

# THE EVOLUTION OF THE COURT OF TAX APPEALS AND RECENT JURISPRUDENCE IN TAXATION\*

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*"Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes. Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands."*

*- Judge Learned Hand*

## I. INTRODUCTION

Republic Act (R.A.) No. 9503, or "An Act enlarging the organizational structure of the Court of Tax Appeals, amending for the purpose certain sections of the law creating the Court of Tax Appeals and for other purposes," "was signed into law by the President on June 11 [2008]. The law increases the number of associate justices of the Court of Tax Appeals (CTA) from six to nine to expedite the resolution of tax cases."<sup>1</sup> R.A. No. 9503 is the latest act of legislation expanding the organization of the CTA for the better administration and efficient adjudication of tax-related cases. It is the most recent in a long line of laws and jurisprudence that have progressively expanded the jurisdiction and authority of the CTA. Such acts lead to the creation and continuous growth of the CTA, whose vision is to be "[a] specialized tax court that is impartial, competent,

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<sup>1</sup> See <http://www.businessmirror.com.ph/07032008/opinion04.html>.

transparent, and worthy of public trust and confidence, ensuring faithful compliance with tax laws.<sup>2</sup>

The objective of this article is to chronicle the legislative and judicial precedents that have progressed to the creation of the new CTA under R.A. No. 9503. This article will discuss the evolution of CTA from an administrative body to a specialized court of justice elevated to the level of the Court of Appeals. It will also discuss the expansion of the CTA's jurisdiction, to covering both civil and criminal cases involving issues of taxation. This article will also touch on jurisprudence clarifying the CTA's jurisdiction as well as more current decisions ruled by the CTA that were upheld by the Supreme Court.

A full understanding of the CTA's strategic role in our government will not be complete without tracing its beginnings. In order to know what it is, we must know what it has been, and what it tends to become.<sup>3</sup>

## II. THE BOARD OF TAX APPEALS

On January 5, 1953, President Ramon Magsaysay, pursuant to the powers vested in him under R.A. No. 422, promulgated Executive Order (E.O.) No. 401-A, which created the Board of Tax Appeals.<sup>4</sup> Sections 8<sup>5</sup> and 20<sup>6</sup> of E.O. No. 401-A provided for the Board of Tax Appeals'

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<sup>2</sup> *Vision of the CTA*, available at <http://cta.judiciary.gov.ph/vision.php>.

<sup>3</sup> Homes, Jr., O.W., *The Common Law*, 1 (2004).

<sup>4</sup> Congressional Record, 1 House of Representatives, Third Congress of the Republic of the Philippines, First Regular Session. May 3, 1954, Vol. I, No. 65, p. 2202.

<sup>5</sup> SEC. 8. The Board of Tax Appeals shall have exclusive jurisdiction to hear and decide administratively as hereinafter provided :

(1) All appeals from decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

<sup>6</sup> SEC. 20. No judicial proceeding against the Government involving matters arising under the National Internal Revenue Code, the Customs law, or the Assessment Law shall be maintained except as herein provided, until and unless an appeal has been previously filed with the Board of Tax Appeals and disposed of in accordance with the provisions hereof.

The party adversely affected by any ruling, order or decision of the Board of Tax Appeals may appeal therefrom to the Supreme Court by filing with the said Board a notice of appeal and with the Supreme Court a petition for review, within thirty days from the date he receives notice of said ruling, order or decision. If, within the aforesated period, he fails to perfect his appeal, the said ruling, order or decision shall become final and conclusive against him.

If no decision is rendered by the Board within sixty days from the filing with said Board of an appeal from any ruling, order or decision of the Collector of Internal Revenue, the Commissioner of Customs, or of the provincial or city Board of Assessment Appeals concerned, the party adversely affected by said ruling, order or decision may file with said Board a notice of his intention to appeal to the Supreme Court, and if,

exclusive jurisdiction to hear and decide all appeals from decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the Board of Assessment Appeals. This executive act created the predecessor of the CTA.

A few months after the creation of the Board of Tax Appeals, the Supreme Court, in the case of *UST v. Board of Tax Appeals*<sup>7</sup> declared that "Executive Order No. 401-A is null and void in so far as it interferes with the jurisdiction of the courts of first instance in cases arising not only under the internal revenue law but also customs law and assessment law, but is valid with regard to the rest of its provisions in so far as they affect the organization and administrative functions of the Board of Tax Appeals."<sup>8</sup> The President under R.A. No. 422 could not enact Executive Order No. 401-A to deprive the courts of first instance of their jurisdiction in actions for recovery of taxes which was granted to them by section 306 of the National Internal Revenue Code.<sup>9</sup> Under the Constitution, Congress alone had the power to define, prescribe, and apportion the jurisdiction of the various courts.<sup>10</sup>

With this decision, the Supreme Court essentially curtailed the powers of the Board of Tax Appeals to act as a focal point for all tax and tax-related controversies. As such, the legislature had to intervene and rectify the void that was created by the nullification of the E.O. No. 401-A.<sup>11</sup>

### III. CREATION OF THE COURT OF TAX APPEALS THROUGH R.A. 1125

As a consequence of the Supreme Court's decision in *UST v. Board of Tax Appeals*, and cognizant of the need for a central agency which would review tax cases, together with the recognition of the dire need for expediting the collection of taxes, a bill for the creation of the CTA was submitted to Congress.<sup>12</sup> The proposed CTA would have the same rank and category as the Court of Industrial Relations.<sup>13</sup> Its decisions would be

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within thirty days from the filing of said notice of intention to appeal, no decision has as yet been rendered by the Board, the aggrieved party may file directly with the Supreme Court an appeal from said ruling, order or decision, notwithstanding the foregoing provisions of this section.

<sup>7</sup> G.R. No. 1-5701, June 23, 1953.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, citing Article VIII, Section 2, 1935 Constitution.

<sup>11</sup> C. Montejo, *The Court of Tax Appeals Acts*, Annotated, 2 (1960).

<sup>12</sup> Congressional Record, House of Representatives, 3<sup>rd</sup> Congress, Vol. I, No. 65, May 3, 1954, p. 2202.

<sup>13</sup> *Supra*, note 11, at p. 3.

directly appealable to the Supreme Court, in light of the numerous cases and their importance to the overall scheme of the government.<sup>14</sup>

Hence, R.A. No. 1125 was enacted on June 16, 1954, creating the Court of Tax Appeals, which was mandated to review cases and at the same time expedite the collection of taxes.<sup>15</sup> The CTA was created as a court of special appellate jurisdiction, which exercises exclusive appellate jurisdiction to review by appeal “decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other law or part of law administered by the BIR”.<sup>16</sup> The CTA consisted of three members, namely the Presiding Judge and two Associate Judges, with the same qualifications, rank, category, and privileges as the Presiding Judge and Associate Judges of the Court of Industrial Relations, respectively.<sup>17</sup> The Legislature decided to put three judges in the CTA because they could decide more cases and possibly more correctly as they took on the considerable number of tax cases.<sup>18</sup>

#### IV. QUASI-JUDICIAL TO COURT OF JUSTICE

Notwithstanding the effectivity of R. A. No. 1125, the nature of the CTA as a court of justice has been confused with being a mere quasi-judicial agency of government. To highlight the confusion, in the quite recent case of *Commissioner of Internal Revenue (“CIR”) v. General Foods, Inc.*<sup>19</sup> a case decided almost forty years after the promulgation of R.A. No. 1125, the Supreme Court, under the ponencia of Justice Renato C. Corona, inadvertently called the CTA a quasi-judicial agency. In reasoning why the CTA’s decision must be upheld, the Court said that “[i]t has been a long standing policy and practice of the Court to respect the conclusions of *quasi-judicial agencies such as the Court of Tax Appeals, a highly specialized body specifically created for the purpose of reviewing tax cases.* The CTA, by the nature of its functions, is dedicated exclusively to the study and consideration of tax problems. It has necessarily developed an expertise on the subject. (We) extend due

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Collector of Customs v. Court of Tax Appeals*, G.R. No. 1-8811, Oct. 31, 1957.

<sup>16</sup> *V. Marnalateo, Reviewer on Taxation*, 544 (2008), citing *Commissioner vs. Ayala Securities Corporation*.

<sup>17</sup> *Supra*, note 11, at p. 5.

<sup>18</sup> *Ibid.*

<sup>19</sup> G.R. No. 143672, April 24, 2003.

consideration to its opinion unless there is an abuse or improvident exercise of authority.”<sup>20</sup>

The fact that the CTA is a specialized court does not equate it to a quasi-judicial agency. This issue was long settled by the Supreme Court in *Ursal v. CTA*<sup>21</sup> (the “*Ursal case*”). In this case, the Supreme Court made it clear that the CTA is part of the judiciary and not merely another administrative agency. It stated that the CTA as created by R.A. No. 1125 is “part of the judicial system presumably to act only on protests of private persons adversely affected by the tax, custom, or assessment”, “instead of being another superior administrative agency as was the former Board of Tax Appeals”.

### V. ISSUES ON JURISDICTION DURING R.A. NO. 1125

Section 7 of R.A. No. 1125 defined the jurisdiction of the CTA as follows:

Section 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

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<sup>20</sup> Emphasis supplied.

<sup>21</sup> G.R. Nos. L-10123 & L-10355, April 26, 1957.

(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

The above provision was a major step towards defining the jurisdiction of the CTA. Nonetheless, the Supreme Court still had to settle controversies regarding the CTA's jurisdiction.

In the *Ursal* case,<sup>22</sup> the issue of whether a city assessor has the personality to file an appeal with the CTA was discussed. Commonwealth Act No. 530 creating the former Central Board of Tax Appeals gave express authority to the city assessor to appeal tax cases to the Central Board of Tax Appeals. However, the Supreme Court, in *Ursal*, made it clear that the assessor had no personality to resort to the CTA as only persons "adversely affected" by the decision or ruling of the Collector of Internal Revenue, the Collector of Customs, or any provincial or city Board of Assessment Appeals may file an appeal in the CTA. The CTA was not created to decide mere conflicts of opinion between administrative officers or agencies.

The highest court further said that R.A. No. 1125 did not grant the CTA blanket authority to decide any and all tax disputes. R.A. No. 1125, being a complete law by itself, defines such special court's jurisdiction and necessarily limited its authority to those matters enumerated therein.

Thus, the CTA's jurisdiction is exclusively within those enumerated in Section 7 of R.A. No. 1125.

In *Development Bank of the Philippines ("DBP") vs. Court of Appeals*,<sup>23</sup> the Supreme Court held that the exclusive appellate jurisdiction of the CTA over decisions the Commissioner of Customs in cases involving liability for custom duties, fees, or other monetary charges, inter *alia*, under Section 7(2) of R.A. No. 1125 was superseded by Presidential Decree ("P.D.") No. 242, which provided that "xxx all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations but excluding constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or

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<sup>22</sup> G.R. Nos. L-10123 & L-10355, April 26, 1957.

<sup>23</sup> G.R. No. 86625, December 22, 1989.

agreements, shall henceforth be administratively settled or adjudicated xxx.”<sup>24</sup>. The Court stated that “there is an “irreconcilable repugnancy ... between Section 7(2) of R.A. No. 1125 and P.D. No. 242,” and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.”

However, in *Philippine National Oil Company (“PNOC”) v. Court of Appeals*,<sup>25</sup> the Supreme Court en banc reversed the above pronouncement in DBP vs. CA that P.D. No. 242 repealed Section 7(2) of R.A. No. 1125. The statutory construction used in the DBP case was wrong as when there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. “P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines.” On the other hand, R.A. No. 1125 “is a special law dealing with a specific subject matter – the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.” Following the rule on statutory construction that between a general law and a special law, the special law prevails, “P.D. No. 242 should not affect” R.A. No. 1125. R.A. No. 1125, “specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant.”

The Court of Appeals also had opportunity to clarify the jurisdiction of the CTA under R.A. No. 1125. In *Phinma Property Holdings Corporation v. Court of Tax Appeals and Liwayway Vinzon*,<sup>26</sup> the Court of Appeals discussed

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<sup>24</sup> Section 1, R.A. NO. 242.

<sup>25</sup> G.R. Nos. 109976 & 112800, April 26, 2005.

<sup>26</sup> CA-G.R. SP No. 38666, October 25, 1996.

the jurisdiction of the CTA on decisions of the CIR on “other matters” in the National Internal Revenue Code (“NIRC”). It stated:

As clearly provided in aforesaid Section 7 of RA 1125, the exclusive appellate jurisdiction of the respondent CTA is over decision of the respondent Commissioner in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue. This jurisdiction of the respondent CTA was stressed by the Supreme Court in the Case of Commissioner of Internal Revenue vs. Ayala Securities Corporation (70 SCRA 204).

In line with the principle of "ejusdem generis", the term "other matters" in regard to the respondent court's jurisdiction could be those cases which do not necessarily involve disputed assessments or refunds of internal revenue taxes, fees or other charges, penalties in relation thereto or those related to customs protest or forfeiture cases but *controversies which are still within* the scope of the functions of the BIR and Customs (p. 229, Basic Taxation in the Philippines, Benjamin Aban, 1994). (Underlining supplied.)

In *Atlas Consolidated Mining and Development Corporation v. Commissioner Of Internal Revenue*,<sup>27</sup> the Supreme Court stated the nature of proceedings in the CTA with regard to refund cases. It stated: “First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.”

Moreover, the CA discussed when the CTA acquires its jurisdiction - “The respondent court acquires jurisdiction only when the respondent Commissioner renders a decision on the protest lodged in her office and it is this decision which is

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<sup>27</sup> G.R. No. 145526, March 16, 2007.

challenged in a petition for review before the respondent court. This has been explained by the Supreme Court as follows:

... Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the collector on the disputed assessment. . . ."<sup>28</sup>

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Since in the instant case the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decision of the Commissioner of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only, of such matters as are clearly within its jurisdiction.

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## VI. DIRECT APPEAL TO THE SC CHANGED TO APPEAL TO THE CA

The promulgation of Batas Pambansa ("B.P.") Blg. 129 (An Act Reorganizing the Judiciary, Appropriating Funds Therefore, and For Other Purposes) temporarily discontinued the direct appeal of CTA decisions to the Supreme Court. Decisions of the CTA should now first be appealed to the Intermediate Appellate Court (now the Court of Appeals).

In *DBP vs. Court of Appeals*,<sup>30</sup> the Supreme Court explained that in view of the promulgation of B.P. Blg. 129, the Intermediate Appellate Court was granted exclusive appellate jurisdiction over the CTA and other quasi-judicial agencies, instrumentalities, boards, or commissions. The wording of B.P. Blg. 129 ("Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance

<sup>28</sup> Cited in the case of *Commissioner of Internal Revenue v. Villa*, 22 SCRA 3.

<sup>29</sup> *Ibid.*

<sup>30</sup> G.R. No. 86625, December 22, 1989.

with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.") is broad and comprehensive, and the explicitly stated exceptions have no reference whatsoever to the CTA. Thus, direct appeal to the Supreme Court from the CTA under Section 18<sup>31</sup> and 19<sup>32</sup> of R.A. No. 1125 was removed by B.P. Blg. 129.

This change in the procedure of appeal from the CTA to the CA was subsequently changed with the promulgation of R. A. No. 9282.

### VII. CTA EXPANDED JURISDICTION THROUGH R.A. NO. 9282 AND R.A. NO. 9503

The field of legal taxation is a very dynamic discipline. While the substantive laws affecting the taxpayers undergo a number of amendments, primarily, in order to plug the loopholes of earlier laws in terms of tax administration and collection, on the other hand, the modifications of our procedural laws and issuances have remained untouched. It is only with the expansion of the jurisdiction (R.A. No. 9282) of the CTA that the dynamism of the procedural aspects of tax litigation came to a closer scrutiny.<sup>33</sup>

With the increasing number of cases filed in the CTA, Republic Act No. 9282 came into being and took effect on April 23, 2004. The law expanded the jurisdiction of the CTA, elevated its rank to the level of a collegiate court and enlarged its membership. The number of divisions was increased to two, composed of three Justices each.<sup>34</sup> And the rank of the

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<sup>31</sup> Section 18 – xxx Any party adversely affected by any ruling, order or decision of the Court of Tax Appeals may appeal therefrom to the Supreme Court by filing with the said Court a notice of appeal and with the Supreme Court a petition for review, within thirty days from the date he receives notice of said ruling, order or decision. If, within the aforesaid period, he fails to perfect his appeal, the said ruling, order or decision shall become final and conclusive against him.

If no decision is rendered by the Court within thirty days from the date a case is submitted for decision, the party adversely affected by said ruling, order or decision may file with said Court a notice of his intention to appeal to the Supreme Court, and if, within thirty days from the filing of said notice of intention to appeal, no decision has as yet been rendered by the Court, the aggrieved party may file directly with the Supreme Court an appeal from said ruling, order or decision, notwithstanding the foregoing provisions of this section.

If any ruling, order or decision of the Court of Tax Appeals be adverse to the Government, the Collector of Internal Revenue, the Commissioner of Customs, or the provincial or city Board of Assessment Appeals concerned may likewise file an appeal therefrom to the Supreme Court in the manner and within the same period as above prescribed for private parties. xxx

<sup>32</sup> Section 19. Review by certiorari. — Any ruling, order or decision of the Court of Tax Appeals may likewise be reviewed by the Supreme Court upon a writ of certiorari in proper cases. xxx

<sup>33</sup> Preface, iv, CTA Laws and Issuances

<sup>34</sup> Section 1, R.A. No. 9282.

Court and the Justices became the same as that of the Court of Appeals and the Justices of the latter court.<sup>35</sup> Further, with R.A. No. 9282, the CTA *En Banc* was created and the decisions of the CTA Division were made appealable to the CTA *En Banc* before any appeal to the Supreme Court can be filed.<sup>36</sup> More so, the jurisdiction of the Court was expanded to include: appellate jurisdiction over decisions of the Regional Trial Court on local taxes and over decisions of the Central Board of Assessment Appeals on real property taxes; exclusive original jurisdiction over all criminal offenses under both the Tax Code and the Tariff and Customs Code, where the principal amount of taxes involved is P1 Million or more; and exclusive appellate jurisdiction in criminal offenses where the amount of taxes involved is less than P1 Million.<sup>37</sup> More, the CTA has been granted exclusive original jurisdiction over tax collection cases where the amount involved is P1 Million or more, and exclusive appellate jurisdiction where the amount involved is less than P1 Million.<sup>38</sup>

Another significant development was the change in the process of Appeal from the CTA. With R.A. 9282, decisions of the CTA can now be directly appealed to the Supreme Court.<sup>39</sup>

Recognizing the limited resources of the CTA, coupled with a continuous increase of cases filed, R.A. No. 9503 was signed into law on June 12, 2008 and further reorganized the CTA with the creation of a Third Division. Under this law the CTA will have a total of nine members composed of a Presiding Justice and eight Associate Justices sitting *En Banc* or in three Divisions. More cases would be heard simultaneously by the three Divisions expediting the disposition of cases.

Under R.A. No. 9503, five justices shall constitute a quorum for an *En Banc* session and two justices for sessions of a Division. If this required quorum in the division cannot be constituted, the Presiding Justice may designate any Justice of the other division of the court to sit temporarily therein.

The affirmative votes of five members of the Court *En Banc* or two members of a Division, as the case may be, shall be necessary for the

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<sup>35</sup> *Ibid*.

<sup>36</sup> Sections 2 and 18, R.A. No. 9282.

<sup>37</sup> Section 7, R.A. No. 9282.

<sup>38</sup> Section 7(c), R.A. No. 9282.

<sup>39</sup> Section 19, R.A. No. 9282

rendition of a decision or resolution.<sup>40</sup> Interlocutory orders or resolutions shall be acted upon by a majority of the justices present constituting a quorum.

The decision of the Division of the CTA is still appealable to the CTA *En banc*. From an *En Banc* decision, the aggrieved party may file with the Supreme Court a verified Petition for Review on Certiorari, pursuant to Rule 45 of the 1997 Rules of Court.

### VIII. RELEVANT CTA DECISIONS UPHELD BY THE SUPREME COURT

Time and again it has been held that the power of taxation is sometimes also the power to destroy. The desire to collect more taxes which adheres to the doctrine espoused by the Supreme Court that "taxes are the lifeblood of the government and their prompt and certain availability is an imperious need"<sup>41</sup>; should therefore be done with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg".<sup>42</sup> The effort to strike a balance between the power of the government to tax and the right of the people not to be erroneously deprived of liberty and property has been the primordial reason for the creation of the CTA. And in carrying out the above said paramount duty, the CTA have decided on countless tax cases, some have been appealed to and ultimately been settled by the Highest Tribunal. Below are a few recent decisions of the Supreme Court on tax cases

#### CHEVRON PHILIPPINES, INC. VS. COMMISSIONER OF THE BUREAU OF CUSTOMS<sup>43</sup>

This is a case of abandonment under the Tariff and Customs Code of the Philippines (TCCP). According to the Supreme Court the "entry" in Sections 1301 and 1801 of the TCCP refers to both the Import Entry Declaration (IED) and the Import Entry and Internal Revenue Declaration (IEIRD). Under Section 1301, imported articles must be "entered" within a non-extendible period of 30 days from the date of discharge of the last package from a vessel. Otherwise, the imported goods shall be deemed

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<sup>40</sup> Section 2, R.A. No. 9503.

<sup>41</sup> *Bull v U.S.*, 295 U.S. 247.

<sup>42</sup> *Raxas vs. Court of Tax Appeals*, No. L-25043, April 26, 1968, 23 SCRA 276.

<sup>43</sup> G.R. No. 178759, August 11, 2008.

abandoned under Section 1801. Both the IED and the IEIRD are required to constitute “entry” because the IED serves as basis for the payment of the advance duties on the importations, whereas the IEIRD evidences the final payment of duties and taxes. Citing an old case, it was held that the word “entry” refers to the regular consumption entry (which, currently is the IEIRD) and not the provisional entry (the IED).

The Supreme Court cited congressional deliberations on the House Bill which was later enacted as the TCCP to show the policy considerations for the non-extendible 30-day period for the filing of the import entry in Section 1301, *i.e.*, importers will be constrained under the threat of having their importation declared as abandoned . . . to file import entries and claim their importation as early as possible; thus accelerating the collection of duties and taxes. The filing of IEIRDs serves important purposes: (1) the ascertainment of the value of the imports, (2) the collection of the correct and final amount of duties, and (3) the avoidance of smuggling of goods. Chevron’s interpretation that the 30-day period applies only to the IED, while no deadline is specified for the submission of the IEIRD would then have absurd implications for it is the IEIRD which accompanies the final payment of duties, which duties must in turn be paid in full before the Bureau of Customs (BOC) allows the release of the articles from its custody.

Moreover, the Supreme Court upheld the findings of fraud both by the BOC investigating team and by the CTA. It was held that Chevron bided its time to file the IEIRD so as to avail of a lower rate of duty, since at or about this time, the bill lowering the duty on oil products from 10% to 3% was already under discussion. There was a calculated and preconceived course of action by Chevron purposely to avoid the payment of correct customs duty then prevailing, done in collusion with the former District Collector, (it was the latter who allowed the acceptance of the late IEIRDs and the collection of taxes at 3%). Due to the presence of fraud, the prescriptive period on the finality of liquidation under Section 1603 of the TCCP was held to be inapplicable.

As Chevron failed to file the IEIRD within the non-extendible period of 30 days from the date of its discharge, under the law, it was deemed to have renounced all its interest and property rights over the imported goods. The articles were considered impliedly abandoned in favor of the government. Further, it was held that given the peculiar facts due notice was not necessary because Chevron was fully aware that its shipments had in fact arrived. The oil shipments were discharged from the carriers docked in its private pier, into its shore tanks. From then on, Chevron had

actual physical possession of its oil importations. It was thus incumbent upon Chevron to know its obligation to file the IEIRD within the 30-day period prescribed by law. Notice, therefore, was superfluous.

Under Section 1802 of the TCCP, the abandoned article shall *ipso facto* be deemed the property of the government. Thus, when Chevron withdrew the oil shipments for consumption, it appropriated for itself, properties which already belonged to the government. Accordingly, it became liable for the total dutiable value of the shipments reduced by the duties paid, thereby leaving a balance of P893,781,768.21.

#### **DIZON VS. COURT OF TAX APPEALS, ET. AL.<sup>44</sup>**

In this case the Supreme Court reiterated that the CTA is a court of record. It was held that cases filed before it are to be litigated *de novo*, thus party litigants shall prove every minute aspect. No evidentiary value can be given to pieces of evidence submitted by the Bureau of Internal Revenue (BIR), as the rules of documentary evidence require that these documents must be formally offered before the CTA. Although this rule have been relaxed in several cases, the said relaxation of the rule is merely an exception to the general rule and is to be applied only when there is strict compliance with the following requirements: (1) the evidence was duly identified and (2) they must have been incorporated in the records of the case.

#### **PILIPINAS SHELL PETROLEUM CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE (G.R. NO. 172598, DECEMBER 21, 2007),**

In this case the Supreme Court has upheld the validity of the tax credit certificates (TCCs) amounting to P1,705,008.06 used by Pilipinas Shell Petroleum Corporation (Shell) as payment for its excise tax liabilities.

According to the Supreme Court, TCCs are not subject to post-audit as a suspensive condition and are valid and effective from their issuance. The findings of the Bureau of Internal Revenue (BIR)'s post-audit cannot therefore void the TCCs and the payment Shell made through them.

It was further ruled that Shell, having duly complied with the requirements of the law and the rules to be a qualified transferee of TCCs,

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<sup>44</sup> G.R. No. 140944, May 6, 2008.

cannot be held liable should the TCCs be later found to be fraudulently procured or transferred. Fraud in this case was merely speculative. Shell, as the records disclose, is a transferee in good faith and for value. It cannot be legally required to pay again the tax covered by the TCC.

In addition, as the TCCs went through several approvals and verifications by various government agencies before being issued to Shell, it was stressed that Shell may not be prejudiced with a re-assessment of excise tax liabilities it has already duly settled with the use of the said TCCs. While the State in the performance of governmental functions is not estopped by neglect or omission of its agents, this principle cannot be applied to work injustice against an innocent party. Shell's rights as an innocent transferee for value must be protected.

#### **INTERNATIONAL EXCHANGE BANK VS. COMMISSIONER OF INTERNAL REVENUE<sup>45</sup>**

In this case the Supreme Court held that a passbook, representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest. It was held that a document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance, not form, is paramount.

A certificate of deposit may or may not be negotiable as gathered from the use of the conjunction "or", instead of "and", in its definition. A certificate of deposit may be payable to the depositor, to the order of the depositor, or to some other person or his order. In any event, the negotiable character of any and all documents under Section 180 is immaterial for purposes of imposing DST.

Orders for the payment of sum of money payable at sight or on demand are of course explicitly exempted from the payment of DST. Thus, a regular savings account with a passbook, which is withdrawable at any time is not subject to DST, unlike a time deposit which is payable on a fixed maturity date.

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<sup>45</sup> G.R. No. 171266, April 4, 2007.

It was emphasized that DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.

According to the Supreme Court, while tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade payment of just taxes. To claim that time deposits evidenced by passbooks should not be subject to DST is a clear evasion of the rule on equality and uniformity in taxation that requires the imposition of DST on documents evidencing transactions of the same kind, in this particular case, on all certificates of deposits drawing interest.

The further amendment of Section 180 of the NIRC was intended to eliminate precisely the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits.

#### **COMMISSIONER OF INTERNAL REVENUE VS. HANTEX CO., INC.<sup>46</sup>**

It was held in this case that the best evidence obtainable may consist of hearsay evidence, such as the testimony of third parties or accounts or other records of other taxpayers similarly circumstanced as the taxpayer subject of the investigation, hence, inadmissible in a regular proceeding in the regular courts. Moreover, the general rule is that administrative agencies such as the BIR are not bound by the technical rules of evidence. It can accept documents, which cannot be admitted in a judicial proceeding where the Rules of Court are strictly observed. It can choose to give weight or disregard such evidence, depending on its trustworthiness.

However, the best evidence obtainable under Section 16 of the National Internal Revenue Code (NIRC), does not include mere photocopies of records/documents. The petitioner, in making a preliminary and final tax deficiency assessment against a taxpayer, cannot anchor the said assessment on mere machine copies of records/documents. Mere photocopies have no probative weight if offered as proof of the contents thereof.

<sup>46</sup> G.R. No. 136975, March 31, 2005.

**SOUTHERN CROSS CEMENT CORPORATION VS. PHILIPPINE CEMENT MANUFACTURERS CORPORATION, THE SECRETARY OF TRADE AND INDUSTRY, THE SECRETARY OF FINANCE AND THE BUREAU OF CUSTOMS<sup>47</sup>**

The Supreme Court held in this case that pursuant to Section 29 of the Safeguard Measures Act (SMA), it is the Court of Tax Appeals, not the Court of Appeals, which has appellate jurisdiction over the case. The Highest Tribunal could not accept the allegation of respondent that the phrase "in connection with the imposition of safeguard measure" under Section 29 confers in the CTA jurisdiction only if there is an imposition of safeguard measure and if none is being imposed it is the Court of Appeals that has jurisdiction. The Supreme Court stated that, "precisely the split-jurisdiction situation is anathema to the orderly administration of justice." Undoubtedly, the phrase "in connection with" not only qualifies but also clarifies the succeeding phrase "imposition of a safeguard measure"; the phrase also encompasses the opposite or converse ruling which is the non-imposition of a safeguard measure.

### IX. CONCLUSION

After the Supreme Court nullified E.O. 401-A which created the BTA, the CTA was then created under R.A. No. 1125 as a Special Court under the supervision of the Supreme Court, composed of one (1) division with one (1) Presiding Judge and two (2) Associate Judges. It had special limited appellate jurisdiction to review by appeal, decisions of the Commissioner of Internal Revenue and the Commissioner of Customs, decisions of the Secretary of Finance on Customs cases elevated to him automatically for review of the decision of the Commissioner of Customs which are adverse to the government, and decisions of the Secretary of Trade and Industry in case of non-agricultural products, and the Secretary of Agriculture in case of agricultural products, involving dumping and countervailing duties under the Tariff and Customs Code, and safeguard measures under R.A. No. 8800.

This Court was created in order to entrust tax cases to technically qualified men in the field of, or those with specialized knowledge in, taxation and to help expedite the proper disposition of tax cases. However, its

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<sup>47</sup> G.R. No. 158540, July 8, 2004.

nature as a Court has been subject to question such that in an old case<sup>48</sup> the Supreme Court had to make a pronouncement that the proceedings in the CTA are judicial in nature, although the Court is not bound by the technical rules of evidence. There was even a case<sup>49</sup> that created an impression that the CTA is to be likened more to a quasi-judicial body or agency than a court. However, this has long been corrected. The CTA is not a mere superior administrative agency or tribunal but is a part of the judicial system of the Philippines, as a court specializing in tax cases.

The Supreme Court has itself declared that as a matter of practice and principle, unless there has been an abuse or improvident exercise of authority, it will not set aside the conclusion reached by the CTA, which, by the very nature of its function is dedicated exclusively to the study and consideration of tax problems, and thus, has necessarily developed an expertise on the subject.<sup>50</sup>

The foregoing developments in the field of taxation, particularly in jurisprudence and the set-up and responsibilities of the key players prove that taxation is alive and dynamic. The philosophical teaching of Heraclitus that “all is flux; nothing stays still” clearly applies to the complex world of taxation. It is equally true that law embodies the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only axioms and corollaries of a book of mathematics.<sup>51</sup> Providing a historical perspective to how the CTA evolved will help in the understanding of how its role in our society will be in the future.

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<sup>48</sup> *Perez v. Araneta*, 103 Phil. 1167.

<sup>49</sup> *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 86625, 22 December 1989, 180 SCRA 609.

<sup>50</sup> *Commissioner of Internal Revenue v. Court of Appeals, Atlas Consolidated Mining and Development Corporation and Court of Tax Appeals*, G.R. No. 104151, and *Atlas Consolidated Mining and Development Corporation v. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. No. 105563, 242 SCRA 289, 304, 10 March 1995.

<sup>51</sup> *Ibid.*