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ATTORNEYS AT LAW

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REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 43-2022 issued on April 12, 2022

- This Circular prescribes the non-imposition of surcharge on amended tax returns.
- The 25% surcharge shall not be imposed on an amendment of a tax return if the taxpayer was able to file the initial tax return on or before the prescribed due date for its filing. On the other hand, the 25% surcharge shall be imposed on a tax deficiency found during an audit if the particular tax return being audited was found to have been filed beyond the prescribed period or due date.

COURT DECISIONS

SUPREME COURT DECISION

Harte-Hanks Philippines, Inc. vs. CIR
G.R. No. 205189 promulgated on March 7, 2022 (Uploaded on April 18, 2022)

(BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003, up to its reversal by this Court in Aichi on October 6, 2010, where the Supreme Court held that the 120+30-day periods are mandatory and jurisdictional.)

Facts:

On March 23, 2010, Harte-Hanks Philippines, Inc. (Harte-Hanks) filed a written application for refund or issuance of a tax credit for its excess and unutilized input value-added tax (VAT) for the first to second quarters of 2008. The CIR did not act on the application. On June 29, 2010, or after 99 days, Harte-Hanks filed a petition for review with the CTA Division, praying for the refund or issuance of a tax credit. The CTA Division dismissed the petition for review for having been prematurely filed. Citing *CIR v. Aichi Forging Company of Asia, Inc.* (Aichi) stating that it is clear that the petitioner failed to comply with the "120-30" day period. Records of the case show that Harte-Hanks filed its administrative claim for refund on March 23, 2010, and thereafter filed its Petition for Review on June 29, 2010 or before the lapse of the 120-day period on July 21, 2010. Consequently, the Petition for Review was prematurely filed and the CTA lacks jurisdiction. The CTA En Banc affirmed the decision of the CTA Second Division.

Issue:

Was the judicial claim for refund of Harte-Hanks prematurely filed?

Ruling:

No.

The general rule under Section 112 (C) of the Tax Code, as explained in *Aichi*, is clear, plain, and unequivocal. The observance of the 120 and 30-day periods is crucial in filing a judicial appeal before the CTA. However, there is an exception to this general rule, in BIR Ruling No. DA-489-03, a general interpretative rule issued by the CIR, expressly states that the "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." Hence, in the landmark case of *CIR v. San Roque Power Corporation*, it states that BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time

of its issuance on December 10, 2003, up to its reversal by this Court in *Aichi* on October 6, 2010, where the Supreme Court held that the 120+30-day periods are mandatory and jurisdictional.

In this case, although Harte-Hanks did not actually invoke BIR Ruling No. DA-489-03 in any of its pleadings to justify the timeliness of its judicial claim with the CTA, the BIR Ruling applies to all taxpayers who filed their judicial claims within the window period of December 10, 2003 to October 6, 2010. Thus, the CTA has jurisdiction over the judicial claim filed by the petitioner.

CTA EN BANC DECISIONS

CIR vs. Oñate
CTA EB No. 2370 promulgated on March 18, 2022

(Considering that compensatory interest is considered a form of penalty or indemnity for damages, it cannot rightfully be considered taxable income.)

Facts:

Mr. Oñate was awarded a monetary award based on a Supreme Court (SC) judgment against Land Bank in a previous case. He later on filed a claim for refund for erroneously paid withholding tax on the interest income from the judgment award. The claim for refund was granted in full by the Court in division.

Issue:

Was the interest income earned from trust accounts opened and maintained by Mr. Oñate with Land Bank, which became the subject of litigation and subsequently awarded in 2014 by the SC, exempt from tax on passive income under Section 24(B)(1) of the Tax Code?

Ruling:

Yes.

The interest awarded was interest income that Mr. Oñate could have earned on the capital he invested with the bank. Legal interests imposed in the SC's judgment award were imposed by the SC as a form of indemnity for the interest of the funds or capital lost by Oñate and would have earned had they not been wrongfully withdrawn by Land Bank.

Further, applying the *origin of the claim test*, the payments received by Mr. Oñate from winning the case against Land Bank clearly *originated* from the trust accounts he invested in the bank. Because the SC ordered the bank to return the undocumented withdrawals from the trust accounts, those funds are merely a return of capital to the taxpayer. With respect to the interest that were also awarded with the restored funds, they are in the nature of an indemnity to Mr. Oñate for the income he could have earned from the funds had they not been debited, to begin with.

CIR vs. New York Bay Philippines, Inc.
CTA EB No. 2364 and 2366 promulgated on March 24, 2022

(As a rule, when the taxpayer is able to establish prima facie its right to refund by testimonial and object evidence, the BIR should present rebuttal evidence to shift the burden back to the taxpayer-claimant.)

Facts:

During the four quarters of the calendar year (CY) 2015, New York Bay Philippines, Inc. (NYB Philippines) rendered services in the Philippines to non-resident foreign corporations not engaged in business in the Philippines, the consideration for which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of *Bangko Sentral ng Pilipinas*. On March 29, 2017, NYB Philippines filed with the BIR an administrative claim for refund, requesting the refund of or issuance of a Tax Credit Certificate (TCC) of its alleged excess and unutilized input VAT for the four quarters of CY 2015. Due to alleged inaction, NYB Philippines filed a Petition for Review before the CTA. The CTA Division partially granted the petition of NYB Philippines and denied VAT zero-rating to TF International for failure to satisfy the two requisites: (1) services rendered in its favor were not in the same category as "processing, manufacturing or repacking of goods;" and (2) services were performed in the Philippines.

Issue:

Were the services rendered by NYB Philippines to TF International qualify for VAT zero-rating?

Ruling:

Yes.

NYB Philippines sufficiently established that sales to TF International qualify for VAT zero-rating. *First,* NYB Philippines' Certificate of Registration with the BIR shows that its Line of Business/Industry is listed as "6694 Financial Holding Company Activities." *Second,* the Amended Articles of Incorporation of NYB Philippines show that the nature of services it renders to customers, such as TF International, falls in the category of financial holding activities. *Third,* the NYB Philippines' Audited Financial Statements states that the Company is engaged in "providing services to a money remittance business either by electronic bank transfers, door-to-door, and other kinds of fund transfer. All these pieces of evidence, taken together, show that NYB Philippines is engaged in financial holding activities, particularly the business of remittance service providers. This is convincing proof that the services rendered by NYB Philippines to its customers, such as TF International, pertain to financial holding activities which are not within the same category as "processing, manufacturing, or repacking of goods."

In this case, TF Remittance and TF International receive requests from individual senders abroad to send funds to the Philippines and forward these to NYB Philippines. NYB Philippines, upon receipt of the requests, processes them and remits the funds either in local currency or US dollars to the recipients in the Philippines. It is thus sufficiently proven that sales to TF International are not in the same category as "processing, manufacturing, or repacking of goods" and that services were performed in the Philippines. The submitted evidence more than establishes NYB Philippines' prima facie right to refund. As a rule, when the taxpayer is able to establish prima facie its right to refund by testimonial and object evidence, the BIR should present rebuttal evidence to shift the burden back to the taxpayer-claimant. However, in this case, the CIR did not present any contradictory evidence to shift the burden back to NYB Philippines.

CIR vs. S & Woo Construction Philippines, Inc.
CTA EB No. 24020 promulgated on March 22, 2022.

(Nowhere in Section 112(A) of the Tax Code, as amended, *does it require that the input VAT subject of a claim for refund be directly attributable to zero-rated sales. The law merely states that the creditable input VAT should be attributable to zero-rated or effectively zero-rated sales.)*

Facts:

On September 6, 2016, Petitioner company filed an Application for Tax credits/refund with the BIR for its alleged excess/unutilized input VAT for the first quarter of CY 2016. The CIR claims that Section 112(A) of the Tax Code requires that only creditable input taxes that are directly attributable or comes from purchases of goods that form part of the finished product of the taxpayer may be refunded.

Issue:

Does Section 112(A) of the Tax Code require that only creditable inputs taxes which are directly attributable may be refunded?

Ruling:

No.

A textual analysis of Section 112(A) of the Tax Code readily debunks petitioner CIR's position. Nowhere in the said provision does it require that the input VAT subject of a claim for refund be directly attributable to zero-rated sales. The law merely states that the creditable input VAT should be attributable to zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" strictly relates to a situation involving taxpayers having both zero-rated or effectively zero-rated sale, as well as taxable or exempt sale of goods, properties or services and the creditable input VAT, cannot be directly attributed to any of such transactions. In such cases, the input taxes shall be allocated proportionately on the basis of the volume of sales.

City of Makati vs. Casop Atlas Corporation
CTA EB No. 2328 promulgated on March 30, 2022

(Two (2) requisites must first be complied with before a company can be classified as a holding company, namely: (1) the company should be a controlling company that has one or more subsidiaries; and (2) the company should confine its activities primarily to the management of its subsidiaries.)

Facts:

Petitioner City of Makati assessed Respondent Company for delinquent Local Business Taxes (LBT) on its (1) gain of sales of shares of stock; and (2) foreign exchange gains. Petitioner City of Makati argues that Respondent Company is a holding company, and its gross income is subject to LBT under the revenue code of Makati.

Respondent Company submits the view that it is not a holding company under the Revenue Code of Makati because it had no subsidiary or affiliate and did not control or manage any subsidiary because it had no subsidiary to manage.

Issue:

Is the respondent a holding company under the Revised Revenue Code of Makati?

Ruling:

No. The Respondent Company does not fall under the definition of a holding company.

The Court *en banc* ruled that the Respondent Company is not a holding company as contemplated under the Revised Revenue Code of Makati. Before a company can be classified as a "holding company", two (2) requisites must first be complied with. First, the company should be a controlling company that has one or more subsidiaries. Second, the company should confine its activities primarily to the management of its subsidiaries.

In this case, since Respondent Company only owned 7.73% of the total outstanding shares of CCC prior to the same being sold to Atlas, the Respondent Company cannot be considered as its controlling shareholder. The Respondent Company is merely a minority shareholder in CCC without sufficient power to manage and control the same.

Even assuming that Respondent Company is a holding company, Respondent Company still cannot be subjected to LBT. LBT is imposed only on the gross receipts derived from the pursuit of a taxpayer's principal business. The gains from the sale of shares of stock and foreign exchange gains did not derive from Respondent Company's primary business activities as a "holding company." Respondent Company's main business should simply be limited to holding shares to influence the policies of its subsidiaries. It is neither an active investor nor a dealer in securities. Any income or gain that it derives from the buying and selling of its securities are merely incidental to its main business.

CIR vs. V.Y. Domingo Jewellers, Inc.
CTA EB No. 2313 promulgated on March 16, 2022

(There is valid service of notice of assessment when there is proof that it was sent or served and received as well.)

Facts:

BIR served on Respondent through registered mail a Preliminary Assessment Notice (PAN) for deficiency income tax and deficiency VAT. RDO of Manila likewise issued a Notice informing Respondent that the assessments were due for collection. A Final Notice Before Seizure (FNBS) and a Preliminary Collection Letter (PCL) were also issued against the respondent. The BIR subsequently issued a Warrant of Distraint and/or Levy (WDL) against the respondent. However, prior to the WDL's issuance, Petitioner had already garnished Respondent's deposit accounts with BPI, Security Bank, and Metrobank. With this, the respondent filed a Petition for Review with an application for a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WIP). During the trial, the Respondent presented the testimonies of its witnesses to prove that respondent did not receive the PAN, Assessment Notices (ANs), Formal Letter of Demand (FLD), and the Warrant of Garnishment when BIR garnished the bank deposits. The petitioner, on the other hand, presented testimonial evidence to prove that the notices were served through the Respondent's registered mail. The Third Division found that the WDL had been wrongly issued, and the notices were all served at the respondent's old address despite BIR being notified of their new address.

Issue:

Were the assessment notices issued and served to Respondent valid?

Ruling:

No.

The assessment notices were not validly served on Respondent. In the case of *CIR v. Fitness by Design, Inc.*, the Supreme Court held that for the service of a notice of assessment to be valid, it must not only be proved that the same was sent or served but the same was received as well. In this case, the petitioner cannot claim that his service of the PAN and the FLD was valid notwithstanding his admission of sending the same to the Respondent's old address.

CIR vs. Montalban Methane Power Corporation
CTA EB No. 2170 promulgated on March 30, 2022

(In the SC case of CIR v. McDonald's Philippines Realty Corp., wherein the Court ruled that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90.)

Facts:

Montalban Methane Power Corporation (Montalban) received a Letter of Authority (LOA) authorizing Revenue Officers (ROs) Martirez, Ang, Holgado, and Lacsamana and Group Supervisor (GS) Lim, to examine respondent's books of accounts and other accounting records for the calendar year 2009. However, later on, Montalban received a letter from the BIR informing it of the reorganization and realignment of its existing office structure, resulting in the regrouping of ROs and reassignment of cases. Thus, ROs Casipe, Gomez, Doloiras, and Dayacap, under the direct supervision of GS Luna, were directed to replace RO Lacsamana by virtue of a Memorandum of Assignment (MOA). The same was supported by a Memorandum of Assignment signed by Sarah B. Mopia (Mopia), Chief, Excise Large Taxpayers (LT) Audit Division I. Thereafter, Montalban received an FLD and then a Final Decision on Disputed Assessment (FDDA). The CIR contends that the issuance of an MOA is sufficient to confer authority upon the substitute ROs.

Issue:

Is a new LOA necessary in case of reassignment of revenue officers to conduct the audit?

Ruling:

Yes.

In the SC case of *CIR v. McDonald's Philippines Realty Corp.,* wherein the Court ruled that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90.

In this case, RO Casipe continued the audit of the respondent by virtue solely of an MOA without the required LOA. In addition, the said MOA was issued only by the Chief of Excise LT Audit Division I, an official who is not among those authorized to issue LOAs pursuant to existing laws and regulations. Hence, the assessment in the FLD and FDDA is void.

National Grid Corporation of the Philippines vs. The City of Tacloban Zosima Cordano
CTA EB no. 2133 promulgated on March 31, 2022

(Failure to prove prior payment of the required 3% franchise tax would lead to the taxpayer's non-entitlement of its national and local tax exemption under its legislative franchise.)

Facts:

Petitioner Company was granted a legislative franchise to engage in the business of conveying or transmitting electricity through a high-voltage backbone system of interconnected transmission lines pursuant to Section 1 of RA No. 9511.

The Respondent City of Tacloban assessed the Petitioner Company for delinquent Contactor's Tax.

In its defense, Petitioner argued that it is exempt from paying any form of taxes by paying a 3% franchise tax in lieu of all other taxes. pursuant to its legislative franchise under RA No. 9511

Petitioner Company was not able to provide any proof that it had paid the franchise tax prior to the assessments made by the Respondent City. Petition Company further argues that the payment of the 3% franchise tax is not a precondition for the enjoyment of its tax exemption under Sec. 9 of RA No. 9511.

Issue:

Is the payment of 3% franchise tax a condition precedent before the enjoyment of its tax exemption under Sec. 9 of RA No. 9511?

Ruling:

Yes.

The Payment of the 3% franchise tax is a condition precedent before the enjoyment of tax exemption under its franchise. In the case of *National Grid Corporation v. Oliva*, the SC stated that the payment of 3% franchise tax based on gross receipts derived from the exercise of its franchise is sufficient for Oliva to involve its tax exemption under RA 9511. Sec. 9 of RA 9511 covers not only real property taxes, but also other local taxes as well. In reverse, failure to prove such prior payment of the required 3% franchise tax would lead to the petitioner's non-entitlement of its national and local tax exemption under Sec. 9 of RA 9511.

In relation to this case, the Petitioner Company should have offered evidence in court to prove that it has indeed paid the franchise tax for it to fully enjoy the tax exemptions granted under RA No. 9511.

Carmen Copper Corporation vs. CIR
CTA EB No. 2339 promulgated on March 17, 2022

(A taxpayer must timely file its Petition for Review within 30 days from the lapse of the 120-day waiting period. Otherwise, any claim filed beyond the 120+30-day period is outside the jurisdiction of the CTA.)

Facts:

Carmen Copper Corporation (Carmen Copper) filed its administrative claims for refund for the 1st and 2nd quarters of CY 2012 on August 12, 2013 and December 17, 2013, respectively; and for the 3rd and 4th quarters of CY 2012, on March 19, 2014. The BIR partially denied Carmen Copper's administrative claims for refund for the 1st and 2nd quarters of CY 2012 on September 2, 2014 and for the 3rd and 4th quarters of CY 2012 on October 29, 2014. Considering the partial denial of its claims for refund, Carmen Copper filed two (2) Petitions for Review before the CTA on October 7, 2014 and December 22, 2014. The CIR claims that the CTA has no jurisdiction over the case. On the other hand, Carmen Copper asserts that the instant case is not based on the inaction of the CIR , but instead is based on BIR's partial denial of its claims. Allegedly, it is the receipt of the

Notices issued by the BIR-Large Taxpayers Services on September 5, 2014 and November 20, 2014, respectively, that should trigger the application of Section 112(C) of the Tax Code, as amended, and not the lapse of the 120-day period. As such, the Petitions for Review filed before the CTA were timely filed on October 7, 2014 and December 22, 2014.

Issue:

Does the CTA have jurisdiction over the case?

Ruling:

No.

Accordingly, the inaction, i.e., failure of the CIR to render a decision/ruling on the taxpayer's administrative claim for refund, within the 120-day period, is deemed a denial of its claim and should be treated by the taxpayer as such. Hence, a taxpayer should no longer wait for the CIR to render a decision on the taxpayer's administrative claim for refund before filing a judicial claim before the CTA. In other words, a taxpayer must timely file its Petition for Review within 30 days from the lapse of the 120-day waiting period. Otherwise, any claim filed beyond the 120+30-day period is outside the jurisdiction of the CTA.

In this case, Carmen Copper filed its administrative claims for refund for the 1st and 2nd quarters of CY 2012 on August 12, 2013 and December 17. 2013,31 respectively; while for the 3rd and 4th quarters of CY 2012, both were filed on March 19. 2014. Notably, Carmen Copper did not allege any other dates as to when it filed its supporting documents. Hence, the reckoning dates for the start of the running of the 120-day period are August 12, 2013, December 17, 2013 and March 19, 2014. Accordingly, the CIR had 120 days from said dates or until December 10, 2013, April 16, 2014 and July 14, 2014, respectively, within which to render a decision on the said claim. However, in this case, there was no full or partial denial of the claim within the 120-day period. Rather, the 120-day period lapsed without a decision or ruling from the CIR. Thus, Carmen Copper had 30 days from the above-mentioned expiry dates, or until January 9, 2014, May 16, 2014 and August 18, 2014, to file its judicial claims for refund. Carmen Copper filed its judicial claim for refund for the 1st and 2nd quarters of CY 2012 on October 7, 2014, and for the 3rd and 4th quarters of CY 2012 on December 22, 2014, or way beyond the 30-day period to appeal.

Hence, Carmen Copper's judicial claims were filed out of time and the CTA has no jurisdiction over the case.

CIR vs. Gulf Air Company Philippine Branch
CTA EB No. 2439 promulgated on April 12, 2022

(International air carriers doing business in the Philippines shall pay a 2.5% tax on its GPB subject to the principle of reciprocity.)

Facts:

Respondent Company filed with the BIR-ITAD a request for confirmation of its exemption from income taxes imposed on Gross Philippine Billings (GPB). Subsequent to this, Respondent Company filed administrative claims for refund of its alleged overpayment of income taxes imposed on GPB.

Petitioner CIR argues that Respondent Company and Philippine Airlines (PAL) entered into an agreement in which PAL is given the right to sell tickets for Respondent Company which acts as the operating carrier. As such, PAL is not operating in Bahrain, the home country of Respondent Company. It follows therefore that Respondent cannot claim an exemption from payment of income tax under Section 28(A)(3) of the Tax Code.

Issue:

Is the Respondent Company entitled to a refund of its alleged overpayment of income tax on its GPB?

Ruling:

Yes.

Based on Section 28 (A)(3) of the Tax Code, it is clear that an international air carrier doing business in the Philippines shall pay a 2.5% tax on its GPB. However, such international air carrier may, inter alia, avail of a tax exemption based on reciprocity. Reciprocity in tax exemption means that the international air carrier's country of registry also exempts from similar taxes the gross revenue (derived from the carriage of persons and their excess baggage) by Philippine carriers in their country.

The Respondent Company had paid a 1.5% special tax rate pursuant to the Philippine-Bahrain Tax Treaty instead of not paying any income tax as a result of the tax exemption under RA No. 10378. Hence, the Respondent Company is entitled to the erroneously paid income taxes on its GPB.

CIR vs. Fonterra Brands Philippines, Inc.
CTA EB No. 2350 promulgated on April 11, 2022

(Waivers must indicate the nature and amount of the tax due in order to be valid. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed.)

Facts:

In 2011, CIR issued an LOA to examine Fonterra's books of accounts and other accounting records for the FY covering August 1, 2009 to July 31, 2010. In 2014, Fonterra signed Waivers, which purportedly extended the period for assessment of its alleged deficiency taxes. CIR then issued a PAN and FLD with attached Details of Discrepancies to which Fonterra filed its protest letter. In 2015, Fonterra received a copy of the CIR's undated FDDA with attached Details of Discrepancies.

Issue:

1. Are the Waivers valid?
2. Is there a valid assessment?

Ruling:

1. No.

   In this case, the Waivers executed by Fonterra failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. In CIR v. La Flor de Isabela, Inc., the CTA ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due. Hence, the Waivers executed by Fonterra were invalid and as such, did not extend the prescriptive period under Sec. 203 of the Tax Code.

2. No.

   The FLD issued by the CIR failed to state when the payment of the deficiency taxes shall become due. This is a violation of Fonterra's right to be informed of the determinable amount for which it is liable to pay.

An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed.

The taxpayer's due process rights involve the right to be informed of the amount of the tax due. This includes the right to know when the payment of the deficiency tax should be made in order to determine when penalties and interests begin to accrue.

BSP vs. CIR
CTA EB No. 2231 promulgated on April 18, 2022

(Disputes, claims, and controversies, falling under Section 7 of RA No. 1125 even though solely among government offices, agencies, and instrumentalities, including GOCCS remain in the exclusive appellate jurisdiction of the CTA.)

Facts:

Bangko Sentrial ng Pilipinas (BSP) and G7 Bank- Rural Bank of Nabua Inc. (G7 Bank) entered into a Restructured Promissory Note with Trust Receipt Agreement and Deed of Assignment. When G7 Bank defaulted, the mortgaged credits assigned to BSP were subjected to foreclosure.

BIR then assessed the BSP for payment of documentary stamp tax (DST), surcharge, interest, and compromise penalty. BSP allegedly paid the same as evidenced by its Credit Advices to the Treasurer of the Philippines, and filed an administrative claim for refund. CTA Division rendered a decision dismissing the Petition for Review on jurisdictional ground. It ruled that both administrative and judicial claims must be filed within two years from the date of payment of the tax or penalty. BSP argues that the payment of the DST should not have been considered an issue, much less a jurisdictional issue since CIR never disputed BSP's allegations that it paid the DST sought to be refunded.

Issue:

1. Does a CTA Division have jurisdiction to take cognizance of the petition for review filed by BSP in CTA Case No. 9478?
2. Is RA No.1125, as amended by RA No. 9282 and RA No. 9053, contradictory to Presidential Decree (PD) No. 242?

Ruling:

1. Yes.

   CTA Second Division has the exclusive appellate jurisdiction over the tax refund claim filed by BSP in the CTA Case No. 9478 by virtue of the Tax Code, as amended, and RA No. 1125, as amended by RA No. 9282 and RA No. 9503.

2. No.

   RA No. 1125, is the exception to PD No. 242, which is a general law. Disputes, claims, and controversies, falling under Section 7 of RA No. 1125 even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations (GOCCs) remain in the exclusive appellate jurisdiction of the CTA.

   PD No. 242 is a general law that deals with the administrative settlement among government agencies. Its coverage is broad and sweeping. RA No. 1125, a special law,

deals with a specific subject matter, the creation of the CTA, which shall exercise exclusive appellate jurisdiction over tax disputes and controversies.

CTA DIVISION DECISIONS

Atlas Precision Environment Corporation vs. CIR
CTA Case No. 9043 promulgated on March 30, 2022

(Although the CIR is not obliged to accept the taxpayer's explanations, he/she must give some reason for rejecting these explanations. He/She must give the particular facts upon which his/her conclusions are based, and those facts must appear in the record.)

Facts:

CIR issued a PAN against Atlas Precision Environment Corporation (APEC). In reply to the same PAN, APEC filed its letter-protest with the BIR. Subsequently, APEC received the FLD/Final Assessment Notice (FAN), and the assessment here is exactly the same as those stated in the earlier issued PAN. The only difference is that the amounts of interest were adjusted. The BIR merely reiterated the same findings without giving any reason for rejecting the above-stated refutations and explanations made by the petitioner.

Issue:

Was the VAT assessment valid?

Ruling:

No.

In this case, the VAT assessment in the FLD/FAN is exactly the same as those stated in the PAN. The only difference is that the amounts of interest were adjusted. The basic tax due remained the same. In other words, the BIR merely reiterated the same findings as stated in the PAN, without giving any reason for rejecting the APEC's refutations and explanations in its letter-protest dated May 30, 2014. APEC was left unaware of how the BIR appreciated explanations or defenses APEC raised against the subject Pan, in clear violation of its right to administrative due process, thereby rendering the subject VAT assessment void.

For purposes of ensuring taxpayer's (TP) due process rights in tax assessments, Section 228 of the Tax Code provides that TPs shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

To implement this, Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides that after review and evaluation by the CIR or his duly authorized representative, the CIR shall issue to the TP a PAN for the proposed assessment. It shall show in detail the facts and the law, rules and regulations or jurisprudence on which the proposed assessment is based. Further, an FLD/FAN calling for payment of the TP's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the assessment shall be void.

Although the CIR is not obliged to accept the TP's explanations, he/she must give some reason for rejecting these explanations. He/She must give the particular facts upon which his/her conclusions are based, and those facts must appear in the record.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

SEC OGC Opinion No. 22-02 issued on March 2, 2022

- Under this Opinion, the De La Salle University – Parents of University Student Organization (the "Corporation") requested an opinion from the SEC with regard to the current structure of its Board of Trustees.
- Presently, the Corporation is currently composed of only six (6) board members from the stated twenty-five (25) board members under its Articles of Incorporation and By-laws.
- The SEC declared that the powers of the Board of Trustees are suspended due to the fact that its Board does not have the requisite number of Trustees to constitute a quorum.
- In another SEC Opinion, the SEC opined that in the event that a Board is composed of less than the number of directors/trustees under its Articles of Incorporation, such a situation would only give rise to a vacancy of the Board. The power of the Board is not suspended unless the number is reduced below a quorum.
- Without the requisite number of Trustees, the Corporation cannot act as a body corporate for it to conduct business.