TAXATION LAW

2018 Cases

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Reyes, Joanna Marie
Salvador, Kharina Mar V
Samson, Kristel L.
Santos, Nikki Tricia R.
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Sarmiento, Arianna Laine T.
Sarmiento, Ian Timothy R.
Sim, Lance Lester Angelo
Soriano, Manuel Joshua O.
Sugay, Alexandra Nicole D.
Teves, Jan Matthew V.

TABLE OF CONTENTS

TAXATION LAW

I. GENERAL PRINCIPLES

A. Power of taxation as distinguished from Police Power and Eminent Domain

B. Inherent and constitutional limitations of taxation

C. Requisites of a valid tax

D. Tax as distinguished from other forms of exactions

E. Kinds of taxes

F. Doctrines in taxation

1. Construction and interpretation of tax laws, rules, and regulations

2. Prospectivity of tax laws

3. Imprescriptibility of taxes

4. Double taxation

5. Escape from taxation

a. Shifting of tax burden

b. Tax avoidance

c. Tax evasion

6. Exemption from taxation

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *-versus-*. COVANTA ENERGY PHILIPPINE HOLDINGS, INC., *Respondent*.

G.R. 203160, SECOND DIVISION, January 24, 2018, REYES, JR., J.

While tax amnesty is in the nature of a tax exemption, which is strictly construed against the taxpayer, the Court cannot disregard the plain text of R.A. No. 9480. The implementing rules and regulations of R.A. No. 9480, as embodied in Department of Finance (DOF) Department Order No. 29-07, laid down the procedure for availing of the tax amnesty. Upon the taxpayer's full compliance with these requirements, the taxpayer is immediately entitled to the enjoyment of the immunities and privileges of the tax amnesty program. But when: (a) the taxpayer fails to file a SALN and the Tax Amnesty Return; or (b) the net worth of the taxpayer in the SALN as of December 31, 2005 is proven to be understated to the extent of 30% or more, the taxpayer shall cease to enjoy these immunities and privileges.

It is undisputed that CEPHI submitted all the documentary requirements for the tax amnesty program. It is evident from CEPHI's original and amended SALN that the information statutorily mandated in R.A. No. 9480 were all reflected in its submission to the BIR. While the columns *for Reference and Basis for Valuation were indeed left blank, CEPHI attached schedules to its SALN (Schedules 1 to 7), both original and amended, which provide the required information under R.A. No. 9480 and its implementing rules and regulations. Furthermore, there is no evidence on record to prove that the amount of CEPHI's net worth was understated.*

FACTS:

On December 6, 2004, the CIR issued Formal Letters of Demand and Assessment Notices against CEPHI for deficiency value-added tax (VAT) and expanded withholding tax (EWT). CEPHI protested the assessments by filing two (2) separate Letters of Protest. However, the CIR issued another Formal Letter of Demand and Assessment Notice assessing CEPHI for deficiency minimum corporate income tax (MCIT). This assessment lead to CEPHI filing a Letter of Protest on the MCIT assessment.

The protests remained unacted upon. Thus, CEPHI filed separate petitions before the CTA, seeking the cancellation and withdrawal of the deficiency assessments. The cases were eventually consolidated upon the CIR's motion.

After the parties' respective submission of their formal offer of evidence, CEPHI filed a Supplemental Petition on October 7, 2008, informing the CTA that it availed of the tax amnesty under R.A. No. 9480. CEPHI afterwards submitted a Supplemental Formal Offer of Evidence, together with the documents relevant to its tax amnesty.

The CIR argued that CEPHI is not entitled to the immunities and privileges under R.A. No. 9480 because its documentary submissions failed to comply with the requirements under the tax amnesty law.

The CTA Second Division partially granted the petitions of CEPHI with respect to the deficiency VAT and MCIT assessments for 2001. Since tax amnesty does not extend to withholding agents with respect to their withholding tax liabilities, the CTA Second Division ruled, after computation, that CEPHI is liable to pay for the deficiency EWT assessment, plus additional deficiency and delinquency interest.

The CTA *en banc* upheld the ruling that, without any evidence that CEPHI's net worth was underdeclared by at least 30%, there is a presumption of compliance with the requirements of the tax amnesty law. For this reason, CEPHI may immediately enjoy the privileges of the tax amnesty program.

ISSUE

Whether CEPHI is entitled to the immunities and privileges of the tax amnesty program (YES)

RULING

Yes, CEPHI is entitled to the immunities and privileges of the tax amnesty program upon full compliance with the requirements of R.A. No. 9480. R.A. No. 9480 governs the tax amnesty program for national internal revenue taxes for the taxable year 2005 and prior years. Subject to certain exceptions, a taxpayer may avail of this program by complying with the documentary submissions to the Bureau of Internal Revenue (BIR) and thereafter, paying the applicable amnesty tax.

The implementing rules and regulations of R.A. No. 9480, as embodied in Department of Finance (DOF) Department Order No. 29-07, laid down the procedure for availing of the tax amnesty. Upon the taxpayer's full compliance with these requirements, the taxpayer is immediately entitled to the enjoyment of the immunities and privileges of the tax amnesty program. But when: (a) the taxpayer fails to file a SALN and the Tax Amnesty Return; or (b) the net worth of the taxpayer in the SALN as of December 31, 2005 is *proven* to be understated to the extent of 30% or more, the taxpayer shall cease to enjoy these immunities and privileges.

The underdeclaration of a taxpayer's net worth, as referred in the second instance above, is proven through: (a) proceedings initiated by parties other than the BIR or its agents, within one (1) year from the filing of the SALN and the Tax Amnesty Return; or (b) findings or admissions in congressional hearings or proceedings in administrative agencies, and in courts. Otherwise, the taxpayer's SALN is presumed true and correct. The tax amnesty law thus places the burden of overturning this presumption to the parties who claim that there was an underdeclaration of the taxpayer's net worth.

In this case, it is undisputed that CEPHI submitted all the documentary requirements for the tax amnesty program. The CIR argued, however, that CEPHI cannot enjoy the privileges attendant to the tax amnesty program because its SALN failed to comply with the requirements of R.A. No. 9480. The CIR specifically points to CEPHI's supposed omission of the information relating to the *Reference* and *Basis for Valuation* columns in CEPHI's original and amended SALNs.

The required information that should be reflected in the taxpayer's SALN is enumerated in Section 3 of R.A. No. 9480. It is evident from CEPHI's original and amended SALN that the information statutorily mandated in R.A. No. 9480 were all reflected in its submission to the BIR. While the columns for *Reference* and *Basis for Valuation* were indeed left blank, **CEPHI attached schedules to its SALN (Schedules 1 to 7), both original and amended, which provide the required information under R.A. No. 9480 and its implementing rules and regulations.** A review of the SALN form likewise reveals that the information required in the *Reference* and *Basis for Valuation* columns are actually the specific description of the taxpayer's declared assets. As such, these were deemed filled when CEPHI referred to the attached schedules in its SALN. On this basis, the CIR cannot disregard or simply set aside the SALN submitted by CEPHI.

More importantly, CEPHI's SALN is presumed true and correct, pursuant to Section 4 of R.A. No. 9480. This presumption may be overturned if the CIR is able to establish that CEPHI understated its net worth by the required threshold of at least 30%.

However, aside from the bare allegations of the CIR, there is no evidence on record to prove that the amount of CEPHI's net worth was understated. Parties other than the BIR or its agents did not initiate proceedings within one year from the filing of the SALN or Tax Amnesty Return, in order to challenge the net worth of CEPHI. Neither was the CIR able to establish that there were findings or admissions in a congressional, administrative, or court proceeding that CEPHI indeed understated its net worth by 30%.

Considering that CEPHI completed the requirements and paid the corresponding amnesty tax, it is considered to have totally complied with the tax amnesty program. As a matter of course, CEPHI is entitled to the immediate enjoyment of the immunities and privileges of the tax amnesty program. Nonetheless, the Court emphasizes that the immunities and privileges granted to taxpayers under

R.A. No. 9480 is *not* absolute. **It is subject to a resolutory condition insofar as the taxpayers' enjoyment of the immunities and privileges of the law is concerned.** These immunities cease upon proof that they underdeclared their net worth by 30%.

Unfortunately for the CIR, however, there is no such proof in CEPHI's case. The Court, thus, finds it necessary to deny the present petition. While tax amnesty is in the nature of a tax exemption, which is strictly construed against the taxpayer, the Court cannot disregard the plain text of R.A. No. 9480.

7. Equitable recoupment

8. Prohibition on compensation and set-off

9. Compromise and tax amnesty

II. NATIONAL TAXATION (National Internal Revenue Code of 1997, as amended by RA 10963 or the Tax Reform for Acceleration and Inclusion Law)

A. Taxing authority

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus THE SECRETARY OF JUSTICE AND METROPOLITAN CEBU WATER DISTRICT (MCWD), *Respondents*
G.R. No. 209289, FIRST DIVISION, July 9, 2018, TIJAM, *J.*

Here, respondent filed a protest with the CIR to assail the tax assessment issued to respondent. For failure of the CIR to act within 180 days from submission of the supporting documents, respondent filed a petition for review before the CTA. Interestingly, the CIR filed a motion to dismiss the petition for review on the ground that the CTA has no jurisdiction to resolve the said matter since the SOJ has exclusive jurisdiction over all disputes between the government and GOCCs. As a result, the CTA dismissed the petition. When the SOJ assumed jurisdiction over the petition for arbitration filed by the respondent, the CIR, completely changed its stand and claimed that the SOJ has no jurisdiction over the case.

This turnaround by the CIR cannot be countenanced. The CIR cannot invoke jurisdiction of the SOJ and then completely reject the same.

Nevertheless, the SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations has been finally settled by this Court in the recent case of Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue. Since this case is a dispute between the CIR and respondent, a local water district, which is a GOCC pursuant to P.D. No. 198, also known as the Provincial Water Utilities Act of 1973, clearly, the SOJ has jurisdiction to decide over the case.

FACTS:
Metropolitan Cebu Water District (respondent) received a Preliminary Assessment Notice from the BIR for alleged tax deficiencies for the year 2000 in the total amount of P70,660,389.00, representing alleged deficiency income, franchise and value added taxes with surcharge and interest, as well as compromise penalties

Respondent filed a formal protest with the Regional Director. The CIR however failed to act on the protest within 180 days from submission of the supporting documents. Thus, respondent filed a Petition for Review before the CTA. The CIR however opposed the said petition on the ground that the Secretary of Justice (SOJ) has jurisdiction over the dispute considering that respondent is a government-owned or controlled corporation (GOCC). As such, the CTA dismissed the petition.

Respondent then filed a Petition for Arbitration before the SOJ. In a complete turnaround, the CIR claimed that the SOJ has no jurisdiction over the case since the issue in dispute is the validity of the tax assessment against respondent

The case proceeded and the SOJ rendered its Decision which declared MCWD is (a) exempt from payment of income tax from gross income pursuant to Section 32(B)(7)(b) of the National Internal Revenue Code of 1997, (b) liable for franchise tax of two percent (2%) of its gross receipts, (c) exempt from value-added tax, and (d) not liable to pay surcharge, interest, and compromise penalty on the deficiency taxes.

ISSUE:
Whether SOJ has jurisdiction to decide the Petition for Arbitration filed by respondent which assails the tax assessment issued by the BIR. (YES)

RULING:
The SOJ has jurisdiction to decide the case

This turnaround by the CIR cannot be countenanced. The CIR cannot invoke jurisdiction of the SOJ and then completely reject the same. "A party cannot invoke jurisdiction at one time and reject it at another time in the same controversy to suit its interests and convenience."14 Jurisdiction is conferred by law and cannot be made dependent on the whims and caprices of a party. "Jurisdiction, once acquired, continues until the case is finally terminated." Thus, the SOJ having acquired jurisdiction over the dispute between the CIR and the respondent, continues to exercise the same until the termination of the case.

Nevertheless, the SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations has been finally settled by this Court in the recent case of Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue, to wit:

> However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that original jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and

government agencies involved. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction.

xxx

The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims "solely" between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

The law is clear and covers "all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements." When the law says "all disputes, claims and controversies solely" among government agencies, the law means all, without exception. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

P.D. No. 24219 is now embodied in Chapter 14, Book IV of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987.

Since this case is a dispute between the CIR and respondent, a local water district, which is a GOCC pursuant to P.D. No. 198, also known as the Provincial Water Utilities Act of 1973, clearly, the SOJ has jurisdiction to decide over the case.

1. Jurisdiction, power, and functions of the Commissioner of Internal Revenue

a. Interpreting tax laws and deciding tax cases

COMMISSION OF INTERNAL REVENUE, *Petitioner,* -versus - COURT OF TAX APPEALS and PETRON CORPORATION, *Respondents*
G.R. No. 207843, SPECIAL FIRST DIVISION, February 14, 2018, PERLAS-BERNABE, *J.*

In this case, Petron's tax liability was premised on the COC's issuance of CMC No. 164-2012, which gave effect to the CIR's June 29, 2012 Letter interpreting Section 148 (e) of the NIRC as to include alkyl ate among the articles subject to customs duties, hence, Petron's petition before the CTA ultimately challenging the legality and constitutionality of the CIR's aforesaid interpretation of a tax provision.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the *constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals*

FACTS:

CIR issued a Letter interpreting Section 148(e) of the National Internal Revenue Code7 (NIRC) and thereby, opining that "alkylate, which is a product of distillation similar to naphtha, is subject to tax." In implementation thereof, the Commissioner of Customs (COC) issued Customs Memorandum Circular (CMC) No. 164-2012. Not long after, and in compliance with CMC No. 164-2012, the Collector of Customs assessed excise tax on Petron's importation of alkylate.

Petron filed a petition for review before the CTA, contesting the allegedly erroneous classification of alkylate and the resultant imposition of excise tax arising from the CIR's interpretation of Section 148(e) of the NIRC.

Later on, the CIR elevated the matter to the Court through a petition for certiorari, alleging that the CTA had no jurisdiction to take cognizance of a case involving the CIR's exercise of interpretative or quasi-legislative functions and that there was yet no final decision by the COC that was properly appealable to the CTA.

In the July 15, 2015 Decision, the Court upheld the CIR's position that the CTA could not take cognizance of the case because the latter's jurisdiction to resolve tax disputes excluded the power to rule on the constitutionality or validity of a law, rule or regulation and that, in any case, it was premature to elevate a customs collector's assessment without a prior protest and an appeal to the COC.

Dissatisfied, Petron filed a motion for reconsideration dated October 5, 2015.

ISSUE:
Whether the CTA properly assumed jurisdiction over the petition assailing the imposition of excise tax on Petron's importation of alkylate based on Section 148 (e) of the NIRC. (YES)

RULING:
In 2016 En Banc case of Banco De Oro v. Republic of the Philippines (Banco De Oro), it was opined that:

> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.
>
> In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should thus be filed before the Court of Tax Appeals.

> Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.
>
> Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(l) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.

The En Banc ruling in Banco De Oro has since not been overturned and thus, stands as the prevailing jurisprudence on the matter. Accordingly, the Court is prompted to reconsider its ruling in this case with respect to the issue of jurisdiction.

Thus, in conjunction with the Banco De Oro ruling that the CTA has jurisdiction to resolve all tax matters (which includes the validity of the CIR's interpretation and consequent imposition of excise tax on alkylate), the Court finds it proper to reconsider its decision

CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE); JUDICIARY EMPLOYEES ASSOCIATION OF THE PHILIPPINES (JUDEA-PHILS); SANDIGANBAYAN EMPLOYEES ASSOCIATION (SEA); SANDIGAN NG MGA EMPLEYADONG NAGKAKAISA SA ADHIKAIN NG DEMOKRATIKONG ORGANISASYON (S.E.N.A.D.O.); ASSOCIATION OF COURT OF APPEALS EMPLOYEES (ACAE); DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA); SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES-DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (SWEAP-DSWD); DEPARTMENT OF TRADE AND INDUSTRY EMPLOYEES UNION (DTI-EU); KAPISANAN PARA SA KAGALINGAN NG MGA KAWANI NG METRO MANILA DEVELOPMENT AUTHORITY (KKK-MMDA); WATER SYSTEM EMPLOYEES RESPONSE (WATER); CONSOLIDATED UNION OF EMPLOYEES OF THE NATIONAL HOUSING AUTHORITIES (CUE-NHA); and KAPISANAN NG MGA MANGGAGAWA AT KAWANI NG QUEZON CITY (KASAMA KA-QC), PETITIONERS, *Petitioners,* -versus- COMMISSIONER, BUREAU OF INTERNAL REVENUE AND THE SECRETARY, DEPARTMENT OF FINANCE, *Respondents.*

G.R. No. 213446, EN BANC, July 3, 2018, CAGUIOA, J.

JUDGE ARMANDO A. YANGA, IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS PRESIDENT OF THE RTC JUDGES ASSOCIATION OF MANILA, AND MA. CRISTINA CARMELA I. JAPZON, IN HER PERSONAL CAPACITY and IN HER CAPACITY AS PRESIDENT OF THE PHILIPPINE ASSOCIATION OF COURT EMPLOYEES-MANILA CHAPTER, *Petitioners,* -versus - HON. COMMISSIONER KIM S. JACINTO-HENARES, IN HER CAPACITY AS COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, *Respondent.*

G.R. No. 213658, EN BANC, July 3, 2018, CAGUIOA, J.

However, not all income payments to employees are subject to withholding tax as there are items excluded by the NIRC from the employee's compensation income and, thus, are exempt from withholding tax on compensation. In the case at bar, it is the petitioner's assertion that the assailed RMO went beyond the provisions of the NIRC insofar as it imposes new or additional taxes to allowances, benefits or bonuses granted to government employees which are otherwise non-taxable. This cannot be sustained. On the contrary, the RMO merely mirrors the relevant provisions of the NIRC and its implementing rules on the withholding tax on compensation income. While Section III of the RMO enumerates certain allowances which may be subject to withholding tax, it does not exclude the possibility that these allowances may fall under the exemptions, thus, the phrase "subject to the exemptions enumerated herein."

FACTS:

Commissioner of Internal Revenue (CIR) issued RMO No. 23-2014 on the "Reiteration of the Responsibilities of the Officials and Employees of Government Offices for the Withholding of Applicable Taxes on Certain Income Payments and the Imposition of Penalties for Non-Compliance Thereof" in order to clarify the responsibilities of the public sector to withhold taxes on its transactions as a customer and as an employer.

In G.R. No. 213446, petitioners filed a Petition for Prohibition and Mandamus before the SC, imputing grave abuse of discretion on the part of CIR in issuing RMO No. 23-2014. According to petitioners, the said RMO classified some items of income of government employees as taxable compensation which they alleged to be considered by law as non-taxable fringe and de minimis benefits. The imposition of withholding tax on the said items of income which have been allotted by the Government free of tax for a long time, violates the prohibition on non-diminution of benefits and infringes upon the fiscal autonomy of the Judiciary and Constitutional Commissions, among others. It also violates the equal protection clause as it discriminates against government employees by imposing fringe benefit tax upon their allowances as opposed to the allowances of employees of the private sector, the fringe benefit tax of which is borne by their employers. Furthermore, they believe that the ceiling of the 13th month pay and other benefits must be upgraded by CIR.

In G.R. No. 213658, petitioners filed a Petition for Certiorari and Prohibition before the SC seeking to nullify RMO No. 23-2014 on the following grounds: (1) CIR is bereft of any authority to issue the assailed RMO. The NIRC of 1997 expressly vests to the Secretary of Finance the authority to promulgate rules and regulations for the effective enforcement of tax provisions; and (2) CIR committed grave abuse of discretion when it subjected to withholding tax allowances of court employees which are tax-exempt such as Special Allowance for Judiciary (SAJ) and additional cost of living allowance (AdCOLA), among others. Petitioners further asserted that RMO No. 23-2014 violates their right to due process because while it is denominated as a revenue issuance, it is a legislative action which sharply increased the tax burden of the employees of the Judiciary without the benefit of being heard.

In response, respondents argue that the petitions are barred by the doctrine of hierarchy of courts. Maintaining that RMO No. 23-2014 was validly issued in accordance with the CIR's power to make opinion in connection with the implementation of internal revenue laws, respondents aver that unlike RRs, RMOs do not require the approval of the Secretary of Finance as these merely provide directives in the implementation of stated policies. In fact, the said RMO is a mere reiteration of the Tax Code and previous RMOs. As to the alleged violation of fiscal autonomy, respondents argue that such constitutional guarantee does not include exemption from payment of taxes. On the other hand, as to the alleged violation of petitioners' right to equal protection of laws, respondents claim that the same is not true as it covers all employees and officials of the government. In any case, respondents assert that the allowances claimed to be tax exempt are not actually fringe benefits nor de minimis benefits. SAJ and AdCOLA, for instance, are additional allowances which form part of the employee's basic salary. Lastly, respondents aver that mandamus will not lie to compel respondents to increase the ceiling for tax exemptions because the Tax Code does not impose a mandatory duty on the part of respondents to do the same.

ISSUES:

(1) Whether the doctrine of non-exhaustion of administrative remedies is violated by the petitioners. (YES)

(2) Whether the doctrine of hierarchy of courts is violated by the petitioners. (YES)

(3) Whether the RMO went beyond the provisions of the NIRC when it imposed new or additional taxes to allowances, benefits or bonuses granted to government employees claimed by petitioners to be non-taxable (NO)

(4) Whether the RMO contravene the equal protection clause, fiscal autonomy, and the rule on non-diminution of benefits (NO)

RULING:

(1) Rule 65 will only lie if there is no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law against the assailed issuance of the CIR. In the case at bar, the petitioners could still have appealed the assailed RMO with the Secretary of Finance pursuant to Section 4 of the NIRC, to wit:

> *SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance. xxx*

The CIR's exercise of its power to interpret tax laws comes in the form of revenue issuances which include RMOs. These revenue issuances are subject to the review of the Secretary of Finance. As provided in Department of Finance Department Order No. 007-02, a taxpayer is granted a period of 30 days from receipt of the adverse ruling of the CIR to file with the Office of the Secretary of Finance a request for review in writing and under oath.

Accordingly, the petition in the present case should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. While there are recognized exceptions to this salutary rule, petitioners have failed to prove the presence of any of those in the instant case. In any case, it must be noted that the availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies.

Be that as it may, it must be remembered the CIR cannot issue administrative rulings or circulars inconsistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out.

(2) The petitions should have been initially filed with the CTA, having the exclusive appellate jurisdiction to determine the constitutionality or validity of revenue issuances. While there is no law which explicitly provides where the rulings of the Secretary of Finance under Section 4 of NIRC are appealable, the law creating the CTA is sufficient, albeit impliedly, to include appeals from the Secretary of Finance's review. Moreover, it is settled that the CTA has the power, through certiorari, to rule on the validity of a particular administrative rule so long as it is within its appellate jurisdiction even without the prior issuance of an assessment as its power is not limited to determining the propriety of an assessment.

When RA 9282 was enacted, it expanded the jurisdiction of the CTA. Section 1 specifically provides that the CTA is of the same level as the CA and possesses all the inherent powers of a Court of Justice. Section 7, as amended, grants the CTA the exclusive jurisdiction to resolve all tax-related issues. Except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the CTA.

Nevertheless, despite the procedural infirmities, the Court deems it prudent to take cognizance of the present petitions as they assail the actions of the CIR that affect thousands of government employees.

(3) Compensation income is the income of the individual taxpayer arising from services rendered pursuant to an employer-employee relationship. Every form of compensation for services, whether paid in cash or in kind, is generally subject to income tax and consequently to withholding tax. **The name designated to the compensation income received by an employee is immaterial.** Thus, salaries, wages, emoluments and honoraria, allowances, commissions, fees, (including director's fees, if the director is, at the same time, an employee of the employer/corporation), bonuses, fringe benefits (except those subject to the fringe benefits tax under Section 33 of the Tax Code), pensions, retirement pay, and other income of a similar nature, constitute compensation income that are taxable and subject to withholding.

The withholding tax system was devised for 3 primary reasons, namely: (1) to provide the taxpayer a convenient manner to meet his probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow. It resulted in prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies. In relation, Section 79(A) of the NIRC provides:

> *SEC. 79. Income Tax Collected at Source. –*
>
> *(A) Requirement of Withholding - Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code,* ***every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.***

Said rule applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. As provided in RR No. 2-98, the term employee covers **all employees, including officers and employees, whether elected or appointed, of the Government of the Philippines, or any political subdivision thereof or any agency or instrumentality**; while the term **employer embraces not only an individual and an organization engaged in trade or business, but also includes an organization exempt from income tax, as well as the Government of the Philippines.** Accordingly, the Government, as an employer, is constituted as a withholding agent who is mandated to deduct, withhold and remit the corresponding tax on compensation income paid to all its employees.

However, not all income payments to employees are subject to withholding tax as there are items excluded by the NIRC from the employee's compensation income and, thus, are exempt from withholding tax on compensation. In the case at bar, it is the petitioner's assertion that the assailed RMO went beyond the provisions of the NIRC insofar as it imposes new or additional taxes to allowances, benefits or bonuses granted to government employees which are otherwise non-taxable. This cannot be sustained. On the contrary, the RMO merely mirrors the relevant provisions of the NIRC and its implementing rules on the withholding tax on compensation income. It simply reinforces the rule that every form of compensation arising from employer-employee relationship is deemed subject to income tax and, consequently, to withholding tax, unless specifically exempted or excluded by the NIRC. While Section III of the RMO enumerates certain allowances which may be subject to withholding tax, it does not exclude the possibility that these allowances may fall under the exemptions, thus, the phrase "subject to the exemptions enumerated herein."

(4) The constitutional guarantee of equal protection is not violated by an executive issuance which was issued to simply reinforce existing taxes applicable to both the private and public sector. While the assailed RMO is a directive to the Government as a reminder of its obligation, it did not amend the provisions of the NIRC, for or against the Government or its employees.

As to the issue of fiscal autonomy raised by the petitioners, it is held that said fiscal autonomy does not grant immunity or exemption from the common burden of paying taxes imposed by law. Fiscal autonomy entails freedom from outside control other than those provided by law. It is the freedom to allocate and utilize funds in accordance with law and pursuant to the wisdom and dispatch its needs may require from time to time.

With regards to the alleged violation of the principle of non-diminuition of benefits, it is held that the imposition of taxes on salaries does not result in diminution of benefits. All citizens should bear their aliquot part of the cost of maintaining the government and should share the burden of general income taxation equitably.

b. Non-retroactivity of rulings

2. Rule-making authority of the Secretary of Finance

B. Income tax

1. Definition, nature, and general principles

a. Criteria in imposing Philippine income tax

b. Types of Philippine income taxes

c. Taxable period

d. Kinds of taxpayers

2. Income

a. Definition and nature

b. When income is taxable

i. Existence of income

ii. Realization and recognition of income

c. Tests in determining whether income is earned for tax purposes

i. Realization test

ii. Economic benefit test, doctrine of proprietary interest

iii. Severance test

d. Tax-free exchanges

e. Situs of income taxation

3. Gross income

a. Definition

b. Concept of income from whatever source derived

c. Gross income vs. net income vs. taxable income

d. Classification of income subject to tax

i. Compensation income

ii. Fringe benefits

iii. Professional income

iv. Income from business

v. Income from dealings in property

vi. Passive investment income

vii. Annuities, proceeds from life insurance or other types of insurance

viii. Prizes and awards

ix. Pensions, retirement benefit or separation pay

x. Income from any source

e. Exclusions and exemptions

i. Rationale

ii. Taxpayers who may avail

iii. Distinguished from deductions and tax credits

4. Deductions from gross income

a. Concept as return of capital

b. Itemized deductions vs. Optional Standard Deduction

c. Items not deductible

5. Income tax on individuals

a. Resident citizens, non-resident citizens, and resident aliens

i. Inclusions and exclusions for taxation on compensation income

ii. Taxation of business income/income from practice of profession

iii. Taxation of passive income

iv. Taxation of capital gains

v. Capital asset vs. ordinary asset

b. Income tax on non-resident aliens engaged in trade or business

c. Income tax on non-resident aliens not engaged in trade or business

d. Individual taxpayers exempt from income tax

i. Senior citizens

ii. Minimum wage earners

iii. Exemptions granted under international agreements

6. Income tax on corporations

a. Income tax on domestic corporations and resident foreign corporations

i. Minimum Corporate Income Tax

ii. Branch Profit Remittance Tax

iii. Itemized deductions vs. Optional Standard Deductions

iv. Taxation of passive income

v. Taxation of capital gains

b. Income tax on non-resident foreign corporations

c. Income tax on special corporations

i. Proprietary educational institutions and hospitals

ii. Non-profit hospitals

iii. Government-owned or controlled corporations, agencies, or instrumentalities

iv. Domestic depository banks (foreign currency deposit units)

v. International carriers doing business in the Philippines

vi. Off-shore banking units

vii. Resident foreign depository banks (foreign currency deposit units)

viii. Regional or area headquarters and regional operating headquarters of multinational companies

d. Improperly Accumulated Earnings Tax (IAET)

e. Exemptions from tax on corporations

f. Tax on other business entities: general partnerships, general professional partnerships, co-ownerships, joint ventures, and consortia

7. Filing of returns and payment

a. Period within which to file income tax return of individuals and corporations

b. Substituted filing

c. Failure to file returns

8. Withholding taxes

a. Concept

PHILIPPINE AIRLINES, INC. (PAL), Petitioner, -versus- COMMISSIONER OF INTERNAL REVENUE, Respondent.

G.R. Nos. 206079-80, THIRD DIVISION, January 17, 2018, LEONEN, J.

Under Presidential Decree No. 1590, as amended by Section 22 of Republic Act No. 9337, PAL is only subject to Corporate Income Tax and Value Added Tax and is exempt from all other taxes, including taxes on interest earned from deposits. Moreover, Presidential Decree No. 1590 provides that any excess payment over taxes due from PAL's shall either be refunded or credited against its tax liability for the succeeding taxable year. PAL is entitled to a tax refund or tax credit if excess payments are made on top of the taxes due from it. Considering that PAL is not liable to pay the tax on interest income from bank deposits, any payments made for that purpose are in excess of what is due from it. Thus, if PAL erroneously paid for this tax, it is entitled to a refund.

The taxes on interest income from bank deposits are in the nature of a withholding tax. When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue. *The liability for remitting the tax is on the withholding agent.* ***To claim a refund, PAL needs only to prove that taxes were withheld.*** *Certificates of Final Taxes Withheld issued by the Agent Banks are sufficient evidence to establish the withholding of the taxes.* ***Applying the pronouncement in the case of Commissioner of Internal Revenue v. Philippine National Bank, PAL need not prove the remittance to the Bureau of Internal Revenue of the final withholding tax on its interest from currency bank deposits to be entitled to tax refund.***

FACTS:

Sometime in 2002, Philippine Airlines (PAL) made US dollar and Philippine peso deposits and placements in Chinabank, JPMorgan, PBCom, and Standard Chartered (collectively, Agent Banks). PAL earned interest income from these deposits and the Agent Banks deducted final withholding taxes.

PAL filed with the Commissioner on November 3, 2003 a written request for a tax refund of the withheld amounts on the basis of its alleged exemption from final withholding taxes under its franchise, Presidential Decree No. 1590. The Commissioner failed to act on the request. Thus, PAL elevated the case to the Court of Tax Appeals in Division.

The Commissioner, in her answer, contended that PAL's claim was subject to administrative routinary investigation or examination by the Bureau of Internal Revenue. She also alleged that PAL's claim was not properly documented, and that it must show that it complied with the prescriptive period for filing refunds under Sections 204(C) and 229 of the National Internal Revenue Code. It likewise asserted that claims for refund are of the same nature as a tax exemption, and thus, are strictly construed against the claimant.

PAL presented evidence to support its claim. The Commissioner then submitted the case for decision based on the pleadings. The Court of Tax Appeals First Division partially granted PAL's Petition and ordered the Commissioner to refund the final income tax withheld and remitted by JPMorgan. It denied the remaining claim for refund of the final income tax withheld by Chinabank, PBCom, and Standard Chartered. The Court of Tax Appeals Special First Division found that PAL was exempted from final withholding tax on interest on bank deposits. However, it ruled that PAL failed to adequately substantiate its claim because it did not prove that the Agent Banks, with the exception of JPMorgan, remitted the withheld amounts to the Bureau of Internal Revenue. PAL only presented documents which showed the total amount of final taxes withheld for all branches of the banks. As such, the amount of tax withheld from and to be refunded to PAL could not be ascertained with particularity. It ruled that the Certificates of Final Tax Withheld at Source are not sufficient to prove remittance.
CTA En Banc affirmed the decision of the Court of Tax Appeals Special First Division. The CTA En Banc sustained that PAL needed to prove the remittance of the withheld taxes because although remittance is the responsibility of the banks as withholding agents, remittance was put in issue in this case.

ISSUE:
Whether or not PAL is required to prove the remittance to the Bureau of Internal Revenue of the final withholding tax on its interest from currency bank deposits to be entitled to tax refund? (NO)

RULING:

PAL failed to prove the Agent Banks' remittance of the withheld taxes on its interest income, with the exception of JP Morgan. However, **the remittance need not be proven**. PAL needs only to prove that taxes were withheld from its interest income.

First, PAL is uncontestedly exempt from paying the income tax on interest earned. Under its franchise, Presidential Decree No. 1590, petitioner may either pay a franchise tax or the basic corporate income tax, and is exempt from paying any other tax, including taxes on interest earned from deposits. In *Commissioner of Internal Revenue v. Philippine Airlines*, Inc., this Court ruled that Section 13 of Presidential Decree No. 1590 is clear and unequivocal in exempting PAL from all taxes other than the basic corporate income tax or the 2% franchise tax. PAL's tax liability was also modified on July 1, 2005, when Republic Act No. 9337 further amended the National Internal Revenue Code. Section 22 of Republic Act No. 9337 abolished the franchise tax and subjected PAL to corporate income tax and to value-added tax. Nonetheless, it maintained PAL's exemption from "any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement." Thus, Presidential Decree No. 1590 and PAL's tax exemptions subsist. Necessarily, PAL remains exempt from tax on interest income earned from bank deposits. Moreover, Presidential Decree No. 1590 provides that any excess payment over taxes due from PAL's shall either be refunded or credited against its tax liability for the succeeding taxable year. PAL is entitled to a tax refund or tax credit if excess payments are made on top of the taxes due from it.

Considering that PAL is not liable to pay the tax on interest income from bank deposits, any payments made for that purpose are in excess of what is due from it. Thus, if PAL erroneously paid for this tax, it is entitled to a refund.

PAL is likewise entitled to a refund because it is not responsible for the remittance of tax to the Bureau of Internal Revenue. **The taxes on interest income from bank deposits are in the nature of a withholding tax. When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue.** The liability for remitting the tax is on the withholding agent. Thus, PAL is not obliged to remit, let alone prove the remittance of, the taxes withheld.

To claim a refund, this Court rules that PAL needs only to prove that taxes were withheld. **Certificates of Final Taxes Withheld issued by the Agent Banks are sufficient evidence to establish the withholding of the taxes.** In the case at bar, the Court of Tax Appeals Special First Division noted that PAL offered in evidence Certificates of Final Tax Withheld at Source from the Agent Banks to prove the earned interest income on its bank deposits and the taxes withheld. These bank-issued Certificates of Income Tax Withheld and BIR Forms were neither disputed nor alleged to be false or fraudulent. There was not even any denial from the Commissioner or the Agent Banks that the amounts were not withheld as final taxes from PAL's interest income from its money deposits. Moreover, these Certificates of Final Tax Withheld, complete in relevant details, were declared under the penalty of perjury. As such, they may be taken at face value. Thus, these Certificates are sufficient evidence to establish the withholding of the taxes. The taxes withheld from PAL are considered its full and final payment of taxes. Necessarily, when taxes were withheld and deducted from its income, PAL is deemed to have paid them. Considering that PAL is exempted from paying the withholding tax, it is rightfully entitled to a refund.

The case of ***Commissioner of Internal Revenue v. Philippine National Bank*** involves a refund of creditable withholding tax and not of final withholding tax. However, its ruling that proof of remittance is not necessary to claim a tax refund applies to final withholding taxes. **The same principles used to rationalize the ruling apply to final withholding taxes: (i) the payor-withholding agent is responsible for the withholding and remitting of the income taxes; (ii) the payee-refund claimant has no control over the remittance of the taxes withheld from its income; (iii) the Certificates of Final Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by payee-refund claimant to the government itself and are declared under perjury.**

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus- **CEBU HOLDINGS, INC.**, *Respondent*.
G.R. No. 189792, EN BANC, June 20, 2018, CARPIO, *J.*

The requisites for claiming a refund of excess creditable withholding taxes are: (l) the claim for refund was filed within the two-year prescriptive period; (2) the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount of tax *withheld therefrom; and (3) the income upon which the taxes were withheld was included in the income tax return of the recipient as part of the gross income.*

When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayers of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
*(c) **When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year**; or*
(d) When the excise tax due on excisable articles has not been paid; or
(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within 30 days from receipt of the said decision, or from the lapse of the 180-day period; otherwise, the decision shall become final, executory and demandable.

FACTS:

Respondent is a registered real estate developer. On 15 April 2003, respondent filed with the BIR its ITR for the year ending 31 December 2002. Respondent indicated in its ITR and amended ITR for taxable year 2002 that it is opting to be issued a tax credit certificate (TCC) for the alleged overpayment of P18,992,055.00. On 4 March 2005, respondent filed with the BIR a written claim for a TCC in the amount of P18,992,055.00. When petitioner failed to act upon respondent's claim, respondent filed a Petition for Review with the CTA First Division on 15 April 2005.

The Court commissioned Independent CPA filed his Final and Consolidated Report which stated that they found that the total CWT's claimed per December 31, 1998 Amended ITR are as follows, Real Estate Sales- P6,067,093.08, Real Estate Leasing- P2,800,461.83, Other Income- Management Fees - P124,500.00.

The CTA First Division agreed with the findings of the Independent CPA, except for the amount of P3,857.33 which was erroneously included as part of the Creditable Withholding Taxes (CWTs) filed out of period in the amount of P2,818,260.83. It found that the certificate supporting the creditable tax of P3,857.33 shows that the same was withheld in taxable year 2002. It further held that out of the total creditable tax withheld of P18,992,055.00, only the amount of P15,877,961.02 represents respondent's valid claim for taxable year 2002. The CTA First Division disallowed CWTs totaling P3,114,093.89.

It also found a discrepancy in respondent's revenue from sales of real properties in the amount of P120,964,737.00 as indicated in its ITR, which is lower by P19,999.70 compared to the amount of P120,984,736.70 gross sales stated in its withholding tax remittance returns. For failure of respondent to account for the discrepancy in sales of real properties amounting to P19,999.70, the CTA First Division disallowed CWTs in the amount of P999.99 and also disallowed the P124,500.00 CWTs pertaining to management fees amounting to P2,490,000.00 for failure of respondent to indicate such amount under "Sales of Services" in its ITR. Although respondent reported a "Miscellaneous" income of P4,205,134.00, it failed to submit documents to prove that the P2,490,000.00 management fees formed part of its Miscellaneous income of P4,205,134.00. The CTA First Division further ruled that respondent failed to substantiate the P30,150,757.00 prior year's excess credits, except for the amount of P288,076.04

On 26 March 2009, respondent filed an Urgent Motion to Withdraw the Petition for Review in CTA. Case No. 7218 on the ground that it shall no longer pursue its claim for a tax credit certificate. Instead, respondent is opting to carry forward the excess creditable income taxes to the succeeding taxable quarters of the succeeding taxable years until the same have been fully utilized. In a Resolution dated 5 May 2009, the CTA First Division denied respondent's motion.

On 16 April 2009, petitioner filed a petition for review before the CTA *En Banc*, assailing the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division.

The CTA *En Banc* agreed with the finding of the CTA First Division that respondent is entitled only to P2,083,878.07 of tax credit certificate representing excess creditable taxes for taxable year 2002. The CTA *En Banc* further ruled that respondent's claim for refund filed with the BIR on 4 March 2005 and the Petition for Review filed on 15 April 2005 were within the reglementary period.

As regards the unsubstantiated P16,194,108.00 prior year's tax credit which was carried over by respondent for taxable year 2003, the CTA *En Banc* held that since the refund claim pertains only to the taxable year 2002, the alleged tax deficiency for taxable year 2003 cannot be offset against the excess creditable taxes covered by the refund claim.

Petitioner asserts that respondent is not entitled to the P2,083,878.07 refund of excess creditable withholding tax for taxable year 2002. Furthermore, petitioner reiterates that respondent is liable for deficiency income tax for taxable year 2003 because respondent erroneously carried over the amount of P16,194,108.00 as prior year's excess credits, to which it is not entitled, to the succeeding taxable year 2003.

ISSUE:

1. Whether respondent is entitled to a tax credit certificate in the amount of P2,083,878.07, representing respondent's excess creditable taxes for taxable year 2002 (YES)
2. Whether respondent is liable for deficiency income tax for taxable year 2003 (YES)

RULING:

The petition is partly meritorious. The requisites for claiming a refund of excess creditable withholding taxes are: (l) the claim for refund was filed within the two-year prescriptive period; (2) the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount of tax withheld therefrom; and (3) the income upon which the taxes were withheld was included in the income tax return of the recipient as part of the gross income.

Respondent complied with all the requisites. First, respondent filed the claim for refund within the two-year prescriptive period. Respondent filed its claim for refund with the BIR on 4 March 2005 and the Petition for Review before the CTA on 15 April 2005, which both fell within the two-year prescriptive period counting from the date respondent filed its ITR on 15 April 2003. Second, as proof of taxes withheld, respondent submitted the Certificate Authorizing Registration, Withholding Tax Remittance Returns, and Certificates of Creditable Tax Withheld at Source, upon which the Independent CPA based his report. Third, respondent submitted its amended 2002 ITR to show that the income upon which the taxes were withheld was included in its ITR. However, upon comparison with the Certificates of Creditable Tax Withheld at Source and Withholding Tax Remittance Returns, the CTA found certain discrepancies and held that out of the total claimed CWT of P15,877,961.02, respondent was only able to provide valid proofs of withholding for the amount of P15,752,461.03. Thus, the CTA First Division correctly held that respondent is entitled to a refundable excess tax credits of P2,083,878.07 after deducting the substantiated prior year's excess credits (P288,076.04) and the substantiated CWT (P15,752,461.03) from the total tax due (P13,956,659.00).

However, as pointed out by petitioner, respondent erroneously carried over the amount of P16,194,108.00 as prior year's excess credits, to which it is not entitled, to the succeeding taxable year 2003 as shown in respondent's Annual ITR for the year 2003. It should be stressed that the amount of P16,194,108.00 is the remaining portion of the claimed prior year's excess credits in the amount of P30,150,767.00 after deducting the P13,956,659.00 tax due in respondent's amended ITR for taxable year 2002. **But the CTA First Division categorically ruled that respondent (petitioner therein) failed to substantiate its prior year's excess credits of P30,150,767.00 except for the amount of P288,076.04, which can be applied against respondent's income tax liability for taxable year 2002.**

The CTA First Division stated that petitioner **failed to substantiate its prior year's excess credits of P30,150,767.00, save for the amount of P288,076.04**. **In sum, out of the reported prior year's excess credits of P30,150,767.00, only the amount of P288,076.04 shall be applied against the income tax liability for taxable year 2002 in the amount of P13,956,659.00.** The remaining income tax liability of P13,668,582.96 shall be offset against the substantiated creditable taxes withheld in taxable year 2002 in the amount of P15,752,461.03, leaving a refundable excess tax credits of only P2,083,878.07.

Such categorical pronouncement of the CTA First Division affects respondent's claim for excess creditable income taxes which can be carried over to succeeding taxable years. Thus, when the CTA First Division denied respondent's Motion for Partial Reconsideration of the Decision dated 10 November 2008, respondent filed an "Urgent Motion to Withdraw Petition for Review." Clearly, respondent filed the motion in order to avoid the adverse effect of the ruling of the CTA First Division that respondent (petitioner therein) failed to substantiate almost all of its claimed prior year's excess credits, especially since respondent already carried over and applied the amount of P16,194,108.00 as prior year's excess creditable tax against the income tax due for the succeeding taxable year 2003. The CTA First Division denied for lack of merit respondent's Urgent Motion to Withdraw Petition for Review.

Clearly, respondent erred when it carried over the amount of P16,194,108.00 as prior year's excess credits to the succeeding taxable year 2003, resulting in a tax overpayment of P7,653,926.00 as shown in its 2003 Amended ITR

Considering that respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the P16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003. Thus, the amount of P16,194,108.00 as prior year's excess credits should be deleted, making respondent liable for income tax in the amount of P8,540,182.00 for taxable year 2003

Respondent argues that the alleged deficiency income tax for taxable year 2003 has no bearing on the case which merely involves a claim for a tax credit certificate for taxable year 2002. To reiterate, the CTA First Division already ruled that respondent (petitioner therein) failed to substantiate its prior year's excess credits of P30,150,767.00 except for the amount of P288,076.04, which can be applied against respondent's income tax liability for taxable year 2002. Thus, since respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the P16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003.

Nevertheless, it is incumbent upon petitioner to issue a final assessment notice and demand letter for the payment of respondent's deficiency tax liability for taxable year 2003. Section 228 of the NIRC provides that: When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayers of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:

(f) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
(g) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(h) **When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year**; or
(i) When the excise tax due on excisable articles has not been paid; or

(j) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within 30 days from receipt of the said decision, or from the lapse of the 180-day period; otherwise, the decision shall become final, executory and demandable.

In this case, no pre-assessment notice is required since respondent taxpayer carried over to taxable year 2003 the prior year's excess credits which have already been fully applied against its income tax liability for taxable year 2002.

b. Creditable vs. withholding taxes

c. Duties of a withholding agent

C. Transfer taxes

1. Estate tax

a. Basic principles, concept, and definition

b. Classification of decedent

c. Determination of gross and net estate

d. Deductions and exclusions from estate

e. Exemption of certain acquisitions and transmissions

f. Period for filing estate tax returns

2. Donor's tax

a. Basic principles, concept, and definition

b. Requisites of a valid donation

c. Transfers which may be constituted as donation

i. Transfer of property for insufficient consideration

ii. Condonation/remission of debt

iii. Bona fide arms-length transfers

d. Determination of gross gift

e. Exemption of gifts from donor's tax

D. Value-Added Tax (VAT)

1. Concept and elements of VATable transactions

2. Impact and incidence of tax

3. Destination Principle; Cross-Border Doctrine

4. Imposition of VAT on transfer of goods by tax exempt persons

5. Transactions deemed sale subject to VAT

6. Zero-rated and effectively zero-rated sales of goods or properties

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* EURO-PHILIPPINES AIRLINE SERVICES, INC., *Respondent*

G.R. No. 222436, SECOND DIVISION, July 23, 2018, REYES JR., *J*

Section 113 of the NIRC of 1997, on the said provisions on the "Consequences of Issuing Erroneous VAT Invoice of VAT Official Receipt, nowhere therein is a presumption created by law that the non-imprintment of the word "zero rated" deems the transaction subject to 12 % VAT.

In addition, Section 4. 113-4 of Revenue Regulations 16-2005, Consolidated Value-Added Tax Regulations of 2005, also does not state that the non-imprintment of the word "zero rated" deems the transaction subject to 12 %VAT. Thus, in this case, failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT.

FACTS:

Respondent Euro-Philippines Airline Services, Inc. (Euro-Phil) is an exclusive passenger sales agent of British Airways, PLC, an off-line international airline in the Philippines to service the latter's passengers in the Philippines.

Euro-Phil received a Formal Assessment Notice (FAN) dated September 13, 2010 from petitioner Commissioner of Internal Revenue (CIR) on 14 September 2010 in the aggregate amount of P4,271,228,20.00 consisting of assessment of Value Added Tax (VAT), among others, for the taxable year ending March 31, 2007 with Details of Discrepancies.

On 29 September 2010, Euro-Phil filed a final protest on CIR. Following the lapse of the 180-day period within which to resolve the protest, Euro-Phil filed a petition for review before the Court of Tax Appeals Special First Division (CTA-First Division) praying for the cancellation of the FAN issued by CIR for deficiency VAT.

Euro-Phil argued therein that the receipts that are supposedly subject to 12% VAT actually pertained to "services rendered to persons engaged exclusively in international air transport" hence, zero-rated.

The CTA First Division rendered a Decision in favor of Euro-Phil. CIR filed a Motion for Partial Reconsideration of the said Decision but was subsequently denied for lack of merit.

CIR then appealed before the CTA *En Banc*. The CTA *En Banc* rendered a Decision denying the petition. CIR moved for reconsideration of the said decision insisting that the presentation of VAT official receipts with the words "zero-rated" imprinted thereon is indispensable to cancel the value-added tax (VAT) assessment against Euro-Phil. However, it was also denied.

ISSUES:

1. Whether or not the issue of non-compliance of the invoicing requirements by Euro-Phil must be recognized despite being raised only on appeal; and
2. Whether or not the Court of Tax Appeals *En Banc* erred in finding that the transaction sale made by respondent is entitled to the benefit of zero-rated VAT despite its failure to comply with invoicing requirements as mandated by law.

RULING:

Here, it is not disputed that CIR raised the issue that the alleged failure to present VAT official receipts with the imprinted words "zero rated". Accordingly, with the doctrine that issues may not be raised for the first time on appeal, CIR should not be allowed by this Court to raise this matter.

Moreover, the law is clear on the matter. Section 108 of the NIRC of 1997 imposes zero percent (0%) value-added tax on services performed in the Philippines by VAT-registered persons to persons engaged in international air transport operations, as it thus provides:

Section 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
(A) x x x x
(B) **T*ransactions Subject to Zero Percent (0%) Rate* - The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate.**
(1) x x x x
x x x x
(4) **Services rendered to persons engaged in** international shipping or **International air-transport operations**, including leases of property for use thereof;
x x x x

Here, there is no dispute that Euro-Phil is VAT registered. Next, it is also not disputed that the services rendered by Euro-Phil was to a person engaged in international air-transport operations. Thus, by application, Section 108 of the NIRC of 1997 subjects the services of Euro-Phil to British Airways PLC, to the rate of zero percent VAT.

While CIR contends that Euro-Phil's failure to present and offer any proof to show that it has complied with the invoicing requirements, deems its sale of services to British Airways PLC subject to 12% VAT, it does not negate the established fact that British Airways PLC is engaged in international air-transport operations.

Moreover, as dictated by Section 113 of the NIRC of 1997, on the said provisions on the "*Consequences of Issuing Erroneous VAT Invoice of VAT Official Receipt,* nowhere therein is a presumption created by law that the non-imprintment of the word "zero rated" deems the transaction subject to 12 % VAT.

In addition, Section 4. 113-4 of Revenue Regulations 16-2005, Consolidated Value-Added Tax Regulations of 2005, also does not state that the non-imprintment of the word "zero rated" deems the transaction subject to 12 %VAT. Thus, in this case, failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT.

7. VAT-exempt transactions

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *-versus-.* NEGROS CONSOLIDATED FARMERS MULTI-PURPOSE COOPERATIVE, *Respondent*
G.R. No. 212735, FIRST DIVISON, December 05, 2018, TIJAM, J.

While the sale of raw sugar, by express provision of law, is exempt from VAT, the sale of refined sugar, on the other hand, is not so exempted as refined sugar already underwent several refining processes and as such, is no longer considered to be in its original state. However, if the sale of the sugar, whether raw or refined, was made by an agricultural cooperative to its members or non-members, such transaction is still VAT-exempt.

COFA is a VAT-exempt agricultural cooperative. Exemption from the payment of VAT on sales made by the agricultural cooperatives to members or to non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill.

FACTS

COFA is a multi-purpose agricultural cooperative organized under Republic Act (RA) No. 6938.

As its usual course, COFA's farmer-members deliver the sugarcane produce to be milled and processed in COFA's name with the sugar mill/refinery. Before the refined sugar is released by the sugar mill, however, an Authorization Allowing the Release of Refined Sugar (AARRS) from the BIR is required from COFA. For several instances, upon COFA's application, the BIR issued the AARRS without requiring COFA to pay advance VAT pursuant to COFA's tax exemption. As such, COFA was issued Certificates of Tax Exemption.

However, beginning February 3, 2009, the BIR, through the Regional Director of Region 12-Bacolod City, required as a condition for the issuance of the AARRS the payment of "advance VAT" on the premise that COFA, as an agricultural cooperative, does not fall under the term "producer." According to the BIR, a "producer" is one who tills the land it owns or leases, or who incurs cost for agricultural production of the sugarcane to be refined by the sugar refinery.

As bases for the required payment of advance VAT, the Regional Director pointed to Sections 3 and 4 of Revenue Regulations (RR) No. 13-2008. COFA was thus, constrained to pay advance VAT under protest and to seek the legal opinion of the BIR Legal Division, as to whether COFA is considered the producer of the sugar product of its members.

In a Ruling dated January 11, 2008, the BIR stated that the sales of sugar produce by COFA to its members and non-members are exempt from VAT pursuant to Section 109(L) of RA 9337, as implemented by Revenue Regulations (RR) No; 4-2007.

Thus, pursuant to Section 229 of RA. 8424, as amended, COFA lodged with petitioner CIR an administrative claim for refund for the advance VAT it paid refined sugar. Because of the CIR's inaction, COFA filed a petition for review before the CTA Division.

In its Answer, the CIR raised as sole point COFA's alleged failure to comply with the requisites for recovery of tax erroneously or illegally collected as spelled under Section 229 of RA 8424, specifically, the lack of a prior claim for refund or credit with the CIR.

On December 12, 2012, the CTA Division rendered its Decision finding COFA to be exempt from VAT and thus, ordered the refund of the advance VAT it erroneously paid. The CIR Division reasoned that COFA's Certificates of Tax Exemption dated May 24, 1999 and April 23, 2003 and the BIR Ruling dated January 11, 2008, which had not been revoked or nullified, affirmed COFA's status as a tax-exempt agricultural cooperative. It further held that based on said uncontroverted evidence, COFA is "considered as the actual producer of the members' sugarcane production because it primarily provided the various production inputs (fertilizers), capital, technology transfer and farm management."

In its presently assailed Decision, the CTA En Banc affirmed COFA's status as an agricultural cooperative entitled to VAT exemption.

ISSUE

Whether COFA, at the time of the subject transactions is VAT-exempt and therefore entitled to a tax refund for the advance VAT it paid (YES)

RULING

COFA is a VAT-exempt agricultural cooperative. Exemption from the payment of VAT on sales made by the agricultural cooperatives to members or to non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill.

VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services.

There are, however, certain transactions exempt from VAT such as the sale of agricultural products in their original state, including those which underwent simple processes of preparation or preservation for the market, such as raw cane sugar.

While the sale of raw sugar, by express provision of law, is exempt from VAT, the sale of refined sugar, on the other hand, is not so exempted as refined sugar already underwent several refining processes and as such, is no longer considered to be in its original state. However, if the sale of the sugar, whether raw or refined, was made by an agricultural cooperative to its members or non-members, such transaction is still VAT-exempt.

Thus, by express provisions of the law under Section 109 (L) of RA 8424, as amended by RA 9337, and Article 61 of RA 6938 as amended by RA 9520, the *sale itself* by agricultural cooperatives duly registered with the CDA to their members as well as the sale of their produce, whether in its original state or processed form, to non-members are exempt from VAT.

In the interim, or on September 19, 2008, the BIR issued RR No. 13-2008 consolidating the regulations on the *advance payment of VAT* or "*advance VAT*" on the sale of refined sugar. Generally, the advance VAT on the sale of the refined sugar is required to be paid in advance by the owner/seller before the refined sugar is *withdrawn* from the sugar refinery/mill. The "sugar owners" refer to those persons having legal title over the refined sugar and may include, among others, the cooperatives.

By way of exception, withdrawal of refined sugar is exempted from advance VAT upon the concurrence of certain conditions which ultimately relate to a two-pronged criteria: *first*, the character of the cooperative seeking the exemption; and *second*, the kind of customers to whom the sale is made.

Thus, for an agricultural cooperative to be exempted from the payment of advance VAT on refined sugar, it must be (*a*) a cooperative in good standing duly accredited and registered with the CDA; and (*b*) the producer of the sugar.

It appears also that the requirement as to the character of the cooperative being the producer of the sugar is relevant only when the sale of the refined sugar is likewise made to non-members.

We find no reason to disturb the CTA *En Banc's* finding that COFA is a cooperative in good standing as indicated in the Certification of Good Standing previously issued and subsequently renewed by the CDA. It was likewise established that COFA was duly accredited and registered with the CDA as evidenced by the issuance of the CDA Certificate of Registration. There is no showing that the CIR disputed the authenticity of said documents or that said certifications had previously been revoked. Consequently, such must be regarded as conclusive proof of COFA's good standing and due registration with the CDA. Similarly, COFA is considered the producer of the sugar as found by the CTA Division and affirmed by the CTA *En Banc*.

Having established that COFA is a cooperative in good standing and duly registered with the CDA and)s the-producer of the sugar, its sale then of refined sugar whether sold to members or non-members, following the express provisions of Section 109(L) of RA 8424, as amended, is exempt from VAT. As a logical and necessary consequence then of its established VAT exemption, COFA is likewise exempted from the payment of advance VAT required under RR No. 13-2008.

Moreover, it was established that COFA satisfied the requirements under Section 109(L) of RA 8424, as amended, to enjoy the exemption from VAT on its sale of refined sugar; its exemption from the payment of advance VAT for the withdrawal it made from May 12, 2009 to July 22, 2009 follows, as a matter of course.

8. Input and output tax

MALAYAN INSURANCE COMPANY, INC., ***Petitioner***, ***- versus - .*** **ST. FRANCIS SQUARE REALTY CORPORATION**, ***Respondent.***

G.R. Nos. 198916-17, SPECIAL THIRD DIVISION, July 23, 2018, PERALTA, *J.*

As a VAT-registered purchaser which has sold condominium units and parking lots in the course of its business, and admitted to have offset input tax from the project against its output tax liabilities, ***Malayan can no longer claim that input VAT is an additional cost built into the cost of goods and services it purchased and procured from its contractors and suppliers****. To allow Malayan to pass the burden of such indirect tax to buyers of the said units and slots, and to further claim that input VAT must still form part of the ARCC, would constitute unjust enrichment at the expense of St. Francis, as the latter's proportionate share in the remaining units would be unduly reduced, while Malayan's share would be increased.*

FACTS:

Malayan Insurance Company, Inc. and St. Francis Square Realty Corporation both filed a Motion for Reconsideration of the Court's Decision dated January 11, 2016.

St. Francis' motion for partial reconsideration takes exception only to the Court's ruling that the input value added tax (VAT) in the amount of P45,419,770.44 should be considered as part of the Actual Remaining Construction Cost (ARCC).

St. Francis states that the issue of input VAT is not limited to or purely about technical classifications of taxes or accounting rules, and that input VAT can neither be considered an expense under tax laws nor be deemed part of the ARCC under the plain and ordinary meaning of cost. Citing *VAT Ruling No. 053-94*, St. Francis posits that the VAT paid by a VAT-registered person on his purchases is an asset account in the Balance Sheet and cannot be treated as an expense unless he is exempt from VAT. According to St. Francis, this is the reason why under Malayan's own documentary evidence consisting of cash vouchers, input VAT was treated separately from the actual construction cost, and was treated in its audited financial statements under the heading "Other Assets" as opposed to expense.

St. Francis further contends that since Malayan admitted that the input VAT were used to offset its output VAT and thus lessen its tax liability, input VAT can no longer be charged as part of the ARCC. St. Francis asserts that *Malayan has not made any actual expenditure* as regards the input VAT because Malayan was able recover what it paid for the input VAT when it offset the same against its output VAT.

St. Francis theorizes that there will be unjust enrichment if Malayan would be allowed to benefit twice by still including the input VAT in the ARCC, which will result in a corresponding decrease of its share in the reserved units. Finally, St. Francis posits that under the MOA, the reserved units are considered its property and will only be diminished should the ARCC exceed the RCC (Remaining Construction Cost). As such, there is no actual transfer or sale of said units from Malayan to St. Francis, and there would be no occasion for St. Francis to incur input VAT which it can use to offset against its output VAT.

Malayan counters that St. Francis is barred by estoppel from claiming that input VAT should not be included in the ARCC because it included such tax in computing its investment in the project which, in turn was the basis for determining its share in some of the units in the project. Malayan insists that input VAT is considered a cost under the law and the principles of accounting, and is part of the ARCC as contemplated in the MOA.

ISSUE:

Whether or not the input VAT in the amount of P45,419,770.44 which is based on the official receipts, check vouchers and other supporting should be disallowed in the computation of the ARCC.

RULING:

It is not amiss to state that whether input VAT is a direct construction cost and should be included as component of the ARCC is a question of law, and not a question of fact. Perforce, the principle that findings of construction arbitrators on matters belonging to their field of expertise, especially when affirmed by the appellate court, are generally entitled to great respect if not finality, pertain only to factual issues, and not to questions of law, of which the Court is the final arbiter.

The Court previously ruled that input VAT is a financial cost, not a direct construction cost, but went on to state that such VAT should be included in the ARCC because the cash vouchers and receipts showed that Malayan's payment to the contractors and suppliers included the same tax. In deciding such question of law, however, the Court overlooked the nature of VAT as an indirect and consumption tax which the end users of consumer goods, properties or services ultimately shoulder, as the liability therefor is passed on to them by the providers of goods and services who, in turn, may credit their own VAT liability from the VAT payments they receive from the final consumer.

For the VAT-registered purchaser, the tax burden passed on does not constitute cost, but input tax which is creditable against his output tax liabilities; conversely, it is only in the case of a non-VAT purchaser that VAT forms part of cost of the purchase price. The input tax passed on to the final consumers, like the buyers of Malayan's condominium units and parking slots, thus becomes part of their acquisition cost of the asset or operating expense.

As a VAT-registered purchaser which has sold condominium units and parking lots in the course of its business, and admitted to have offset input tax from the project against its output tax liabilities, **Malayan can no longer claim that input VAT is an additional cost built into the cost of goods and services it purchased and procured from its contractors and suppliers**. To allow Malayan to pass the burden of such indirect tax to buyers of the said units and slots, and to further claim that input VAT must still form part of the ARCC, would constitute unjust enrichment at the expense of St. Francis, as the latter's proportionate share in the remaining units would be unduly reduced, while Malayan's share would be increased.

Granted that check vouchers, official receipts and other supporting documents indicate that payments made to the contractors and suppliers of the construction project are VAT-inclusive, the Court cannot close its eyes that the burden of paying VAT was ultimately shouldered by final consumers, and that input VAT was indeed used to offset Malayan's output VAT liabilities. In view thereof, the Court rules that input VAT cannot be considered within the scope and meaning of the ARCC, which should be understood in the traditional "construction" sense rather than the "investment," as the actual expenditures necessary to complete the project.

Considering that Malayan admitted that it had offset its input VAT against its output VAT, Malayan is deemed to have decided to pass the burden of the tax to the buyers of the condominium units and parking lots, and it virtually incurred no actual expenditure which could be included in the computation of the ARCC. The Court, therefore, rules that since Malayan had already benefitted from the crediting of the input VAT against its output VAT liabilities, to allow Malayan to claim input VAT as part of the ARCC would result in unjust enrichment.

Meanwhile, in arguing that input VAT should be allowed to remain as a component of the ARCC, Malayan cannot successfully rely on *BIR Ruling No. 229-15 dated 30 June 2015* to the effect that once shifted to the buyer/customer as an addition to the costs of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods and services. Suffice it to state that Malayan is not the final buyer/customer contemplated in the BIR ruling, because it is a VAT registered purchaser which, in the ordinary course of its business, has shifted the burden of such indirect tax to the buyers of its condominium units and parking lots, and has also used input VAT to offset its out-put VAT liabilities.

In fine, the Court reverses its ruling and holds that input VAT in the amount of P45,419,770.44 which is based on the official receipts, check vouchers and other supporting should be disallowed in the computation of the ARCC.

After a careful review of the relevant law and jurisprudence, the Court finds that its earlier pronouncement regarding Input VAT is contrary to the nature thereof as an indirect consumption tax which is ultimately shouldered by final consumers, and that there would be unjust enrichment if the same is considered as part of the ARCC, despite the fact that Malayan had used its input VAT from the project to offset its output VAT liabilities.

9. Tax refund or tax credit

NIPPON EXPRESS (PHILIPPINES) CORPORATION, *Petitioner,* -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondents*

G.R. No. 191495, THIRD DIVISION, July 23, 2018, MARTIRES, *J.*

Irrefutably, when a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice which properly pertains to a sale of goods or properties.

In this case, the documentary proofs presented by Nippon Express to substantiate its zero-rated sales of services consisted of sales invoices and other secondary evidence like transfer slips, credit memos, cargo manifests, and credit notes. It is very clear that these are inadequate to support the petitioner's sales of services.

FACTS:

On March 30, 2005, Nippon Express filed an application for tax credit of its excess/unused input taxes attributable to zero-rated sales for the taxable year 2004 in the total amount of ₱27,828,748.95.

By reason of the inaction by the BIR, Nippon Express filed a Petition for Review before the CTA on March 31, 2006. In its Answer, respondent CIR interposed the defense, among others, that Nippon

Express' excess input VAT paid for its domestic purchases of goods and services attributable to zero-rated sales for the four quarters of taxable year 2004 was not fully substantiated by proper documents.

CTA Division (the court) denied the latter's claim for failure to submit the required VAT official receipts as proof of zero-rated sales.

In its appeal before the CTA En Banc, Nippon Express alleged that it had fully complied with the invoicing requirements when it submitted sales invoices to support its claim of zero-rated sales. Nippon argued that there is nothing in the tax laws and regulations that requires the sale of goods or properties to be supported only by sales invoices, or the sale of services by official receipts only.

CTA En Banc affirmed the decision of the CTA Division

ISSUES:
I. Whether the CTA has jurisdiction. (NO)

II. Whether the sales invoices and documents other than official receipts are proper in substantiating zero-rated sales of services in connection with a claim for refund under Section 112 of the NIRC. (NO)

RULING:
I.
Even if not raised in the present petition, the Court is not prevented from considering the issue on the court's jurisdiction consistent with the well-settled principle that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them. Besides, courts have the power to motu proprio dismiss an action over which it has no jurisdiction pursuant to Section 1, Rule 9 of the Revised Rules of Court.

Pertinently, the CTA law expressly provides that when the CIR fails to take action on the administrative claim, the "inaction shall be deemed a denial" of the application for tax refund or credit. The taxpayer-claimant must strictly comply with the mandatory period by filing an appeal with the CTA within thirty days from such inaction, otherwise, the court cannot validly acquire jurisdiction over it.

In this case, Nippon Express timely filed its administrative claim on 30 March 2005, or within the two-year prescriptive period. Counted from such date of submission of the claim with supporting documents, the CIR had 120 days, or until 28 July 2005, the last day of the 120-day period, to decide the claim. As the records reveal, the CIR did not act on the application of Nippon Express. Thus, in accordance with law and the cited jurisprudence, the claimant, Nippon Express, had thirty days from such inaction "deemed a denial," or until 27 August 2005, the last day of the 30- day period, within which to appeal to the CTA.

However, Nippon Express filed its petition for review with the CTA only on 31 March 2006, or two hundred forty-six (246) days from the inaction by the CIR. In other words, the petition of Nippon

Express was belatedly filed with the CTA and, following the doctrine above, the court ought to have dismissed it for lack of jurisdiction.

The present case is similar to the case of Philex Mining Corporation (Philex) in the consolidated cases of San Roque. In that case, Philex: (1) filed on 21 October 2005 its original VAT return for the third quarter of taxable year 2005; (2) filed on 20 March 2006 its administrative claim for refund or credit; (3) filed on 17 October 2007, its petition for review with the CTA. As in this case, the CIR did not act on Philex's claim.

The Court considered Philex to have timely filed its administrative claim on 20 March 2006, or within the two-year period; but, its petition for review with the CTA on 1 7 October 2007, was late by 426 days. Thus, the Court ruled that the CTA Division did not acquire jurisdiction.

Due to the lack of jurisdiction of the CTA over the Nippon Express petition before it, all the proceedings held in that court must be void. The rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. It follows that the decision and the resolution of the CTA Division, as well as the decision rendered by the CTA En Banc on appeal, should be vacated orset aside.

II.
Actually, the issue is no longer novel.

In AT&T Communications Services Philippines, Inc. v. Commissioner (AT&T), we interpreted Sections 106 and 108 in conjunction with Sections 113 and 237 of the NIRC relative to the significance of the difference between a sales invoice and an official receipt as evidence for zero-rated transactions. For better appreciation, we simply quote the pertinent discussion, viz:

> Although it appears under [Section 113] that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. The Court therefore cannot conclude that the general provision of Section 113 of the NIRC of 1997, as amended, intended that the invoice and official receipt can be used for either sale of goods or services, because there are specific provisions of the Tax Code which clearly delineates the difference between the two transactions
>
> Apparently, the construction of the statute shows that the legislature intended to distinguish the use of an invoice from an official receipt. It is more logical therefore to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements. Having been grouped under Section 108, its subparagraphs, (A) to (C), and Section 106, its subparagraphs (A) to (0), have significant relations with each other.
>
> x x x x
>
> Settled is the rule that every part of the statute must be considered with the other parts. Accordingly, the whole of Section 108 should be read in conjunction with Sections 113 and

> 237 so as to give life to all the provisions intended for the sale of services. There is no conflict between the provisions of the law that cover sale of services that are subject to zero rated sales; thus, it should be read altogether to reveal the true legislative intent.

It was in Kepco Philippines Corporation v. Commissioner (Kepco) that the Court was directly confronted with the adequacy of a sales invoice as proof of the purchase of services and official receipt as evidence of the purchase of goods. The Court initially cited the distinction between an invoice and an official receipt as expressed in the Manila Mining case. We then declared for the first time that a VAT invoice is necessary for every sale, barter or exchange of goods or properties while a VAT official receipt properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. Thus, we held that a VAT invoice and a VAT receipt should not be confused as referring to one and the same thing; the law did not intend the two to be used alternatively. We stated:

The VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.

In Kepco, the taxpayer tried to substantiate its input VAT on purchases of goods with official receipts and on purchases of services with invoices. The claim was appropriately denied for not complying with the required standard of substantiation. The Court reasoned that the invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims. Unmistakably, the indispensability of an official receipt to substantiate a sale of service had already been illustrated jurisprudentially as early as Kepco.

The doctrinal teaching in Kepco was further reiterated and applied in subsequent cases.

Thus, in Luzon Hydro Corp. v. Commissioner, the claim for refund/tax credit was denied because the proof for the zero-rated sale consisted of secondary evidence like financial statements.

Subsequently, in AT&T, the Court rejected the petitioner's assertion that there is no distinction in the evidentiary value of the supporting documents; hence, invoices or receipts may be used interchangeably to substantiate VAT. Apparently, the taxpayer-claimant presented a number of bank credit advice in lieu of valid VAT official receipts to demonstrate its zero-rated sales of services. The CT A denied the claim; we sustained the denial.

Then, in Takenaka Corporation-Philippine Branch v. Commissioner, the proofs for zero-rated sales of services were sales invoices. The claim was likewise denied.

Most recently, in Team Energy Corporation v. Commissioner of Internal Revenue/Republic of the Philippines v. Team Energy Corporation, we sustained the CTA En Bane's disallowance of the petitioner's claim for input taxes after finding that the claimed input taxes on local purchase of goods were supported by documents other than VAT invoices; and, similarly, on local purchase of services, by documents other than VAT official receipts.

Irrefutably, when a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice which properly pertains to a sale of goods or properties.

In this case, the documentary proofs presented by Nippon Express to substantiate its zero-rated sales of services consisted of sales invoices and other secondary evidence like transfer slips, credit memos, cargo manifests, and credit notes. It is very clear that these are inadequate to support the petitioner's sales of services.

a. San Roque doctrine

TEAM ENERGY CORPORATION (FORMERLY: MIRANT PAGBILAO CORPORATION AND SOUTHERN ENERGY QUEZON, INC.), ***Petitioner,*** **-versus - COMMISSIONER OF INTERNAL REVENUE,** ***Respondent.***
G.R. No. 197663, THIRD DIVISION, March 14, 2018, LEONEN, *J.*

REPUBLIC OF THE PHILIPPINES REP. BY THE BUREAU OF INTERNAL REVENUE, ***Petitioner,*** **-versus - TEAM ENERGY CORPORATION,** ***Respondent.***
G.R. No. 197770, THIRD DIVISION, March 14, 2018, LEONEN, *J.*

The prescriptive period regarding judicial claims for refunds or tax credits of input VAT are explicitly set forth in Section 112(D) of the 1997 NIRC which provides that the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration of the 120 day-period, appeal the decision or the unacted claim with the CTA. In Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. as well as in Commissioner of Internal Revenue v. San Roque Power Corporation, it was pronounced that the observance of the 120+30-day periods is crucial in filing an appeal with the CTA. Compliance with the said periods are both mandatory and jurisdictional. Exempted from this are VAT refund cases that are prematurely filed or filed before the lapse of the 120-day period between December 10, 2003, when the BIR issued Ruling No. DA-489-03, and October 6, 2010, when this Court promulgated the Aichi case. In the case at bar, Team Energy's administrative claim for refund was filed on December 17, 2004. The BIR had 120 days to act on the claim or until April 16, 2005. Team Energy, in turn, had until May 16, 2005 to file a petition with the CTA. However, it filed its appeal only on July 22, 2005 or 67 days late. Thus, the CTA En Banc correctly denied Team Energy's claim for refund due to prescription. The judicial claim for second to fourth quarters was filed beyond the 30-day period.

Under Section 110(A)(1) of the NIRC, creditable input tax must be evidenced by a VAT invoice or official receipt which must in turn reflect the information required in Sections 113 and 237 of the Code. Although it appears under Section 113 that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT-registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. As previously held in the case of AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue, Section 113 must be read in conjunction with Sections 106 and 108 which specifically delineates sales invoices for sales of goods and *official receipts for sales of services. Thus, to claim a refund of unutilized or excess input VAT, purchase of goods or properties must be supported by VAT invoices while purchase of services must be supported by VAT official receipts. Noncompliance will result to the disallowance of the claim for input tax. Accordingly, this does not support Team Energy's claim that at the time when the unutilized input VAT was incurred in 2003, the applicable NIRC provisions did not create a distinction between an official receipt and an invoice in substantiating a claim for refund. The CTA First Division properly disallowed ₱78,134.65 input VAT claimed on local purchase of goods supported by documents other than VAT invoices and ₱180,739.90 input VAT claimed on local purchase of services supported by documents other than VAT official receipts.*

Team Energy's claim for unutilized or excess input VAT was anchored not on the Electrical Power Industry Reform Act (EPIRA Law) but on Section 108(B)(3) of the NIRC, in relation to NPC's charter. The requirements of the EPIRA Law would apply only to claims for refund filed under the EPIRA. Accordingly, the Commisioner cannot question Team Energy's claim for refund of input VAT on the basis of the latter's failure to submit the Registration and Certificate of Compliance issued by the ERC. Such certificate is only relevant on claims for refund filed under the EPIRA. It must be noted that to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA Law, the taxpayer must establish that it is a generation company and that it derived sales from power generation.

FACTS:

Team Energy is a VAT-registered entity. It is engaged in power generation and sale to National Power Corporation (NPC) under a Build, Operate, and Transfer scheme. It then filed an Application for Effective Zero-Rate of its supply of electricity to the NPC, which was subsequently approved.

On December 17, 2004, Team Energy filed a claim for refund of unutilized input VAT in the amount of ₱83,465,353.50 for the first to fourth quarters of taxable year 2003. On April 22, 2005, it appealed before the Court of Tax Appeals (CTA) its 2003 first quarter VAT claim of ₱15,085,320.31 while on July 22, 2005, it appealed its second to fourth quarters VAT claim of ₱68,380,033.19.

In opposing the appeal before the CTA, the Commissioner claimed that it was imperative upon Team Energy to prove its compliance with the registration requirements of a VAT taxpayer as well as the the invoicing and accounting requirements for VAT-registered persons. Furthermore, it contended that Team Energy must prove that the claims were filed within the prescriptive periods and that the input taxes being claimed had not been applied against any output tax liability or were not carried over in the succeeding quarters.

The CTA First Division partially granted Team Energy's petition. NPC's exemption from direct and indirect taxes had long been resolved by the Court. Consequently, NPC's electricity purchases from Team Energy were subject to 0% VAT pursuant to Section 108(B)(3) of the 1997 NIRC. However, the CTA disallowed certain claims for failure to submit the corresponding official receipts as well as for failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the 1997 NIRC. In particular, ₱78,134.65 input VAT claimed on local purchase of goods supported by documents other than VAT invoices and ₱180,739.90 input VAT claimed on local purchase of services supported by documents other than VAT official receipts were disallowed. As to the issue of prescription, the CTA First Division held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding quarterly VAT return. The ruling in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation to the effect that the two-year prescriptive period starts from the close of the taxable quarter when the relevant sales were made must be applied to cases filed after the promulgation of Mirant. Accordingly, Team Energy's administrative and judicial claims were well within the two-year prescriptive period.

Before the CTA En Banc, the Commissioner argued that the CTA First Division erred in allowing the tax refund/credit as Team Energy's administrative and judicial claims for the first and second quarters were filed beyond the two-year period. Additionally, it was averred that Team Energy's judicial claims from the second to fourth quarters of 2003 were filed beyond the 30-day period to appeal.

On April 8, 2011, the CTA En Banc promulgated its Decision, granting Team Energy's petition with respect to the first quarter excess input VAT. As for the second to fourth quarters, it held that the judicial claim was filed beyond the 30-day period. Consequently, the claim for these quarters must be denied for lack of jurisdiction.

ISSUES:

1. Whether Team Energy is entitled for tax refund of its unutilized input VAT for the second to fourth quarters of 2003. (NO)

2. Whether VAT invoice and VAT official receipt can be interchanged to comply with the substantiation requirements for refund of excess or unutilized input tax. (NO)

3. Whether Team Energy's failure to submit the Registration and Certificate of Compliance issued by the Energy Regulatory Commission (ERC) disqualifies it from claiming a tax refund/credit from its sale of electricity to NPC. (NO)

RULING:

1. The prescriptive period regarding judicial claims for refunds or tax credits of input VAT are explicitly set forth in Section 112(D) of the 1997 NIRC which provides that the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration of the 120 day-period, appeal the decision or the unacted claim with the CTA. In Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. as well as in Commissioner of Internal Revenue v. San Roque Power Corporation, it was pronounced that the observance of the 120+30-day periods is crucial in filing an appeal with the CTA. Compliance with the said periods are both mandatory and jurisdictional. Exempted from this are VAT refund cases that are prematurely filed or filed before the lapse of the 120-day period between December 10, 2003, when the BIR issued Ruling No. DA-489-03, and October 6, 2010, when this Court promulgated the Aichi case.

In the case at bar, Team Energy's administrative claim for refund was filed on December 17, 2004. The BIR had 120 days to act on the claim or until April 16, 2005. Team Energy, in turn, had until May 16, 2005 to file a petition with the CTA. However, it filed its appeal only on July 22, 2005 or 67 days late. Thus, the CTA En Banc correctly denied Team Energy's claim for refund due to prescription. The judicial claim for second to fourth quarters was filed beyond the 30-day period.

Team Energy's argument that the application of the Aichi doctrine would violate the rule on non-retroactivity of judicial decisions is without merit. Although Revenue Regulations No. 7-95 did not require a specific number of days within which the BIR must decide on the claim, when Team Energy filed its refund claim in 2004, the 1997 NIRC was already in effect which clearly provided for the 120+30-day period. It must be noted that the NIRC itself provides that rules and regulations or parts of them which are contrary to or inconsistent with it are amended or modified accordingly. In any case, it must be noted that the Aichi doctrine deals with prematurity while the present case deals with late filing. Moreover, in another case where the corporate taxpayer filed its administrative and judicial claims prior to the promulgation of the Aichi case, the Court already ruled for the denial of refund claim for failure to file the judicial claim within the 30-day period.

Also, Team Energy's contention that the denial of its duly proven refund claim would constitute unjust enrichment on the part of the government is misplaced. Excess input tax is not an excessively, erroneously, or illegally collected tax. The term "excess" simply means that the input VAT available as refund or credit exceeds the output VAT. It is in the nature of a tax exemption. Accordingly, there must be strict compliance with the prescriptive periods and substantive requirements set by law before a claim may prosper. The mere fact that Team Energy has proved its excess input VAT does not entitle it as a matter of right to a tax refund or credit.

2. Claimants of tax refund have the burden to prove their entitlement to the claim under substantive law and the factual basis of their claim. Moreover, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.

Under Section 110(A)(1) of the NIRC, creditable input tax must be evidenced by a VAT invoice or official receipt which must in turn reflect the information required in Sections 113 and 237 of the Code. Although it appears under Section 113 that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT-registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. As previously held in the case of AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue, Section 113 must be read in conjunction with Sections 106 and 108 which specifically delineates sales invoices for sales of goods and official receipts for sales of services. Thus, to claim a refund of unutilized or excess input VAT, purchase of goods or properties must be supported by VAT invoices while purchase of services must be supported by VAT official receipts. Noncompliance will result to the disallowance of the claim for input tax. Accordingly, this does not support Team Energy's claim that at the time when the unutilized input VAT was incurred in 2003, the applicable NIRC provisions did not create a distinction between an official receipt and an invoice in substantiating a claim for refund.

It is important to observe strict compliance with substantiation and invoicing requirements considering VAT's nature and VAT system's tax credit method where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes. The non-interchangeability between VAT official receipts and VAT invoices further avoids having the government refund a tax that was not even paid. It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser in case of sale of services. If we are to use sales invoice in the sale of services, an absurd situation will arise when the purchaser of the service can claim tax credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction. Worse, if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all.

3. Team Energy's claim for unutilized or excess input VAT was anchored not on the Electrical Power Industry Reform Act (EPIRA Law) but on Section 108(B)(3) of the NIRC, in relation to NPC's charter. The requirements of the EPIRA Law would apply only to claims for refund filed under the EPIRA. It must be noted that to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA Law, the taxpayer must establish that it is a generation company and that it derived sales from power generation.

In the case of Commissioner of Internal Revenue v. Toledo Power Company (TPC), the CTA granted TPC's claim for refund of unutilized input VAT attributable to sales of electricity to NPC but denied refund of input VAT related to sales of electricity to other entities. This is because of the failure of TPC to prove that it was a generation company by submitting the ERC Certificate of Compliance.

In the case at bar, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the NIRC in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements.

TEAM SUAL CORPORATION (FORMERLY MIRANT SUAL CORPORATION), *Petitioner*, -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondents.*

G.R. Nos. 201225-26, SECOND DIVISION, April 18, 2018, REYES, JR., *J.*

In order for the CTA to acquire jurisdiction over a judicial claim for refund or tax credit arising from unutilized input VAT, the said claim must first comply with the mandatory 120+30-day waiting period. Any judicial claim for refund or tax credit filed in contravention of said period is rendered premature, depriving the CTA of jurisdiction to act on it.

Given the fact that TSC's administrative claim was filed on March 20, 2003, the CIR had 120 days or until July 18, 2003 to act on it. Thus, the first judicial claim was premature because TSC filed it a mere 11 days after filing its administrative claim. On the other hand, the second judicial claim filed by TSC was filed on time because it was filed on July 23, 2003 or five days after the lapse of the 120-day period. Accordingly, it is clear that the second judicial claim complied with the mandatory waiting period of 120 days and was filed within the prescriptive period of 30 days from the CIR's action or inaction. Therefore, the CTA division only acquired jurisdiction over TSC's second judicial claim for refund covering its second, third, and fourth quarters of taxable year 2001.

FACTS:

Team Sual Corporation (TSC) is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a *Build, Operate*, and *Transfer* scheme. As a seller of services, TSC is registered as a VAT taxpayer.

On December 6, 2000, TSC filed with the BIR RDO No. 5-Alaminos, Pangasinan an application for zero-rating arising from its sale of power generation services to NPC for the taxable year 2001. The same was subsequently approved. As a result, TSC filed its VAT returns covering the four quarters of taxable year 2001. For the first, second, third, and fourth quarters of 2001, TSC reported excess input VAT amounting to P37,985,009.25, P29,298,556.12, P32,869,835.40, and P66,566,967.02, respectively. The total excess input VAT claimed by TSC for the taxable year amounted to P166,720,367.79.

On March 20, 2003, TSC filed with the BIR an administrative claim for refund in the aggregate amount of P166,720,367.79 for its unutilized input VAT for taxable year 2001.

On March 31, 2003, without waiting for the resolution of its administrative claim for refund or tax credit, TSC filed with the CTA Division a petition for review. It prayed for the refund or issuance of a tax credit certificate for its alleged unutilized input VAT for the first quarter of taxable year 2001 in the amount of P37,985,009.25. On July 23, 2003, TSC filed another petition for review, seeking the refund or issuance of a tax credit certificate for its alleged unutilized input VAT for the second, third, and fourth quarters of taxable year 2001 in the amount of P128,735,358.54. Both cases were consolidated on August 7, 2003. Trial of the case ensued.

On June 9, 2006, the CTA Division partially granted TSC's claim. It allowed the refund of unutilized input VAT for the first, third, and fourth quarters of taxable year 2001, but disallowed the refund for the second quarter. The CTA Division ruled that the claim for the second quarter did not fall within the two-year prescriptive period.

The Commissioner of Internal Revenue (CIR) filed a Motion for Partial Reconsideration, praying that the entire claim for refund be denied. The CIR argued that TSC has not sufficiently proven its entitlement to refund and that the CTA had no jurisdiction to act on the judicial claim for refund because the same was prematurely filed.

On June 7, 2010, the CTA Division promulgated an Amended Decision which partially granted TSC's additional claim for refund. In said decision, the CTA denied the claim for input VAT on local purchases of goods and services, but allowed the refund for input VAT for the second quarter of taxable year 2001. However, the grant was reduced from P29,298,556.12 to P27,233,561.57 for failure to substantiate the difference.

Dissatisfied, TSC filed a Petition for Review before the CTA *En Banc*. It posits that the CTA Division erred in disallowing the amount of P12,761,224.50 for input VAT on local purchases of goods and services.

On September 15, 2011, the CTA *En Banc* rendered a Consolidated Decision granting petitioner's claim for refund of input VAT for the second, third, and fourth quarters of taxable year 2001 amounting to P123,110,001.68. Insofar as the refund of the input VAT for the first quarter of taxable year 2001 is concerned, the CTA *En Banc* ruled that the CTA did not acquire jurisdiction over it as it had been filed prematurely.

ISSUE:

Whether the CTA has jurisdiction to act on TSC's two judicial claims for refund. (NO)

RULING:

NO, the first judicial claim was premature because TSC filed it merely 11 days after filing its administrative claim.

In order for the CTA to acquire jurisdiction over a judicial claim for refund or tax credit arising from unutilized input VAT, the said claim must first comply with the mandatory 120+30-day waiting period. Any judicial claim for refund or tax credit filed in contravention of said period is rendered premature, depriving the CTA of jurisdiction to act on it.

Pursuant to Section 112, Subsections (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, the procedure to be followed in claiming a refund or tax credit of unutilized input VAT are as follows:

(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, that for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
x x x x

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days** from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) hereof.

In case of **full or partial denial of the claim** for tax refund or tax credit, or the **failure on the part of the Commissioner to act on the application** within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals.

It is clear from the above-quoted provisions that any taxpayer seeking a refund or tax credit arising from unutilized input VAT from zero-rated or effectively zero-rated sales should first file an initial administrative claim with the BIR. This claim for refund or tax credit must be filed within two years after the close of the taxable quarter when the sales were made.

The CIR is then given a period of 120-days from the submission of complete documents in support of the application to either grant or deny the claim. If the claim is denied by the CIR or the latter has not acted on it within the 120-day period, the taxpayer-claimant is then given a period of 30 days to file a judicial claim *via* petition for review with the CTA.

As such, the law provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.

This mandatory and jurisdictional nature of the 120-day waiting period has been reiterated time and again by the Court. In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, the Court *En Banc* categorically stated:

> Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition.

In the instant case, TSC filed its administrative claim for refund for taxable year 2001 on March 20, 2003, well within the two-year period provided for by law. TSC then filed two separate judicial claims for refund: one on March 31, 2003 for the first quarter of 2001, and the other on July 23, 2003 for the second, third, and fourth quarters of the same year.

Given the fact that TSC's administrative claim was filed on March 20, 2003, the CIR had 120 days or until July 18, 2003 to act on it. Thus, the first judicial claim was premature because TSC filed it a mere 11 days after filing its administrative claim. On the other hand, the second judicial claim filed by TSC was filed on time because it was filed on July 23, 2003 or five days after the lapse of the 120-day period. Accordingly, it is clear that the second judicial claim complied with the mandatory waiting period of 120 days and was filed within the prescriptive period of 30 days from the CIR's action or inaction. Therefore, the CTA division only acquired jurisdiction over TSC's second judicial claim for refund covering its second, third, and fourth quarters of taxable year 2001.

TSC submits that at the time of the filing of its claims for refund, prevailing jurisprudence espoused that the 120-day waiting period was merely permissive instead of mandatory. Otherwise stated, TSC argues that as long as a taxpayer-claimant filed both its administrative and judicial claim within the two year prescriptive period under Section 112(A) of the NIRC then there would be no need to comply with the 120-day waiting period. This assertion has no basis.

In *Intel Technology Philippines*, the Court resolved the issue of whether entities engaged in business are required to indicate in their receipts or invoices the authority from the BIR to print the same. Nowhere in the case did the Court rule that the 120-day period may be dispensed with as long as the administrative and judicial claims are filed within the two-year prescriptive period.

In *San Roque Power Corporation*, the main issue revolved around the coverage of the terms, "zero-rated or effectively zero-rated sales." The Court discussed that the NIRC does not limit the definition of "sale" to commercial transactions in the normal course of business, but extends the term to transactions which are also "deemed" sale under Section 106(B) of the NIRC. Again, nowhere in said case was the 120-day period even remotely mentioned or ruled upon.

Given the foregoing, it is apparent that none of these cases constitute binding precedent as to the nature of the 120-day period. As such, TSC cannot now claim that at the time they filed their judicial claims, they relied in good faith on the then-prevailing interpretation as to the nature of the 120-day period.

Nevertheless, TSC insists that assuming arguendo that the 120-day period was indeed mandatory and jurisdictional, the issue of its non-compliance with said period, as a ground to deny its claim, was already waived since the CIR did not raise it in the proceedings before the CTA Division. It claims that non-compliance with the 120-day period prior to the filing of a judicial claim with the CTA merely results in a lack of cause of action, a ground which may be waived for failure to timely invoke the same. However, it is apparent from the records that the issue of TSC's non-compliance with the 120-day waiting period has been raised by the CIR throughout the pendency of the entire case. In fact, the records reveal that the CIR raised it at the earliest possible opportunity, when it filed its motion for partial reconsideration with the CTA Division dated July 3, 2009.

In any case, even if the CIR failed to raise the issue of TSC's non-compliance with the 120-day waiting period at the first instance, such failure would not operate to vest the CTA with jurisdiction over TSC's judicial claims for refund. The Court has already settled that a judicial claim for refund which does not comply with the 120-day mandatory waiting period renders the same void. As such, no right can be claimed or acquired from it, notwithstanding the failure of a party to raise it as a ground for dismissal. In *San Roque*, the Court expounded on such point, *to wit*:

> San Roque's failure to comply with the 120-day mandatory period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.'' San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.

It is hornbook doctrine that **a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act**. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper. Being a mere scrap of paper, TSC's judicial claim for refund filed on March 31, 2003 covering the first quarter of taxable year 2001 cannot be the source of any rights.

As a final note, tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayer-claimant. A claim for tax refund is a statutory privilege and the mere existence of unutilized input VAT does not entitle the taxpayer, as a matter of right, to it. As such, the rules and procedure in claiming a tax refund should be faithfully complied with. Non-compliance with the pertinent laws should render any judicial claim fatally defective

KEPCO ILIJAN CORPORATION, *Petitioners,* -versus –
COMMISSIONER OF INTERNAL REVENUE, *Respondents.*
G.R. No. 205185, FIRST DIVISION, September 26, 2018, BERSAMIN, *J.*

The Court ruled in Atlas that "it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter." On the other hand, Mirant abandoned Atlas and announced that "the reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid," applying Section 112(A) of the NIRC and no other provisions that pertained to erroneous tax payments. In San Roque, promulgated on February 12, 2013, therefore, the Court clarified the effectivity of the pronouncements in Atlas and Mirant on reckoning the two-year prescriptive period, elucidating that: (a) the Atlas pronouncement was effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 through Mirant; and (b) prior to the promulgation of the ruling in Atlas, Section 112 (A) should be applied following the verba legis rule adopted in Mirant.

In San Roque, the Court acknowledged an instance when a premature filing in the CTA was allowed. The mandatory and jurisdictional nature of the 120-30 period rule did not apply to claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the Aichi doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of Aichi, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 wherein the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA.

The records showed that the petitioner herein filed its administrative claims for refund for the first, second, third, and fourth quarters of taxable year 2002 on April 13, 2004. Such claims were covered by Section 112(A) of the NIRC that was the rule applicable prior to Atlas and Mirant. As such, the proper reckoning date in this case, pursuant to Section 112(A) of the NIRC, was the close of the taxable quarter when the relevant sales were made. Under the circumstances, the petitioner had belatedly filed its administrative claim corresponding to the first quarter of taxable year 2002, which was thereby already barred. But the claims for the refund of the input taxes corresponding to the second, third and fourth quarters were timely and not barred.

The petitioner filed its administrative and judicial claims for refund on April 13, 2004 and April 22, 2004, respectively. Both claims were filed after BIR Ruling No. DA-589-03 was issued on December 10, 2003, but before the promulgation of the Aichi pronouncement on October 06, 2010. Thus, notwithstanding the petitioner's having filed its judicial claim without waiting for the decision of the respondent or for the expiration of the 120-day mandatory period, the C TA could still take cognizance of the claims because they were filed within the period exempted from the mandatory and jurisdictional 120-30 period rule.

FACTS:

The petitioner, a duly registered domestic corporation engaged in the production of electricity as an independent power producer (IPP) and in the sale of electricity solely to the National Power Corporation (NPC). On April 13, 2004, it brought its administrative claim for refund with Revenue District Office (RDO) No. 43 of the Bureau of Internal Revenue (BIR), claiming excess input VAT amounting to P74,658,481.68 for taxable year 2002.

On April 22, 2004, nine days after filing the administrative claim, the petitioner filed its petition for review (CTA Case No. 6966), which was assigned to the Second Division of the CTA. The CTA in Division rendered judgment partly granting the petition for review and ordering the respondent to refund or to issue a tax credit certificate in the reduced amount of P23,389,050.05 representing the petitioner's unutilized excess input VAT attributable to its zero-rated sales to NPC for the second, third and fourth quarters of taxable year 2002, but denying the petitioner's input VAT claim for the first quarter of taxable year 2002 on the ground of prescription, and the other input VAT claims for lack of the required documentary evidence.

Petitioner moved for partial reconsideration with prayer to admit attached additional supporting documents. It argued that its claim for the first quarter of taxable year 2002 should not be denied because the rules and jurisprudence then prevailing stated that the reckoning point of the two-year period for filing the claim for refund of unutilized input taxes was the date of filing of the return and payment of the tax due pursuant to the two-year rule under Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas).

Acting on the petitioner's motion for partial reconsideration, the CTA in Division promulgated the amended decision dated February 18, 2011 denying the entire claim on the ground of prematurity. It opined that it did not acquire jurisdiction over the petition for review because of the petitioner's non-observance of the periods provided under the NIRC, citing the rulings in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant) and Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi).

The CTA *En Banc* denied the petitioner's claim upon appeal.

ISSUE:

Whether KEPCO ILIJAN Corporation seasonably filed its administrative and judicial claim. (PARTLY YES)

RULING:

The resolution of when to reckon the two-year prescriptive period for the filing an administrative claim for refund or credit of unutilized input VAT in light of the pronouncements in Atlas and Mirant was extensively addressed and dealt with in *Commissioner of Internal Revenue v. San Roque Corporation* (San Roque). To recall, the Court ruled in Atlas that "it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter." On the other hand, Mirant abandoned Atlas and announced that "the reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid," applying Section 112(A) of the NIRC and no other provisions that pertained to erroneous tax payments. In San Roque, promulgated on February 12, 2013, therefore, the Court clarified the effectivity of the pronouncements in Atlas and Mirant on reckoning the two-year prescriptive period, elucidating that: (a) the Atlas pronouncement was effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 through Mirant; and (b) prior to the promulgation of the ruling in Atlas, Section 112 (A) should be applied following the verba legis rule adopted in Mirant.

The records showed that the petitioner herein filed its administrative claims for refund for the first, second, third, and fourth quarters of taxable year 2002 on April 13, 2004. Such claims were covered by Section 112(A) of the NIRC that was the rule applicable prior to Atlas and Mirant. As such, the proper reckoning date in this case, pursuant to Section 112(A) of the NIRC, was the close of the taxable quarter when the relevant sales were made. Specifically, the close of the quarters of taxable year 2002 took place on March 31, 2002, June 30, 2002, September 30, 2002 and December 31, 2002, giving to the petitioner until March 31, 2004, June 30, 2004, September 30, 2004 and December 31, 2004 within which to file its administrative claims for the first, second, third and fourth quarters, respectively. Under the circumstances, the petitioner had belatedly filed its administrative claim corresponding to the first quarter of taxable year 2002, which was thereby already barred. But the claims for the refund of the input taxes corresponding to the second, third and fourth quarters were timely and not barred.

As to the judicial claim, the petitioner brought its judicial claim in the CTA on April 22, 2004 or nine days after filing the administrative claim in the BIR. It did not await the lapse of the 120-day period provided under the NIRC, leading the CTA *En Banc* to declare that the petitioner had prematurely brought its appeal. Indeed, under Section 112 (c) of the NIRC, the respondent had 120 days from the submission of the complete documents in support of the application of the respondent for the tax refund or tax credit within which to decide whether or not to grant or deny the claim. In case of the denial of the claim, or in case of the failure of the respondent to act on the application within the period prescribed, the taxpayer has 30 days from the receipt of the decision or from the expiration of the 120-day period within which to file the petition for review in the CTA.

In Aichi, the Court clarified that the 120-day period granted to the respondent was mandatory and jurisdictional, however, in San Roque, the Court acknowledged an instance when a premature filing in the CTA was allowed. The mandatory and jurisdictional nature of the 120-30 period rule did not apply to claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the Aichi doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of Aichi, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 wherein the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA.

The petitioner filed its administrative and judicial claims for refund on April 13, 2004 and April 22, 2004, respectively. Both claims were filed after BIR Ruling No. DA-589-03 was issued on December 10, 2003, but before the promulgation of the Aichi pronouncement on October 06, 2010. Thus, notwithstanding the petitioner's having filed its judicial claim without waiting for the decision of the respondent or for the expiration of the 120-day mandatory period, the C TA could still take cognizance of the claims because they were filed within the period exempted from the mandatory and jurisdictional 120-30 period rule.

As a result, the case was remanded to the CTA in Division for further proceedings on the claim for refund of the petitioner's input VAT for the second, third and fourth quarters of taxable year 2002.

b. Enhanced VAT refund system

10. Filing of returns and payment

E. Tax remedies under the NIRC

1. General concepts

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus- **STANDARD INSURANCE CO., INC.**, *Respondent*.

G.R. No. 219340, FIRST DIVISION, November 07, 2018, Bersamin, *J.*

Section 218 of the NIRC expressly provides that "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NJRC]."

An action for declaratory relief is governed by Section 1, Rule 63 of the Rules of Court. It is predicated on the attendance of several requisites, specifically: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.

The violation of Section 184 of the NIRC occurred upon the taxpayer's failure or refusal to pay the correct DST due at the time of issuing the non-life insurance policies.

FACTS:

On February 13, 2014, Standard received from the Bureau of Internal Revenue (BIR) a Preliminary Assessment Notice (PAN) regarding its liability amounting to P377,038,679.55 arising from a deficiency in the payment of documentary stamp taxes (DST) for taxable year 2011. The Standard contested the PAN through its letter dated February 27, 2014, but the CIR nonetheless sent to it a formal letter of demand dated March 27, 2014.

Although Standard requested reconsideration on April 22,2014, it received on December 4, 2014 the Final Decision on Disputed Assessment (FDDA) dated November 25, 2014, declaring its liability for the DST deficiency, including interest and compromise penalty, totaling P418,830,567.46.

On December 11, 2014, it sought reconsideration of the FDDA, and objected to the tax imposed pursuant to Section 184 of the NIRC as violative of the constitutional limitations on taxation.

On December 19, 2014, Standard commenced Civil Case No. 14-1330 in the RTC (with prayer for issuance of a temporary restraining order (TRO) or of a writ of preliminary injunction) for the judicial determination of the constitutionality of Section 108 and Section 184 of the NIRC with respect to the taxes to be paid by non-life insurance companies. In its petition, Standard contended that the facts of the case must be appreciated in light of the effectivity of Republic Act (R.A.) No. 10001 entitled An Act Reducing the Taxes on Life Insurance Policies, whereby the tax rate for life insurance premiums was reduced from 5% to 2%; and the pendency of deliberations on House Bill (H.B.) No. 3235 entitled "An Act Rationalizing the Taxes Imposed on Non-Life Insurance Policies", whereby an equal treatment for both life and non-life companies was being sought as a response to the supposed inequality generated by the enactment of R.A. No. 10001.

On May 8, 2015, the RTC rendered the assailed judgment, opining that although taxes were self-assessing, the tax system merely created liability on the part of the taxpayers who still retained the right to contest the particular application of the tax laws; and holding that the exercise of such right to contest was not considered a breach of the provision itself as to deter the action for declaratory relief. Thus, the RTC permanently enjoined the CIR from proceeding with the enforcement of Sections 108 and 184 of the National Internal Revenue Code against Standard until the Congress shall have enacted and passed into law House Bill No. 3235.

The CIR directly appealed to the CIR.

ISSUE:

1. Whether or not the injunctive relief is available as a remedy to assail the collection of a tax (NO)

2. Whether or not declaratory relief is procedurally proper as a remedy (NO)

RULING:

Section 218 of the NIRC expressly provides that "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the [NJRC]."

Also, pursuant to Section 11 of R.A. No. 1125, as amended, the decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer," in which case the Court of Tax Appeals "at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount."

An action for declaratory relief is governed by Section 1, Rule 63 of the Rules of Court. It is predicated on the attendance of several requisites, specifically: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.

The third, fourth, fifth and sixth requisites were patently wanting.

Firstly, the third requisite was not met due to the subject of the action(i.e. statute) having been infringed or transgressed *prior* to the institution of the action.

Specifically, the assessments for DST deficiencies of Standard for the years 2011, 2012 and 2013, as imposed pursuant to Section 184 of the NIRC were the subject of the Standard's petition for declaratory relief. Said legal provision states:

> Section 184. Stamp Tax on Policies of Insurance Upon Property.- On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lightning, there shall be collected a documentary stamp tax of Fifty centavos (P0.50) on each Four pesos (P4.00), or fractional part thereof, of the amount of premium charged: Provided, however, That no documentary stamp tax shall be collected on reinsurance contracts or on any instrument by which cession or acceptance of insurance risks under any reinsurance agreement is effected or recorded.

What was being thereby taxed was the privilege of issuing insurance policies; hence, the taxes accrued at the time the insurance policies were issued. Verily, the violation of Section 184 of the NIRC occurred upon the taxpayer's failure or refusal to pay the correct DST due at the time of issuing the non-life insurance policies. Inasmuch as the cause of action for the payment of the DSTs pursuant to Section 108 and Section 184 of the NIRC accrued upon the Standard's failure to pay the DST at least for taxable year 2011 despite notice and demand, the RTC could not procedurally take cognizance of the action for declaratory relief.

Secondly, the apprehension of the Standard that it could be rendered technically insolvent through the imposition of the iniquitous taxes imposed by Section 108 and Section 184 of the NIRC, laws that were valid and binding, did not render the action for declaratory relief fall within the purview of an actual controversy that was ripe for judicial determination. The Standard was thereby engaging in speculation or conjecture, or arguing on probabilities, not actualities. Admittedly, the Standard sought in the RTC the determination of its right to be assessed the correct taxes under Section 108 and Section 184 of the NIRC by contending said tax provisions to be invalid and unconstitutional for their unequal treatment of life and non-life insurance policies. The Standard cited R.A. No. 10001 and House Bill No. 3235 in support of its contention. Obviously, the challenge mounted by the Standard against the tax provisions in question could be said to be based on a contingency that might or might not occur.

Lastly, Standard's adequate remedy upon receipt of the FDDA for the DST deficiency for taxable year 2011 was not the action for declaratory relief but an appeal taken in due course to the Court of Tax Appeals.

a. Requisites of a valid assessment

b. Tax delinquency vs. tax deficiency

c. Prescriptive period for assessment

i. False returns vs. fraudulent returns vs. non-filing of returns

ii. Suspension of the running of statute of limitations

ASIAN TRANSMISSION CORPORATION, Petitioner, -versus-. COMMISSIONER OF INTERNAL REVENUE, Respondent.

G.R. No. 230861, FIRST DIVISION, September 19, 2018, BERSAMIN, J.

The Waivers executed by ATC were defective. As a general rule, defective waivers are invalid and ineffective in tolling the three-year prescriptive period. However, ATC's case falls under the exception provided for in the case of Commissioner of Internal Revenue v. Next Mobile Inc., thus, despite the defects in the waiver, it effectively tolled the running of the prescriptive period . The foregoing defects noted in the waivers of ATC were not solely attributable to the CIR. Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver. Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates. Moreover, the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit. It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse. ***Thus, the CTA En Banc did not err in ruling that ATC, after having benefitted from the defective waivers, should not be allowed to assail them. In short, the CTA En Banc properly applied the equitable principles of in pari delicto, unclean hands, and estoppel as enunciated in Commissioner of Internal Revenue v. Next Mobile case.***

FACTS:

Asian Transmission Corporation (ATC) is a domestic corporation engaged in the manufacturing of motor vehicle transmission component parts and engines of Mitsubishi vehicles. On January 3, 2003 and March 3, 2003, ATC filed its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes and Annual Information Return of Creditable Income Taxed Withheld (Expanded)/Income Payments Exempt from Withholding Tax, respectively.

On August 11, 2004, ATC received Letter of Authority [(LOA)] No. 200000003557 where the CIR informed ATC that its revenue officers from the Large Taxpayers Audit and Investigation Division II shall examine its books of accounts and other accounting records for the taxable year 2002. Thereafter, the CIR issued a Preliminary Assessment Notice (PAN) to ATC. Consequently, on various dates, ATC, through its Vice President for Personnel and Legal Affairs, Mr. Roderick M. Tan, executed several documents denominated as "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver). Meanwhile, ATC availed of the Tax Amnesty Program under Republic Act No. 9480.

On July 15, 2008, ATC received a Formal Letter of Demand from the CIR for deficiency WTC, EWT and FWT. On August 14, 2008, ATC filed its Protest Letter in regard thereto. Accordingly, on April 14, 2009, ATC received the Final Decision on Disputed Assessment where the CIR found ATC liable to pay the assessed deficiency tax. Thus, on May 14, 2009, ATC filed an appeal letter/request for reconsideration with the CIR. CIR denied ATC's request for reconsideration. As such, ATC filed the instant Petition for Review (with Application for Preliminary Injunction and Temporary Restraining Order).

The CTA in Division rendered its decision granting the petition for review of ATC. It held that ATC was not estopped from raising the invalidity of the waivers inasmuch as the Bureau of Internal Revenue (BIR) had itself caused the defects thereof, namely: (a) the waivers were notarized by its own employee despite not being validly commissioned to perform notarial acts; (b) the BIR did not indicate the date of its acceptance; (c) the BIR did not specify the amounts of and the particular taxes involved; and (d) respondent CIR did not sign the waivers despite the clear mandate of RMO 20-90 to that effect. It ruled that the waivers, being invalid, did not operate to toll or extend the three-year period of prescription.

CTA En Banc reversed and set aside the decision of the CTA in Division, and ruled that the waivers were valid. It observed that the CIR's right to assess deficiency withholding taxes for CY 2002 against ATC had not yet prescribed.

ISSUE:

Whether or not the Waivers executed by ATC were valid and thus, suspended the running of the three-year prescriptive period? (YES)

RULING:

In *Commissioner of Internal Revenue v. Next Mobile Inc*, the Court declared that **as a general rule a waiver that did not comply with the requisites for validity specified in RMO No. 20-90 and RDAO 01-05 was invalid and ineffective to extend the prescriptive period to assess the**

deficiency taxes. However, due to peculiar circumstances obtaining, the Court treated **the case as an exception to the rule, and considered the waivers concerned as valid for the following reasons, viz.:**

> "First, the parties in this case are in **pari delicto or "in equal fault**." However, although the parties are in pari delicto, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other. Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. **As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.**
>
> Second, the Court has repeatedly pronounced that parties must come to court with **clean hands**. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. **Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.**
>
> Third, respondent is **estopped from questioning the validity of its Waivers.** While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. **Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.**
>
> Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

> It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith."

In this case, the CTA in Division noted that the eight waivers of ATC contained the following defects, to wit: 1). The notarization of the Waivers was not in accordance with the 2004 Rules on Notarial Practice; 2) Several waivers clearly failed to indicate the date of acceptance by the Bureau of Internal Revenue; 3.) The Waivers were not signed by the proper revenue officer; and 4.) The Waivers failed to specify the type of tax and the amount of tax due.

The Court agree with the holding of the CTA En Banc that ATC's case was similar to the case of the taxpayer involved in *Commissioner of Internal Revenue v. Next Mobile Inc*. **The foregoing defects noted in the waivers of ATC were not solely attributable to the CIR. Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver.** Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates.

Moreover, the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit. It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse

Thus, the CTA En Banc did not err in ruling that ATC, after having benefitted from the defective waivers, should not be allowed to assail them. In short, the CTA En Banc properly applied the equitable principles of in pari delicto, unclean hands, and estoppel as enunciated in *Commissioner of Internal Revenue v. Next Mobile case.*

2. Civil penalties

a. New rule on delinquency interest and deficiency interest

b. Surcharge

c. Compromise penalty

3. Assessment process and reglementary periods

a. Letter of Authority

b. Notice of Informal Conference

c. Issuance of Preliminary Assessment Notice

d. Issuance of Formal Letter of Demand/ Final Assessment Notice

e. Disputed assessment

COMMISSIONER OF INTERNAL REVENUE, *Petitioners*, -versus- BANK OF THE PHILIPPINE ISLANDS, *Respondents.*

G.R. No. 224327, SECOND DIVISION, June 11, 2018, PERALTA, J

While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. In the instant case, BPI denies receiving the assessment notice, and the CIR was unable to present substantial evidence that such notice was, indeed, mailed or sent before the BIR's right to assess had prescribed and that said notice was received by BPI. As a matter of fact, there was an express admission on the part of the CIR that there was no proof that indeed the alleged Final Assessment Notice was ever sent to or received by BPI.

The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.

FACTS:

On April15, 1987, Citytrust Banking Corporation (CBC) filed its Annual Income Tax Returns for the taxable year 1986. Subsequently, CBC executed Waivers of the Statute of Limitations.

On March 7, 1991, CIR issued a Pre-Assessment Notice (*PAN*) against CBC for deficiency taxes, among which is for deficiency Income Tax for taxable year 1986 in the total amount of P19,202,589.97. The counsel for CBC filed its protest against the PAN.

On May 6, 1991, the CIR issued a Letter, with attached Assessment Notices, demanding for the payment of the deficiency taxes within 30 days from receipt thereof. The counsel for CBC filed its Protest against the assessments. A Letter was again issued by petitioner on February 5, 1992 requesting for the payment of CBC's tax liabilities.

The counsel for CBC issued a Letter addressed to petitioner offering a compromise settlement on its deficiency Income Tax assessment in the amount of P1,721,503.40. The CIR approved the Application for Compromise Settlement provided that one hundred percent (100%) of its deficiency Income Tax assessment for the year 1986, or in the amount of P8,607,517.00, be paid within 15 days from receipt thereof. The counsel for CBC requested for a reconsideration of the approved amount as compromise settlement, and offering to pay the amount of P1,600,000.00 as full and final settlement of the subject assessment.

Petitioner, however, disapproved the Application for Compromise Settlement of CBC. Meanwhile, the Securities and Exchange Commission approved the Articles of Merger between respondent BPI and CBC, with BPI as the surviving corporation.

Afterwards, CIR issued a Notice of Denial addressed to respondent, requesting for the payment of CBC's deficiency Income Tax, within fifteen (15) days from receipt thereof, and on July 28, 2011, CIR issued another Letter addressed to respondent, denying the offer of compromise penalty, and requesting for the payment of the amount of P19,202,589.97, plus all increments incident to delinquency.

Consequently, CIR issued a Warrant of Distraint and/or Levy against respondent BPI which prompted the latter to file a Petition for Review with the CTA on October 7, 2011. The CTA ultimately ruled in favor of BPI, stating:

The Assessment Notices, being issued only on May 6, 1991, were already issued beyond the three-year period to assess, counting from April 15, 1987, when CBC filed its Annual Income Tax Returns for the taxable year 1986. The same Court also held that the Waivers of Statute of Limitations executed were not in accordance with the proper form of a valid waiver pursuant to RMO No. 20-90, thus, the waivers failed to extend the period given to petitioner to assess.

Hence, the present petition

ISSUE:

Whether or not the Warrant of Distraint and/or Levy was proper. (NO)

RULING:

An assessment becomes final and unappealable if within thirty (30) days from receipt of the assessment, the taxpayer fails to file his or her protest requesting for reconsideration or reinvestigation as provided in Section 229 of the NIRC.

The CIR nonetheless failed to prove that it sent a notice of assessment and that it was received by respondent.

The February 5, 1992 Decision of the CIR which she insists to be the reckoning point to protest, was not proven to have been received by BPI when the latter denied its receipt. Thus, the assessment notice dated May 6, 1991 should be deemed as the final decision of the CIR on the matter, in which BPI timely protested on May 27, 1991. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. (Republic v. Court of Appeals, G.R. No. L-38540, April 30, 1987, 149 SCRA 351, 355.) In the instant case, BPI denies receiving the assessment notice, and the CIR was unable to present substantial evidence that such notice was, indeed, mailed or sent before the BIR's right to assess had prescribed and that said notice was received by BPI. As a matter of fact, there was an express admission on the part of the CIR that there was no proof that indeed the alleged Final Assessment Notice was ever sent to or received by BPI.

Moreover, whether or not the Letter dated February 5, 1992 constitutes as the Final Decision on the Disputed Assessment appealable under Section 229 of the 1977 Tax Code, or whether the same was validly served and duly received by BPI, are immaterial matters which will not cure the nullity of the said Preliminary Assessment Notice and Assessment Notices, **as they were clearly made beyond the prescriptive period.**

As to the contention of petitioner that through the principle of estoppel, respondent is not allowed to raise the defense of prescription against the efforts of the government to collect the tax assessed against it, such is misplaced. Petitioner cannot implore the doctrine of estoppel just to compensate its failure to follow the proper procedure. As aptly ruled by the CTA:

It is well established that issues raised for the first time on appeal are barred by estoppel. However, in the leading case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*, the Supreme Court held that:

The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. xxx As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. xxx

Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. xxx Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.

Applying the said ruling in the case at bench, BPI is not estopped from raising the invalidity of the subject Waivers as the BIR in this case caused the defects thereof. As such, the invalid Waivers did not operate to toll or extend the period of prescription.

MACARIO LIM GAW, JR., *Petitioner,* –versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.* G.R. No. 222837, FIRST DIVISION, July 23, 2018, TIJAM, *J.*

Rule 111, Section 1(a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

However, the mere failure to pay the docket fees at the time of the filing of the complaint, or in this case the Petition for Review Ad Cautelam, does not necessarily cause the dismissal of the case. While the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its nonpayment at the time of filing of the initiatory pleading does not automatically cause its dismissal so long as the docket fees are paid within a reasonable period; and that the party had no intention to defraud the government.

FACTS:

Petitioner entered into an Agreement to Sell with Azure Corporation for the sale and transfer of real properties to a joint venture company, which at the time was still to be formed and incorporated. Petitioner then requested the BIR- RDO No. 52 for the respective computations of the tax liabilities due on the sale of the 10 parcels of land.

In accordance with the One Time Transactions (ONETT) Computation sheets, petitioner paid Capital Gains Tax amounting to P505,177,213.8110 and Documentary Stamp Tax amounting to P330,390.00.11

Two years later, Commissioner of Internal Revenue opined that petitioner was not liable for the 6% capital gains tax but for the 32% regular income tax and 12% value added tax, on the theory that the properties petitioner sold were ordinary assets and not capital assets. Further, r**espondent found petitioner to have misdeclared his income, misclassified the properties and used multiple tax identification numbers to avoid being assessed the correct amount of taxes**.

Respondent then filed before the Department of Justice a Joint Complaint Affidavit for tax evasion against petitioner for violation of Sections 25416 and 25517 of the National Internal Revenue Code. **The DOJ then filed two criminal informations for tax evasion against petitioner.** At the time the Informations were filed, the respondent has not issued a final decision on the deficiency assessment against petitioner. Halfway through the trial, the respondent issued a Final Decision on Disputed Assessment (FDDA) against petitioner, assessing him of deficiency income tax and VAT covering taxable years 2007 and 2008.

With respect to the deficiency assessment against petitioner for the year 2007, petitioner filed a petition for review with the CTA. The clerk of court of the CTA assessed petitioner for filing fees which the latter promptly paid.

However, **with respect to the deficiency assessment against petitioner for the year 2008, the same involves the same tax liabilities being recovered in the pending criminal cases. Thus, petitioner was confused as to whether he has to separately file an appeal with the CTA and pay the corresponding filing fees considering that the civil action for recovery of the civil liability for taxes and penalties was deemed instituted in the criminal case**. Thus, petitioner filed before the CTA a motion to clarify as to whether petitioner has to file a separate petition to question the deficiency assessment for the year 2008.

The CTA held that the recovery of the civil liabilities for the taxable year 2008 was already deemed instituted with the consolidated criminal cases. However, as a caution, petitioner still filed a Petition for Review Ad Cautelam. Upon filing of the said petition, the clerk of court of the CTA assessed petitioner with "zero filing fees."

Meanwhile, the CTA later acquitted petitioner in the criminal cases and directed the litigation of the civil aspect in the Petition for Review filed by petitioner. Thereafter, respondent filed a Motion to Dismiss the Petition for Review Ad Cautelam on the ground that the CTA First Division lacks jurisdiction to resolve the case due to petitioner's non-payment of the filing fees.

ISSUE:

Whether or not the Petition for Review Ad Cautelam must be dismissed for failure of the petitioner to pay docket fees. (NO)

RULING:

Rule 9, Section 11 of the Revised Rules of the Court of Tax Appeals (RRCTA), states that:

> SEC. 11. Inclusion of civil action in criminal action. – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review Ad Cautelam, is deemed instituted upon the filing of the criminal action.

We do not agree.

Rule 111, Section 1(a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

Under Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.

While the tax evasion case is pending, the BIR is not precluded from issuing a final decision on a disputed assessment, such as what happened in this case. **In order to prevent the assessment from becoming final, executory and demandable, Section 9 of R.A. No. 9282 allows the taxpayer to file with the CTA, a Petition for Review within 30 days from receipt of the decision or the inaction of the respondent.**

The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter. While the Petition for Review filed by the petitioner was aimed to question the FDDA and to prevent it from becoming final. The stark difference between them is glaringly apparent. As such, the Petition for Review Ad Cautelam is not deemed instituted with the criminal case for tax evasion. **What is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case.** The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.

However, the mere failure to pay the docket fees at the time of the filing of the complaint, or in this case the Petition for Review Ad Cautelam, does not necessarily cause the dismissal of the case. While the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its nonpayment at the time of filing of the initiatory pleading does not automatically cause its dismissal so long as the docket fees are paid within a reasonable period; and that the party had no intention to defraud the government.

Further, petitioner merely relied on good faith on the pronouncements of the CTA First Division that he is no longer required to pay the docket fees. As such, the CTA cannot just simply dismiss the case on the ground of nonpayment of docket fees. The CTA should have instead directed the clerk of court to assess the correct docket fees and ordered the petitioner to pay the same within a reasonable period. It should be borne in mind that technical rules of procedure must sometimes give way, in order to resolve the case on the merits and prevent a miscarriage of justice.

4. Collection

a. Requisites

b. Prescriptive periods

F. Taxpayer's remedies

1. Protesting an assessment

a. Period to file protest

b. Submission of supporting documents

c. Effect of failure to file protest

d. Decision of the Commissioner on the protest filed

i. Period to act upon or decide on protest filed

ii. Remedies of the taxpayer in case the Commissioner denies the protest or fails to act on the protest

SAN ROQUE POWER CORPORATION, *Petitioner* –versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

G.R. No. 203249, THIRD DIVISION, July 23, 2018, MARTIRES, J

The 120-day and 30-day periods are mandatory and jurisdictional. Thus, noncompliance with the mandatory 120+30-day period renders the petition before the CTA void. However, it is to be noted that BIR Ruling No. DA-489-03 provides,

> *[A] taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.*

It is a general interpretative rule issued by the CIR pursuant to its power under Section 4 of the NIRC, hence, applicable to all taxpayers. Thus, taxpayers can rely on this ruling from the time of its issuance on 10 December 2003.

In other words, the 120+30-day period is generally mandatory and jurisdictional from the effectivity of the 1997 NIRC on 1 January 1998, up to the present. By way of an exception, judicial claims filed during the window period from 10 December 2003 to 6 October 2010, need not wait for the exhaustion of the 120-day period.

In this case, the two judicial claims filed by the petitioner fell within the window period, thus, the CTA can take cognizance over them.

FACTS:

San Roque Power Corporation is a VAT-registered taxpayer which was granted by the BIR a zero-rating on its sales of electricity to National Power Corporation. On 22 December 2005 and 27 February 2006, the **petitioner filed two separate administrative claims for refund** of its alleged unutilized input tax for the period January 2004 up to March 2004, and April 2004 up to December 2004, respectively.

Due to the inaction of respondent CIR, the petitioner filed petitions for review before the CTA. The CTA Division partially granted the refund claim of the petitioner. The CIR moved for reconsideration but to no avail. Thus, the CIR filed a petition for review with the CTA En Banc, raising, among other issues the claimant's judicial recourse to the CTA as inconsistent with the procedure prescribed in Section 112 (D) of the NIRC. The CIR asserted that the petitions for review filed with the CTA were premature, and thus, should be dismissed.

ISSUE:

Whether or not the Petition for Review filed before the CTA was premature. (NO)

RULING:

EC. 112. Refunds or Tax Credits of Input Tax. –

> (A) Zero-rated or Effectively Zero-rated Sales.- Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax:
>
> x x x x
>
> (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof:
>
> In case of full or partial denial of the claim tor tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.**

The 120-day and 30-day periods are mandatory and jurisdictional. Thus, noncompliance with the mandatory 120+30-day period renders the petition before the CTA void.

Significantly, a taxpayer can file a judicial claim only within thirty (30) days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period. **The taxpayer cannot file such judicial claim prior to the lapse of the 120-day period, unless the CIR partially or wholly denies the claim within such period.** The taxpayer-claimant must strictly comply with the mandatory period by filing an appeal to the CTA within thirty days from such inaction; otherwise, the court cannot validly acquire jurisdiction over it.

In this case, the petitioner timely filed its administrative claims for refund/credit of its unutilized input VAT for the first quarter of 2004, and for the second to fourth quarters of the same year, on 22 December 2005 and 27 February 2006, respectively, or within the two-year prescriptive period. Counted from such dates of submission of the claims (with supporting documents), the CIR had 120 days, or until 13 April 2006, with respect to the first administrative claim, and until 27 June 2006, on the second administrative claim, to decide.

However, the petitioner, without waiting for the full expiration of the 120-day periods and without any decision by the CIR, immediately filed its petitions for review with the CTA on 30 March 2006, or a mere ninety-eight (98) days for the first administrative claim; and on 20 June 2006, or only one hundred thirteen (113) days for the second administrative claim, from the submission of the said claims. In other words, the judicial claims of the petitioner were prematurely filed as correctly found by the CTA En Banc.

However, it is to be noted that BIR Ruling No. DA-489-03 provides,

> [A] taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.

It is a general interpretative rule issued by the CIR pursuant to its power under Section 4 of the NIRC, hence, applicable to all taxpayers. Thus, taxpayers can rely on this ruling from the time of its issuance on 10 December 2003. The conclusion is impelled by the principle of equitable estoppel enshrined in Section 24615 of the NIRC which decrees that a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal.

In other words, the 120+30-day period is generally mandatory and jurisdictional from the effectivity of the 1997 NIRC on 1 January 1998, up to the present. By way of an exception, judicial claims filed during the window period from 10 December 2003 to 6 October 2010, need not wait for the exhaustion of the 120-day period. In this case, the two judicial claims filed by the petitioner fell within the window period, thus, the CTA can take cognizance over them.

Furthermore, the beneficiaries of BIR Ruling No. DA-489-03 include those who did not specifically invoke it. It is general interpretative law and it applies to each and every taxpayer and being an official act emanating from the BIR, the Court can take judicial notice of such issuance and its consistent application in past rulings of the Court relating to the timeliness of judicial claims which makes it even more mandatory in taking cognizance of the same.

iii. Effect of failure to appeal

2. Compromise and abatement of taxes

3. Recovery of tax erroneously or illegally collected

a. Grounds, requisites, and period for filing a claim for refund or issuance of a tax credit certificate

COCA-COLA BOTTLERS PHILIPPINES, INC., *Petitioners,* -versus – COMMISSIONER OF INTERNAL REVENUE, *Respondents.*
G.R. No. 222428, SECOND DIVISION, February 19, 2018, PERALTA, *J.*

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, xxx illegally, xxx excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount.

It is clear therefore that neither the law nor jurisprudence authorized petitioner's claim for refund or issuance of tax credit. In asserting its alleged right to said claim, petitioner unfortunately failed to convinced the Court that it is entitled to the refund or credit of input VAT in the amount of P123,459,647.70 it inadvertently failed to include in its VAT Return. This is because petitioner's claim is not governed by Section 229 as an ordinary refund or credit outside of the VAT System as the same does not involve a tax that is "erroneously, illegally, excessively, or in any manner wrongfully collected." Neither is said claim authorized under Sections 110(B) and 112(A) as the same does not seek to refund or credit input tax due or paid attributable to zero-rated or effectively zero-rated sales.

FACTS:

On April 20, 2010, Coca-Cola Bottlers Philippines, Inc., a Value-Added Tax (*VAT*)-registered, domestic corporation engaged in the business of manufacturing and selling beverages, filed with the BIR's Large Taxpayers Service an administrative claim for refund or tax credit of its alleged over/erroneous payment of VAT for the quarter ended March 31, 2008 in the total amount of P123,459,647.70.

Three (3) days thereafter, or on April 23, 2010, petitioner filed with the CTA a judicial claim for refund or issuance of tax credit certificate. Coca-Cola posited that its claim for refund/tax credit is hinged not on the basis of "excess" input tax *per se* but on the basis of the inadvertence of applying the undeclared input tax against the output VAT. It asserted that through relevant evidence, it has substantially proven that due to its employees' inadvertence, the input tax amounting to P123,459,674.70 was not credited against the corresponding output tax during the quarter. Thus, by virtue of Section 229 of the 1997 NIRC, petitioner may claim for refund/tax credit of its erroneous payment of output VAT due to its failure to apply the P123,459,674.70 input VAT in the computation of its excess allowable input VAT.

Petitioner also averred that since it is already barred from amending its VAT Return due to the fact that the BIR had already issued an LOA, it is left with no other recourse but to apply for a claim for refund for the undeclared input VAT, still, under Section 229. Coca-Cola also argued that its claim for refund or issuance of tax credit under Sections 229 and 204(C) of the NIRC only required that the same be in writing and filed with the Commissioner within two (2) years after the payment of tax or penalty, and that the claim must categorically demand for reimbursement and show proof of payment of the tax. In support of its assertion, petitioner cited the ruling in *Fort Bonifacio Development Corporation v. CIR* which adopts the principle that input taxes not reported in the VAT Return may still be credited against output tax due for as long as the same were properly substantiated.

The CTA Division denied petitioner's claim for lack of merit. Subsequently, the CTA *En Banc* affirmed the ruling of the CTA Division and opined that since the amount sought to be credited or refunded by Coca-Cola essentially represents undeclared input taxes for the first quarter of 2008, and not erroneously paid VAT or understatement of VAT overpayment, then it does not fall under the instances enumerated in Section 112 which pertain to excess taxes only. CTA *Enbanc* also cited jurisprudence which provide that Sections 204(C) and 229 of the NIRC similarly apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

ISSUE:

1. Whether Coca-cola is entitled on its claim for refund of its alleged over/erroneous payment of VAT under Section 229 of the 1997 NIRC. (NO)
2. Whether Coca-cola is entitled on its claim for tax credit of its alleged over/erroneous payment of VAT under Sections 110 (B) and 112 (A) of the 1997 NIRC. (NO)

RULING:

1. In *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque)*, the Supreme Court explained that input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected, the amount paid is correct and proper. If said input VAT is in fact "excessively" collected as understood under Section 229, then it is the person legally liable to pay the input VAT, and not the person to whom the tax is passed on and who is applying the input VAT as credit for his own output VAT, who can file the judicial claim for refund or credit outside the VAT system. The Supreme Court, in *San Roque*, explained as follows:

"Excess" Input VAT and "Excessively" Collected Tax

The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. **If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT - who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System.** In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. **Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due.** The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. **Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.**

x x x x

x x x Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.

x x x x

Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, xxx illegally, xxx excessively or in any manner wrongfully collected." In short,

there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes." Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.**

Thus, the CTA *En Banc* and CTA Division were correct in holding that, based on the San Roque doctrine, Section 229 of the 1997 NIRC is inapplicable to the instant claim for refund or issuance of tax credit.

2. In addition, neither can petitioner advance its claim for refund or tax credit under Sections 110 (B) and 112 (A) of the 1997 NIRC.

SEC. 110. *Tax Credits*.-

x x x x

(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Provided, however, That 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.** x x x x

SEC. 112. *Refunds or Tax Credits of Input Tax.* -

(A) Zero-rated or Effectively Zero-rated Sales. - **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated rateably between his zero-rated and non-zero-rated sales.

A plain and simple reading of the aforequoted provisions reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Such is the clear import of the Court's ruling in *San Roque*, to wit:

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy. **Thus, a non zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. He can only carry-over and apply his "excess" input VAT against his future output VAT. If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit.** Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.

It is clear therefore that neither the law nor jurisprudence authorized petitioner's claim for refund or issuance of tax credit. In asserting its alleged right to said claim, petitioner unfortunately failed to convinced the Court that it is entitled to the refund or credit of input VAT in the amount of P123,459,647.70 it inadvertently failed to include in its VAT Return. This is because petitioner's claim is not governed by Section 229 as an ordinary refund or credit outside of the VAT System as the same does not involve a tax that is "erroneously, illegally, excessively, or in any manner wrongfully collected." Neither is said claim authorized under Sections 110(B) and 112(A) as the same does not seek to refund or credit input tax due or paid attributable to zero-rated or effectively zero-rated sales.

UNIVERSITY PHYSICIANS SERVICES INC. - MANAGEMENT, INC., *Petitioner*, -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 205955, THIRD DIVISION, March 7, 2018, MARTIRES, *J.*

The last sentence of Section 76 of the NIRC stated the irrevocability rule. It provides that once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarter of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of TCC shall be allowed therefor. As can be gleaned therefrom, said rule is limited only to the option of carry-over such that a taxpayer is still free to change its choice after electing a refund of its excess tax credit. There appears nothing in the said section from which to infer that the other choice, i.e., cash refund or TCC, is also irrevocable. If the intention of the lawmakers was to make the other option also irrevocable then they would have clearly provided so. Furthermore, the provision seems to suggest that there are no qualifications or conditions *attached to the rule on irrevocability. Considering the foregoing, once a taxpayer opts to carry over the excess CWT after electing refund or issuance of TCC, the carry-over option becomes irrevocable. Accordingly, the previous choice of a claim for refund, even if subsequently pursued, may no longer be granted.*

In the case at bar, applying the foregoing precepts, UPSI-MI is barred from recovering its excess CWT through refund or TCC. Despite its initial option to refund its 2006 excess CWT in the 2006 Annual ITR, UPSI-MI subsequently indicated in its 2007 short period FAR that it carried over the 2006 excess CWT and applied the same against its 2007 income tax due, thus, the application of the irrevocability rule. It does not matter that UPSI-MI had not actually benefited from the carry-over on the ground that it did not have a tax due in its 2007 FAR. Neither may it insist that the insertion of the carry over in the 2007 FAR was by mere mistake or inadvertence. The irrevocability rule admits of no qualifications or conditions.

FACTS:

University Physicians Services Inc. – Management, Inc. (UPSI – MI) applied for tax refund of its excess unutilized creditable withholding taxes (CWT) for the taxable year 2006.

As of December 31, 2005, UPSI–MI had an outstanding amount of ₱2,331,102.00 in excess and unutilized CWT. For the subsequent taxable year, the total sum of CWT on the management fees of UPSI-MI was ₱2,927,834.00.

UPSI-MI's income tax due per its 2006 Annual Income Tax Return (ITR) amounted to ₱99,595.00 which was applied to UPSI-MI's "Prior Year's Excess Credits" of ₱2,331,102.00. Meanwhile, the creditable taxes withheld for the year 2006 which is ₱2,927,834.00 remained intact and unutilized. In the said 2006 Annual ITR, UPSI-MI chose the option "To be issued a tax credit certificate" with respect to the 2006 excess CWT.

In the following year, UPSI-MI changed its taxable period from calendar year to fiscal year ending on the last day of March. Thus, it filed on November 14, 2007 an Annual ITR covering the short period from January 1 to March 31 of 2007. In the original 2007 Annual ITR, UPSI-MI opted to carry over as "Prior Year's Excess Credits" the total amount of ₱5,159,341.00 which included the 2006 unutilized CWT. However, on the same date, UPSI-MI amended the return by excluding said 2006 unutilized CWT under the line "Prior Year's Excess Credits" which amount is the subject of the present claim for refund. In view of the fact that respondent has not acted upon the claim for refund/TCC, petitioner filed with a Petition for Review on April l4, 2009 before the Court of Tax Appeals (CTA) in Division.

The CTA Division denied the petition. UPSI-MI effectively exercised the carry-over option under Section 76 of the National Internal Revenue Code (NIRC) of 1997, thus, the irrevocability rule is applicable. On motion for reconsideration, UPSI-MI argued that the irrevocability rule is not applicable since it did not carry over to the succeeding taxable period the 2006 excess CWT. Said CWTs were merely inadvertently included in its original 2007 ITR and such were rectified in the amended 2007 ITR. Thus, what should control is its election of the option "To be issued a Tax Credit Certificate" in its 2006 ITR. The CTA Division, however, denied the said motion for reconsideration. The amendment of the 2007 ITR cannot undo UPSI-MI's actual exercise of the carry-over option in the original 2007 ITR for to do so would be against the irrevocability rule.

Subsequently, the CTA En Banc affirmed the CTA's division's decision and added that the prevailing law and jurisprudence admit of no exception or qualification to the irrevocability rule.

A petition for review under Rule 45 of the Rules of Court was then filed by UPSI-MI. It claims that the irrevocability rule applies as much to the option of refund or tax credit certificate. Any of the two alternatives once chosen is irrevocable - be it for refund or carry-over - and the choice of one precludes the other. Thus, when it indicated in its 2006 Annual ITR the option "To be issued a Tax Credit Certificate," such choice precluded the other option to carry-over.

ISSUE:

Whether UPSI-MI may still refund its 2006 excess CWT. (NO)

RULING:

There are two options available to a corporation whenever it overpays its income tax for the taxable year: (1) to carry over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized as there is no prescriptive period; and (2) to apply for a cash refund or issuance of a TCC within the prescribed period. Such overpayment of income tax is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer.

The last sentence of Section 76 of the NIRC stated the irrevocability rule. It provides that once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarter of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of TCC shall be allowed therefor. As can be gleaned therefrom, said rule is limited only to the option of carry-over such that a taxpayer is still free to change its choice after electing a refund of its excess tax credit. There appears nothing in the said section from which to infer that the other choice, i.e., cash refund or TCC, is also irrevocable. If the intention of the lawmakers was to make the other option also irrevocable then they would have clearly provided so. Furthermore, the provision seems to suggest that there are no qualifications or conditions attached to the rule on irrevocability.

Considering the foregoing, once a taxpayer opts to carry over the excess CWT after electing refund or issuance of TCC, the carry-over option becomes irrevocable. Accordingly, the previous choice of a claim for refund, even if subsequently pursued, may no longer be granted. It must be noted that the law does not prevent a taxpayer who originally opted for a refund or TCC from shifting to the carry-over of the excess CWT to the taxable quarter of the succeeding taxable years. However, in case the taxpayer decides to shift its option to carryover, it may no longer revert to its original choice due to the irrevocability rule.

Section 228 paragraph (c) of the NIRC which provides that a pre-assessment notice shall not be required when a taxpayer who opted to claim a refund or TCC of excess CWT for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter of the succeeding taxable years is also relevant. In such cases, the law contemplates a double recovery by the taxpayer of an overpaid income tax. It envisages that the taxpayer had previously asked for and *successfully recovered* from the BIR its excess CWT through refund or TCC. If, on the other hand, an administrative claim for refund or issuance of TCC *is still pending* but the taxpayer had in the meantime automatically carried over the excess CWT, it would appear wholly unjustified and tantamount to adopting an unsound policy if the government should resort to assessment. In this instance, all that the government needs to do is to deny the refund claim and allow the carry-over. An otherwise disallowance of the carry-over due to the supposed irrevocability rule applicable to refund pending application would unduly hamper the tax administration and unnecessarily exhausts the government's time and resources. It defeats, rather than promotes, administrative feasibility.

The case of Philam Asset Management, Inc. v. Commissioner (Philam) cited by UPSI-MI to support its contention cannot be successfully invoked. Philam involved 2 cases wherein the taxpayer failed to signify its option in the Final Adjustment Return (FAR). In the first case, the Court ruled that such failure did not mean the outright barring of the request for a refund should one still choose this option later on. The taxpayer did in fact file an administrative claim for refund of its excess CWT later on. However, in the second case, the taxpayer filled out the portion "Prior Year's Excess Credits" in its subsequent FAR. The court considered the taxpayer to have constructively chosen the carry-over option, thus, the application of the irrevocability rule. It must be noted that the irrevocability rule was established to avoid confusion and complication that could be brought about by the flip-flopping on the options.

In the case at bar, applying the foregoing precepts, UPSI-MI is barred from recovering its excess CWT through refund or TCC. Despite its initial option to refund its 2006 excess CWT, UPSI-MI subsequently indicated in its 2007 short period FAR that it carried over the 2006 excess CWT and applied the same against its 2007 income tax due, thus, the application of the irrevocability rule. It does not matter that UPSI-MI had not actually benefited from the carry-over on the ground that it did not have a tax due in its 2007 FAR. Neither may it insist that the insertion of the carry over in the 2007 FAR was by mere mistake or inadvertence. The irrevocability rule admits of no qualifications or conditions.

This is not to say that all is lost for UPSI-MI It remains entitled to the benefit of carry-over and thus may apply the 2006 overpaid income tax as tax credit in succeeding taxable years until fully exhausted. Unlike the remedy of refund or TCC, the option of carry-over is not subject to any prescriptive period.

RHOMBUS ENERGY, INC., *Petitioner*, *v.* COMMISSIONER OF INTERNAL REVENUE, *Respondent*.
G.R. No. 206362, THIRD DIVISION, August 01, 2018, BERSAMIN, *J*.

The irrevocability rule is enunciated in Section 76 of the National Internal Revenue Code (NIRC), viz.: Section 76. Final Adjusted Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar of fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of the tax still due; or
(B) Carry over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited *against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.* ***Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable years of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.***

The CTA En Banc thereby misappreciated the fact that Rhombus had already exercised the option for its unutilized creditable withholding tax for the year 2005 to be refunded when it filed its annual ITR for the taxable year ending December 31, 2005. Based on the disquisition in Republic v. Team (Phils.) Energy Corporation, supra, ***the irrevocability rule took effect when the option was exercised****. In the case of Rhombus, therefore, its marking of the box "To be refunded" in its 2005 annual ITR constituted its exercise of the option, and from then onwards Rhombus became precluded from carrying-over the excess creditable withholding tax. The fact that the prior year's excess credits were reported in its 2006 quarterly ITRs did not reverse the option to be refunded exercised in its 2005 annual ITR. As such, the CTA En Banc erred in applying the irrevocability rule against Rhombus.*

FACTS:

On April 17, 2006, Rhombus filed its Annual Income Tax Return ("ITR") for taxable year 2005, and reflected a tax overpayment of P1,500,653.00

In said Annual ITR for taxable year 2005, Rhombus indicated that its excess creditable withholding tax ("CWT") for the year 2005 was "To be refunded". However, on its Quarterly Income Tax Return for the first to third quarter of the taxable year 2006, it reflected prior year excess credits of P1,500,653.00.

On December 29, 2006, respondent filed with the Revenue Region No. 8 an administrative claim for refund of its alleged excess/unutilized CWT for the year 2005 in the amount of P1,500,653.00. On April 2, 2007, respondent filed its Annual Income Tax Return for taxable year 2006 showing prior year's excess credits of P0.00.

On December 7, 2007, pending CIR's action on Rhombus's claim for refund or issuance of a tax credit certificate of its excess/unutilized CWT for the year 2005 and before the lapse of the period for filing an appeal, Rhombus filed a Petition for Review with the CTA.

After trial on the merits, on March 23, 2011, the First Division rendered the Decision granting the Petition for Review.

Not satisfied, CIR filed a Petition for Review with the CTA *En Banc*. The CTA *En Banc* ruled in favor of CIR and made the following Decision:

Citing *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation*, the CTA *En Banc* reversed and set aside the decision dated March 23, 2011 of the CTA First Division, explaining and holding thusly:

x x x Section 76 is clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. It mentioned no exception or qualification to the irrevocability rule (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands 592 SCRA 231*). Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. *Section 76 of the NIRC of 1997* is explicit in stating that once the option to carry over has been made, no application for tax refund or issuance of a tax credit certificate shall be allowed therefor'.

Applying the foregoing rulings to the instant case, considering that petitioner opted to carry-over its unutilized creditable withholding tax of P1,500,653.00 for taxable year 2005 to the first, second and third quarters of taxable year 2006 when it had actually carried-over said excess creditable withholding tax to the first, second and third quarters in its Quarterly Income Tax Returns for taxable year 2006, said option to carryover becomes irrevocable. Petitioner's act of reporting in its Annual Income Tax Return for taxable year 2006 of prior year's excess credits other than MCIT as 0.00, will not change the fact that petitioner had already opted the carry-over option in its first, second and third quarters Quarterly Income Tax Returns for taxable year 2006, and said choice is irrevocable. As previously mentioned, whether or not petitioner actually gets to apply said excess tax credit is irrelevant and would not change the carry-over option already made.

Thus, the present petition praying for refund or issuance of a TCC of its unutilized creditable withholding tax for taxable year 2005 in the amount of P1,500,653.00 must perforce be denied in view of the irrevocability rule on carry-over option of unutilized creditable withholding tax.

ISSUE:

Whether Rhombus is barred by the irrevocability rule in claiming for the refund of its excess and/or unutilized creditable withholding tax. (NO)

RULING:

The irrevocability rule is enunciated in Section 76 of the National Internal Revenue Code (NIRC), *viz.*:

Section 76. *Final Adjusted Return*. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar of fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of the tax still due; or
(B) Carry over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable years of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**

The application of the irrevocability rule is explained in *Republic v. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation*, where the Court stated:
In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, the Court, citing the pronouncement in Philam Asset Management, Inc., points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains:

Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option **shall be considered irrevocable for that taxable period** and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals **mistakenly** understood the phrase "for that taxable period" as a prescriptive period for the *irrevocability rule*. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the *irrevocability rule*. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to **keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit**. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the *irrevocability rule*, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period tor the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.

The CTA First Division duly noted the exercise of the option by Rhombus in the following manner: The evidence on record shows that **petitioner clearly signified its intention to be refunded of its excess creditable tax withheld for calendar year 2005 in its Annual ITR for the said year. Petitioner under Line 31 of the said ITR marked "x" on the box "To be refunded".** Moreover, petitioner's 2006 and 2007 Annual ITRs do not have any entries in Line 28A "Prior Year's Excess Credits" which only prove that petitioner did not carry-over its 2005 excess/unutilized creditable withholding tax to the succeeding taxable years or quarters.

Although the CTA *En Banc* recognized that Rhombus had actually exercised the option *to be refunded*, it nonetheless maintained that Rhombus was not entitled to the refund for having reported the prior year's excess credits in its quarterly ITRs for the year 2006, *viz.*:
Based on the records, it is clear that respondent marked the box "To be refunded" in its Annual Income Tax Return. It is also clear that the 2005 excess CWT were included in the prior year's excess credits reported in the 2006 Quarter ITRs. The 2006 Annual ITR did not reflect the 2005 excess CWT in the prior year's excess credits.

The CTA *En Banc* thereby misappreciated the fact that Rhombus had already exercised the option for its unutilized creditable withholding tax for the year 2005 *to be refunded* when it filed its annual ITR for the taxable year ending December 31, 2005. Based on the disquisition in *Republic v. Team (Phils.) Energy Corporation, supra*, **the irrevocability rule took effect when the option was exercised**. In the case of Rhombus, therefore, its marking of the box "To be refunded" in its 2005 annual ITR constituted its exercise of the option, and from then onwards Rhombus became precluded from carrying-over the excess creditable withholding tax. The fact that the prior year's excess credits were reported in its 2006 quarterly ITRs did not reverse the option to be refunded exercised in its 2005 annual ITR. As such, the CTA *En Banc* erred in applying the irrevocability rule against Rhombus.

b. Proper party to file claim for refund or tax credit

G. Government remedies

1. Kinds

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- PILIPINAS SHELL PETROLEUM CORPORATION, *Respondent.*
G.R. No. 197945, FIRST DIVISION, July 9, 2018, LEONARDO-DE CASTRO, *J.*

In the normal course of tax administration and enforcement, the BIR must first make an assessment then enforce the collection of the amounts so assessed. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.

*The Court cannot allow petitioner to collect any excise tax deficiency from respondents by mere issuance of the 1998 and 2002 Collection Letters. Absent a previously issued assessment supporting the 1998 and 2002 Collection Letters, it is clear that petitioner's attempts to collect through said collection letters as well as the subsequent Warrants of Garnishment and Distraint and/or Levy are void and ineffectual. Petitioner had failed to comply with the prescribed procedure for collection of unpaid taxes **through summary administrative remedies** and, thus, violated respondents' right to due process.*

FACTS:

Before the Court are consolidated petitions for review on *certiorari* filed by petitioner CIR.

Respondents Shell and Petron are domestic corporations engaged in the production of petroleum products and are duly registered with the Board of Investments (BOI) under the Omnibus Investments Code of 1987.

On different occasions during 1988 to 1996, respondents separately sold bunker oil and other fuel products to other BOI export entities. These BOI-registered export entities used Tax Credit Certificates (TCCs) originally issued in their name to pay for these purchases.

To proceed with this mode of payment, the BOI-registered export entities executed Deeds of Assignment in favor of respondents, transferring the TCCs to the latter. Subsequently, the Department of Finance (DOF), through its One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF Center), approved the Deeds of Assignment.

Thereafter, respondents sought the DOF Center's permission to use the assigned TCCs in settling respondents' own excise tax liabilities. The DOF Center issued Tax Debit Memoranda (DOF TD Ms) addressed to the Collection Program Division of the Bureau of Internal Revenue (BIR), allowing respondents to do so.

Thus, to pay for their excise tax liabilities from 1992 to 1997 (Covered Years), respondents presented the DOF TDMs to the BIR. The BIR accepted the TDMs.

Three significant incidents arising from the foregoing antecedents resulted in the filing of several petitions before this Court, *viz.*:

A. Issuance of 1998 Collection Letters (G.R. Nos. 204119-20) – present petition

In its collection letters dated April 22, 1998 (1998 Collection Letters) addressed to respondents' respective presidents, the BIR invalidated respondents' tax payments using said TCCs; and requested respondent Shell and respondent Petron to pay their delinquent tax liabilities amounting to ₱1,705,028,008.06 and ₱1,107,542,547.08, respectively.

Respondents separately filed their administrative protests against the 1998 Collection Letters, but the BIR denied said protests.

In their respective petitions before the CTA, respondents raised similar arguments against petitioner, to wit: (a) The collection of tax without prior assessment was a denial of the taxpayer's right to due process; (b) The use of TCCs as payment of excise tax liabilities was valid; (c) Since the BIR approved the transfers and subsequent use of the TCCs, it was estopped from questioning the validity thereof; and (d) The BIR's right to collect the alleged delinquent taxes had already prescribed.

B. Issuance 1999 Assessments (The *2007 Shell Case* and *2010 Petron Case)*

As a result of its post-audit procedures, the DOF Center cancelled the first batch of the transferred TCCs used by respondent Shell and Petron, with aggregate amount of ₱830,560,791.00 and ₱284,390,845.00, respectively.

Following the cancellation of the TCCs, petitioner issued separate assessment letters to respondents in November 1999 (1999 Assessments) for the payment of deficiency excise taxes, surcharges, and interest for the Covered Years, which were also covered by the 1998 Collection Letters. Respondents filed their respective administrative protests against said assessments. This Court ultimately invalidated the assessments.

C. Issuance of 2002 Collection Letter (G.R. No. 197945) – present petition

The BIR requested respondent Shell to pay its purported excise tax liabilities amounting to ₱234,555,275.48, in a collection letter dated June 17, 2002 (2002 Collection Letter)

ISSUES:

1. W/N the TCC's can be validly use to settle respondent's tax liabilities. (YES)

2. W/N Petitioner violated respondents' right to due process for failing to observe the prescribed procedure for collection of unpaid taxes through summary administrative remedies. (YES)

3. W/N The period for petitioner to collect the alleged deficiency excise taxes from respondents through judicial remedies had already prescribed. (YES)

RULING:

1. The issues concerning the transferred TCCs' validity, respondents' qualifications as transferees of said TCCs, and the respondents' valid use of the TCCs to pay for their excise tax liabilities for the Covered Years had been finally settled in the 2007 Shell Case and 2010 Petron Case and are already barred from being re-litigated herein by the doctrine of res judicata in the concept of conclusiveness of judgment.

In the *2007 Shell Case,* the Court affirmed the validity of the TCCs, the transfer of the TCCs to respondent Shell, and the use of the transferred TCCs by respondent Shell to partly pay for its excise tax liabilities for the Covered Years. The Court ratiocinated as follows: ***FIRST,*** respondent Shell was a transferee in good faith and for value as it secured the necessary approvals from various government agencies before it used and applied the transferred TCCs against its tax liabilities and it did not participate in the perpetuation of fraudulent acts in the procurement of the said TCCs. As a transferee in good faith, respondent Shell could not be prejudiced with a re-assessment of excise tax liabilities it had already settled when due using the subject TCCs nor by any fraud attending the procurement of the subject TCCs. ***SECOND,*** while the DOF Center was authorized to cancel TCCs it might have erroneously issued, it could no longer exercise such authority after the subject TCCs have already been utilized and accepted as payment for respondent Shell's excise tax liabilities. What had been used up, debited, and cancelled could no longer be voided and cancelled anew. While the State was not estopped by the neglect or omission of its agents, this principle could not be applied to the prejudice of an innocent transferee in good faith and for value. And ***FINALLY,*** the Court found in the *2007 Shell Case* that respondent Shell's right to due process was violated.Petitioner did not issue a Notice of Informal Conference (NIC) and Preliminary Assessment Notice (PAN) to respondent Shell, in violation of the formal assessment procedure required by Revenue Regulations No. (RR) 12-99. Petitioner merely relied on theDOF Center's findings supporting the cancellation of respondent Shell's TCCs. Thus, the Court voided the assessment dated November 15, 1999 issued by the CIR against herein respondent Shell.

On the other hand, the Court resolved the *2010 Petron Case* in accordance with its ruling in the *2007 Shell Case*

As a result of such findings in the *2007 Shell Case* and *2010 Petron Case,* then respondents could not have had excise tax deficiencies for the Covered Years as they had validly paid for and settled their excise tax liabilities using the transferred TCCs.

2. The Court cannot allow petitioner to collect any excise tax deficiency from respondents by mere issuance of the 1998 and 2002 Collection Letters. Petitioner had failed to comply with the prescribed procedure for collection of unpaid taxes through summary administrative remedies and, thus, violated respondents' right to due process.

In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. An assessment is not an action or proceeding for the collection of taxes. It is **a step preliminary, but essential to** warrant distraint, if still feasible, and also to establish a cause for judicial action. The BIR may summarily enforce collection only when it has accorded the **taxpayer administrative due process**, which vitally includes the issuance of a valid assessment. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.

In the instant cases, petitioner did not issue at all an assessment against respondents prior to his issuance of the 1998 and 2002 Collection Letters. Thus, there is reason for the Court to bar petitioner's attempts to collect the alleged deficiency excise taxes through any summary administrative remedy.

Absent a previously issued assessment supporting the 1998 and 2002 Collection Letters, it is clear that petitioner's attempts to collect through said collection letters as well as the subsequent Warrants of Garnishment and Distraint and/or Levy are void and ineffectual. If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place.

3. The alleged deficiency excise taxes petitioner seeks to collect from respondents in the cases at bar pertain to the Covered Years, *i.e.,* 1992 to 1997, during which, the National Internal Revenue Code of the Philippines of 1977 (1977 NIRC) was the governing law.

Under Section 318 of the 1977 NIRC, petitioner had five years from the time respondents filed their excise tax returns in question to: (a) issue an assessment; and/or (b) file a court action for collection without an assessment. In the petitions at bar, respondents filed their returns for the Covered Years from 1992 to 1997, and the five-year prescriptive period under Section 319 of the 1977 NIRC would have prescribed accordingly from 1997 to 2002.

As the Court has explicitly found herein as well as in the *2007 Shell Case* and *2010 Petron Case,* petitioner failed to issue any valid assessment against respondents for the latter's alleged deficiency excise taxes for the Covered Years. Without a valid assessment, the five-year prescriptive period **to assess** continued to run and had, in fact, expired in these cases. Irrefragably, petitioner is already barred by prescription from issuing an assessment against respondents for deficiency excise taxes for the Covered Years. Resultantly, this also bars petitioner from undertaking any summary **administrative remedies**, *i.e.,* distraint and/or levy, against respondents for collection of the same taxes.

Unlike summary administrative remedies, **the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment.** Sections 318 and 319(a) of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively.

A judicial action for the collection of a tax is begun: (a) by the **filing of a complaint** with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by **filing an answer to the taxpayer's petition for review** wherein payment of the tax is prayed for.

From respondents' filing of their excise tax returns in the years 1992 to 1997 until the lapse of the five-year prescriptive period under Section 318 of the 1977 NIRC in the years 1997 to 2002, **petitioner did not institute any judicial action for collection of tax** as aforedescribed. Instead, petitioner relied solely on summary administrative remedies by issuing the collection letters and warrants of garnishment and distraint and/or levy without prior assessment against respondents. Sifting through records, it can be said that petitioner's earliest attempts to **judicially** enforce collection of respondents' alleged deficiency excise taxes were his **Answers** to respondents' Petitions for Review filed before the CTA in Case Nos. 5657, 5728, and 6547 on August 6, 1998, March 2, 1999,and November 29, 2002, respectively.

Verily, in a long line of jurisprudence, the Court deemed the filing of such pleadings as effective tax collection suits so as to stop the running of the prescriptive period in cases where: (a) the CIR issued an assessment and the taxpayer appealed the same to the CTA; (b) the CIR filed the answer praying for the payment of tax within five years after the issuance of the assessment; and (c) at the time of its filing, jurisdiction over judicial actions for collection of internal revenue taxes was vested in the CT A, not in the regular courts.

However, judging by the foregoing conditions, even petitioner's Answers in CTA Case Nos. 5657, 5728, and 6547 cannot be deemed judicial actions for collection of tax. *First,* CTA Case Nos. 5657, 5728, and 6547 were not appeals of assessments. Respondents went before the CTA to challenge the 1998 and 2002 Collection Letters, which, by petitioner's own admission, are not assessments. *Second,* by the time petitioner filed. his Answers before the CTA on August 6, 1998, March 2, 1999, and November 29, 2002, his power to collect alleged deficiency excise taxes, the returns for which were filed from 1992 to 1997, had already partially prescribed, particularly those pertaining to the earlier portion of the Covered Years. *Third,* at the time petitioner filed his Answers before the CTA, the jurisdiction over judicial actions for collection of internal revenue taxes was vested in the regular courts, not the CTA. Original jurisdiction over collection cases was transferred to the CTA only on April 23, 2004, upon the effectivity of Republic Act No. 9282.

Without either a **formal tax collection suit** filed before the court of competent jurisdiction or an **answer** deemed as a judicial action for collection of tax within the prescribed five-year period under Section 318 of the 1977 NIRC, petitioner's **power to institute a court proceeding for the collection of respondents' alleged deficiency excise taxes without an assessment had already prescribed** in 1997 to 2002.

The Court's ruling remains the same even if the 10-year prescriptive period under Section 319(a) of the 1977 NIRC, in case of falsity, fraud, or omission in the taxpayer's return, is applied to the present cases.

Even if the Court concedes, for the sake of argument, that respondents' returns for the Covered Years were false or fraudulent, Section 319(a) of the 1977 NIRC similarly required petitioner to (a) issue an

assessment; and/or (b) file a court action for collection without an assessment, but within 10 years after the discovery of the falsity, fraud, or omission in the taxpayer's return. As early as the 1998 Collection Letters, petitioner could already be charged with knowledge of the alleged falsity or fraud in respondents' excise tax returns, which precisely led petitioner to invalidate respondents' payments using the transferred TCCs and to demand payment of deficiency excise taxes through said letters. The 10-year prescriptive period under Section 319(a) of the 1977 NIRC wholly expired in 2008 without petitioner issuing a valid assessment or instituting judicial action for collection.

The Court cannot countenance the tax authorities' non-performance of their duties in the present cases. The law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. While taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes.

2. Judicial remedies

III. LOCAL TAXATION (Local Government Code of 1991 [RA 7160], as amended)

A. Local government taxation

1. Fundamental principles

2. Specific taxing powers of Local Government Units (exclude rates)

3. Common limitations on the taxing powers of LGUs

4. Procedure for approval and effectivity of tax ordinances

5. Periods of assessment and collection of local taxes, fees, or charges

6. Taxpayer's remedies

a. Protest of assessment

b. Claim for refund of tax credit for erroneously or illegally collected taxes, fees, or charges

CITY OF MANILA AND OFFICE OF THE CITY TREASURER OF MANILA, ***Petitioners*****,** ***- versus -*** **COSMOS BOTTLING CORPORATION**, ***Respondent***

G.R. No. 196681, THIRD DIVISION, June 27, 2018, MARTIRES, *J.*

The filing of a motion for reconsideration or new trial to question the decision of a division of the Court of Tax Appeals (CTA) is mandatory. An appeal brought directly to the CTA En Banc is dismissible for lack of jurisdiction.

In local taxation, an assessment for deficiency taxes made by the local government unit may be protested before the local treasurer without necessity of payment under protest. But if payment is made simultaneous with or following a protest against an assessment, the taxpayer may subsequently maintain an action in court, whether as an appeal from assessment or a claim for refund, so long as it is initiated within thirty (30) days from either decision or inaction of the local treasurer on the protest.

FACTS:

For the first quarter of 2007, the City of Manila assessed Cosmos local business taxes and regulatory fees in the total amount of P1,226,781.05, as contained in the Statement of Account dated January 15, 2007. Cosmos protested the assessment through a letter dated January 18, 2007, arguing that Tax Ordinance Nos. 7988 and 8011, amending the Revenue Code of Manila (RCM), have been declared null and void. Cosmos also argued that the collection of local business tax under Section 21 of the RCM in addition to Section 14 of the same code constitutes double taxation.
Cosmos also tendered payment of only P131,994.23 which they posit is the correct computation of their local business tax for the first quarter of 2007. This payment was refused by the City Treasurer. Cosmos also received a letter from the City Treasurer denying their protest.

On March 8, 2007, Cosmos filed its complaint with the RTC of Manila praying for the refund or issuance of a tax credit certificate in the amount of P1,094,786.82. The RTC in its decision ruled in favor of Cosmos but denied the claim for refund.

Cosmos' motion for partial reconsideration was also denied, hence, the Petition for Review before the CTA. The CTA Division essentially ruled that the collection by the City Treasurer of Manila of local business tax under both Section 21 and Section 14 of the Revenue Code of Manila constituted double taxation. It also ruled that the City Treasurer cannot validly assess local business tax based on the increased rates under Tax Ordinance Nos. 7988 and 8011 after the same have been declared null and void. Finally, the court held that Cosmos Bottling Corporation's local business tax liability for the calendar year 2007 shall be computed based on the gross sales or receipts for the year 2006.

Instead of filing a motion for reconsideration or new trial, the petitioners directly filed with the CTA En Banc a petition for review praying that the decision of the CTA Division be reversed or set aside. In its Resolution, the CTA En Banc ruled that the direct resort to it without a prior motion for reconsideration or new trial before the CTA Division violated Section 18 of Republic Act (*R.A.*) No. 1125,[1] as amended by R.A. No. 9282 and R.A. No. 9503, and Section 1, Rule 8 of the Revised Rules of the CTA (*CTA Rules*). The petitioners sought reconsideration, but their motion was denied by the CTA En Banc.

ISSUES:

1. Whether or not the CTA En Banc correctly dismissed the petition for review before it for failure of the petitioners to file a motion for reconsideration or new trial with the CTA Division.
2. Whether a taxpayer who had initially protested and paid the assessment may shift its remedy to one of refund.

RULING:

The filing of a motion for reconsideration or new trial before the CTA Division is an indispensable requirement for filing an appeal before the CTA En Banc.

The CTA En Banc was correct in interpreting Section 18 of R.A. No. 1125, as amended by R.A. 9282 and R.A. No. 9503. A party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a petition for review with the CTA en banc. Failure to file such motion for reconsideration or new trial is cause for dismissal of the appeal before the CTA En Banc.

Corollarily, Section 1, Rule 8 of the CTA Rules provides:

> Section 1. *Review of cases in the Court en banc*. — In cases falling under the exclusive appellate jurisdiction of the Court en banc, 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. (emphasis supplied)

Clear it is from the cited rule that the filing of a motion for reconsideration or new trial is mandatory – not merely directory – as indicated by the word "must."

A taxpayer who had protested and paid an assessment may later on institute an action for refund.

Where an assessment is to be protested or disputed, the taxpayer may proceed (*a*) without payment, or (*b*) with payment[32] of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable**.

(*a*) Where no payment is made, the taxpayer's procedural remedy is governed strictly by **Section 195**. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.

(b) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (**Section 195**, LGC) and at the same time seeking a refund of the taxes. In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.

The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under **Section 196** of the LGC. In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily **assailing the validity or correctness of the assessment** he had administratively protested.

It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him. There is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.

However, when an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund ***at any time*** within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' *within 60 days from receipt of the notice of assessment*, and thereafter bring suit in court *within 30 days from either decision or inaction* by the local treasurer.

Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action 1s denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.

In this case, after Cosmos received the assessment of Toledo on 15 January 2007, it forthwith protested such assessment through a letter dated 18 January 2007.Constrained to pay the assessed taxes and charges, Cosmos subsequently wrote the Office of the City Treasurer another letter asking for the refund and reiterating the grounds raised in the previous submitted protest letter.[35] In the meantime, Cosmos received on 6 February 2007 the letter of Toledo denying its protest.[36] Thus, on 8 March 2007, or exactly thirty (30) days from its receipt of the denial, Cosmos brought the action before the RTC of Manila.

Under the circumstances, it is evident that Cosmos was fully justified in asking for the refund of the assailed taxes after protesting the same before the local treasurer. Consistent with the discussion in the premises, Cosmos may resort to, as it actually did, the alternative procedure of seeking a refund after timely protesting *and* paying the assessment. Considering that Cosmos initiated the judicial claim for refund within 30 days from receipt of the denial of its protest, it stands to reason that the assessment which was validly protested had not yet attained finality.

To reiterate, Cosmos, after it had protested and paid the assessed tax, is permitted by law to seek a refund having fully satisfied the twin conditions for prosecuting an action for refund before the court. Consequently, the CTA did not commit a reversible error when it allowed the refund in favor of Cosmos.

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., Petitioner, -versus-. THE CITY OF MANILA; LIBERTY M. TOLEDO, IN HER CAPACITY AS TREASURER OF MANILA; GABRIEL ESPINO, IN HIS CAPACITY AS RESIDENT AUDITOR OF MANILA; AND THE CITY COUNCIL OF MANILA, Respondents.

G.R. No. 185622, THIRD DIVISION, October 17, 2018, LEONEN, J

*If the **taxpayer receives an assessment and does not pay the tax**, its remedy is **<u>strictly confined</u>** to **Section 195** of the Local Government Code. In its court action, **the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid**. "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer." On the other hand, if **no assessment notice is issued** by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, **then Section 196 applies**. Here, there is no dispute on the refund of P6,224,250.00, representing the additional taxes paid for the first 3 quarters of 1999. The controversy here pertains to petitioner's entitlement to a refund of the taxes paid subsequent to the third quarter of 1999.*

*The nature of an action is determined by the allegations in the complaint and the character of the relief sought. Here, petitioner seeks a refund of taxes that respondents had collected. Following City of Manila case, **<u>refund is available under both Sections 195 and 196 of the Local Government Code</u>**: for **Section 196, because it is the express remedy sought**, and for **Section 195, as a consequence of the declaration that the assessment was erroneous or invalid**.*

*In the case at bar, **no notice of assessment** for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first 3 quarters of 1999. Hence, when petitioner paid these taxes and filed written claims for refund before respondent City Treasurer, the subsequent denial of these claims should have **prompted resort to the remedy laid down in Section 196**, specifically the filing of a judicial case for the recovery of the allegedly erroneous or illegally collected tax within the two-year period. Petitioner appealed the denial of the protest against respondent City Treasurer's assessment and the action against the denial of its claims for refund. For both issues, petitioner's arguments are based on the common theory that the additional tax under Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807, is illegal double taxation. Hence, their joinder in one (1) suit was legally appropriate and avoided a multiplicity of suits.*

FACTS

International Container, a corporation with its **principal place of business in Manila**, renewed its business license for 1999. It was assessed for **2 business taxes**:

(1) for which it was **already paying**, a local annual business tax for contractors equivalent to 75% of 1% of its gross receipts for the preceding calendar year pursuant to **Section 18** of Manila Ordinance No. 7794; and

(2) the **newly assessed** business tax which was computed at 50% of 1% of its gross receipts for the previous calendar year, pursuant to **Section 21 (A)** of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807.

It **paid** the additional assessment, **under protest** to the City Treasurer of Manila.

When the **City Treasurer failed to decide** on the protest within 60 days therefrom, International Container filed before the RTC of Manila its Petition for Certiorari and Prohibition against the City Treasurer and Resident Auditor of Manila, in which the RTC later on dismissed. International Container appealed the dismissal to the Court of Appeals, which set aside the RTC's dismissal and ordered the case remanded to the RTC for further proceedings.

However **while the case was pending**, the City of Manila **continued to impose the business tax under Section 21 (A), in addition to the business tax under Section 18,** on International Container so that it would be issued business permits. On June 17, 2003, International Container sent a letter to the City of Manila **reiterating its protest to the business tax under Section 21 (A) and requesting for a refund of its payments pursuant to Section 196 of the LGC**. International Container filed an Amended and Supplemental Petition, alleging that since the payment of both business taxes was a pre-condition to the renewal of International Container's business permit, it was compelled to pay, and had been paying under protest. It amended its prayer to include not only the refund of business taxes paid for the first 3 quarters of 1999, but also the taxes continuously paid afterwards. The RTC admitted its Amended and Supplemental Petition.

On February 28, 2005, the RTC dismissed the Amended and Supplemental Petition. Court of Tax Appeals Second Division set aside the RTC' Decision. It found that imposing the business tax under Section 21 (A) in addition to the contractors' tax under Section 18 constituted direct double taxation. It ordered the City of Manila and its officials to refund the amount of P6,224,250.00, representing the additional taxes paid for the first 3 quarters of 1999. The claims corresponding to the subsequent periods were denied, since the Court of Tax Appeals Second Division found that International Container failed to substantiate its claims and to comply with Section 195 of the Local Government Code. It found that International Container failed to submit to the court its protest dated June 17, 2003, and thus, the court could not verify the total amount of taxes paid and the taxing period covered in this protest. Both the International Container and the City of Manila moved for reconsideration, which the CTA Second Division denied. On appeal to the CTA En Banc, the latter by dismissed the Petition for Review for the lack of merit. Contrary to the claim of International Container, the CTA En Banc found that International Container's causes of action in the RTC and CTA Second Division were different from each other. In the RTC, International Container's action was for the annulment of the assessment and collection of additional local business tax**. According to the CTA En Banc**, this meant that International Container **chose to protest the assessment pursuant to Section 195 of the Local Government Code, and not to request for a refund as provided by Section 196**. The CTA En Banc further found that Sections 195 and 196 of the Local Government Code are two (2) separate and distinct remedies granted to taxpayers, with different requirements and conditions. International Container cannot merely claim that by complying with the reglementary period of protesting an assessment under Section 195, it had already complied with the two-year period stated in Section 196. The CTA found that since International Container paid the taxes under the assessment, its claim for refund assumed that the assessment was wrong. The claim for refund should be understood as a logical and necessary consequence of the allegedly improper assessment such that if the assessment were cancelled, the taxes paid under it should be refunded. This should not be understood as the claim for refund under Section 196 of the Local Government Code.

ISSUE

1. Whether or Not Section 195 or Section 196 of the Local Government Code govern petitioner International Container Terminal Services, Inc.'s claims for refund from the fourth quarter of 1999 onwards? (Both provision is applicable)
2. Whether or Not petitioner International Container Terminal Services, Inc. complied with the requirements that would entitle it to the refund it claims? (Yes)

RULING

1. Sections 195 and 196 of the Local Government Code govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes: *Section 195. Protest of Assessment and Section 196. Claim for Refund of Tax Credit.*
   In *City of Manila v. Cosmos Bottling Corp*., this Court distinguished between these 2 remedies:

> The **first** provides the **procedure for contesting an assessment issued by the local treasurer**; whereas, the **second** provides the **procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge**. **Both** Sections 195 and 196 mention an **administrative remedy** that the taxpayer should first exhaust before bringing the appropriate action in court. In **Section 195**, it is the **written protest with the local treasurer that constitutes the administrative remedy**; while in S**ection 196**, it is the **written claim for refund or credit** with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the **written protest or refund is addressed to the local treasurer** expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.
>
> Obviously, the application of **Section 195 is triggered by an assessment** made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. **Should the taxpayer and the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period** of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The **local treasurer has sixty (60) days to decide said protest.** In case of denial of the protest or inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.
>
> On the other hand, **Section 196** may be invoked by a **taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him**. The provision requires the taxpayer to **first file a written claim for refund before bringing a suit in court** which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.
>
> Unlike Section 195, however, **Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit**. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer. In this

> instance, the **taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription**.
> Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its **applicability does not depend upon the existence of an assessment notice**. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the **taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC**.

If the **taxpayer receives an assessment and does not pay the tax**, its remedy is **strictly confined** to **Section 195** of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal. If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, **the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid**. "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer." On the other hand, if **no assessment notice is issued** by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, **then Section 196 applies**.

Here, there is no dispute on the refund of P6,224,250.00, representing the additional taxes paid for the first 3 quarters of 1999, as ordered by the CTA Second Division on the basis that there was direct double taxation. The controversy here pertains to petitioner's entitlement to a refund of the taxes paid subsequent to the third quarter of 1999, which was denied by the CTA Second Division on the ground that petitioner failed to comply with the requirements of Section 195. The nature of an action is determined by the allegations in the complaint and the character of the relief sought. Here, petitioner seeks a refund of taxes that respondents had collected. Following City of Manila, **refund is available under both Sections 195 and 196 of the Local Government Code**: for **Section 196, because it is the express remedy sought**, and for **Section 195, as a consequence of the declaration that the assessment was erroneous or invalid**. Whether the remedy availed of was under Section 195 or Section 196 is not determined by the taxpayer paying the tax and then claiming a refund. **What determines the appropriate remedy is the local government's basis for the collection of the tax**. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. No such precondition is necessary for a claim for refund pursuant to Section 196.

In the case at bar, **no notice of assessment** for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first 3 quarters of 1999. Hence, when petitioner paid these taxes and filed written claims for refund before respondent City Treasurer, the subsequent denial of these claims should have **prompted resort to the remedy laid down in Section 196**, specifically the filing of a judicial case for the recovery of the allegedly erroneous or illegally collected tax within the two-year period. Petitioner appealed the denial of the protest against respondent City Treasurer's assessment and the action against the denial of its claims for refund. For both issues, petitioner's arguments are based on the common theory that the additional tax under Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807, is illegal double taxation. Hence, their joinder in one (1) suit was legally appropriate and avoided a multiplicity of suits.

2. A tax refund or credit is in the nature of a tax exemption, construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Claimants of a tax refund must prove the factual basis of their claims with sufficient evidence. To be **entitled to a refund** under Section 196 of the Local Government Code, the taxpayer must comply with the following procedural requirements: first, **file a written claim** for refund or credit **with the local treasurer**; and second, file a **judicial case for refund within two (2) years from the payment of the tax**, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.

As to the **first requirement**, the records show that the following written claims for refund **were made** by petitioner; In its June 17, 2003 Letter to the City Treasurer, it claimed a refund of P27,800,674.36 for taxes paid from the fourth quarter of 1999 up to the second quarter of 2003; and in its August 18, 2005 Letter to the City Treasurer, it claimed a refund of P14,190,092.90 for taxes paid for the third quarter of 2003 up to the second quarter of 2005. The **City Treasurer** Liberty M. Toledo **denied the claim stating** that; "In view thereof and considering that the issue on whether or not Golden Arches is liable under Section 21 or not and that the same constitute double taxation is subjudice due to the case filed in court by your company, this Office, cannot, much to our regret, act favorably on your claim for refund or credit of the tax collected as mentioned above. Rest assured that **upon receipt of any decision from the Supreme Court declaring Section 21 illegal and unconstitutional, this Office shall act accordingly**."

As for the taxes paid thereafter and were not covered by these letters, petitioner readily admits that it did not make separate written claims for refund, citing that "there was no further necessity" to make these claims. It argues that to file further claims before respondent City Treasurer would have been "**another exercise in futility**" as it would have merely raised the same grounds that it already raised

The doctrine of exhaustion of administrative remedies requires recourse to the pertinent administrative agency before resorting to court action. This is under the theory that the administrative agency, by reason of its particular expertise, is in a better position to resolve particular issues. Nonetheless, the **failure to exhaust administrative remedies is not always fatal** to a party's cause. Among these exceptional cases are: 1) when the question raised is **purely legal**; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; 6) when irreparable damage will be suffered; 7) when there is [no] other plain, speedy and adequate remedy; 8) when strong public interest is involved; 9) when the subject of the controversy is private land; and 10) in quo warranto proceedings. If the party can prove that the resort to the administrative remedy would be an idle ceremony such that it will be absurd and unjust for it to continue seeking relief that evidently will not be granted to it, then the doctrine would not apply.

Further, the issue at the core of petitioner's claims for refund, the **validity of Section 21 (A)** of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807, is a **question of law**. When the issue raised by the taxpayer is **purely legal** and there is no question concerning the reasonableness of the amount assessed, then there is no need to exhaust administrative remedies. Thus, **petitioner's failure to file written claims of refund for all of the taxes under Section 21 (A)** with respondent City Treasurer **is warranted** under the circumstances.

Similarly, **petitioner complied with the second requirement** under Section 196 of the Local Government Code that it must file its **judicial action for refund within two (2) years from the date of payment,** or the date that the taxpayer is entitled to the refund or credit. Among the reliefs it sought in its **Amended and Supplemental Petition before the Regional Trial Court** is the refund of any and all subsequent payments of taxes under Section 21 (A) from the time of the filing of its Petition until the finality of the case. As acknowledged by respondent City Treasurer in her September 1, 2005 Letter, petitioner's entitlement to the refund would only arise upon a judicial declaration of the invalidity of Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807. This only took place when the **Court of Tax Appeals En Banc dismissed respondents' Petition for Review of the May 17, 2006 Decision of the Court of Tax Appeals Second Division, rendering the judgment on the invalidity of Section 21 (A) final and executory on July 2, 2007.** Therefore, the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition.

7. Remedies of the LGUs for collection of revenues

a. Administrative action

b. Judicial action

B. Real property taxation

1. Fundamental principles

2. Exemption from real property taxes

3. Collection of real property tax

a. Date of accrual of real property taxes and special levies

b. Collection of taxes

c. Periods within which to collect real property taxes

4. Taxpayer's remedies

a. Contesting an assessment

i. Payment under protest

HERARC CORPORATION, REALTY Petitioner, -versus - THE PROVINCIAL TREASURER OF BATANGAS, THE PROVINCIAL ASSESSOR OF BATANGAS, THE MUNICIPAL ASSESSOR AND MUNICIPAL TREASURER OF CALATAGAN, BATANGAS, DR. RAFAEL A. MANALO, GRACE OLIVA, AND FREIDA RIVERA YAP, *Respondents.*

G.R. No. 210736, THIRD DIVISION, September 05, 2018, PERALTA, *J.*

RTC correctly opined, in real estate taxation, the unpaid tax attaches to the property. The personal liability for the tax delinquency is generally on whoever is the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership.2 Nonetheless, where the tax liability is imposed on the beneficial use of the real property, such as those owned but leased to private persons or entities by the government, or when the assessment is made on the basis of the actual use thereof, the personal liability is on any person who has such beneficial or actual use at the time of the accrual of the tax.

FACTS:

Upon acquisition via execution sale in August 2004, thirteen (13) parcels of land located in Sta. Ana, Calatagan, Batangas are registered since 2006 in the name of petitioner Herarc Realty Corporation under Transfer Certificate of Title (TCT) Nos. T-105907 to T-105919 (subject property).

From March 2, 2006 up to August 12, 2009, the Subject Property had been in actual possession of private respondents Dr. Rafael A. Manalo, Grace Oliva, and Freida Rivera Yap in their capacity as assignees in an involuntary insolvency proceeding against the Spouses Rosario and Saturnino Baladjay pending before the Muntinlupa City RTC Br. 204.

It was only on August 13, 2009 that petitioner was able to take full possession and control of the subject property by virtue of the July 31, 2009 Order of the Makati City RTC Br. 56 granting the issuance of a writ of execution, which, in tum, was based on the final and executory Decision of the Court of Appeals in CA¬ G.R. SP Nos. 93818 and 93823.

In a letter dated October 9, 2012, public respondent Provincial Treasurer of Batangas sent to petitioner a Statement of Real Property Tax Liabilities to collect the amount of P8,093,256.89, which included the unpaid RPT on the subject property for 2007, 2008, and January to August 2009 (covered period). The demand was reiterated in letters dated October 23, 2012 and November 21, 2012.

The assessment was paid under protest on November 20, 2012.7 Less than a month after, petitioner filed a petition for prohibition and mandamus against respondents. Herarc believes that the RPT assessment is illegal and erroneous because the subject property was not in its possession during the covered period.

RTC denied Herarc's petition. Herarc then filed a Petition for Review under Rule 45 of the Rules of Court before the Supreme Court.

ISSUE:

A. Whether or not Herarc availed the proper remedy. (NO)
B. Whether or Not Herarc is liable for the real property tax. (YES)

HELD:

A. Petitioner's direct recourse to the RTC is warranted since the issue of the legality or validity of the assessment is a question of law. However, as a taxpayer not satisfied with the RTC decision, it should have filed a petition for review before the Court of Tax Appeals (CTA). The decision, ruling or resolution of the CTA, sitting as Division, may further be reviewed by the CTA En Banc. It is only after this procedure has been exhausted that the case may be elevated to this Court.

Under Section 7 (a) (3) of Republic Act (R.A.) No. 9282,16 the appellate jurisdiction of the CTA over decisions, orders, or resolutions of the RTC becomes operative when the latter has ruled on a local tax case, i.e., one which is in the nature of a tax case or which primarily involves a tax issue. Local tax cases include those involving RPT, which is governed by Book II, Title II of R.A No. 7160, or Local Government Code (LGC) of 1991. Among the possible issues are the legality or validity of the RPT assessment; protests of assessments; disputed assessments, surcharges, or penalties; legality or validity of a tax ordinance; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments.

Evidently, petitioner erred in its appeal. If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due with respect to the property becomes absolute upon the expiration of the period to appeal. The assessment becomes final, executory and demandable, precluding the taxpayer from assailing the legality/validity (or reasonableness/correctness) of the assessment.

B. Even if this case is resolved on its substantive merit, the disposition remains the same. In real estate taxation, the unpaid tax attaches to the property. The personal liability for the tax delinquency is generally on whoever is the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. Nonetheless, where the tax liability is imposed on the beneficial use of the real property, such as those owned but leased to private persons or entities by the government, or when the assessment is made on the basis of the actual use thereof, the personal liability is on any person who has such beneficial or actual use at the time of the accrual of the tax. Beneficial use means that the person or entity has the use and possession of the property. Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.

As a general rule, real properties are subject to the RPT since the LGC has withdrawn exemptions from real property taxes of all persons, whether natural or juridical. Entities may be exempt from payment of the RPT if their charters, which were enacted or reenacted after the effectivity of the LGC, exempt them payment of the RPT. Likewise, exceptions to the rule are provided in Section 133(o) 32 of the LGC, which states that local government units have no power to levy taxes of any kind on the national government, its agencies and instrumentalities and local government units. Particularly on the RPT, Section 23433 enumerates the persons and real property exempt therefrom. The tax exemption of real property owned by the Republic, its political subdivisions, agencies or instrumentalities carries, however, ceases if the beneficial use of the real property has been granted, for a consideration or otherwise, to a taxable person. In such case, the corresponding liability for the payment of the RPT devolves on the taxable beneficial user. As applied in subsequent cases, it is in this context that our ruling in Testate Estate of Concordia T. Lim should be understood. Moreover, in said case, the taxpayer that was being assessed with the unpaid RPT was neither the registered owner nor the possessor of the subject property when the tax became due and demandable. In contrast, petitioner herein, an entity that is not tax exempt under the law, is the registered owner of the real property. Therefore, it is personally liable for the RPT at the time it accrued.

ii. File protest with treasurer

iii. Refunds or credits of real property taxes

b. Contesting a valuation of real property

i. Appeal to the Local Board of Assessment Appeals (LBAA)

ii. Appeal to the Central Board of Assessment Appeals (CBAA)

iii. Effect of payment of tax

5. Remedies of LGUs for collection of real property taxes

JEROME K. SOLCO, *Petitioner*, -versus- MEGAWORLD CORPORATION, *Respondent*.
G.R. No. 213669, FIRST DIVISION, March 05, 2018, TIJAM, *J.*

Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. Particularly, the notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfilment of which vitiates the sale.

A careful review of the records of the case would show that Solco patently failed to discharge the burden of proving that the tax sale was conducted with conformity to the governing rules.

FACTS:

Megaworld Corporation (Megaworld) was the registered owner of 2 parking slots located in Two Lafayette Square Condominium and Manhattan Square Condominium, respectively, in Makati City.

For failure to pay real property taxes thereon from the year 2000 to 2008, the City Government of Makati issued a Warrant of Levy over the subject properties. The properties were sold at a public auction, wherein Jerome Solco (Solco) emerged as the highest bidder. Certificates of sale were issued to Solco. There being no redemption by Megaworld, a Final Deed of Conveyance was executed by the local treasurer.

As the CCTs are still under Megaworld's name and the owner's duplicate copies of the same are still in Megaworld's possession, Solco filed a Petition for Issuance of New Condominium Certificates of Title and to Declare Null and Void the old Condominium Certificates of Title.

Megaworld filed a Comment on/Opposition to the Petition with Compulsory Counterclaims, averring, among others, that it entered into a Contract to Buy and Sell with one Dimaporo and one Delos Santos covering the Two Lafayette property and Manhattan property respectively. By virtue of such transfers, the buyers assumed all the respective obligations, assessments, and taxes on the property from the time of delivery pursuant to their agreements. Hence, starting year 2000, Megaworld admittedly did not pay the real property taxes thereon.

It was further alleged that the auction proceedings were tainted with fatal anomalies, to wit: (1) Megaworld nor Dimaporo or Delos Santos were notified of the warrants of levy purportedly issued by the city government; (2) the Notice of Deliquency was not posted in a conspicuous place in each barangay of Makati; (3) the published notice did not state the necessary recitals prescribed in Section 254 of the Republic Act No. 7160; (4) the purported warrants of levy were not properly served upon the Register of Deeds and the City Assessor; (5) the City Treasurer proceeded with the advertisement of the public sale of the subject properties despite the absence of due notice to Megaworld and the service to the Register of Deeds and the City Assessor of the warrants of levy.

By virtue of a Compromise Agreement between Solco and Delos Santos,the case was dismissed insofar as the Manhattan property is concerned. Hence, the case proceeded only with respect to the Two Lafayette property.

The RTC rendered judgment in favor of Solco ordering Megaworld to surrender owner's duplicate Condominium Certificate of Title to the Registry of Deeds, and directing the latter to issue a new condominium certificate of title in favor of Solco upon such surrender.

The CA reversed the decision. Citing Sections 254, 256, 258, and 260 of RA 7160, the CA found merit on Megaworld's arguments as to the irregularities which attended the entire delinquency proceedings. It nullified the auction, the levy and the final deed of conveyance. The CA found that Solco failed to present proof of compliance to the aforesaid provisions. Specifically, Solco did not comply with the requirement as to the posting and publication of notice of delinquency and mail and reportorial requirements on the warrant of levy.

Solco questions the jurisdiction of the court contending that the issue on the validity of a tax sale should be threshed out in a proper forum as: (1) the land registration court has limited jurisdiction; (2) Section 267 of RA 7160 requires a jurisdictional bond before a court can entertain any action assailing a tax sale; and (3) the City Government of Makati is an indispensable party since it will be prejudiced because it will be held liable for the return of the proceeds of the tax sale to him if tax sale proceedings are nullified. It violated the local government's right to due process as it was not impleaded to answer the issue, as well as a violation to its immunity from suit.

Issues

1. Does the court have jurisdiction to adjudicate upon the matter of the validity of the tax sale in this case? (YES)

2. In the affirmative, was the tax sale subject of this case valid? (NO)

3. Assuming the tax sale was invalid, may Solco be considered as a purchaser in good faith to uphold the sale of the subject property in his favor? (NO)

Ruling

1. **First,** PD No. 1529, with the intention to avoid multiplicity of suits and to promote expeditious termination of cases, had eliminated the distinction between the general jurisdiction vested in the regional trial court and the latter's limited jurisdiction when acting merely as a land registration court. Land registration courts, as such, can now hear and decide even controversial and contentious cases, as well as those involving substantial issues.

Certainly, thus, the courts *a quo* had jurisdiction to rule on all matters necessary for the determination of the issue of ownership, including the validity of the tax sale.

It must be remembered that the case is a petition for declaration of nullity of a condominium certificate of title and the issuance of a new one in lieu thereof. Solco basically seeks for consolidation of ownership and issuance of a new title under his name over the subject property. Needless to say, in such a case, the resolution of the propriety of the claimant's right necessitates the determination of the issue of ownership over the subject property. Simply put, the court cannot just order the cancellation of a title registered under a certain person and the issuance of a new one in lieu thereof under the claimant's name without first ascertaining whether the claimant is the true and rightful owner of the subject property.

Second. Solco cannot invoke the provision under Section 267 of RA 7160, requiring the posting of a jurisdictional bond before a court can entertain an action assailing a tax sale.

The provision relates to actions for annulment of tax sales. The section likewise makes use of terms "entertain" and "institution" to mean that **the deposit requirement applies only to *initiatory* actions assailing the validity of tax sales.** Again, the suit filed by Solco was an action for nullity of title and issuance of new title in lieu thereof; the issue of nullity of the tax sale was raised by the Megaworld merely as a defense and in no way converted the action to an action for annulment of a tax sale.

Third. Contrary to Solco's asseveration, the city government is not an indispensable party in this case as it shall not be prejudiced whatever the outcome of the case will be.

As expressly stated in Section 267, the amount deposited as bond requirement shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. In fine, **such deposit is meant to reimburse the purchaser of the amount he had paid at the tax sale should the court declare the sale invalid**. Clearly, the deposit is an ingenious legal device to guarantee the satisfaction of the tax deliquency, with the local government unit keeping the payment on the bid price whether the tax sale be nullified or not by the court.

With this, there is an assurance **that the public funds shall not be made liable whatever may be the outcome of the case**. Thus, contrary to Solco's contention, the City Government of Makati is not an indispensable party in this annulment of title/land registration case, wherein the validity of the tax sale upon which the applicant's claim is grounded, is in issue.

To be clear, however, it bears stressing that in this particular case, We rule that the non-compliance to such requirement cannot prevent the court from taking cognizance of the issue on the validity of the tax sale considering that the same was raised merely as a defense, but nonetheless, We emphasize that the purpose of such requirement cannot be disregarded.

In view of such purpose and considering Megaworld's manifest willingness to comply with Section 267, We find it proper to direct Megaworld to post the required deposit before the trial court pursuant to the said provision.

2. The tax sale is null and void. There is insufficiency of evidence to prove compliance with the mandatory requirements under Sections 254, 258, and 260 of RA 7160 for a valid tax delinquency sale.

Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. **Particularly, the notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfilment of which vitiates the sale.**

The auction sale of land to satisfy alleged delinquencies in the payment of real estate taxes derogates or impinges on property rights and due process. Thus, the steps prescribed by law for the sale, particularly the notices of delinquency and of sale, must be followed strictly. Failure to observe those steps invalidates the sale.

The burden to prove compliance with the validity of the proceedings leading up to the tax delinquency sale is incumbent upon the buyer or the winning bidder.

Indeed, the burden to show that such steps were taken lies on the person claiming its validity, who in this case is Solco. A careful review of the records of the case would show that Solco patently failed to discharge the burden of proving that the tax sale was conducted with conformity to the governing rules.

The record is barren of any proof that the warrant of levy was served upon Megaworld or Dimaporo as the beneficial owner/possessor, either personally or by registered mail. As correctly observed by the CA, the acknowledgment portion of the warrant of levy is blank and does not indicate any signature or printed name of Megaworld's representative or Dimaporo to prove the receipt of the same. Also, the warrant of levy on its face shows that it was issued on December 20, 2005, which was also the date of the auction sale. Indeed, it is highly irregular that the warrant of levy was issued on the same date of the auction sale. It is essential that there be an actual notice to the delinquent taxpayer, otherwise, the sale is null and void even if it be preceded by proper advertisement or publication.

There was likewise no evidence presented and offered that a written notice of levy with the attached warrant was mailed to or served upon the assessor and the Register of Deeds for the latter to be able to annotate the levy on the tax declaration and the title, respectively. In this case, the inscription of the Notice of Levy on the CCT No. 593823 was dated January 5, 2006 or 16 days after the auction sale. Such annotation was done on the same date that the Certificate of Sale was inscribed on the title. Further, the reportorial requirements to the *Sanggunian* to be done by the levying officer and the local treasurer, respectively, were not proven to be complied with. Clearly, these are violation of RA 7160's provisions.

3. Good faith is a question of intention, determined by outward acts and proven conduct. The circumstances of the case restrain Us from ruling that Solco was a buyer in good faith. Records show that the subject property had been in Dimaporo's possession since 1999. Notably, this fact has never been refuted by Solco in the entire proceedings even up to the instant petition. Settled is the rule that one who purchases a real property which is in possession of another should at least make some inquiry beyond the face of the title. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. Admittedly, in this case, Solco never made any inquiry to such a significant fact.

Reliance on the presumption of regularity of the acts of public officials cannot be had in consonance with the strict and mandatory character of the requirements for validity of a tax delinquency sale. well-established is the rule that the presumption of regularity in the performance of a duty enjoyed by public officials, cannot be applied to those involved in the conduct of a tax sale. no presumption of regularity exists in any administrative action which resulted in depriving a citizen or taxpayer of his property. This is an exception to the rule that administrative proceedings are presumed to be regular.

IV. JUDICIAL REMEDIES (RA 1125, as amended, and the Revised Rules of the Court of Tax Appeals)

A. Court of Tax Appeals (CTA)

1. Exclusive original and appellate jurisdiction over civil cases

STEEL CORPORATION OF THE PHILIPPINES, *Petitioner*, *v.* BUREAU OF CUSTOMS (BOC), BUREAU OF INTERNAL REVENUE (BIR), DEPARTMENT OF FINANCE (DOF), OFFICE OF THE PRESIDENT (OP), AND MUNICIPALITY OF BALAYAN, BATANGAS, *Respondents*.

G.R. No. 220502, SECOND DIVISION, February 12, 2018 PERALTA, *J.*

Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

Section 7. Jurisdiction. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal

Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

FACTS:

On September 11, 2006, Equitable PCI Bank, Inc. initiated a petition for rehabilitation of Steel Corporation of the Philippines (*STEELCORP*) before the RTC of Batangas City. Finding the petition to be sufficient in form and substance, the court issued an Order on September 12, 2006, which directed, among others, the "*[stay] [of] all claims against [STEELCORP], by all other corporations, persons or entities insofar as they may be affected by the present proceedings, until further notice from this Court, pursuant to Sec. 6, of Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation*."

While the rehabilitation proceedings were pending, Republic Act (R.A.) No. 10142, or the *Financial Rehabilitation and Insolvency Act (FRIA) of 2010* was enacted. Section 19 of which mandates:

SEC. 19. *Waiver of Taxes and Fees Due to the National Government and to Local Government Units (LGUs)*. - Upon issuance of the Commencement Order by the court, and until the approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, the imposition of all taxes and fees, including penalties, interests and charges thereof, due to the national government or to LGUs shall be considered waived, in furtherance of the objectives of rehabilitation.

In a letter addressed to Bureau of Customs (*BOC*) Commissioner Angelito A. Alvarez, STEELCORP manifested its intent to avail of the privileges granted by Section 19 of R. A. No. 10142, stressing that the import duties and fees/VAT which the BOC wanted to impose on and collect cannot be made without violating the aforesaid provision. It appears that STEELCORP had imported raw materials for use in its manufacture of steel products, which the BOC assessed with taxes in the sum of P41,206,120.00.

In a Memorandum dated October 26, 2010, Commissioner Alvarez, upon the recommendation of the BOC Director of Legal Service and the concurrence of the Deputy Commissioner of the BOC Revenue Collection Management Group, approved the waiver of all taxes and fees which are due to STEELCORP. On March 8, 2011, he sent his 1st Indorsement to the Department of Finance (DOF), stating that "*the release of the [Memorandum dated October 26, 2010] had been put on hold pending clearance from the [DOF]. The attention of [DOF] is invited to the revenue loss that may be suffered by the Bureau in the implementation thereof as shown by the attached summary of importations for the past three years, and the fact that the said company is still continuously importing raw materials up to the present*.

Subsequently, DOF Undersecretary Carlo A. Carag issued 2nd Indorsement dated May 26, 2011, which disapproved the recommendation of Commissioner Alvarez based on two grounds: (1) the Stay Order relied upon by STEELCORP is not the same as the Commencement Order required by law to consider the taxes and customs duties waived; and (2) assuming that the Stay Order is the same as the Commencement Order, the waiver contemplated under Section 19 does not include taxes and customs duties due on importations or shipments that were made by STEELCORP after the issuance of the Commencement Order.

STEELCORP elevated the matter to the Office of the President (OP).

Undersecretary Carag moved to dismiss the appeal for lack of jurisdiction. He noted that "*the assailed 2nd Indorsement dated May 26, 2011 issued by [the DOF] involves customs matters for automatic review from the decision of the Commissioner of Customs, which was adverse to the Government, under Section 2315 of the Tariff and Customs Code of the Philippines (TCCP), as amended. Verily, it is the Court of Tax Appeals (CTA) which has the* ***exclusive appellate jurisdiction*** *to review the decision of the Secretary of Finance pursuant to* ***Section 7, Republic Act No. 1125****, as amended*. " In opposition, STEELCORP contended that Section 2315 of the TCCP is irrelevant since said provision presupposes that there is already an assessment of duties by the Collector of Customs, which is not so in this case because the appeal "*does not involve a decision of the Commissioner in a case involving the liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fine, forfeitures or other penalties imposed in relation thereto, or other matters arising under the Customs Laws or other law or part of law administered by the Bureau of Customs*. " It was argued that the OP is vested with *quasi*-judicial functions under Administrative Order No. 18, Series of 1987.

On September 14, 2011, STEELCORP filed a Complaint against the respondents for injunction with application for immediate issuance of temporary restraining order (*TRO*) and writ of preliminary injunction (*WPI*) before RTC, Br. 10 of Balayan, Batangas. The action sought to restrain the respondents from assessing and continuing to assess STEELCORP of all taxes and fees due to the national government, including penalties, interests, and charges from the issuance of the Stay Order on September 12, 2006 and until final court approval of the rehabilitation plan.

On January 12, 2012, the court ordered the Manila International Container Port (*MICP*) District Collector of Customs to immediately comply with the *Status Quo* Order by refraining the imposition of customs duties and taxes on the importation of raw materials of STEELCORP and to immediately release to the corporation the raw materials without payment of duties/taxes and without further delay. On the same day, the Office of the Solicitor General (*OSG*), acting for and in behalf of the BIR, BOC, DOF, and OP, filed a Motion to Dismiss (*MTD*). It was argued that the RTC has no jurisdiction to hear and determine the complaint because, under Section 602 (g) of Presidential Decree (*P.D.*) No. 1464 or the TCCP, the BOC acquires exclusive jurisdiction over imported goods for purposes of enforcement of the customs laws from the moment the goods are actually in its possession or control; thus, the *Status Quo* Order is null and void. Also, under Section 2315 of the TCCP, the 2nd Indorsement dated May 26, 2011 should be appealed to the CTA; hence, the appeal to the OP did not toll the running of the 30-day reglementary period provided under Section 11 of R.A. No. 9282. Reiterating the position of the BOC, the OSG further contended that: (1) the Stay Order is not the same as the Commencement Order required by law to consider the taxes and customs duties waived; and (2) assuming that both orders are the same, the waiver contemplated under Section 19 does not include the payment of taxes and customs duties on STEELCORP's future importations or incoming shipments. STEELCORP opposed the motion.

The opposing parties filed various motions before the RTC.

The RTC granted the OSG's motion for reconsideration of the January 12, 2012 Order; the BIR's omnibus motion for reconsideration and to dissolve the WPI; and the OSG's motion for reconsideration of the March 5, 2012 Order;

The BIR and the BOC are the agencies tasked to collect taxes and customs duties, respectively. Inasmuch as what are to be collected, how much, when, and from whom as provided by law are to be ascertained and discharged by said agencies, the question of who are to be exempted shall also be determined by them. The issue of whether STEELCORP may avail of the benefits of R.A. No. 10142 should have been raised before the CTA after the BOC denied the claim.

STEELCORP appealed the matter before the CA but the same was denied.

ISSUE:

Whether the dismissal by the RTC is proper. (YES)

RULING:

The CA also did not err in affirming the June 6, 2012 Order of the RTC which dissolved the writ of preliminary injunction and dismissed STEELCORP's complaint for lack of jurisdiction.

Certainly, the consent of the parties does not confer jurisdiction over the subject matter. Jurisdiction cannot be waived; it is not dependent on the consent or objection or the acts or omissions of the parties or any one of them. The jurisdiction of the court over a subject matter is conferred only by the Constitution or by law as well as determined by the allegations in the complaint and the character of the relief sought.

In reverting to the earlier rulings that upheld the exclusive jurisdiction of the CTA to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances, this Court recently elucidated in *Banco De Oro v. Republic of the Philippines* the subject matter jurisdiction of the CTA:

On June 16, 1954, Republic Act No. 1125 created the Court of Tax Appeals not as another superior administrative agency as was its predecessor - the former Board of Tax Appeals - but as a part of the judicial system with exclusive jurisdiction to act on appeals from:

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

Republic Act No. 1125 transferred to the Court of Tax Appeals jurisdiction over all matters involving assessments that were previously cognizable by the Regional Trial Courts (then courts of first instance).

In 2004, Republic Act No. 9282 was enacted. It expanded the jurisdiction of the Court of Tax Appeals and elevated its rank to the level of a collegiate court with special jurisdiction. Section 1 specifically provides that the Court of Tax Appeals is of the same level as the Court of Appeals and possesses "all the inherent powers of a Court of Justice."

Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

Section 7. *Jurisdiction*. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.

With the enactment of R.A. No. 1125, the CTA was granted the exclusive appellate jurisdiction to review by appeal all cases involving disputed assessments of internal revenue taxes, customs duties, and real property taxes. In general, it has jurisdiction over cases involving liability for payment of money to the Government or the administration of the laws on national internal revenue, customs, and real property. As held in *Ollada v. Court of Tax Appeals, et al.* :

Note that the law gives to the Court of Tax Appeals exclusive appellate jurisdiction to review the decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the provincial or city Boards of Assessment Appeals. Note also that in defining the cases that may be reviewed the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under the National Internal Revenue Code, the Customs Law and the Assessment Law. This shows that the **"other matters" that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as *ejusdem generis*. In other words, in order that a matter may come under the general clause, it is necessary that it belongs to the same kind or class therein specifically enumerated. Otherwise, it should be deemed foreign or extraneous and is not included.**

From the clear purpose of R.A. No. 1125 and its amendatory laws, the CTA, therefore, is the proper forum to file the appeal. Matters calling for technical knowledge should be handled by such court as it has the specialty to adjudicate tax, customs, and assessment cases.

Section 11, Paragraph 4 of R.A. No. 1125, as amended by R.A. No. 9282, embodies the rule that an appeal to the CTA will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. Nonetheless, when, in the opinion of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount. Yet the requirement of deposit or surety bond may be dispensed with. We held in *Pacquiao v. Court of Tax Appeals, First Division*:

Thus, despite the amendments to the law, the Court still holds that the CTA has ample authority to issue injunctive writs to restrain the collection of tax **and to even dispense with the deposit of the amount claimed or the filing of the required bond**, whenever the **method** employed by the CIR in the collection of tax jeopardizes the interests of a taxpayer for being **patently in violation of the law**. Such authority emanates from the jurisdiction conferred to it not only by Section 11 of R.A. No. 1125, but also by Section 7 of the same law, which, as amended provides:

Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or **other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue.** x x x x [Emphasis Supplied]

From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond **is not simply confined to cases where prescription has set in**. As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax <u>is not sanctioned by law</u>***, the **<u>bond</u>**requirement under Section 11 of R.A. No. 1125 **<u>should be dispensed with</u>**. The purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the court would declare "that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction."

PHILIPPINE PORTS AUTHORITY, *Petitioner,* -versus - THE CITY OF DAVAO, SANGGUNIANG PANGLUNGSOD NG DAVAO CITY, CITY MAYOR OF DAVAO CITY, CITY TREASURER OF DAVAO CITY, CITY ASSESSOR OF DAVAO CITY, and CENTRAL BOARD OF ASSESSMENT APPEALS (CBAA), *Respondents.*

G.R. No. 190324, THIRD DIVISION, June 6, 2018, LEONEN, *J.*

Section 7, paragraph (a)(5) of Republic Act No. 1125, as amended by Republic Act No. 9282, provides that the CTA has exclusive appellate jurisdiction:

> *Section 7. Jurisdiction. - The CT A shall exercise:*
> *(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:*
> *. . . .*
> *(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.*

Urgency does not remove the Central Board of Assessment Appeals decision from the exclusive appellate jurisdiction of the CTA. The CTA has the power to determine whether or not there has been grave abuse of discretion in cases falling within its exclusive appellate jurisdiction and has power to issue writs of certiorari. If a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction.

In the case at bar, the CTA had jurisdiction over petitioner's appeal as to its liability for real property tax. Such tax liability was the very reason for the acts which petitioner wanted to have enjoined. Respondents' acts were carried out pursuant to the imposition of the real property tax. Thus, they were within the jurisdiction of the CTA. The Petitioner should have, instead, applied for injunctive relief with the CTA.

FACTS:

Petitioner Philippine Ports Authority received a letter from the City Assessor of Davao for the assessment and collection of real property taxes against its administered properties located at Sasa Port. It appealed the assessment to the Local Board of Assessment Appeals through the Office of the City Treasurer of Davao. While the case was pending, the City of Davao posted a notice of sale of delinquent real properties including the 3 properties subject of this case.

The Local Board of Assessment Appeals eventually dismissed the appeal for being filed out of time and for its lack of jurisdiction on the tax exemption of the petitioner. Petitioner then brought an appeal before the Central Board of Assessment Appeals which was also dismissed. Thus, an appeal was filed with the Court of Tax Appeals (CTA).

Petitioner claimed that it did not receive any warrant of levy for the 3 properties which were sold to respondent City of Davao or any notice that they were going to be auctioned. Thus, it filed a petition for certiorari with the Court of Appeals (CA), arguing that the City of Davao's taxation of its properties and their subsequent auction and sale to satisfy the alleged tax liabilities were without or in excess of its jurisdiction. There is no other speedy and adequate remedy except to file the same.

While the petition was pending with the CA, the CTA promulgated a Decision granting the petitioner's appeal. Sasa Port, Davao City and its buildings were declared exempt from the real estate tax.

Thereafter, the CA dismissed the petition filed before it. It held that CTA had exclusive jurisdiction to determine the matter and said that the Petitioner should have applied for the issuance of writ of injunction or prohibition before the CTA. In this regard, Petitioner argues that the CA has jurisdiction on the basis of urgency.

ISSUE:

Whether the CA has jurisdiction over the Petition for Certiorari. (NONE)

RULING:

Petitioner has failed to cite any law supporting its contention that the CA has jurisdiction over the present case. Its contention that the basis for CA's jurisdiction is the urgent need for injunctive relief has no legal basis. On the other hand, Section 7, paragraph (a)(5) of Republic Act No. 1125, as amended by Republic Act No. 9282, provides that the CTA has exclusive appellate jurisdiction:

> *Section 7. Jurisdiction. - The CT A shall exercise:*
> *(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:*
> *. . . .*
> *(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals*

Urgency does not remove the Central Board of Assessment Appeals decision from the exclusive appellate jurisdiction of the CTA. The CTA has the power to determine whether or not there has been grave abuse of discretion in cases falling within its exclusive appellate jurisdiction and has power to issue writs of certiorari. If a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction.

It must be noted that if the Court were to sustain petitioners' contention that jurisdiction over the certiorari petition lies with the CA, the Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter - precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. It would lead to an absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case. Thus, in transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction.

Moreover, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari so as to have complete supervision over the acts of the lower courts. A grant of appellate jurisdiction includes the grant of the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It may prohibit or restrain the performance of any act which might interfere with the exercise of its rightful jurisdiction in cases pending before it.

In the case at bar, the CTA had jurisdiction over petitioner's appeal as to its liability for real property tax. Such tax liability was the very reason for the acts which petitioner wanted to have enjoined. Respondents' acts were carried out pursuant to the imposition of the real property tax. Thus, they were within the jurisdiction of the CTA. The Petitioner should have, instead, applied for injunctive relief with the CTA.

In any case, even if the law had vested the CA with jurisdiction over the petition, the CA was still correct in dismissing the same before it. Once a court acquires jurisdiction over a case, it also has the power to issue all auxiliary writs necessary to maintain and exercise its jurisdiction, to the exclusion of all other courts. Thus, once the CTA acquired jurisdiction over petitioner's appeal, the CA would have been precluded from taking cognizance of the case.

2. Exclusive original and appellate jurisdiction over criminal cases

B. Procedures

1. Filing of an action for collection of taxes

a. Internal revenue taxes

b. Local taxes

2. Civil cases

a. Who may appeal, mode of appeal, and effect of appeal

b. Suspension of collection of taxes

c. Injunction not available to restrain collection

3. Criminal cases

a. Institution and prosecution of criminal actions

b. Institution of civil action in criminal action

c. Period to appeal

4. Appeal to the CTA en banc

BUREAU OF INTERNAL REVENUE, Petitioner, -versus- HON. ERNESTO D. ACOSTA, ET AL. OF THE SPECIAL FIRST DIVISION OF THE COURT OF TAX APPEALS and CHEVRON PHILIPPINES, INC. (formerly Caltex Philippines, Inc.), Respondents

G.R. No. 195320, SECOND DIVISION, April 23, 2018, REYES, JR.

The main issue resolved by the CTA-Special First Division in the Decision dated July 12, 2010 was **Chevron's entitlement to refund or credit** because of its overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel. In its decision, the CTA-Special First Division found sufficient basis for Chevron's claim and partially granted the petition. The BIR was ordered to refund. Clearly, the CTA-Special First Division disposed of the case in its entirety and no other issues were left to further rule upon. Therefore, the **appropriate remedy** to challenge the Resolution dated December 3, 2010 is **an ordinary appeal**, not a petition for certiorari.

For cases before the CTA, a decision rendered by a division of the CTA is **appealable to the CTA En Banc** as provided by Section 18 of R.A. No. 1125, as amended. **CTA En Banc has exclusive appellate jurisdiction relative to the review of the court divisions' decisions or resolutions** on motion for reconsideration or new trial, in cases arising from administrative agencies such as the BIR.

FACTS

On October 7, 2004, Chevron Philippines, Inc. (Chevron) filed an administrative claim for refund or credit with the BIR. The claim in the aggregate amount of P131,175,480.18 represented alleged overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel withdrawn from its refinery in San Pascual, Batangas for the month of November 2003. The BIR, however, did not act on Chevron's claim. Therefore, Chevron elevated the case to the CTA-Special First Division on October 28, 2005 via a petition for review.

CTA-Special First Division rendered its Decision partly granting the petition ordering the BIR to refund to Chevron the reduced amount of P108,585,162.95.

BIR moved for the reconsideration, which was later on denied by the CTA Special First Division. Unperturbed, the BIR once again moved for a reconsideration of the resolution, which the CTA-Special First Division denied with finality in its Resolution dated December 3, 2010. The BIR received its copy of the Resolution dated December 3, 2010. The CTA-Special First Division, after having confirmed that the BIR did not elevate the issue before the CTA En Banc within the 15-day reglementary period to appeal, issued an Entry of Judgment.

Thereafter, Chevron moved for the issuance of a Writ of Execution of the CTA-Special First Division's Decision to which in response thereof, the BIR filed a Motion to Lift Entry of Judgment before the CTA- Special First Division on the ground that it intended to exhaust the remedy of filing a Petition for Certiorari before the Supreme Court under Rule 65 of the Revised Rules of Court.

ISSUE

Whether a Special Civil Action for Certiorari under Rule 65 of the Rules of Court is available as a remedy to the BIR? (NO)

RULING

Under Section 1, Rule 65 of the Rules of Court provides that the **special civil action of certiorari** may **only** be invoked when there is **no appeal, nor any plain, speedy and adequate remedy** in the course of law. It is a **remedy of last recourse**. A writ of certiorari is not a substitute for a lost appeal.

When an appeal is available, certiorari will not prosper especially if the appeal was lost because of one's own negligence or error in the choice of remedy, even if the ground is grave abuse of discretion. Under the Rules of Court, the **remedy against a final judgment or order is an appeal**. A final judgment or order leaves nothing more to be done except to enforce by execution what the court has determined.

For cases before the CTA, a decision rendered by a division of the CTA is **appealable to the CTA En Banc** as provided by Section 18 of R.A. No. 1125, as amended.

> No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA En Banc.

Section 2 of Rule 4 of the Revised Rules of the CTA also states that the **CTA En Banc has exclusive appellate jurisdiction relative to the review of the court divisions' decisions or resolutions** on motion for reconsideration or new trial, in cases arising from administrative agencies such as the BIR.

It must be stressed that the Resolution dated December 3, 2010 of the CTA- Special First Division which declared its **Decision** dated July 12, 2010 final and executory is a **final judgment**. It disposed of the case on the merits. The main issue resolved by the CTA-Special First Division in the Decision dated July 12, 2010 was **Chevron's entitlement to refund or credit** because of its overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel. In its decision, the CTA-Special First Division found sufficient basis for Chevron's claim and partially granted the petition. The BIR was ordered to refund. Clearly, the CTA-Special First Division disposed of the case in its entirety and no other issues were left to further rule upon. Therefore, the **appropriate remedy** to challenge the Resolution dated December 3, 2010 is **an ordinary appeal**, not a petition for certiorari. BIR had every opportunity to elevate the matter to the CTA En Banc but chose not to avail itself of this remedy. Even on this ground alone, the Court may already dismiss the present petition.

5. Petition for review on certiorari to the SC