652 Phil. 172

SECOND DIVISION

[G.R. No. 185371, December 08, 2010]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. METRO STAR SUPERAMA, INC., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court filed by the petitioner Commissioner of Internal Revenue *(CIR)* seeks to reverse and set aside the 1] September 16, 2008 Decision[1] of the Court of Tax Appeals En Banc *(CTA-En Banc),* in C.T.A. EB No. 306 and 2] its November 18, 2008 Resolution[2] denying petitioner's motion for reconsideration.

The CTA-En Banc affirmed *in toto* the decision of its Second Division *(CTA-Second Division)* in CTA Case No. 7169 reversing the February 8, 2005 Decision of the CIR which assessed respondent Metro Star Superama, Inc. *(Metro Star)* of deficiency value-added tax and withholding tax for the taxable year 1999.

Based on a Joint Stipulation of Facts and Issues[3] of the parties, the CTA Second Division summarized the factual and procedural antecedents of the case, the pertinent portions of which read:

> Petitioner is a domestic corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, x x x.
>
> On January 26, 2001, the Regional Director of Revenue Region No. 10, Legazpi City, issued Letter of Authority No. 00006561 for Revenue Officer Daisy G. Justiniana to examine petitioner's books of accounts and other accounting records for income tax and other internal revenue taxes for the taxable year 1999. Said Letter of Authority was revalidated on August 10, 2001 by Regional Director Leonardo Sacamos.
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> For petitioner's failure to comply with several requests for the presentation of records and Subpoena Duces Tecum, [the] OIC of BIR Legal Division issued an Indorsement dated September 26, 2001 informing Revenue District Officer of

Revenue Region No. 67, Legazpi City to proceed with the investigation based on the best evidence obtainable preparatory to the issuance of assessment notice.

On November 8, 2001, Revenue District Officer Socorro O. Ramos-Lafuente issued a Preliminary 15-day Letter, which petitioner received on November 9, 2001. The said letter stated that a post audit review was held and it was ascertained that there was deficiency value-added and withholding taxes due from petitioner in the amount of P 292,874.16.

On April 11, 2002, petitioner received a Formal Letter of Demand dated April 3, 2002 from Revenue District No. 67, Legazpi City, assessing petitioner the amount of Two Hundred Ninety Two Thousand Eight Hundred Seventy Four Pesos and Sixteen Centavos (P292,874.16.) for deficiency value-added and withholding taxes for the taxable year 1999, computed as follows:

ASSESSMENT NOTICE NO. 067-99-003-579-072

VALUE ADDED TAX			
Gross Sales			P1,697,718.90
Output Tax			P 154,338.08
Less: Input Tax			
VAT Payable			P 154,338.08
Add: 25% Surcharge		P 38,584.54	
20% Interest		79,746.49	
Compromise Penalty			
Late Payment	P16,000.00		
Failure to File VAT returns	2,400.00	18,400.00	136,731.01
TOTAL			P 291,069.09
WITHHOLDING TAX			
Compensation			2,772.91
Expanded			110,103.92
Total Tax Due			P 112,876.83
Less: Tax Withheld			111,848.27
Deficiency Withholding Tax			P 1,028.56
Add: 20% Interest p.a.			
Compromise Penalty		576.51	
TOTAL		200.00	P 1,805.07
*Expanded Withholding Tax	P1,949,334.25	x 5%	97,466.71
Film Rental	10,000.25	x 10%	1,000.00
Audit Fee	193,261.20	x 5%	9,663.00

Rental Expense	41,272.73	x 1%	412.73
Security Service	156,142.01	x 1%	1,561.42
Service Contractor			P 110,103.92
Total SUMMARIES OF DEFICIENCIES			
VALUE ADDED TAX			P 291,069.09
WITHHOLDING TAX			1,805.07
TOTAL			**P 292,874.16**

Subsequently, Revenue District Office No. 67 sent a copy of the Final Notice of Seizure dated May 12, 2003, which petitioner received on May 15, 2003, giving the latter last opportunity to settle its deficiency tax liabilities within ten (10) [days] from receipt thereof, otherwise respondent BIR shall be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment to enforce collection.

On February 6, 2004, petitioner received from Revenue District Office No. 67 a Warrant of Distraint and/or Levy No. 67-0029-23 dated May 12, 2003 demanding payment of deficiency value-added tax and withholding tax payment in the amount of P292,874.16.

On July 30, 2004, petitioner filed with the Office of respondent Commissioner a Motion for Reconsideration pursuant to Section 3.1.5 of Revenue Regulations No. 12-99.

On February 8, 2005, respondent Commissioner, through its authorized representative, Revenue Regional Director of Revenue Region 10, Legaspi City, issued a Decision denying petitioner's Motion for Reconsideration. Petitioner, through counsel received said Decision on February 18, 2005.

x x x.

Denying that it received a Preliminary Assessment Notice *(PAN)* and claiming that it was not accorded due process, Metro Star filed a petition for review[4] with the CTA. The parties then stipulated on the following issues to be decided by the tax court:

> 1. Whether the respondent complied with the due process requirement as provided under the National Internal Revenue Code and Revenue Regulations No. 12-99 with regard to the issuance of a deficiency tax assessment;
>
> > 1.1 Whether petitioner is liable for the respective amounts of P291,069.09 and P1,805.07 as deficiency VAT and withholding tax for the year 1999;
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> > 1.2. Whether the assessment has become final and executory and demandable for failure of petitioner to protest the same within 30 days from its receipt thereof on April 11, 2002, pursuant to Section 228 of the National Internal Revenue Code;
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> 2. Whether the deficiency assessments issued by the respondent are void for failure to state the law and/or facts upon which they are based.
>
> > 2.2 Whether petitioner was informed of the law and facts on which the assessment is made in compliance with Section 228 of the National Internal Revenue Code;
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> 3. Whether or not petitioner, as owner/operator of a movie/cinema house, is subject to VAT on sales of services under Section 108(A) of the National Internal Revenue Code;
>
> 4. Whether or not the assessment is based on the best evidence obtainable pursuant to Section 6(b) of the National Internal Revenue Code.

The CTA-Second Division found merit in the petition of Metro Star and, on March 21, 2007, rendered a decision, the decretal portion of which reads:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision dated February 8, 2005 is hereby REVERSED and SET ASIDE and respondent is ORDERED TO DESIST from collecting the subject taxes against petitioner.

The CTA-Second Division opined that "[w]hile there [is] a disputable presumption that a mailed letter [is] deemed received by the addressee in the ordinary course of mail, a direct denial of the receipt of mail shifts the burden upon the party favored by the presumption to

prove that the mailed letter was indeed received by the addressee."[5] It also found that there was no clear showing that Metro Star actually received the alleged PAN, dated January 16, 2002. It, accordingly, ruled that the Formal Letter of Demand dated April 3, 2002, as well as the Warrant of Distraint and/or Levy dated May 12, 2003 were void, as Metro Star was denied due process.[6]

The CIR sought reconsideration[7] of the decision of the CTA-Second Division, but the motion was denied in the latter's July 24, 2007 Resolution.[8]

Aggrieved, the CIR filed a petition for review[9] with the CTA-En Banc, but the petition was dismissed after a determination that no new matters were raised. The CTA-En Banc disposed:

> WHEREFORE, the instant Petition for Review is hereby DENIED DUE COURSE and DISMISSED for lack of merit. Accordingly, the March 21, 2007 Decision and July 27, 2007 Resolution of the CTA *Second Division* in CTA Case No. 7169 entitled, *"Metro Star Superama, Inc., petitioner vs. Commissioner of Internal Revenue, respondent"* are hereby AFFIRMED *in toto.*
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> SO ORDERED.

The motion for reconsideration[10] filed by the CIR was likewise denied by the CTA-En Banc in its November 18, 2008 Resolution.[11]

The CIR, insisting that Metro Star received the PAN, dated January 16, 2002, and that due process was served nonetheless because the latter received the Final Assessment Notice (FAN), comes now before this Court with the sole issue of whether or not Metro Star was denied due process.

The general rule is that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, has accordingly developed an exclusive expertise on the resolution unless there has been an abuse or improvident exercise of authority.[12] In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,[13] the Court wrote:

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its

function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

On the matter of service of a tax assessment, a further perusal of our ruling in *Barcelon* is instructive, *viz*:

> Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:
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> > **"The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed.** Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269)."
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> x x x. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.** This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported

by substantial evidence establishing the fact of mailing. Thus:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." (Nava vs. CIR, 13 SCRA 104, January 30, 1965).
>
> x x x.
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> The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. (Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR CTA Case 4885, August 22, 1996). (Emphases supplied.)

The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the PAN, but failed. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. It merely accepted the letter of Metro Star's chairman dated April 29, 2002, that stated that he had received the *FAN* dated April 3, 2002, but not the *PAN*; that he was willing to pay the tax as computed by the CIR; and that he just wanted to clarify some matters with the hope of lessening its tax liability.

This now leads to the question: Is the failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?

The answer to these questions require an examination of Section 228 of the Tax Code which reads:

> SEC. 228. Protesting of Assessment. - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: provided, however, that a

preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied).

Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be

informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.[14]

This is confirmed under the provisions R.R. No. 12-99 of the BIR which pertinently provide:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. --
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 3.1.1 Notice for informal conference. -- The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
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> 3.1.2 Preliminary Assessment Notice (PAN). -- If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall

be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.3 Exceptions to Prior Notice of the Assessment. -- The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

3.1.4 Formal Letter of Demand and Assessment Notice. -- The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof).

The same shall be sent to the taxpayer only by registered mail or by personal delivery.

If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

x x x.

From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.[15] Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.

The case of *CIR v. Menguito*[16] cited by the CIR in support of its argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of R. R. No. 12-85 which sought to interpret Section 229 of the old tax law. RA No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid.[17] The regulation then, on the other hand, simply provided that a notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.

The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit.[18]

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law.[19] In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.,*[20] it was said -

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx

> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed.[21] (Emphasis supplied).

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and *Abad, JJ.*, concur.

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[1] *Rollo*, pp. 32-75. Penned by Associate Justice Caesar A. Casanova, with Associate Justices Erlinda P. Uy,

Olga Palanca-Enriquez, concurring and Associate Justices Ernesto D. Acosta and Lovell R. Bautista, dissenting.

[2] Id. at 88-96.

[3] Id. at 308-311.

[4] Id. at 97-110.

[5] Id. at 85, citing *Republic v. Court of Appeals*, 233 Phil. 359, 364 (1987).

[6] Id. at 86.

[7] Id. at 111-119.

[8] Id. at 120-122.

[9] Id. at 123-138.

[10] Id. at 139-152.

[11] Id. at 88-96.

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

March 9, 2010.

[13] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.

[14] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

[15] *Tupas v. Court of Appeals*, G.R. No. 89571, February 6, 1991, 193 SCRA 597, 600.

[16] G.R. No. 167560, September 17, 2008, 461 SCRA 565.

[17] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 & G.R. No. 163581 January 27, 2006, 382 SCRA 480.

[18] Id.

[19] Section 1, Article III, 1987 Constitution.

[20] 241 Phil. 829 (1988).

[21] Id. at 830, 836.