RECENT JURISPRUDENCE ON TAXATION LAW*

INTRODUCTION

This article 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. All these cases were decided in 2021.

I. NATIONAL TAXATION

A. *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*[1]

McDonald's Philippines Realty Corporation ("McDonald's") established its branch office in the Philippines to purchase and lease back two existing McDonald's restaurants to Golden Arches Development Corporation and to develop new McDonald's restaurants to be leased to third parties. The Bureau of Internal Revenue (BIR) issued a Letter of Authority ("LOA") to revenue officers—one of them being Eulema Demadura—to examine the books of accounts and records of McDonald's for all internal revenue taxes from January 1 to December 31, 2006.[2]

In 2008, the BIR transferred Demadura's assignment to Rona Marcellano through a Referral Memorandum. No new LOA was issued in the name of Marcellano. Three years later, the Commissioner of Internal Revenue (CIR) issued a Formal Letter of Demand ("FLD") to McDonald's, demanding the payment of deficiency income tax and value-added tax ("VAT") liabilities for calendar year 2006 in the amount of PHP 17,486,224.38, inclusive of

---

* *Cite as Recent Jurisprudence on Taxation Law*, 95 PHIL. L.J. 513, [page cited, if applicable] (2022). This *Recent Jurisprudence* was prepared by Editorial Assistants Noemi M. Mejia, Keren Lois T. Pono, Mika Andrea O. Ramirez, Arthur Anthony L. Saulong, and Jasmin Althea A. Siscar, and reviewed by Justice Maria Rowena G. Modesto-San Pedro, Associate Justice of the Court of Tax Appeals.

This Article is part of a series published by the JOURNAL, providing updates in jurisprudence across the eight identified fields of the law. The other articles focus on political law, labor law, civil law, criminal law, mercantile law, remedial law, and judicial ethics.

[1] G.R. No. 242670, May 10, 2021.

[2] *Id.* at 2. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

interest. In response, McDonald's filed a protest requesting the cancellation of the FLD. The CIR issued the Final Decision on Disputed Assessment, which granted the request of McDonald's to cancel the deficiency income tax assessments but reiterated the demand for deficiency VAT in the amount of PHP 16,229.506.83. McDonald's filed a petition for review with the Court of Tax Appeals (CTA), which declared the assessment void as Marcellano lacked authority to make the assessment.[3]

The Court ruled that a separate or amended LOA must be issued in the name of a substitute or replacement revenue officer in case of reassignment or transfer. An LOA is the grant of authority provided by the CIR or his duly authorized representative required before revenue officers may validly conduct any examination or assessment. An LOA is not a general authority to any revenue officer. Rather, it is a special authority granted to a particular revenue officer. With this, the authorized revenue officer must not go beyond the authority conferred, and in the absence of such authority, the assessment or examination is null and void.[4]

Citing *Medicard Phil., Inc. v. Commissioner of Internal Revenue*,[5] the Court held that the issuance of an LOA prior to examination and assessment is a requirement of due process. Moreover, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid assessment.

The practice of reassigning or transferring revenue officers who were the original authorized officers in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, usurps the statutory power of the CIR or his duly authorized representative.[6]

B. *Commissioner of Internal Revenue v. Shinko Electric Industries Co., Ltd.*[7]

Shinko Electric Industries Co., Ltd. ("Shinko") is a Philippine-registered representative office of the Japanese corporation of the same name. Shinko is licensed as a representative office to "undertake activities such as but not limited to information dissemination, promotion of the parent

---

[3] *Id.* at 2–3.
[4] *Id.* at 6–8.
[5] G.R. No. 222743, 822 SCRA 444, Apr. 5, 2017.
[6] *Commissioner of Internal Revenue v. McDonald's Phils. Realty Corp.*, at 8–10.
[7] G.R. No. 226287, July 6, 2021.

company's products, quality control of products as well as all other activities which may be legally undertaken by a representative office." In 2010, Shinko received a Preliminary Assessment Notice ("PAN"), and later on, a Formal Assessment Notice ("FAN") from the CIR. Shinko was assessed deficiency tax liabilities for fiscal year 2007. Shinko filed a protest but due to the CIR's inaction, it filed a petition for review before the CTA Division.[8]

Shinko argued that as a representative office of a foreign corporation, it does not derive income from within the Philippines. Thus, it is not liable for deficiency income tax and VAT. Meanwhile, the CIR argued that Shinko should be taxed as a Regional Operating Headquarter ("ROHQ") that derives income from within the Philippines. It used as basis the Securities and Exchange Commission (SEC) registration of Shinko stating that the company is engaged in the promotion of the parent company's product.[9] The CTA Division withdrew the FAN and Assessment Notices against Shinko. This was affirmed by the CTA *En Banc*.[10]

The Court stated the differences among a representative office, an RHQ, and an ROHQ as follows:

> 1. A representative office and an RHQ are not allowed to engage in any income-generating activities in the Philippines. An ROHQ, on the other hand, provides qualifying services that generate income in the Philippines.
> 2. Both a representative office and an RHQ do not earn or derive income in the Philippines, while an ROHQ is allowed to derive income in the Philippines.
> 3. Unlike an RHQ and an ROHQ, a representative office deals directly with the parent company's clients and not with the affiliates, branches, or subsidiaries.
> 4. Under the Tax Code, as amended, RHQs are exempt from both income tax and VAT so long as they do not render any of the qualifying services, whereas ROHQs shall be subject to a tax rate of ten percent (10%) of their

[8] *Id.* at 2–3. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

[9] *Id.* at 3.

[10] *Id.* at 3–5.

> taxable income from their qualifying services and twelve percent (12%) VAT.[11]

The Court ruled that Shinko is not an ROHQ, but a representative office which should be treated as a Regional Headquarters ("RHQ") for tax purposes.[12] Shinko proved that it was a representative office since it presented evidence that it was fully subsidized by its head office in Japan and that it merely promotes and provides information about the products offered by its Japan head office without entering into contracts on its own.[13]

Moreover, the Court found that the amounts subject of the assessment are not income and, thus, cannot be subject to income tax or VAT. In order to be considered income, three requisites must exist: (1) there must be gain, (2) the gain must be realized, and (3) the gain must not be excluded from taxation by law or by treaty. In this case, the amounts assessed were merely subsidies remitted by its head office for the corporation's operations in the country. These amounts cannot be considered as gain realized; rather, they can only be considered capital which is intended for the continued operation of a representative office in the Philippines.[14]

As a representative office, Shinko is not liable for income tax. In the first place, it does not engage in income-generating activities in the Philippines. Second, the amounts considered by the CIR as Shinko's income can only be regarded as capital because they are intended for Shinko's continued operation as a representative office.[15]

Shinko is also not liable for VAT as the amounts being received by it from the parent company were not derived in relation to any sale, barter, or exchange of goods or services in the course of trade or business.[16]

C. *Commissioner of Internal Revenue v. Macquarie Offshore Services Pty., Ltd.–Philippine Branch* [17]

Macquarie Offshore Services Pty., Ltd. ("Macquarie") is a multinational company organized under Australian law and engaged in trade

---

[11] *Id.* at 6–8.
[12] *Id.* at 10–13.
[13] *Id.* at 10-11.
[14] *Id.* at 14.
[15] *Id.*
[16] *Id.* at 15.
[17] G.R. No. 225169 (Notice), Oct. 6, 2021.

inspection security and certification and in international trade with affiliates, subsidiaries, or branch offices in the Asia Pacific Region and other foreign markets. Based on its SEC Certification, it is duly registered and licensed to do business as a ROHQ in the Philippines. Macquarie is paid for its services in Australian dollars, an acceptable foreign currency inwardly remitted through its account with Hongkong Shanghai Banking Corporation and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).[18]

In the course of its operations, Macquarie, as a VAT-registered taxpayer, purchased goods and services for which it paid input VAT. It requested from the BIR a refund or credit of the unutilized input VAT attributable to its zero-rated sales for the second, third, and fourth quarters of fiscal year 2009. The BIR failed to act on these claims, prompting Macquarie to file a petition for review which the CTA partially granted. The CTA found that Macquarie was able to prove that it principally rendered services to Macquarie Financial Holdings, Ltd. ("MFHL"), an entity registered under the laws of Australia and not registered with the SEC.[19]

After the CTA *En Banc* affirmed the CTA Division, the CIR filed its petition for review on *certiorari* alleging that all Macquarie was able to establish by its evidence is that MFHL is a foreign corporation not registered in the Philippines. It does not automatically follow that MFHL is a non-resident foreign corporation (NRFC) or one doing business outside the Philippines as required by Sections 112 and 108(b) of the Tax Code, the CIR argued.[20]

The Court ruled that Macquarie is qualified for the tax credit. In the cases of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[21] and *Accenture, Inc. v. Commissioner of Internal Revenue*,[22] the Court categorically declared that for zero-rated sale of services, it is not only required that the services be other than "processing, manufacturing, or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with the BSP rules. It is also

---

[18] *Id.* at 1–2. This pinpoint citation refers to the copy of this unsigned resolution uploaded to the Supreme Court Website.

[19] *Id.* at 2–5.

[20] *Id.* at 6.

[21] G.R. No. 153205, 512 SCRA 124, Jan. 22, 2007.

[22] G.R. No. 190102, 676 SCRA 325, July 11, 2012.

essential that the recipient of such services is doing business outside the Philippines.[23]

In the present case, Macquarie submitted the following as documentary evidence: the sworn statement of respondent's resident agent, the services agreement between respondent and MFHL, the SEC Certification of Non-Registration, Consular Authentication of such, the Australian Securities and Investments Commission (ASIC) Certificate of Registration on Change of Name, ASIC Certificate of Registration, Constitution of MFHL, Consular Authentication of ASIC documents, MFHL's registration details, MFHL's current organization details, MFHL's registered office, and MFHL's principal place of business. These are enough to constitute *prima facie* evidence that MFHL is not engaged in trade or business in the Philippines. Because there is sufficient evidence to substantiate both components for the NRFC status of MFHL, Macquarie's sale of services to MFHL qualify as zero-rated transactions.[24]

D. *IFC Capitalization (Equity) Fund, L.P. v. Commissioner of Internal Revenue* [25]

Petitioner IFC Capitalization (Equity) Fund, L.P. ("IFC Capitalization Fund") is a non-resident foreign limited partnership engaged in the business of making investments in the private sector banks that have systemic impact in their home markets. IFC Capitalization Fund traded shares in the Philippine Stock Exchange through two trading companies, which withheld stock transaction tax (STT) of ½ of 1% from the proceeds of the sales of listed shares. Claiming exemption from STT, IFC Capitalization Fund sought a refund of the withheld amount.[26]

The CTA Division granted the claim for refund, finding IFC Capitalization Fund exempt from income tax under Section 32(B)(7)(a) of the Tax Code because it is a financing institution owned and controlled or enjoying refinancing from foreign governments. Presiding Justice Roman G. Del Rosario dissented, opining that STT is not an income tax to which the Tax Code provision exclusion may apply.[27]

---

[23] *Commissioner of Internal Revenue v. Macquarie Offshore Services Pty., Ltd.–Phil. Branch*, at 8–9.

[24] *Id.* at 11–12.

[25] G.R. No. 256973, Nov. 15, 2021.

[26] *Id.* at 2. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court website.

[27] *Id.* at 2–3.

The CTA *En Banc* reversed the CTA Division decision and ruled that STT is a percentage tax under Title V of the Tax Code and not an income tax under Title II. It noted that the STT is governed by Section 127(A) of the Tax Code, pertaining to Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange. Citing the legislative history of Section 127 of the Tax Code, the CTA *En Banc* concluded that the authors of the law intended to delineate between STT and income tax. Hence, the exemption under Section 32(B)(7)(a) of the Tax Code cannot be extended to IFC Capitalization Fund.[28]

IFC Capitalization Fund contended that the CTA *En Banc* should not have taken cognizance of the issue of whether STT is an income tax because it was belatedly raised on appeal by the CIR. Notwithstanding this, the Court upheld the CTA *En Banc* decision. It noted that STT is a percentage tax because it is measured by the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged, or otherwise disposed of. This is unlike income tax, which is imposed on the net or gross income realized in a taxable year. The Court stressed that the exemption under Section 32(B)(7)(a) is applicable only to income tax under Title II of the Tax Code and cannot be stretched to Title V on Other Percentage Taxes.[29]

II. LOCAL TAXATION

A. *Metropolitan Waterworks and Sewerage System v. Central Board of Assessment Appeals*[30]

The Metropolitan Waterworks and Sewage System (MWSS) was created by R.A. No. 6234 "to insure [sic] an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems."[31] It was vested with the power to exercise supervision and control over all waterworks and sewerage systems within Metro Manila, Rizal, and a portion of Cavite. In 1997,

---

[28] *Id.* at 3–4.

[29] *Id.* at 5–6.

[30] [Hereinafter "*Metropolitan Waterworks and Sewerage Sys.*"], G.R. No. 215955, Jan. 13, 2021.

[31] Rep. Act No. 6234 (1971), § 1. An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority; and For Other Purposes.

pursuant to R.A. No. 8041,[32] MWSS entered into a concessionaire agreement with Maynilad Water Services, Inc. to service the West Zone of the Metropolitan Area including Pasay City.[33]

In 2008, MWSS received Real Property Tax ("RPT") computations from the Pasay City Treasurer for the taxable year 2008, demanding payment of RPT in the amount of PHP 166,629.36. MWSS contended that it is a public utility and a government instrumentality, and therefore, its properties and facilities are exempt from RPT. This claim was anchored upon *Manila International Airport Authority v. Court of Appeals*,[34] which declared MIAA, a government instrumentality exercising corporate powers, exempt from RPT under Sections 133(o) and 234(a) of Local Government Code.[35]

Due to the Pasay City Treasurer's inaction, MWSS filed an appeal with the Local Board of Assessment Appeals (LBAA), which pointed out that when MWSS entered into a concessionaire agreement with Maynilad, the actual use of its real properties was turned over to a taxable person. MWSS then filed an appeal with the Central Board of Assessment Appeals (CBAA), which affirmed the LBAA ruling. Aggrieved, MWSS appealed to the Court of Appeals (CA), which dismissed the appeal for failure to exhaust administrative remedies under Sections 206 and 252 of the Local Government Code.[36]

The Court ruled that MWSS is a government instrumentality with corporate powers, and is therefore not liable to Pasay City for RPT. The tax exemption that its properties carry, however, ceases when their beneficial use has been extended to a taxable person. The liability to pay RPT on government-owned properties, the beneficial or actual use of which was granted to a taxable entity, devolves on the taxable beneficial user. As such, all assessments issued in the name of MWSS should be declared void.[37]

Nonetheless, the claim of MWSS for refund of RPT erroneously paid will not automatically be issued. The amount is a factual matter that must be threshed out with certainty and in accordance with the administrative procedure provided under Section 253 of the Local Government Code. The claim for tax refund should be filed with the City Treasurer within two years

---

[32] Rep. Act No. 8041 (1995), § 2. The National Water Crisis Act of 1995.

[33] *Metropolitan Waterworks and Sewerage Sys.*, at 2. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

[34] G.R. No. 155650, 495 SCRA 591, July 20, 2006.

[35] *Metropolitan Waterworks and Sewerage Sys.*, at 2–3..

[36] *Id.* at 3–5.

[37] *Id.* at 6–11.

from the finality of the decision, as it is only then that the invalidity of the Pasay City assessment is finally settled.[38]

B. *Province of Nueva Vizcaya v. CE Casecnan Water and Energy Company, Inc.*[39]

CE Casecnan Water and Energy Company, Inc. ("CE Casecnan") and the National Irrigation Administration (NIA) entered into a Build-Operate-Transfer (BOT) contract ("Project") whereby the company agreed to deliver to Pantabangan Reservoir all water diverted from the Casecnan Watershed and all net electrical energy generated by the project. The parties executed an Amended and Restated Casecnan Project Agreement.[40]

Under the amended agreement, CE Casecnan shall, among others: (1) cause and be responsible for the financing, design, construction, completion, testing, commissioning, and operation of the Project; and (2) transport water from the Casecnan Watershed to the Pantabangan Reservoir and, in the process of such transport, generate electrical energy, which shall be accepted by the NIA in exchange for fees in favor of CE Casecnan.[41]

The Officer-In-Charge Provincial Assessor of Nueva Vizcaya requested from David Baldwin, President of CE Casecnan, duly certified and detailed estimates of the total infrastructure cost for the Casecnan dams and trans-basin tunnel, including all other structures within the Municipality of Alfonso Castañeda, Nueva Vizcaya. This was for the determination by the Provincial Assessor's Office of the amount of RPT due from CE Casecnan. CE Casecnan furnished the Office the requested documents. The Office then sent a letter to CE Casecnan informing it of the initial appraisal and assessment of the properties; the company endorsed the said letter to the NIA.[42]

The NIA did not give any instructions to CE Casecnan regarding the assessed fees and instead filed its protest with the LBAA of Nueva Vizcaya. The LBAA applied Section 234(c) of the Local Government Code, which provides that all machineries and equipment that are actually, directly, and

---

[38] *Id.* at 11.

[39] [Hereinafter "*Province of Nueva Vizcaya*"], G.R. No. 241302, Feb. 1, 2021.

[40] *Id.* at 2. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

[41] *Id.*

[42] *Id.* at 2–3.

exclusively used by local water districts (LWDs) and GOCCs engaged in the supply and distribution of water and/or generation and transmission of electric power are exempt from RPT. However, the LBAA concluded that, in this case, the registered owner of the machineries and equipment in question is CE Casecnan, which is neither an LWD nor a GOCC. Hence, the provision is not applicable. The CBAA and the CTA concurred with the ruling.[43]

The Court ruled that the provisions of Executive Order ("E.O.") No. 173[44] should be applied in favor of CE Casecnan, because it is an independent power producer that entered into a BOT contract with the NIA, which is a GOCC. The Court further found no merit in the Province of Nueva Vizcaya's claim that E.O. No. 173 can only be applied to existing tax liabilities, and not to those that are paid. It held that E.O. No. 173 does not distinguish between outstanding liabilities and those that had been paid at the time the executive order became effective. Section 1 of E.O. No. 173 is clear that the reduced amount of RPT under the law should be deducted from whatever is paid by the IPP. Thus, the CTA *En Banc* correctly remanded the case to the CBAA for the computation of the amount to be refunded to CE Casecnan, if any, taking into consideration the provisions of E.O. No. 173.[45]

C. *New Vision Satellite Network, Inc. v. Provincial Government of Cagayan*[46]

New Vision Satellite Network, Inc. ("New Vision") is a Philippine corporation with a Certificate of Authority issued by the National Telecommunications Commission (NTC). The certificate allows it to operate and maintain a Cable Television System ("CATV") in the municipalities of Ballesteros and Abulug, Cagayan. In 2013, the Sangguniang Panlalawigan of Cagayan issued Provincial Ordinance No. 2013-8-008, imposing franchise tax and an annual fee for Governor's permits on businesses enjoying a franchise, among others. Pursuant to this ordinance, the Provincial Treasurer demanded payment from New Vision for tax obligations from 2001 to 2014.[47]

New Vision did not heed the demand letter and instead filed a petition for *certiorari* and prohibition before the Regional Trial Court (RTC), arguing that its Certificate of Authority did not amount to a franchise that would make

---

[43] *Id.* at 3–6.

[44] Exec. Order No. 173 (2014).

[45] *Province of Nueva Vizcaya*, at 8–9.

[46] G.R. No. 248840, July 5, 2021.

[47] *Id.* at 2–3. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

it subject to franchise tax and annual fee. The RTC dismissed the petition as New Vision failed to exhaust all administrative remedies; the CA affirmed.[48]

Ruling on the merits of the case, the Court held that the Certificate of Authority issued by the NTC to operate CATV systems is an administrative franchise subject to local franchise tax.[49] Franchise tax is not imposed on the general or primary franchise which gives rise to the juridical capacity of a corporation. Rather, the tax is imposed on the special or secondary franchise to do particular business activities. Said special or secondary franchise must enable the taxpayer to operate within the territorial jurisdiction of the respondent province.[50] Moreover, local franchise taxes apply to both legislative and administrative franchises.

While there was no legislative franchise, the Certificate of Authority bears all the hallmarks of an administrative franchise. First, the CATV system is a market where first entrants or incumbents have an advantage due to economic considerations. Second, the CATV services are charged with public use and its facilities restrict the use of properties on a communal or societal level. Third, the grantee of the Certificate of Authority clearly exercises a right which is a delegation of an inherent sovereign power. These characteristics distinguish the Certificate of Authority as an administrative franchise rather than a secondary license or permit.[51]

D. *Domato-Togonon v. Commission on Audit*[52]

In 2001, the City of Koronadal was authorized under Executive Orders. No. 24 and 25 to create a City Appraisal Committee tasked with finding the best location for a new city hall building location. One of the lots that were considered was the property owned by the heirs of Plomillo, who expressed their willingness to sell their property at a reduced price of PHP 22,000,000.00, provided that the city government shoulder all transfer expenses, specifically documentation expenses, capital gains tax, estate taxes, and documentary taxes. The City Appraisal Committee found the offer to be reasonable and endorsed the property to then Mayor Fernando Miguel, who sought authority from Sangguniang Panlungsod to purchase the property. The Sangguniang Panlungsod subsequently passed Resolution No. 746,

---

[48] *Id.* at 3–4.
[49] *Id.* at 17.
[50] *Id.* at 11.
[51] *Id.* at 17–18.
[52] G.R. No. 224516, July 6, 2021.

authorizing Mayor Miguel to enter into a deed of sale with the heirs of Plomillo. The Resolution abided by the terms set by the heirs of Plomillo; however, these were not stated in the Deed of Absolute Sale entered into by the city government. Notwithstanding this, the City of Koronadal continued to pay the purchase price along with the necessary notarial fees, capital gains tax, documentary tax, estate tax, transfer tax, transfer fee tax, and registration fee.[53]

During the post-audit, the audit team found the payments of the taxes and fees by the city government to be irregular, because the general rule under Article 1487 of the Civil Code is that "[t]he expenses for the execution and registration of the sale shall be borne by the vendor, unless there is a stipulation to the contrary." The Commission on Audit's (COA) Regional Cluster Director in Cotabato City then issued Notice of Disallowance Nos. 05-001-101(04) and 05-002-101(03), disallowing the amount of PHP 2,398,403.02, which represented the total costs of transferring the title. The City Mayor, City Vice Mayor, Members of the Sangguniang Panlungsod (including petitioner Marites Domato-Togonon), and the heirs of Plomillo as the vendors were held liable under the Notices of Disallowance. The COA further declared that Koronadal City's payment of taxes and fees was an indirect imposition of tax against the city.[54]

The Court agreed with the COA's findings, ruling that because the Deed of Absolute Sale had no stipulation on the expenses for the sale's execution and registration being shouldered by the vendee, the general rule must be applied.[55] Additionally, the Court stressed that the exercise of taxing power by local government units is not absolute and is subject to limitations provided by the Local Government Code. Section 133(o) prohibits the enactment of measures that impose taxes, fees, or charges on local government units. The City of Koronadal cannot indirectly circumvent the prohibition by entering into a contract and assuming responsibility for the payment of taxes and fees.[56]

---

[53] *Id.* at 2–3. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

[54] *Id.* at 3–5.

[55] *Id.* at 11.

[56] *Id.* at 13–14.

III. ADMINISTRATIVE AND JUDICIAL REMEDIES

A. *Commissioner of Customs v. Carrier Air Conditioning Philippines, Inc.*[57]

In 2009, Carrier Air Conditioning Philippines, Inc. ("Carrier Philippines") declared cash dividends in favor of its foreign parent company, Carrier HVACR Investments B.V. ("Carrier B.V."), out of its unrestricted retained earnings. However, an independent audit revealed that Carrier Philippines' unrestricted retained earnings were insufficient to support the dividends that were overdeclared and already paid. Thus, Carrier Philippines recorded the overpaid dividends as receivables from Carrier B.V. in its 2009 Audited Financial Statements (AFS), and these were carried over and reflected in the 2010 AFS.[58] In 2011, the Board of Directors authorized the deduction of the overpaid cash dividends from 2009, resulting in a net dividend payable and the removal of the receivables from Carrier Philippines' 2011 AFS.[59]

On November 29, 2011, Carrier Philippines filed an administrative claim for the refund or issuance of tax credit certificate in the amount of PHP 11,395,574.20, which represented the final withholding taxes on the 2009 overpaid dividends. Ten days later, on December 9, 2011, Carrier Philippines filed a Petition for Review before the CTA even without the CIR ruling on the administrative claim.[60]

The CIR sought the dismissal of the petition, arguing that the CTA had no jurisdiction over the judicial claim because the administrative claim was still subject to investigation. However, the CTA Division granted the claim of Carrier Philippines and held that "both administrative and judicial claims were filed within the two-year prescriptive period" under Sections 204 and 229 of the Tax Code. The CIR then argued before the CTA *En Banc* that the judicial claim was premature and violative of the doctrine of exhaustion of administrative remedies, but the CTA *En Banc* affirmed the CTA Division's decision.[61]

The Court affirmed the CTA *En Banc* and held that it was proper for Carrier Philippines to file its judicial claim 10 days after it filed its

---

[57] G.R. No. 226592, July 27, 2021.
[58] *Id.* at 3.
[59] *Id.*
[60] *Id.*
[61] *Id.* at 3–6.

administrative claim even without the ruling of the CIR. This is because, from the plain language of Section 229 of the Tax Code, it does not matter how far apart the administrative and judicial claims were filed or whether the CIR was able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.[62] Moreover, the Court reiterated the pronouncement in *CBK Power Company Limited v. Commissioner of Internal Revenue*[63] that the filing of an administrative claim is intended "primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow."[64]

However, the Court drew attention to the problem as to what is considered a "reasonable period" for the CIR to act on refund claims. It noted that while Section 7 of R.A. No. 9282[65] grants the CTA exclusive appellate jurisdiction over an "inaction deemed denial" by the CIR, Sections 204 and 229 of the Tax Code do not prescribe a specific period within which the CIR must resolve the claim for refund or credit of erroneously paid taxes (unlike in claims for refund of input value-added tax under Section 112). This allowed taxpayers to file judicial claims briefly after filing the administrative claims, on the ground that both were filed within the two-year prescriptive period.[66]

The Court pointed out that this lack of a specific period for the resolution of the administrative claim has prejudiced both taxpayers and the CIR. On one hand, the CIR has taken time to resolve administrative claims filed early by taxpayers. On the other hand, the CIR has been deprived of the opportunity to act on the matter in cases when there is a short interval between the filing of the administrative claim and the judicial claim.[67] However, the Court stressed that "the silence or insufficiency in the law on the reasonable period for the [CIR's] action" could be addressed not by judicial pronouncement but by appropriate legislation. The Court ordered that a copy of the decision be furnished to the Senate and the House of Representatives for their information and appropriate action.[68]

---

[62] *Id.* at 11–12.

[63] G.R. No. 193383-84, 746 SCRA 93, Jan. 14, 2015.

[64] *Id.* at 112, *citing* P.J. Kiener Co., Ltd. v. David, 92 Phil. 945, 947 (1953).

[65] Rep. Act No. 9282 (2004), § 7(a). An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership.

[66] *Commissioner of Internal Revenue v. Carrier Air Conditioning Phil., Inc.*, at 11–12.

[67] *Id.* at 13–14.

[68] *Id.* at 14–15.

B. *Philippine Mining Development Corporation v. Commissioner of Internal Revenue* [69]

Philippine Mining Development Corporation (PMDC) is a government-owned and controlled corporation (GOCC) attached to the Department of Environment and Natural Resources (DENR). Its purpose is to explore, develop, and mine all kinds of minerals and mineral resources. The BIR assessed PMDC's tax liabilities for the year 2006, prompting PMDC to file a petition for review before the CTA to nullify the assessment issued by the BIR for alleged deficiency income tax.[70]

During the pendency of the case, the Court rendered its decision in *Power Sector Assets and Liabilities Management (PSALM) Corporation v. Commissioner of Internal Revenue*,[71] which ruled that pursuant to Presidential Decree No. 242, all disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.[72] Adhering to the ruling in *PSALM*, the CTA Division dismissed PMDC's petition for lack of jurisdiction. The CTA *En Banc* affirmed the decision and denied PMDC's motion for reconsideration.[73]

In an unsigned resolution, the Court ruled that the CTA had jurisdiction over the case and that the *PSALM* ruling cannot be applied retroactively. When the Court overrules a doctrine, the new doctrine should apply prospectively and should not apply to parties who relied on the old doctrine in good faith. Section 4 of the Tax Code and Section 7(a) of Republic Act ("R.A.") No. 1125[74] shall apply to this case, where the power to decide disputed assessments is vested in the CIR and exclusive appellate jurisdiction belongs to the CTA. The reversal of an interpretation of the law cannot be

---

[69] [Hereinafter "*Phil. Mining Dev. Corp.*"], G.R. No. 250748 (Notice), Oct. 6, 2021.

[70] *Id.* at 2. This pinpoint citation refers to the copy of this unsigned resolution uploaded to the Supreme Court Website.

[71] G.R. No. 198146, 835 SCRA 235, Aug. 8, 2017.

[72] *Id.* at 258.

[73] *Phil. Mining Dev. Corp.*, at 3–5.

[74] Rep. Act No. 1125 (1954), § 7(a).

given retroactive effect to the prejudice of parties who may have relied on the first interpretation.[75]

- o0o -

[75] *Phil. Mining Dev. Corp.*, at 15–17.