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CIR vs. Spouses Remigio P. Magaan and Leticia L. Magaan
G.R. No. 232663 promulgated on May 3, 2021 (Uploaded on November 4, 2021)

(Section 228 of the National Internal Revenue Code [the "Tax Code"] requires that the taxpayer be informed in writing of the factual and legal bases of the assessment; otherwise, it is void. For assessments issued beyond the three-year period, where fraud is being invoked, the factual basis must also be stated and communicated to the taxpayer. The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed.)

Facts:

Petitioner Bureau of Internal Revenue (BIR) issued a Letter of Authority (LOA) for the examination and audit of Respondent Magaan Spouses'/Imilec Tradehaus's books of accounts and other accounting records for internal revenue taxes covering taxable years 1998 to 2001. Thereafter, the BIR issued a Preliminary Assessment Notice (PAN) assessing deficiency income and percentage taxes from 1998 to 2000. Allegedly, the undeclared income was based on the checks issued to the Magaan Spouses, which were undeclared for that period.

On October 16, 2007, the Magaan Spouses sent a letter questioning the basis of the PAN. They requested copies of the checks and the documents linking them to Imilec Tradehaus. Instead of the requested documents, the Magaan Spouses received a tabular summary of check payments with the payee, the amounts, and the banks where the checks were deposited. It included a detailed computation of their income and percentage tax liabilities based on the check payments.

Issue:

Is the assessment valid?

Ruling:

No. Section 228 of the Tax Code requires that the taxpayer be informed in writing of the factual and legal bases of the assessment; otherwise, it is void. For assessments issued beyond the three-year period, where fraud is being invoked, the factual basis must also be stated and communicated to the taxpayer. The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed.

Without substantiating its allegations of fraud, petitioner assumes that Imilec Tradehaus is respondents' alter ego. However, it did not present evidence to prove its claim. Respondents have consistently asked petitioner to show them the basis of their alleged involvement with Imilec Tradehaus, but petitioner refused to give them the actual checks and other documents showing their alleged relationship. What respondents got were schedules containing the list of deposits to banks, payees, and a detailed computation of their tax liabilities. None of these schedules show their relationship with Imilec Tradehaus. The basis of their connection with Imilec Tradehaus is material in showing that they used it to evade the correct payment of taxes. In failing to provide respondents with material information, petitioner denied them the opportunity to effectively protest. This renders the assessments void, for which respondents cannot be held liable.

Taganito Mining Corporation vs. CIR
G.R. No. 216656 promulgated on April 26, 2021 (Uploaded on November 11, 2021)

(A zero-rated taxpayer is entitled to claim as refund or tax credit the input value-added tax [VAT] from its domestic purchases or importation of capital goods used for its trade or business. However, if the acquisition cost exceeds Pl,000,000.00, the claim becomes subject to the rule on amortization of its input VAT credit over the useful life span of the capital goods.)

Facts:

Taganito Mining Corporation (TMC) is "an exporter of beneficiated nickel silicate ores and chromite ores". It alleged that from January 1, 2007 to December 31, 2007, it generated "zero-rated export sales". During such period, TMC paid input VAT on its "domestic purchases of taxable goods and services and importation of capital and non-capital goods. Thereafter, TMC filed an application for refund/credit of its VAT input taxes for 2007 before the Large Taxpayer's Division of the BIR. The BIR disallowed part of the amount being applied for a refund consisting of deferred input VAT on capital goods and recommended for amortization over 60 months.

TMC avers that since the rules are silent on the application of the amortization on zero-rated sales, it should be construed to not apply to taxpayers who are engaged in zero-rated transactions. Here, since all its input taxes are attributable to its zero-rated sales, petitioner claims that its input tax credit/refund is not subject to amortization.

Issue:

Is the input tax credit for purchase of capital goods above PhP1 Million, which are directly attributable to zero-rated export sales of TMC, required to be amortized over the useful life of the product?

Ruling:

Yes. Under Section 110(B) of the Tax Code, as amended, any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112. The use of "any" in Section ll0(B) does not prevent the application of the amortization rule under Section 110(A) to "input tax attributable to zero-rated sales[.]" The amortization rule does not preclude the zero-rated taxpayer from claiming its input tax in full. It is not the word "any" which qualifies a claim for refund or tax credit of input tax. It is the amount of the purchased or imported goods used for trade or business, and whether depreciation is allowed for it.

In Section 4.110-3 of Revenue Regulations (RR) No. 16-2005, as amended, if the purchase or importation of depreciable goods is directly attributable to zero-rated sales, and their acquisition cost exceeds Pl,000,000.00, the amortization applies.

A perusal of RR No. 16-05, implementing the VAT provisions of the Tax Code reveals that, insofar as the amortization of input VAT paid on capital goods is concerned, there is no distinction between the input VAT creditable against output VAT and input VAT subject of a claim for refund or application for issuance of a tax credit certificate. Thus, the law being silent, the same rule on amortization of input VAT necessarily applies to claims for refund. Contrary to TMC's argument, Section 110(B) does not give a VAT-registered taxpayer vested rights to refund any and all input VAT which are directly attributable to its zero-rated sales. Being statutory in nature, its right to refund depends on the limitations provided by law.

Himlayang Pilipino Plans, Inc. vs. CIR
G.R. No. 241848 promulgated on May 14, 2021 (Uploaded on November 16, 2021)

(A LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.)

Facts:

On September 29, 2010, the BIR issued an electronic LOA, authorizing Revenue Officer (RO) Cacdac and Group Supervisor (GS) Andaya to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2009. The examination of books of accounts and other records was made by RO Bagauisan. \Thereafter; on December 14, 2012, the CIR issued a PAN with Details of Discrepancies and on January 14, 2013, an Formal Letter of Demand (FLD) with Final Assessment Notice (FAN) and Details of Discrepancies.

Issue:

Is the assessment valid?

Ruling:

No. RO Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a memorandum of assignment signed by revenue district officer Nacar.

A LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA from RO Cacdac to RO Bagauisan necessitates the issuance of a new LOA. This is clear under RMO No. 43-90. Thus, RO Bagauisan is not authorized by a new LOA to conduct an audit of petitioner's books of accounts for taxable year 2009. The lack of a valid LOA authorizing RO Bagauisan to conduct an audit on petitioner makes the assessment void.

CIR vs. Shinko Electric Industries Co., Ltd.
G.R. No. 226287 promulgated on July 6, 2021 (Uploaded on November 16, 2021)

(A representative office is primarily engaged in non-income generating activities like an Regional or Area Headquarters [RHQ], by analogy, and hence, should be considered exempt from income tax and VAT.)

Facts:

Shinko is a Philippine-registered representative office of the foreign corporation Shinko Electric Industries Co., Ltd., a company organized and existing under the laws of Japan.The BIR assessed Shinko for alleged deficiency income tax and VAT covering the fiscal year ending March 31, 2007. Shinko argued that it is a representative office of a foreign corporation, and, as such, it does not derive income from sources within the Philippines. Hence, it is not liable for deficiency income tax and VAT. On the other hand, the CIR maintains that Shinko should be treated as a taxable Regional Operating Headquarter (ROHQ) because it renders "qualifying services" as enumerated in Section 22(EE) of the Tax Code, as amended. To support its argument, the CIR relies on Shinko's Securities and Exchange Commission (SEC) registration, which states that it performs "promotion xx x

[and] quality control [of the parent company's products]," thereby rendering it involved in an ROHQ's qualifying services.

Issue:

Is the assessment valid correct?

Held:

No. The documents presented by Shinko is sufficient proof that it is a representative office of its parent company in Japan. Thus, since Shinko is a representative office, it is treated similarly with an RHQ for tax purposes.

The term "representative office" is not explicitly defined under the Tax Code. However, a definition thereof can be found in Section I(c), Rule I of the Implementing Rules and Regulations of RA No. 7042, as amended, which states that a "Representative or liaison office deals directly with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office. It undertakes activities such as but not limited to information dissemination and promotion of the company's products as well as quality control of products." In relation to this, an RHQ is an office principally intended to render administrative services. The RHQ does not earn or derive income in the Philippines. Consequently, the Tax Code exempts RHQs from income tax and VAT.

A representative office, while not defined under the Tax Code, is akin to an RHQ and not to an ROHQ. A representative office is only allowed under the law to undertake activities such as but not limited to information dissemination, promotion of the parent company's products as well as quality control of products. These activities, while directed to the parent company's clients, are not income generating, similar to the activities of an RHQ and in stark contrast with the qualifying services performed by ROHQs. As such, a representative office should be treated and taxed in the same manner as an RHQ and not an ROHQ. Stated otherwise, since a representative office is primarily engaged in non-income generating activities like an RHQ, by analogy, it should be considered exempt from income tax and VAT.

In this case, Shinko is fully subsidized by its head office in Japan, wherein all the costs associated with establishing and maintaining a representative office are covered by remittances from the parent company. Moreover, Shinko deals directly with the clients of its head office as it undertakes activities limited to information dissemination, promotion of the parent company's products, including the conduct of quality control. Records show that all inquiries from Philippine clients are routed to its Japan head office, which, in turn, makes the final decisions.

The CIR insists that Shinko performs "qualifying services" is a misreading of Shinko's SEC Registration, Shinko's SEC Registration makes no mention of it performing qualifying services. In fact, the activities specified therein, namely "information dissemination, promotion of the parent company's products, quality control of products" clearly fall within the scope of what a representative office is permitted to do. Moreover, the CIR contends that Shinko, in its capacity as an ROHQ, derived income in the Philippines from its bank deposits and investments in shares of stocks. The interest and dividend allegedly earned by Shinko are considered as "passive income." Income in the form of interest and dividends does not automatically render it as an ROHQ liable to pay income tax and VAT. Earning interest or dividend income is not one of the qualifying services an ROHQ may provide.

CTA EN BANC DECISION

CIR vs. Actuate Builders, Inc.
CTA En Banc Case No. 2298 promulgated on October 29, 2021

(The appellant has to specify in what aspect of the law or the facts that the trial court erred. There is long standing precedent that a general assignment of errors is unacceptable under the rules.)

Facts:

On June 26, 2015, Actuate Builders, Inc. (ABI) filed an Application for Tax Credits/Refunds with the BIR, applying for refund of its alleged excess and unutilized input VAT for the 2nd to 4th quarters of the calendar year ending December 31, 2013. On November 23, 2015, ABI filed a Petition for Review with the CTA, claiming that the excess and unutilized VAT arose from transactions with entities registered with the Philippine Economic Zone Authority (PEZA) and, hence, should have been effectively subjected to zero-percent VAT rate. The CTA in Division partially granted the refund of ABI. Thereafter, the CIR filed his Petition for Review with the CTA en banc. However, ABI pointed out that the CIR's Petition did not contain a concise statement of facts and issues involved to sufficiently enable the Court to intelligently decide the Petition.

Issue:

Is the failure to indicate any assignment of errors pertaining to the assailed CTA Division Decision fatal?

Ruling:

Yes. As ABI has pointed out, the CIR failed to specify the deficient invoices alleged in the Petition to enable the Court to consider the argument and likewise failed to identify the witness/es allegedly uttering the hearsay testimony or to specify in what respect their testimony constitutes hearsay.

The appellant has to specify in what aspect of the law or the facts that the trial court erred. There is long standing precedent that a general assignment of errors is unacceptable under the rules. In fact, a statement of the following tenor: that "the Court of First Instance of this City incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence," was deemed insufficient. An appellant, therefore, must carefully formulate his assignment of errors. As observed by the Court en banc above, not only does the CIR's Petition not have a section on his "assignment of errors" or even issues, for that matter, but also, the arguments proffered by the CIR on the non-compliant invoices and the hearsay testimony, without any specificity as to which non-compliant invoices/receipts are being referred to or whose/which hearsay testimony the Court in Division erred in considering when partially granting the claim are general assertions that are simply unacceptable. Hence, the Petition for Review by the CIR is dismissed.

CTA DIVISION DECISIONS

William R. Villarica vs. CIR
CTA Case No. 9343 promulgated on October 21, 2021

(A LOA is issued covering a specific taxable year and "unverified prior years", the LOA will not be rendered void in its entirety but will be valid as to the declared taxable year.)

Facts:

The BIR issued a Letter of Authority to examine the books of accounts and other accounting records of petitioner William R. Villarica. The LOA covered all types of internal revenue taxes for "Calendar Year 2009 and unverified prior years".

Petitioner contends that the BIR has no authority to investigate him alleging that the LOA herein is invalid. He explains that the coverage of the said instrument, specifically, "Calendar Year 2009 and unverified prior years" runs contrary to the mandate of Revenue Memorandum Order (RMO) No. 43-90, consequently, he insists that the resulting assessments issued against him are void. Respondent insists that the BIR was justified in extending the coverage of the LOA to "unverified prior years" since at the time of its issuance, it was still investigating when petitioner started his illegal acts.

Issue:

Is the LOA issued by the BIR valid?

Ruling:

Yes, the LOA issued against Petitioner is valid only insofar as taxable year 2009 is concerned.

In order to determine the validity of an LOA, a LOA should cover a taxable period not exceeding one taxable year under RMO No. 43-90. The practice of issuing LOAs covering audit of "unverified prior years" is hereby prohibited. Furthermore, under RMO No. 27-10,98 the issuance of LOAs shall cover only the taxable year(s) for which prima facie evidence of tax fraud, or of violations of the Tax Code, was established through the appropriate preliminary investigation, unless the investigation of prior or subsequent years is necessary". In harmonizing both legal pronouncements, it is clear that they do not prohibit the issuance of an LOA covering more than one taxable period. More so in audits conducted by the NID when the investigation of prior or subsequent years is necessary in order to determine the transactions or scheme employed by the taxpayer in not paying the correct taxes. However, what the guidelines prohibit is the issuance of LOAs covering "unverified prior years."

Jurisprudence has also clarified that in the event an LOA is issued covering a specific taxable year and "unverified prior years", the LOA will not be rendered void in its entirety but will be valid as to the declared taxable year.

Gateway Rural Bank, Inc. vs. CIR
CTA Case No. 9547 promulgated on June 22, 2021 decision (October 13, 2021 Resolution)

(A person who receives the notice must be (1) a competent person managing the office or place of business; and (2) must have sufficient knowledge to understand the obligation of the defendant in the notice, its importance and the prejudicial effects arising from inaction.)

Facts:

Petitioner Gateway argues that the Formal Assessment, Preliminary Collection Letter and Final Notice Before Seizure FNBS are null and void for violating its right to due process since they were not preceded by a validly served FAN/FLD. The alleged FLD dated October 14, 2016 was improperly served to a supposed receptionist, Ms. Roselyn Dela Cruz, last November 4, 2016.

Issue:

Was there an improper service of the FAN/FLD to Gateway?

Ruling:

No, the CIR failed to show convincing evidence that the subject FAN/FLD was properly served to Gateway. Thus, the assessments are void.

Based on the Affidavit of Service of Final Assessment Notice executed by RO Magsaysay R. Bacay, it is clear that the BIR availed of "Substituted Service" in view of the supposed absence of the concerned party, i.e., the petitioner, by serving the subject notices to a certain Ms. Roselyn Dela Cruz. In this case, the concerned party for the subject FAN/FLD is Gateway, which is indisputably a corporation. Such being the case, as a corporation, Gateway should always be considered present or found at its current address. Thus, since it is deemed to be found therein, the said notice may not be validly left at Gateway's current or registered address, with its clerk or with a person having charge thereof.

The service of the subject FAN/FLD shall bind Gateway, when such service was done to its board of directors; or to certain officers, committees or agents, pursuant to law or its corporate by-laws, or if there is a showing that the said board has authorized the said individuals, or has delegated the function or power of receiving the said FAN/FLD to the latter, either expressly or impliedly by habit, custom or acquiescence in the general course of business. In this case, it is clear that the service of the subject FAN/FLD was not done to Gateway's board of directors. Rather, it was served to Ms. Dela Cruz. The CIR has not shown any provision of law or of petitioner's bylaws that Ms. Dela Cruz was authorized to receive the subject FAN/FLD for and/or on behalf of Gateway. It is not acceptable for RO Bacay to simply rely on what the security guard on duty has said as to Ms. Dela Cruz's authority. Neither is the wearing of an identification card of Ms. Dela Cruz sufficient. At best, it only proves that she is an employee of petitioner, but not necessarily indicative that she is its authorized representative to receive the subject FAN/FLD. It is clear that RO Magsaysay R. Bacay merely relied on his perception that Ms. Dela Cruz is Gateway's "receptionist" or loan clerk, without further inquiry.

A person who receives the notice must be (1) a competent person managing the office or place of business; and (2) must have sufficient knowledge to understand the obligation of the defendant in the notice, its importance and the prejudicial effects arising from inaction.

Therefore, the "*clerk or the person having charge thereof*" for Substituted Service under Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended, must refer to a competent person managing the office or place of business with sufficient knowledge to understand the importance and effects of the notice. Consequently, the loan clerk who receives mail matters cannot be considered as the "clerk" contemplated under RR No. 12-99, as amended, as she is not the person managing the office or place of business of the petitioner.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. Thus, there was an improper service of the subject FAN/FLD to Gateway, and thus, the same is not binding on the latter and the assessment is void for violation of Gateway's right to due process.

Diageo Philippines, Inc. vs. CIR
CTA Case No. 9522 promulgated on November 4, 2021

(Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of

due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in auditing a taxpayer.)

Facts:

The BIR issued a Request for Presentation of Records requiring Diageo Philippines, Inc. (Diageo) to submit the documents in relation to respondent's validiation/verification of Diageo's Importer's Sworn Statements (ISS) pertaining to all of its imported brands of distilled spirits and champagne. This request was served by revenue officer (RO) Claress Marie S. Notario (RO Notario) to Diageo. Thereafter, Diageo submitted the requested documents. A Mission Order (MO) was issued by Officer-In-Charge Assistant Commissioner Nestor S. Valeroso directing RO Notario and GS Emmanuel G. Viardo to validate the Net Retail Price declared in Diageo's submitted Manufacturers/Importers Sworn Statement pursuant to Sections 6, 7 and 8 of Revenue Regulations No. (RR') 17-2012. Upon receipt of the requested documents, RO Notario allegedly proceeded to validate and verify the ISS and ATRIGs submitted by Diageo for taxable years 2013 and 2014. By performing these procedures, RO Notario determined that deficiency taxes are due from Diageo. Hence, RO Notario recommended the issuance of a PAN against Diageo. Thereafter, a FLD and Audit Results/Assessment Notices (ARANs) for the assessed deficiency taxes was issued against Diageo. The Final Decision on Disputed Assessment (FDDA) was received by Diageo on March 7, 2017.

Issue:

Is the tax deficiency assessment validly issued?

Ruling:

No. The revenue officers who conducted the audit of Diageo were not properly authorized. Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given to them in auditing a taxpayer. It is clear, therefore, that before an assessment can be made, the revenue officer conducting the examination of a taxpayer's books of accounts and other accounting records must first be duly authorized to do so.

In the case at bar, RO Notario and GS Viardo performed an examination and audit of Diageo which led to the issuance of a deficiency taxes assessment against it. Despite this, respondent admitted that no LOA was issued in the case at bar authorizing RO Notario and GS Viardo to audit and investigate Diageo for the purpose of issuing a deficiency tax assessment. posited that he issued the subject assessment lawfully without the need of an LOA. He argued that the deficiency Excise Tax and VAT assessments he issued against Diageo were the result of verification and validation of Diageo's ISS of its alcohol products. This argument is misplaced. Clearly, there must be a prior grant of authority before any revenue officer can conduct an examination or investigation for the purpose of determining. Absent such, the resulting assessment is undoubtedly null and void.

It is clear that no valid LOA was issued in the case at bar. Hence, no authority was conferred to RO Notario and GS Viardo to perform an audit and investigation of Diageo's books of accounts and other accounting records for the purpose of assessing the correct taxes due. Any resulting assessment from the examination and investigation conducted by said revenue officers of Diageo's records is thus unquestionably null and void.

Bac-Man Geothermal Inc., vs. CIR
CTA Case No. 9728 promulgated on November 18, 2021

(Section 228 of the Tax Code, as amended, and RR No. 12-99, as amended, explicitly require that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. The law mandates that the bases be reflected in the PAN, FLD, FAN, and FDDA. This cannot be presumed, otherwise, the express mandate of Section 228 and RR No. 12-99, as amended, would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.)

Facts:

On January 10, 2017, Bac-Man received Letter of Authority to examine its books of accounts and other accounting records for corporate income tax for the period from January 1, 2013 to December 31, 2013. \

Bac-Man argues that the Respondent failed to comply with the standards of due process, specifically:

(i) the PAN and FLD did not provide adequate factual basis of the assessment;
(ii) (ii) the FLD failed to consider and address Bac-Man's explanation in the Reply to the PAN;
(iii) (iii) the FDDA failed to state the legal and factual basis of the assessment; and (iv) the FDDA is likewise void for failing to specify a definite due date for the payment of the deficiency tax assessment;

Issue:

Is the assessment of the BIR oid for failure to comply with the standards of due process and to inform Bac-Man of the law and the facts upon which the assessment was based?

Ruling:

Yes. Section 228 of the Tax Code, as amended, and RR No. 12-99, as amended, explicitly require that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. The law mandates that the bases be reflected in the PAN, FLD, FAN, and FDDA. This cannot be presumed, otherwise, the express mandate of Section 228 and RR No. 12-99, as amended, would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.

The FLD is a verbatim reproduction of the wordings of the PAN, differing only in the computation of the interest. The FLD also neither referred to Bac-Man's Reply nor addressed its arguments therein. The FLD was not even accompanied with a computation sheet. Since the FLD failed to inform Bac-Man of the reasons for his apparent rejection of its arguments in the Reply, respondent failed to observe the standards of due process.

In *CIR vs. Avon Products Manufacturing, Inc.*, the CIR's has the duty to apprise the taxpayer of the legal and factual bases of the assessments issued against it, to consider the explanations or defenses raised by the taxpayer in connection with the assessments, and further instructs that the reason for the rejection of such explanations or defenses be communicated to taxpayers, even as it clarified that the CIR is not obliged to accept the taxpayer's submissions at face value, lest the assessment be deemed void. Indeed, issuing the FLD which is an exact replica of the PAN, sans any indication in the FLD that due consideration was accorded on Bac-Man's explanations or arguments as stated in its Reply to the PAN, is fatal to respondent's cause.

Amadeus Marketing Philippines, Inc. vs. CIR
CTA Case No. 10094 promulgated on November 17, 2021

(When a judicial claim for refund or tax credit is appealed from an unsuccessful administrative claim, the taxpayer has to convince the Court that respondent CIR had no reason to deny its claim. It becomes imperative for the taxpayer to show the Court that not only is it entitled under substantive law to its claim, but also that it satisfied all the evidentiary requirements for its administrative claim..)

Facts:

On January 1, 2015, Amadeus Philippines entered into an ACO (Amadeus Commercial Organization) Agreement with its parent company, Amadeus Spain. Under the agreement, Amadeus Philippines will promote, make available and facilitate access to the Amadeus System to the subscribers located in the Amadeus ACO Territory (Philippines) and will act as a neutral agent for all Amadeus Spain participants and subscribers under the agreement. Amadeus System is a fully automated reservations and distribution system with the ability to perform comprehensive information, communications, reservations, ticketing and related functions worldwide. Under the ACO Agreement, Amadeus System is also defined as the processing facilities related to computerized travel information and distribution hardware and software systems are developed, owned, operated and/or distributed by Amadeus Spain. Pursuant to the ACO Agreement, Amadeus Philippines rendered services to Amadeus Spain and issued billing invoices for the year 2017. For the payments received from Amadeus Spain petitioner issued VAT zero-rated official receipts. In the course of its operations, petitioner allegedly incurred and paid input VAT arising from domestic purchases of goods and services which were attributable to its zero-rated sales. Thereafter, petitioner filed its quarterly VAT returns for 2017.

Thereafter, petitioner Amadeus Philippines filed with the BIR Revenue District Office No. an administrative claim for refund of its excess and unutilized input VAT. However, in an undated letter a copy of which was received by petitioner on May 21, 2019, the BIR, denied petitioner's administrative claim.

Issue:

Is Amadeus Philippines is entitled to a refund of the alleged unutilized VAT input taxes for taxable year 2017?

Ruling:

No. Petitioner failed to establish that it is engaged in zero-rated sales or effectively zero-rated sales during the four quarters of 2017.

Pursuant to Section 112 of the Tax Code, certain essential elements must be present for a sale or supply of services to qualify for VAT rate of zero percent (0%), namely:

1. The services fall under any of the categories under Section 108(8)(2), or simply, the services rendered should be other than "processing, manufacturing or repacking goods";
2. The service must be performed in the Philippines by a VAT-registered person;
3. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules; and,
4. The recipient of the services is a foreign corporation, and the corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed.

Relative the fourth essential element, petitioner offered in evidence a Certification of Non-Registration of Company for Amadeus Spain issued by the Philippine SEC to the effect that

the records of the latter do not show the registration of Amadeus Spain as a corporation, a partnership or a One Person Corporation (OPC). Petitioner likewise submitted Amadeus Spain's Tax Residency Certification, By-Laws, and Screenshot of the Official Website of Spain Company Registries. A taxpayer claiming for a VAT refund or credit under Section 108(8) of the Tax Code, as amended, has the burden to prove not only that the recipient of the service is a foreign corporation, but also that said corporation is doing business outside the Philippines. Significantly, the BIR denied petitioner's administrative claim on the ground that petitioner's sale of services to its parent Amadeus Spain cannot be considered as zero-rated sales since Amadeus Spain is doing business in the Philippines. In relation to this denial, when a judicial claim for refund or tax credit is appealed from an unsuccessful administrative claim, the taxpayer has to convince the Court that respondent CIR had no reason to deny its claim. It becomes imperative for the taxpayer to show the Court that not only is it entitled under substantive law to its claim, but also that it satisfied all the evidentiary requirements for its administrative claim.

In this case, petitioner failed to show that respondent was in error in finding that Amadeus Spain is doing business in the Philippines. Petitioner has failed to overcome respondent's finding and basis for denying its administrative claim. It becomes unnecessary to determine whether petitioner complied with the remaining requisites under Section 112 of the Tax Code, as amended, to successfully obtain a credit/refund of its alleged input VAT.

HR Mall, Inc. vs. CIR
CTA Case No. 9981 promulgated on November 12, 2021

(A tax assessment issued by the BIR may be protested administratively, within thirty (30) days from receipt thereof, by filing either a request for reconsideration or reinvestigation, in such form and manner as may be prescribed by implementing rules and regulations.)

Facts:

On May 25, 2016, the BIR served HR Mall, Inc. (HRMI) a LOA to examine the books of accounts and other accounting records of HRMI, for all internal revenue taxes for the period from January 1, 2014 to December 31, 2014. Thereafter, on November 17, 2017, HRMI received the PAN and Details of Discrepancies assessing the latter for deficiency taxes for taxable year 2014. Thereafter, the BIR issued a FAN dated December 15, 2017 which HRMI received on December 20, 2017.

The said FAN covered the period from January 1, 2015 until December 28, 2017. On January 15, 2018, HRMI, filed with the BIR the letter of even date, acknowledging its receipt of the FAN on December 20, 2017; alleging that the FAN lacks factual and legal basis; and requesting for a period of thirty (30) days within which to submit its records against the BIR's findings. On January 28, 2018, HRMI filed the Supplemental Protest with the BIR against the FAN for year 2014. Sometime in the 2nd week of March 2018, HRMI received the letter dated February 27, 2018 from the BIR, denying its request for a 30-day extension to submit a response, and further stating that the assessment mentioned in the FAN became final, executory and demandable, for its failure to file a valid protest within the time prescribed by Section 3.1.4 of Revenue Regulations (RR) No. 18-2013. Hence, on November 15, 2018, HRMI received the Warrant of Distraint and/or Levy (WDL).

Issue:

Is there a valid protest letter?

Ruling:

No. Section 228 of the Tax Code provides that a tax assessment issued by the BIR may be protested administratively, within thirty (30) days from receipt thereof, by filing either a

request for reconsideration or reinvestigation, in such form and manner as may be prescribed by implementing rules and regulations.

In this case, the supposed protest letter of HRMI did not comply with Section 228 of the Tax Code, in relation to RR No. 12-99, as amended. After receiving the FAN, Assessment Notices, and Details of Discrepancies on December 20, 2017, HRMI filed on January 15, 2018, the letter evenly dated and the Annex "A" thereof. However, while HRMI therein indicates its date of receipt of the subject FAN and a certain form of legal basis to support some of its arguments against FAN, nowhere is it stated whether its protest is a request for reconsideration or a request for reinvestigation. Nevertheless, even granting that it is justified to ignore the said requirement, it cannot determine whether the same is a request for reconsideration or a request of reinvestigation, since there is no plea of re-evaluation either "on the basis of existing records without need of additional evidence" or "on the basis of newly discovered or additional evidence that the taxpayer intends to present'. Hence, the January 15, 2018 Letter of the HRMI cannot be considered as a valid protest, and thus, without force and effect. Even assuming it's a valid request for reinvestigation, HRMI failed to submit the supporting documents within 60 days as required under RR No. 12-99, as amended.

Similarly, HRMI's Supplemental Protest cannot be considered as a valid protest. It is noteworthy that the same likewise failed to indicate whether it is a request for reconsideration or a request of reinvestigation. Moreover, the Supplemental Protest was filed beyond the period to protest an assessment as provided under the law. As established, HRMI filed the said Supplemental Protest only on January 28, 2018. Considering that the subject tax assessments were received by HRMI on December 20, 2017, the filing of the same is already beyond the thirty (30)-day period to file a protest thereto. It is already settled that failure to file an administrative protest within thirty (30) days from receipt of the FAN will render the assessment final, executory, and demandable. Correspondingly, since HRMI failed to file a valid protest, the subject tax assessments have become final, executory and demandable. Therefore, the WDL issued against HRMI is valid.

10K South Concrete Mix Specialist, Inc., vs. CIR
CTA Case No. 9730 promulgated on November 18, 2021

(As a general rule, a mailed letter is deemed received by the addressee in the ordinary course of mail. However, this is merely a disputable presumption, subject to controversion. If the taxpayer denies receipt of an assessment from the BIR, the latter has to prove that such assessment was indeed received by the former.)

Facts:

On September 30, 2014, the BIR issued a LOA authorizing the examination of 10K South Concrete Mix Specialist, Inc. (South Concrete)'s books of accounts and other accounting records for all internal revenue taxes for the period beginning from January 1, 2013 to December 31, 2013. On June 22, 2016, the BIR issued a PAN assessing South Concrete for alleged deficiency taxes for taxable year 2013. Within the 15-day period to file a reply to the PAN, South Concrete filed its Reply to PAN questioning the validity of the aforesaid assessment. The BIR claims that Assessment Notices and a FAN with Details of Discrepancies assessing South Concrete for alleged deficiency taxes for taxable year 2013 were issued to South Concrete on August 2, 2016. Thereafter, on November 17, 2017, South Concrete received the following: (1) from the Bank of the Philippine Islands (BPI), a letter14 dated November 10, 2017, informing South Concrete that BPI received a Warrant of Garnishment dated November 2, 2017; and (2) from Security Bank, a Warrant of Garnishment16 dated November 2, 2017, which was received by Security Bank on November 9, 2017.

South Concrete argues that the assessments are void because it never received, either personally or through registered mail, the FLD/FAN allegedly issued and served by the BIR. South Concrete asserts that respondent failed to prove that the FLD/FAN was, in fact, mailed to, and was received by, South Concrete. On the other hand, the CIR claims that the PAN and FAN were served to South Concrete through registered mail.

Issue:

Is there a valid service of FLD/FAN to South Concrete by the BIR?

Ruling:

No. In this case, the CIR failed to prove that the FLD/FAN was mailed to, and received by, South Concrete. Under Section 228 of the Tax Code in relation to RR No. 12-99, as amended, an FLD and an assessment notice shall be issued by the CIR or his duly authorized representative. The use of the word "shall" in these legal provisions indicate the mandatory nature of the requirements laid down therein. Verily, it is mandatory for the CIR or his duly authorized representative to demonstrate that the FLD/FAN was issued to, and was received by, the taxpayer. It is a requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process. Hence, any assessment issued in violation of Section 228 of the Tax Code, as amended, and RR No. 12-99, as amended, is void.

As a general rule, a mailed letter is deemed received by the addressee in the ordinary course of mail. However, this is merely a disputable presumption, subject to controversion. If the taxpayer denies receipt of an assessment from the BIR, the latter has to prove that such assessment was indeed received by the former.

From the foregoing, it is clear that the documents submitted by the CIR, such as the Record of Cases of the Administrative Division and Postmaster Certification -do not prove that the document which was mailed to South Concrete was the FLD/FAN. Considering that respondent failed to present the Registry Receipt issued by PHLPOST or the Registry Return Card signed by South Concrete or its authorized representative, and that the Postmaster Certification failed to prove that what was mailed to South Concrete was the FLD/FAN, respondent failed to discharge the burden of proving the fact of mailing of the FLD/FAN. Likewise, respondent was not able to prove that the FLD/FAN was received by South Concrete. Hence, the FLD/FAN is considered void.