TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TAX UPDATES FROM OCTOBER 16, 2023 TO NOVEMBER 15, 2023

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4.JOHNNY SY CO vs. BUREAU OF INTERNAL REVENUE, ET AL., respondents. C.T.A. CASE NO. 11024, (Resolution)	October 26, 2023	Motion for Partial Reconsideration for the dismissal of the Petition for Review on failure to submit a compliant Verification and Certification on Non-Forum Shopping pursuant to the directive embodied in the Minute Resolution of the Court.	**7**
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11. REGUS SERVICE CENTRE PHILIPPINES B.V.-ROHQ VS. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 9907, October 25, 2023	October 25, 2023	VAT refund applications not acted within 90 days by the BIR is deemed denied; taxpayer has 30 days from the end of the 90-day period to appeal with CTA	**11**
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13. SAGITTARIUS MINES, INC. VS. HON. GERARDO C. BRAGANZA, in his capacity as Presiding Judge of the Regional Trial Court, Branch 43, Koronadal City, South Cotabato, MUNICIPALITY OF TAMPAKAN, SOUTH COTABATO, and OFFICE OF THE MUNICIPAL TREASURER OF TAMPAKAN, SOUTH COTABATO, CTA Case No. SCA-0003 2466, November 15, 2023)	November 15, 2023	Regulatory fees amounting to P397,697,014.93 may be treated as taxes. Under Section 131 of the LGC, a "fee" is defined as "any charge fixed by law or ordinance for the regulation or inspection of a business or activity." Since the assessed Mayor's permit fees and other regulatory fees exceed the cost of inspection and regulation, it may be held as tax. Thus, the RTC correctly acquired jurisdiction over the case.	**12**

DISCUSSION

A. REVENUE REGULATIONS

1. **REVENUE REGULATIONS NO. 13-2023** (November 10, 2023), Prescribes the policies and guidelines for the optional VAT-Registration of Registered Business Enterprises (RBEs) classified as Domestic Market Enterprise (DME) under the 5% tax on Gross Income earned in lieu of all taxes regime during the transitory period pursuant to Rule 18, Section 5 of the amended IRRs of Republic Act No. 11534 (CREATE Act).

    - During the 10-year transitory period, the RBEs classified as DME may retain the availment of the 5% GIE Incentive and be allowed to register as a VAT taxpayer provided it secures a certification

from the concerned IPA, which expressly state that the 5% GIE shall be in lieu of all taxes except VAT. The RBEs must provide the following documentary requirements to the concerned IPA:

a. Request letter stating its intention to avail of the option to register as a VAT taxpayer with the BIR pursuant to Section 5, Rule 18 of the amended IRR of the CREATE;
b. Notarized "Deed of Waiver of Right to Avail of the VAT Exemption Incentive" in the form prescribed in the Annex "A" of this regulation; and
c. Other documents that may be prescribed by the concerned IPA.

- The non-VAT registered RBEs shall update their registration with the concerned Revenue District Office (RDO) to reflect their registration from non-VAT to VAT taxpayer. Consequently, such RBEs shall be treated on par with regular corporations insofar as the VAT imposition and compliance is concerned.

- The waiver of rights to avail of the VAT exemption incentive shall be irrevocable from the time it is made and be binding in the remaining transitory period.

2. **REVENUE REGULATIONS NO. 14-2023** (November 10, 2023), Further amends the pertinent provisions of RR No. 2-98, as amended, to impose Creditable Withholding Tax on certain income payments by joint ventures/consortiums.

- Income payments made by joint ventures or consortiums, whether incorporated or not, taxable or non-taxable, to their local or resident supplier of goods and services shall be subject to 1% and 2%, respectively.

- Distributive share of each co-venturer/member from the net income of the joint venture or consortium not taxable as corporation prior to actual or constructive distribution shall be subject to 15%.

B. REVENUE MEMORANDUM CIRCULARS

1. **REVENUE MEMORANDUM CIRCULAR 111-2023** (October 16, 2023), Announces the availability of Wage Orders issued by the Regional Tripartite Wages and Productivity Board (RTWPB) in the BIR Website

- The wage orders issued by Regional Tripartite Wages and Productivity Board to inform the public of the changes in the regional wage rates shall be posted on the website of the Bureau of Internal Revenue, particularly under the "Announcements" section.

2. **REVENUE MEMORANDUM CIRCULAR 112-2023** (October 17, 2023), Clarifies the duty of the Food and Drug Administration to determine classification of beverages pursuant to Sec. 150-B of the NIRC of 1997, as amended, and as implemented by RR No. 20-2018

- The Food and Drug Administration (FDA) shall determine the classification of beverages pursuant to Section 150-B of the NIRC of 1997, as amended, and as implemented by Revenue Regulations No. 20-2018 in determination of excise tax and/or granting tax exemptions on beverages.

- The FDA's function is limited only to adoption of the relevant version of the Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995) and determination of the classification of beverages.

- The determination of the classification of beverages by the FDA is subject to review by the BIR. Further, the BIR reserves its right to classify the products for taxation purposes should the FDA fail to strictly adhere to the applicable Codex Descriptors.

- Hence, the proper determination of whether a product or beverage is subject to the imposition and payment of excise tax or is covered by the exclusions therefrom rest with the Commissioner of Internal Revenue.

3. **REVENUE MEMORANDUM CIRCULAR 114-2023** (October 27, 2023), Temporary Suspension of the Opening Escrow Account Pursuant to RMO No. 29-2022

    - This Circular temporarily suspends the opening of Escrow Account in relation to the auction sale of seized properties due to the several issues and concerns observed by Regional Offices regarding the procedures.

    - Accordingly, the Bureau of Internal Revenue is preparing a Revenue Memorandum Order (RMO) to amend certain provisions of RMO No. 29-2022 involving opening Escrow Accounts. Further, the existing procedures under the Collection Manual 2011, pursuant to RMO 28-2012 are advised to be followed by the concerned offices in conducting a public auction sale of seized properties. Nonetheless, procedures under RMO No. 29-2022 shall still be in effect.

4. **REVENUE MEMORANDUM CIRCULAR 115-2023** (October 31, 2023), Classifies the costs associated with franchises, concessions, licenses, rights, operations agreements or similar arrangements (herein referred to as Licenses or Rights) granted by the government to operate a public service, including public utility as an Administrative Cost instead of "Direct Cost of Services", for purposes of computing the gross income to determine the Optional Standard Deduction (OSD) under Section 34 (L) of the Tax Code of 1997, as amended by Section 3 of Republic Act (RA) No. 9504

    - The costs associated with the Licenses or Rights should be properly classified as administrative costs instead of direct costs of services.

    - The costs associated with the Licenses or Rights as an administrative cost implies that the expenses associated with acquiring and maintaining the entitlements should not be included as direct costs of services. They should be considered separately when calculating the gross income for tax purposes.

    - This is crucial as it affects the determination of taxable income and the subsequent application of the OSD that allows taxpayers to deduct a specified percentage from their gross income, ensuring a fair and reasonable assessment of their tax liability.

5. **REVENUE MEMORANDUM CIRCULAR 118-2023** (November 06, 2023), Circularizes the Updated List of Accredited Microfinance Non-Government Organizations (NGOs) as of September 2023

- The Circular publishes the updated list of microfinance non-government organizations (NGOs) accredited by the Microfinance NGO Regulatory Council (MNRC) as of September 2023.

- Under the implementing rules and regulations (IRR) of Republic Act (RA) 10693, otherwise known as the "Microfinance NGOs Act", a Certificate of Accreditation for the purpose of availing incentives shall be valid for a period of three (3) years from the date of issuance, unless revoked by the MNRC.

- The full list can be accessed via the link below:
  https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2023%20RMCs/RMC%20No.%20118-2023%20Attachment.pdf

C. COURT OF TAX APPEALS DECISIONS

1. DIZON COUNTRY FRESH, INC. vs. COMMISSIONER OF INTERNAL REVENUE C.T.A. Case No. 9719 (Resolution), October 26, 2023, Reyes-Fajardo, J.

In the Decision dated 27 June 2023, CTA has cancelled and withdrawn the BIR's assessment notices. In this case, the taxpayer denied receipt of the BIR's Preliminary Assessment Notice (PAN) purportedly mailed by the BIR to the taxpayer. The CTA found that the BIR failed to satisfactorily establish that the person (the security guard in the registered address) who received the PAN is duly authorized by petitioner to receive BIR notices on its behalf. The BIR likewise failed to demonstrate that all the requirements for valid service of the PAN, prescribed by Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013 were complied with. As such, the BIR fell short in proving that there was actual receipt of said PAN by the taxpayer which is violative of its right to due process.

BIR filed a motion for reconsideration which the CTA also denied as the contentions of the BIR were already addressed, discussed and found wanting in the June decision.

2. JULIO R. DE QUINTO vs. BUREAU OF INTERNAL REVENUE (BIR), THRU REVENUE DISTRICT OFFICES NO. 04 MANDALUYONG CITY AND 07, QUEZON CITY C.T.A. Case No. 9623 (Resolution), October 26, 2023, Manahan, J.

In this case, the CTA affirmed its earlier decision finding that the BIR's assessment was based merely on a presumption. The BIR failed to validate from third party sources the information stated in the Letter Notice (LN) issued and relied mainly on petitioner's failure to respond to such LN where a notation therein states that failure to respond means that the information is "assumed to be true and correct." Hence, the CTA has cancelled and withdrawn the BIR's assessment notices.

3. TETRA PAK PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE C.T.A. Case No. 10113 (Resolution). October 26, 2023, Reyes-Fajardo, J.

In this case, the CTA granted the re-computation of petitioner's refundable unutilized input VAT to conform with the Supreme Court's ruling in Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. CIR ("Chevron").

The CIR is claiming that the ruling in Pilipinas Total Gas, Inc. v. CIR ("Total Gas") is applicable, theorizing that since a decision was rendered by the BIR denying petitioner's administrative claim for refund for failure to substantiate the same, petitioner cannot submit documents it did not submit at the administrative level.

In disagreeing with the CIR, the CTA held that, similar with Chevron, the CIR in Total Gas also did not act upon the administrative claim filed by petitioner therein. The rule in Total Gas is that if a judicial claim for refund or tax credit is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the Court that the CIR had no reason to deny its claim. The CTA held that there is nothing Total Gas that precludes a claimant/taxpayer from submitting additional supporting documents before the Court, neither is there anything that prevents the Court from perusing evidence not presented in the administrative claim with the BIR. In fact, Republic Act ("RA") No. 1125, the law creating the Court of Tax Appeals, specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the Court is not limited by the evidence presented in the administrative level. The claimant/taxpayer may present new and additional evidence to the Court to support its case for tax refund.

Moreover, the BIR CIR's reliance on the dissenting opinion of Associate Justice Alfredo Benjamin S. Caguioa in Chevron to support his arguments holds no water. It is well-settled that a dissenting opinion is not binding as it is a mere expression of the individual view of the dissenting member from the conclusion held by the majority of the Supreme Court.

4. JOHNNY SY CO vs. BUREAU OF INTERNAL REVENUE, ET AL., respondents. C.T.A. CASE NO. 11024, (RESOLUTION), October 26, 2023

In this case, the CTA ruled that submission of a compliant Verification and Certification on Non-Forum Shopping pursuant to the directive embodied in the Minute Resolution of the Court dated December 14, 2022 followed by the Court's Resolution dated March 29, 2023, must be strictly complied with.

Mere photocopy of a Verification and Certification that was not compliant with the 2004 Rules on Notarial Practice on April 26, 2023, cannot suffice. The CTA held that the petitioner was specifically given a last opportunity to submit a compliant Verification and Certification Against Non-Forum Shopping in the CTA's Resolution dated March 29, 2023. Unfortunately, petitioner only submitted a photocopy of a Verification and Certification that was not compliant with the 2004 Rules on Notarial Practice on April 26, 2023.

Also, the taxpayer cannot contend that there exists ample jurisprudence that recognizes substantial compliance with the rules over a rigid and overly technical application thereof in order to afford the parties the opportunity to fully ventilate the substantive merits of their case. The Supreme Court in the case of Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue, which ruled thus:

> "Procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows

a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances."

5. **BB INTERNATIONAL LEISURE AND RESORT DEVELOPMENT CORPORATION, HANN INTERNATIONAL LEISURE, INC. (formerly WIDUS INTERNATIONAL LEISURE, INC.), and HANN PHILIPPINES, INC. (formerly WIDUS PHILIPPINES, INC.) vs. BUREAU OF INTERNAL REVENUE, et al. C.T.A. Case No. 10841 (Decision), October 27, 2023, Manahan, J.**

In this case, the CTA ruled that it has jurisdiction over the Petition for Certiorari and Prohibition [With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction]. The CTA cited Supreme Court jurisprudence holding that the CTA has the exclusive jurisdiction to resolve all tax problems. Thus, the CTA has jurisdiction over certiorari cases under Rule 65 of the Rules of Court, as amended, which also includes petitions for prohibition.

The CTA also ruled that Item IV of RMC No. 32-2022 dated March 29, 2022 particularly on the imposition of 5% FT on PAGCOR licensees is unconstitutional. In the case of *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. CIR*, the Supreme Court clarified that the tax privilege as to the payment of the 5% franchise tax does not extend to PAGCOR licensees. It extends only to PAGCOR contractors.

Specifically, the fifth sentence of the first paragraph of Item IV of RMC No. 32-2022 which contains the phrase "Their income from gaming operations, however, shall not be subject to the GIT, ITH or corporate income tax but remains subject to the 5% Franchise Tax in accordance with P.D. No. 1869, as amended, and the aforecited jurisprudence" has no legal basis as Section 13 (2) (b) of PD No. 1869, as to the payment of 5% FT, does not extend to PAGCOR's licensees. It is very clear that the inclusion of 5% FT among taxes imposed on PAGCOR's licensees within the SEZ is beyond the jurisdiction of the BIR as it is bereft of legal basis and not guided by jurisprudence.

Accordingly, the fifth sentence of the first paragraph of Item IV of RMC No. 32-2022 is DECLARED null and void.

6. (COMMISSIONER INTERNAL REVENUE vs. CEBU LIGHT INDUSTRIAL PARK, INC., CTA EB Case No. 2466, October 25, 2023)

The CTA held that the preliminary collection letter (PCL) received on May 05, 2017 is the BIR's final decision on disputed assessment which is appealable to the CTA. In this motion for reconsideration, petitioner BIR claims that the PCL is not his FDDA. Instead, it is Assistant Regional Director Teresita M. Dizon (ARD Dizon)'s Letter dated March 10, 2016, and received by respondent on April 10, 2016, which is his FDDA. Counting thirty (30) days from April 10, 2016, respondent had until May 10, 2016 to appeal with the Court in Division. Therefore, BIR maintains that the Petition for Review was filed late.

The Court denied the Motion on the following reasons:

a) The parties judicially admitted that the PCL is petitioner's FDDA.

b) Jurisdiction over the subject matter is determined by the averments in respondent's Petition for Review.
c) In his Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court, filed before the Court in Division, petitioner theorizes that ARD Dizon's Letter dated March 10, 2016 is the matter appealable before the Court in Division. Notably, said motion seeks the dismissal of CTA Case No. 9607. The jurisdiction of the Court in Division over CTA Case No. 9607 may not be made to depend on such theory; hence, should be ignored outright.
d) Respondent sought clarification if ARD Dizon's Letter dated March 10, 2016 is petitioner's FDDA. Petitioner could have expressly said so but chose to turn deaf on respondent's simple query. To overlook the inattention exhibited by petitioner would foster the circumstance which jurisprudence seeks to obviate — unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court.

7. EXPEDITORS PHILIPPINES INC., vs. HON. KIM S. JACINTO-HENARES — IN HER CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE, [C.T.A. CASE NO. 9257. November 3, 2023.]

In this case, LOA No. LOA-122-2010-00000107 dated September 20, 2010 authorized ROs Ricardo Calma and Ma. Teresa Espino, and Group Supervisor Monica Zamora to conduct the examination of petitioner's books of accounts and other accounting records for TY 2009. Subsequently, the case was reassigned to different ROs through a memorandum of assignment. There was no showing that a new LOA was issued to authorize the new ROs who continued the audit and investigation of petitioner's books of accounts and other accounting records for TY 2009. If the ROs who conducted the examination of the taxpayer are not duly authorized to do so, the assessment is inescapably void. A void assessment bears no fruit.

8. (Star Sports Corporation vs. Commissioner on Internal Revenue, and Assistant Regional Director of Revenue Region No. 8, Makati City, [CTA Case No. 10380], 06 November 2023)

In this case, the BIR failed to present proof of receipt of PAN and FAN by the taxpayer. The CTA ruled that the burden of proof is on respondent to prove petitioner's receipt of the PAN and FAN. Section 228 of the National Internal Revenue Code of 1997, as amended ("NIRC"), requires that a taxpayer be informed of the factual and legal basis for the assessment made against it. Said assessment is otherwise void. The Supreme Court has declared that respondent must, indeed, prove a taxpayer's receipt of an assessment notice when the latter denies receipt of any notice. Such denial shifts the burden of proof onto the CIR. Petitioner Star Sports Corporation denies having ever received any PAN or FAN. It is thus on respondents to prove that said issuances were properly served upon petitioner. Unfortunately, respondents offered no proof of such service.

Because the assessment notices were not properly served to petitioner, the assailed assessment is void. Sec. 228 of the NIRC requires that a taxpayer be informed of the assessment against it. If this requirement is not met, the assessment is void. That a lack of notice is enough to void an assessment is based on a taxpayer's right to due process. Any given taxpayer with an assessment issued against it must be afforded the opportunity to present its case and protest said assessment, neither of which can be achieved if it was not informed of said assessment in the first place.

A WDL based on a void assessment is, itself, also void. In its Memorandum, petitioner insists that the WDL is void because the assessment on which it is based is void. The Court concurs. A void assessment bears no fruit. What this adage means is that the government is barred from collecting any tax liabilities based on a void assessment. The Supreme Court has also worded this differently as "an invalid assessment bears no valid effect." As such, when an assessment is void, any WDL based upon it is also void and cannot be executed.

9. (NATIONAL FOOD AUTHORITY, Represented by Acting Regional Manager Felimon T. Cangrejo of NFA-ARMM vs. MUNICIPALITY OF SHARIFF AGUAK, TREASURER OF SHARIFF AGUAK MAGUINDANAO AND MUNICIPAL ASSESSOR OF SHARIFF AGUAK MAGUINDANAO, CTA EB Case No. 2465, October 31, 2023)

In this case, National Food Authority (NFA) or the petitioner, filed before the regional trial court (RTC) a Petition for Prohibition under Rule 65 of the Rules of Court without first availing the administrative remedies available under the LGC of 1991. Petitioner questioned the RPT assessment issued by Treasurer of Shariff Aguak Maguindanao, arguing that it is a government instrumentality exempt from Real Property Tax (RPT) based on Sections 133 (o) and 234 (a) of the LGC of 1991.

The CTA ruled that exhaustion of administrative remedies does not apply when the issue involves a pure question of law; thus, the petitioner properly availed the remedy of Petition for Prohibition before the RTC.

However, the CTA held that the petitioner is a government owned and controlled corporation (GOCC), and not a mere government instrumentality as evidenced by the following:

1) It is organized as a stock or non-stock corporation;
2) It is vested with functions relating to public needs whether governmental or proprietary in nature; and
3) It is owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock.

Thus, the NFA is not exempt from RPT.

The CTA also added that with the enactment and effectivity the LGC of 1991, the exemption from payment of RPT previously granted to, or presently enjoyed by GOCCs, among others, was withdrawn.

10. Stefanini Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Div. Case No. 11189, November 8, 2023

In this case, the petitioner filed a VAT refund claim of its excess and unutilized input VAT for the 4th quarter of 2020 with the BIR on December 21, 2022. The petitioner received the BIR's decision partly granting its claim for refund on May 16, 2023. Consequently, the petitioner filed a Petition

for Review with the CTA on June 14, 2023. The petitioner asserts that the said petition was timely filed as it is within the 30-day period from the date of receipt of BIR's decision.

The issue here is the interpretation of Section 112 (C) of the Tax Code as amended by the TRAIN Law.

Petitioner argues that because of the TRAIN Law, the inaction of the BIR after the lapse of the 90 day period is no longer appealable. The 30 day period to file an appeal must be counted from receipt of the decision of the BIR.

The CTA disagreed and held that it already lost jurisdiction over the case by June 14, 2023. The CTA interpreted that under Section 112 (C) of the NIRC, only an adverse decision rendered by the BIR within the 90-day period prescribed therein may be the subject of appeal before the CTA. The CTA posits that since there were no adverse decision was received by the petitioner as of March 21, 2023 (the end 90-day period from the filing of application of VAT refund claim with the BIR), the administrative claim was considered denied pursuant to Section 7(1)(2) of RA No. 1125, as amended by RA No. 9282. Hence, the petitioner had until April 20, 2023, or 30 days from March 21, 2023 to take judicial action.

11. Regus Service Centre Philippines B.V.-ROHQ vs. Commissioner of Internal Revenue, CTA Case No. 9907, October 25, 2023

Petitioner filed its administrative claim for refund of excess/unutilized VAT for the first quarter of calendar year (CY) 2016 on April 2, 2018 and upon receipt of the letter denying its claim on July 13, 2018, filed its judicial appeal with the Court on August 13, 2018 which is within thirty (30) days from receipt of the letter denying its claim. The petitioner argued that the case of San Roque Power Corporation vs. CIR, on the deemed denial due to inaction by the BIR, should not be applied to the instant case as it was decided before the amendments under the TRAIN Law. The petitioner believes that the deletion of the phrase, "or the failure on the part of the Commissioner to act on the application within the period prescribed above," under the TRAIN Law, and the addition of the phrase, "failure on the part of any official, agent, or employee of the Bureau of Internal Revenue (BIR) to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code," shows the intention of the lawmakers to compel the CIR to act on the taxpayer's administrative claim for refund.

However, the CTA held that the imposition of a mandatory ninety (90)-day period to act upon the administrative claims for refund under the TRAIN Law did not operate to repeal the jurisdiction of the CTA over the "inaction" of the BIR which is considered as a "deemed denial" appealable under Section 7 (a) (2) of RA No. 1125, as amended by RA No. 9282. Thus, if BIR fails to act within the ninety (90)-day period under Section 112 (C) of the 1997 NIRC, as amended by the TRAIN Law, such inaction should already be considered a denial appealable to the CTA.

The 120 + 30 mandatory period to appeal to the CTA under pre-TRAIN Law provisions has not been abandoned by the onset of the TRAIN law, albeit replaced by a shorter period of 90 + 30 days. If the BIR fails to act within the ninety (90)-day period provided under Section 112 (C) of the 1997 NIRC, as amended by the TRAIN Law, such inaction should already be deemed a denial of the administrative claim appealable to the CTA.

12. ROYAL CARIBBEAN CRUISES LTD., doing business under the name RCL REGIONAL OPERATING HEADQUARTERS vs. COMMISSIONER OF INTERNAL REVENUE, CTA Div. Case No. 10256, November 7, 2023

The ROHQ filed a letter dated January 15, 2020 with the BIR, requesting a refund of the alleged erroneously paid FWT on its payment of the salaries and wages received by its qualified managerial employees for the period January 2018 to December 2018.

Considering the confusion brought about by the amendment introduced to Section 25 of the NIRC of 1997, as amended by RA No. 10963, and the subsequent veto of the President to the proviso of Section 6 (F) of RA No. 10963, the ROHQ paid both the 15% FWT and withholding taxes on wages "to avoid being penalized," as the question of whether the 15% FWT or the regular income tax is applicable may be considered a doubtful question of law.

The BIR argued that this is not a case of erroneously or illegally collected tax as the petitioner was fully aware of the effectivity of RA 10963 (TRAIN Law) when it made payments.

The CTA held that the ROHQ is entitled to refund since when the proviso under Section 6 (F) of RA No. 10963 was vetoed by then President Duterte, it effectively removed the preferential tax rate of 15% of gross income of employees of RHQs/ROHQs, OBUs, and petroleum service contractors and subcontractors, effective January 1, 2018. Thus, said employees' salaries, wages, annuities, compensation, remuneration, and other emoluments, such as honoraria and allowances, are now subject to the regular income tax rate. Accordingly, the ROHQ's payment of the 15% FWT is without statutory authority or not legally due. There was wrongful payment because what is paid is not legally due.

13. (Sagittarius Mines, Inc. vs. Hon. Gerardo C. Braganza, in his capacity as Presiding Judge of the Regional Trial Court, Branch 43, Koronadal City, South Cotabato, MUNICIPALITY OF TAMPAKAN, SOUTH COTABATO, and OFFICE OF THE MUNICIPAL TREASURER OF TAMPAKAN, SOUTH COTABATO, CTA Case No. SCA-0003 2466, November 15, 2023)

This petition resolves the respondents Municipality of Tampakan, South Cotabato and Office of the Municipal Treasurer of Tampakan, South Cotabato (municipal respondents)' Motion for Reconsideration with petitioner Sagittarius Mines, Inc.

The respondents argued the following:

1. That both the Regional Trial Court (RTC) Branch 43, Koronadal City, South Cotabato, and this Court have no jurisdiction over this case as it involves the question of the validity of an ordinance related to mining. As such, the jurisdiction lies with RTC Branch 35, General Santos City, a special court that tries and decides violations of environmental laws under Supreme Court (SC) Administrative Order No. 23-2008.
2. Further, municipal respondents insist that the regulatory fees and charges imposed against petitioner cannot be considered as taxes because before they issue a permit to petitioner for the

construction of roads, buildings, etc., the municipality will use its workforce to inspect the facilities at regular intervals; hence, the rate of the regulatory fees is based on the area utilized by petitioner.

The Court ruled:

1. The RTC has jurisdiction over the case as it pertains to a local tax case. A local tax case is a dispute between the local government unit (LGU) and a taxpayer involving the imposition of the LGU's power to levy tax, fees, or charges against the property or business of the taxpayer concerned. A local tax case involves disputed assessments, surcharges or penalties, and the validity of a tax ordinance, among others, which are among the issues raised before the RTC. Thus, the RTC correctly acquired jurisdiction over the case.
2. As to whether the regulatory fees amounting to P397,697,014.93 may be treated as taxes, the Court ruled in the affirmative. Under Section 131 of the LGC, a "fee" is defined as "any charge fixed by law or ordinance for the regulation or inspection of a business or activity." Since the assessed Mayor's permit fees and other regulatory fees exceed the cost of inspection and regulation, it may be held as tax. It is even held that an ordinance that imposes fees that are substantially in excess of the reasonable expense of issuing the license and regulating the occupation to which it pertains is invalid.

Hence, the Court considered it necessary to enjoin municipal respondents from implementing the deficiency assessment until the Petition for Review before the lower court is resolved with finality because the continuance of the acts of municipal respondents would render the judgment in the main case ineffectual.