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BIR ISSUANCES

REVENUE REGULATIONS (RR)

RR No. 3-2022 issued on April 8, 2022

- This regulation implements the provisions of Republic Act (RA) No. 11635 which amends Section 27(B) of the Tax Code with regard to income tax rates of proprietary educational institutions and non-profit hospitals.
- Beginning July 1, 2020 until June 30, 2023, the preferential corporate income tax rate of one percent (1%) shall apply to the following institutions
    1. Proprietary Educational Institutions;
    2. Non-profit Hospitals; and
    3. Non-stock, Non-profit Educational Institutions whose net income or assets accrue/inure to or benefit any member or specific person.
- After June 30, 2023, the rate shall revert to the preferential corporate income tax.
- The regular corporate income tax rate of twenty-five percent (25%) prescribed under Section 27(A) of the Tax Code shall be imposed on the entire taxable income of the abovementioned institutions if their gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income they derived from all sources.
- In addition to this, a Non-stock, Non-profit Educational Institution shall be subject to the regular corporate income tax rate of twenty-five percent (25%) on the portion of its revenues or assets not used actually, directly and exclusively for educational purposes, as provided in Section 27(A) of the Tax Code.

REVENUE MEMORANDUM ORDER (RMO)

RMO No. 26-2022 issued on April 29, 2022

- This issuance prescribes the Policies, Guidelines and Procedures in the Application for Revalidation of Tax Credit Certificates (TCC).
- All applications for TCC revalidation, shall be filed with the Miscellaneous Operations Monitoring Division (MOMD) under the Collection Service at the National Office any time before the expiration of the validity period of the original TCC.
- Issued TCCs that remain unutilized by a taxpayer after five (5) years from the date of issue, unless an application for revalidation has been filed by the taxpayer before the end of the fifth year, shall be considered invalid.

COURT DECISIONS

SUPREME COURT DECISION

Genoveva S. Suarez vs. People of the Philippines and the BIR
G.R. No. 253429 promulgated on October 6, 2021 (Uploaded on April 18, 2022)

(Only those corporate officers which are directly responsible for and have actively participated in the acts violative of the Tax Code on behalf of the corporation can be held liable.)

Facts:

In 2004, the CIR issued Final Assessment Notices (FANs) and Formal Letters of Demand (FLDs) to 21st Century for taxable year (TY) 2000. The company, represented by its Vice President John S. Suarez at the time of the assessment, filed a protest against the FLDs and

requested for reinvestigation. However, 21st Century failed to submit within 60 days from date of protest supporting documents to refute the assessment. After issuance of two Notices of Delinquent Account in 2005 and 2006, 21st Century still failed to settle its obligations; hence, BIR issued a Final Notice before Seizure (FNBS) addressed to Richard Suarez.

Genoveva Suarez sent a Letter to the BIR requesting additional time to secure the services of an external accountant to assist 21st Century in organizing its records and expressed her willingness to settle 21st Century's tax liabilities, through compromise. Despite this, the BIR issued a Warrant of Distraint and/or Levy (WDL) and, later on, a Warrant of Garnishment to Equitable-PCI Bank against the account of 21st Century, to no avail. Hence, in 2008, Genoveva was charged with violation of Section 255, in relation to Sections 253(d) and 256 of the Tax Code, as amended for failure to pay taxes. The Regional Trial Court (RTC) found her guilty beyond reasonable doubt..

Issue:

Was Genoveva, as the Executive VP of 21st Century, criminally liable for 21st Century's failure to pay its tax liabilities?

Ruling:

No.

Section 253 of the Tax Code expressly identified the following corporate officers who may be held liable for violations of the Tax Code committed by the corporation: *partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees* ***responsible*** *for the violation*. Genoveva was the Executive Vice President (VP) of 21st Century at the time of the assessment, not one of the corporate officers enumerated under the Tax Code.

Genoveva's Letter to the BIR asking for an extension of time to pay, and signifying her intent as representative of the company to settle the tax liabilities, is not enough to pronounce her guilt beyond reasonable doubt. This single Letter does not suffice to prove that Genoveva has actively participated in, or has failed to prevent the violation by 21st Century of the provisions of Tax Code. Further, such Letter may not be received in evidence as an implied admission of her guilt.

FC Capitalization (Equity) Fund, L.P. vs. CIR
G.R. No. 256973 promulgated on November 15, 2021 (Uploaded on April 7, 2022)

(The exemption given under Section 32(B)(7)(a) is applicable only to income tax under Title II of the Tax Code. Its application cannot be made to apply to Title V of the Tac Code on Other Percentage Taxes.)

Facts:

IFC Capitalization (Equity) Fund (IFC) is a non-resident foreign limited partnership engaged in the business of making investments in the private sector banks that have systemic impact in their home markets, traded shares in the Philippine Stock Exchange wherein stock transaction tax of 1/2 of 1 % were withheld from the proceeds of the sales of IFC's listed shares.

Claiming exemption from stock transaction tax, IFC filed a claim for refund. Since the BIR did not act on the claim and the two-year period to file the claim was about to lapse, IFC filed its Petition for Review to the CTA. The CIR insisted that IFC correctly paid the stock transaction tax. The CTA Division ruled that there was an erroneous or illegal collection of

stock transaction tax and cited Section 32(B)(7)(a) of the Tax Code, which provides for exclusions from gross income of income derived by the foreign government. The CTA *En Banc* reversed the decision of the CTA Division and held that IFC is not entitled to claim the refund.

Issue:

Is the stock transaction tax an income tax covered by the exemption under Section 32(B)(7)(a) of the Tax Code?

Ruling:

No.

Stock transaction tax is found under Title V on Other Percentage Taxes. A percentage tax a national tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services. An income tax, on the other hand, is a national tax imposed on the net or the gross income realized in a taxable year.

The exemption given under Section 32(B)(7)(a) is applicable only to income tax under Title II of the Tax Code. Its application cannot be made to apply to Title V of the Tax Code on Other Percentage Taxes. Further, it is an oft-repeated rule that tax refunds or credits - just like tax exemptions -are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit, which IFC failed to do.

DOF, represented by its Secretary and the BIR represented by its Commissioner vs. Asia United Bank, et al.
GR Nos. 240163 & 240168-69 promulgated on December 1, 2021 (Uploaded on May 12, 2022)

(Administrative issuances must not override, supplant, or modify the law; they must remain consistent with the law they intend to carry out.)

Facts:

On March 15, 2011, the DOF, through the Secretary of Finance issued RR No. 4-2011 which prescribes the rules on "proper allocation of costs and expenses amongst income earnings of banks and other financial institutions for income tax reporting purposes. In this RR, a bank may deduct only those costs and expenses attributable to the operations of its Regular Banking Units (RBU) to arrive at the taxable income of the RBU subject to regular income tax. Any cost or expense related with or incurred for the operations of its foreign currency deposit units (FCDU), offshore banking unit (OBU) and not allowed as deductions. A Petition for Declaratory Relief was filed with the RTC wherein the RTC granted such Petition ruling that the RR was declared null and void.

Issues:

1. Does the RTC have jurisdiction over the petition assailing the validity of RR 4-2011?
2. Is RR No. 4-2011 a valid regulation issued by the DOF and BIR?

Ruling

1. No, the RTC has no jurisdiction over the present petition.

   The Supreme Court, in a plethora of cases, has consistently ruled that it is the CTA jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance. It is the CTA, and not the RTC, that has the jurisdiction to rule on the constitutionality and validity of revenue issuances by the CIR.

2. RR No. 4-2011 is not a valid regulation.

   The BIR expanded or modified the law when it curtailed the income tax deductions of respondents and when it sanctioned the method of accounting the respondents should use, without any basis found in the Tax Code.

   The RR did not simply provide details for the enforcement of the provisions in the Tax Code. Neither did it interpret the provisions of the Tax Code. Instead, RR No. 4-2011 modified what was explicitly provided therein. This amounts to tax legislation which is a matter within the authority of the legislative department only.

   RR No. 4-2011 contravenes the following sections of the Tax Code:

   - Section 43 - which provides the general rule for taxpayer's accounting periods and methods of accounting;
   - Section 50 - with regard to the rule that the CIR is authorized to distribute, apportion, or allocate gross income or deductions if they determine that such distribution, apportionment, or allocation: (a) is necessary in order to prevent evasion of taxes; or (b) clearly to reflect the income of organizations, trades, or businesses;
   - Section 34 - In issuing said RR, which requires the aforesaid allocation of costs and expenses of banks with respect to its RBU and FCDU/Expanded FCDU or OBU operations and as to its "tax paid income" and "tax exempt income" activities, Petitioners have effectively imposed an additional requirement for deductibility of expenses which is not provided under the Tax Code. RR No. 4-2011, therefore, effectively qualified the deduction bestowed by the Tax Code, thereby modifying the law.

Asian Transmission Corporation vs. CIR
G.R. No. 230861 promulgated on February 14, 2022 (Uploaded on May 13, 2022)

(The waiver's validity in relation to the timeliness of the CIR's subsequent issuance of a tax assessment is not determined by a mere plurality of the defects committed between the BIR and the taxpayer.)

Facts:

The CIR's right to assess Asian Transmission Corporation (ATC) for deficiency taxes was due to prescribe in the first quarter of 2006. However, the execution of eight Waivers of the Defense of Prescription under the Statute of Limitations of the Tax Code (Waivers), through Roderick M. Tan, the Vice President for Personnel and Legal Affairs of ATC, had consented to extend the BIR's investigation period and the CIR's assessment period until December 31, 2018. Consequently, this allowed the CIR to serve a FLD on July 15, 2008 assessing ATC for deficiency taxes.

Issue:

Has the CIR's right to assess already prescribed?

Ruling:

No.

The following are the defects found in the Waivers:

a. The notarization of the Waivers was not in accordance with the 2004 Rules on Notarial Practice;

b. Several waivers clearly failed to indicate the date of acceptance by the BIR;
c. The Waivers were not signed by the proper revenue officer; and
d. The Waivers failed to specify the type of tax and the amount of tax due.

In this case, both parties were at fault. On one hand, the BIR failed to observe the proper procedure in the execution of a valid waiver, as prescribed by Revenue Delegation Authority Order No. (RDAO) 05-01. However, ATC was also remiss in its responsibility of preparing the waiver prior to submission to and filing before the BIR. Hence, pursuant to the equitable principles of *in pari delicto*, unclean hands, and estoppel should be applied.

Moreover, although the alleged defects caused by the BIR outnumber the sole defect caused by ATC, if a waiver suffers from defects on account of both parties, the waiver's validity in relation to the timeliness of the CIR's subsequent issuance of a tax assessment is not determined by a mere plurality of the defects committed between the BIR and the taxpayer. That ATC acquiesced to the BIR's extended investigation and failed to assail the Waivers' validity at the earliest opportunity gives rise to estoppel. Moreover, ATC's belated attempt to cast doubt over the Waivers' validity could only be interpreted as a mere afterthought to resist possible tax liability.

CIR vs. Court of Tax Appeals Second Division and QL Development, Inc.
G.R. No. 258947 promulgated on March 29, 2022 (Uploaded on May 25, 2022)

(The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent returns or failure to file a return.)

Facts:

On December 12, 2014, the CIR sent out a FAN/FLD with Details of Discrepancies to QL Development, Inc. (QLDI) for the assessment of deficiency taxes covering taxable year 2010, to which QLDI failed to file a protest within the 30-day period provided by law.

Subsequently, as there was no disputed assessment to speak of, as no protest was filed, the CIR issued a Final Decision on Disputed Assessment (FDDA), which QLDI received on March 3, 2015.

QLDI elevated the case to the CTA by way of Petition for Review. The CTA Division held that the period within which the CIR may collect deficiency taxes had already lapsed. The CTA Division ruled that when an assessment is timely issued, the CIR has five years to collect the assessed tax, reckoned from the date the assessment notice had been released, mailed, or sent by the Bureau of Internal Revenue (BIR) to the taxpayer. Thus, in this case, the CIR had five years from December 12, 2014, or until December 12, 2019, to collect the deficiency taxes. However, the CIR issued the BIR letters for the collection of taxes on various dates in 2020, which were all beyond December 12, 2019.

Issue:

Has the CIR' s right to collect taxes already prescribed?

Ruling:

Yes.

The CIR 's right to collect taxes had prescribed. However, the three-year, and not the five-year, period applies to this case. In *CIR v. United Salvage and Towage (Phils.), Inc.,* the SC held that in cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes. Hence, the CTA Division erred when it

applied the five-year period to collect taxes. The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return.

In this case, since the FAN/FLD was mailed on December 12, 2014, the CIR had another three years reckoned from said date, or until December 12, 2017, to enforce collection of the assessed deficiency taxes. Verily, prescription had already set in when the CIR initiated its collection efforts only in 2020.

Republic of the Philippines, represented by the BIR vs. First Gas Power Corporation
G.R. No. 214933 promulgated on February 15, 2022 (Uploaded on May 16, 2022)

(The Supreme Court in the Fitness by Design case held that a FAN is invalid if it does not contain a definite due date for payment by the taxpayer.)

Facts:

First Gas received Letter of Authority (LOA) authorizing BIR representative to examine books of accounts and other accounting records for all revenue taxes for the taxable years 2000 and 2001. Record shows that First Gas and its authorized representative and the BIR executed three (3) Waivers of the Defense of Prescription under the Statute of Limitations. First Gas received the FAN and the FLD, all date July 19, 2004, on September 6, 2004.

Issue:

Were the assessments valid?

Ruling:

No.

The FAN and FLD for taxable year 2000 were invalid. The Waivers were defective; hence, the BIR's period to issue the FAN and FLD has already prescribed. First Gas filed two (2) ITRs for taxable year 2000 on June 30, 2000 and April 16, 2001, respectively. BIR then had until October 16, 2003 and April 16, 2004 within which to assess First Gas for deficiency income tax for TY 2000. However, First Gas received the FAN and the FLD, all dated July 19, 2004, only on September 6, 2004, which is clearly beyond the three-year prescriptive period provided under Section 203 of the Tax Code. Despite the execution of three (3) Waivers, such were found to be defective because the date of acceptance by the BIR was not indicated therein.

RMO 20-90 and RDAO 05-01 clearly mandate that the date of acceptance by the BIR should be indicated in the waiver. This is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.

Although BIR contends that the date of the notarization should be presumed as the date of acceptance, the Court disagreed and reiterated CTA's observation that these dates refer to different aspects, as the notary public is distinct from the CIR who is authorized by the law to accept Waivers of the Statute of Limitations.

Moreover, the FAN and FLD for taxable year 2001 were also invalid because they failed to indicate a definite due date for payment. In this case, the due date in each of the FAN was left blank. The last paragraph of each of the assessments stated only the following:

> "In view thereof, you are requested to pay your aforesaid deficiency income tax liability/penalties through the duly authorized agent bank in

which you are enrolled within the time shown in the enclosed assessment notice."

The Supreme Court in *CIR v. Fitness by Design, Inc.* held that a FAN is not valid if it does not contain a definite due date for payment by the taxpayer. In relation to the present case, the assessment against First Gas is null and void due to the failure of the BIR to indicate a definite due date for payment.

CTA EN BANC DECISIONS

Milestone Holdings Corp vs. CIR
CTA EB No. 2224 promulgated on April 27, 2022

(The 30-day period to appeal before the CTA shall be counted from the receipt of the WDL.)

Facts:

Milestone Holdings Corp (Milestone) received a Letter Notice stating that after the computerized matching of information/data in its income tax returns, the BIR found a discrepancy in tax payments. On April 24, 2014, a WDL was served upon Milestone by the BIR. Thereafter, Milestone filed a Petition for Review on August 8, 2014, praying for the lifting of the WDL. The CTA Division dismissed the case for being filed out of time. Milestone alleges that its failure to file the petition for review within 30 days from receipt of the WDL was not a jurisdictional defect.

Issue:

Does the CTA have jurisdiction over the case?

Ruling:

No.

The Petition for Review was not timely filed. In case of an adverse decision or ruling, or inaction of the CIR, the taxpayer is given a period of thirty (30) days from receipt of the decision or ruling, or the expiration of the period fixed by law, to file a Petition for Review with the CTA. The Supreme Court has previously ruled that the failure to comply with the 30-day period would deprive the CTA of jurisdiction to hear and try the case. The 30-day period to appeal before the CTA shall be counted from the receipt of the WDL.

The remedy for Milestone was to appeal to the CTA within 30 days from the date that it was notified of the WDL. Thus, it had 30 days from April 24, 2014, or until 26 May 2014, to appeal and challenge the validity of the WDL with the CTA. However, it only filed the Petition for Review on August 8, 2014, which is clearly beyond the 30-day reglementary period provided by law, rules and regulations, and applicable jurisprudence.

CIR v. The Orchard Golf and Country Club, Inc.
CTA EB No. 2335 promulgated on April 25, 2022

(The CIR or his duly authorized representative is duty bound to wait for the expiration of the 15-day period, reckoned from the date of receipt of the PAN, before the FLD/FAN can be issued.)

Facts:

On March 26, 2014, The Orchard Golf and Country Club, Inc. (Orchard Golf) received a Preliminary Assessment Notice (PAN) from the BIR, which states that it is liable for deficiency taxes for taxable year 2010. Subsequently, on April 10, 2014, Petitioner filed the

Request for Reinvestigation dated April 8, 2014, in respect of the said PAN. On April 21, 2014, Petitioner received the FLD/FAN issued on March 28, 2014.

Issue:

Is the issuance of the FLD/FAN barely two (2) days from Orchard Golf's receipt of the PAN in violation of Orchard Golf's right to due process?

Ruling:

Yes.

The issuance of the PAN, as well as giving the taxpayer fifteen (15) days from receipt of such PAN to respond thereto, are part of due process in the issuance of tax assessments. The CIR or his duly authorized representative is duty bound to wait for the expiration of the 15-day period, reckoned from the date of receipt of the PAN, before the FLD/FAN can be issued.

In the instant case, the PAN dated February 17, 2014 was received by Orchard Golf on March 26, 2014. However, the subject FLD/FAN was issued on March 28, 2014, or barely two (2) days from Orchard Golf's receipt of the PAN. Clearly, the FLD/FAN was issued before the lapse of the 15-day period granted to the taxpayer to respond to the PAN. Thus, the FLD/FAN was issued prematurely depriving Orchard Golf of the opportunity to be heard on the PAN, in violation of the due process requirement in the issuance of tax assessments. Consequently, the subject FLD/FAN is void and bears no valid fruit.

CIR v. Ma. Jethra Pascual
CTA EB No. 2400 promulgated on May 5, 2022

(Under Section 32(B)(6)(b) of the Tax Code, as amended, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall not be included in gross income and shall be exempt from taxation.)

Facts:

In 2014, Pascual, an employee of Deutsche Bank (DB), was officially terminated due to redundancy at 46 years old. DB gave Pascual her separation pay and "retirement pay" among others as part of her severance package. Due to her age at the time of termination, DB viewed her "retirement pay" as subject to an income tax. Aside from her compensation income, Pascual also received income from her laundry business and lease of real property. For her mixed income, Pascual filed her income tax return. She also filed an Application for Issuances of Tax Credits/Refunds and sent a Claim of Refund to the BIR requesting a refund of the taxes erroneously withheld and remitted by DB.

Issue

1. Was redundancy clearly established? Yes.
2. Is Pascual entitled to the refund of the taxes claimed? Yes.

Ruling:

1. Redundancy is clearly established since item II(5) of RMO No. 26-2011, as amended by RMO No. 66-2016, is not applicable in this case. Said provision obliges the employer to submit documentary requirements. In this case, DB cannot be expected to submit such requirements as it was the one who considered a part of Pascual's separation benefits as taxable "retirement pay". DB's submission of said requirements would negate DB's own presumption of said benefit's taxability.

Further, RMO No. 66-2016 does not have any retroactive effect pursuant to Sec. 246 of the Tax Code, as amended. It must be noted that RMO No. 66-2016 only came into effect on December 6, 2016, while Pascual was officially terminated on September 17, 2014. She filed her ITR for TY 2014 on April 11, 2015 and, later, her administrative claim for refund on July 9, 2015.

2. Pascual's benefit under the Retirement Plan despite its erroneous designation as "retirement pay" is not taxable since she received the same as a consequence of redundancy and due to her retirement.

   Under Section 32(B)(6)(b) of the Tax Code, as amended, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall not be included in gross income and shall be exempt from taxation. It is undisputed that Pascual lost her employment due to redundancy in accordance with Article 283 of the Labor Code. The benefit that accrued in Pascual's favor under DB's retirement plan was a consequence of her separation from DB; only that the amount of her separation pay was computed consistent with the values used for computing a retirement pay. CIR focused too heavily on the benefit's designation as "retirement pay" that he ignored the ultimate reason why such benefit was awarded to Pascual in the first place.

CIR v. New Farmers Plaza
CTA EB No. 2290 promulgated on May 6, 2022

(While it is true that a void assessment produces no effect, the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. NFPI's failure to comply with the 30-day statutory period barred the appeal and deprived the court of jurisdiction to entertain and determine the validity of the assessment.)

Facts:

On September 5, 2008, the CIR issued Letter of Authority to New Farmers Plaza, Inc. (NFPI). Subsequently, the CIR issued a PAN for 2007 to NFPI. NFPI did not reply to the PAN. On June 24, 2011, the CIR issued a FLD. NFPI did not file a protest against the FLD. More than 3 years thereafter, NFPI received a WDL dated October 22, 2013. In May 2014, instead of filing an appeal against the WDL, NFPI filed an Application for Compromise dated May 2, 2014. On August 23, 2016, NFPI received Notice of Denial dated June 1, 2016 of its Application for Compromise. Later, NFPI questioned the denial of its offer of compromise. The CTA Division declared the assessment null and void and cancelled the WDL for having been issued in violation of NFPI's due process.

Issue:

Can the deficiency assessment and the WDL still be given effect?

Ruling:

Yes.

Section 228 of the Tax Code provides that the protest to the FLD and the assessment notice must be made within 30 days from the taxpayer's receipt of the deficiency tax assessment; otherwise, the assessment becomes final, executory, and demandable. The rule is that for the court to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a petition for review may be taken to the court. Similarly, in relation to Sections 7(a)(1) and 11 of R.A. 1125, as amended, judicial appeals questioning the validity of WDL should be filed within 30

days from receipt thereof. In the present case, it was never disputed that NFPI, when it received the FLD, it did not file any protest thereto. Consequently, the deficiency tax assessments against NFPI had long attained finality and cannot be questioned on appeal.

Likewise, the WDL is valid. NFPI failed to file an appeal to question the validity of the WDL. Instead of filing a Petition for Review, NFPI merely filed an Offer of Compromise before the BIR, more than 6 months after it received the WDL. Thus, the WDL attained finality, and the CTA was divested of any authority to review the validity thereof. The CTA *En Banc* reiterated that it shall not permit the circumvention of the unappealable character of an assessment that had long attained finality by allowing an inquiry into the validity of the assessment considering that NFPI's Petition for Review strictly involves a challenge to the correctness of the denial of its offer of compromise.

CIR v. Izone Technologies, Philippines
CTA EB No. 2295 promulgated on May 5, 2022

(The 3-year period to assess by the BIR is reckoned from date of filing and payment of the FBT)

Facts:

On January 9, 2012, Izone received the PAN. However, CIR issued the FLD dated January 5, 2012 and the four (4) FANs, all dated January 13, 2012, without waiting for Izone's reply to the PAN or at least the expiration of the 15-day period provided by law.

Issues:

1. Was Izone's right to due process violated?
2. Was the cancellation of the deficiency fringe benefits tax (FBT) assessment valid?
3. Is Izone entitled to a refund of the FBT it paid?

Ruling

1. Yes.

   Izone's right to due process was violated when CIR issued the FAN and the FLD without waiting for Izone's reply to the PAN or at least the expiration of the 15-day period provided by law. Izone had until January 24, 2012 to file its reply to the PAN. Notably, even prior to Izone's receipt of the PAN and the lapse of the 15-day periods for Izone to file its protest against the PAN, CIR already issued the subject FLD on January 5, 2012. It must be noted that the date of actual receipt of the FLD on April 10, 2012 is of no consequence. What is material is the date of the issuance of the FLD because that shows CIRs' non-observance of the 15-day period given to Izone to file a protest and be heard on its defenses. Hence, the belated filing of Izone's reply to the PAN on February 17, 2012 is immaterial and does not cure the apparent violation of its right to due process.

2. Yes.

   The assessment on Izone's FBT for the 1st quarter of TY 2008, which it received on April 10, 2012, was issued beyond the three-year prescriptive period. The last day for CIR to issue an assessment was on April 10, 2011 (reckoned from date of filing and payment of the FBT on April 9, 2008).

3. No.

   Izone is not entitled to the refund of erroneously or illegally collected tax because it failed to comply with the requisites under Sections 204(C) and 229 of the Tax Code.

The administrative and judicial claims for refund were not filed within two (2) years after the payment of the FBT for the 1st quarter of TY 2008.

CIR v. Sunnyphil Incorporated
CTA EB No. 2232 promulgated on May 24, 2022

(Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.)

Facts:

On January 14, 2022, Sunnyphil received a FAN for its alleged deficiency Income Tax, Expanded Withholding Tax, Improperly Accumulated Earnings Tax, and compromise penalty for taxable year 2006. After Sunnyphil filed its Formal Protest on January 26, 2010, an FDDA was later on issued by the CIR. On May 25, 2006, Sunnyphil paid its tax liabilities under protest. Thereafter, Sunnyphil filed an administrative claim for refund on the ground that the BIR's right to collect had already prescribed. Sunnyphil later on filed a Petition for Review in the CTA Division.

The CTA Division ruled that Sunnyphil is entitled to its claim for refund for taxes as it was collected under a void assessment. The CTA Division invalidated the CIR's assessment of Sunnyphil on the ground that it was a Memorandum not a LOA that was issued to the Revenue Officer (RO) who conducted the audit investigation. The CIR, after having its Motion for Reconsideration (MR) denied by the CTA Division, appeals the aforesaid decision to the Court *En Banc.*

Issue:

Did the CTA Division err in denying the CIR's MR?

Ruling:

No, the CTA Division did not err in denying the MR of the CIR.

In the present case, Sunnyphil was assessed for alleged deficiency taxes in 2010, thus, the 5-year period under Section 222(c) of the Tax Code, as amended, would apply. Under this section, any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

The records show that Sunnyphil received the FAN on January 4 2010. From then on, the CIR would have five (5) years or until January 14 2015 to collect Sunnyphil's alleged tax deficiencies through distraint, levy, or a collection suit instituted before this Court. However, the CIR took no action to collect from respondent within the said 5-year period. As the records clearly show, Sunnyphil received the FDDA, Preliminary Collection Letter (PCL), and FNBS only on 13 May 2016, 03 May 2016, and 16 May 2016, respectively, or more than a year after the end of the 5-year prescribed period.

CIR vs. Airglobe, Inc.
CTA EB No. 2348 promulgated on May 23, 2022

(If the Revalidation/Reassignment Notice was issued by the Regional Director and contains the same information as in a Letter of Authority, the former may be considered as the functional equivalent of the latter.)

Facts:

On 2008, OIC Regional Director (RD) Guerrero issued Letter of Authority No. 2007-00044111 authorizing RO Dela Cruz and Group Supervisor (GS) Yu to examine Airglobe's books of accounts for the taxable year 2007. Later, on 2009, a Revalidation/Reassignment Notice, with the subject "Letter of Authority No. 2007-00044111 dated July 29, 2008" was issued by RD Misajon, authorizing RO Lutching and GS Dela Cruz to continue the audit on Airglobe. Airglobe maintains that there must be a grant of authority before any RO can conduct an examination, and in the absence of such authority, the examination or assessment is void.

The PAN was issued by the BIR on December 29, 2010, and the same was served upon Airglobe on December 30, 2010. Thus, Airglobe had 15 days therefrom or on until January 14, 2011 within which to file a reply to the PAN. However, on the same last day for the submission of reply or on January 14, 2011, the FAN was immediately issued and mailed to Airglobe. BIR contends that, nevertheless, Airglobe was able to file a protest to the PAN. Airglobe's request for reinvestigation was even granted and was able to transmit pertinent documents.

Issues:

1. Would the Revalidation/Reassignment Notice suffice for the authority of RO Lutching's authority to continue the audit?
2. Was Airglobe's right to due process violated?

Ruling:

1. Yes.

   If the Revalidation/Reassignment Notice was issued by the Regional Director and contains the same information as in a Letter of Authority, the former may be considered as the functional equivalent of the latter.

   In jurisprudence, what is proscribed is the practice of substituting the ROs named in the LOA with new ROs who do not have a separate LOA issued in their name or merely by virtue of a MOA, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment of ROs, which is signed by a mere revenue district officer or other subordinate official, and not by the CIR or his duly authorized representative.

   Here, RO Lutching continued the examination of Airglobe's books of accounts on the strength of the Revalidation/Reassignment Notice. The same explicitly referred to "Letter of Authority No. 2007-00044111 dated July 29, 2008" and indicated RO Lutching's and GS Dela Cruz' authority to continue such audit, which is deemed sufficient according to RAMO No. 01-00[i]. Further, the contents of the subject Revalidation/Reassignment Notice are similar to the contents of the LOA, because: first, both documents were particularly addressed to Airglobe; second, both documents specifically named the ROs authorized to examine the books of Airglobe; third, both documents stated that the taxes covered by the audit are Airglobe's all internal revenue taxes; and lastly and more importantly, both documents were signed by a regional director, who is duly authorized to issue LOAs under Section 10(c) of the Tax Code, as amended.

   More so, the Revalidation/Reassignment Notice was addressed to and in fact received by Airglobe on 2009; hence, not a mere internal document. Clearly, for all intents and purposes, the Revalidation/Reassignment Notice issued to Airglobe, which contains

essentially all the essential details of an LOA, is sufficient authorization for RO Lutching to continue the examination of the books of Airglobe.

2. Yes.

To implement the procedural and substantive rules on assessment of national internal revenue taxes, the BIR issued RR No. 12-99, which essentially states that, the taxpayer has 15 days from the date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can the BIR issue the FLD/FAN.

The PAN is part of due process. The persuasiveness of the right to due process reaches both substantial and procedural rights, and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process. Further, the Supreme Court has already ruled that, notwithstanding the fact that the taxpayer was able to file a protest to the FAN, it does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.

Considering that the FAN was issued without waiting for the lapse of the 15-day period for Airglobe to file a reply to the PAN, the assessments are void; thus, Airglobe's right to due process was violated. Despite the holding that RO Lutching is authorized to continue the examination of Airglobe's books, the resulting assessments are still void.

Ayala Corporation vs. CIR
CTA EB No. 2417 promulgated on May 18, 2022

(The CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA En Banc.)

Facts:

In April 2015, Ayala Corporation filed is Annual Income Tax Return (AITR) for calendar year (CY) 2014 through the eFiling and Payment System (eFPS) showing overpayment of income tax due. On the same date, it manually filed said AITR with the BIR Large Taxpayer Service Office (LTSO).

In March 2017, Ayala Corporation filed an administrative claim for the issuance of TCC for its unutilized Creditable Withholding Tax (CWT) for CY 2014 with the BIR LTSO. Since the two-year prescriptive period within which to apply for the issuance of TCC was about to expire, a Petition for Review was also filed.

In February 2020, the Second Division promulgated the Assailed Decision partially granting the Petition for Review. In response, Ayala Corporation filed a "Motion for Partial Reconsideration" while the CIR filed via registered mail his "Motion for Partial Reconsideration (re: Decision dated February 26 2020)". Thereafter, the CTA Division promulgated the Assailed Amended Decision. Both parties then filed their respective Petitions for Review with the CTA *En Banc*.

Issue

Were Ayala Corporation and the CIR correct to file their Petitions for Review before the Court *En Banc*, without filing a prior motion for reconsideration of the Assailed Amended Decision?

Ruling:

No.

The CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. In order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. The same is true in the case of an amended decision. As explained in *CE Luzon Geothermal Power Company, Inc. v. CIR*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

In the recent case of *CIR v. COMELEC* (G.R. Nos. 244155 & 247508, May 11, 2021), the SC clarified the *Asiatrust* principle, and decreed that only a new or different amended decision necessitates the filing of a motion for reconsideration or new trial. The SC defined an amended decision as a decision which is based on a reevaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision.

The conclusions in the Assailed Amended Decision were arrived at by the court *a quo* by (a) re-evaluating Ayala Corporation's arguments on its substantiation of prior year's excess tax credit and (b) re-examining some of Ayala Corporation's Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) which were disallowed as a result. Undoubtedly, the same is a "new or different" decision, not a mere clarification which does not need a MR or MNT before filing a petition for review with the Court *En Banc.*

CTA DIVISION DECISIONS

SOFGEN Holdings Limited, Philippine Branch v. CIR
CTA Case No. 9691 promulgated on April 21, 2022

(The LOA issued shall only cover a taxable period not exceeding one (1) taxable year.)

Facts:

On October 26, 2016, the BIR issued a LOA authorizing the examination of the books of accounts and other accounting records for all internal revenue taxes of SOFGEN Holdings Limited, Philippine Branch (SOFGEN), for the period April 1, 2015 to March 31, 2016. SOFGEN argues that the LOA dated October 26, 2016,62 which covers the examination of its books of accounts and other accounting records for the period from April 1, 2015 to March 31, 2016, is void, since it follows the calendar year as its taxable year for national internal revenue tax purposes.

Issue:

Is the LOA void?

Ruling:

Yes.

The LOA should cover only one (1) taxable year has been the consistent and general policy of the BIR. As a rule, one LOA shall be issued for each taxable year to include all internal revenue tax liabilities of the taxpayer. However, for purposes of verifying tax liabilities of a decedent, one consolidated LA shall be issued to cover the estate tax liability and the income tax liability for the immediately preceding year up to the time of the death of the taxpayer. However, in this case, the LOA dated October 26, 2016 covers the period from April 1, 2015 to March 31, 2016. Because SOFGEN's taxable year follows the calendar year, i.e., from January 1 to December 31, 2015, the subject LOA covers fractions of two taxable

years, i.e. from April 1 to December 31, 2015 and January 1 to March 31, 2016 in violation of the BIR's guidelines as well as jurisprudence on the matter. The LOA is therefore void.

Oro Dare Corporation vs. CIR
CTA Case No. 9846 promulgated on May 19, 2022

(Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.)

Facts:

On April 25, 20212, Oro Dare received a Letter Notice (LN) informing it of the discrepancies resulting from the Reconciliation of Listing for Enforcement Summary List of Sales and Purchases (RELIEF) and Tax Reconciliation System (TRS).

Subsequently, Oro Dare received a PAN from the CIR. By reason of such, Oro Dare filed a letter addressed to CIR requesting for an application of compromise based on doubtful validity/jeopardy assessment. The CIR later on issued a Notice of Denial of application for compromise settlement on the ground that Oro Dare failed to justify its claim.

Oro Dare argues that the denial of its application for compromise has no factual or legal basis on the ground that there was an absence of a validly issued LOA rendering the assessment void.

The CIR on the other hand maintains that although the Letter Notice was not entitled Letter of Authority, it contains all the elements necessary to establish a contract of agency between the CIR and the revenue officer. The CIR further argues that there is no strict requirement for the existence of a LOA in a "no contact-audit-approach." In addition, under Revenue Memorandum Circular No. 40-2003, a Letter Notice is sufficient notice of audit and investigation, receipt of which prevents the subject taxpayer from amending the relevant tax return.

Issue:

Did the denial of Oro Dare's compromise application have factual or legal basis?

Ruling:

No.

The denial of the compromise application failed to be supported by any factual or legal basis. The assessment in the present case is void due to the absence of a validly issued LOA. In case of *Medicard Philippines v. CIR,* the Supreme Court held that a Letter Notice cannot be converted into an LOA as these serve different purposes and that a LOA is nonetheless required in RELIEF system and ITS. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system.

Since the Jaw specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

Based on the foregoing jurisprudential pronouncements, the absence of a LOA is fatal to the validity of respondent's claim against petitioner. The Letter Notices issued to petitioner are not equivalent to a LOA. Being a void assessment, no valid fruit can be derived therefrom.

DEPARTMENT OF LABOR AND EMPLOYMENT ISSUANCE

Department Order No. 40 J-22 issued on April 1, 2022

- This issuance amends Rule VII of the Implementing Rules of Book V of the Labor Code of the Philippines as amended by Department Order No. 40, Series of 2003.
- The requirements for request of sole and exclusive bargaining agent (SEBA) Certification shall additionally include the contact details of the requesting union or local and of the company where it operates.
- Within one (1) day from the submission of the request, the Regional Director (RD) shall:
    a. determine whether the request is compliant with requirements for request of SEBA certification and whether the bargaining unit sought to be represented is organized or not; and
    b. direct the management to submit a certified true copy of the payroll for purposes of SEBA certification. The payroll shall be submitted by the management on or before the date of the first validation conference and shall indicate among others the position of the employee, date hired, and manner of payment of wages.
- If the RD finds the request deficient, the RD shall notify the requesting union or local to comply within ten (10) working days from receipt of notice. Failure to comply within the prescribed period shall be deemed withdrawal of the request for SEBA certification. On the other hand, if the RD finds the request sufficient, the RD shall call for a validation conference.
- In a request for certification in unorganized establishment with only one (1) LLO, the RD shall call a conference within five (5) working days for the submission of the:
    a. names of employees in the *proposed* covered bargaining unit who signify their support for the certification, provided that said employees comprise at least majority of the number of employees in the covered bargaining unit; and
    b. certification under oath by the President of the *requesting union or local* that all documents submitted are true and correct based on his/her personal knowledge.
- If the management fails or refuses to provide the payroll during the validation conference, the list of employees in the bargaining unit as certified under oath by the union president, or any similar document provided by the requesting union or local that may aid the RD, shall be used in the validation conference.
- If the requesting union or local, without valid reason, fails to complete the requirements for SEBA certification during the validation conference, the request shall be referred to the Election Officer for the conduct of certification election pursuant to Rule IX of this Rules. Provided, however, that a requesting union or local who justifiably fails to complete the requirements shall have ten (10) working days from notice to comply the same.
- The validation proceedings shall not exceed a total of fifteen (15) working days from the date of the fist validation conference.
- If the RD finds the requirements complete, he/she shall issue within three (3) working days to the requesting union or local a certification as SEBA enjoying the rights and privileges of a SEBA of all the employees in the covered bargaining unit.
- The RD and/or the requesting union or local shall cause the posting of the SEBA certification for fifteen (15) consecutive days in at least two (2) conspicuous places in the establishment of covered bargaining unit.

SECURITIES AND EXCHANGE COMMISSION ISSUANCE

SEC Opinion No. 22-03 issued on March 15, 2022

- In this Opinion, the SEC opined on several matters raised by X Rural Bank concerning distribution of dividends, preference in liquidation of preferred shares, and compliance with the Rural Bank Act and Anti-Dummy Law.
- The SEC established that the act of X Rural Bank in having preference in the dividends on the basis of the par value of the preferred shares is allowed pursuant to Section 42 in relation to Section 6 of the RCC. The SEC also opined that the liquidated value of preferred shares may be distributed on the basis of the par value. This is subject to the condition that the BOD will not be given blanket authority to determine the terms of such preferred shares unless certain features, guidelines or standard to be followed in the issuance of preferred shares are set out in the AOI.
- The proposed capital structure of X Rural Bank complies with the provisions of the Rural Bank Act since over 60% of its voting stocks are owned by Filipinos (The Rural Bank Act allows Foreign Ownership of Rural Banks of 60%).
- The SEC is of the opinion the Rural Banks are deemed to have been taken out of the coverage of the Anti-Dummy Law since foreign banks are now allowed to own, acquire and purchase at least 60% voting shares from the rural bank.

MATA-PEREZ TAMAYO & FRANCISCO (MTF)
Attorneys-at-Law

MTF Counsel is a full-service law firm comprised of experienced, multi-disciplined and innovative tax, customs and international trade, corporate, and litigation attorneys.

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