

SUMMARY OF SIGNIFICANT CTA DECISIONS (September- October 2010)

By: Atty. Bryan Joseph L. Mallillin

1. The 120-day period is crucial in filing an appeal to the CTA.

The recent Supreme Court case of Commissioner of Internal Revenue v. Aichi Forging Company (GR 184823, October 6, 2010) is instructive. Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit], within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days. *Kepeco Philippines Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 7474, October 21, 2010

* Doctrine reiterated in the cases of *Kepeco Philippines Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 7628, October 19, 2010; and *TeaM Sual Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 7620, September 16, 2010.

2. Judicial rulings should be applied prospectively.

In the recent case of *Mirant Pagbilao Corporation vs. CIR* (G.R. No. 172129, September 12, 2008), the Supreme Court had ruled that the claim for refund of unutilized input VAT payments must be filed within two (2) years from the close of the taxable quarter when the relevant sales were made. Said ruling, however, should not be made to apply to the present case but should be applied prospectively pursuant to and consistent with the numerous rulings of the Supreme Court, given that petitioner Kepeco's claim involves unutilized input taxes for the 3rd quarter of 2000. Hence, the prescriptive period applicable in the instant case would still be the period enunciated in the case of *Atlas Consolidated Mining and Development Corporation vs. CIR* (G.R. Nos. 141104 & 148763, June 8, 2007), where it was held that the counting of the two-year prescriptive period is reckoned from the filing of the quarterly VAT returns. *Kepeco Ilijan Corporation v. Commissioner of Internal Revenue*, C.T.A. E.B. Case No. 528 (C.T.A. Case No. 6550), October 14, 2010

3. The formal letters of demand and assessment notices must be protested within 30 days from receipt thereof to prevent it from attaining finality.

The assessment required by law to be duly protested refers to the respondent's formal letters of demand and assessment notices, which were all received by petitioner on 13 March 2007 but were left unchallenged until the filing of the present petition. Petitioner's protest of 04 July 2006, sent to the Chief of the Assessment Division, is not the administrative protest covered by the provision of the NIRC as it refers to the BIR Post Reporting Notice of 09 June 2006 and not to the issued formal letters of demand and assessment notices all dated 26 February 2007. Also, an examination of

the letters between the petitioner and respondent would show that it was this 04 July 2006 protest which was denied by the letter of the Revenue District Officer (RDO) dated 17 January 2008. As such, the letter of the RDO is not the denial of the protest of an assessment contemplated under the Tax Code. *QCD Ventures, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 7741, October 8, 2010*

4. Assessment is null and void for having been issued on the day the PAN was received by petitioner.

The records show that respondent Commissioner failed to comply with the procedural requirements in assessing petitioner. Specifically, the records indicate that petitioner received the Preliminary Assessment Notice (PAN) dated January 9, 2003 on January 24, 2003. However, on the same day, respondent issued a Final Assessment Notice (FAN). Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC, Revenue Regulations Nos. 12-85 and 12-99, and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of fifteen days within which to reply to the PAN. Clearly, petitioner was denied of its right to due process. *Puratos Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6980, October 4, 2010*

5. The CTA has exclusive appellate jurisdiction to review, by appeal, other matters arising under the NIRC or other laws administered by the BIR which provide a specific period of action.

The CTA has exclusive appellate jurisdiction to review, by appeal, other matters arising under the NIRC or other laws administered by the BIR where the NIRC provides a specific period of action, in which case, the inaction shall be deemed a denial. The failure of respondent CIR to resolve petitioner Cathay's application for VAT registration and change of tax type from percentage tax to VAT cannot be considered as inaction of the petitioner which is appealable to the CTA, for the simple reason that Section 236 of the NIRC does not provide for a specific period for the Commissioner to act or resolve the application for change of tax type. Hence, the CTA has no jurisdiction over the subject matter of the present petition. *Cathay Pacific Airways, Limited v. Commissioner of Internal Revenue, C.T.A. Case No. 7876, September 21, 2010*

6. Once chosen, the carry-over option shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.

Although petitioner UPSI marked with "x" the box corresponding to the phrase "To be issued a tax credit certificate", the categorical avilment of the carry-over option by petitioner in filling out the portion "Prior year's excess credits" prevails. As a consequence, petitioner is barred from seeking the issuance of tax credit certificate for its excess creditable withholding taxes. Since Section 76 of the NIRC mentions no exception or qualification, petitioner's contention that it was not its intention to exercise the option of carry-over considering that the unutilized tax credits had not been actually

credited due to its net loss position and break-even position for the succeeding taxable years is of no moment. *UPSI Management Inc. v. Commissioner of Internal Revenue*, C.T.A. E.B. Case No. 544 (C.T.A. Case No. 7602), September 15, 2010

* Doctrine reiterated in the case of *United Coconut Planters Bank v. Commissioner of Internal Revenue*, C.T.A. Case No. 7614, September 17, 2010.