BDB Law wts

DU-BALADAD AND ASSOCIATES

SUMMARY OF SIGNIFICANT SC TAX DECISIONS (August to December 2014)

1. **Compliance with all the VAT invoicing requirements is required for taxpayer to be entitled to a claim for input taxes attributable to zero-rated sales.**

Taxpayer is a VAT and PEZA registered corporation engaged in the manufacture and export of ready-to-wear items. It claimed to have paid excess input VAT for the year 1999 attributable to its zero-rated export sales. It then filed 4 separate applications for tax refund with the One-Stop-Shop Inter-Agency Tax credit and Duty Drawback Center of the DOF. Thereafter, taxpayer filed a petition for review before the CTA. The CTA Division denied the petition on the ground that all of its export sales invoices failed to comply with the invoicing requirements: have no BIR Permit to Print; did not contain its TIN-VAT or TIN-V and the word zero-rated was not imprinted thereon in violation of Section 113(A) in relation to Section 238 of the Tax Code. Upholding the decision of CTA Division and CTA En Banc, the Supreme Court held that the invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear - a VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases of goods or services attributable to zero-rated sales. A VAT invoice is an invoice that meets the requirements of Section 4.108-4 of RR 7-95. (***J.R.A. Philippines Inc. vs. Commissioner of Internal Revenue, G.R. No. 171307 dated August 28, 2014)***

2. **Prior application for tax treaty relief is not required for the availment of tax treaty provisions.**

Taxpayer withheld and remitted to the BIR 15% branch profit remittance tax (BPRT) to its head office, Deutsche Bank Germany. Believing that it made an overpayment of BPRT, it filed with the BIR an administrative claim for a refund. On the same date, it also filed a request for ruling with the BIR for a confirmation of its entitlement to the preferential tax rate of 10% based on the Philippines - Germany Tax Treaty. Due to the inaction in the administrative claim for refund, taxpayer elevated the case to the CTA by filing a petition for review on October 18, 2005. The CTA denied the petition on the ground that the application for a tax treaty relief was not filed with the BIR prior to the payment of its BPRT. Thus, it violated the 15-day period mandated under Section III paragraph (2) of RMO 1-2000. The denial was upheld by the CTA En Banc

and held that a ruling from the BIR must be secured prior to the availment of a preferential tax rate under a tax treaty.

On appeal to the Supreme Court, the Court ruled that our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands performance in good faith of treaty obligation on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties and obligations under the treaty must be performed by them in good faith. Treaties have the force and effect of law in this jurisdiction. Tax treaties are entered into "to reconcile the national fiscal legislations of the contracting parties and in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions. It must be stressed that there is nothing in RMO 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. The period of application for the availment of tax treaty relief as required by RMO 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. ***(Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue, G.R. No. 188550, August 19, 2014)***

3. PAL's franchise includes exemption from excise taxes.

PAL was assessed excise taxes on its February and March 2007 importation of cigarettes and alcoholic drinks for its commissary supplies used in its international flights. PAL paid the amounts under protest. Thereafter, it filed 3 separate administrative claims for refund before the BIR for the alleged excise taxes erroneously paid on 3 different dates. Subsequently, it filed Petition for review before the CTA to forestall the running of the 2-year prescriptive period. The CTA granted the petition. In the CTA En Banc, it held that the *"in lieu of all taxes"* clause in PAL's franchise exempts it from excise tax. Upholding the decision of CTA En Banc, the Supreme Court held that in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: (a) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (b) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. ***(Commissioner of Internal Revenue vs. Philippine Airlines, Inc., G.R. No. 212536-37)***

4. Presentation of withholding tax certificates at the administrative level is not required in a claim for refund.

Taxpayer earned income subjected to withholding taxes for the year 2000. In April 18, 2001, it filed tentative income tax return which it subsequently amended on July 25, 2001. A second amendment was filed on June 20, 2002, declaring that it has no income tax liability as it incurred loss. The second amended return showed an income tax overpayment. On November 11, 2002, it filed an administrative claim for the refund with the BIR for the excess amount. On April 11, 2003, it filed a petition for review with the CTA due to inaction of the BIR. The CTA granted the petition. The BIR alleged that the taxpayer presented the withholding tax certificates only

before the CTA and not at the first instance when it filed for claim for refund administratively with the BIR. The Supreme Court held that proof of actual remittance by the respondent is not needed in order to prove the withholding and remittance to the BIR. Section 2.58.3(B) of RR No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. Also, the BIR is in no position to assail the authenticity of the CWT due to the taxpayer's alleged failure to submit the same before the administrative level since he could have easily directed the claimant to furnish copies of these documents, if the refund applied for casts him any doubt. The CTA is not precluded from accepting the evidence assuming these were not presented at the administrative level. Cases filed in the CTA are litigated de novo. ***(Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180920, September 29, 2014)***

5. Documentary stamp tax applies only to the sale of real property, not to all other kinds of transfers or conveyances of real properties.

On April 27, 1999, a merger took place between two corporations whereby all the assets and liabilities of the absorbed corporation were transferred to the surviving entity. Among the assets transferred were real properties. For the transfer of these real properties, a documentary stamp tax was paid by the surviving corporation under Section 196 of the 1997 Tax Code. Realizing that the documentary stamp tax was erroneously paid on the transfer of the real property as a result of the merger, the surviving corporation applied for the refund of the DST paid. The claim was granted by the CTA. On appeal to the Supreme Court, the Supreme Court held that the DST is only imposed on all conveyances, deeds, instruments or writing where realty sold shall be conveyed to a purchaser or purchasers for a consideration under Section 196 of Tax Code of 1997 Tax Code. Section 196 of the 1997 Tax Code does not apply to all kinds of transfers and conveyances of real property for valuable consideration. It is imposed on the transfer of realty by way of sale and does not apply to all conveyances of real property. The fact that Section 196 refers to words "sold", "purchaser" and "consideration" undoubtedly leads to the conclusion that only sales of real property are contemplated therein. In a merger, the real properties are not deemed "sold" to the surviving corporation and the latter could not be considered as "purchaser" of realty since the real properties subject of the merger were merely absorbed by the surviving corporation by operation of law and these properties are deemed automatically transferred to and vested in the surviving corporation without further act or deed. Therefore, this is not subject to DST. ***(Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 192398, September 29, 2014)***

6. The CTA En Banc has exclusive jurisdiction over appeals from the decisions of its divisions.

Taxpayer was issued by the BIR several assessment notices for deficiency income tax and VAT covering the taxable year 1999 to 2002. Taxpayer filed its protest letters, but were eventually denied by the BIR. Taxpayer then filed a petition for review with the CTA, questioning the

assessments. The CTA First Division denied the petition. The CTA Division likewise denied the motion for reconsideration. Taxpayer then appealed directly to the Supreme Court under Rule 45 of the 1997 Rules of Civil Procedure , assailing the decision and resolution of the CTA Division.

The Supreme Court ruled that it is without jurisdiction to review decisions rendered by a division of the CTA, exclusive appellate jurisdiction of which is vested in the CTA *en banc*. ***(Duty Free Philippines vs. Bureau of Internal Revenue, G.R. No 197228, October 8, 2014)***

7. Sending the Formal Assessment Notice to the taxpayer's old address does not suspend the running of the prescriptive period if the BIR is aware of the taxpayer's new address.

Taxpayer had its BIR-registered address at Barrio Talon, Las Piñas City. Following the resolution of the stockholders and directors to shorten its corporate life, taxpayer moved its office to Calamba, Laguna. Following the change in address, taxpayer sent two letters to the Revenue District Office in Alabang, Muntinlupa City, which has jurisdiction over the taxpayer's address in Las Pinas. The first letter was a notice of taxpayer's dissolution and the second letter was a manifestation indicating the submission of various documents supporting the taxpayer's dissolution, among which was BIR Form No. 1905, which refers to an update of information contained in taxpayer's tax registration. Thereafter, a Formal Assessment Notice was sent by the BIR through registered mail on January 24, 2003 at the taxpayer's former address in Las Piñas City, assessing the taxpayer of various deficiency taxes for the year 1999. On March 4, 2004, a First Notice Before Issuance of Warrant of Distraint and Levy was sent to the residence of one of the taxpayer's directors. On March 19, 2004, taxpayer filed a protest letter citing lack of due process and prescription as grounds. For lack of action by the BIR on the taxpayer's protest, the latter filed a Petition for Review with the CTA.

The CTA Division and En Banc granted the petition. On appeal to the Supreme Court, the Court ruled that under Section 223 of the Tax Reform Act of 1997, the running of the Statute of Limitations provided under the provisions of Sections 203 and 222 of the same Act shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected. Also, under Section 11 of Revenue Regulations No. 12-85, in case of change of address, the taxpayer is required to give a written notice to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business. However, these provisions on the suspension of the three-year period to assess apply only if the BIR Commissioner is not aware of the whereabouts of the taxpayer. In this case, the BIR, by all indications, is well aware that e taxpayer had moved to its new address in Calamba, Laguna. The Court also noted that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of taxpayer's tax liabilities for 1999 at the latter's new address in Laguna. Moreover, the RDO previously sent taxpayer a letter informing the latter of the results of their investigation and inviting it to an informal conference. Subsequently, the RDO also sent taxpayer another letter acknowledging receipt of the latter's reply. These two letters were sent to taxpayer's new address in Laguna.

Had the RDO not been informed or was not aware of respondent's new address, he could not have sent the said letters to the said address. Furthermore, the BIR should have been alerted by the fact that prior to mailing the FAN, the BIR sent to taxpayer's s old address a Preliminary Assessment Notice but it was "returned to sender." Yet, despite this occurrence, the BIR still insisted in mailing the FAN to respondent's old address. Hence, despite the absence of a formal written notice of taxpayer's change of address, the fact remains that the BIR became aware of taxpayer's new address. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed. *(**Commissioner of Internal revenue vs. BASF Coating + Inks Philippines, Inc. G.R. No. 198677, November 26, 2014)***

8. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct one's income, such as the expenditure method.

The Bureau of Internal Revenue issued a letter of authority authorizing its revenue officers to investigate Spouses Antonio Villan Manly (Antonio) and Ruby Ong Manly for their internal revenue tax liabilities for the taxable year 2003 and prior years. Antonio is a stockholder and the Executive Vice-President of Standard Realty Corporation, a family-owned corporation. He is also engaged in rental business. His spouse is a housewife. The BIR later issued the Spouses a letter requiring them to submit documentary evidence to substantiate the source of their cash purchase of a 256-square meter log cabin in Tagaytay City worth P17,511,010.00. The Spouses, however, failed to comply with the letter. The revenue examiners then executed affidavit showing the declared income of the Spouses for the covered years, and despite such modest income, they were able to buy in cash luxurious vacation house in Tagaytay and motor vehicles. Since the Spouses failed to show the source of their cash purchases, the revenue officers concluded that the income declared in Antonio's income tax returns were underdeclared. And since the underdeclaration exceeded 30% of the reported or declared income, it was considered a prima facie evidence of fraud with intent to evade the payment of proper taxes due to the government. The revenue officers , thus, recommended the filing of criminal cases against the Spouses for failing to supply correct and accurate information in their income tax returns, punishable under Sections 254 and 255 in relation to Section 248(B) of the 1997 Tax Code. The prosecutor recommended the filing of criminal charges but was reversed by the Secretary of Justice. The latter found no willful failure to pay or attempt to evade or defeat the tax on the part of the Spouses as the BIR allegedly failed to specify the amount of tax due and the likely source of income from which the same was based. She also pointed out BIR's failure to issue a deficiency tax assessment against the Spouses which is a prerequisite to the filing of a criminal case for tax evasion. On appeal to the Court of Appeals, the CA ruled that there was no probable cause to charge Spouses as the BIR allegedly failed to state their exact tax liability and to show sufficient proof of their likely source of income. The CA further said that before one could be prosecuted for tax evasion, the fact that a tax is due must first be proved.

On appeal to the Supreme Court, the SC, citing earlier rulings, noted that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be

prosecuted for tax evasion. In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income. ***(Bureau of Internal Revenue vs. Court of Appeals, Sps. Antonio Villan Manly and Ruby Ong Manly G.R. No. 197590, November 24, 2014)***

9. Substantial under-declaration of withholding taxes renders the tax return false, resulting in the application of the 10-year prescriptive period.

Taxpayer was issued a letter or authority by the BIR for the examination of its books of account and other accounting records for income and withholding taxes for the period of 1997 to 1999. On December 13, 2001, taxpayer executed a Waiver of the Defense of Prescription Under the Statutes of Limitation, good until March 29, 2002. On September 15, 2002, a FAN was received by taxpayer for the 1997, 1998 and 1999, alleging, among others, d deficiency withholding tax on compensation. Taxpayer contends that the subject 1997 and 1998 withholding tax assessments on compensation were issued beyond the prescriptive period of three years under Section 203 of the NIRC of 1997. The Supreme Court ruled that there are exceptions to the 3-year prescriptive period, such as, but not limited to a case of a false or fraudulent return with intent to evade tax or of failure to file a return, in which the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission. In this case, the taxpayer's substantial under-declaration of withholding taxes which constituted the "falsity" in the subject returns – giving the BIR the benefit of the period under Section 222 of the NIRC of 1997 to assess the correct amount of tax "at any time within ten (10) years after the discovery of the falsity, fraud or omission." ***(Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100 December 10, 2014)***