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SUPREME COURT DECISIONS

SUBSIDIARY JOURNALS AND MONTHLY VALUE-ADDED VAT ("VAT") DECLARATIONS ARE NOT PART OF SUBSTANTIATION REQUIREMENTS TO SUPPORT A CLAIM FOR TAX REFUND OR CREDIT. The Bureau of Internal Revenue ("BIR") asserts that the taxpayer did not comply with the requirement of Section 4.113-3 of Revenue Regulations ("Rev. Regs.") No. 16-2005 to keep, preserve, and maintain subsidiary sales and purchase journals. Likewise, the taxpayer supposedly failed to prove that it filed the monthly VAT declarations required under Section 114(A) of the National Internal Revenue Code of 1997 ("1997 NIRC"), as implemented by Section 4.114-1 of Rev. Regs. 16-2005. The BIR believes that prior compliance with these requirements is a condition *sine qua non* in claiming unutilized zero-rated input VAT. ***Held:*** There is nothing in the 1997 NIRC or in Rev. Regs. 16-2005 requiring that the subsidiary journals and monthly VAT declarations be made part of the substantiation requirements to support a claim for tax refund or credit. To be creditable, the input taxes must be evidenced by validly issued invoices and/or official receipts containing the information enumerated in Sections 113 and 237 of the 1997 NIRC. Similarly, there is nothing in Section 112(A) and Rev. Regs. 16-2005 that require prior filing of monthly VAT declarations as a condition precedent to the entitlement for refund. While admittedly the 1997 NIRC requires the taxpayer to pay VAT on a monthly basis, the law and relevant revenue regulations do not provide denial of the claim as a consequence of non-compliance. ***Commissioner of Internal Revenue v. Philex Mining Corp., G.R. No. 230016 dated November 23, 2020 [Date Uploaded: 03/19/2021]***

THE ENUMERATION OF DIRECT COSTS DEDUCTIBLE FROM A PEZA-REGISTERED ENTERPRISE'S GROSS INCOME IN REV. REGS. 11-2005 IS NOT EXCLUSIVE. The BIR issued Rev. Regs. 11-2005 revoking Section 7 of Rev. Regs. 2-2005 and removing the exclusivity of the enumeration of cost or expense allowed as a deduction from gross income, as defined under Section 24 of Republic Act No. 7916 (PEZA Law). Per Rev. Regs. 11-2005, the enumeration of allowable deductions was only made by way of example or illustration of the nature and type of expenses that may be deducted from a PEZA-registered enterprise's gross income for purposes of computing the 5% gross income tax. ***Commissioner of Internal Revenue v. East Asia Utilities Corp., G.R. No. 225266 dated November 16, 2020 [Date Uploaded: 03/02/2021]***

COURT OF TAX APPEALS DECISIONS

THE BOND RQUIREMENT FOR PURPOSES OF SUSPENDING COLLECTION OF TAXES MAY BE DISPENSED WITH WHEN THE COLLECTION MEANS EMPLOYED BY THE BIR ARE NOT SANCTIONED BY LAW. Whenever it is determined by the courts that the method employed by the BIR in the collection of tax is not sanctioned by law, the bond requirement under Section 11 of R.A. No. 1125 should be dispensed with. In *Tridharma Marketing Corp. v. Commissioner of Internal Revenue* (G.R. No. 215950 dated June 20, 2016), the Supreme Court held that simply prescribing such high amount of bond like the initial 150% of the deficiency assessment of P4,467,391,881.76 (or P6,701,087,822.64), or later on even reducing the amount of the bond to equal the deficiency assessment, would practically deny to the taxpayer the meaningful opportunity to contest the validity of the assessments, and would likely even impoverish it as to force it out of business. In this case, the issuance of the Warrant of Distraint and/or Levy by the BIR notwithstanding this Court's Decision on November 16, 2020 cancelling the deficiency assessments clearly jeopardizes the taxpayer's interest. Moreover, to demand the posting of the bond as a condition for the suspension of the collection in the present case would practically deny the taxpayer the meaningful opportunity to contest the validity of the assessment as it is tantamount to an impossible condition on the taxpayer's part. ***Marketing Convergence, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9379 dated March 8, 2021.***

THE TAXPAYER SHOULD PINPOINT SPECIFICALLY WHICH OF RESPONDENT'S FINDINGS HAVE NOT BEED SUPPORTED BY ANY FACTUAL OR LEGAL BASES. The Court also reiterates that, other than the taxpayer's bare allegation and general statement that the BIR's computation of its refundable input VAT was erroneous, the taxpayer has been unable to point out the reasons/bases why its administrative claim was denied in the first place by the BIR. It not only failed to offer proof to debunk the findings of the BIR, but also failed to pinpoint specifically which of the BIR's findings have not been supported by any factual or legal bases. As such, said allegation cannot be accorded credence for lack of evidentiary support. It is a basic rule that he who alleges must prove what is alleged. Thus, the taxpayer's claim of erroneous computation cannot stand. ***First Gen Hydro Power Corp. v. Commissioner of Internal Revenue, CTA Case No. 9889 dated March 5, 2021.***

IN THE ABSENCE OF A VALID LETTER OF AUTHORITY ("LOA"), ISSUED SPECIFICALLY IN FAVOR OF A REVENUE OFFICER, THE TAX ASSESSMENTS ISSUED BY THE BIR SHALL BE VOID. As a rule, revenue officers are required to be specifically authorized by a valid LOA, prior to the exercise of the BIR's assessment functions, such as the examination of books of accounts and accounting records of the taxpayer. In the absence of a valid LOA, issued specifically in favor of a revenue officer, the tax assessments issued by the BIR against such taxpayer shall be void. In this case, the examination by the BIR examiner of the taxpayer's tax liabilities for 2009 was made solely on the basis of a Memorandum of Assignment, instead of a valid LOA, as required by Section 13 of the 1997 NIRC. Considering that the BIR examiner acted on the taxpayer's case, despite not being properly clothed with authority through a requisite LOA, the tax assessments resulting therefrom are void and of no effect. ***Robie Stylographic and Dev't Corp. v. Commissioner of Internal Revenue, CTA Case No. 9774 dated March 2, 2021.***

A FINAL ASSESSMENT NOTICE ("FAN") THAT LACKS THE DEFINITE AMOUNT OF TAX LIABILITY FOR WHICH THE TAXPAYER IS ACCOUNTABLE, IS NOT A VALID ASSESSMENT. In this case, the subject Formal Letter of Demand ("FLD") contains the statement that the "*interest and total amount due will have to be adjusted if paid beyond x x x,*" which renders the amount of tax due therein indefinite, as it is subject to modification, depending on the date of payment. Pursuant to the case of *Commissioner of Internal vs. Fitness by Design, Inc*. (G.R. No. 215957 dated November 9, 2016), a FAN that lacks the definite amount of tax liability for which the taxpayer is accountable, is not a valid assessment. ***Robie Stylographic and Dev't Corp. v. Commissioner of Internal Revenue, CTA Case No. 9774 dated March 2, 2021.***

IT IS NOT NECESSARY FOR THE PERSON WHO EXECUTED THE CERTIFICATE OF CREDITABLE WITHHOLDING TAX AT SOURCE TO BE PRESENTED AND TESTIFY PERSONALLY TO PROVE THE AUTHENTICITY OF THE CERTIFICATES. It is well-settled that the presentation of regularly issued Certificates of Creditable Withholding Tax at Source (*i.e.*, BIR Forms 2307) is sufficient proof that creditable income tax has indeed been withheld from a taxpayer's income by the income payor-withholding agent. Further, it is not necessary for the person who executed such Certificates of Creditable Withholding Tax at Source to personally testify as to the authenticity. The said document, by itself, is already competent proof of withholding of income tax and the amount of tax withheld considering that this was executed under penalty of perjury. As long as the Certificates of Creditable Withholding Tax at Source are complete in its relevant details and is with a written statement that it was made under penalty of perjury, the same is admissible in evidence even without the preparer's testimony attesting to its authenticity and considered as competent proof of the fact of withholding and the amount of tax withheld. ***Sonoma Services, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9808 dated March 2, 2021.***

IT IS APPROPRIATE TO RESOLVE AN ISSUE OF DEFICIENCY TAX ASSESSMENT WITH A CLAIM FOR TAX REFUND IN A SINGLE PROCEEDING TO AVOID THE MULTIPLICITY OF SUITS AND UNNECESSARY DIFFICULTIES OR EXPENSES. The original Petition for Review filed by the taxpayer before the Court of Tax Appeals in Division questioned the validity of the deficiency tax assessments issued by the BIR. It is important to note that the Court in Division already obtained jurisdiction over said issue. The amendment of the original Petition for Review to include a prayer for refund of erroneously and/or illegally paid taxes is merely to reflect such developments connected with the original Petition for Review, the primary objective of which is to declare the subject assessments as null and void. In fact, the refund of the alleged illegally and erroneously collected taxes can only be granted once the subject assessments have been declared null and void, which is, as stressed, the primary cause of action in the original Petition for Review. Certainly, to require the taxpayer to first go through with the rigorous process of filing an administrative claim for refund with the BIR before this Court can grant its claim for refund is not only unduly burdensome on the taxpayer, but also an absurdity, considering that this Court has already found that the deficiency tax assessment issued against the taxpayer is null and void, which is the ultimate basis for the taxpayer's claim for refund of erroneously and/or illegally paid taxes. The proper way, therefore, would simply be for this Court to directly grant the taxpayer's claim for refund based on its finding that the subject assessments are void to remove any unnecessary and useless formality that is only a detriment against the interest of the government and the taxpayer. ***Y&R Phil., Inc. v. Commissioner of Internal Revenue, CTA EB Nos. 2019 and 2020 (CTA Case No. 9437) dated March 11, 2021.***

RECEIPTS FOR REGISTERED LETTERS AND RETURN RECEIPTS DO NOT PROVE THEMSELVES, THEY MUST BE PROPERLY AUTHENTICATED IN ORDER TO SERVE AS PROOF OF RECEIPT OF THE BIR NOTICES. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. In the case at bar, while the BIR was able to present the registry return card relative to the alleged mailing of the FLD to the taxpayer, it failed to prove that the same has been signed by the authorized representative of the taxpayer. The BIR failed to establish the fact that it was the taxpayer's duly authorized representative who received such document supposedly containing the FLD. Considering that the BIR failed to authenticate the subject registry return card, the BIR was unable to discharge its burden to present proof to show that the taxpayer indeed received the FLD, which was sent through registered mail. ***Commissioner of Internal Revenue v. Xylem Water Systems Int'l, Inc., CTA EB 2120 (CTA Case No. 8901) dated March 12, 2021***.

THE TAXPAYER CANNOT CLAIM THAT THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT'S ("ICPA") FINDINGS ARE SUFFICIENT TO SUPPORT ITS CLAIM THAT IT IS ENTITLED TO REFUND. The Court makes its own determination and verification of the documentary evidence presented by the parties, including the correctness of the BIR's findings (at the administrative level), and ICPA's conclusion as reflected in the ICPA report. After all, the latter's report is only persuasive in nature and not conclusive to the Court, as explicitly provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals. ***First Gen Hydro Power Corp. v. Commissioner of Internal Revenue, CTA Case No. 9889 dated March 5, 2021.***

IN CLAIMS FOR REFUND OF ERRONEOUSLY AND/OR ILLEGALLY PAID TAXES, THE TAXPAYER IS ENTITLED TO REFUND WHEN THE INVALIDITY OF THE ORDINANCE IMPOSING TAX HAS BEEN JUDICIALLY PRONOUNCED AND BECAME FINAL AND EXECUTORY. The judicial case for refund should have been filed within two years from the payment of the tax, fee, or charge, or from the date when the taxpayer became entitled to a refund or credit. In this case, the petitioner became entitled to a refund or credit only when the invalidity of Section 21(A) of Manila Ordinance No. 7794, as amended, was judicially pronounced, which judgment became final and executory. This took place when this Court *En Banc* dismissed the City of Manila's Petition for Review of the CTA Second Division's decision invalidating Section 21(A) of the ordinance which became final and executory only on 2 July 2007. Following this, the Supreme Court ruled that the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition since petitioner only became entitled to the present refund (i.e., 2 July 2007) after such judicial claim has already been filed (i.e., 11 July 2003). ***Int'l Container Terminal Services, Inc. v. The City of Manila, CTA EB 277 (CTA AC No.11) dated March 10, 2021.***

IN ORDER FOR PAYMENT OF INTEREST TO ACCRUE ON THE AMOUNT TO BE REFUNDED TO THE TAXPAYER, EITHER SAID TAXPAYER MUST BE AUTHORIZED BY LAW OR THE COLLECTION OF THE TAX WAS ATTENDED BY ARBITRARINESS. These two circumstances are not present in the case at bar. First, no law expressly grants the payment of interest as a form of damages in tax refund cases. Second, no arbitrariness attended the collection of the taxes subject of the present case. Pending the resolution of the taxpayer's Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax, the BIR is not precluded from collecting the garnished amount. This is because there is no order yet from the Court in Division suspending the collection of the alleged deficiency taxes against the taxpayer when the BIR proceeded with the

collection of the garnished amounts. Consequently, the BIR did not disobey any lawful order from the Court in Division. ***Y&R Phil., Inc. v. Commissioner of Internal Revenue, CTA EB Nos. 2019 and 2020 (CTA Case No. 9437) dated March 11, 2021.***

PURCHASE INVOICES AND OFFICIAL RECEIPTS SHOULD REFLECT "TIN-VAT" INSTEAD OF "TIN-V". The pertinent portion of Section 4.108-1 of Rev. Regs. 7-95 states that, "only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT' Invoice. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax." Evidently, Rev. Regs. 7-95 specifically requires a VAT-registered person to imprint "TIN-VAT" on its invoices or receipts. Consequently, purchases supported by invoices or official receipts, wherein the "TIN-VAT" is not printed thereon, shall not give rise to any input VAT. It must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory. ***Kepco Ilijan Corp. v. Commissioner of Internal Revenue, CTA Case No. 6966 dated March 12, 2021.***

THE COLLECTION OF DEFICIENCY TAXES MUST BE PRECEDED BY A PRELIMINARY ASSESSMENT NOTICE ("PAN"), FAN AND FLD. The BIR maintains that there was no violation of due process in the present case since there was an LOA issued and the taxpayer was duly notified of all required notices. The BIR argues further that the taxpayer was in fact able to intelligently argue its case and elucidate the reasons for the pending issuance of a Closure Order. A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the PAN, but also in the FLD and FAN. Thus, the issuance of these notices is indispensable, except in the case of the PAN in certain instances. No PAN or FAN was issued in this case. In fact, during the pendency of the instant case, the tax audit of petitioner for other taxes pursuant to LOA No. 201200033231 dated October 28, 2016 was still on-going. Since the collection of the subject deficiency VAT was not preceded by a PAN, FAN and FLD, the same must perforce fail. ***Paymentwall, Inc. v. Commissioner of Internal Revenue, CTA Case No.9727 dated March 18, 2021.***

THE 30-DAY PERIOD TO FILE AN APPEAL WITH THE CTA MAY BE COUNTED FROM RECEIPT OF THE WARRANT OF DISTRAINT AND LEVY ("WDL"). As correctly noted by the Special Third Division, the Supreme Court, in *Phil. Journalists, Inc. v. Commissioner of Internal Revenue* (G.R. No. 162852 dated December 16, 2004) reckoned the 30-day period to file an appeal before this Court from the receipt of the WDL. Similar herein, since the taxpayer filed its prior Petition for Review on 03 October 2014 or within 30 days from its receipt of the WDL on 09 September 2014, the taxpayer timely filed its appeal with the Court in Division. Thus, the Special Third Division correctly ruled that it had jurisdiction over the taxpayer's prior Petition for Review. The case of *Yap v. Bureau of Internal Revenue* (CTA Case No. 10020 dated October 14, 2019), which ruled that the Preliminary Collection Letter ("PCL") was considered as the final decision which could be the subject of an appeal, is not applicable given the varying facts involved in the two cases. The taxpayer in said case received an FLD to which he was able to file his protest. In contrast, the taxpayer herein denied having received the FLD and, as a result, it was not able to file its protest. Clearly, the PCL subject of this case cannot be considered as the CIR's final decision since respondent at the time had yet to receive the FLD when it got hold of the PCL. As such, the Court *En Banc* could not reckon the 30-day period to file an appeal with this Court from the PCL's receipt. ***Commissioner of Internal Revenue v. Xylem Water Systems Int'l, Inc., CTA EB 2120 (CTA Case No. 8901) dated March 12, 2021***.

GOOD FAITH AND HONEST BELIEF THAT A TAXPAYER IS NOT SUBJECT TO TAX ON THE BASIS OF PREVIOUS INTERPRETATIONS OF GOVERNMENT AGENCIES TASKED TO IMPLEMENT THE TAX LAW ARE SUFFICIENT JUSTIFICATION TO DELETE THE IMPOSITION OF SURCHARGES AND INTEREST. ***San Miguel Paper Packaging Corp. v. Commissioner of Internal Revenue, CTA EB 2099 (CTA Case No. 9288) dated March 15, 2021.***

A SURVEILLANCE IS NECESSARY BEFORE THE BIR CAN ISSUE THE 48-HOUR NOTICE, 5-DAY VAT COMPLIANCE NOTICE, AND CLOSURE ORDER TO A "NON-COMPLIANT TAXPAYER", AND THAT ALSO THE SURVEILLANCE MUST BE COVERED BY, OR AUTHORIZED THROUGH, A MISSION ORDER DULY ISSUED IN COMPLIANCE WITH RMO NO. 3-2009. In the present case, the BIR does not deny that no surveillance was ever conducted against the taxpayer before the issuance of the 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order. The BIR even admitted that no mission order was issued against the taxpayer. By failing to do so, BIR violated petitioner's right to due process when it failed to act in accordance with the prescribed procedure before issuing the subject notices. Evidently, the BIR's Closure Order is void due to its failure to strictly adhere to the prescribed procedure under RMO No. 3-2009 before issuing the subject notices. ***Paymentwall, Inc. v. Commissioner of Internal Revenue, CTA Case No.9727 dated March 18, 2021.***

BIR RULINGS AND ISSUANCES

AVAILABILITY OF OFFLINE eBIRFORMS PACKAGE VERSION 7.8 This Circular is issued to disseminate the availability of the Offline eBlRForms Package Version 7.8, which now includes the January 2018 version of BIR Form Nos. 1800, 1801 and 2000-OT. ***Revenue Memorandum Circular No. 33-2021 dated March 3, 2021.***

CIRCULAR PRESCRIBING GUIDELINES ON THE SHIFT FROM FINAL TO A CREDITABLE SYSTEM ON VAT WITHHELD ON SALES TO GOVERNMENT OR ANY OF ITS POLICITCAL SUBIVISIONS, INSTRUMENTALITIES OR AGENCIES, INCLUDING GOCCS, IN LINE WITH SECTION 37 OF REPUBLIC ACT NO. 10963, TRAIN LAW. The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs who are required to withhold creditable VAT, shall use the "Monthly Remittance Return of Value-Added Tax Withheld" (BIR Form No. 1600-VT) for filing and remittance of the amount withheld. However, for those using the eFPS, they shall still use BIR Form No 1600 due to unavailability of BIR Form No. 1600-VT. BIR Form Nos. 2550M and 2550Q have also been revised to implement the shift. The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs who are required to withhold creditable VAT shall issue the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) using Alphanumeric Tax Code (ATC) No. WV010 for purchases of goods or WV020 for purchases of services. Thus, the Certificate of Final Tax Withheld at Source (BIR Form No. 2306) shall no longer be issued for this purpose. ***Revenue Memorandum Circular No. 36-2021 dated March 5, 2021.***

CIRCULAR EXTENDING THE DEADLINE FOR THE FILING OF APPLICATIONS FOR INPUT VAT REFUND WITH THE VAT CREDIT AUDIT DIVISION. For the information and guidance of all internal revenue officers, employees and others concerned and following the temporary closure of VCAD until March 28, 2021, in compliance with the existing health protocols for the mitigation of the COVID-19 pandemic, the filing of VAT refund, where the two (2)-year period within which to file the claim falls on March 31, 2021, shall be extended until April 12, 2021. Moreover, the 90-day period of processing of all VAT refund claims pending with VCAD during the temporary closure is also suspended pursuant to Section 5(3) of Rev. Regs. 27-2020. ***Revenue Memorandum Circular No. 36-2021 dated March 22, 2021.***

CIRCULAR ALLOWING THE FILING ANYWHERE OF RETURNS AND PAYMENT OF TAXES DUE THEREON FALLING WITHIN THE PERIOD MARCH 22, 2021 TO APRIL 30, 2021, EVEN OUTSIDE THE JURISDICTION OF THE REVENUE DISTRICT OFFICE WHERE THE TAXPAYER IS REGISTERED. This Circular is being issued in order to provide relief to taxpayers, in relation to the current surge in COVID-19 cases that is affecting the entire country which has prompted establishments to operate at half their manpower capacity. Thus, filing of returns as well as payment of taxes due thereon falling within the period March 22, 2021 to April 30, 2021 may be made anywhere, even outside the jurisdiction of the Revenue District Office where the taxpayer is registered. Taxpayers who are not mandated to use the eFPS and eBlRForms System are encouraged to electronically file their returns through the eBIR Forms Facility and pay the corresponding taxes due thereon through any ePayment channels. ***Revenue Memorandum Circular No. 41-2021 dated March 29, 2021.***

ORDER STREAMLINING THE PROCEDURES AND DOCUMENTS FOR THE AVAILMENT OF TAX TREATY RELIEF ("TTRA"). When the treaty rates have been applied by the withholding agent on the income earned by the nonresident, the former shall file with the International Tax Affairs Division ("ITAD") a request for confirmation on the propriety of the withholding tax rates applied on that item of income. On the other hand, if the regular rates have been imposed on the said income, the nonresident shall file a TTRA with the ITAD. In either case, each request for confirmation and TTRA shall be supported by the documentary requirements set out in this order. The request for confirmation shall be filed by the withholding agent at any time after the payment of withholding tax but shall in no case be later than the last day of the fourth month following the close of each taxable year. The filing of TTRA largely depends upon the nonresident who must invoke and prove his/her/its entitlement to treaty benefit. The nonresident may, at any time after the receipt of income, file a TTRA to prove its entitlement to treaty benefits. If the BIR determines that the withholding tax rate applied is lower than the rate that should have been applied on an item of income pursuant to the treaty, or that the nonresident taxpayer is not entitled to treaty benefits, it will issue a BIR Ruling denying the request for confirmation or TTRA. Consequently, the withholding agent shall pay the deficiency tax plus penalties. On the contrary, if the withholding tax rate applied is proper or higher than the rate that should have been applied, the BIR will issue a certificate confirming the nonresident income recipient's entitlement to treaty benefits. In the latter case, the taxpayer may apply for a refund of excess withholding tax. ***Revenue Memorandum Order No. 14-2021 dated March 31, 2021.***

Note: The information provided herein is general and may not be applicable in all situations. It should not be acted upon without specific legal advice based on particular situations. If you have any questions, please feel free to contact us at telephone number (632) 8633-9418, facsimile number (632) 8633-1911, or email us at mail@baniquedlaw.com.

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