

FIRST DIVISION

[G.R. No. 215801, January 15, 2020]

**IN THE MATTER OF DECLARATORY RELIEF ON THE VALIDITY OF
BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2012
"CLARIFYING THE TAXABILITY OF ASSOCIATION DUES,
MEMBERSHIP FEES AND OTHER ASSESSMENTS/CHARGES
COLLECTED BY CONDOMINIUM CORPORATIONS"**

G.R. No. 218924

**BUREAU OF INTERNAL REVENUE (BIR), AS HEREIN
REPRESENTED BY ITS COMMISSIONER KIM S. JACINTO-
HENARES AND REVENUE DISTRICT OFFICER (RDO) RICARDO B.
ESPIRITU, PETITIONER, VS. FIRST E-BANK TOWER
CONDOMINIUM CORP., RESPONDENT.**

**IN THE MATTER OF DECLARATORY RELIEF ON THE VALIDITY OF
BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2012
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**FIRST E-BANK TOWER CONDOMINIUM CORP., PETITIONER, VS.
BUREAU OF INTERNAL REVENUE (BIR), AS HEREIN
REPRESENTED BY ITS COMMISSIONER KIM S. JACINTO-
HENARES,* RESPONDENT.**

D E C I S I O N

LAZARO-JAVIER, J.:

The Cases

These twin cases refer to the: 1) Petition for Review filed by the Bureau of Internal Revenue (BIR) (G.R. No. 215801); and 2) Special Civil Action for Certiorari initiated by the First E-Bank Tower Condominium Corp. (First E-Bank) (G.R. No. 218924). Both cases assail the following dispositions of the Court of Appeals in CA-G.R. CV No. 102266 entitled *"In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 'Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments /Charges Collected by Condominium Corporations, 'First E-Bank Tower Condominium Corp. v. Bureau of Internal Revenue (BIR) represented by its Commissioner Kim S.Jacinto-Henares, et al."*

1) Resolution^[1] dated June 26, 2014 dismissing for alleged lack of jurisdiction the respective appeals of the First E-Bank and the BIR et al., viz.:

It appearing from the records that the subject matter of the instant appeal is the Resolution dated 05 September 2013 of the RTC-Branch 146, Makati City, declaring "to have been invalidly issued" BIR Revenue Memorandum Circular No. 65-2012 dated 31 October 2012 which imposed 12% value added tax and 32% income tax on association dues/membership fees and other charges collected by condominium corporation from its members and tenants, taking into account Section 7 (a) of Republic Act No. 9282 (which took effect on 23 April 2004) which expressly provides that the Court of Tax Appeals has exclusive appellate jurisdiction over "Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction," considering that the Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases and resolving tax problems, the instant appeal is hereby **DISMISSED** outright for lack of jurisdiction over the nature and subject matter of the action.

The Compliance/Manifestation dated 16 May 2014 of RTC Judge Encarnacion Jaja G. Moya and Branch Clerk of Court Therese Lynn R. Bandong, Manifestations dated 29 May 2014 and 30 May 2014 of First E-Bank Tower Condominium Corporation and the Manifestation dated 02 June 2014 of the Republic of the Philippines are **NOTED**.

Let the instant appeal be considered **CLOSED** and **TERMINATED**.

Let the original records be returned to the trial court.

SO ORDERED.

2) Resolution^[2] dated November 27, 2014 denying the parties' respective motions for reconsideration.

The Facts

The First E-Bank filed the petition below for declaratory relief seeking to declare as invalid Revenue Memorandum Circular No. 65-2012 (RMC No. 65-2012) dated October 31, 2012.^[3] The case was raffled to the Regional Trial Court, Branch 146, Makati City.

RMC No. 65-2012 entitled "*Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/ Charges Collected by Condominium Corporations*" relevantly reads:

x x x

CLARIFICATION

The taxability of association dues, membership fees, and other assessments/charges collected by a condominium corporation from its members, tenants and other entities are discussed hereunder.

I. Income Tax -- The amounts paid in as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter subject to income tax. This is because a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments. For tax purposes, the association dues, membership fees, and other assessments/charges collected by a condominium corporation constitute income payments or compensation for beneficial services it provides to its members and tenants. The previous interpretation that the assessment dues are funds which are merely held in trust by a condominium corporation lacks legal basis and is hereby abandoned.

Moreover, since a condominium corporation is subject to income tax, income payments made to it are subject to applicable withholding taxes under existing regulations.

II. Value-Added Tax (VAT) -Association dues, membership fees, and other assessments/charges collected by a condominium corporation are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its members and tenants.

Section 105 of the National Internal Revenue Code of 1997, as amended, provides:

"SECTION 105. Persons Liable. -Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, **by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests),** or government entity." (Emphasis supplied)

The above provision is clear -- even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. This conclusion was affirmed by the Supreme Court in *Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation*, G.R. No. 125355, March 30, 2000. In this case, the Supreme Court held:

"(E)ven a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or

property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit- oriented.

The definition of the term "in the course of trade or business" incorporated in the present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barter or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or government entity is liable to pay VAT for the sale of goods and services.

Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration. " It includes "the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project."

On February 5, 1998, the Commissioner of Internal Revenue issued BIR Ruling No. 010-98 emphasizing that a domestic corporation that provided technical, research, management and technical assistance to its affiliated companies and received payments on a reimbursement-of-cost basis, without any intention of realizing profit, was subject to VAT on services rendered. In fact, even if such corporation was organized without any intention of realizing profit, any income or profit generated by the entity in the conduct of its activities was subject to income tax.

Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT."

Accordingly, the gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes under existing regulations.^[4]

The First E-Bank's Allegations

In its Petition dated December 20, 2012, the First E-Bank essentially alleged: It was a non-stock non-profit condominium corporation. It owned and possessed, through its members, a condominium office building. RMC No. 65-2012 imposed on it two (2) tax liabilities: 1) value-added tax (VAT) of P118,971. 53 to be paid on December 2012 and every month thereafter; and b) income tax of P665,904.12 to be paid on or before April 15, 2013 and every year thereafter.^[5]

RMC No. 65-2012 burdened the owners of the condominium units with income tax and VAT on their own money which they exclusively used for the maintenance and preservation of the building and its premises. RMC No. 65-2012 was oppressive and confiscatory because it required condominium unit owners to produce additional amounts for the thirty-two percent (32%) income tax and twelve percent (12%) VAT.^[6]

Through the Makati Commercial Estate Association, Inc., it sent a Letter dated December 5, 2012 to the BIR Commissioner requesting deferment of RMC No. 65-2012. A Letter dated December 19, 2012 was likewise sent to Makati City Revenue District Officer Ricardo B. Espiritu informing him of the continuous judicial consignment of the income tax and VAT payments due under RMC No. 65-2012.^[7]

The BIR et al .'s Comments

Under Comment dated February 11, 2013, the BIR and RDO Espiritu through the Office of the Solicitor General (OSG) riposted that declaratory relief was no longer proper here considering that RMC No. 65-2012 already took effect on October 31, 2012. The alleged injury which the First E-Bank sought to prevent had already arisen as of that date.^[8]

By its separate comment,* the BIR's Litigation Division argued that the petition should be dismissed for violation of the principle of primary jurisdiction. Several condominium corporations had already referred the issue to the BIR Law Division for further clarification. Ultimately, only the Secretary of Finance had primary jurisdiction over the issue raised here. Too, a petition for declaratory relief will not prosper if the questioned statute had already been breached, as in this case. RMC No. 65-2012 was only a clarificatory issuance on pertinent laws, specifically the National Internal Revenue Code (NIRC). It was merely a restatement of the BIR's prevailing position on the issue of taxation.^[9]

The First E-Bank's Reply

The First E-Bank replied that judicial consignment of its tax payments under protest was necessary.^[10]

The Trial Court's Ruling

By Resolution^[11] dated September 5, 2013, the trial court ruled that the First E-Bank correctly resorted to a petition for declaratory relief for the purpose of