



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

FRITZ BRYN ANTHONY M. G.R. No. 222548  
DELOS SANTOS,

Petitioner,

Present:

-versus-

LEONEN, *J.*, Chairperson,  
LAZARO-JAVIER,  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., *JJ.*

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent.

Promulgated:

JUN 22 2022

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DECISION

LEONEN, *J.*:

This Court resolves a Petition for Certiorari under Rule 65 of the Rules of Court filed directly by Fritz Bryn Anthony M. Delos Santos (Delos Santos) assailing the validity of Revenue Memorandum Circular No. 65-2012<sup>1</sup> (the Circular). The Circular clarifies the taxability of association dues, membership fees, and other assessments or charges collected by condominium corporations.

On April 29, 2013, Delos Santos became a resident of Makati City where he lived at his father's condominium unit in Unit 12H, Classica Tower 2. He pays condominium association dues to Classica Tower Condominium Association, Inc. (Classica).<sup>2</sup>

<sup>1</sup> Revenue Memorandum Circular No. 65-2012 (2012), available at <chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.bir.gov.ph/images/bir\_files/old\_files/pdf/66019RMC%20No%2065-2012.pdf>.

<sup>2</sup> *Rollo*, p. 4.

On October 31, 2012, Commissioner of Internal Revenue Kim S. Jacinto-Henares of the Bureau of Internal Revenue issued the Circular<sup>3</sup> imposing Value-Added Tax on condominium owners' association dues:

The taxability of association dues, membership fees, and other assessments/charges collected by a condominium corporation from its members, tenants and other entities are discussed hereunder.

I. Income Tax -- The amounts paid in as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter subject to income tax. This is because a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments. For tax purposes, the association dues, membership fees, and other assessments/charges collected by a condominium corporation constitute income payments or compensation for beneficial services it provides to its members and tenants. The previous interpretation that the assessment dues are funds which are merely held in trust by a condominium corporation lacks legal basis and is hereby abandoned.

Moreover, since a condominium corporation is subject to income tax, income payments made to it are subject to applicable withholding taxes under existing regulations.

....

II. Value-Added Tax (VAT) – Association dues, membership fees, and other assessments/charges collected by a condominium corporation are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its members and tenants.

....

Accordingly, the gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes under existing regulations.<sup>4</sup>

On November 26, 2015, Classica informed its unit owners and tenants that its Board of Trustees had decided that it will no longer shoulder the Value-Added Tax on association dues starting on January 3, 2016.<sup>5</sup>

On January 4, 2016, Classica sent Delos Santos a billing statement for his association dues that included the additional Value-Added Tax imposed by

<sup>3</sup> The subject of the Circular is "Clarifying the Taxability of Association Dues, Membership Fees, and Other Assessments/Charges Collected by Condominium Corporations."

<sup>4</sup> Revenue Memorandum Circular No. 65-2012 (2012), pp. 1–3, available at <chrome extension://efaidnbnmnnibpcajpcgclcfndmkaj/https://www.bir.gov.ph/images/bir\_files/old\_files/pdf/66019RMC%20No%2065-2012.pdf>.

<sup>5</sup> *Rollo*, p. 4.

the Circular. He then paid his association dues on January 21, 2016.<sup>6</sup> Subsequently, he filed a Petition before this Court.

Petitioner Delos Santos alleges that he has legal standing to challenge the Circular's constitutionality. He claims that his payment of Value-Added Tax for his association dues to Classica resulted in his direct injury. The Circular's direct adverse monetary effect satisfies the actual case or controversy requirement of judicial review.

Moreover, petitioner assails the Circular's constitutionality for violating substantive due process because there is no legal or judicial basis for its issuance. Since the President has failed to correct public respondent Commissioner of Internal Revenue's issuance of the Circular, there has been a continued breach of the President's constitutional duty to ensure the faithful execution of laws.<sup>7</sup>

Petitioner argues that the issue is capable of repetition but evading review since there is nothing that prevents the Bureau of Internal Revenue from issuing a similar regulation. The doctrine of hierarchy of courts should be waived considering the exceptionally compelling and important issue raised in the Petition.<sup>8</sup>

Petitioner contends that Section 105 of the National Internal Revenue Code of 1997<sup>9</sup> does not apply to condominium owners' or tenants' payment of association dues. In paying their association dues, they do not buy, transfer, or lease any good, property, or services from the condominium corporation. The association dues are contributions to defray the condominium's maintenance costs. The condominium corporation does not acquire ownership over the association dues, but only holds the same in a fiduciary capacity for payment of periodic maintenance costs of the project.<sup>10</sup>

Moreover, the condominium corporation earns no income from the

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<sup>6</sup> Id. at 5.

<sup>7</sup> Id. at 7.

<sup>8</sup> Id. at 10.

<sup>9</sup> TAX CODE, sec. 105 provides: SECTION 105. *Persons Liable.* - Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code. The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.

<sup>10</sup> *Rollo*, pp. 12-13.

association dues. These monies are not intended for their benefit and cannot be considered as taxable revenue for purposes of income tax. Those who receive income are the employees of the condominium corporation, the sellers of the maintenance services and commodities, all of whom are separate from the condominium corporation.<sup>11</sup>

Thus, petitioner concludes that the Circular is an invalid subordinate legislation for modifying Sections 105 and 108<sup>12</sup> of the National Internal Revenue Code. Value-Added Tax is a tax on consumption. The unit owners do not consume anything from the condominium association dues. There is also no production chain involved in the condominium corporation's maintenance.<sup>13</sup> Since the Circular involves a tax imposition, it must be strictly construed against the taxing authority and must be struck down.<sup>14</sup>

<sup>11</sup> Id. at 14.

<sup>12</sup> TAX CODE, sec. 108 provides:

SECTION. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission by any means entity, and distribution companies, including electric cooperatives; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under section 119 of this Code, and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity, and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" shall likewise include:

- (1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right;
  - (2) The lease of the use of, or the right to use of any industrial, commercial or scientific equipment;
  - (3) The supply of scientific, technical, industrial or commercial knowledge or information;
  - (4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);
  - (5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person.
  - (6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;
  - (7) The lease of motion picture films, films, tapes and discs; and
  - (8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.
- Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines. The term "gross receipts" means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

<sup>13</sup> *Rollo*, p. 15.

<sup>14</sup> Id. at 16.

On April 6, 2016, this Court required the Commissioner of Internal Revenue to file a comment.<sup>15</sup>

In lieu of a comment, the Office of Solicitor General filed a Manifestation and Motion to direct Commissioner of Internal Revenue to file its Comment, joining petitioner in declaring the Circular void. The Office of Solicitor General argues that the Petition should have been dismissed, because certiorari is not the correct remedy to assail the Circular. However, it joins petitioner in urging this Court to revisit the Circular.

The Office of Solicitor General opines that when association dues exceed what is required in maintenance and administrative expenses, they should only be considered as part of the gross income of condominium corporations. A condominium corporation acts only in a fiduciary capacity, and there is a trust created between the corporation and its owners or tenants.<sup>16</sup>

This Court noted and granted the Office of Solicitor General's Manifestation and Motion and required the Commissioner of Internal Revenue to file its Comment.<sup>17</sup> Afterward, this Court required the Commissioner of Internal Revenue to show cause for its failure to file its Comment on or before January 26, 2017.<sup>18</sup> On October 9, 2017, the Commissioner of Internal Revenue filed its Compliance and Motion.<sup>19</sup>

On November 8, 2017, the Commissioner of Internal Revenue filed its Comment<sup>20</sup> arguing that a Rule 65 Petition for Certiorari is not proper because the Circular was issued using the Commissioner of Internal Revenue's quasi-legislative powers.<sup>21</sup> The Petition is in the nature of a declaratory relief and should have been filed before the Regional Trial Court.<sup>22</sup> Moreover, petitioner should have first questioned the Circular before the Secretary of Finance.<sup>23</sup>

The Commissioner of Internal Revenue asserts the Circular's validity. The management of a condominium is a beneficial service, and payment in exchange for these services is included in the condominium corporation's gross income.<sup>24</sup> The Commissioner of Internal Revenue contends that it has the power to interpret the provisions of the National Internal Revenue Code on income tax and Value-Added Tax. The Circular was simply a clarification

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<sup>15</sup> Id. at 29-30.

<sup>16</sup> Id. at 60-64.

<sup>17</sup> Id. at 90-91.

<sup>18</sup> Id. at 92.

<sup>19</sup> Id. at 95-100.

<sup>20</sup> Id. at 103-121.

<sup>21</sup> Id. at 105-108.

<sup>22</sup> Id. at 109.

<sup>23</sup> Id. at 114.

<sup>24</sup> Id. at 117.

and correction of previous rulings on association dues.<sup>25</sup>

On January 15, 2018, this Court noted the Commissioner of Internal Revenue's Compliance and Motion. Petitioner was also directed to file his Reply.<sup>26</sup>

On March 28, 2018, petitioner filed his Reply<sup>27</sup> alleging that a Rule 65 Petition for Certiorari has been recognized as a permissive remedy to challenge a legally infirm administrative issuance.<sup>28</sup> He asserts that the Commissioner of Internal Revenue failed to observe due process in failing to give prior notice and hearing before implementing the Circular.<sup>29</sup>

Petitioner reiterates the invalidity of the Circular.<sup>30</sup> Petitioner invokes the amendment of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which expressly provides that "association dues, membership fees, and other assessments and charges collected by homeowners associations and condominium corporations"<sup>31</sup> are Value-Added Tax exempt. Thus, the Circular has been automatically revoked by the TRAIN Law.<sup>32</sup>

Petitioner contends that even if this revocation mooted the Petition, this Court should still give it consideration since there is a need: (1) to curb the Circular's effects on erroneously collected Value-Added Tax; (2) for this Court to fix the nature of activities that should be subjected to Value-Added Tax; and (3) to prevent a similar Circular from being enacted in the future.<sup>33</sup>

This Court does not need to resolve the instant Petition for being moot and academic.

On January 15, 2020, this Court's First Division, through the *ponencia* of Associate Justice Amy Lazaro-Javier, promulgated G.R. Nos. 215801 and 218924<sup>34</sup> where this Court held that the Commissioner of Internal Revenue gravely abused its authority in issuing Revised Memorandum Circular No. 65, and that in doing so, "[the Circular] did not merely interpret or clarify[,] but changed altogether the long standing rules of the Bureau of Internal

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<sup>25</sup> Id. at 119.

<sup>26</sup> Id. at 125–126.

<sup>27</sup> Id. at 127–140.

<sup>28</sup> Id. at 128–129.

<sup>29</sup> Id. at 131.

<sup>30</sup> Id. at 135–136.

<sup>31</sup> Tax Reform for Acceleration and Inclusion (2017), sec. 34(Y).

<sup>32</sup> Id. at 136.

<sup>33</sup> Id. at 137–138.

<sup>34</sup> *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 and 218924, January 15, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66002>> [Per. J. Lazaro-Javier, First Division]. The twin cases are both entitled "In the Matter of Declaratory Relief on the Invalidity of BIR Revenue Memorandum Circular No. 65-2012 'Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations.'"

[R]evenue.”<sup>35</sup>

Here, this Court likewise declared that the Commissioner of Internal Revenue gravely abused its discretion in issuing the same Circular and for declaring that association dues, membership fees, and other assessments or charges are subject to income tax, Value-Added Tax, and withholding tax.

This Court reiterated the pronouncement in *Yamane v. BA Lepanto Condominium Corporation*,<sup>36</sup> that a condominium corporation is not engaged in trade or business. Association dues are not intended for profit, but for the maintenance of the condominium project. The collection of association dues, membership fees, and other charges is purely for the benefit of the condominium owners:

For when a condominium corporation manages, maintains, and preserves the common areas in the building, it does so only for the benefit of the condominium owners. It cannot be said to be engaged in trade or business, thus, the collection of association dues, membership fees, and other assessments/charges is not a result of the regular conduct or pursuit of a commercial or an economic activity, or any transactions incidental thereto.

Neither can it be said that a condominium corporation is rendering services to the unit owners for a fee, remuneration or consideration. Association dues, membership fees, and other assessments/charges form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses and other administrative expenses.

Indisputably, the nature and purpose of a condominium corporation negates the carte blanche application of our value-added tax provisions on its transactions and activities.<sup>37</sup>

The Circular unduly expanded and modified several provisions of the National Internal Revenue Code. Section 32 of the National Internal Revenue Code does not include these charges in its enumeration of sources of gross income. Moreover, Sections 105 to 108 of the National Internal Revenue Code imposes Value-Added Tax on transactions involving sale, barter, or exchange of goods, rendition of services, and the use or lease of properties. However, condominium association dues, membership fees, and other charges also do not arise from these transactions. The very nature of a condominium corporation negates the application of the National Internal Revenue Code provisions on Value-Added Tax.

Thus, the promulgation of G.R. Nos. 215801 and 218924 declaring the

<sup>35</sup> Id.

<sup>36</sup> 510 Phil. 750 (2005) [Per J. Tinga, Second Division].

<sup>37</sup> *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 and 218924, January 15, 2020 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66002>> [Per J. Lazaro-Javier, First Division].

Circular invalid has mooted the Petition.

A case is moot and academic when it loses its justiciability due to a supervening event, which takes away its practical use or value.<sup>38</sup> This Court cannot render judgment after the issue has already been resolved by or through external developments, and no relief prayed for can be granted or denied.<sup>39</sup> Generally, this Court declines jurisdiction over such cases, except when:

[F]irst, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.<sup>40</sup> (Citations omitted)

None of the foregoing exceptions are present in this case. This Court abstains from passing upon the other issues raised in the Petition, since the main relief prayed for has already been resolved in G.R. Nos. 215801 and 218924.

**WHEREFORE**, the Petition is **DISMISSED** for being **MOOT** and **ACADEMIC**.

**SO ORDERED.**



**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:



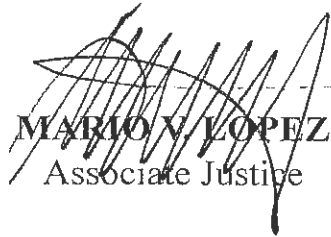
**AMY C. LAZARO-JAVIER**  
Associate Justice

<sup>38</sup> *Funa v. Agra*, 704 Phil. 205 (2013) [Per J. Bersamin. En Banc].

<sup>39</sup> *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 2, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208>> [Per J. Leonen, En Banc].

<sup>40</sup> *David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006) [Per J. Sandoval-Gutierrez, En Banc].





**MARIO V. LOPEZ**  
Associate Justice



**JHOSEP Y. LOPEZ**  
Associate Justice



**ANTONIO T. KHO, JR.**  
Associate Justice

**ATTESTATION**

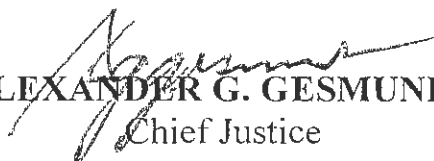
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Article VIII, Section 13 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