RECENT JURISPRUDENCE ON TAXATION*

I. REMEDIES

A. *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[1]

These consolidated cases emanate from a refund claim by Philippine Airlines, Inc. ("PAL") for final taxes withheld on its interest income from its peso and dollar deposits with China Banking Corporation ("Chinabank"), JP Morgan Chase Bank ("JP Morgan"), Philippine Bank of Communications ("PBCom"), and Standard Chartered Bank ("Standard Chartered"), herein referred to as "agent banks." PAL asserts that it is entitled to a refund of the withheld taxes, as it is exempted from paying the same on interest income under Presidential Decree No. 1590. However, the Commissioner of Internal Revenue refused to grant the claim, averring that PAL failed to prove the remittance of the withheld taxes to the Bureau of Internal Revenue (BIR).

From Chinabank, PAL claimed that it earned interest income net of withholding tax in the amount of USD 480,688.76 in its US dollar time deposit for the year 2002. Supporting this claim was Chinabank's Certification, which stated that withholding taxes were deducted from PAL's interest income in the amount of USD 38,974.75. These taxes were remitted to the BIR on different dates from February 2002 to January 2003. On the other hand, from JP Morgan, PAL alleged that it earned interest income in its peso deposit in the amount of Php 6,188,232.17, from September to December 2002. JPMorgan deducted withholding tax totaling PHP 1,237,646.43. From PBCom, PAL maintained that it earned interest income from its various dollar placements for the year 2002, with the following corresponding final taxes withheld. Lastly, from Standard Chartered, PAL stated that it earned interest income in its dollar time deposit account from May to December 2002, amounting to USD 86,107.55. The amount of USD 6,458.14 was deducted and allegedly remitted to the BIR as final withholding tax.

On 3 November 2003, in the belief that it was exempted from final withholding taxes under its franchise law, PAL filed with the Commissioner, a written request for a tax refund of the withheld amounts of PHP 1,747,869.59 and USD 65,877.07. The Commissioner, however, failed to act on the request. Thus, on 24 February 2004, PAL elevated the case to the Court

* *Cite as Recent Jurisprudence on Taxation,* 93 PHIL. L.J. 547, [page cited] (2020).

[1] G.R. No. 206079-80, Jan. 17, 2018.

of Tax Appeals in Division. The Commissioner contended that PAL's claim was subject to routine administrative investigation or examination by the BIR. She also alleged that PAL's claim was not properly documented, and that it must show that it complied with the prescriptive period for filing refunds under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC). Likewise, she asserted that claims for refund are of the same nature as a tax exemption, and thus, are strictly construed against the claimant.

Both the Court of Tax Appeals (CTA) Special First Division and *en banc* ruled that PAL failed to sufficiently prove that Chinabank, PBCom, and Standard Chartered had remitted the withheld taxes. They found that the presented documents only showed the total amount of final taxes withheld for all branches of these agent banks. It did not show that the amounts remitted by these agent banks pertained to the taxes withheld from PAL's interest income. They ruled that the Certificates of Final Tax Withheld at Source are not sufficient to prove remittance.

Upon appeal, the Supreme Court, speaking through Justice Leonen, held that in order to claim a refund, PAL only needs to prove that taxes were withheld. Taxes withheld by the withholding agent are deemed to be the full and final payment of the income tax due from the income earner or payee. Certificates of Final Taxes Withheld issued by the Agent Banks are sufficient evidence to establish the withholding of the taxes. Considering that PAL presented sufficient proof that: (i) it is exempted from paying withholding taxes; (ii) amounts were withheld and deducted from its accounts; and (iii) the Commissioner did not contest the withholding of these amounts and only raises that they were not proven to be remitted, PAL sufficiently proved that it is entitled to its claim for refund.

B. *Commissioner of Internal Revenue v. Court of Tax Appeals*[2]

Respondent Petron Corporation imports alkylate as a raw material or blending component for the manufacture of ethanol-blended motor gasoline. From January 2009 to August 2011, as well as for the month of April 2012, Petron transacted an aggregate of 22 separate importations, for which the Commissioner of Internal Revenue (CIR) issued Authorities to Release Imported Goods ("ATRIGs"), categorically stating that Petron's importation of alkylate is exempt from the payment of the excise tax. On June 2012, Petron imported 12,802,660 liters of alkylate and paid value-added tax ("VAT") in the total amount of PHP 41,657,533.00, as evidenced by an

[2] G.R. No. 207843, Feb. 14, 2018.

Import Entry and Internal Revenue Declaration ("IEIRD"). Based on the Final Computation, said importation was subjected by the Collector of Customs of Port Limay, Bataan, upon instructions of the Commissioner of Customs ("COC"), to excise taxes of P4.35 per liter, or in the aggregate amount of PHP 55,691,571.00, and consequently, to an additional VAT of 12% on the imposed excise tax in the amount of PHP 6,682,989.00. The imposition of the excise tax was supposedly premised on Customs Memorandum Circular (CMC) No. 164-2012, dated July 18, 2012, implementing the Letter issued by the CIR, dated June 29, 2012, which states that:

> [A]lkylate which is a product of distillation similar to that of naphta, is subject to excise tax under Section 148(e) of the National Internal Revenue Code (NIRC) of 1997.

In view of the CIR's assessment, Petron filed before the CTA a petition for review, raising the issue of whether its importation of alkylate as a blending component is subject to excise tax as contemplated under Section 148(e) of the NIRC. The CIR filed a motion to dismiss on the grounds of lack of jurisdiction and prematurity.

CTA gave due course to Petron's petition, finding that: (a) the controversy was not essentially for the determination of the constitutionality, legality or validity of a law, rule or regulation but a question on the propriety or soundness of the CIR's interpretation of Section 148(e) of the NIRC, which falls within the exclusive jurisdiction of the CTA under Section 4 thereof, particularly under the phrase "other matters arising under [the NIRC]"; and (b) there are attending circumstances that exempt the case from the rule on non-exhaustion of administrative remedies, such as the great irreparable damage that may be suffered by Petron from the CIR's final assessment of excise tax on its importation. The CIR appealed to the Supreme Court.

In its 15 July 2015 Decision, the Supreme Court upheld CIR's position that the CTA could not take cognizance of the case because the latter's jurisdiction to resolve tax disputes excluded the power to rule on the constitutionality or validity of a law, rule or regulation and that, in any case, it was premature to elevate a customs collector's assessment without a prior protest and an appeal to the COC. Accordingly, the Court ordered the dismissal of Petron's petition for review filed before the CTA. Dissatisfied, Petron filed the present motion for reconsideration.

At the onset, Petron insists that the CTA has jurisdiction to pass upon the validity of the CIR's interpretative ruling on alkylate, maintaining that the

CTA may rule on the validity of a revenue regulation, ruling, issuance or other matters arising under the NIRC and other tax laws administered by the BIR. As basis, Petron cited the Court's ruling in *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue (Philamlife)*[3] which held that Sec. 7(a)(l) of Republic Act (R.A.) No. 1125, as amended, vests the CTA with jurisdiction over the subject Court of Appeals petition therein, as "other matters" arising under the NIRC or other laws administered by the BIR.

In the case at bar, the Court, through Justice Perlas-Bernabe, posits that the foregoing remarks appear to be in direct opposition to the ruling in *British American Tobacco v. Camacho, et al.*,[4] cited by the Court in its 2015 Decision as basis in ruling on the issue of jurisdiction. But the Court further argued that the apparent conflicting jurisprudence on the matter involving the Court's 2008 *en banc* ruling in *British American Tobacco* and the Court's Third Division Ruling in *Philamlife* has been seemingly settled in the 2016 *en banc* case of *Banco De Oro v. Republic of the Philippines*,[5] wherein it was emphasized that within the judicial system, the law intends the CTA to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should thus be filed before the CTA. R.A. No. 9282, a special and later law than Batas Pambansa Blg. 129, provides an exception to the original jurisdiction of the RTCs over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the CTA.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the CTA under Section 7(1) of R.A. No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under R.A. No. 8424.

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[3] 747 Phil. 811 (2014).
[4] 584 Phil. 489 (2008).
[5] G.R. No. 198756, August 16, 2016.

The ruling in *Banco De Oro* has not since been overturned, and thus stands as the prevailing jurisprudence on the matter. Accordingly, the Court was prompted to reconsider its ruling in this case with respect to the issue of jurisdiction.

C. *University Physicians Services Inc. – Management, Inc. v. Commissioner of Internal Revenue*[6]

The University Physicians Services Inc. – Management, Inc. ("UPSI-MI") had, as of 31 December 2005, an outstanding amount of PHP 2,331,102.00 in excess and unutilized creditable withholding taxes. For the subsequent taxable year, the total sum of creditable taxes withheld on the management fees of UPSI-MI was PHP 2,927,834.00. Per its 2006 Annual Income Tax Return ("ITR"), UPSI-MI's income tax due amounted to PHP 99,105.00. UPSI-MI then applied its "Prior Year's Excess Credits" of PHP 2,331,102.00 as tax credit against such 2006 Income Tax due, leaving a balance of PHP 2,231,507.00 of still unutilized excess creditable tax. Meanwhile, the creditable taxes withheld for the year 2006 remained intact and unutilized. In said 2006 Annual ITR, UPSI-MI chose the option "To be issued a tax credit certificate" with respect to the amount of PHP 2,927,834.00, representing unutilized excess creditable taxes for the taxable year ending 31 December 2006.

In the following year, UPSI-MI changed its taxable period from calendar year to fiscal year, ending on the last day of March. On 14 November 2007, it filed an Annual ITR covering the short period from January 1 to March 31 of 2007. In the original 2007 Annual ITR, UPSI-MI opted to carry over as "Prior Year's Excess Credits" the total amount of PHP 5,159,341.00, which included the 2006 unutilized creditable withholding tax of PHP 2,927,834.00. UPSI-MI amended the return by excluding the sum of PHP 2,927,834.00 under the line "Prior Year's Excess Credits," which is the amount subject of the refund claim.

The Court resolves the issue as to whether UPSI-MI may be entitled to the refund of its 2006 excess tax credits or overpayment of tax in the amount of PHP 2,927,834.00 when it filed its income tax return (for the short period ending in 31 March 2007) indicating the option of carry-over. In ruling in the negative, the Court, through Justice Martires, clarified that under Philippine tax laws, there are two options available to a corporation when it overpays its income tax liability as adjusted at the close of the taxable year: (1)

[6] G.R. No. 205955, Mar. 7, 2018.

to be refunded or issued a tax credit certificate, or (2) to carry over such overpayment to the succeeding taxable quarters to be applied as tax credit against income tax due. Once the carry-over option is taken, it becomes irrevocable, such that the taxpayer cannot later on change its mind in order to claim a cash refund or the issuance of a tax credit certificate of the very same amount of overpayment or excess tax credit. As Section 76 of the of the NIRC unequivocally provides, once the option to carry over has been made, it shall be irrevocable. Furthermore, the provision seems to suggest that there are no qualifications or conditions attached to the rule on irrevocability. The irrevocability is limited only to the option of carry-over, such that a taxpayer is still free to change its choice after electing a refund of its excess tax credit. But once it opts to carry over such excess creditable tax (after electing refund or issuance of tax credit certificate), the carry-over option becomes irrevocable. Accordingly, the previous choice of a claim for refund, even if subsequently pursued, may no longer be granted.

It is undisputed that despite its initial option to refund its 2006 excess creditable tax, UPSI-MI subsequently indicated in its 2007 short-period Final Adjustment Return ("FAR") that it carried over the 2006 excess creditable tax and applied the same against its 2007 income tax due. The CTA was correct in considering UPSI-MI to have constructively chosen the option of carry-over, for which reason, the irrevocability rule forbade it to revert to its initial choice. It does not matter that UPSI-MI had not actually benefited from the carry-over on the ground that it did not have a tax due in its 2007 short period. Neither may it insist that the insertion of the carry-over in the 2007 FAR was by mere mistake or inadvertence. Since UPSI-MI constructively chose the option of carry-over, it is already barred from recovering its 2006 excess creditable tax through refund or TCC even if it was its initial choice. As the Court previously laid down, the irrevocability rule admits of no qualifications or conditions.

D. *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*[7]

On 24 April 2008, Coca-Cola Bottlers Philippines, Inc. ("Coca-Cola"), a VAT-registered domestic corporation, filed its Quarterly VAT Return for the period of 1 January 2008 to 31 March 2008 and amended the same a few times thereafter. On 20 April 2010, Coca-Cola filed with the BIR's Large Taxpayers Service an administrative claim for refund or tax credit of its alleged over or erroneous payment of VAT for the quarter which ended on March 31, 2008, in the total amount of PHP 123,459,647.70. Three days later,

[7] G.R. No. 222428, Feb. 19, 2018.

it filed with the CTA a judicial claim for refund or issuance of tax credit certificate presenting petitioner's input and output VAT through its computerized accounting system.

The CTA *en banc* held that Sections 204(C) and 229 of the NIRC similarly apply only to instances of erroneous payment or illegal collection of internal revenue taxes. In claims for refund or credit of excess input VAT under Sections 110(B) and 112(A), the input VAT is not "excessively" collected as understood under Section 229. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Section 229, therefore, is inapplicable to the instant claim for refund or credit. Coca-Cola elevated the controversy to the Supreme Court.

The Court, speaking through Justice Peralta, sustained the CTA decision, propounding that the plain text of Section 229 clearly shows that what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. Otherwise stated, there must be a wrongful payment because what is paid, or part of it, is not legally due.

As the Court held in *Commissioner of Internal Revenue v. Mirant Pagbilao Corp.*,[8] Section 229 should apply only to instances of erroneous payment or illegal collection of internal revenue taxes. For if the 'excess' input VAT is an 'excessively' collected tax under Section 229, then the taxpayer claiming to apply such 'excessively' collected input VAT to offset his output VAT may have no legal basis to make such offsetting.

II. INCOME TAXATION

A. *Aegis PeopleSupport, Inc. v. Commissioner of Internal Revenue*[9]

Aegis PeopleSupport, Inc. ("Aegis") is a domestic corporation registered with the Board of Investments (BOI) as a new and pioneer IT Export service firm in the field of Customer Contact Center. It is also registered with the Philippine Economic Zone Authority (PEZA) as a new Ecozone IT Export enterprise to engage in the establishment of a contact

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[8] G.R. No. 172129, Sept. 12, 2008.
[9] G.R. No. 216601, Oct. 7, 2019.

center and provide outsourced customer care services and business process outsourcing.

Aegis filed with the BIR Revenue District Office (RDO) No. 47, an administrative claim for refund or issuance of tax credit certificate ("TCC") and an Application for Tax Credits/Refunds for its excess payment of income tax for taxable year 2007 in the amount of PHP 66,177,830.95. It insists that it is entitled to such credit or refund for the tax it erroneously paid for the foreign exchange gains it realized from the hedging contract it entered with Citibank. Respondent's inaction on petitioner's administrative claim for refund prompted the filing of the instant Petition for Review.

Both the CTA Division and the CTA *en banc* denied the claim, reasoning that while Aegis may have shown that it earned U.S. dollars as a contact center and is being used to purchase Philippine Pesos through its hedging contracts with Citibank in order to pay for the ordinary and necessary expenses of Aegis' customer-support business, the fact remains that the subject foreign exchange gains were derived from the foreign exchange contracts entered into with Citibank, and not from its registered activity as a contact center, nor necessarily related to it. Aegis appealed to the Supreme Court.

The Court, through Justice Jose Reyes, Jr., reversed the CTA. At the outset, Section 4 of R.A. No. 7916 provides that enterprises located within the recognized economic or trade zones "are granted preferential tax treatment." Such incentive is further buttressed in Section 23 of the same law, which provides that "business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order (EO) No. 226, otherwise known as the Omnibus Investment Code of 1987."

In this case, Aegis opted to avail of the benefit of an income tax holiday under Article 39(a) of EO No. 226. Any income earned by a PEZA-registered enterprise which is not related to its registered activities is not covered by the incentives granted under R.A. No. 7916 and EO No. 226. Yet its Articles of Incorporation undoubtedly authorize Aegis to enter a hedging contract with a broker such as Citibank in order to protect its gross revenues in the form of foreign currency from being severely devalued in terms of local currency. Consequently, the Court considers hedging to be very much related to its registered activities, hence, still subject to a preferential tax treatment under R.A. No. 7916 and EO No. 226.

III. REAL PROPERTY TAXATION

A. *National Power Corp. v. The Province of Pangasinan*[10]

The National Power Corporation (NPC) is a government-owned and controlled corporation, created and existing under R.A. No. 6395, as amended. NPC is mandated to undertake the production of electricity from nuclear, geothermal, other sources, and the transmission of electric power nationwide.

Pursuant to its mandate, on 20 May 1994, NPC entered into an Energy Conversion Agreement ("ECA") with CEPA Pangasinan Electric Limited ("CEPA"), a private corporation, for the construction, operation, and maintenance of the Sual Coal-Fired Thermal Power Plant, whereby CEPA agreed to supply a coal-fired thermal power station to NPC on a Build-Operate-Transfer ("BOT") basis to generate electricity, which electricity would, in turn, be sold exclusively to NPC. CEPA subsequently became Mirant Sual Corporation ("Mirant").

Among the obligations undertaken by the NPC under the ECA was the assumption of all real property taxes. The power plant started operations sometime in 1998. The NPC religiously paid real property taxes from 1998 up to the first quarter of 2003 for the land, buildings, machinery, and equipment pertaining to the power plant. Notably, said machinery and equipment were declared in the name of Mirant. Yet by the second quarter of 2003, NPC stopped paying said taxes, purportedly pursuant to the provisions of R.A. No. 7160, the Local Government Code, which grants certain exemptions from real property tax liabilities. This prompted the Office of the Municipal Treasurer of Sual, Pangasinan to issue a Notice of Assessment, dated 10 September 2003, for the payment of real property taxes thereon.

Invoking its entitlement to an exemption under the provisions of R.A. No. 7160, NPC filed a petition for exemption with the Local Board of Assessment Appeals, praying for an order to be issued: (a) recalling the Notice of Assessment dated September 10, 2003; (b) declaring the machinery and equipment of the power to be exempt from real property tax, arguing that the same are actually, directly, and exclusively used for power generation, and as such are exempted from said taxes under Section 234(c) of R.A. No. 7160; and (c) if not exempt, declaring that the subject properties be classified as

[10] G.R. No. 210191, Mar. 4, 2019.

special under Section 216 of the same Act and as such be given a lower assessment level.

The Supreme Court, through Justice Jose Reyes, Jr., held that NPC was correct in saying that a beneficial user may also be legally burdened with the obligation to pay for the tax imposed on a property and as such, has legal interest therein and the personality to protest an assessment or claim exemption from tax liability. In this case, however, NPC is neither the owner nor the possessor or beneficial user of the subject facilities. Hence, it cannot be considered to have any legal interest in the subject property to clothe it with the personality to question the assessment and claim for exemptions and privileges.

The Court concluded that until the transfer of the project to NPC, it does not have anything to do with the use and operation of the power plant. The direct, actual, exclusive, and beneficial owner and user of the power station, machineries, and equipment pertains to Mirant. That NPC assumed the tax liabilities in the agreement is irrelevant; such agreement cannot extend to Mirant the privilege granted to NPC.

Anent the argument of the NPC that it is the one which utilizes the generated electricity for transmission or distribution to the customers, the Court clarified that the law textually states that it is the machinery and equipment which are exempted from the payment of real property tax, not the water or electricity that such facilities generate for distribution.

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