649 Phil. 446

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.
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> 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.
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> 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.
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> 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.
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> 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:

I

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

II

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. To quote Section 223(c):

> **Any internal revenue tax** which has been assessed within the period of limitation above-prescribed **may be collected** by distraint or levy or by a proceeding in court **within three years following the assessment of the tax**. (Emphases supplied.)

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

> Sec. 3. Powers and duties of Bureau. - The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied.)

Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.

Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each

other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125,

as amended by Republic Act No. 9282,[8] belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.

To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.

With respect to the second issue, the CIR insists that its right to collect the tax deficiency it assessed on respondent is not barred by prescription since the prescriptive period thereof was allegedly suspended by respondent's request for reinvestigation.

Based on the facts of this case, we find that the CIR's contention is without basis. The pertinent provision of the 1986 NIRC is Section 224, to wit:

> Section 224. Suspension of running of statute. - The running of the statute of limitations provided in Sections 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter**; when the taxpayer requests for a re-investigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided, That*, if the taxpayer informs the Commissioner of any change in address, the statute will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. (Emphasis supplied.)

The plain and unambiguous wording of the said provision dictates that two requisites must concur before the period to enforce collection may be suspended: (a) that the taxpayer requests for reinvestigation, and (b) that petitioner grants such request.

On this point, we have previously held that:

> The above section is plainly worded. In order to suspend the running of the prescriptive periods for assessment and collection, **the request for reinvestigation must be granted by the CIR**.[9] (Emphasis supplied.)

Consequently, the mere filing of a protest letter which is not granted does not operate to suspend the running of the period to collect taxes. In the case at bar, the records show that respondent filed a request for reinvestigation on December 3, 1993, however, there is no indication that petitioner acted upon respondent's protest. As the CTA Original Division in C.T.A. Case No. 6362 succinctly pointed out in its Decision, to wit:

> It is evident that the respondent did not conduct a reinvestigation, the protest having been dismissed on the ground that the assessment has become final and executory. There is nothing in the record that would show what action was taken in connection with the protest of the petitioner. In fact, petitioner did not hear anything from the respondent nor received any communication from the respondent relative to its protest, not until eight years later when the final decision of the Commissioner was issued (TSN, March 7, 2002, p. 24). **In other words, the request for reinvestigation was not granted**. x x x.[10] (Emphasis supplied.)

Since the CIR failed to disprove the aforementioned findings of fact of the CTA which are borne by substantial evidence on record, this Court is constrained to uphold them as binding and true. This is in consonance with our oft-cited ruling that instructs this Court to not lightly set aside the conclusions reached by the CTA, which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abuse or improvident exercise of authority.[11]

Indeed, it is contradictory for the CIR to argue that respondent's December 3, 1993 protest which contained a request for reinvestigation was filed beyond the reglementary period but still claim that the same request for reinvestigation was implicitly granted by virtue of its October 27, 2001 letter. We find no cogent reason to reverse the CTA when it ruled that the prescriptive period for the CIR's right to collect was not suspended under the circumstances of this case.

WHEREFORE, the petition is **DENIED**. The assailed Decision of the Court of Tax Appeals (CTA) *En Banc* dated August 12, 2005 is **AFFIRMED**. No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.*, concur.

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[*] Per Special Order No. 913 dated November 2, 2010.

[1] *Rollo*, pp. 30-39; penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[2] Id. at 40-62.

[3] Id. at 32-34.

[4] Id. at 39.

[5] Id. at 12.

[6] 386 Phil. 611 (2000).

[7] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 214, 224.

[8] The relevant portion of Section 11, Republic Act No. 1125 states: "Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7 (a)(2) herein."

[9] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 174942, March 7, 2008, 548 SCRA 105, 113.

[10] *Rollo*, p. 60.

[11] *Toshiba Information Equipment (Phils.) Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.