RECENT JURISPRUDENCE ON TAXATION LAW*

INTRODUCTION

This is a survey of recent cases decided by the Supreme Court across the following sub-fields of taxation law: national taxation; local taxation; and administrative and judicial remedies. These cases were decided in 2022 and 2023.

I. NATIONAL TAXATION

A. *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue*[1]

This decision, penned by Associate Justice Henri Jean Paul B. Inting, tackles the taxability of satellite services provided by a non-resident foreign satellite operator which are transmitted by satellites in outer space and received by subscribers in the Philippines.

PT Asia Cellular Satellite ("Aces Indonesia") and the Philippine Long Distance Telephone Company ("PLDT") entered into an Air Time Purchase Agreement wherein the former was allowed to sell satellite communications time ("Aces Services") to the latter, which, in turn, shall become the exclusive provider/distributor thereof to Philippine subscribers. These services depended upon the "Aces System," which consisted of satellites, terminals, and gateways. The satellite (in outer space) receives, switches, amplifies, and/or transmits radio signals to and from the terminals and gateways (terrestrial/ground facilities, including those in Philippine territory). Aces Indonesia transferred its rights and obligations under the Air Time Purchase Agreement in favor of Aces International Limited ("Aces Bermuda"), and PLDT transferred its rights and obligations to its subsidiary, petitioner Aces Philippines Cellular Satellite Corporation ("Aces Philippines"). Aces

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[1] [Hereinafter "*Aces Philippines*"], G.R. No. 226680, Aug. 30, 2022 (*En Banc,* Inting, *J.*) (slip op.)

Philippines then had the authority to operate telecommunications gateways and related equipment within the Aces System.[2]

The Bureau of Internal Revenue (BIR) found in its audit that Aces Philippines did not withhold the proper amount of tax when the latter paid Aces Bermuda satellite air time fees. These satellite air time fees were held to be income payments to a non-resident foreign corporation ("NRFC") that are subject to 35% final withholding tax ("FWT"). The CTA division ruled that the satellite airtime fees paid were considered Philippine-sourced income. It observed that, under the agreement, the fees are paid only when satellite air time is delivered to Aces Philippines and its Philippine subscribers, and is *used in the Philippines for a voice or data call*, excluding satellite utilization time for call set-up and unanswered and incomplete calls; thus, the activity that produced the income took place in the Philippines. The CTA *En Banc* upheld the decision, pointing out that the service would not be considered delivered to Aces Philippines and its subscribers if those signals do not *reach the gateways located in the Philippines*.[3]

Aces Philippines claimed that the income-producing activity is the "receipt and beaming of satellite signals which all happen in the satellite and its control center, all located outside the Philippines;" therefore the situs of the income is from sources outside the Philippines. It explained that Aces Bermuda's ground or earth station which performs the required service is located outside the Philippines, i.e., in outer space, specifically in geostationary orbit at 123 degrees east longitude.[4]

The Supreme Court ("Court") differed from the position of Aces Philippines and held that the assessment of deficiency FWT was correct. First, the gateways' *receipt of the call* as routed by the satellite is the income source. Citing the Securities and Exchange Commission's (SEC) definition of "income" in SEC Memorandum Circular No. 12, series of 2019,[5] the Court noted that "[t]he subject may only be regarded as an income source if the particular property, activity, or service causes an increase in economic benefits, which may be in the form of an inflow or enhancement of assets or a decrease in liabilities with a corresponding increase in equity other than that attributable to a capital contribution."[6] The gateway's receipt of the call was

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[2] *Id.* at 4-6.

[3] *Id.* at 6–9.

[4] *Id.* at 2, 11–13.

[5] Securities and Exchange Comm'n (SEC) Mem. Circ. No. 12 (2019). Adoption of Revised Conceptual Framework; Summary of Philippine Financial Reporting Standards adopted by the SEC. *See Aces Philippines*, G.R. No. 226680, at 19 n.89.

[6] *Aces Philippines*, G.R. No. 226680, slip op. at 19.

identified as the income source as it coincides with: (1) the completion or delivery of the service; and (2) the inflow of economic benefits in favor of Aces Bermuda. Contrary to Aces Philippines' position, the satellite and its control center have only determined the location the call shall be directed to, but have not actually routed the call during the act of transmission. The accrual of satellite air time fees only begins when the satellite air time is delivered to Aces Philippines (i.e., upon the gateway's receipt of the routed call) and is utilized by the Philippine subscriber for a voice or data call. The inflow of economic benefits is signified at such accrual.[7]

Second, the situs of the income-producing activity is within the Philippines. Such is established by the fact that: (1) the income-generating activity is directly associated with the gateways located within the Philippine territory; and (2) engaging in the business of providing satellite communication services in the Philippines is a government-regulated industry. On the first point, the performance of the service continues until Aces Bermuda delivers the satellite communication time (i.e., routes the call) to the Philippine gateway owned by Aces Philippines. That income generation is dependent on the operations of facilities situated in the Philippines. On the next point, the contracting of a Philippine gateway operator and service provider is pivotal to Aces Bermuda's operations in the Philippines because the local public telecommunications industry is state-regulated, via state-granted franchises. Such situation invokes Philippine sovereignty and government intervention or protection.[8]

To support its petition, Aces Philippines cited BIR Ruling No. ITAD-214-02 dated December 4, 2002, where the Commissioner of Internal Revenue ("CIR") opined that when no equipment is installed in the Philippines and the services had been coursed through satellites, the income from the service fees would be treated as derived from sources outside the Philippines and hence not subject to FWT. However, the Court noted that the BIR ruling was a specific interpretative rule that was binding only with respect to a query from a specific taxpayer.[9]

Aces Philippines also cited the United States (US) Circuit Court of Appeals' ruling in *Commissioner of Internal Revenue v. Piedras Negras Broadcasting Co.*,[10] which held that the act of transmission is the source of income produced by transmission of electromagnetic waves over thousands of miles free of

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[7] *Id.* at 21–22.
[8] *Id.* at 23–26.
[9] *Id.* at 13.
[10] 127 F.2d 260 (5th Cir. 1942).

control or regulation by the sender from the moment of generation. Hence, in the case of a foreign radio corporation's transmissions broadcast directly to listeners in the US, none of the income was treated as derived from sources within the US. Aces Philippines also noted that other jurisdictions such as India, Singapore, Thailand, and Germany do not regard satellite air time fee payments as subject to withholding tax, and further cited Section 863(e) of the US Internal Revenue Code and the Organisation for Economic Co-operation and Development Commentaries on Article 5 of the Model Tax Convention on Income and on Capital.[11]

However, the Court pointed out that these references do not have the force of law in the Philippines and are not persuasive. As a general rule, US cases and legislation are not binding and are merely persuasive in resolving tax cases in the Philippine jurisdiction, and the Court may rely on the same in exceptional instances where the domestic legal provision was lifted substantially or entirely from US laws. Aces Philippines, however, merely asserted that Philippine income tax law is of American origin and claimed that the BIR has been unable to "cope with the fast pace of advances in science and technology." To this, the Court responded that foreign law cannot simply be incorporated into the legal system and that only Congress can amend the law. As it is, there is no law characterizing international satellite communications income as foreign-sourced only, revealing that Congress did not intend to automatically remove the income of foreign satellite companies from the reach of Philippine taxation.[12]

B. *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*[13]

In this Decision, the Court, through Associate Justice Mario V. Lopez, emphasized that the existence of excess creditable input value-added taxes ("VAT") cannot be made a condition for the refund of input VAT allocable to zero-rated sales, because it is not required by Section 112 of the National Internal Revenue Code ("NIRC").[14] In the absence of legal and jurisprudential basis, it would be inappropriate and unjust to deny the request of a taxpayer for the refund of unutilized input VAT simply because there is no excess input VAT from the output VAT.

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[11] *Aces Philippines*, G.R. No. 226680, slip op. at 13–14, 26.

[12] *Id.* at 28.

[13] [Hereinafter "*Chevron Holdings*"], G.R. No. 215159, July 5, 2022 (*En Banc*, M. Lopez, *J.*) (slip op.)

[14] *Id.* at 16.

The case involves the request of Chevron Holdings, Inc. for the refund or issuance of a tax credit certificate on its unutilized input VAT for the taxable year 2006.[15] The refund claim concerned the sale of services provided by Chevron Holdings to its foreign affiliates which were subject to a 0% rate.[16] The input taxes attributable to these zero-rated sales were not credited against output taxes because of the large amounts of input taxes incurred by Chevron Holdings that were carried forward from previous taxable quarters.[17]

The CTA *En Banc* partly granted the petition of Chevron Holdings and held that the refundable excess input VAT attributable to zero-rated sales amounted only to PHP 15,085.24.[18] It disallowed the refund claim relating to the input tax carry-over of 56.56 million pesos for the first quarter of 2006 as it cannot be validly applied against the output tax for the second to fourth quarters, underscoring that Chevron Holdings is required to substantiate the existence or payment of excess input taxes with VAT invoices and receipts.[19]

In its petition before the Supreme Court, Chevron Holdings contended that Section 112(A) of the NIRC does not make it mandatory that there be a substantiation of carried-over input taxes for there to be a refund of excess input taxes that were incurred during the period of the claim for refund.[20]

The Court held that it was improper for the CTA to condition the refund of input taxes, which are allocable to zero-rated sales, on the existence of excess creditable input taxes because such condition finds no basis in the NIRC and in jurisprudence.[21] The Court gave four reasons for its ruling.

First, Section 112(A) of the NIRC only requires that the claimed input tax "has not been applied against [the] output tax,"[22] while Section 4.112-1(a) of Revenue Regulation No. 16-2005 provides that such input tax being claimed "shall exclude the portion of input tax that has been applied against the output tax."[23] The Court stressed that the only thing that must be proved by the taxpayer is the "non-application or non-charging of the input VAT

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[15] *Id.* at 3.
[16] *Id.* at 2.
[17] *Id.* at 3.
[18] *Id.* at 5–6.
[19] *Id.* at 6, 14.
[20] *Id.* at 8.
[21] *Id.* at 16.
[22] TAX CODE, § 112(A).
[23] Bureau of Internal Revenue (BIR) Revenue Reg. No. 16-2005 (2005), § 4.112-1(a).

subject of the claim," and that the word "excess" does not even appear in Section 112(A) of the NIRC. It highlighted the difference between requiring the taxpayer to prove that they did not charge the input tax against the output tax and requiring them to prove that, after offsetting input tax from output tax, they still have "excess" input tax. It explained that only the former is essential to be entitled to the refund, because the rationale is simply to avert double recovery: a taxpayer who enjoyed lower or zero output tax by deducting the input tax from zero-rated sales cannot benefit twice by applying for a refund or tax credit.[24]

Second, there is reference to "any input tax" in Section 110(B) of the NIRC. Deliberations on the bills that eventually became Republic Act ("R.A.") No. 7716, or the Expanded VAT Law, also show that the legislature contemplated the input tax, allocable to zero-rated sales, to be an amount that will not be offset against the output tax, but either refundable or creditable.[25] Thus, Congress did not intend that the input tax attributable to zero-rated sales be charged against the output tax as a preliminary step to a refund or tax credit; otherwise, the lawmakers would have used the phrase "excess input tax."[26]

Third, the refundable input tax in Section 110(B) in relation to Section 112(A) of the NIRC cannot be called "excess" input tax, because what is being applied for the refund claimed is unutilized input VAT from zero-rated sales. The Court noted that there can be no "excess" input tax attributable to zero-rated sales, because the seller charges zero output tax and there is no related output tax against which the input tax can be charged.[27] The Court also clarified that its statement in *Commissioner of Internal Revenue v. Seagate Technology (Phils.)*, [28] which implied that only the "excess" input tax allocable to zero-rated sales may be refundable or creditable,[29] is at best merely an *obiter dictum*. It found more apt the case of *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*,[30] which affirmed the denial of the taxpayer's refund claim for failure to prove that the input tax was not applied against any of its output tax liability.[31]

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[24] *Chevron Holdings*, G.R. No. 215159, slip op. at 17–19.
[25] *Id.* at 20–22.
[26] *Id.* at 19.
[27] *Id.* at 22–23.
[28] G.R. No. 153866, 451 SCRA 132, Feb. 11, 2005.
[29] *Id.* at 142–43.
[30] G.R. No. 159471, 640 SCRA 504, Jan. 26, 2011.
[31] *Chevron Holdings*, G.R. No. 215159, slip op. at 23–24.

Fourth, the taxpayer's failure to prove the existence of sufficient creditable input taxes to cover its output tax liability is an issue that is different and distinct from a claim for refund of unutilized input VAT that is attributable to zero-rated sales.[32]

All told, the Court held that the CTA erred in charging Chevron Holdings' input taxes against its output taxes and using the resultant amount as basis to compute the allowable amount for refund, as well as in requiring the taxpayer to substantiate its excess input tax. The Court found that Chevron Holdings had sufficiently established its compliance with all the requisites for a refund or credit of unutilized input tax allocable to zero-rated sales under Section 112(A) of the NIRC and accordingly increased the amount that the CIR is ordered to refund or issue as tax credit.[33]

C. *Petron Corporation v. Commissioner on Internal Revenue*[34]

Alkylate, according to Petron Corporation ("Petron"), is a blending component in motor or aviation gasoline used to meet certain required characteristics such as octane number and volatility requirements and is not by itself suitable as motor fuel.[35] In this Decision, the Court, through Associate Justice Ramon Paul L. Hernando, stressed that alkylate does not fall under the category of "other similar products of distillation" subject to excise tax because distillation does not directly cause the production of alkylate. Moreover, alkylate is exclusively intended for use as a raw material or blending component and not as a product by itself.[36] The contrary interpretations of the CIR do not bind the Court, especially considering testimony from expert witnesses distinguishing between alkylate and substances treated as "products of distillation."[37]

This case involved Petron's importation of alkylate, which was subjected to excise tax pursuant to Section 148(e) of the NIRC.[38] The basis of the tax treatment was a memorandum circular of the Bureau of Customs (BOC) grounded on the interpretation of the CIR that states that alkylate is a product of distillation similar to that of naphtha, which is subject to excise tax.[39] In response, Petron filed claims for the refund of 219.15 million pesos

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[32] *Id.* at 24–25.
[33] *Id.* at 26, 28.
[34] G.R. No. 255961, Mar. 20, 2023 (First Div., Hernando, *J.*) (slip op.)
[35] *Id.* at 4, 6.
[36] *Id.* at 9, 11–12.
[37] *Id.* at 9.
[38] *Id.* at 2.
[39] *Id.*

in excise taxes, arguing that alkylate is not a product of distillation and is thus not subject to excise tax.[40] Moreover, Petron asserted that because alkylate is not imported for domestic sale, consumption, or disposition, there would be double taxation if taxes were imposed on alkylate.[41]

The Court granted the refund claim and underscored that alkylate is not subject to excise taxes under the NIRC because alkylate is not produced through distillation. It is solely used as a raw material and is not a product in and of itself.[42] The Court cited three reasons. First, it applied the doctrine of strict construction of tax laws in favor of the taxpayer because Petron sought the recovery of erroneously assessed and illegally collected taxes and the refund claim was not in the nature of a tax exemption. It noted that Petron's entitlement to a tax refund was not based on the existence of a tax exemption clause, but on the absence of a law that imposes excise tax on alkylate. There being no clear legal basis for the imposition of excise taxes on alkylate, the doubt should be resolved in favor of Petron.[43]

Second, alkylate does not fall under the phrase "other similar products of distillation" because testimonies from expert witnesses explained that alkylate is a product of alkylation, which is distinct from the process of distillation. Although one of the raw materials of alkylate is produced by distillation, the Court stressed that Section 148(e) of the NIRC imposes excise tax only on direct products of distillation similar to naphtha and regular gasoline, not on the raw materials or ingredients used for the production of substances that are products of other processes. Further distinguishing alkylate from the products of distillation subject to excise tax is the fact that it is a mere component which can be combined into finished gasoline. With tax laws being construed *strictissimi juris* against the government, the absence of a clear, express, and unambiguous imposition of tax on alkylate and substances not directly produced by distillation should work in favor of the taxpayer.[44]

Third, the CIR's erroneous interpretation regarding the nature of alkylate should not override, supplant, or modify the provisions of the NIRC as to its tax treatment. This administrative interpretation or ruling by executive officers does not bind the Court when it is found to be erroneous. The Court noted that the CIR's interpretation based merely on reference materials and

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[40] *Id.* at 2, 7.
[41] *Id.* at 7.
[42] *Id.* at 9, 11–12.
[43] *Id.* at 7–8.
[44] *Id.* at 9–12.

not actual testing and experience was contradicted by detailed descriptions and comparisons by the expert witnesses. The testimony revealed substantial distinctions between alkylate and naphtha, in terms of boiling range, volatility, and the recovery process, as well as the unsuitability of alkylate for sale or use as a motor fuel.[45]

II. LOCAL TAXATION

A. *City of Davao v. ARC Investors, Inc.*[46]

In this Resolution, the Court, through Justice Inting, underscored that an entity's money market placements would amount to "doing business" as a non-bank financial intermediary ("NBFI") when the element of "regularity or recurrence for the purpose of earning a profit" is present. Without this element, an entity earning interests by using the dividends of its shares of stock for money market placements would not be considered an NBFI subject to the local business tax ("LBT").

This case concerns ARC Investors, Inc. ("ARCII"), one of the 14 Coconut Industry Investment Fund ("CIIF") Holding Companies sequestered from the ill-gotten wealth of dictator Ferdinand Marcos and his cronies and owned by the Philippine government to be used only for the benefit of coconut farmers and the development of the coconut industry.[47] Its Articles of Incorporation ("AOI") specifically provides that it "shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."[48]

In 2010, ARCII earned PHP 801,634,060.07 by way of dividends from its preferred shares of stocks in San Miguel Corporation ("SMC") and interests on its money market placements. The City of Davao issued an LBT assessment in the amount of PHP 4,381,431.90, equivalent to 0.55% of those dividends and interests.[49]

ARCII protested the assessment,[50] but its petition was denied by the Regional Trial Court (RTC) of Davao City. The RTC treated the dividends

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[45] *Id.* at 13–15.

[46] [Hereinafter "*City of Davao*"], G.R. No. 249668 (Resolution), July 13, 2022 (Third Div., Inting, *J.*) (slip op.)

[47] *See* COCOFED v. Republic [hereinafter "*COCOFED*"], 679 Phil. 508, 639 (2012).

[48] *City of Davao*, G.R. No. 249668, slip op. at 2.

[49] *Id.* at 2–3.

[50] *Id.* at 3.

and interests as principal sources of income in line with the primary purpose stated in the AOI,[51] and thus held that the dividends and interests are subject to LBT.[52] The CTA in Division reversed the RTC decision and canceled the assessment. The CTA *En Banc* affirmed this decision, prompting the City of Davao to file a petition for review on *certiorari*.[53]

The Court denied the City of Davao's petition and agreed with ARCII that it is not an NBFI subject to LBT under Section 143(f), in relation to Section 151, of the Local Government Code ("LGC").[54] It enumerated the following requisites for an entity to be considered as an NBFI under the LGC, in relation to the NIRC and pertinent banking laws and regulations:

> a. The person or entity is authorized by the BSP to perform quasi-banking functions;
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> b. The principal functions of said person or entity include the lending, investing or placement of finds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and
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> c. The person or entity must perform any of the following functions on a *regular and recurring, not on an isolated basis*, to wit:
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> 1. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
>
> 2. Use principally the funds received for acquiring various types of debt or equity securities;

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[51] ARCII's primary purpose under its AOI reads: "To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real or personal property of every kind and description, including shares of stock, voting trust certificates for shares of capital stock, […] evidences of indebtedness, and other securities, contracts, or obligations […], to receive, collect and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership […]." *Id.* at 2.

[52] *Id.* at 4.

[53] *Id.* at 5.

[54] *Id.* at 6.

> 3. Borrow against, or lend on, or buy or sell debt or equity securities.[55]

The Court noted that the SMC preferred shares held by CIIF holding companies such as ARCII, as well as the derivative dividends or increments, are considered assets owned by the National Government which shall be used only for the benefit of the coconut farmers and for the development of the coconut industry. Its purpose is to manage the dividends of SMC preferred shares for and on behalf of the government, and the placement of dividends in the interest-yielding market is considered to be part of this function—but this does not by itself amount to doing business either as a bank or other financial institution or as an NBFI.[56]

The Court also highlighted the primary test for distinguishing between a holding company and a financial intermediary—the "regularity of function, not on an isolated basis, with the end in mind for self-profit." Although ARCII "incidentally" earned interests through its placement of dividends derived from its SMC shares in the market, this did not negate the corporation's restricted purpose as a CIIF holding company or convert it into an active investor or dealer in securities. Absent the element of regularity or recurrence for the purpose of earning a profit, the Court held that ARCII's money market placements could not amount to "doing business" as an NBFI.[57]

As for the difference between banks and other financial institutions on one hand and non-banks and non-financial institutions on the other, the Court cited the Bureau of Local Government Finance Opinion dated February 22, 2011. The legal opinion clarified that any tax imposed on interest, dividends, and gains from sale of shares of non-bank and non-financial institutions assume the nature of income tax, because these are "merely passive investment income." This is because banks and other financial institutions derive gross receipts in the ordinary course of their business, while non-banks and non-financial institutions do not.[58]

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[55] *Id.* at 7, *citing* City of Davao v. Randy Allied Ventures, Inc., G.R. No. 241697, July 29, 2019. (Emphasis in the original.)

[56] *Id.* at 7–9, *citing COCOFED*, 679 Phil. 508, 621–22.

[57] *Id.* at 9.

[58] *Id.*

III. ADMINISTRATIVE AND JUDICIAL REMEDIES

A. *Bureau of Internal Revenue v. Tico Insurance Co., Inc.*[59]

This Decision, penned by Associate Justice Ramon Paul L. Hernando, shows that the purchasers of a taxpayer's property have superior rights over a tax lien of the BIR that is annotated only after acquisition by the former. The purchase prior to the annotation prevents the tax lien from retroacting to the date of assessment, even though this may have been earlier.

Glowide Enterprises, Inc. ("Glowide") and Pacific Mills Inc. ("PMI") took out a fire insurance policy with Tico Insurance Co., Inc. ("Tico Insurance"). When a fire destroyed the insured properties, Tico Insurance was unable to pay the full amount of the insurance proceeds to Glowide and PMI. The RTC of Quezon City on November 23, 2000 granted the application for a writ of preliminary attachment and a notice of levy was issued on the two condominium units of Tico Insurance. The RTC subsequently ruled in favor of Glowide and PMI in their complaint for sum of money. The motion for execution was granted and the writ of execution and notices of levy on execution were annotated on the condominium certificates of title ("CCT") on December 22, 2000.[60]

Meanwhile on January 31, 2000, the BIR served on Tico Insurance several final assessment notices for its alleged tax deficiencies. Because the liabilities remained unpaid, the BIR sent Tico Insurance and the Register of Deeds of Makati City notices of a warrant of distraint and/or levy on the real and personal properties of the insurance company. On February 15, 2005, the BIR caused the annotation of tax lien on the same condominium units bought by Glowide and PMI.[61]

Glowide and PMI maintained that they have superior rights over the BIR and that the tax lien was annotated when the condominium units were already purchased by the two companies. Additionally, they averred that the auction or execution sale retroacted to the date of the levy of the lien on attachment, i.e., December 22, 2000. The BIR argued that its annotation of the notice of tax lien on February 15, 2005 retroacted to the date when the BIR assessed TICO of tax liabilities on January 31, 2000.[62] The RTC of Makati

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[59] G.R. No. 204226, Apr. 18, 2022 (Second Div., Hernando, *J.*) (slip op.)
[60] *Id.* at 2–3.
[61] *Id.* at 3–4.
[62] *Id.* at 11–12.

City ruled in favor of the BIR's claim, while the Court of Appeals (CA) declared that Glowide and PMI have superior rights and are entitled to the condominium units.[63]

The Court affirmed that Glowide and PMI's rights over the condominium units are superior to the BIR's claim and that they are thus entitled to possession and conveyance of the condominium units. While the title vested in the purchaser at an execution sale only becomes absolute after the expiration of the redemption period without such right having been exercised, the right acquired by the purchaser is still entitled to protection and must be respected until extinguished by redemption.[64] The auction sale conducted pursuant to an order of execution retroacts to the date of annotation of the levy on attachment, and such annotation creates a preference that retroacts to the date of the levy.[65] Because the final judgment in favor of Glowide and PMI was already enforced through the sale of the condominium units to these parties, the title to the condominium units were vested immediately in the aforementioned purchasers, subject only to Tico Insurance's right to repurchase. When the condominium units were sold on execution to Glowide and PMI in 2004, the rights acquired by them when they purchased the units retroacted to the date of the annotation of their notice of levy on December 22, 2000.[66]

Although Section 219 of the NIRC provides that a tax lien is enforceable against all property and rights to property belonging to the taxpayer and retroacts to the time when the tax assessment was made, the same provision is qualified such that only after the notice of tax lien is annotated on the pertinent title can a judgment creditor's rights be affected and the tax lien be considered to retroact to the date of assessment.[67]

Contrary to the BIR's assertion, its tax lien cannot retroact to the date of assessment on January 31, 2000 because the property no longer belonged to Tico Insurance when the same was annotated on February 15, 2005. This is because of the earlier annotation of the levy on attachment and sale of the condominium units in favor of Glowide and PMI, whose rights over the condominium units retroacted to December 22, 2000.[68]

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[63] *Id.* at 4–5.

[64] *Id.* at 12, *citing* Sps. Ching v. Family Savings Bank, G.R. No. 167835, 634 SCRA 586, 601, Nov. 15, 2010.

[65] *Id.* at 12–13, *citing* Sps. Caviles v. Sps. Bautista, G.R. No. 102648, 319 SCRA 24, 34, Nov. 24, 1999.

[66] *Id.* at 12–14.

[67] *Id.* at 13–14.

[68] *Id.* at 12–14.

B. *Asian Transmission Corp. v. Commissioner of Internal Revenue*[69]

This case, the Resolution of which was penned by Associate Justice Inting, arose from a situation where both the taxpayer and the BIR were at fault when it came to defects in the waivers of the defense of prescription under the NIRC's statute of limitations. The Supreme Court held that when both parties are at fault and the taxpayer belatedly questions the validity of the waiver, the scales will be tilted in favor of the tax authorities even if more of the defects were attributable to the latter.

On August 9, 2004, the BIR commenced its audit and investigation of the books of account and other accounting records of Asian Transmission Corporation ("ATC") pertaining to taxable year 2002. The CIR's right to assess ATC for the relevant taxes was due to prescribe in the first quarter of 2006. ATC allegedly executed waivers that extended the assessment period to December 31, 2018. On July 15, 2008, the CIR served a Formal Letter of Demand, assessing ATC for withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), and FWT deficiencies. In its judicial protest, ATC alleged that the first three waivers executed by it were defective; therefore, they did not validly extend the assessment period.[70]

The Court, in its Decision[71] dated September 19, 2018, affirmed the decision of the CTA *En Banc* to remand the case to the CTA in Division for further proceedings.[72] The Court found the following defects in the waivers: (1) the notarization of the waivers was not in accordance with the 2004 Rules on Notarial Practice; (2) several waivers clearly failed to indicate the date of acceptance by the BIR; (3) the waivers were not signed by the proper revenue officer; and (4) the waivers failed to specify the type of tax and the amount of tax due.[73] ATC filed a motion for reconsideration, arguing that the three defects allegedly caused by the BIR outnumbered the one attributable to the taxpayer.[74]

ATC's contention that the principles of *in pari delicto*, unclean hands, and estoppel should not have been applied was rejected by the Court, which

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[69] [Hereinafter "*Asian Transmission Corp.*"], G.R. No. 230861 (Resolution), Feb. 14, 2022 (Second Div., Inting, *J.*) (slip op.)

[70] *Id.* at 2–4.

[71] G.R. No. 230861, 880 SCRA 475, Sept. 19, 2018.

[72] *Id.* at 486.

[73] *Id.* at 484–85.

[74] *Asian Transmission Corp.*, G.R. No. 230861 (Resolution), slip op. at 4.

maintained that the waivers were valid and effective because both parties were at fault. This was because ATC was remiss in its responsibility of preparing the waivers, and the BIR failed to observe the procedures in their execution. Moreover, ATC contested the validity of the waivers only in its judicial protest. The Court stressed that "the taxpayer's contributory fault or negligence coupled with estoppel will render effective an otherwise flawed waiver, regardless of the physical number of mistakes attributable to a party."[75]

The Court took into consideration that, despite the defects in the waivers, ATC issued eight successive waivers and continued to correspond with the tax authorities throughout the investigation. In addition, ATC only raised the invalidity of the waivers when it appealed the CIR's unfavorable decision to the CTA. Estoppel arose from ATC's acquiescence to the BIR's extended investigation and its failure to raise the waivers' validity at the earliest opportunity. The Court interpreted ATC's belated attempt to cast doubt on the waivers' validity as a mere afterthought to resist possible tax liability. It frowned upon the abuse that may arise in a situation where a taxpayer deliberately executes haphazard waivers, goes through the motions of the investigation, makes the tax authorities believe that the assessment period had been extended, and then denies their validity when the assessment becomes unfavorable to them.[76]

C. *Commissioner of Internal Revenue v. Philippine Bank of Communications*[77]

In this Decision, the Court, through Justice Hernando, pointed out that the move of Philippine Bank of Communications ("PBCOM") not to wait for the BIR to act upon its administrative claim for the issuance of a tax credit certificate does not make the judicial claim for a refund or credit of creditable withholding tax ("CWT") premature.[78] This is because the law does not require that the administrative claim should be acted upon first before a judicial claim may be filed within the contemporaneous two-year prescriptive periods under Sections 204 and 229 of the NIRC.[79]

On April 16, 2007, PBCOM filed its Income Tax Return for the year 2006 reflecting a net loss and a creditable tax withheld for the fourth quarter

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[75] *Id.* at 5–6.
[76] *Id.* at 6–7.
[77] G.R. No. 211348, Feb. 23, 2022 (Second Div., Hernando, *J.*) (slip op.)
[78] *Id.* at 8.
[79] *Id.* at 7.

of 2006; thus, it applied for a tax credit certificate for its excess or unutilized CWT. After almost two years, it filed on April 3, 2009 a letter requesting the BIR to issue the tax credit certificate. Before waiting for the BIR to act upon its letter, PBCOM on April 15, 2009 filed a petition for review with the CTA, alleging inaction on the part of the CIR.[80] However, the CIR asserted that PBCOM's petition was premature because its claim is in the nature of a refund and is subject to administrative examination by the BIR first, in accordance with Revenue Regulations No. 6-86 and case law.[81] The CTA ruled that PBCOM timely filed the claim for refund, prompting the CIR to bring the petition to the Court, arguing that the taxpayer's failure to submit the required documents rendered its administrative claim *pro forma* and its judicial claim premature.[82]

The Court underscored that the failure of PBCOM to comply with the requirements for an administrative claim did not preclude the filing of a judicial claim for a refund or credit of CWT.[83] The Court ratiocinated that an administrative claim is independent of a judicial claim as implied in the NIRC, which allows a taxpayer to file both administrative and judicial claims within the same prescriptive period of two years from payment of the tax (provided that the administrative claim is filed first before the judicial claim).[84] According to Section 229 of the NIRC, the only requirement for a judicial claim of tax credit to be filed is that the claim for refund has been filed with the CIR, not that the claim before the CIR has already been acted upon.[85] Thus, the legislative intent is to treat the judicial claim as separate and distinct from that of the administrative claim, provided that the taxpayer files an administrative claim before seeking a judicial remedy.[86]

D. *People v. Court of Tax Appeals*[87]

In this Decision, the Supreme Court, through Associate Justice Japar B. Dimaampao, underlined that the BIR may not question the acquittal of the accused in tax evasion cases without being represented by the Office of the

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[80] *Id.* at 1.
[81] *Id.*
[82] *Id.* at 3–4.
[83] *Id.* at 5.
[84] *Id.* at 6–7.
[85] *Id.* at 7.
[86] *Id.*
[87] [Hereinafter "*CTA Case*"], G.R. No. 251270, Sept. 5, 2022 (Third Div., Dimaampao, *J.*) (slip op.)

Solicitor General (OSG) or without any delegation of authority by the Department of Justice (DOJ).[88]

L.M. Camus Engineering Corporation ("L.M. Camus Engineering"), its president, and its comptroller were charged with multiple counts of violation of Sections 254 and 255 of the NIRC for allegedly failing to declare all sales or exchange of services in its income and VAT returns.[89] The CTA granted the demurrer to evidence filed by the accused, citing the failure of the prosecution to present their income and VAT returns and to state in detail how they fraudulently concealed or omitted the payments made to the company.[90]

With the CTA denying its motion for reconsideration, the Prosecution Division of the BIR filed before the Court a petition for *certiorari* to reverse the acquittal on the ground that the accused's tax deficiencies were well-established, despite the prosecution's failure to present the tax returns of L.M. Camus Engineering.[91] Notably, the BIR was not represented by the OSG, which denied its request for representation because of the absence of a favorable endorsement from the DOJ; the Office Orders of the Office of the Prosecutor General also state that the BIR is deputized to prosecute tax-related criminal cases only "in the first and second level courts and the Court of Tax Appeals."[92]

The Court emphasized that the BIR cannot by itself question the acquittal of an accused in a tax evasion case when there is an assessment by the OSG that there exists no valid ground to do so.[93] The Court cited the Administrative Code provision empowering the OSG to represent the government "in all criminal proceedings" before the CA and the Supreme Court,[94] and the case of *Commissioner of Internal Revenue v. La Suerte Cigar & Cigarette Factory*,[95] which held that the NIRC did not overturn the requirement for the OSG to represent the interest of the Republic in appellate proceedings.[96] The Court stressed that the Solicitor General has wide discretion to start the prosecution of a case by filing an action or to desist

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[88] *Id.* at 13–15.
[89] *Id.* at 2–7.
[90] *Id.* at 10.
[91] *Id.* at 11–12.
[92] *Id.* at 15.
[93] *Id.* at 14.
[94] ADMIN. CODE, bk. IV, tit. III, § 35(1).
[95] G.R. No. 144942 (Resolution), 384 SCRA 117, 119, July 4, 2002.
[96] *CTA Case*, G.R. No. 251270, slip op. at 13.

therefrom by choosing not to file a case at all, unless the refusal to perform the duty to represent the government is without a just and valid reason.[97]

Although Section 220 of the NIRC provides that criminal actions under the Code "shall be conducted by legal officers of the Bureau of Internal Revenue,"[98] the Court explained that this authority must be tempered by the provision of the Prosecution Service Act of 2010 that makes the National Prosecution Service "primarily responsible for the preliminary investigation and prosecution of all cases involving violations of penal laws."[99] The BIR's unequivocal interest in tax cases should also be taken together with the issuances of the BIR itself, such as those related to the Run After Tax Evaders ("RATE") Program, which require criminal cases to be prosecuted in coordination with the DOJ.[100]

E. *The Department of Energy v. Court of Tax Appeals*[101]

The Court in this case reiterated the ruling in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[102] ("*PSALM v. CIR*") that tax cases involving government agencies are disputes that must be submitted first to administrative settlement by the Secretary of Justice or the Solicitor General.[103] The decision was penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Alfredo Benjamin S. Caguioa and Henri Jean Paul B. Inting.[104] This case is interesting in that Associate Justice Japar B. Dimaampao, joined by Associate Justice Samuel H. Gaerlan, dissented and urged that the Court revisit the 2017 *PSALM* ruling.[105] Justice Caguioa responded to Justice Dimaampao's dissent in his concurring opinion.[106]

In this case, the BIR issued the Department of Energy (DOE) a Preliminary Assessment Notice for deficiency excise taxes and gave it 15 days to pay the assessed amounts. The DOE refused to do so, asserting that it is not an "owner, lessee, concessionaire or operator of the mining claim" liable

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[97] *Id.* at 14.

[98] TAX CODE, § 220.

[99] Rep. Act No. 10071 (2010), § 3.

[100] *CTA Case*, G.R. No. 251270, at 15.

[101] [Hereinafter "*Dep't of Energy*"], G.R. No. 260912, Aug. 17, 2022 (Third Div., Singh, *J.*) (slip op.)

[102] [Hereinafter "*PSALM*"], G.R. No. 198146, 835 SCRA 235, Aug. 8, 2017.

[103] *Dep't of Energy*, G.R. No. 260912, slip op. at 6.

[104] *Id.* at 17–18.

[105] *Dep't of Energy*, G.R. No. 260912, slip op. at 1, 8–11 (Dimaampao, *J.*, *dissenting*).

[106] *Dep't of Energy*, G.R. No. 260912, slip op. at 6–13 (Caguioa, *J.*, *concurring*).

to pay excise taxes under Section 130(A)(1) of the NIRC. Thus, the BIR issued a Formal Letter of Demand which later became final, executory, and demandable for failure to file a formal protest within the prescribed period.[107] When the CIR issued two warrants of distraint and/or levy and garnishment on September 19, 2019, the DOE filed a petition for review with the CTA on October 18, 2019.[108] The CTA dismissed the petition for lack of jurisdiction, ratiocinating that it cannot exercise its authority in a purely intra-governmental dispute in accordance with the ruling of the Court in the *PSALM* case.[109]

In affirming the CTA, the Court emphasized that Presidential Decree No. 242 ("P.D. 242"), a special law, should prevail against laws defining the general jurisdiction of the CTA, such as Republic Act No. 1125 ("R.A. 1125") as amended by Republic Act No. 9282, in accordance with the rule that special laws prevail over general laws.[110] It added that the legislative intent of P.D. 242 is to submit all inter-governmental disputes between entities within the Executive branch to the authority of the Executive, with the objective of avoiding litigation in instances where the parties involved ultimately represent the government as the only real party-in-interest.[111] The Court disagreed with the argument of the DOE that *PSALM* was limited to disputes arising from contracts, stating that case was hinged not merely on the existence of a memorandum of agreement but on the very fact that there was a dispute between the BIR on one hand and two government agencies on the other.[112] Finally, it held that the Chief Executive's power of control requires that there be a chance to resolve the dispute between government agencies administratively.[113]

Justice Dimaampao in his dissent opined that the Court should revert to the earlier pronouncement in *Philippine National Oil Company v. Court of Appeals*[114] ("*PNOC*") that Section 7 of R.A. 1125 is a special law that constitutes an exception to P.D. 242. He argued that disputes among government agencies, when they are covered by the circumstances under Section 7 of R.A. 1125, remain within the exclusive appellate jurisdiction of the CTA.[115] However, the majority, through Justice Singh, held that the *PNOC* case did not involve the actual application of P.D. 242 because it was

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[107] *Dep't of Energy*, G.R. No. 260912, slip op. at 2.
[108] *Id.* at 3.
[109] *Id.*
[110] *Id.* at 6–9.
[111] *Id.* at 9.
[112] *Id.* at 10.
[113] *Id.* at 12.
[114] G.R. No. 109976, 457 SCRA 32, Apr. 26, 2005.
[115] *Dep't of Energy*, G.R. No. 260912, slip op. at 1, 10 (Dimaampao, *J.*, *dissenting*).

not a case that solely involved the government; as such, the discussion on R.A. 1125 being an exception to P.D. 242 was *obiter*.[116]

Justice Dimaampao also asserted that interpreting P.D. 242 to include tax disputes would result in situations where the Secretary of Justice can supplant the actions of taxing agencies and thwart the power to collect taxes. He added that the administrative settlement of tax disputes cannot be justified by the President's power of control and supervision, because the power to collect taxes ultimately resides with Congress.[117] On the other hand, Justice Caguioa stated that P.D. 242 does not prohibit the enforcement of tax laws and suppress the collection of taxes because it simply recognizes the President's power of control over the Executive and provides an administrative remedy to settle intra-government disputes.[118]

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[116] *Dep't of Energy*, G.R. No. 260912, slip op. at 9–10.
[117] *Dep't of Energy*, G.R. No. 260912, slip op. at 8–9 (Dimaampao, *J.*, *dissenting*).
[118] *Dep't of Energy*, G.R. No. 260912, slip op. at 7–8 (Caguioa, *J.*, *concurring*).