738 Phil. 335

THIRD DIVISION

[G.R. No. 197515, July 02, 2014]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. UNITED SALVAGE AND TOWAGE (PHILS.), INC., RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court which seeks to review, reverse and set aside the Decision[1] of the Court of Tax Appeals *En Banc* (CTA *En Banc*), dated June 27, 2011, in the case entitled *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc. (USTP)*, docketed as C.T.A. EB No. 662.

The facts as culled from the records:

Respondent is engaged in the business of sub-contracting work for service contractors engaged in petroleum operations in the Philippines.[2] During the taxable years in question, it had entered into various contracts and/or sub-contracts with several petroleum service contractors, such as Shell Philippines Exploration, B.V. and Alorn Production Philippines for the supply of service vessels.[3]

In the course of respondent's operations, petitioner found respondent liable for deficiency income tax, withholding tax, value-added tax (VAT) and documentary stamp tax (DST) for taxable years 1992, 1994, 1997 and 1998.[4] Particularly, petitioner, through BIR officials, issued demand letters with attached assessment notices for withholding tax on compensation (WTC) and expanded withholding tax (EWT) for taxable years 1992, 1994 and 1998,[5] detailed as follows:

Assessment Notice No.	Tax Covered	Period	Amount
25-1-000545-92	WTC	1992	P50,429.18
25-1-000546-92	EWT	1992	P14,079.45
034-14-000029-94	EWT	1994	P48,461.76
034-1-000080-98	EWT	1998	P22,437.01[6]

On January 29, 1998 and October 24, 2001, USTP filed administrative protests against the 1994 and 1998 EWT assessments, respectively.[7]

On February 21, 2003, USTP appealed by way of Petition for Review before the

Court in action (which was thereafter raffled to the CTA-Special First Division) alleging, among others, that the Notices of Assessment are bereft of any facts, law, rules and regulations or jurisprudence; thus, the assessments are void and the right of the government to assess and collect deficiency taxes from it has prescribed on account of the failure to issue a valid notice of assessment within the applicable period.[8]

During the pendency of the proceedings, USTP moved to withdraw the aforesaid Petition because it availed of the benefits of the Tax Amnesty Program under Republic Act (R.A.) No. 9480.[9] Having complied with all the requirements therefor, the CTA-Special First Division partially granted the Motion to Withdraw and declared the issues on income tax, VAT and DST deficiencies closed and terminated in accordance with our pronouncement in *Philippine Banking Corporation v. Commissioner of Internal Revenue*.[10] Consequently, the case was submitted for decision covering the remaining issue on deficiency EWT and WTC, respectively, for taxable years 1992, 1994 and 1998.[11]

The CTA-Special First Division held that the Preliminary Assessment Notices (PANs) for deficiency EWT for taxable years 1994 and 1998 were not formally offered; hence, pursuant to Section 34, Rule 132 of the Revised Rules of Court, the Court shall neither consider the same as evidence nor rule on their validity.[12] As regards the Final Assessment Notices (FANs) for deficiency EWT for taxable years 1994 and 1998, the CTA-Special First Division held that the same do not show the law and the facts on which the assessments were based.[13] Said assessments were, therefore, declared void for failure to comply with Section 228 of the 1997 National Internal Revenue Code (*Tax Code*).[14] From the foregoing, the only remaining valid assessment is for taxable year 1992.[15]

Nevertheless, the CTA-Special First Division declared that the right of petitioner to collect the deficiency EWT and WTC, respectively, for taxable year 1992 had already lapsed pursuant to Section 203 of the Tax Code.[16] Thus, in ruling for USTP, the CTA-Special First Division cancelled Assessment Notice Nos. 25-1-00546-92 and 25-1-000545-92, both dated January 9, 1996 and covering the period of 1992, as declared in its Decision[17] dated March 12, 2010, the dispositive portion of which provides:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. 25-1-00546-92 dated January 9, 1996 for deficiency Expanded Withholding Tax and Assessment Notice No. 25-1-000545 dated January 9, 1996 for deficiency Withholding Tax on Compensation are hereby **CANCELLED**.
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> **SO ORDERED**.[18]

Dissatisfied, petitioner moved to reconsider the aforesaid ruling. However, in a Resolution[19] dated July 15, 2010, the CTA-Special First Division denied the same for lack of merit.

On August 18, 2010, petitioner filed a Petition for Review with the CTA *En Banc* praying that the Decision of the CTA-Special First Division, dated March 12, 2010, be set aside.[20]

On June 27, 2011, the CTA *En Banc* promulgated a Decision which affirmed with modification the Decision dated March 12, 2010 and the Resolution dated July 15, 2010 of the CTA-Special First Division, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Petition is **PARTLY GRANTED**. The Decision dated March 12, 2010 and the Resolution dated July 15, 2010 are **AFFIRMED** with **MODIFICATION** upholding the 1998 EWT assessment. In addition to the basic EWT deficiency of P14,496.79, USTP is ordered to pay surcharge, annual deficiency interest, and annual delinquency interest from the date due until full payment pursuant to Section 249 of the 1997 NIRC.
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> **SO ORDERED**.[21]

Hence, the instant petition raising the following issues:

1. Whether or not the Court of Tax Appeals is governed strictly by the technical rules of evidence;

2. Whether or not the Expanded Withholding Tax Assessments issued by petitioner against the respondent for taxable year 1994 was without any factual and legal basis; and

3. Whether or not petitioner's right to collect the creditable withholding tax and expanded withholding tax for taxable year 1992 has already prescribed.[22]

After careful review of the records and evidence presented before us, we find no basis to overturn the decision of the CTA *En Banc*.

On this score, our ruling in *Compagnie Financiere Sucres Et Denrees v. CIR*,[23] is enlightening, to wit:

> We reiterate the well-established doctrine that as a matter of practice and principle, [we] will not set aside the conclusion reached by an agency, like the CTA, especially if affirmed by the [CA]. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which is not present here.[24]

Now, to the *first* issue.

Petitioner implores unto this Court that technical rules of evidence should not be strictly applied in the interest of substantial justice, considering that the mandate of the CTA explicitly provides that its proceedings shall not be governed by the technical rules of evidence.[25] Relying thereon, petitioner avers that while it failed to formally offer the PANs of EWTs for taxable years 1994 and 1998, their existence and due execution were duly tackled during the presentation of petitioner's witnesses, Ruleo Badilles and Carmelita Lynne de Guzman (for taxable year 1994) and Susan Salcedo-De Castro and Edna A. Ortalla (for taxable year 1998).[26] Petitioner further claims that although the PANs were not marked as exhibits, their existence and value were properly established, since the BIR records for taxable years 1994 and 1998 were forwarded by petitioner to the CTA in compliance with the latter's directive and were, in fact, made part of the CTA records.[27]

Under Section 8[28] of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record.[29] As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction.[30] Moreover, as cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases.[31] Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA.[32] Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:

> SEC. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in *Vda. de Oñate v. Court of Appeals*,[33] thus:

> From the foregoing provision, ***it is clear that for evidence to be considered, the same must be formally offered. Corollarily***, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

> However, in *People v. Napat-a* [179 SCRA 403 (1989)] citing *People v. Mate* [103 SCRA 484 (1980)], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case***.[34]

The evidence may, therefore, be admitted provided the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.[35]

In the case at bar, petitioner categorically admitted that it failed to formally offer the PANs as evidence. Worse, it advanced no justifiable reason for such fatal omission. Instead, it merely alleged that the existence and due execution of the PANs were duly tackled by petitioner's witnesses. We hold that such is not sufficient to seek exception from the general rule requiring a formal offer of evidence, since no evidence of positive identification of such PANs by petitioner's witnesses was presented. Hence, we agree with the CTA *En Banc's* observation that the 1994 and 1998 PANs for EWT deficiencies were not duly identified by testimony and were not incorporated in the records of the case, as required by jurisprudence.

While we concur with petitioner that the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice,[36] the presentation of PANs as evidence of the taxpayer's liability is not mere procedural technicality. It is a means by which a taxpayer is informed of his liability for deficiency taxes. It serves as basis for the taxpayer to answer the notices, present his case and adduce supporting evidence.[37] More so, the same is the only means by which the CTA may ascertain and verify the truth of respondent's claims. We are, therefore, constrained to apply our ruling in *Heirs of Pedro Pasag v. Spouses Parocha*,[38] *viz*.:

> x x x. **A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial**. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, ***this allows opposing parties to examine the evidence and object to its admissibility***. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
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> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of