MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

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Highlights

BIR ISSUANCES

RR No. 13-2023, November 10, 2023
(Prescribing Policies and Guidelines for the optional VAT-Registration of Registered Business Enterprises Classified as Domestic Market Enterprises under the Five Percent (5%) Tax on Gross Income Earned In Lieu of All Taxes Regime During the Transitory Period Pursuant to Rule 18, Section 5 of the Amended Implementing Rules and Regulations of Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises (CREATE) ACT")

Salient Provisions:

- Registered Business Enterprise ("RBE") classified as Domestic Market Enterprise ("DME") which is located inside the Economic or Freeport Zone may retain the availment of the 5% GIE incentive during the ten-year transitory period under Sec 311 (C) of the CREATE and be allowed to register as a Value Added Tax ("VAT") taxpayer provided it secures from the concerned Investment Promotion Agencies ("IPA") a Certification specifically excluding VAT from the 5% Gross Income Earned ("GIE") in lieu of all taxes.

- The RBE shall submit to the concerned IPA the following documentary requirements:
  a. Request letter stating its intention to avail of the option to register as a VAT taxpayer with the BIR pursuant to Section 5, Rule 18 of the amended IRR of the CREATE;
  b. Notarized "Deed of waiver of Right to Avail of the VAT Exemption Incentives" in the form prescribed in this Regulations; and
  c. Other documents that may be prescribed by the concerned IPA.

- The waiver of right to avail of the VAT exemption incentives shall be irrevocable from the time it is made and shall be binding in the remaining transitory period.

COURT DECISIONS

SUPREME COURT

People of the Philippines v. Joel C. Mendez; Joel C. Mendez v. People of the Philippines
G.R. No. 208310-11 and 208662, March 28, 2023, Uploaded on November 21, 2023
(The criminal action is deemed a collection case. Therefore, the government must prove two things: one, the guilt of the. accused by proof beyond reasonable doubt, and two, the accused's civil liability for taxes by competent evidence. (other than an assessment))

Facts: Joel C. Mendez was charged with two separate informations for failure to file ITR and for failure to supply correct and accurate information in his Income Tax Returns ("ITR"). In defense, Mr. Mendez contended that since the amounts (PhP1,522,152.14 and PhP2,107,023.65), alleged in the Informations are merely "estimates", it is as if there is no specified amount claimed. Hence, the original jurisdiction belonged to the regular courts. Thus, the CTA erroneously took cognizance of the criminal cases against him.

The CTA however disagreed with his contention and found him guilty of the crimes charged but refused to impose civil liabilities because the CIR did not issue a final assessment for deficiency taxes.

Issues:

1. Did the CTA have jurisdiction over the cases?
2. Was the CTA correct in refusing to impose civil liabilities?

Ruling:

1. Yes.

Jurisdiction over the subject matter is conferred by law and determined by the allegations in the Complaint or Information. Under Republic Act ("RA") 9282, for criminal offenses with an attendant claim amounting to PhPl,000,000.00 or more, exclusive original jurisdiction is vested with the CTA. A plain reading of the Informations reveals that the prosecution alleged with sufficient clarity that the principal amount of deficiency taxes claimed against the accused is at least PhPl,000,000.00 and that the amount is without penalties, surcharges, and interest.

At this juncture, the Supreme court found it appropriate to clarify the conflicting provisions under RA 9282 on the jurisdiction of the CTA and the provisions under RA 11576 on the expanded jurisdiction of the regular courts:

a) Exclusive original jurisdiction over tax collection cases involving PhPl,000,000.00 or more remains with the CTA;
b) Exclusive original jurisdiction over tax collection cases involving less than PhPl,000,000.00 shall be exercised by the proper first-level courts;
c) Exclusive appellate jurisdiction over tax collection cases originally decided by the first-level courts shall be exercised by the Regional Trial Court ("RTC");
d) Exclusive original jurisdiction over criminal offenses or felonies where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is PhPl,000,000.00 or more remains with the CTA;
e) Exclusive original jurisdiction over criminal offenses or felonies where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than PhPl,000,000.00 shall be exercised by the proper first-level courts; and
f) Exclusive appellate jurisdiction over criminal offenses or felonies originally decided by the first-level courts remains with the RTC.

2. No.

Section 7 of RA 9282 provides:

> "the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized."

Therefore, by requiring the simultaneous institution of the criminal case for violation of the tax laws and the civil case for collection of taxes and penalties relative to the criminal case in the same proceeding with the CTA, Congress dispensed with the requirement of delinquency as a pre-condition to collection. In other words, while Section 205 of the National Internal Revenue Code of 1997, as amended ("Tax Code") mandates a final decision of the CIR on the disputed assessment so that "[t]he judgment in the criminal case

shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the [CIR]," Section 7 (b)(l) of RA No. 9282 impliedly repealed the same by allowing the government to collect from the taxpayer its tax liabilities without the formal assessment.

For the guidance of the bench and bar, the following rules shall govern the prosecution of criminal tax law violations and the corresponding civil liability for unpaid taxes:

a) When a criminal action for violation of the tax laws is filed, a prior assessment is not required. Neither a final assessment is a precondition to collection of delinquent taxes in the criminal tax case. The criminal action is deemed a collection case. Therefore, the government must prove two things: one, the guilt of the. accused by proof beyond reasonable doubt, and two, the accused's civil liability for taxes by competent evidence (other than an assessment).

b) If before the institution of the criminal action, the government filed (1) a civil suit for collection, or (2) an answer to the taxpayer's petition for review before the CTA, the civil action or the resolution of the taxpayer's petition for review shall be suspended before judgment on the merits until final judgment is rendered in the criminal action. However, before judgment on the merits is rendered in the civil action, it may be consolidated with the criminal action. In such a case, the judgment in the criminal action shall include a finding of the accused's civil liability for unpaid taxes relative to the criminal case.

CTA EN BANC

NDC v. CIR

CTA EB No. 2572, November 13, 2023

(In order to establish that there was erroneous overpayment of VAT, it is imperative to determine if the taxpayer indeed has sales to government properly substantiated by VAT invoices/Official Receipts ("OR") upon which the 7% standard input VAT ("SIV") will be derived. Only then will there be an amount of 7% SIV which will be compared to the actual input VAT attributable to sales to government.)

Facts: The NDC filed a claim for refund alleging that it made a mistake in utilizing the actual input VAT attributable to its sales to the government, instead of the 7% SIV, as credit against its output VAT. NDC seeks to nullify the decision of the CTA Third Division denying its request for refund of erroneously collected VAT for the second quarter of 2015 to third quarter of 2016 because NDC failed to present proof of its actual input VAT.

Issue: Is NDC entitled to the refund?

Ruling: No. NDC failed to establish its entitlement to a refund. Sales to the government are taxed at 12% where 5 % is withheld by the government payor. The remaining 7%, which accounts for the standard input VAT, will then be compared with the actual input VAT attributable to sale to government with the difference either forming part of or closed to the seller's expense or cost. In order to establish that there was erroneous overpayment of VAT, it is imperative to determine if the taxpayer indeed has sales to government properly substantiated by VAT invoices/ORs upon which the 7% standard input VAT ("SIV") will be derived. Only then will there be an amount of 7% SIV which will be compared to the actual input VAT attributable to sales to government. Here, NDC did not offer in evidence the VAT invoices/ORs substantiating its sales of goods or services to the government. Instead, it submitted amended VAT returns and certificates of tax withheld showing the amount of its sales to government. While the amount of 7% may be derived from the amount of sales to

government indicated in the said documents, the documents presented by NDC do not constitute as the proper VAT supporting documents for NDC's sales.

Arrow Freight Corporation v. CIR
CTA EB No. 2594, November 15, 2023
(The petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Court in Division.)

Facts: Arrow Freight Corporation ("AFC") filed a petition for review for its claim for refund before the Court in Division, which was partially granted. AFC filed a motion for partial reconsideration, however, the Court in Division held that it was filed out of time and ruled that AFC's counsel received the decision on October 16, 2021. The filings of pleadings and motions was suspended until October 26, 2021, pursuant to a Supreme Court administrative circular, thus, from October 27, 2021, AFC has 15 days or until November 10, 2021, to file its motion for reconsideration but AFC only filed the same on November 29, 2021.

AFC argues that the date of receipt of the notice of decision by its counsel on October 16, 2021, is a fake may have been photoshopped. It argued that the receiving stamp and dater stamp is counterfeit and not the one used by the counsel's law office. Additionally, October 16, 2021, is a Saturday, and that its counsel's law office does not hold office on Saturdays, that it is also highly improbable for the process servers of the CTA to serve notices or orders on Saturdays knowing it's a non-working day. AFC argues that it was only on November 15, 2021, that its counsel's law office received the notice of decision.

Issue: Did AFC file its motion for partial reconsideration on time?

Ruling: Yes. As a rule, forgery cannot be presumed. An allegation of forgery must be proved by clear, positive, and convincing evidence, and the burden of proof lies on the party alleging forgery. AFC failed to present proof to show that the signature appearing on the notice of decision does not belong to any of the staff or employee of the counsel's law office. There is greater weight on the certified true copy of the proof of service by the records officer of the CTA en banc on the presumption that official duty has been regularly performed.

Section 1, Rule 8 of the Revised Rules of the CTA provides that the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the division. AFC's motion for partial reconsideration on November 29, 2021, was filed out of time, thus the Court en banc cannot consider AFC's petition for review.

CIR v. Integreon Managed Solutions (Philippines), Inc.
CTA EB No. 2630, November 15, 2023
(A Memorandum of Agreement signed a Revenue District Officer, who is not an official authorized to issue Letters of Assessment ("LOA"), assigning the BIR audit to another Revenue Officer is invalid.)

Facts: On July 23, 2015, Integreon Managed Solutions (Philippines), Inc. ("Integreon") received a LOA. The audit was then reassigned to another Revenue Officer pursuant to a Memorandum of Agreement signed by a Revenue District Officer. A Preliminary Assessment Notice ("PAN"), Final Assessment Notice ("FAN"), and Final Decision on Disputed Assessment ("FDDA") was subsequently issued assessing Integreon for deficiency taxes. Integreon then filed a Petition for Review before the CTA.

Issue: Does the Revenue Officer ("RO") have the proper authority to continue the audit pursuant to a Memorandum of Agreement ("MOA") signed by the Revenue District Officer?

Ruling: No. The RO who continued to audit has not been duly vested with any valid authority to continue with the audit. The RO tasked to examine the books of accounts of taxpayers must be authorized by an LOA. The only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners, and the Commissioner.

Pilipinas Kyohritsu Inc. v. CIR

CTA EB No. 2659, November 17, 2023

(To accord 0% VAT on sales made pursuant to Section 106(A)(2)(a)(l), the sale must be paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas ("BSP").)

Facts: Pilipinas Kyohritsu, Inc. ("PKI") filed with the BIR Large Taxpayers Division its Application for Tax Credits or Refunds for unutilized input VAT. The BIR denied the claim. PKI filed a Petition for Review. The CTA Division partially granted the petition, ruling that offsetting of assets and liabilities is contrary to Revenue Memorandum Circular ("RMC") No. 61-2016. Said RMC prohibits arrangements/practices of offsetting the amounts recognized as accrued/trade receivables against amounts recognized as accrued/trade payables.

Issue: Is PKI entitled to the full amount of its refund claim for unutilized input VAT?

Ruling: No. To accord 0% VAT on sales made pursuant to Section 106(A)(2)(a)(l), the following conditions must be present: first, the sale was made by a VAT-registered person; second, there was sale and actual shipment of goods from the Philippines to a foreign country; and third, said sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

For the third condition, an examination of the documents submitted shows that PKI was not able to substantiate the adjustments of its export sales for offsetting of receivables and payables and deductions for importation of raw materials from SWS-Japan and SEWS-USA. PKI failed to provide any supporting document for each of the additions for "other receivables credited" and the deductions for "importation of raw materials" and "other charges debited."

Therefore, the Court agrees with the Division that out of the Php2,030,790,316.26 reported zero-rated sales arising from export sales to SWS-Japan and SEWS-USA, only Php1,274,943,827.29 qualified for VAT zero-rating.

Oceanagold (Philippines) Inc. v. CIR

CTA EB No. 2663, October 18, 2023

(Actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in strictissimi juris against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized and must be duly proven.)

Facts: Oceanagold (Philippines) Inc. ("Oceanagold) entered into a Financial or Technical Assistance Agreement ("FTAA") with the Republic of the Philippines. Under the FTAA, Oceanagold is given a period of five (5) years from the commencement of its operations to recover its pre-operating expenses, part of which are excise taxes on minerals. Section 11.2 of the FTAA provides:

> "11.2 Recovery of Pre-operating Expenses, Property Expenses and Tax Paid During the Recovery Period.
>
> […]

> All taxes, duties fees, costs, levies and imposts paid by the CONTRACTOR and which are detrimental to the CONTRACTOR's recovery of Pre-operating Expenses and Property Expenses during the five (5) Contract Years"

The BIR however assessed Oceanagold for deficiency excise taxes. Oceanagold paid for the assessment under protest and filed a petition for refund.

Issue: Is Oceanagold entitled to its claim for refund.

Ruling: No. The FTAA clearly provides that during the so-called "Recovery Period" or the five (5) Contract Years beginning from the date of Commencement of Commercial Production, the Government cannot collect from Oceanagold, as the FTAA Contractor, the Government's Share in the Net Revenue, which includes excise tax, because the Government's right to share shall only accrue after the Recovery Period. However, it failed to adduce any evidence to show that the taxes paid were detrimental to Oceanagold's recovery of pre-operating expense and property expense. The conention of Oceanagold that payment of excise tax during the Recovery Period is detrimental to it because such payment "would have been part of recovered pre-operating expenses", without evidence remains to be a mere allegation. The basic rule is that mere allegation is not evidence and is not equivalent to proof.

CIR v. The Merry Cooks, Inc.
CTA EB No. 2681, October 23, 2023
(Reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation.)

Facts: On September 24, 2015, Merry Cooks, Inc. ("TMCI") received a LOA dated September 18, 2015, wherein RO Acacio and Group Supervisor ("GS") Tablizo were authorized by Regional Director to examine TMCI's books of accounts for all internal revenue taxes for the taxable period of 2013.

On July 15, 2016, a Memorandum of Assignment ("MOA") was issued by the Revenue District Officer, referring to RO De Leon and GS Favis the case/docket for continuation of the audit/investigation due to the transfer of previously assigned ROs. A PAN and Preliminary Letter of Demand ("PLD") was subsequently issued.

Issue: Is the MOA, reassigning the case to another RO, has a force and effect?

Ruling: No. Revenue Officers must be authorized through an LOA to conduct the audit or investigation of the taxpayer.

Pursuant to Revenue Memorandum Order ("RMO") No. 43-90, Section (D)(4), the only BIR officials authorized to issue and sign LOA are the Regional Directors, the Deputy Commissioners, and the Commissioner. As also elucidated by the Supreme Court, unless authorized by the CIR himself or by his duly authorized representative pursuant to RMO No. 43-90, an examination of a taxpayer's books of accounts cannot be ordinarily undertaken. In the absence of such an authority, the assessment or examination is a nullity.

In the same RMO No. 43-90, the own rules of the BIR mandate the need for the issuance of a new LOA in cases of reassignment or transfer of examination to another RO. Moreover, in the case of *CIR vs. McDonald's Philippines Realty Corp.* (McDonald's case), the Supreme Court categorically concluded that the reassignment or transfer of an RO requires the

issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation.

NFA v. Municipality of Shariff Aguak, et al.
CTA EB No. 2465, October 31, 2023
(With the enactment of the Local Government Code ("LGC"), any exemption from Real Property Tax ("RPT") previously granted to, or presently enjoyed by Government Owned and Controlled Corporations ("GOCC"), among others, was withdrawn.)

Facts: NFA received a Notice of RPT Delinquency. It filed a Petition for Prohibition/Injunction with Application for Temporary Restraining Order ("TRO") and/or Writ of Preliminary Injunction before the RTC, arguing that it is a government instrumentality exempt from paying RPT under Presidential Decree ("PD") No. 4, the law creating it. On the contrary, the municipality claimed that NFA is a GOCC and, thus, subject to RPT. The RTC dismissed the case. NFA filed a Petition for Review with the CTA. The CTA Division denied said petition for lack of merit.

Issue: Is NFA a GOCC and thus liable for RPT?

Ruling: Yes. In general, government instrumentalities are exempt from RPT. On the other hand, with the enactment of the LGC, any exemption from RPT previously granted to or presently enjoyed by GOCCs, among others, was withdrawn. As such, GOCCs are now subject to RPT.

Under the Administrative Code, a GOCC refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs, and owned by the Government directly or through its instrumentalities.

Pursuant to the NFA Charter, it has a capital stock of P5,000,000,000.00 divided into 5,000,000 shares with par value of PI00 per share wholly subscribed and paid by the national government, LGUs, or other GOCCs. Meanwhile, under its corporate profile, it shall procure palay locally and maintain sufficient rice buffer stocks to be sourced solely from local farmers.

Based on the foregoing, NFA qualifies as a GOCC. Thus, it shall be taxable as a GOCC for RPT purposes.

CIR v. Altimax Broadcasting Co., Inc.
CTA EB No. 2612, October 03, 2023
(There is improper service where the PAN and Final Letter of Demand ("FLD") with FAN were sent by registered mail not to the taxpayer's known address.)

Facts: On September 1, 2014, Altimax Broadcasting Co., Inc. ("ABCI") transferred to its new address in Mandaluyong City. It the received a LOA. However, the LOA still indicated ABCI's old address. On October 9, 2014, the BIR conducted an on-site audit at ABCI's new address. The BIR officer tried to serve the PAN in ABCI old address but when they cannot, the PAN was sent by registered mail to ABCI's old address. The FAN with FLD were also sent by registered mail to the same old address.

The BIR filed a petition for review seeking reversal of the decision of the CTA second division wherein the PAN and FLD with FAN were declared void, thus the subject assessment and the Warrant of Distraint and/or Levy ("WDL") were not given effect.

Issue: Were the PAN and FLD with FAN sent by registered mail to ABCI valid?

Ruling: No. Under Section 228 of the 1997 Tax Code, it is explicitly required 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. Here, ABCI transferred from its old address in Pasig City to the new one in Mandaluyong City. Consequently, the attempts made by the BIR to personally serve the PAN proved futile and it had to resort to service by registered mail. However, despite knowing that the old address in Pasig City was no longer used by the taxpayer, the PAN and then the FAN were still sent to the old address. Expectedly, since both the PAN dated October 6, 2016, and the FAN dated October27, 2016 were sent by registered mail to the old address, they were not received by the ABCI. ABCI had already transferred to Mandaluyong City as early as September 1, 2014. The BIR cannot feign ignorance of the taxpayer's actual location because as early as October 9, 2014, it was able to visit the taxpayer's new address in Mandaluyong City when it conducted its on-site audit. Based on the BIR's own regulations, the taxpayer's location in Mandaluyong City qualifies as a known address which is defined as "a place other than the registered address where business activities of the party are conducted. Thus, instead of adhering to the old address in Pasig City, the BIR should have updated its system to properly serve the assessment in Mandaluyong City and comply with Section 228's mandate.

CTA DIVISION

Manulife Data Services, Inc. v. CIR

CTA Case No. 9991, November 23, 2023

(Submission of consularized charter documents, sans certification of the authorized officials of the respective NRFCs, is considered substantial compliance.)

Facts: This is a Petition for Review requesting for a refund/Tax Credit Certificate for excess input VAT of Manulife Data Services, Inc. ("Manulife") for taxable year 2016. Manulife is a Regional Operating Headquarters ("ROHQ") engaged in the business of providing qualifying services to its affiliates and related parties in the Asia-Pacific region and in other foreign markets.

BIR denied Manulife's administrative claim for refund due to non-compliance with the submission of Certificate of Incorporation from the foreign country as certified by an authorized official of the Non-Resident Foreign Corporation ("NRFC") pursuant to RMC No. 17- 2018

Issue: Is the denial of the administrative claim for refund for non-compliance with RMC No. 17-2018 valid?

Ruling: No. While the requirement for the submission of certificate of incorporation from the foreign country certified by an authorized official of the NRFC is found in Annex A.1 of RMC No.17-2018, a reading of item 3.4 of Annex A.1 shows that it does not aim to restrict or confine the supporting documents only to those specifically mentioned as the abbreviation "e.g." was, in fact, intentionally placed at the beginning of the provision.

Thus, the CTA found that the submission of consularized charter documents of Manulife's clients, sans certification of the authorized officials of the respective NRFCs, should have been considered substantial compliance.

Mactan Electric Company Inc. v. The Municipality of Cordova, et al.

CTA Case No. AC-258, November 17, 2023

(The taxpayer must first pay the tax under protest and then file a protest with the Local Treasurer within 30 days from the date of payment of tax.)

Facts: Mactan Electric Company, Inc. ("MECO") received a Notice of Assessment dated June 12, 2008, from the Municipality of Cordova. Subsequently, on October 13, 2011, it received a letter from the Provincial Treasurer of Cebu, informing MECO of supposed unpaid real property tax for its transformers in the total amount of PhP2,842,430.35. On April 30, 2012, MECO filed a Complaint praying for (1) issuance of a writ of injunction and (2) declaration that the Notice of Assessment be declared null and void. The complaint was dismissed by the RTC.

Issue: Did the RTC err in not nullifying the Notice of Assessment?

Ruling: No. MECO failed to comply with the requirement of payment under protest in Sec 252, in relation to Sec 226 and 229 of the LGC. Under the LGC, the taxpayer must first pay the tax under protest and then file a protest with the Local Treasurer within 30 days from the date of payment of tax. If the protest is denied or upon the lapse of 60-day period for the Local Treasurer to decide on the protest, the taxpayer may appeal to the Local Board of Assessment Appeals ("LBAA") within 60 days from the denial of the protest or the lapse of the 60-day period to decide. If the taxpayer is unsatisfied with the decision of the LBAA, the taxpayer may appeal before the Central Board of Assessment Appeals ("CBAA")

In this case, despite the receipt of the Notice of Assessment in 2008 and the Letter on October 13, 2011, MECO did not pay under protest. Moreover, no protest has been elevated to the LBAA and CBAA. Instead, MECO filed a complaint with the RTC seeking for the issuance of a Writ of Preliminary Injunction, and nullification of the Notice of Assessment.

SL Harbor Bulk Terminal Corporation v. CIR

CTA Case No. 10289, November 15, 2023

(The status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135 of the Tax Code, any excise taxes that were previously paid thereon would then be considered as 'erroneously or illegally collected, and therefore, subject to refund.)

Facts: SL Harbor Bulk Terminal ("SLHBT") filed an administrative claim for tax credit with the BIR for erroneously paying excise taxes on imported bunker fuel and diesel sold to tax-exempt entities registered with the Board of Investments, Subic Bay Metropolitan Authority and Philippine Economic Zone Authority. SLHBT filed before the Court of Tax Appeals to grant its claim for tax credit and alleged that it paid excise taxes to the Bureau of Customs on May 15 &18, 2018, and on June 7 & 8, 2018. SLHBT anchored its claim on Sec. 135 of the Tax Code.

Issue: Is SLHBT entitled to a refund of excise tax paid on petroleum products?

Ruling: No, SLHBT failed to prove that the excise taxes paid were erroneous or illegal. Section 135 (c) of the Tax Code provides for entities which are by law exempt from direct or indirect taxes in the payment of excise tax on petroleum products. It must be shown that (1) the entity to which SLHBT sold the petroleum products is an entity exempt by law from indirect and direct taxes, and (2) SLHBT paid the claimed excise taxes on the same petroleum products sold to the exempt entity. SLHBT presented Certifications issued by the Subic Bay Metropolitan Authority ("SBMA") and Philippine Economic Zone ("PEZA") to prove that its customers are PEZA/SBMA registered entities. However, it cannot be determined with

certainty that petitioner paid the excise taxes on the petroleum products, details such as the dates of the sale, a complete description of all petroleum products associated with the transaction, the dates of performance of each contractual event, evidence of an agreement between the tax-exempt entities and petitioner, and the purchase price, among others, would have been included in these supply or sales agreements, which petitioner did not submit.

Holcim Philippines, Inc. v. The City of Taguig, et al.
CTA Case No. AC-268, November 15, 2023
(Due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest.)

Facts: On separate dates in 2018, the City Treasurer of Taguig issued four (4) billing statements to Holcim Philippines, Inc. assessing Holcim Philippines, Inc. ("HPI") for local business tax ("LBT") for each of the four (4) quarters of year 2018. HPI paid the aforementioned billing statements. HPI sent to the City Treasurer a letter requesting a refund on the alleged overpayment for each quarter, all of which were sent in 2018. The City Treasurer failed to act on each of HPI's letter request. On November 6, 2018, and February 8, 2019, HPI filed a Petition for Refund before the RTC. The RTC denied the refund and HPI filed a Petition for Review before the CTA.

HPI argued that the billing statements are not the assessments contemplated in Section 195 of the LGC and that Section 196 of the LGC applies to the case. The City Treasurer of Taguig argued that the billing statements are in the nature of Notice of Assessment as contemplated by Section 195 of the LGC.

Issue:

1. Are the billing statements considered as Notice of Assessment under Sec. 195 of the LGC?
2. Is the Petition for Refund filed within the prescriptive period provided under the LGC?
3. Is HPI entitled to a refund of erroneously paid LBT?

Ruling:

1. No. The subject billing statements are not the "assessments" contemplated under Section 195 of the LGC of 1991. The billing statements did not provide notice of the facts and laws on which the billed amounts were based. From the details indicated in the said billing statements, it can be observed that the same were issued not as assessments of LBT but for the renewal of petitioner's business permit.

2. Yes. Section 196 of the Tax Code governs the case at hand and HPI complied with the prescriptive period for filing claims for refund of LBT as provided in Section 196 of the LGC. Since no assessment notice was issued by the local treasurer. HPI has 2 years from date payment to file a judicial claim for refund.

3. Yes. HPI is entitled to the preferential rate as a manufacturer of essential commodity such as cement under the LGC. The power of an LGU to impose or levy taxes cannot go beyond the limitations set forth by the provisions of the LGC.

Nueva Ecija I Electric Cooperative, Inc. v. CIR, et al.
CTA Case No. 10587, November 13, 2023
(Electric cooperatives registered with National Electrification Administration ("NEA") are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements.)

Facts: Two LOAs were issued against Nueva Ecija I Electric Cooperative, Inc. ("NECI") for a tax examination covering the periods of January 1 to December 31, 2012, and January 1 to December 31, 2013. Following a Preliminary Assessment, NECI was found liable for deficiency income tax, value-added tax, expanded withholding tax ("EWT"), and fringe benefit tax for Taxable Year ("TY") 2012, as well as deficiency income tax and EWT for TY 2013. NECI contested the assessments, citing its permanent income tax exemption under Section 39 (a)(1) of Presidential Decree ("PD") No. 269, as amended, and faced Warrants of Garnishment on its bank accounts.

Issue: Are the assessments made by the BIR void?

Ruling: Yes, with the promulgation of Fiscal Incentives Review Board ("FIRB") Resolution No. 24-87, the tax exemption granted to electric cooperatives under Sec. 39 (a)(1) of PD No. 269, as amended, vis-à-vis PD No. 2008, was effectively restored subject to the proviso that the income from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements, remain to be taxable. Thus, subject to income tax.

However, notwithstanding that NECI is subject to income tax, the assessments for TY 2012 and TY 2013 were void for being violative of Sec. 246, NIRC, as amended and NECI's procedural due process rights. Prior to the promulgation of RMC No. 74-2013, CIR issued RMC No. 72-2003 which clarified the tax exemptions enjoyed by electric cooperatives registered with NEA, it was CIR's position that electric cooperatives registered with NEA are exempt from income tax, notwithstanding the effectivity of FIRB Resolution No. 24-87 since July 14, 1987. RMC No. 72-2003 was prevailing issuance during the whole of TY 2012 and NECI cannot be faulted for not reporting any taxable income from such period. Thus, for CIR to assess NECI for deficiency income tax is tantamount to its retroactive application as it would be prejudicial to NECI. Further, the ROs who conducted the audit of NECI were not clothed with the proper authority, as Section 6 of the NIRC, as amended, is clear that there must be a grant of authority before any RO can conduct an examination or assessment, and in the absence of such, the assessment or examination is a nullity; the lack of authority of the ROs is tantamount to the absence of the LOA itself. Here, with respect to TY 2013 assessment, LOA originally authorized RO Lumba and GS Tubera, in an undated memorandum recommending the issuance of PAN, it was RO Santos and GS Lugtu who were signatories therein.

Star Sports Corporation v. CIR, et al.
CTA Case No. 10380, November 06, 2023
(The presumption that a letter duly directed and mailed was received in the regular course of the mail is merely a disputable presumption which may be controverted.)

Facts: Star Sports Corporation ("Star Sports") filed a Petition for Review alleging violation of its right to due process, when it received a WDL without receiving a PAN and a FAN. To support its allegations, Star Sports presented a witness to identify its documentary exhibit but who did not have personal knowledge of circumstances surrounding the alleged non-receipt of the PAN and FAN.

The CIR on the other hand contends that Star Sports failed to prove that it did not receive the PAN and the FAN.

Issue: Who has the burden of proving the receipt of the PAN and FAN?

Ruling: The CIR must prove a taxpayer's receipt of an assessment notice when the latter denies receipt of any notice. Such denial shifts the burden of proof onto the CIR. The CIR cannot rely on the supposed incompetence and lack of personal knowledge of the taxpayer's witness to testify on the alleged nonreceipt of the PAN and FAN. Thus, the issue of the reliability of Star Sports' witness to testify on the former's non-receipt is of no moment.

Foundever Philippines Corporation v. CIR

CTA Case No. 10224, October 25, 2023

(The requirement of proper VAT registration equally applies to branches and facilities.)

Facts: Foundever Philippines Corporation ("Foundever') filed an administrative claim for VAT refund before the VAT Credit and Audit Division ("VCAD") of the BIR for the period covering the 3rd and 4th quarter of TY 2017. Upon denial by the BIR, Foundever then filed a Petition for Review before the CTA.

Foundever argued that it is a VAT-registered taxpayer engaged in the sale of services to its non-resident affiliates doing business outside of the Philippines. Foundever argued that various sites in different locations within the Philippines and registered the same as "facility" with the BIR. These sites were intended to be a place where its contact center agents would be located and would perform contact center services. No invoices or official receipts were being issued in such sites. Thus, Foundever deemed it proper to register these sites as "facilities" rather than as "branches". Foundever further argued that sales to Foundever's clients, Sitel Operating Corporation and Sitel UK Limited, both NRFC affiliates, rendered in Foundever's Palawan and Ortigas Technopoint Facilities were zero-rated sales.

Issue: Is Foundever entitled to an input VAT refund for services rendered in its Palawan and Ortigas "facilities"?

Ruling: No. The requirement of proper VAT registration equally applies to branches and facilities and the Palawan and Technopoint sites are improperly registered as "facility".

Specifically for VAT purposes, Section 9.236-1 (a) of RR No. 16-2005 defines a branch as "a fixed establishment in a locality which conducts sales operation of the business as an extension of the principal office". Meanwhile, a "facility" may include but is not limited to a place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with no sales activity.

More importantly, the subject persons or entities must be "registered in accordance with" RR No.16-2005; otherwise, it cannot be deemed as a "VAT -registered person".

In this case, the services performed in the facilities are the main objects of the sale to the NRFC clients and are rendered directly to the latter. The sites thus conduct the very same activities which generate the revenue for the Foundever. Thus, the CTA deemed Foundever non-compliant with the requisite that the taxpayer must be VAT-registered to be entitled to credit or refund of input VAT from zero-rated sales.

Grand Union Supermarket, Inc. v. CIR, et al.
CTA Case No. 10587, November 13, 2023
(A tax assessment must not only contain a computation of tax liabilities but must also include a demand upon the taxpayer for the settlement of a tax liability.)

Facts: Grand Union Supermarket, Inc. ("Grand Union") was assessed for deficiency taxes. The FLD and the FDDA did not contain a demand to pay at a specific due date.

Issue: Is the assessment valid?

Ruling: No. The Supreme Court in *CIR vs. Fitness By Design, Inc.* has ruled that a tax assessment must not only contain a computation of tax liabilities but must also include a demand upon the taxpayer for the settlement of a tax liability. Additionally, RR No. 12-99 expressly provides that the FLD and Assessment Notices should contain a demand for payment otherwise the assessment shall be void. Since the CIR failed to demand payment within a prescribed period for the alleged deficiency taxes, the assessment is void.

People of the Philippines v. Regional Trial Court, Branch 40
CTA SCA Case No. 0001, October 24, 2023
(A judgment of acquittal in a criminal case may be assailed in a Petition for Certiorari under Rule 65 of the Rules of Court, but only upon a clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction, or to a denial of due process, thus rendering the assailed judgment void.)

Facts: Teresa E. Sison was charged for violation of Sec. 255 of the Tax Code for failing to file VAT returns. Subsequently, the RTC of Dagupan acquitted Sison of the crime charged. The BIR lawyers filed a Petition for Certiorari under Rule 65.

Issue: Was the filing of the Petition for Certiorari proper?

Ruling: No. The review of the allegations in the Petition for Certiorari reveals that BIR failed to establish that there was a grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the RTC or a denial of due process. BIR failed to establish the third element, stating that "the willful failure to file VAT return on gross receipts was not fully established by the prosecution as a positive act or state of mind of Sison.

Intelligent Touch Corporation v. CIR, et al.
CTA Case No. 10215, October 19, 2023
(The BIR has the right to assess internal revenue taxes within three (3) years after the last day prescribed by law for the filing of the return or date of filing, whichever is later.)

Facts: Intelligent Touch Corporation ("ITC") was assessed for deficiency VAT for taxable year 2011. The quarterly return was filed on April 11, July 25 and November 28, 2011, and February 23, 2012. The FAN was issued on November 11, 2014.

Issue: Is ITC liable to pay the assessed deficiency VAT for taxable year 2011?

Ruling: No. ITC is liable only for deficiency VAT for 3rd and 4th quarter.

The BIR has the right to assess internal revenue taxes within three (3) years after the last day prescribed by law for the filing of the return or date of filing, whichever is later. Here, the quarterly return was filed on April 11, July 25 and November 28, 2011, and February 23, 2012, the end of 3 years for April 11, 2011, and July 25, 2011, is April 25, 2014 and July 25,

2014 which is 3 years after the last day prescribed by law. The FAN was issued on November 11, 2014, which was beyond the prescribed period for the 1st and 2nd quarter for the year 2011.

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