

FIRST DIVISION

[G.R. No. 169225, November 17, 2010]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. HAMBRECHT & QUIST PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision^[1] dated August 12, 2005 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 73 (C.T.A. Case No. 6362), entitled "*Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*," which affirmed the Decision^[2] dated September 24, 2004 of the CTA Original Division in C.T.A. Case No. 6362 canceling the assessment issued against respondent for deficiency income and expanded withholding tax for the year 1989 for failure of petitioner Commissioner of Internal Revenue (CIR) to enforce collection within the period allowed by law.

The CTA summarized the pertinent facts of this case, as follows:

In a letter dated February 15, 1993, respondent informed the Bureau of Internal Revenue (BIR), through its West-Makati District Office of its change of business address from the 2nd Floor Corinthian Plaza, Paseo de Roxas, Makati City to the 22nd Floor PCIB Tower II, Makati Avenue corner H.V. De la Costa Streets, Makati City. Said letter was duly received by the BIR-West Makati on February 18, 1993.

On November 4, 1993, respondent received a tracer letter or follow-up letter dated October 11, 1993 issued by the Accounts Receivable/Billing Division of the BIR's National Office and signed by then Assistant Chief Mr. Manuel B. Mina, demanding for payment of alleged deficiency income and expanded withholding taxes for the taxable year 1989 amounting to P2,936,560.87.

On December 3, 1993, respondent, through its external auditors, filed with the same Accounts Receivable/Billing Division of the BIR's National Office, its protest letter against the alleged deficiency tax assessments for 1989 as indicated in the said tracer letter dated October 11, 1993.

The alleged deficiency income tax assessment apparently resulted from an adjustment made to respondent's taxable income for the year 1989, on account of the disallowance of certain items of expense, namely, professional fees paid, donations, repairs and maintenance, salaries and wages, and management fees. The latter item of expense, the

management fees, made up the bulk of the disallowance, the examiner alleging, among others, that petitioner failed to withhold the appropriate tax thereon. This is also the same basis for the imposition of the deficiency withholding tax assessment on the management fees. Revenue Regulations No. 6-85 (EWT Regulations) does not impose or prescribe EWT on management fees paid to a non-resident.

On November 7, 2001, nearly eight (8) years later, respondent's external auditors received a letter from herein petitioner Commissioner of Internal Revenue dated October 27, 2001. The letter advised the respondent that petitioner had rendered a final decision denying its protest on the ground that the protest against the disputed tax assessment was allegedly filed beyond the 30-day reglementary period prescribed in then Section 229 of the National Internal Revenue Code.

On December 6, 2001, respondent filed a Petition for Review docketed as CTA Case No. 6362 before the then Court of Tax Appeals, pursuant to Section 7 of Republic Act No. 1125, otherwise known as an 'Act Creating the Court of Tax Appeals' and Section 228 of the NIRC, to appeal the final decision of the Commissioner of Internal Revenue denying its protest against the deficiency income and withholding tax assessments issued for taxable year 1989.^[3]

In a Decision dated September 24, 2004, the CTA Original Division held that the subject assessment notice sent by registered mail on January 8, 1993 to respondent's former place of business was valid and binding since respondent only gave formal notice of its change of address on February 18, 1993. Thus, the assessment had become final and unappealable for failure of respondent to file a protest within the 30-day period provided by law. However, the CTA (a) held that the CIR failed to collect the assessed taxes within the prescriptive period; and (b) directed the cancellation and withdrawal of Assessment Notice No. 001543-89-5668. Petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration of said Decision filed on October 14, 2004 and November 22, 2004, respectively, were denied for lack of merit.

Undaunted, the CIR filed a Petition for Review with the CTA *En Banc* but this was denied in a Decision dated August 12, 2005, the dispositive portion reads:

WHEREFORE, the Petition for Review is **DENIED DUE COURSE** and the case is accordingly **DISMISSED** for lack of merit.^[4]

Hence, the instant Petition wherein the following issues are raised:

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WHETHER OR NOT THE COURT OF TAX APPEALS HAS JURISDICTION TO RULE THAT THE GOVERNMENT'S RIGHT TO COLLECT THE TAX HAS PRESCRIBED.

WHETHER OR NOT THE PERIOD TO COLLECT THE ASSESSMENT HAS PRESCRIBED.^[5]

The petition is without merit.

Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. v. Court of Appeals*,^[6] the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide "other matters" related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over "other matters," it presupposes that the tax assessment has not become final and unappealable.

We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue.** (Emphasis supplied.)

Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).^[7]

In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made.