

## FIRST DIVISION

[ G.R. No. 222837, July 23, 2018 ]

### MACARIO LIM GAW, JR., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

#### DECISION

##### TIJAM, J.:

Before Us is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by Macario Lim Gaw, Jr. (petitioner) assailing the Decision<sup>[2]</sup> dated December 22, 2014 and Resolution<sup>[3]</sup> dated February 2, 2016 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Criminal Case No. 026.

#### Antecedent Facts

Sometime in November 2007, petitioner acquired six (6) parcels of land. To finance its acquisition, petitioner applied for, and was granted a Short Term Loan (STL) Facility from Banco De Oro (BDO) in the amount of P2,021,154,060.00.<sup>[4]</sup>

From April to June 2008, petitioner acquired four (4) more parcels of land. Again, petitioner applied for and was granted an STL Facility from BDO in the amount of P2,732,666,785.<sup>[5]</sup>

Petitioner entered into an Agreement to Sell<sup>[6]</sup> with Azure Corporation for the sale and transfer of real properties to a joint venture company, which at the time was still to be formed and incorporated. Then on July 11, 2008, petitioner conveyed the 10 parcels of land to Eagle I Landholdings, Inc. (Eagle I), the joint venture company referred to in the Agreement to Sell.<sup>[7]</sup>

In compliance with Revenue Memorandum Order No. 15-2003,<sup>[8]</sup> petitioner requested the Bureau of Internal Revenue (BIR)-Revenue District Office (RDO) No. 52 for the respective computations of the tax liabilities due on the sale of the 10 parcels of land to Eagle I.<sup>[9]</sup>

In accordance with the One Time Transactions (ONETT) Computation sheets, petitioner paid Capital Gains Tax amounting to P505,177,213.81<sup>[10]</sup> and Documentary Stamp Tax amounting to P330,390.00.<sup>[11]</sup>

On July 23, 2008, the BIR-RDO No. 52 issued the corresponding Certificates Authorizing Registration and Tax Clearance Certificates.<sup>[12]</sup>

Two years later, Commissioner of Internal Revenue (respondent) opined that

petitioner was not liable for the 6% capital gains tax but for the 32% regular income tax and 12% value added tax, on the theory that the properties petitioner sold were ordinary assets and not capital assets. Further, respondent found petitioner to have misdeclared his income, misclassified the properties and used multiple tax identification numbers to avoid being assessed the correct amount of taxes.<sup>[13]</sup>

Thus, on August 25, 2010, respondent issued a Letter of Authority<sup>[14]</sup> to commence investigation on petitioner's tax account.

The next day, respondent filed before the Department of Justice (DOJ) a Joint Complaint Affidavit<sup>[15]</sup> for tax evasion against petitioner for violation of Sections 254<sup>[16]</sup> and 255<sup>[17]</sup> of the National Internal Revenue Code (NIRC).

The DOJ then filed two criminal informations for tax evasion against petitioner docketed as CTA Criminal Case Nos. O-206 and O-207.<sup>[18]</sup> At the time the Informations were filed, the respondent has not issued a final decision on the deficiency assessment against petitioner. Halfway through the trial, the respondent issued a Final Decision on Disputed Assessment (FDDA)<sup>[19]</sup> against petitioner, assessing him of deficiency income tax and VAT covering taxable years 2007 and 2008.

With respect to the deficiency assessment against petitioner for the year 2007, petitioner filed a petition for review with the CTA, docketed as CTA Case No. 8502. The clerk of court of the CTA assessed petitioner for filing fees which the latter promptly paid.<sup>[20]</sup>

However, with respect to the deficiency assessment against petitioner for the year 2008, the same involves the same tax liabilities being recovered in the pending criminal cases. Thus, petitioner was confused as to whether he has to separately file an appeal with the CTA and pay the corresponding filing fees considering that the civil action for recovery of the civil liability for taxes and penalties was deemed instituted in the criminal case.<sup>[21]</sup>

Thus, petitioner filed before the CTA a motion to clarify as to whether petitioner has to file a separate petition to question the deficiency assessment for the year 2008.<sup>[22]</sup>

On June 6, 2012, the CTA issued a Resolution<sup>[23]</sup> granting petitioner's motion and held that the recovery of the civil liabilities for the taxable year 2008 was deemed instituted with the consolidated criminal cases, thus:

**WHEREFORE**, in light of the foregoing considerations, the prosecution's Motion for Leave of Court to Amend Information and Admit Attached Amended Information filed on May 16, 2012 is **GRANTED**. Accordingly, the Amended Information for CTA Crim. No. O-206 attached thereto is hereby **ADMITTED**. Re-arraignment of [petitioner] in said case is set on **June 13, 2012 at 9:00 a.m.**

As regards, [petitioner's] Urgent Motion (With Leave of Court for

Confirmation that the Civil Action for Recovery of Civil Liability for Taxes and Penalties is Deemed Instituted in the Consolidated Criminal Cases) filed on May 30, 2012, the same is hereby **GRANTED**. The civil action for recovery of the civil liabilities of [petitioner] for taxable year 2008 stated in the [FDDA] dated May 18, 2012 is **DEEMED INSTITUTED** with the instant consolidated criminal cases, without prejudice to the right of the [petitioner] to avail of whatever additional legal remedy he may have, to prevent the said FDDA from becoming final and executory for taxable year 2008.

Additionally, [petitioner] is not precluded from instituting a Petition for Review to assail the assessments for taxable year 2007, as reflected in the said FDDA dated May 18, 2012.

**SO ORDERED.**<sup>[24]</sup>

However, as a caution, petitioner still filed a Petition for Review *Ad Cautelam* (with Motion for Consolidation with CTA Criminal Case Nos. O-206 and O-207).<sup>[25]</sup> Upon filing of the said petition, the clerk of court of the CTA assessed petitioner with "zero filing fees."<sup>[26]</sup>

Meanwhile, the CTA later acquitted petitioner in Criminal Case Nos. O-206 and O-207 and directed the litigation of the civil aspect in CTA Case No. 8503 in its Resolution<sup>[27]</sup> dated January 3, 2013, to wit:

**WHEREFORE**, all the foregoing considered, the [petitioner's] "**DEMURRER TO EVIDENCE**" is hereby **GRANTED** and CTA Crim. Case Nos. O-206 and O-207 are hereby **DISMISSED**. Accordingly, [petitioner] is hereby **ACQUITTED** on reasonable doubt in said criminal cases.

As regards CTA Case No. 8503, an Answer having been filed in this case on August 17, 2012, let this case be set for Pre-Trial on **January 23, 2013 at 9:00 a.m.**

**SO ORDERED.**<sup>[28]</sup>

Thereafter, respondent filed a Motion to Dismiss<sup>[29]</sup> the Petition for Review *Ad Cautelam* on the ground that the CTA First Division lacks jurisdiction to resolve the case due to petitioner's non-payment of the filing fees.

On March 1, 2013, the CTA First Division issued a Resolution<sup>[30]</sup> granting the Motion to Dismiss. His motion for reconsideration being denied, petitioner elevated the case to the CTA *En Banc*. The latter however affirmed the dismissal of the case in its Decision<sup>[31]</sup> dated December 22, 2014, thus:

**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Resolutions of the First Division of this Court promulgated on 01 March 2013 and 24 June 2013 are hereby **AFFIRMED**.

Costs against the petitioner.

SO ORDERED.<sup>[32]</sup>

Petitioner's motion for reconsideration was likewise denied by the CTA *En Banc* in its Resolution<sup>[33]</sup> dated February 2, 2016.

Hence, this petition.

### **Issues**

Petitioner raises the following arguments:

IN RESOLVING CTA EB CRIM. CASE NO. 026, THE CTA *EN BANC* HAS NOT ONLY DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT, BUT HAS ALSO DEPRIVED PETITIONER OF HIS RIGHT TO DUE PROCESS AS TO CALL FOR AN EXERCISE OF SUPERVISION, CONSIDERING THAT:

#### **I**

THE CTA *EN BANC* COMMITTED SERIOUS REVERSIBLE ERROR AND EFFECTIVELY DENIED PETITIONER DUE PROCESS BY DISMISSING THE PETITION FOR REVIEW *AD CAUTELAM* SUPPOSEDLY FOR LACK OF JURISDICTION DUE TO PETITIONER'S FAILURE TO PAY DOCKET AND OTHER LEGAL FEES.

#### **A**

BASED ON APPLICABLE LAWS AND JURISPRUDENCE, AS AFFIRMED BY THE CTA IN ITS PAST PRONOUNCEMENTS IN THE CONSOLIDATED CASES, IT HAD ALREADY ACQUIRED JURISDICTION OVER CTA CASE NO. 8503, AND THEREFORE COULD NOT BE DIVESTED OF SUCH JURISDICTION UNTIL FINAL JUDGMENT.

#### **B**

THE ZERO-FILING-FEE ASSESSMENT IN CTA CASE NO. 8503 ISSUED BY THE CLERK OF COURT OF THE CTA WAS CONSISTENT WITH APPLICABLE LAWS AND JURISPRUDENCE,

AS AFFIRMED BY THE CTA IN ITS PAST PRONOUNCEMENTS IN THE CONSOLIDATED CASES.

C

PETITIONER WAS DEPRIVED OF DUE PROCESS WHEN HIS PETITION WAS DISMISSED WITHOUT FIRST BEING AFFORDED A FAIR OPPORTUNITY TO PAY PROPERLY ASSESSED FILING FEES.

II

THE CTA *EN BANC* COMMITTED SERIOUS REVERSIBLE ERROR IN DEPRIVING PETITIONER OF HIS RIGHT TO ASSAIL THE DEFICIENCY ASSESSMENTS AGAINST HIM FOR TAXABLE YEAR 2008 AND SANCTIONING RESPONDENT'S DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS DESPITE THE FOLLOWING FACTUAL CIRCUMSTANCES WHICH RENDER THE ASSESSMENTS NULL AND VOID:

A

THE LETTER OF AUTHORITY NO. 2009-00044669 WHICH COVERS THE AUDIT OF "UNVERIFIED PRIOR YEARS" IS INVALID, BEING IN DIRECT CONTRAVENTION OF SECTION C OF REVENUE MEMORANDUM ORDER NO. 43-90.

B

THE FORMAL LETTER OF DEMAND DATED 08 APRIL 2011 AND FINAL DECISION ON DISPUTED ASSESSMENT NO. 2012-0001 DATED 18 MAY 2012 WERE IMPROPERLY SERVED ON PETITIONER.

C

RESPONDENT DISREGARDED PETITIONER'S PROTEST LETTER DATED 07 JUNE 2011 AND ADDITIONAL SUBMISSIONS IN SUPPORT OF HIS PROTEST.

D

THE DEFICIENCY TAX ASSESSMENTS AGAINST PETITIONER FOR TAXABLE YEAR 2008 HAVE NO FACTUAL AND LEGAL BASES.

E

IT HAS BEEN A CASE OF PERSECUTION RATHER THAN PROSECUTION ON THE PART OF THE RESPONDENT AGAINST PETITIONER, WARRANTING NOT ONLY AN ACQUITTAL BUT