FIRST DIVISION

[G.R. No. 222476, May 05, 2021]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. YUMEX PHILIPPINES CORPORATION, RESPONDENT.

D E C I S I O N

GESMUNDO, C.J.:

Before the Court is a petition for review on *certiorari* filed under Rule 45 of the Rules of Court seeking the reversal of the August 11, 2015 Decision[1] and January 19, 2016 Resolution[2] of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB No. 1139. In its assailed decision, the CTA En Banc denied the petition for review of Commissioner of Internal Revenue (*petitioner*) and effectively affirmed the November 28, 2013 Decision[3] of the CTA Special Second Division (*CTA Division*) in CTA Case No. 8331 which cancelled and set aside the assessment against Yumex Philippines Corporation (*respondent*) for deficiency improperly accumulated earnings tax (*IAET*) for the taxable year 2007.

Antecedents

On March 4, 2010, a Notice of Informal Conference was issued by the Revenue District Officer (*RDO*) to respondent informing the latter that the investigation of its accounting records for the taxable year 2007 resulted in a preliminary assessment of income tax, value-added tax, expanded withholding tax, fringe benefits tax, IAET, and compromise penalty.[4]

Replying to the preliminary audit findings, respondent wrote petitioner regarding its status as a corporation registered under the Philippine Economic Zone Authority (*PEZA*) which allows it to enjoy payment of a special rate on registered activities; hence, it is not subject to IAET.[5]

Subsequently, petitioner sent the letter[6] dated August 12, 2010 and a Summary of Deficiencies to respondent, which were received by the latter on August 20, 2010 and August 25, 2010, respectively. Respondent thereafter sent its reply letter dated August 25, 2010.

A Preliminary Assessment Notice (*PAN*) dated December 16, 2010, with attached Details of Discrepancies, was issued by the Bureau of Internal Revenue (*BIR*) Regional Director (*RD*), finding respondent liable to pay deficiency income tax, fringe benefits tax, IAET, and compromise penalty. A Formal Letter of Demand (*FLD*) dated January 10, 2011, was likewise issued by the RD, finding respondent liable to pay: deficiency income tax (P589,961.46), fringe benefits tax (P1,097,855.50), IAET (P9,077,695.05), and compromise penalty (P25,000.00).[7]

On January 20, 2011, respondent filed a protest on the FLD asserting its status as a PEZA-registered entity; and that since all of its activities are registered under PEZA,

it is therefore fully exempt from the IAET.[8]

On February 4, 2011, petitioner received a letter dated February 2, 2011 from respondent, stating that the latter is paying a total amount of P981,461.83, consisting of the basic deficiency income tax (P372,106.45), basic deficiency fringe benefits tax (P584,355.38), and compromise penalty (P25,000.00). However, respondent contested the amounts of interest and penalty on its deficiency income and fringe benefit taxes and expressed its hope that petitioner will waive the same.[9] Respondent still did not pay its deficiency IAET.

After a reinvestigation, the RDO issued a letter dated July 25, 2011, acknowledging payment by respondent of the basic deficiency taxes on income and fringe benefits, plus compromise penalty; and informing respondent that its request for cancellation of the civil increments and penalties thereon is subject to the approval of petitioner or the Deputy Commissioner/Assistant Commissioner/RD, pursuant to Section III(6) of Revenue Memorandum Order (*RMO*) No. 19-2007. The RDO reiterated her position and stood by the assessment of the IAET and its corresponding civil increments. She advised respondent that the whole docket of the case will be forwarded to the Regional Office for pursuance of collection.[10]

Respondent considered the above-mentioned letter as petitioner's Final Decision on Disputed Assessment, and appealed the same by filing a Petition for Review before the CTA Division on September 7, 2011.

CTA Division Ruling

On November 28, 2013, the CTA Division rendered its Decision granting respondent's petition and setting aside the assessment issued against the latter for IAET. It agreed with respondent's contention that the subject tax assessment is invalid and illegal because the BIR issued the FLD and the Final Assessment Notice (*FAN*) without giving respondent an opportunity to answer the PAN, which is a violation of procedural due process.

The CTA Division held that petitioner violated Sec. 228 of the National Internal Revenue Code (*NIRC*) of 1997 and the provisions of Revenue Regulations (*RR*) No. 12-99, which grant a taxpayer a period of fifteen (15) days within which to reply to the PAN. It also ruled that the assessment must be cancelled for lack of factual basis. Based on its scrutiny of the records, the CTA Division found that petitioner, in computing respondent's alleged deficiency IAET, actually applied the IAET rate on respondent's income from its registered activities which enjoy Income Tax Holiday (*ITH*). In contrast, there is nothing in petitioner's reports, notices, and letters which would specifically show the unregistered activities from which the alleged taxable income mentioned in the PAN and FLD/FAN was derived.

Petitioner filed a motion for reconsideration which was denied by the CTA Division in its March 3, 2014 Resolution.[11]

Petitioner elevated its case via a petition for review before the CTA *En Banc*.

CTA En Banc Ruling

In its August 11, 2015 Decision, the CTA *En Banc* denied petitioner's petition. It held that the CTA Division did not err in considering the propriety or impropriety of the issuance of the PAN and FLD/FAN. Rejecting petitioner's contention that the matter

was never raised as an issue by respondent during trial, it pointed out that respondent made sufficient allegations in its petition for review before the CTA Division, as well as offered both documentary and testimonial evidence during the trial, regarding the dates of issuance by petitioner and receipt by respondent of the PAN and FLD/FAN. At any rate, whether or not respondent specifically raised the issue of simultaneous receipt of the subject PAN and FLD/FAN in its pleadings or during the trial is no moment. The CTA is not precluded from considering other related issues, not otherwise stipulated by the parties, which may be necessary to achieve a just and orderly disposition of the cases, in accordance with Sec. 1, Rule 14[12] of the 2005 Revised Rules of the CTA (*RRCTA*).

The CTA *En Banc* stressed that Sec. 3.1.2 of RR No. 12-99, in relation to Sec. 228 of the NIRC, gives the taxpayer fifteen (15) days from receipt of the PAN to respond to the same before petitioner shall issue an FLD/FAN. In this case, petitioner did not provide respondent with such opportunity to contest the issued PAN; and thus, there was a violation of respondent's due process.

Additionally, the CTA *En Banc* declared that the CTA Division was correct in ruling that there was no factual basis for the deficiency IAET assessment. Respondent, as a PEZA-registered enterprise, is expressly exempted from the imposition of IAET under Sec. 4(g) of RR No. 2-2001,[13] which made no distinction whether the concerned corporation or enterprise enjoys the ITH or the special five percent (5%) tax regime on its registered activities.

Petitioner's motion for reconsideration was likewise denied by the CTA *En Banc* in its January 19, 2016 Resolution.[14]

Hence, petitioner comes before this Court through the instant Petition.

ISSUES

For resolution in this petition are the following issues: (1) whether or not the CTA Division can take cognizance of the issue of the invalidity of the assessment against respondent for allegedly having been issued in violation of respondent's due process; (2) whether or not the PAN and FLD/FAN are invalid because they were issued by the BIR in violation of respondent's right to due process; and (3) whether or not respondent can be assessed for deficiency IAET.

Petitioner's Arguments

Petitioner assails the CTA *En Banc* for upholding the CTA Division's ruling that the issuance of the PAN and FLD/FAN by the BIR was in violation of respondent's right to due process, even when respondent did not raise the same as an issue in its petition for review before the CTA Division. It was clear error for the CTA Division to decide the case based on respondent's belated assertion of impropriety – raised long after the trial and the submission of the case for decision.[15]

Even granting that the aforementioned issue had been timely raised, petitioner submits that the PAN and FLD/FAN were properly issued by the BIR in compliance with RR No. 12-99. Sec. 3.1.7 of said regulations allows constructive service of the PAN by providing that "x x x if the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer." Petitioner asserts

that, in this case, the dates when the PAN and FLD/FAN had been sent can be easily seen in the registry return cards, which are part of the BIR records. The PAN was mailed on December 17, 2010, and fifteen (15) days therefrom,[16] the BIR still had not received any response from respondent. Consequently, petitioner considered the PAN to have been constructively served upon respondent under Sec. 3.1.2 of RR No. 12-99 and the FLD/FAN could already be issued by January 10, 2011.

In the alternative, petitioner argues that even assuming the BIR failed to observe the due process requirements under RR No. 12-99, respondent had been afforded the opportunity to protest the assessment notices. In fact, it was able to request for a re-investigation.

Petitioner further noted that respondent had already paid for most of the items of assessment brought about by the very same assessment process it now assails. Respondent had even requested the cancellation of some requested increments.[17]

Petitioner invokes Sec. 29(C)(2) of the NIRC as the legal basis for the IAET assessment against respondent. According to the said provision, the mere fact that earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid imposing the tax upon its shareholders or members, unless the corporation, by the clear preponderance of evidence, shall prove the contrary.

Petitioner then maintains that there is sufficient factual basis for the IAET assessment. Petitioner clarified that respondent had two types of registered activities: (1) those enjoying ITH; and (2) those under the five percent (5%) special rate. The IAET was being imposed on the income derived from respondent's registered activity under the ITH, specifically identified as the Backlight, PCBA, PCBM, and CAD Design activities, and not from those under the preferential tax rate. Since respondent did not contest the foregoing BIR findings in its protest against the assessment and, instead, merely argued that its earnings were not subject to IAET, then such factual findings are considered as undisputed issues under 3.1.5 of RR No. 12-99.

Petitioner also contends that aside from the heavy burden on respondent to prove that the IAET assessment was not warranted, it is well-settled that all presumptions are in favor of the correctness of tax assessments.[18]

Respondent's Arguments

Respondent posits that the CTA did not err in finding that it was denied due process by the BIR when the latter issued the FLD/FAN without giving respondent the opportunity to answer the PAN within the period provided in RR No. 12-99.[19]

Respondent avers that it raised the invalidity of the issuance of the aforesaid assessment notices in its petition for review before the CTA Division. It specifically alleged in paragraphs 9 and 10 thereof that "[W]ithout waiting for [respondent's] receipt of the PAN and the lapse of [respondent's] time to respond to the PAN, Regional Director Galano issued a Formal Letter of Demand dated January 10, 2011 with an attached Details of Discrepancy and the corresponding Audit Results/Assessment Notices assessing [respondent] the following deficiency taxes for the year 2007 x x x"; and "[O]n January 18, 2011, [respondent] received the PAN as well as the Fonnal Letter of Demand and Audit Results/Assessment Notices

issued by Regional Director Galano." During the trial, respondent's witness, Ms. Leonora Perez-Sangalang, also testified through her judicial affidavit that respondent received the PAN and FLD/FAN on the same day.[20]

As for the documentary evidence cited by petitioner, respondent points out that Exhibits 13 and 14 of the CTA Records pertain to the PAN and FLD/FAN, neither of which includes a registry return card. Since petitioner was not able to adduce evidence of posting, then the rule on constructive service does not apply. The fact remains that respondent received the PAN and the FLD/FAN simultaneously or on the same day. Thus, petitioner failed to comply with the due process requirements under Sec. 3.1.2 of RR No. 12-99.[21]

Respondent insists that the nullity of the subject assessments was not cured by its subsequent protest of the FLD/FAN and payment of other uncontested assessments. [22]

On the legal basis of the IAET assessment, respondent reiterates the CTA's ruling that Sec. 4 of RR No. 2-2001 exempts from IAET, without any distinction or qualification, enterprises duly registered with PEZA under Republic Act No. 7916, such as respondent. Nonetheless, respondent stresses that it was able to prove during the trial that it was justified in not distributing its earnings and profits to its shareholders in the year 2007 because these were reserved for its new projects, specifically, the manufacture of Heat Run Oven-Controlled Rack, which began operations on June 4, 2007, per the testimony of respondent's witness, Ms. Perez-Sangalang. Petitioner neither cross-examined said witness nor presented countervailing evidence.[23]

The Court's Ruling

The petition has no merit.

The Court recognizes that the findings of the CTA can only be disturbed on appeal if they are not supported by substantial evidence or if there is a showing of gross error or abuse on the part of the tax court,[24] but petitioner failed to establish that any of said compelling reasons exist in this case.

As the CTA *En Banc* held, the CTA Division was justified in ruling on the issue that respondent was denied due process even though it was not expressly raised by respondent in its petition for review. Sec. 1, Rule 14 of the RRCTA provides that " [i]n deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." Herein, the issue of the validity of the assessment against respondent also necessarily requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process. In addition, there were sufficient allegations in respondent's petition for review on the dates of issuance by the BIR and receipt by respondent of the PAN and FLD/FAN, as well as documentary and testimonial evidence to establish the essential facts for resolution of the issue which were presented during the trial without any objection from petitioner. This could be deemed as petitioner's implied consent to try the issue, recognized under Sec. 5, Rule 10[25] of the Revised Rules of Court, which applies suppletorily to the RRCTA.