



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL
 REVENUE,

G.R. Nos. 251306-07

Petitioner,

Present:

- versus -

LEONEN, J., *Chairperson,*
 HERNANDO,*
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., *JJ.*

NORKIS TRADING COMPANY,
 INC.,

Promulgated:

June 16, 2021

Respondent.

MisDCCBatt

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DECISION

INTING, J.:

This resolves the Petition for *Certiorari*¹ filed by the Commissioner of Internal Revenue (CIR) assailing the Court of Tax Appeals (CTA) *En Banc* Resolutions dated May 29, 2019² and January 16, 2020³ which dismissed the CIR's petitions for review docketed as CTA *En Banc* Nos. 1766 and 1845,⁴ respectively.

* On official leave.

¹ *Rollo*, pp. 13-28.

² *Id.* at 39-44; penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, and Catherine T. Manahan, concurring; Associate Justice Ma. Belen M. Ringpis-Liban, on leave.

³ *Id.* at 46-49; penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowera Modesto-San Pedro, concurring; Associate Justice Ma. Belen M. Ringpis-Liban, inhibited.

⁴ Formerly CTA Case No. 8862.

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The Antecedents

The present case stemmed from an assessment⁵ issued by the CIR against Norkis Trading Company, Inc. (Norkis) involving alleged deficiency income taxes amounting to ₱285,927,070.68, inclusive of interest and penalties, for the taxable year ending June 30, 2007.⁶

Norkis filed a judicial protest before the CTA which was docketed as CTA Case No. 8862.

Ruling of the CTA Division

On August 16, 2017, the CTA Second Division (CTA Division) rendered a Decision (Main Decision)⁷ canceling the aforementioned assessment for two reasons. *First*, the CIR failed to prove that Norkis entered into an Indemnity Agreement with, or that it received an indemnity fee from Yamaha Motors Co. Ltd. (Yamaha) amounting to \$6 Million.⁸ Consequently, it failed to establish a substantial under-declaration of gross sales on the part of Norkis which would have allowed the application of the 10-year prescriptive period in issuing an assessment. *Second*, the tax authorities only had three years to assess Norkis, or until October 14, 2010. However, Norkis received the assessment only on April 11, 2014. Therefore, the assessment is void for having been issued beyond the three-year prescriptive period.⁹

Aggrieved, the CIR filed a Motion for Reconsideration¹⁰ dated August 31, 2017, insisting that it sufficiently established the fact of Norkis' under-declaration of sales, and thus, the 10-year prescriptive period applies to the assessment.¹¹

Subsequently, the CIR also filed a Supplemental Motion for

⁵ Through a Formal Letter of Demand and Final Assessment Notice dated April 10, 2014 (FLD/FAN). Subsequently, the CIR issued a Final Decision on Disputed Assessment (FDDA) dated July 9, 2014 denying Norkis's protest.

⁶ *Rollo*, p. 52.

⁷ *Id.* at 51-63; penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Caesar A. Casanova and Catherine T. Manahan, concurring.

⁸ *Id.* at 61-62.

⁹ *Id.* at 62.

¹⁰ *Id.* at 64-73.

¹¹ *Id.* at 65-78.

Reconsideration¹² dated October 2, 2017 requesting the CTA Division to consider and admit copies of the following documents: (a) agreement between Norkis and Yamaha and (b) letter from the National Tax Agency of Japan. According to the CIR, the documents are *prima facie* evidence of an Indemnity Agreement between the parties¹³ from which Norkis received, but did not declare a fee as part of their gross sales. Alternatively, the CIR sought to reopen the proceedings for purposes of identifying the aforementioned documents, if necessary.¹⁴

However, in a Resolution dated December 12, 2017, the CTA Division denied both motions for lack of merit.¹⁵

Undaunted, the CIR filed another Motion for Reconsideration¹⁶ dated January 19, 2018 of the Resolution dated December 12, 2017, specifically the denial of its request to admit additional documents and the alternative prayer to reopen the proceedings.

Pending the CTA Division's resolution on the most recent motion, the CIR filed a Petition for Review *Ad Cautelam*¹⁷ dated February 7, 2018 before the CTA *En Banc* docketed as CTA EB No. 1766 assailing the Main Decision and the Resolution dated December 12, 2017, *viz.*:

WHEREFORE, premises considered, it is most respectfully prayed of the Honorable Court that the assailed Decision promulgated on 16 August 2017 and Resolution dated 12 December 2017 denying petitioner's Motion for Reconsideration be REVERSED and SET ASIDE, and judgment be rendered ordering the respondent to pay the deficiency income taxes in the amount to P285,927,070.68, inclusive of interest and penalties, for its fiscal year ending June 30, 2007, as well as the corresponding penalty and deficiency and delinquency interest, pursuant to Sections 248 and 249 of the [National Internal Revenue Code (NIRC)] of 1997.

Any other relief just and equitable under the premises are likewise prayed for.¹⁸ (Underscoring supplied.)

¹² *Id.* at 79-85.

¹³ *Id.* at 82.

¹⁴ *Id.*

¹⁵ *Id.* at 16.

¹⁶ *Id.* at 93-108.

¹⁷ *Id.* at 93-107.

¹⁸ *Id.* at 106

Eventually, in a Resolution dated April 4, 2018, the CTA Division denied the CIR's Motion for Reconsideration filed on January 19, 2018 for being a second motion for reconsideration, and thus, prohibited under the rules.¹⁹

The denial prompted the CIR to file another Petition for Review²⁰ dated May 11, 2018 before the CTA *En Banc* docketed as CTA EB Case No. 1845 seeking to reverse the Main Decision and the Resolutions dated August 16, 2017 and April 4, 2018, *viz.*:

WHEREFORE, premises considered, it is most respectfully prayed of the Honorable Court that the assailed Decision dated 16 August 2017, Resolution dated 12 December 2017, and Resolution dated 4 April 2018 be REVERSED and SET ASIDE, and that judgment be rendered holding that the Agreement (between Yamaha and Norkis) and the Letter from the National Tax Agency of Japan are CONSIDERED and ADMITTED as evidence for petitioner, and/or that the Honorable Court REOPEN and REMAND the case to the Honorable CTA Second Division to allow petitioner to present a witness who will identify the Agreement (between Yamaha and Norkis) and the Letter from the National Tax Agency of Japan.

Any other relief just and equitable under the premises are likewise prayed for.²¹ (Underscoring supplied.)

Norkis filed its comment on the CIR's petition in CTA EB No. 1766 on April 27, 2018.

The court *a quo* later resolved²² to consolidate CTA EB Nos. 1766 and 1845 in view of the factual relation between the two proceedings.²³

Despite consolidation, Norkis sought the CTA *En Banc*'s permission to file a separate comment on the petition in CTA EB No. 1845.

Ruling of the CTA En Banc

In its assailed resolution, the CTA *En Banc* dismissed the CIR's

¹⁹ *Id.* at 17.

²⁰ *Id.* at 111-121.

²¹ *Id.* at 119.

²² In a Resolution dated May 21, 2018, *id.* at 39.

²³ *Id.* at 40.

petitions in CTA EB No. 1766 and 1845 on the ground of *litis pendentia*. It explained that “x x x both petitions assail the [CTA] Division’s Decision promulgated on August 16, 2017 and its Resolution promulgated on December 12, 2017.”²⁴ Inasmuch as the two cases involved the same parties, rights, reliefs, as well as factual foundation, “the resolution in one petition would amount to *res judicata* in the other.”²⁵ Thus, the CIR’s simultaneous petitions amounted to forum shopping.²⁶

As a result, the CTA *En Banc* also denied Norkis’s request because the petitions’ dismissal would render the filing of a comment unnecessary.²⁷

The CIR moved to reconsider. However, the court *a quo* denied²⁸ the motion.

Hence, the CIR filed the present petition.

Issue

The lone issue for the Court’s resolution is whether the CTA *En Banc* erred in dismissing both petitions in CTA EB No. 1766 and 1845 for violating the rule against forum shopping.

The Court’s Ruling

The petition is meritorious.

The Court agrees with the court *a quo* in that the CIR’s petitions amounted to forum shopping. However, only the petition in CTA EB No. 1845 should have been dismissed, not both.

²⁴ *Id.* at 43.

²⁵ *Id.*

²⁶ *Id.* at 41.

²⁷ *Id.*

²⁸ In a Resolution dated January 16, 2020 of the CTA *En Banc*, p. 48.

The CIR is guilty of forum shopping.

When the CIR filed the petitions in CTA *En Banc* Nos. 1766 and 1845, it invoked the CTA *En Banc*'s *exclusive appellate jurisdiction* to review by appeal "[d]ecisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over x x x [c]ases arising from the x x x Bureau of Internal Revenue."²⁹

A careful review of the subject petitions reveals that the CIR prayed for one and the same relief: that the CTA *En Banc* reverse and set aside the CTA Division's ruling consisting of its Main Decision and the subsequent resolutions denying the CIR's motion for reconsideration, as well as its supplement, which cancelled the subject assessment and disallowed the CIR to submit additional documents, or reopen trial. Stated differently, the CIR's main thrust in both appeals is that it be given the opportunity to reestablish the timeliness of its assessment.

To be sure, the petitions both stemmed from one assessment. That the focal point in petition in CTA *En Banc* No. 1845 was the CIR's request to admit additional documents and/or reopen the proceedings, as it argues, did not create another matter that may be litigated independently of the assessment case.

Thus, the petitions have *identical causes of action and subject matter* inasmuch as both were appeals from the CTA Division's cancellation of the CIR's assessment against Norkis. Due to the two petitions' same identity in the *parties, relief sought, cause of action, and subject matter*, a favorable judgment in either CTA *En Banc* case would have remanded the proceedings to the CTA Division (*i.e.*; for the admission of documents or reopening of trial) and, effectively, resulted in *res judicata* in the other case.

The foregoing are the requisites of *litis pendentia*.³⁰ Thus, as correctly ruled by the court *a quo*, the CIR's filing of the petition in CTA *En Banc* No. 1845 despite the pendency of the proceedings in CTA *En*

²⁹ Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, November 22, 2005.

³⁰ See *Lajave Agricultural Management and Development Enterprises, Inc. v. Spouses Javellana*, G.R. No. 223785, November 7, 2018; *Zamora v. Quinan, et al.*, 821 Phil. 1009 (2017).

Banc No. 1766 amounted to forum shopping.³¹

Certainly, the CIR's two separate appeals before the CTA *En Banc* rendered the court *a quo* vulnerable to the possibility of rendering conflicting decisions upon the same issues—precisely the vexatious situation that the rule against forum shopping seeks to avoid.³²

Only the petition in CTA En Banc No. 1845 should have been dismissed.

The Court takes *litis pendentia* literally to mean “a pending suit.” It may be invoked to dismiss³³ *another pending action* between the same parties involving the same cause of action because “the *second action* becomes unnecessary and vexatious.”³⁴ The dismissal of any one of the two pending actions would logically lead to the cessation of *litis pendentia*. When the parties finally confine themselves to *one suit* in litigating similar issues between them, the former evil caused by a multiplicity of suits ceases to exist.

To reiterate, the CIR is guilty of forum shopping. However, the dismissal of *both* of its appeals is a harsh penalty. It may be prohibited to lodge multiple appeals, but the law certainly affords him an opportunity to seek redress from an unfavorable judgment. Thus, upon the dismissal of the petition in CTA *En Banc* No. 1845, the CIR must still be allowed to pursue and maintain the petition in CTA *En Banc* No. 1766.

WHEREFORE, the Court **GRANTS** the instant petition and **SETS ASIDE** the Resolutions dated May 29, 2019 and January 16, 2020

³¹ In *Commissioner of Customs, et al. v. Pilipinas Shell Petroleum Corporation (PSPC), et al.*, 785 Phil. 537 (2016), the Court cited the “filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet” or the concurrence of the conditions for *litis pendentia*, as one of the ways by which forum shopping may be committed.

³² *Grace Park International Corporation, et al. v. Eastwest Banking Corporation, et al.*, 791 Phil. 570 (2016).

³³ Section 1(e), Rule 16, Rules of Court provides:

SECTION 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x

(e) That there is another action pending between the same parties for the same cause;

x x x


³⁴ *Proton Pilipinas Corp. v. Republic*, 535 Phil. 521 (2006).

of the Court of Tax Appeals *En Banc* in CTA *En Banc* Nos. 1766 and 1845. The Court **DIRECTS** the Court of Tax Appeals *En Banc* to reinstate the petition in CTA *En Banc* No. 1766 and proceed with the case. On the other hand, the Court **AFFIRMS** the dismissal of the petition in CTA *En Banc* No. 1845.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


(On official leave)

RAMON PAUL L. HERNANDO **EDGARDO L. DELOS SANTOS**
Associate Justice *Associate Justice*


JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice