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ATTORNEYS AT LAW

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BOC ISSUANCE

MEMORANDUM ORDER

Memorandum Order No. 61 issued on May 24, 2022

- This Memorandum Order pertains to the approval of the 2022 Strategic Investment Priority Plan (SIPP) by President Rodrigo Duterte.
- The activities proposed to be included under Tier II of this Memorandum Order are envisioned to promote a competitive and resilient economy and fill in gaps in the Philippines' industrial value chains, and are deemed critical in promoting green ecosystems, ensuring a dependable health system, achieving self-reliance in defense systems, and realizing modern, competitive, and resilient industrial and agricultural sectors. The activities under Tier II include, but are not limited to, green ecosystems which cover electric vehicle assembly and manufacturing; health-related activities; industrial value-chain gaps; among others.
- In addition, the activities proposed to be included under Tier III are projected to accelerate the transformation of the economy primarily through the application of research and development and attracting technology investments. It also includes activities involving the production of equipment parts and services that embed new technologies, and the commercialization of research and development output. The activities under Tier III include but are not limited to research & development and activities adopting advanced digital production technologies of the fourth industrial revolution such as, but not limited to robotics, artificial intelligence, data analytics, among others; highly technical manufacturing and production of innovative products and services; and establishment of innovation support facilities.
- Pursuant to Section 302 of the National Internal Revenue Code (the "Tax Code"), as amended by the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, additional activities that comply with Section 296 of the Tax Code, as amended by the CREATE Act, can qualify under Tiers II and III; Provided that, the additional activities under Tier III are duly endorsed by the relevant agencies such as the Department of Science and Technology (DOST).

SUPREME COURT ISSUANCES

A.M. No. 10-3-7-SC/A.M. No. 11-9-4-SC issued on February 22, 2022

- These Revised Guidelines shall govern the submission of electronic copies of all Supreme Court-bound papers and their annexes pursuant to the Efficient Use of Paper Rule.
- Electronic copies of all Supreme court-bound papers and their annexes must be submitted within 24 hours from the filing of the hard copies by transmitting them through electronic mail.
- When the paper or hard copy is filed in person, by registered mail, or by accredited courier, the same shall be deemed to have been filed on the date and time of filing of the hard copy, not the date and time of the transmission of the electronic copy.
- When the manner of filing of the paper or other court submission is made online, the date of the electronic transmission shall be considered as the date of filing, provided that an EXPRESS PERMISSION IS GRANTED BY THE COURT for the online filing of the following:
    - Initiatory pleadings and initial responsive pleadings, such as an Answer to a Complaint or a Comment to a Petition;
    - Appendices and exhibits to motions, or other documents that are not readily amenable to electronic scanning; and
    - Sealed and confidential documents or records.

- In the absence of express permission from the Court to file the foregoing online, the date of filing shall be the date when the hard copy was filed.
- The electronic copy submitted should be the EXACT COPY of the paper filed in Court. Thus, the following shall be considered as proof of filing:
    - For paper filed in person, the electronic copy shall contain the official receiving stamp of the docketing office, clearly showing the date and time of filing of the hard/paper copy and must be duly signed by the receiving clerk or records officer;
    - For paper sent by registered mail or by accredited courier, the electronic copy shall include the scanned copy of the following:
        - proof of mailing clearly showing the date and time of mailing or delivery to the post office/accredited courier, and
        - proof of payment of fees, when applicable;
    - For paper filed online via electronic mail or other electronic means pursuant to Section 3 (d), Rule 13 of the 2019 Amendments to the 1997 Rules of Procedure, the electronic copy shall include the following documents:
        - PDF copy of the Affidavit of Electronic Filing of the Supreme Court-bound paper and its annexes (if any), with an undertaking that the filer will submit the exact paper/hard copy to the Court in person or by registered mail or by accredited courier, within 24 hours from the date of the electronic transmission;
        - Express authority from the Court to file the initiatory pleadings and initial responsive pleadings, etc., in compliance with Section 14, Rule 13 of the 2019 Amendments to the 1997 Rules of Civil Procedure.
- The electronic copies must be in PDF format and individually saved, as well as individually attached to the e-mail.
- Electronic copies submitted by e-mail must be addressed to the appropriate docketing office which is provided in the Revised Guidelines.
- The submission of electronic copies by electronic mail shall use the following format:

    To: [e-mail address of the appropriate docketing office]
    From: [filer's e-mail address]
    Subject: [Case Number or Docket Number AND Case Title] - [Pleading or Document Title]

- The title of each electronic copy shall contain sufficient information to enable the Court to ascertain from the title: (a) the party or parties filing the paper, (b) the nature of the paper, (c) the party or parties against whom relief, if any, is sought, and the nature of the relief sought.
- In the same manner, as a general rule, all electronic copies of Supreme Court-bound papers and their annexes pertaining to the same case shall be attached to one e-mail.
- In case the total file size of the electronic documents exceeds the maximum size allowed for uploading by the e-mail service provider being used by the filer, the filer shall send the electronic documents in several batches, but each email must be clearly marked by indicating in the subject of the e-mail the batch number of the e-mail and the total batches of e-mail sent (ex. Batch 1 out of 3).
- The filer shall also attach to the e-mail a Verified Declaration that the pleading and annexes submitted electronically are complete and true copies of the printed document and annexes filed with the Supreme Court.

A.M. No. 08-8-7-SC issued on March 1, 2022

- In this issuance, the Supreme Court promulgated the new Rules on Expedited Procedures in the First Level Courts to recalibrate, reconcile, and harmonize the 1991 Revised Rule on Summary Procedure and the 2016 Revised Rules on Small Claims Cases.
- There is a need for such recalibration because of the enactment of Republic Act (RA) No. 11576 which expanded the jurisdictional amount cognizable by the first-level courts in civil cases to PhP2 Million and the jurisdictional amount for recovery of real property with the assessed value to PhP400,000.00, and RA No. 1095 which adjusted the value of property and damage on which a penalty is based and the fines imposed under the Revised Penal Code.
- The Rules on Expedited Procedures in the First Level Courts took effect on April 11, 2022 and apply prospectively. Pending cases that were filed before April 11, 2022, are bound by the rules applicable at the time those cases were filed.

A. Rule on Summary Procedure

- The Rule on Summary Procedure covers a wider scope of civil cases: particularly (1) forcible entry and unlawful detainer cases, (2) civil actions and complaints for damages with claims up to PhP2 Million, (3) cases solely for the revival of the judgment of any first-level court, (4) civil aspect of a violation of the Bouncing Checks Law (Batas Pambansa Blg. [BP] 22) if no criminal action has been instituted therefor, and (5) enforcement of barangay amicable settlement agreements and arbitration awards where the money claim exceeds PhP1 Million. For criminal cases, violation of the Bouncing Checks Law (BP 22) is now under the scope of the Rule, as well as all other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding one year or a fine not exceeding PhP50,000.00. It also includes offenses involving damage to property through criminal negligence where the imposable fine does not exceed PhP150,000.00.
- Videoconference is also allowed as a mode of hearing as far as practicable and if the court finds that it will be beneficial to the fair, speedy, and efficient administration of justice. The provisions on prohibited pleadings and motions and service pursuant to international conventions under the 2019 Amendments to the 1997 Rules of Civil Procedure have been incorporated.
- The Rules on Summary Procedure likewise adjusted the period within which pleadings and actions must be filed or complied with. For the defendant's filing of an answer, it has to be made within 30 calendar days from the service of summons. Preliminary Conference must be held within 30 calendar days from the date of filing of the last responsive pleading and a notice must be issued within five calendar days after the filing of the last responsive pleading.
- For appeals, any judgment, final order, or final resolution in a Summary Procedure case may be appealed to the Regional Trial Court (RTC) which has jurisdiction over the territory under Rules 40 and 122 of the Rules of Court for civil and criminal cases, respectively. The RTC judgment on the appeal shall be final, executory, and unappealable.

B. Rule on Small Claims

- The Rule on Small Claims adjusted the jurisdictional amount of first-level courts from not exceeding PhP400,000.00 or PhP300,000.00 to not exceeding PhP1 Million. There is no more distinction as to whether the claim is filed within or outside Metro Manila.
- For the notice of hearing, this should be served together with the summons. The date of the hearing shall not be more than 30 calendar days from the filing of the Statement of Claim/s, or not more than 60 days if one of the defendants resides or holds business outside the judicial region. If summons is returned without being served on any or all of the defendants, the plaintiff shall be ordered by the court to serve or cause the service of summons. The plaintiff may also be ordered by the court to serve or cause the service of summons in cases

where summons is to be served outside the judicial region of the court where the case is pending. If the case is dismissed without prejudice for failure to serve summons, the case may be re-filed within one year from notice of dismissal subject to the payment of a reduced filing fee of PhP2,000.00.

- The service of court issuances and filings by the parties may now be made through e-mail, facsimile, and other electronic means. Notices may also be served through mobile phone calls, SMS, or instant messaging software applications. If the parties consent to this electronic means of serving, they must do so in the Statement of Claim/s or Response.
- Hearing should be held only in one day. This can be done through videoconferencing using the Court-prescribed videoconferencing platform. The court may allow the use of alternative videoconferencing platforms or instant messaging applications with video call features in certain instances. Judgment must be rendered within 24 hours from the termination of the hearing. Decisions rendered by the first-level courts in small claims shall be final, executory, and unappealable.

BIR ISSUANCES

REVENUE REGULATIONS (RR)

RR No. 5-2022 issued on June 20, 2022

- This regulation implements Section 5(b) of RA No. 11597 which mandates the estate tax exemption on the transfer by a veteran of his/her share/s, common or preferred, with the Philippine Veterans Bank (Veterans Bank).
- All transfers, by way of succession or donation *mortis causa*, made by a veteran of his/her shares of stock, common or preferred, with the Veterans Bank to his/her widow, orphan, or compulsory heir shall not be subject to estate tax.
- The term "veteran or veterans" shall include:
    1. Any person or persons who served in the regularly constituted air, land, or naval services or arms, or in such non-regularly organized military units in the Philippines during World War II, and whose services with such units are duly recognized by the Republic of the Philippines or by the government of the United States of America;
    2. Those veterans referred to under RA No. 6948, as amended by RA No. 7696 and RA No. 9396; and
    3. The widow, orphan or a compulsory heir of a deceased veteran, as determined by existing laws.
- An electronic Certificate Authorizing Registration (eCAR)/Tax Clearance Certificate (TCC) must be secured with the Revenue District Office (RDO) where the estate of the decedent is registered before any transfer of share/s is registered in the books of the Veteran's Bank.

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 78-2022 issued on June 9, 2022

- This Circular is issued to clarify the different classifications of educational institutions referred to in the Tax Code, the income tax treatment under each classification, the tax exemption and tax liabilities of specified class of educational institutions, the required withholding taxes on certain income payments, and their compliance requirements.
- Proprietary Educational Institution, which is any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education (DepEd), or the Commission on Higher Education (CHED), or the Technical

Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.

- Domestic Corporation- 10% preferential income tax rate under Section 27(B) of the Tax Code. Provided, that beginning July 1, 2020 until June 30, 2023, the tax rate imposed shall be 1%.
  - All domestic non-stock, non-profit (NSNP) educational institutions whose net income or assets accrue to or benefit any member or specific person shall likewise be subject to the ten percent (10%) income tax rate.
  - However, if the revenues or income is not used actually, directly and exclusively for educational purposes are concerned - from 'unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income it derived from all sources, the regular corporate income tax of 25% (or 20%) shall be applicable.

- Government Educational Institution which refers to a public university or college that is fully owned and subsidized by the government. A government educational institution (GEI) may be created through a charter or a law passed by the Congress of the Philippines.
  - Express Provision in Charter or Law- If provided, then such GEI is exempt from applicable taxes as may be provided in the aforesaid charter.
  - No Express Provision in Law- If exemption not provided, it is nonetheless exempt from income tax on the income received as such pursuant to Section 30(I) of the Tax Code.
- Non-stock and Non-profit Educational Institution - All revenues and assets of a nonstock, non-profit (NSNP) educational institution used "actually. directly and exclusively" for educational purposes shall be exempt from taxes and duties.
  - The NSNP educational institution is required to secure a one-time certificate of income tax exemption or exemption ruling from the Bureau of Internal Revenue (BIR).
- All educational institutions are required to be registered with the BIR using the Application for Registration Form (BIR Form No. 1903, January 2018 ENCS for the corporation and No. 1901 for Individuals) on or before the commencement of its operations.

COURT DECISIONS

CTA EN BANC DECISIONS

Oceanagold Philippines Inc. vs. CIR
CTA EB No. 2492 promulgated on March 31, 2022

(Under the FTAA, Oceanagold is exempt from payment of excise tax during the recovery period.)

Facts:

To prevent Oceanagold Philippines Inc. (Oceanagold) from making removals of copper concentrates without prepayment of excise tax, the CIR detained mineral ores in Oceanagold's stockpile. The CIR issued Revenue Memorandum Order (RMO) No. 17-2013, which revoked BIR Ruling No. 10-2007 and with it, Oceanagold's exemption from excise tax during the recovery period. Then, Oceanagold filed for a refund or tax credit seeking the recovery of excise taxes paid on its removals of copper concentrates. BIR denied its claim for refund of excise taxes.

Issue:

Is Oceanagold exempt from paying excise tax during the recovery period?

Ruling:

Yes.

Under the Financial and Technical Assistance Agreement (FTAA), petition is exempt from payment of excise tax during the recovery period. Section 11.2 of the FTAA reads: The contractor shall have a period of up to 5 contract years, counted from the Date of Commencement of Commercial Production within which to recover its pre-operating expenses. The government cannot collect from Oceanagold, as the FTAA Contractor, the Government's Share in the Net Revenue, which includes excise tax, because the Government's right to share shall only accrue after the recovery period.

Orica Philippines Inc vs. CIR
CTA EB No. 2336 promulgated on March 31, 2022

(A motion to reopen the trial may only be properly presented only after either or both parties have formally offered, and closed their evidence, but before judgment.)

Facts:

Orica filed an Application for Tax Credit/Refund with the BIR on June 13, 2015, covering the 3rd quarter of its Fiscal Year. The BIR subsequently denied the application due to the alleged lack of factual and legal bases. Orica then filed a Petition for Review based on such denial by the BIR. The CTA Division later denied Orica's Petition for Review on the ground that Orica only submitted invoices without the bills of lading and/or export declarations, and for its failure to substantiate its claims for zero-rated sales.

Orica claims that it relied in good faith on the Independent Certified Public Accountant's (ICPA's) representation that its zero-rated sales were all supported by the bills of lading and/or export declarations and its reliance on the ICPA report constitutes excusable negligence.

Thus, Orica prays for the reopening of the case to present the pieces of evidence that the CTA Division deemed lacking. Orica further argues that the CTA should have taken judicial notice of the testimony of its witness, Ms. Gonzales, in resolving the issue in the instant case so that there will be no miscarriage of justice on a mere technicality.

Issues:

1. Should the case be reopened in order to present the pieces of evidence from Orica?
2. Should the Court take judicial notice of the testimony of Ms. Gonzales?

Ruling:

1. No.

   A motion to reopen the trial may only be properly presented only after either or both parties have formally offered, and closed their evidence, but before judgment.

   In the instant case, Orica prayed for the reopening of the case to present the bills of lading and/or airway bills, omitted invoices, and correct Board of Investment (BOI) certifications that were cited but omitted by the ICPA, and to present Ms. Gonzales to testify on matters raised/explained in the previous case, only after the CTA Division had rendered its decision. Considering that the CTA Division already rendered a decision, Orica could no longer avail of the remedy of reopening the case. Neither can the CTA Division's denial

of Orica's motion to allow the reopening of the case be reviewed on appeal, absent any showing that there was clear abuse on the part of the CTA Division when it denied said motion.

In addition, Orica's reliance on the ICPA report does not constitute excusable negligence. Excusable negligence is one which ordinary diligence and prudence could not have guarded against. In this case, Orica failed to exercise even ordinary diligence as it relied entirely on the ICPA's representations. Orica admitted that it "afforded too much weight to the statements by the ICPA in his report and in doing so might have become lenient in conducting its own independent evaluation of the documents submitted and marked by the ICPA.

2. No.

The Court should not take judicial notice of the testimony of Ms. Gonzales. In the instant case, the testimony of Ms. Gonzales in the previous case failed to satisfy the first two material requisites laid down by the Supreme Court in the *Expertravel* case. Ms. Gonzales' testimony is not one of common and general knowledge, and not well and authoritatively settled.

The testimony of Ms. Gonzales falls under the purview of forgotten evidence, which refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. As a rule, the presentation of forgotten evidence is disallowed.

Lantro Philippines, Inc. vs. CIR
CTA EB No. 2406 promulgated on June 9, 2022

(Section 112(C) of the Tax Code, as amended, that in case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said claim within a period of 120 days, the taxpayer may file its judicial claim with the CTA, within 30 days from receipt of the decision or after the expiration of the said 120-day period.)

Facts:

On January 7, 2016, Lantro Philippines, Inc. (LPI) filed with the BIR its administrative claim for Value-Added Tax (VAT) refund covering the period of Taxable Year (TY) 2014 via the letter dated January 5, 2016. LPI prepared the Transmittal Sheet dated February 26, 2016, indicating therein that it is submitting certain documents/requirements needed for its application for VAT refund for the year 2014. LPI filed its Petition for Review before the CTA Division on August 23, 2016. The CTA dismissed the Petition for lack of jurisdiction. LPI contends it re-filed its Application for Tax Credits/Refunds on February 26, 2016 for VAT covering the TY 2014, hence, filed in time.

Issue:

Was the Petition for Review filed out of time?

Ruling:

Yes.

Section 112 of the Tax Code provides that an administrative claim for refund must be filed within 2 years after the close of the taxable quarter when the sales were made. Moreover, it is provided under Section 112 (C) of the Tax Code, as amended, that in case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said

claim within a period of 120 days, the taxpayer may file its judicial claim with the CTA, within 30 days from receipt of the decision or after the expiration of the said 120-day period.

For purposes of determining when the 120-day period would commence, RMC No. 54-2014 dated June 11, 2014, provides that applications for VAT refund/tax credit must already be submitted with complete supporting documents, as well as a statement under oath, attesting to the completeness of the submitted documents. More importantly, no other documents will be accepted or required from the taxpayer during its evaluation, and the decision of the Commissioner shall be based only on the documents submitted by the taxpayer. And in case of failure of the taxpayer/claimant to submit complete supporting documents, the application for tax refund/tax credit shall be denied. Thereafter, the corresponding Denial Letter shall be issued to the taxpayer/claimant.

In this case, the Letter of Request categorically states that it is applying for a VAT refund, while the Transmittal Sheet merely states that it is transmitting the documents/requirements needed for its application for VAT refund. There is nowhere in the Letter of Request that the petitioner was re-applying, or re-filing its administrative claim for refund, or that the previous filing is being superseded. Rather, the Transmittal Sheet indicates that it is transmitting the documentary requirements for their claim for refund. Considering now that the filing made on February 26, 2016, was a mere transmission of documentary requirements, the same shall not be considered as a re-filing of the petitioner's administrative claim for refund. Therefore, the petitioner's administrative claim is considered to have been made on January 7. 2016.

This being the case, the 120-day period from the date of the filing of the administrative claim and submission of complete documents in support thereof, is reckoned from January 7, 2016. Hence, CIR had 120 days from January 7. 2016, or until May 6, 2016, within which to render a decision on the said claim. Considering that the respondent failed to act on the petitioner's claim on or before May 6, 2016, the petitioner had 30 days, or until June 5, 2016. within which to file its judicial claim before the CTA. In the instant case, however, the Petition for Review was filed before the CTA only on August 23, 2016, or way beyond the 30-day period to appeal.

People vs. Tiotangco
CTA EB Crim. No. 086 promulgated June 9, 2022

(The collection of deficiency tax cannot be made in the criminal case without formal assessment.)

Facts:

Respondent Tiotangco was charged with violation of Section 255 of the Tax Code, as amended, in two (2) Information before the CTA. The CTA Division rendered a Decision finding the Respondent guilty beyond reasonable doubt.

In its Decision, the CTA Division ruled that a tax deficiency cannot be collected in a criminal proceeding in court without an assessment. Petitioner argues that, while as a general rule, collection of taxes by a proceeding in court cannot be done without an assessment, an exception to such rule would be in case of false or fraudulent returns with an intent to evade tax. Further, Petitioner contends that Section 7(b)(1) of RA No. 9282 provides that the filing of criminal action necessarily carries with it the filing of the civil action is consistent with the mentioned exception.

Issue:

Can a tax deficiency be collected in a criminal proceeding in court without an assessment?

Ruling:

No.

The collection of deficiency tax cannot be made in a criminal case without formal assessment. Section 205 of the Tax Code, as amended, provides for the requisites for the award of civil liability in criminal cases. While Section 205 explicitly mandates the inclusion of civil liability for the payment of taxes in the judgment in the criminal case, it is also clear that there must first be a final determination of such civil liability by the CIR before they may be included in the judgment. This determination of civil liability for the payment of internal revenue taxes by the CIR refers to a formal assessment.

On petitioner's argument that, while generally, collection of taxes by a proceeding in court cannot be done without an assessment, an exception to such rule would be in case of false or fraudulent returns with an intent to evade tax, the Petitioner cannot invoke Sections 203 and 222 of the Tax Code, as amended. The said provisions deal with the period of limitation of assessment and collection of internal revenue taxes. These provisions have nothing to do with the question of whether a deficiency tax liability can be collected in a criminal proceeding with or without assessment.

On the petitioner's argument that the civil liability for the payment of taxes and penalties is already deemed instituted upon the filing of the criminal action for tax evasion, the Supreme Court has already clarified that a taxpayer's liability to pay tax is an obligation created by law, and as such, it is not deemed instituted with the filing of the criminal action for tax evasion. Only those actions that seek to recover civil liability arising from crime are deemed instituted with the criminal case.

Considering the limited purpose of the criminal action for tax evasion, all the more reason why there must be a final determination of the deficiency tax liabilities by the CIR through a formal assessment before it may be included in the judgment in the criminal case, as duly mandated by the Tax Code. Without such final determination, there will be no basis to rule on the civil liability of the respondent.

Philippine Geothermal Production Company, Inc. vs. CIR
CTA EB No. 2478 promulgated on June 14, 2022

(In order for a RE Developer to be entitled to the VAT zero-rating on sales of renewable sources of energy under RA No. 9513 in relation to the Tax Code, an RE Developer must register as such with the DOE, through the REMB; and secure a DOE Certificate of Registration as an RE Developer, BOI Registration, and DOE Certificate of Endorsement on the particular sale of RE.)

Facts:

On June 30, 2015, Philippine Geothermal Production Company, Inc. (PGPCI) filed with the BIR-Large Taxpayers Excise Audit Division its administrative claim for refund together with Application for Tax Credits or Refunds covering its unutilized input taxes for the 2nd quarter of TY 2013. On September 30, 2015, PGPCI filed its Application for Tax Credits or Refunds covering its unutilized input taxes for the 3rd quarter of TY 2013. PGPCI based its alleged entitlement to zero-rated sales of renewable sources of energy on Sec. 15(g), Chapter VII of RA No. 9513, or the Renewable Energy Act of 2008. It presented its registration as a Renewable Energy (RE) Developer and a corresponding DOE certification.

Issue:

Is the presentation of registration as a RE Developer and the DOE certification enough to enjoy the incentive of VAT zero-rating on sales of renewable sources of energy under Sec. 15(g) of RA No. 9513 in relation to Sec. 108 (B)(7) of the Tax Code, as amended?

Ruling:

No.

PGPCI failed to produce the Department of Energy (DOE) Certificate of Endorsement relative to its alleged sales of RE for the 2nd and 3rd quarters of TY 2013. Section 26 of RA No. 9513 additionally requires RE to comply with the requirements that may be imposed by government agencies tasked with the administration of the fiscal incentives under said law. The DOE issued Department Order (DO) No. DC2009-05-008, with Section 18(A), (B) and (C), Rule 5, Part III thereof prescribing the documents required to avail of VAT zero-rating on a RE Developer's sales of renewable energy. Thus, an RE Developer must register as such with the DOE, through the Renewable Energy Management Bureau (REMB); and secure a DOE Certificate of Registration as an RE Developer, BOI Registration, and DOE Certificate of Endorsement on the particular sale of RE to qualify for VAT zero-rating.

CIR vs. PTT Philippines Trading Corporation
CTA EB No. 2244 promulgated on June 14, 2022

(Separate customs territories under RA No. 7227, as amended by RA No. 9400, are deemed foreign territories by fiction of law. For this reason, goods destined for consumption therein are not subject to VAT.)

Facts:

PTT Philippines imported diesel fuel from the Cayman Islands and paid the corresponding VAT for the two (2) importations involved. PTT Philippines thereafter sold the imported diesel to Clark Development Corporation (CDC). An administrative claim for refund was filed by PTT Philippines for its alleged erroneously paid VAT on its imported diesel. After this, a Petition for Review was filed which was granted by the CTA Division.

The CIR primarily argues that PTT Philippines failed to prove that the petroleum products have been sold to a duly registered locator and utilized in the registered activity/operations of the locator. In addition, the CIR further argues that the petroleum products did not remain in the Freeport Zones/Ecozones. On the other hand, PTT Philippines counters that even though RR No. 2-2012 requires prior proof that imported fuel never left the Freeport Zone/Ecozone as a precondition for refund of the VAT paid on importations, RR No. 2-2012 was declared unconstitutional in the case of *Purisima vs. Lazatin* since it violates that tax exemption granted to Ecozones and Freeport zones under the law.

Issue:

Is PTT Philippines entitled to a refund?

Ruling:

Yes.

The Subic Special Economic Zone (SSEZ), including the Subic Freeport Zone (SBFZ), Clark Freeport Zone (CFZ) and the Clark Special Economic Zone (CSEZ) are considered as separate customs territories under RA No. 7227, as amended by RA No. 9400. As such, they are deemed foreign territories by fiction of law. For this reason, goods destined for consumption therein are not subject to VAT.

In this case, based on the Bureau of Customs (BOC) Import Entry and Internal Revenue Declaration (IEIRD) Nos. 2013 C-4122 and 2013 C-4123, the imported fuel was consigned to PTT Philippines, with address located at Brand Rex Compound, Argonaut Highway, Subic Bay Freeport Zone, 2222 Olongapo City, Philippines. Hence, VAT may not be imposed on the imported fuel bound for the SBFZ, a foreign territory by fiction of law. In addition, PTT Philippines is duly registered with the Subic Bay Metropolitan Authority (SBMA) as a Subic Bay Freeport Enterprise which is granted tax and duty-free importation of raw materials, capital, equipment, and all articles in general. The imported fuel is no exception in this case.

CIR vs. Tektite Insurance Brokers, Inc.
CTA EB No. 2443 promulgated on June 20, 2022

(Revalidating a LOA after one hundred twenty (120) days from the issuance thereof has been expressly revoked by both DOF DO No. 11-2009 RMO No. 044-10.)

Facts:

In this case, Tektite is arguing that the Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN)/Formal Letter of Demand (FLD) are void for having been issued pursuant to a prescribed Letter of Authority (LOA). On the other hand, the CIR argues that the Court erred in declaring the LOA void for failure to comply with Department of Finance (DOF) Department Order (DO) No. 0069-99 and RMO No. 43-90 issued by the BIR that a LOA needs to be revalidated if the Revenue Officer (RO) fails to submit its Memorandum Report within the 120-day period. DOF DO No. 0069-99 was already expressly revoked by DOF DO No. 011-09, and RMO No. 43-90 has already been superseded by RMO No. 044-10; and DOF DO No. 011-09 and RMO No. 044-10 state that the LOA need not be revalidated even if the prescribed audit period has been exceeded.

Issue:

Does the LOA need to be revalidated if the RO fails to submit its Memorandum Report within the 120-day period?

Ruling:

No.

Revalidating a LOA after one hundred twenty (120) days from the issuance thereof has been expressly revoked by both DOF DO No. 11-2009 and RMO No. 044-10. Considering the 120-day period has been revoked by the implementing rules cited, the LOA is valid. In view of the foregoing, the failure of RO Elma Delluta to have the LOA revalidated did not render the LOA invalid. In other words, RO Delluta was still authorized to examine Tektite's books of accounts and other accounting records for all internal revenue taxes for the period of January 1, 2011 to December 31, 2011 despite the lapse of the 120-day audit period.

CIR vs. Sonoma Services, Inc.
CTA EB No. 2416 promulgated on June 16, 2022

(The submission of the SAWT, MAP, and a certification from the BIR proving the fact of remittance are not required in a claim for refund or TCC for unutilized CWT. A Certificate of Creditable Tax Withheld at Source is sufficient to prove the withholding of tax.)

Facts:

Sonoma, Inc. (Sonoma) filed with the BIR RDO No. 50, an administrative claim for refund of excess and unutilized creditable withholding tax (CWT) for Calendar year (CY) 2016 in the amount of PhP5,366,303.57. The claim was denied. Sonoma filed a request for

reconsideration of the denial. The CIR did not act upon the request, hence, Sonoma filed a Petition for Review with the CTA. The CTA granted the claim for refund of Sonoma)

The CIR argued that Sonoma failed to comply with the evidentiary standards of claiming a refund of excess CWT, particularly the submission of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and the Monthly Alphalist of Payees (MAP) pursuant to RR No. 2-98 and RR No. 2-2006, as well as the proof of actual remittance to the BIR and testimonial evidence of the payors and withholding agents.

Sonoma contended that the Certificates of Creditable Tax Withheld at Source issued by the withholding agents constituted sufficient proof of the existence and validity of a taxpayer's CWT. It also invoked cases where the Supreme Court has ruled that proof of actual remittance of CWT to the BIR is not a requirement for proving entitlement to a claim for refund of excess and unutilized CWTs, and pointed out the untenability of the purported requirements.

Issue:

Did the CTA Division err in granting the claim for refund of Sonoma consisting of alleged excess and unutilized CWT for CY 2016?

Ruling:

No.

The requisites for claiming refund or a TCC for unutilized CWT, as applied in jurisprudence, are as follows:

1. The claim for refund must be filed with the CIR within the two (2) - year prescriptive period from the date of payment of the tax, as prescribed under Section 204 (C), in relation to Section 229 of the Tax Code, as amended;
2. It must be shown in the return of the recipient that the income payment received was declared as part of the gross income; and,
3. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The requirement of submitting the SAWT and the MAP finds no basis in law and jurisprudence as what is required is the submission of a copy of the withholding tax statement issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom, which refers to the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307). Additionally, the certification from the BIR to prove the fact of remittance of the tax withheld is likewise untenable as it is well settled that the taxpayer does not have to prove actual remittance of the taxes to the BIR; it is sufficient that the Certificate of Creditable Tax Withheld at Source is presented in evidence to prove that taxes were indeed withheld.

CIR vs. Kuwait Airways Corporation
CTA EB No. 2525 promulgated on June 16, 2022

(Taxpayers cannot be deprived of their entitlement to the benefits of a tax treaty for failure to comply with the requirements of an administrative issuance. The obligation to comply with a tax treaty must take precedence over an administrative issuance.)

Facts:

In 2015, Kuwait Airways Corporation (Kuwait Airways) filed an Application for Relief from Double Taxation on Shipping and Air Transport with the BIR's International Tax Affairs Division (ITAD) in relation to its availment of the preferential tax rate of 1 ½%. In 2016, it paid the corresponding income tax due for the fiscal year (FY) ending March 31, 2016 in the aggregate amount of P29,241,800.39 at a 2 ½% tax rate.

In 2017, the CIR responded to Kuwait Airways' 2015 application for tax treaty relief by issuing BIR Ruling No. ITAD 034-17. It ruled that Kuwait Airways is subject to a preferential tax rate of 1 ½% on its Gross Philippine Billings (GPBs) earned beginning January 1, 2014, under Article 8 of the Philippines-Kuwait Tax Treaty. Thus, in 2018, Kuwait Airways filed with the BIR its Amended Annual income tax return (ITR) for the FY ending March 31, 2016, applying the 1 ½% preferential income tax rate and showing an overpayment of PhP12,158,469.00. Thereafter, Kuwait Airways filed an administrative claim for the issuance of a TCC with the BIR, and later a Petition for Review with the CTA Division.

The CTA Division rendered a Decision ordering the issuance of a TCC in favor of Kuwait Airways in the reduced amount of PhP11,973,834.71, representing the latter's overpaid income taxes for FY ended March 31, 2016. The CIR argued that the availment of a tax treaty provision is not *ipso facto* granted to anyone who wishes to avail of the benefits thereof since there are specific procedures that must first be complied with; in relation to this, RMO No. 1-2000 was issued by the CIR to streamline the processing of tax treaty applications to improve efficiency in the service of taxpayers.

Issue:

Is Kuwait Airways entitled to the refund of its alleged overpayment?

Ruling:

Yes.

Generally, an international carrier doing business in the Philippines shall pay a tax of 2 ½% on its GPBs as provided under Section 28 (A)(3) of the Tax Code, as amended. However, with the enactment of RA No. 10378, an international carrier doing business in the Philippines may now avail of a preferential rate or exemption based on an applicable tax treaty or international agreement to which the Philippines is a signatory or on the basis of 'reciprocity.' In this case, the CIR issued RMC No. 37-2014 entitled "Entry Into Force, Effectivity, and Applicability of the Philippines-Kuwait Double Taxation Agreement" on May 8, 2014. Under Article 8 of the Philippines-Kuwait Tax Treaty, international carriers of Kuwait doing business in the Philippines are subject to income tax on their GBP at the rate of 1 ½%, or the lowest rate imposed on the GPB of international carriers of a third country (the so-called "most-favored-nation treatment"). Thus, Kuwait Airways is entitled to the preferential tax rate of 1 1/2% on its GBPs beginning January 1, 2014, under the Philippines-Kuwait Tax Treaty, which entitlement has also been confirmed by the CIR himself when he signed and issued BIR Ruling No. ITAD 034-17.

Moreover, the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. A tax treaty is an agreement entered into between sovereign states "for purposes of eliminating double taxation on income and capital, preventing fiscal evasion, promoting mutual trade and investment, and according fair and equitable tax treatment to foreign residents or nationals. Bearing in mind the rationale of tax treaties, the requirements of RMO No. 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.

Based on the foregoing, Kuwait Airways made an erroneous overpayment of its income tax for the FY ended March 31, 2016 when it applied the 2 ½% tax rate instead of the 1 ½% preferential tax rate under the Philippines-Kuwait Tax Treaty, therefore entitling it to the issuance of a TCC. Nonetheless, the amount claimed must be reduced by the aggregate amount of PhP1,154,374.00 because the CWTs were not duly proven and are therefore disallowed.

Deutsche Knowledge Services vs. CIR
CTA EB No. 2249 promulgated on June 1, 2022

(A ROHQ rendering services "other than processing, manufacturing or repacking of goods" in the Philippines is entitled to a refund of its input VAT credits.)

Facts:

Deutsche Knowledge Services PTE., LTD. (Deutsche)'s claim for refund was denied by the CTA Division. Its Petition for Review before the CTA *En Banc* was likewise denied, prompting it to file a Motion for Reconsideration before the same court. In its Motion, Deutsche argued that it has sufficiently proved that its services fall within the scope of "services other than processing, manufacturing, or repacking of goods" under Section 108(b)(2) of the Tax Code, as amended, that as a regional operating headquarter (ROHQ), it is only engaged in services performed in the Philippines, and that it incurred input VAT credits since it purchased goods and services in the course of rendering services.

In his Opposition, the CIR argued that Deutsche has the burden of proof to establish the factual basis of its claim for refund and that claims for refund are construed strictly against the taxpayer.

Issue:

Is Deutsche entitled to a refund of its input VAT credits?

Ruling:

Yes.

The testimony of Deutsche's Legal Entity Controller was unrebutted by the CIR and was able to sufficiently establish that Deutsche rendered services other than processing, manufacturing or repacking of goods, and that said services were performed in the Philippines. *First,* Deutsche's witness testified as to how Deutsche "acts as a shared services center, which handles regional, as well as global, accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control." This testimony was corroborated by Deutsche's Certificate of Registration and License (CRL) issued by the Securities and Exchange Commission (SEC). *Second,* the witness testified as to Deutsche's purchase of goods and services in the course of rendering services in the Philippines as a shared services center to clients engaged in business conducted in the Philippines. This testimony was likewise corroborated by Deutsche's purchases.

Philippine Geothermal Production Company, Inc. vs. CIR
CTA Case Nos. 9882, 9959 and 10010 promulgated on June 3, 2022

(The VAT on the sale of services is computed based on gross receipts. Gross receipts is defined under the Tax Code as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively

received…" Hence, the VAT on the sale of services accrues upon actual or constructive receipt of the consideration, whether or not the service has been rendered.)

Facts:

The Philippine Geothermal Production Company, Inc. (PGPCI) filed with the BIR three separate applications for tax refund or issuance of TCC of unutilized input VAT attributable to its zero-rated sales/receipts for the 1st, 2nd, and 3rd quarters of CY 2016. It also filed three separate Petitions for Review before the CTA after its administrative claims for refund were only granted partially. The three cases were consolidated. In support of its petitions, PGPCI argued that as a RE Developer, its sales of fuel or power generated from renewable sources are VAT zero-rated. It maintained that the excess input VAT claimed for refund has not been applied by the CIR to its output taxes during the 1st, 2nd, and 3rd quarters of CY 2016, as well as the subsequent quarters, and that said input taxes are directly attributable to its zero-rated sales.

Issue:

Is PGPCI entitled to its claim for refund or issuance of a TCC?

Ruling:

Yes.

As an RE Developer, PGPCI is governed by the provisions of RA No. 9513, otherwise known as the "Renewable Energy Act of 2008". Under said law, it is entitled to a zero-rated VAT on its local purchases.

In *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, the Supreme Court laid down the requisites that must concur to allow a claim for refund or tax credit for unutilized input VAT, to wit:

a. The taxpayer is VAT-registered;
b. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
c. The input taxes are due or paid;
d. The input taxes are not transitional input taxes;
e. The input taxes have not been applied against output taxes during and in the succeeding quarters;
f. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
g. For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
h. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated based on sales volume; and
i. The claim is filed within two years after the close of the taxable quarter when such sales were made.

In this case, all the requisites were met by PGPCI. Nevertheless, the amount of unutilized input VAT claimed must be reduced for the following reasons: *First,* its zero-rated sales were based on the Billing Statements and not the official receipts (ORs) it issued. Considering that PGPCI is engaged in the sale of services, the 12% VAT is computed based on gross receipts, which is defined under Section 108(A) of the Tax Code as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received…" The VAT on the

sale of services accrues upon actual or constructive receipt of the consideration, whether or not the service has been rendered. Accordingly, Section 108(C) provides that the tax on the sale of services shall be computed by multiplying the total amount indicated in the OR. *Second,* several purchases where the PGPCI allegedly incurred input VAT were disallowed by the court-appointed ICPA for being supported by documents which were not dated within the year or period of claim or claiming an amount greater than the amount stated.

CIR vs. Bicyclepoker
CTA EB NO. 2448, promulgated on June 9, 2022

(There must be a grant of authority in the form of a LOA before any revenue officer can conduct an examination or assessment. Only the revenue officers actually named under the LOA are authorized to examine the taxpayer. Only the CIR and his duly authorized representatives may issue the LOA.)

Facts:

Records reveal that on May 17, 2016, a LOA was issued authorizing RO Miranda and Group Supervisor (GS) Mendoza to examine respondent Bicyclepoker's books of accounts and other accounting records for TY 2014. Thereafter, a Memorandum of Assignment (MOA) was issued "pursuant to the LOA" assigning the continuation of the investigation to RO de Guzman and GS Gozun. The subject MOA serves as the only basis of their authority to conduct the audit since no new or second LOA was issued in their name. The CIR claims that the Tax Code provides that the investigation of the RO must be made pursuant to a valid LOA, and there is no requirement that the names of the ROs be included in the LOA. Respondent counters that the CTA Division correctly ruled that the investigating ROs did not have the authority to conduct the investigation, and that there is no doubt that RO de Guzman was acting without authority as she was acting under the LOA if RO Miranda when she conducted her examination. The belated issuance of the LOA of RO de Guzman did not cure the defect of having acted without a valid LOA.

Issue:

May "any" revenue officer act under a LOA when it is validly issued?

Held:

No.

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect usurpation of the statutory power of the CIR or his duly authorized representative. RMO No. 43-90 expressly and specifically requires the issuance of a new LOA if ROs are reassigned or transferred. There must be a grant of authority in the form of an LOA before any revenue officer can conduct an examination or assessment. Only the revenue officers actually named under the LOA are authorized to examine the taxpayer. Only the CIR and his duly authorized representatives may issue the LOA.

CTA DIVISION DECISIONS

Service Resources Inc. vs. Pasig City
CTA AC No. 243 promulgated on June 3, 2022

(On periods of protesting an assessment with the court of competent jurisdiction, Section 195 of the LGC essentially provides that, the taxpayer has 30 days either from the: 1) receipt of the denial of its protest; or 2) lapse of the 60-day period, within which to appeal with the court of competent

jurisdiction. Otherwise, the assessment becomes conclusive and unappealable. The periods therein are not only mandatory but jurisdictional.)

Facts:

Service Resources, Inc. (Service Resources) is an independent contractor maintaining a principal office in Pasig City. It has several branches in Laguna, Cavite and Pampanga. Through its offices, the Service Resources provides personnel management services to client firms throughout the country.

In 2011, the Pasig City Treasurer issued a LOA authorizing the examination of Service Resources' books of accounts. In February 2012, it received from the City Treasurer FIRST notice alleging that there was under-declaration of gross sales, and thus, it was assessed of deficiency local business taxes (LBT). In March 2012, Service Resources protested the FIRST notice through a letter questioning the propriety of the assessment. Much later, in June 2012, it received from the City Treasurer an assessment of a higher amount. In the same month, it wrote a second letter questioning the second assessment.

In July 2012, Service Resources filed a "Petition for Review on Appeal" before the RTC of Pasig City questioning the LBT assessments. After the filing of respective pleadings, the RTC of Pasig City denied the petition for lack of jurisdiction and lack of cause of action. The RTC ruled that Service Resources' second letter is another protest for which it must give the City Treasurer a period of 60 days to decide before going to court. Since it filed the Petition for Review on Appeal before the lapse of 60-day period, then such appeal was prematurely filed; hence, the RTC did not validly acquire jurisdiction. After its Motion for Reconsideration was denied, it elevated the case to the CTA.

Issues:

Did Service Resources undertake the correct legal remedy?

Ruling:

No.

The last sentence of Section 195 of the Local Government Code (LGC) provides that, the taxpayer shall have 30 days from the receipt of the denial of the protest or from the lapse of the 60-day period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise, the assessment becomes conclusive and unappealable.

In resolving the issue, the CTA presented the timeline of events as follows:

Date	Event
February 24, 2012	Petitioner received the FIRST notice
March 1, 2012	Petitioner filed its protest through the FIRST letter
April 30, 2012	End of the 60-day period for respondent City Treasurer to decide on the protest
May 30, 2012	**End of the 30-day period to file an appeal before a court of competent jurisdiction**
June 15, 2012	Petitioner received the SECOND notice
June 21, 2012	Petitioner filed the SECOND letter reiterating its objections to the assessments made by the City Treasurer
July 10, 2012	**Petitioner filed a "Petition for Review on Appeal" before the RTC Pasig**
August 20, 2012	**End of the 60-day period for the City Treasurer to decide on the protest**

As gleaned from the timeline, it is clear that Service Resources failed to comply with the provisions of Section 195 of the LGC in both notices of assessment.

The CTA said, with respect to the First Notice, Service Resources had until May 30, 2012 to file an appeal with the court of competent jurisdiction; however, no appeal had been filed. Hence, the First Notice became conclusive and unappealable.

Even so, with respect to the Second Notice, Service Resources failed to comply with Section 195 because it hastily filed an appeal with the RTC without waiting for the lapse of the 60-day period. Since the said appeal was prematurely filed, the RTC had no jurisdiction over the same. On the argument that it filed an appeal with the RTC within 30 days from receipt of the Second Notice was proper because the Second Notice effectively denied its First Letter, the CTA cited two reasons why such argument holds no water: first, Service Resources admitted through its petition that the same was filed due to City Treasurer's supposed inaction on the Second Letter; and second, if it treated the Second Notice as the denial of its First Letter, then why would it file the Second Letter which clearly addresses the Second Notice? Because the Second Letter was actually a protest to the Second Notice.

In sum, since Service Resources failed to file a timely appeal to the RTC within 30 days from the lapse of the 60-day period for the City Treasurer to decide the protest, the First Notice became conclusive and unappealable on May 30, 2012. As a result, the issuance of the Second Notice is even null and void because the First Notice can no longer be amended, modified or set aside by the City Treasurer or even by the court.

People vs. IRA General Security Services, Inc. and Agluglub
CTA Crim. Case No. O-776-8 promulgated on June 22, 2022

(It bears noting that the rationale of the rule that the BIR's assessment notices must only be served or presented to the concerned taxpayer or its authorized representative is to ensure that the recipient has sufficient discretion and understanding of the importance of the documents delivered to him or her and has the requisite authority to act on the same.)

Facts:

Accused IRA General Security Services, Inc. (IGSSI) is a domestic corporation engaged in the business of security services. On the other hand, Accused Aglugub is the President of the accused-corporation. Three separate Informations were filed against them for willful failure to pay tax under Section 255, in relation to Sections 253 and 256, of the Tax Code, as amended. Allegedly, the accused failed to file and pay income tax, VAT and improperly accumulated earnings tax (IAET) for TY 2009, despite notice and demand.

In defense, they argued that the subject assessments were void because the LOA was sent to it beyond the 30-day reglementary period from the time it is issued. Moreover, the notices from the BIR were received by individuals not duly authorized by the accused-corporation to receive the same.

Issue:

Were IGSSI and Aglugub guilty of the crimes charged?

Ruling:

No.

There are three elements that must be established to sustain a conviction for willful failure to pay tax under Section 255 of the Tax Code:

1) A person is required under the Tax Code, or its rules and regulations to pay any tax;
2) The said person failed to pay the required tax at the time required by law or rules and regulations; and,
3) Such failure to pay the required tax at the time required by law or rules and regulations is willful.

In relation to Sections 253 and 256 of the Tax Code, since the accused IGSSI is a corporation, it must be shown that accused Aglugub is the president, general manager, branch manager, treasurer, officer-in-charge, or employee responsible for the violation before the penalty may be imposed upon him.

In this case, it must be proven that the deficiency taxes are based on valid assessments, notice and demand from the BIR.

First, Revenue Audit Memorandum Order (RAMO) No. 01-2000 mandates that an LOA must be served within 30 days from the time it is issued, otherwise, it becomes null and void unless revalidated. Here, the accused-corporation received the electronic LOA dated November 11, 2011 on June 6, 2012, which is beyond the 30-day reglementary period. However, the accused-corporation received the manual LOA dated June 24, 2010 on July 21, 2010 within such 30-day reglementary period. It bears noting that the electronic LOA was just issued pursuant to RMO No. 69-2010 requiring that the manual LOAs be retrieved and replaced with new electronic LOA. In this case, the manual LOA still clothed the examiners the authority needed to conduct an examination.

Second, RR No. 12-99 provides that should the FAN be sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt in a duplicate copy, with the following details: 1) name; 2) signature; 3) designation and authority to act for and on behalf of the taxpayer, if not received by the taxpayer himself; and 4) date of receipt. Here, the FLD and Assessment Notices have stamps which provide Romeo Francisco's name, signature, designation as Operations Officer and date of receipt only. The authority to act on behalf of the accused-corporation is missing.

There can be no willful failure to pay tax if there is no requirement to pay the same at all. Since the subject FLD and Assessment Notices are void and considering that an invalid assessment bears no valid fruit, accused-corporation cannot be said to have failed to pay the deficiency taxes much more to have done so willfully. With the failure to prove all the elements of the offense charged, accused-corporation and Aglugub are entitled to acquittal.

People vs. Del Rosario
CTA Crim. Case No. O-501 to O-514 promulgated on June 1, 2022

(The Information must state the exact amount, and the phrase "more or less" deprives the CTA of jurisdiction; It is not required that a tax deficiency assessment first be issued for a criminal prosecution for tax evasion to prosper; The payment of lesser taxes does not necessarily constitute tax evasion; An accused is presumed to be aware that his accountant's failure to file and pay the correct taxes may expose him to criminal prosecution)

Facts:

The accused, Mr. Agerico L. Banzon, is the sole proprietor of Banz Built Construction. On April 15, 2009, accused filed his Annual Income Tax Return (AITR) for TY 2008. On August 22, 2013, an investigation was conducted by the National Investigation Division (NID) of the BIR which culminated in the filing of 14 Informations against Banzon for violations of Sections 254 and 255 of the Tax Code.

The CIR asserts that Banzon committed substantial underdeclaration of his Gross Revenue for 2008, and failed at all to declare his Gross Revenue for the years 2009 and 2010. Further, Banzon is registered as a VAT taxpayer but failed to file any VAT Returns for the years 2008 until 2010. Banzon claims that his right to due process was violated as he did not receive a PAN, FAN, and FLD prior to filing of these cases. Further, he relied heavily on his accountant to take care of all tax matters, and paid all taxes the latter filed for him, including Optional Percentage Tax in lieu of VAT. Lastly, he claimed that his contracts are all with the government, for which he presents the corresponding Withholding Tax Certificates.

Issue:

1. Does the CTA have jurisdiction over the consolidated criminal cases?
2. Is the assessment of deficiency tax necessary before the filing of a criminal case?
3. Has the prosecution established his guilt beyond criminal doubt for violating Section 254 of the Tax Code?
4. Has the prosecution established his guilt beyond criminal doubt for violating Section 255 of the Tax Code?

Ruling:

1. No.

   While the CTA has jurisdiction over CTA Crim. Case Nos. 0-503, 0-505, 0-506, 0-507, 0-509, 0-510, and 0-513, it has no jurisdiction over CTA Crim. Case Nos. 0-501, 0-502, 0-504, 0-508, 0-511, 0-512 and 0-514. The latter set suffers from fatal infirmities which deprived the CTA of jurisdiction. In particular, the defective informations states the tax claimed to be of amounts "more or less" a certain amount. Section 7(b)(l) of RA No. 1125, as amended by RA No. 9282 provides that the CTA has jurisdiction over cases where the principal amount is at least PhP1 Million. The Information must be unequivocal and unmistakable in stating that the principal amount claimed exceeds the jurisdictional threshold. The phrase "more or less" allows the implication that the amount may be less than PhP1 Million.

2. No.

   Under Section 254 and 255 of the Tax Code, the crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. The government's power to enforce the collection through judicial action, whether civil or criminal, is not conditioned upon a previous valid assessment. A deficiency tax assessment is not necessary before a criminal case may be filed. Thus, there was no violation of due process, even when no assessment has been issued, prior to the filing of the criminal case.

3. No.

   The following elements must be established under Section 254 of the Tax Code: A) A tax is imposed under the Tax Code, and a person, natural or juridical, is liable for the tax, B) There is an attempt in any manner to evade or defeat any tax imposed under the Tax Code or the payment, C) Such attempt to evade or defeat tax or the payment thereof is willful.

   The BIR established the existence of the first element, but failed to establish the second and third element. The payment of lesser taxes does not necessarily constitute tax evasion. The taxpayer's resort to minimize taxes must be in the context of fraud, which must be proven by clear and convincing evidence and cannot be based on mere speculation. The act of filing a fraudulent return must be intentional and not attributable to mistake, carelessness, or ignorance. In this case, the prosecution did not point out any detail or unlawful scheme which establishes actual fraud committed by the accused.

4. Yes.

   The following elements must be established under Section 254 of the Tax Code: A) The accused is a person required under the Tax Code or rules and regulations to pay any tax or make a return or supply correct and accurate information, B) The accused failed to pay such tax, make such return or supply correct and accurate information, at the time or times required by law or rules and regulations, C) Such failure to pay such tax, make such return or supply correct and accurate information is willful.

   All elements are satisfied. Banzon was required to file his VAT and Income Tax Returns, and failed to do so. For the last element, the word "willful" means premeditated; malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence. The defense that he completely relied on his accountant on all tax matters is indicative of a lack of concern and wanton disregard of his tax responsibilities. This is equivalent to "deliberate ignorance"' and "conscious avoidance" to be sufficient to characterize the act as "willful". As a literate person of age and a long-time businessman, he should have known his tax obligations under the law as well as the consequences of any violations.

People vs. Yang
CTA Crim. Case No. O-202, O-203, O-204, O-205 promulgated on June 1, 2022

(The failure of the BIR to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of the PAN as strictly required by Section 228 of the Tax Code, the Court holds that the subject assessment is void and of no legal effect.)

Facts:

In this case, accused Shirley Yang, Raquel O. Villarante, and Zaldy G. Trinidad, are charged before the CTA for violations of Section 255 of the Tax Code. Accused Shirley Yang is the President of Cardona Apparel, Inc., while accused Raquel O. Villarante is the Corporate Secretary and accused Zaldy G. Trinidad is the Accounting Manager. On March 30, 2006, a LOA was issued authorizing RO Bernardo Mora to examine the books of accounts and other accounting records of Cardona from the period from January 1, 2004 to December 31, 2004.

On January 21, 2008, the BIR issued and sent a PAN with Details of Discrepancy to the registered office address of Cardona.

It is alleged that Cardona failed and refused to pay deficiency taxes knowing fully well that the tax assessment has already become final, due, and demandable. It added that for defrauding the government of the correct taxes due and neglecting to pay the final and demandable assessment against it, Cardona is liable under Section 255 of the Tax Code.

Villarante alleged that there was no proper service of the PAN on Cardona, and therefore the alleged deficiency tax assessment of Cardona is null and void.

Issue:

Is the accused guilty of 'Failure to Pay Tax' under Section 255 of the Tax Code?

Ruling:

No.

In this case, there is no valid service by the BIR of the PAN on Cardona. It may be the duty of the taxpayer to notify the BIR of the change of its registered business address of closure of business. However, its failure to do the same does not necessarily negate the BIR's strict

obligation to inform the taxpayer in writing of the facts and the law on which the assessment is made.

To prove the fact of mailing of the PAN, the prosecution presented a Registry Return Receipt. However, only the back side of the Registry Return Receipt was presented and offered in evidence, which only contains the name of addressee, which reads: "CARDONA APPAREL, INC. (2004)." The front side, which was not presented, would have indicated relevant information that will prove due service, such as: (a) the date of mailing; (b) the name of the sender; (c) the street number; (d) the name of the post office; and (f) file case/ account number.

The service of the PAN cannot be established as only the back side of the Registry Return Receipt was presented and offered in evidence, which only contains the name of the addressee, which reads: "CARDONA APPAREL, INC. (2004)."

Only the taxpayer or its authorized representative may receive the assessment from the BIR and the mere presentation of the registry receipts are insufficient. To ascertain whether the signatures appearing therein were authorized representatives of the taxpayer, the signatures should be identified and authenticated.

Thus, the failure of the BIR to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of the PAN as strictly required by Section 228 of the Tax Code, the Court holds that the subject assessment is void and of no legal effect.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

SEC-OGC Opinion No. 22-04 issued on March 29, 2022

- In this Opinion, the SEC discussed the implications of a corporation operating under a Business/trade name, different from its legal (corporate) name.
- The Christian and Missionary Alliance Churches of the Philippine, Inc. (CAMACOP) is currently doing business under the name and style of CAMACOP.
- With the first query, CAMACOP raised the question on whether or not it can use the name The Christian and Missionary Alliance Churches of the Philippine, Inc. without the trade name "CAMACOP" in its regular and official transaction.
- The SEC affirmatively opined on this query. Under item 4 of the SEC Memorandum Circular (MC) No. 13-2019 (Guidelines and Procedures on the Use of Corporate and Partnership Names), it provides that a Business or Trade name which is different from the corporate or partnership name shall be indicated in the Articles of Incorporation (AOI).
- In this case, the Christian and Missionary Alliance Churches of the Philippine, Inc. may use its registered corporate name without the trade name " CAMACOP" in all its regular and official transactions.
- Under the second query, the Corporation raised the question whether or not it can use the trade name CAMACOP independently without its corporate name in its transactions.
- The SEC also affirmatively opined to this query. It is settled that a corporation using an assumed name (business or trade name) in executing a contract is bound just as much as if it had used it corporate name. (SEC Opinion No. 11-39)
- However, it is worthy to note that there are instances wherein the corporation is mandated to use, issue and/or submit papers reflecting not just its business name, but also its corporate name, such as filing Financial Statements with the BIR and SEC.

SEC-OGC Opinion No. 22-05 issued on April 13, 2022

- In this Opinion, the SEC discussed the application of the Grandfather Rule in the ownership structure of a Proposed Corporation that will engage in real estate development and acquisition in the Philippines.
- The Corporation in question has the proposed ownership structure below:

Incorporator	Citizenship	Percentage of Ownership
Individual (Minor C)	Filipino (with Chinese trustee)	50%
Corporation X	100% foreign-owned (BVI)	39%
Individual	Filipino	10%
Individual	Filipino	1%
Individual	Chinese	1 Share
Individual	Chinese	1 Share
Individual	Chinese	1 Share

- The first query of this opinion raises the question on whether or not the Chinese Father of Minor C can be validly designated as Trustee for his daughter's shares in the Proposed Corporation.
- The SEC opined that as a general rule, shares of stock may be issued in trust for another person. The shares may be registered in the name of one person but the beneficial owner may belong to another.
- In a previous opinion (SEC Opinion No. 12-13), the SEC shared that in the determination of the citizenship of shares being held in trust, both the nationality of the trustee and of the beneficiary should be considered. Pursuant to the ruling in the *Gamboa v. Teves* and *Roy v. Herbosa* cases, control should be determined by looking at the stockholder's ability to vote in the election of directors and other important corporate affairs.
- The Proposed Corporation in this case will be engaged in a partially nationalized activity that must comply with the 40% foreign ownership threshold.
- Based on Articles 320 and 326 of the Civil Code and a previous Opinion of the SEC (SEC Opinion, June 30, 1982), shares of stock owned by minors should be issued in the name of the father or mother, in trust for the minors. He/she may represent and vote for the minor children in the stockholder's meetings since said acts are embraced in the administration of property. However, he/she does not have the power to dispose or encumber the property of the minor unless prior court approval was secured.
- In relation to the present case, under the proposed ownership structure, the 50% shareholding of Minor C will be under the control of her Chinese Father. Since foreign control over the Proposed Corporation will exceed 40%, it will not comply with the Constitution and nationality laws. Thus, the Proposed Corporation cannot engage in real estate business under this structure.
- The second query raises the question on whether or not the Chinese trustee may qualify as a nominee/representative of the Filipino minor incorporator in the BOD.
- As a rule, a natural incorporator must be of legal age pursuant to Section 10 of the RCC. In this case, considering that the legal title of the shares of stock of the Minor will be represented by the Chinese Father, the legal title will be in the latter's name. As such, the trustee Chinese Father may qualify as a director subject to the allowable proportion under the Anti-dummy law.
- For the law query, the Grandfather Rule does not apply in this case since the nationality of Corporation X is not in doubt. What is primarily being contended is the 50% share ownership of Minor C, which can be determined without applying the Grandfather Rule.

SEC-OGC Opinion No. 22-06 issued on May 10, 2022

- Ngo Lok Foundry, Inc. (NLFI)'s corporate charter was revoked by the SEC. for the failure to comply with its reportorial requirements. It was also stated that NLFI does not have any creditor and its lone assent is a parcel of land. Out of the nine directors, only six are still living.
- The first query is whether NLFI may still liquidate and dispose its lone asset despite the lapse of more than three years since the revocation of its corporate charter. The SEC opined that while Section 139 of the RCC gives a dissolved corporation three years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period. NLFI may still liquidate and dispose its lone asset despite the lapse of more than three years since the revocation of its corporate charter.
- The second query is whether the Board of Directors of NLFI or persons appointed by the Board in a duly constituted meeting may act as trustees by implication and liquidate the lone asset of NLFI. The SEC opined that in the case of *Gelano vs. CA*, the Court stated that if the three-year extended life has expired without a trustee or receiver having been expressly designated by the corporation within that period, the board of directors (or trustees) itself, may be permitted to so continue as "trustees" by legal implication to complete the corporate liquidation.

SEC-OGC Opinion No. 22-07 issued on May 26, 2022

- This Opinion discusses the applicability of Section 22 of the Revised Corporation Code (RCC) and its effect on existing provisions in the by-laws of corporations, which were formed and incorporated under the old Corporation Code.
- The SEC opined that corporations are not allowed to elect directors, all of whom are non-residents of the Philippines, if their by-laws provide for the residency requirement. Although Section 22 of the RCC provides for the qualifications and term of the board of directors or trustees of a corporation which does anymore include the residency requirement, Section 46(f) of the RCC allows private corporations to provide in their by-laws the directors' qualifications such as residency requirement. Thus, if a corporation provides in its by-laws the requirement that majority of its directors must be residents of the Philippines, then, it may do so. Such corporation may not elect directors, all of whom are non-residents of the Philippines, if its by-laws ***still*** requires that the majority of the elected directors must be residents of the Philippines.
- Alternatively, should amendment of the by-laws be required, the corporation may not elect directors who are not Philippine residents pending the approval of their applications for amendment of their by-laws by the SEC. The SEC opined that Section 47 of the RCC provides that the amended by-laws shall only be effective upon the issuance by the SEC of a certification that the same is in accordance with the RCC and other relevant laws. Prior to such issuance, the corporation is still required to make sure that the majority of its elected directors are residents of the Philippines.
- The corporation may elect directors who are not Philippine residents, pending the approval of its application for amendment of its by-laws with the SEC, as long as the majority of the directors are residents of the Philippines.

SEC-OGC Opinion No. 22-08 issued on May 30, 2022

- In this Opinion, the SEC addressed the query of KOBELCO Construction Machinery Southeast Asia Co. Ltd. Philippine Branch ("KOBELCO-PH") whether "after-sales support services" are covered in its primary purpose of "operating the business of wholesaling of hydraulic excavator, crane and its attachment, parts including components of said products."
- The SEC said that, in order to determine whether or not the "after-sales support services" are covered by KOBELCO-PH's license to transact business in the Philippines, reference

must be made to the specific purpose the corporation intends to pursue, as stated in its application for such license that was submitted.

- The SEC discussed that, it is the corporation's purpose clause that confers, as well as limits, the powers that a corporation may exercise. Express powers include the general powers which are enumerated in Section 35 of the RCC and those in the corporation's Articles of Incorporation ("AOI"). On the other hand, **implied** or incidental powers are those which are "essential or **necessary** to carry-out its purpose or purposes as stated in the AOI.
- Here, in KOBELCO-PH's application to establish a branch in the Philippines reveals that its purpose is "*to operate the business of wholesaling of hydraulic excavator, crane and its attachment, parts including components of said products*". This is likewise reflected in KOBELCO-PH's license.
- The SEC said that the meaning of the purpose clause can be reasonably "stretched", or it is even legal to "stretch", to cover new and unexpected situations. But in those cases where it cannot, a proper amendment thereof would be necessary.
- Thus, the SEC advanced the view that the selling of components and spare parts is part of the services offered to the customers after a sale of a machinery is made. The SEC furthered that the after-sales support services are necessary to and implied from the nature of the activity that KOBELCO-PH is engaged in. It is **necessary** because KOBELCO-PH must cater to the maintenance of the machineries and respective queries or complaints, if any, of its customers in the Philippines. It is **implied** because KOBELCO-PH is engaged in the wholesale of machineries; thus, coordination with local dealers for sales and marketing of its products for it to be able to sell its products to the public.
- Nonetheless, the SEC emphasized that, based on KOBELCO-PH's license to transact business, the after-sales services to be undertaken by it should be strictly limited to its customers, and should not be pursued as a separate business activity.

BUREAU OF CUSTOMS ISSUANCE

CMO No. 15-2022 issued on June 2, 2022

- This Order applies to all goods clearly indicated in the Transshipment Foreign Cargo Manifest as destined for a foreign destination other than the Port of Discharge.
- Goods intended for transshipment shall not be subject to the payment of duties and taxes, provided, that the Transshipment Goods Declaration particularly indicates such nature of goods, duly supported by commercial or transport documents or evidence as required by the Bureau of Customs (BOC).
- *Transshipment* refers to the customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation.
- *Transit of Strategic Goods* refers to the shipment of strategic goods within the Philippines and those entering and passing through the territory of the Philippines with an ultimate destination outside the Philippines in such a manner that the strategic goods remain at all times in or on the same carrier. On the other hand, *Transshipment of Strategic Goods* refers to a mode of shipping a good on a carrier which enters the territory of the Philippines, wherein the good is unloaded from the carrier and reloaded in the same or on another carrier that is bound for an ultimate destination outside the Philippines.
- All entities engaged in transshipment activities must apply for accreditation with the BOC as transshippers upon implementation of the electronic lodgment of Goods Declaration for Transshipment. This shall include Cargo forwarders, consolidators, shipping lines, Air Express Cargo Operators (AECOs) and other similar entities engaged in transshipment operations.

- There are also provisions on direct transfer to vessels/aircraft, transshipment of bulk and break-bulk cargoes, in-transit transfers, transshipment of goods via air and even those covered by international conventions and agreements.
- This Order also provides rules on the loading of goods intended for Transshipment.
- In-transit transfers of goods in containers shall be equipped with the electronic customs seal under the Electronic Tracking of Containerized Cargo (E-TRACC) System.
- With regard the Transit of Strategic Goods and Transshipment of Strategic Goods under RA No. 10697, or the Strategic Trade Management Act, no prior authorization is required until the Strategic Trade Management Office issues a prior public notice of its implementation to all stakeholders.
- This Order also enumerates the documents that must be submitted by the carrier's agent or representative when applying for the Transshipment Permit.
- It must be noted that there are transshipments where a Transshipment Permit is not needed, *i.e.* Transshipment Operations of Hub Facilities Operated by AECOs (Section 6). Such operations shall be dedicated to the sorting and distributing of shipments from points across the world that are then physically transferred to a connecting transportation mode.
- Hub Facilities owned and operated by AECOs shall be accredited and registered as Customs Facilities and Warehouse (CFWs) with the Collection District having jurisdiction over the facility.
- Transshipment operations at Hub Facilities may cover (1) transfer, (2) transhold, (3) transload, and (4) transport.
- This Order reiterates the supervision fees that shall be collected for all Transshipment Goods as provided under CAO No. 12-2019.
- Lastly, this Order provides a schedule of penalties for the following acts:
    - Unloading of goods for transshipment before arrival at port of entry;
    - Unloading of goods for transshipment at improper time and place after arrival;
    - Failure to supply advance and requisite manifest;
    - Disappearance of manifested goods for transshipment;
    - False statement of port of final destination of transshipment goods;
    - Failure to load within the period allowed; and
    - Other violations for which delinquency no specific penalty is provided under CAO No. 12-2019.

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