



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

**THE PHILIPPINE AMERICAN
LIFE AND GENERAL
INSURANCE COMPANY,**
Petitioner,

G.R. No. 210987

Present:

VELASCO, JR., *J.*, Chairperson,
PERALTA,
VILLARAMA, JR.,
MENDOZA,* and
LEONEN,** *JJ.*

- versus -

**THE SECRETARY OF FINANCE
and THE COMMISSIONER OF
INTERNAL REVENUE,**
Respondents.

Promulgated:

November 24, 2014

X-----
[Signature] X

DECISION

VELASCO, JR., *J.*:

Nature of the Case

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing and seeking the reversal of the Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 127984, dated May 23, 2013¹ and January 21, 2014, which dismissed outright the petitioner's appeal from the Secretary of Finance's review of BIR Ruling No. 015-12² for lack of jurisdiction.

The Facts

Petitioner The Philippine American Life and General Insurance Company (Philamlife) used to own 498,590 Class A shares in Philam Care Health Systems, Inc. (PhilamCare), representing 49.89% of the latter's outstanding capital stock. In 2009, petitioner, in a bid to divest itself of its interests in the health maintenance organization industry, offered to sell its shareholdings in PhilamCare through competitive bidding. Thus, on September 24, 2009, petitioner's Class A shares were sold for USD 2,190,000, or PhP 104,259,330 based on the prevailing exchange rate

* Acting member per Special Order No. 1878 dated November 21, 2014.

** Additional member per raffle dated September 24, 2014.

¹ Penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz.

² Rollo, pp. 189-193.

at the time of the sale, to STI Investments, Inc., who emerged as the highest bidder.³

After the sale was completed and the necessary documentary stamp and capital gains taxes were paid, Philamlife filed an application for a certificate authorizing registration/tax clearance with the Bureau of Internal Revenue (BIR) Large Taxpayers Service Division to facilitate the transfer of the shares. Months later, petitioner was informed that it needed to secure a BIR ruling in connection with its application due to potential donor's tax liability. In compliance, petitioner, on January 4, 2012, requested a ruling⁴ to confirm that the sale was not subject to donor's tax, pointing out, in its request, the following: that the transaction cannot attract donor's tax liability since there was no donative intent and, ergo, no taxable donation, citing BIR Ruling [DA-(DT-065) 715-09] dated November 27, 2009;⁵ that the shares were sold at their actual fair market value and at arm's length; that as long as the transaction conducted is at arm's length—such that a bona fide business arrangement of the dealings is done in the ordinary course of business—a sale for less than an adequate consideration is not subject to donor's tax; and that donor's tax does not apply to sale of shares sold in an open bidding process.

On January 4, 2012, however, respondent Commissioner on Internal Revenue (Commissioner) denied Philamlife's request through BIR Ruling No. 015-12. As determined by the Commissioner, the selling price of the shares thus sold was lower than their book value based on the financial statements of PhilamCare as of the end of 2008.⁶ As such, the Commissioner held, donor's tax became imposable on the price difference pursuant to Sec. 100 of the National Internal Revenue Code (NIRC), viz:

SEC. 100. Transfer for Less Than Adequate and full Consideration. -

Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

The afore-quoted provision, the Commissioner added, is implemented by Revenue Regulation 6-2008 (RR 6-2008), which provides:

**SEC. 7. SALE, BARTER OR EXCHANGE OF SHARES OF STOCK
NOT TRADED THROUGH A LOCAL STOCK EXCHANGE**

³ Id. at 6-7.

⁴ Id. at 94-99.

⁵ "The legislative intendment of the deemed gift provision under Section 100 of the Tax Code is to discourage the parties to a sale from manipulating their selling price in order to save on income taxes. This is because under the Tax Code, the measurement of gain from a disposition of property merely considers the amount realized from the sale, which is the selling price minus the basis of the property sold. Hence, if the parties would declare a lower selling price per document of sale than the actual amount of money which changed hands, there is foregone revenue and the government is placed at a very disadvantageous position."

⁶ Rollo, p. 190.

PURSUANT TO SECS. 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c), 28(B)(5)(c) OF THE TAX CODE, AS AMENDED. —

x x x x

(c) Determination of Amount and Recognition of Gain or Loss –

(c.1) In the case of cash sale, the selling price shall be the consideration per deed of sale.

x x x x

(c.1.4) In case the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax under Section 100 of the Tax Code, as amended.

x x x x

(c.2) Definition of 'fair market value' of Shares of Stock. – For purposes of this Section, 'fair market value' of the share of stock sold shall be:

x x x x

(c.2.2) In the case of shares of stock not listed and traded in the local stock exchanges, the book value of the shares of stock as shown in the financial statements duly certified by an independent certified public accountant nearest to the date of sale shall be the fair market value.

In view of the foregoing, the Commissioner ruled that the difference between the book value and the selling price in the sales transaction is taxable donation subject to a 30% donor's tax under Section 99(B) of the NIRC.⁷ Respondent Commissioner likewise held that BIR Ruling [DA-(DT-065) 715-09], on which petitioner anchored its claim, has already been revoked by Revenue Memorandum Circular (RMC) No. 25-2011.⁸

Aggrieved, petitioner requested respondent Secretary of Finance (Secretary) to review BIR Ruling No. 015-12, but to no avail. For on November 26, 2012, respondent Secretary affirmed the Commissioner's assailed ruling in its entirety.⁹

⁷ NIRC, Sec. 99(B): Tax Payable by Donor if Donee is a Stranger. - When the donee or beneficiary is stranger, the tax payable by the donor shall be thirty percent (30%) of the net gifts. For the purpose of this tax, a "stranger", is a person who is not a:

(1) Brother, sister (whether by whole or half-blood), spouse, ancestor and lineal descendant; or
(2) Relative by consanguinity in the collateral line within the fourth degree of relationship.

⁸ "It is noteworthy to state that the above provision (Section 100 of the Tax Code) does not mention of any exempt transaction. The above provision is clear and free from any doubt and/or ambiguity. Hence, there is no room for interpretation. There is only room for application."

⁹ Rollo, pp. 91-93.

Ruling of the Court of Appeals

Not contented with the adverse results, petitioner elevated the case to the CA via a petition for review under Rule 43, assigning the following errors:¹⁰

A.

The Honorable Secretary of Finance gravely erred in not finding that the application of Section 7(c.2.2) of RR 06-08 in the Assailed Ruling and RMC 25-11 is void insofar as it alters the meaning and scope of Section 100 of the Tax Code.

B.

The Honorable Secretary of Finance gravely erred in finding that Section 100 of the Tax Code is applicable to the sale of the Sale of Shares.

1.

The Sale of Shares were sold at their fair market value and for fair and full consideration in money or money's worth.

2.

The sale of the Sale Shares is a bona fide business transaction without any donative intent and is therefore beyond the ambit of Section 100 of the Tax Code.

3.

It is superfluous for the BIR to require an express provision for the exemption of the sale of the Sale Shares from donor's tax since Section 100 of the Tax Code does not explicitly subject the transaction to donor's tax.

C.

The Honorable Secretary of Finance gravely erred in failing to find that in the absence of any of the grounds mentioned in Section 246 of the Tax Code, rules and regulations, rulings or circulars – such as RMC 25-11 – cannot be given retroactive application to the prejudice of Philamlife.

On May 23, 2013, the CA issued the assailed Resolution dismissing the CA Petition, thusly:

WHEREFORE, the Petition for Review dated January 9, 2013 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

In disposing of the CA petition, the appellate court ratiocinated that it is the Court of Tax Appeals (CTA), pursuant to Sec. 7(a)(1) of Republic Act

¹⁰ Id. at 71-72.

No. 1125 (RA 1125),¹¹ as amended, which has jurisdiction over the issues raised. The outright dismissal, so the CA held, is predicated on the postulate that BIR Ruling No. 015-12 was issued in the exercise of the Commissioner's power to interpret the NIRC and other tax laws. Consequently, requesting for its review can be categorized as "other matters arising under the NIRC or other laws administered by the BIR," which is under the jurisdiction of the CTA, not the CA.

Philamlife eventually sought reconsideration but the CA, in its equally assailed January 21, 2014 Resolution, maintained its earlier position. Hence, the instant recourse.

Issues

Stripped to the essentials, the petition raises the following issues in both procedure and substance:

1. Whether or not the CA erred in dismissing the CA Petition for lack of jurisdiction; and
2. Whether or not the price difference in petitioner's adverted sale of shares in PhilamCare attracts donor's tax.

Procedural Arguments

a. Petitioner's contentions

Insisting on the propriety of the interposed CA petition, Philamlife, while conceding that respondent Commissioner issued BIR Ruling No. 015-12 in accordance with her authority to interpret tax laws, argued nonetheless that such ruling is subject to review by the Secretary of Finance under Sec. 4 of the NIRC, to wit:

SECTION 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance.**

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Petitioner postulates that there is a need to differentiate the rulings promulgated by the respondent Commissioner relating to those rendered under the first paragraph of Sec. 4 of the NIRC, which are appealable to the Secretary of Finance, from those rendered under the second paragraph of Sec. 4 of the NIRC, which are subject to review on appeal with the CTA.

¹¹ An Act Creating the Court of Tax Appeals.

This distinction, petitioner argues, is readily made apparent by Department Order No. 7-02,¹² as circularized by RMC No. 40-A-02.

Philamlife further averred that Sec. 7 of RA 1125, as amended, does not find application in the case at bar since it only governs appeals from the Commissioner's rulings under the second paragraph and does not encompass rulings from the Secretary of Finance in the exercise of his power of review under the first, as what was elevated to the CA. It added that under RA 1125, as amended, the only decisions of the Secretary appealable to the CTA are those rendered in customs cases elevated to him automatically under Section 2315 of the Tariff and Customs Code.¹³

There is, thus, a gap in the law when the NIRC, as couched, and RA 1125, as amended, failed to supply where the rulings of the Secretary in its exercise of its power of review under Sec. 4 of the NIRC are appealable to. This gap, petitioner submits, was remedied by *British American Tobacco v. Camacho*¹⁴ wherein the Court ruled that where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency, the **regular courts** have jurisdiction to pass upon the same.

In sum, appeals questioning the decisions of the Secretary of Finance in the exercise of its power of review under Sec. 4 of the NIRC are not within the CTA's limited special jurisdiction and, according to petitioner, are appealable to the CA via a Rule 43 petition for review.

¹² Providing for the Implementing Rules of the First Paragraph of Section 4 of the National Internal Revenue Code of 1997, Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99.

WHEREAS, Section 4 of Republic Act No. 8424 (the National Internal Revenue Code of 1997, 'the NIRC' for brevity) vests with the Commissioner of Internal Revenue exclusive and original jurisdiction to interpret its provisions and other tax laws, subject to review by the Secretary of Finance;

x x x x

WHEREAS, there is a need to further provide for the implementing rules of the first paragraph of Section 4 of the NIRC.

x x x x

Section 1. Scope of this Order. – This Department Order shall apply to all rulings of the Bureau of Internal Revenue (BIR) that implement the provisions of the NIRC and other tax laws.

Section 2. Validity of Rulings. – A ruling by the Commissioner of Internal Revenue shall be presumed valid until overturned or modified by the Secretary of Finance.

Section 3. Rulings adverse to the taxpayer. – A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance. x x x

¹³ Sec. 7(a)(6), RA 1125, as amended:

Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code.

¹⁴ G.R. No. 163583, August 20, 2008, 562 SCRA 511.

b. Respondents' contentions

Before the CA, respondents countered petitioner's procedural arguments by claiming that even assuming *arguendo* that the CTA does not have jurisdiction over the case, Philamlife, nevertheless, committed a fatal error when it failed to appeal the Secretary of Finance's ruling to the Office of the President (OP). As made apparent by the rules, the Department of Finance is not among the agencies and quasi-judicial bodies enumerated under Sec. 1, Rule 43 of the Rules of Court whose decisions and rulings are appealable through a petition for review.¹⁵ This is in stark contrast to the OP's specific mention under the same provision, so respondents pointed out.

To further reinforce their argument, respondents cite the President's power of review emanating from his power of control as enshrined under Sec. 17 of Article VII of the Constitution, which reads:

Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

The nature and extent of the President's constitutionally granted power of control have been defined in a plethora of cases, most recently in *Elma v. Jacobi*,¹⁶ wherein it was held that:

x x x This power of control, which even Congress cannot limit, let alone withdraw, means the power of the Chief Executive to review, alter, modify, nullify, or set aside what a subordinate, *e.g.*, members of the Cabinet and heads of line agencies, had done in the performance of their duties and to substitute the judgment of the former for that of the latter.

In their Comment on the instant petition, however, respondents asseverate that the CA did not err in its holding respecting the CTA's jurisdiction over the controversy.

The Court's Ruling

The petition is unmeritorious.

¹⁵ Section 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

¹⁶ G.R. No. 155996, June 27, 2012, 675 SCRA 20.

Reviews by the Secretary of Finance pursuant to Sec. 4 of the NIRC are appealable to the CTA

To recapitulate, three different, if not conflicting, positions as indicated below have been advanced by the parties and by the CA as the proper remedy open for assailing respondents' rulings:

1. Petitioners: The ruling of the Commissioner is subject to review by the Secretary under Sec. 4 of the NIRC, and that of the Secretary to the CA via Rule 43;
2. Respondents: The ruling of the Commissioner is subject to review by the Secretary under Sec. 4 of the NIRC, and that of the Secretary to the Office of the President before appealing to the CA via a Rule 43 petition; and
3. CA: The ruling of the Commissioner is subject to review by the CTA.

We now resolve.

Preliminarily, it bears stressing that there is no dispute that what is involved herein is the respondent Commissioner's exercise of power under the first paragraph of Sec. 4 of the NIRC—the power to interpret tax laws. This, in fact, was recognized by the appellate court itself, but erroneously held that her action in the exercise of such power is appealable directly to the CTA. As correctly pointed out by petitioner, Sec. 4 of the NIRC readily provides that the Commissioner's power to interpret the provisions of this Code and other tax laws is **subject to review by the Secretary of Finance**. The issue that now arises is this—**where does one seek immediate recourse from the adverse ruling of the Secretary of Finance in its exercise of its power of review under Sec. 4?**

Admittedly, there is no provision in law that expressly provides where exactly the ruling of the Secretary of Finance under the adverted NIRC provision is appealable to. However, We find that Sec. 7(a)(1) of RA 1125, as amended, addresses the seeming gap in the law as it vests the CTA, albeit impliedly, with jurisdiction over the CA petition as “other matters” arising under the NIRC or other laws administered by the BIR. As stated:

Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National

Internal Revenue or other laws administered by the Bureau of Internal Revenue. (emphasis supplied)

Even though the provision suggests that it only covers rulings of the Commissioner, We hold that it is, nonetheless, sufficient enough to include appeals from the Secretary's review under Sec. 4 of the NIRC.

It is axiomatic that laws should be given a reasonable interpretation which does not defeat the very purpose for which they were passed.¹⁷ Courts should not follow the letter of a statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the purpose of the act.¹⁸ This Court has, in many cases involving the construction of statutes, cautioned against narrowly interpreting a statute as to defeat the purpose of the legislator, and rejected the literal interpretation of statutes if to do so would lead to unjust or absurd results.¹⁹

Indeed, to leave undetermined the mode of appeal from the Secretary of Finance would be an injustice to taxpayers prejudiced by his adverse rulings. To remedy this situation, We imply from the purpose of RA 1125 and its amendatory laws that the CTA is the proper forum with which to institute the appeal. This is not, and should not, in any way, be taken as a derogation of the power of the Office of President but merely as recognition that matters calling for technical knowledge should be handled by the agency or quasi-judicial body with specialization over the controversy. As the specialized quasi-judicial agency mandated to adjudicate tax, customs, and assessment cases, there can be no other court of appellate jurisdiction that can decide the issues raised in the CA petition, which involves the tax treatment of the shares of stocks sold.

Petitioner, though, next invites attention to the ruling in *Ursal v. Court of Tax Appeals*²⁰ to argue against granting the CTA jurisdiction by implication, viz:

Republic Act No. 1125 creating the Court of Tax Appeals did not grant it blanket authority to decide any and all tax disputes. Defining such special court's jurisdiction, the Act necessarily limited its authority to those matters enumerated therein. In line with this idea we recently approved said court's order rejecting an appeal to it by Lopez & Sons from the decision of the Collector of Customs, because in our opinion its jurisdiction extended only to a review of the decisions of the *Commissioner* of Customs, as provided by the statute — and not to decisions of the *Collector of Customs*. (Lopez & Sons vs. The Court of Tax Appeals, 100 Phil., 850, 53 Off. Gaz., [10] 3065).

X X X X

¹⁷ Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte, G.R. No. 169435, February 27, 2008, 547 SCRA 71.

¹⁸ Torres v. Limjap, 56 Phil. 141 (1931); citing Vol. II Sutherland, Statutory Construction, pp. 693-695.

¹⁹ The Secretary of Justice v. Koruga, G.R. No. 166199, April 24, 2009, 582 SCRA 513.

²⁰ 101 Phil. 209 (1957).

x x x Republic Act No. 1125 is a complete law by itself and expressly enumerates the matters which the Court of Tax Appeals may consider; such enumeration excludes all others by implication. *Expressio unius est exclusio alterius*.

Petitioner's contention is untenable. Lest the ruling in *Ursal* be taken out of context, but worse as a precedent, it must be noted that the primary reason for the dismissal of the said case was that the petitioner therein lacked the personality to file the suit with the CTA because he was not adversely affected by a decision or ruling of the Collector of Internal Revenue, as was required under Sec. 11 of RA 1125.²¹ As held:

We share the view that the assessor had no personality to resort to the Court of Tax Appeals. The rulings of the Board of Assessment Appeals did not "adversely affect" him. At most it was the City of Cebu that had been adversely affected in the sense that it could not thereafter collect higher realty taxes from the abovementioned property owners. His opinion, it is true had been overruled; but the overruling inflicted no material damage upon him or his office. And the Court of Tax Appeals was not created to decide mere conflicts of opinion between administrative officers or agencies. Imagine an income tax examiner resorting to the Court of Tax Appeals whenever the Collector of Internal Revenue modifies, or lower his assessment on the return of a tax payer!²²

The appellate power of the CTA includes certiorari

Petitioner is quick to point out, however, that the grounds raised in its CA petition included the nullity of Section 7(c.2.2) of RR 06-08 and RMC 25-11. In an attempt to divest the CTA jurisdiction over the controversy, petitioner then cites *British American Tobacco*, wherein this Court has expounded on the limited jurisdiction of the CTA in the following wise:

While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which

²¹ SEC. 11. Who may appeal; effect of appeal. — Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

²² *Ursal v. Court of Tax Appeals*, supra note 20.

are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.²³

Vis-a-vis *British American Tobacco*, it bears to stress what appears to be a contrasting ruling in *Asia International Auctioneers, Inc. v. Parayno, Jr.*, to wit:

Similarly, in *CIR v. Leal*, pursuant to Section 116 of Presidential Decree No. 1158 (The National Internal Revenue Code, as amended) which states that “[d]ealers in securities shall pay a tax equivalent to six (6%) per centum of their gross income. Lending investors shall pay a tax equivalent to five (5%) per cent, of their gross income,” the CIR issued Revenue Memorandum Order (RMO) No. 15-91 imposing 5% lending investor’s tax on pawnshops based on their gross income and requiring all investigating units of the BIR to investigate and assess the lending investor’s tax due from them. The issuance of RMO No. 15-91 was an offshoot of the CIR’s finding that the pawnshop business is akin to that of “lending investors” as defined in Section 157(u) of the Tax Code. Subsequently, the CIR issued RMC No. 43-91 subjecting pawn tickets to documentary stamp tax. Respondent therein, Josefina Leal, owner and operator of Josefina’s Pawnshop, asked for a reconsideration of both RMO No. 15-91 and RMC No. 43-91, but the same was denied by petitioner CIR. Leal then filed a petition for prohibition with the RTC of San Mateo, Rizal, seeking to prohibit petitioner CIR from implementing the revenue orders. The CIR, through the OSG, filed a motion to dismiss on the ground of lack of jurisdiction. The RTC denied the motion. Petitioner filed a petition for certiorari and prohibition with the CA which dismissed the petition “for lack of basis.” In reversing the CA, dissolving the Writ of Preliminary Injunction issued by the trial court and ordering the dismissal of the case before the trial court, the Supreme Court held that “[t]he **questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops.**” They were issued pursuant to the CIR’s power under Section 245 of the Tax Code “to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes.” The Court held that under R.A. No. 1125 (An Act Creating the Court of Tax Appeals), as amended, **such rulings of the CIR are appealable to the CTA.**

In the case at bar, the assailed revenue regulations and revenue memorandum circulars are actually rulings or opinions of the CIR on the tax treatment of motor vehicles sold at public auction within the SSEZ to implement Section 12 of R.A. No. 7227 which provides that “exportation or removal of goods from the territory of the [SSEZ] to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines.” **They were issued pursuant to the power of the CIR under Section 4 of the National Internal Revenue Code x x x.**²⁴ (emphasis added)

²³ Supra note 14, at 534.

²⁴ G.R. No. 163445, December 18, 2007, 540 SCRA 536, 549-551.

The respective teachings in *British American Tobacco* and *Asia International Auctioneers*, at first blush, appear to bear no conflict—that when the validity or constitutionality of an administrative rule or regulation is assailed, the regular courts have jurisdiction; and if what is assailed are rulings or opinions of the Commissioner on tax treatments, jurisdiction over the controversy is lodged with the CTA. The problem with the above postulates, however, is that they failed to take into consideration one crucial point—a taxpayer can raise both issues simultaneously.

Petitioner avers that there is now a trend wherein both the CTA and the CA disclaim jurisdiction over tax cases: on the one hand, mere prayer for the declaration of a tax measure's unconstitutionality or invalidity before the CTA can result in a petition's outright dismissal, and on the other hand, the CA will likewise dismiss the same petition should it find that the primary issue is not the tax measure's validity but the assessment or taxability of the transaction or subject involved. To illustrate this point, petitioner cites the assailed Resolution, thusly:

Admittedly, in *British American Tobacco vs. Camacho*, the Supreme Court has ruled that the determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts, not the CTA.

x x x x

Petitioner essentially questions the CIR's ruling that Petitioner's sale of shares is a taxable donation under Sec. 100 of the NIRC. The validity of Sec. 100 of the NIRC, Sec. 7 (C.2.2) and RMC 25-11 is merely questioned incidentally since it was used by the CIR as bases for its unfavourable opinion. Clearly, the Petition involves an issue on the taxability of the transaction rather than a direct attack on the constitutionality of Sec. 100, Sec.7 (c.2.2.) of RR 06-08 and RMC 25-11. Thus, the instant Petition properly pertains to the CTA under Sec. 7 of RA 9282.

As a result of the seemingly conflicting pronouncements, petitioner submits that taxpayers are now at a quandary on what mode of appeal should be taken, to which court or agency it should be filed, and which case law should be followed.

Petitioner's above submission is specious.

In the recent case of *City of Manila v. Grecia-Cuerdo*,²⁵ the Court *en banc* has ruled that the CTA now has the power of certiorari in cases within its appellate jurisdiction. To elucidate:

The prevailing doctrine is that the authority to issue writs of certiorari involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied

²⁵ G.R. No. 175723, February 4, 2014.

from the mere existence of appellate jurisdiction. Thus, x x x this Court has ruled against the jurisdiction of courts or tribunals over petitions for certiorari on the ground that there is no law which expressly gives these tribunals such power. It must be observed, however, that x x x these rulings pertain not to regular courts but to tribunals exercising quasi-judicial powers. With respect to the Sandiganbayan, Republic Act No. 8249 now provides that the special criminal court has exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction.

In the same manner, Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of certiorari, prohibition and mandamus. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives the appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of certiorari, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of certiorari, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.

The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

On the strength of the above constitutional provisions, it can be fairly interpreted that **the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.**

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total. (emphasis added)

Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it can now rule not only on the propriety**

of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

Guided by the doctrinal teaching in resolving the case at bar, the fact that the CA petition not only contested the applicability of Sec. 100 of the NIRC over the sales transaction but likewise questioned the validity of Sec. 7(c.2.2) of RR 06-08 and RMC 25-11 does not divest the CTA of its jurisdiction over the controversy, contrary to petitioner's arguments.

The price difference is subject to donor's tax

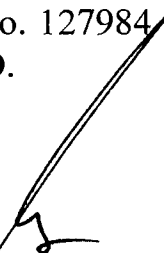
Petitioner's substantive arguments are unavailing. The absence of donative intent, if that be the case, does not exempt the sales of stock transaction from donor's tax since Sec. 100 of the NIRC categorically states that the amount by which the fair market value of the property exceeded the value of the consideration shall be **deemed** a gift. Thus, even if there is no actual donation, the difference in price is considered a donation by fiction of law.

Moreover, Sec. 7(c.2.2) of RR 06-08 does not alter Sec. 100 of the NIRC but merely sets the parameters for determining the "fair market value" of a sale of stocks. Such issuance was made pursuant to the Commissioner's power to interpret tax laws and to promulgate rules and regulations for their implementation.

Lastly, petitioner is mistaken in stating that RMC 25-11, having been issued after the sale, was being applied retroactively in contravention to Sec. 246 of the NIRC.²⁶ Instead, it merely called for the strict application of Sec. 100, which was already in force the moment the NIRC was enacted.

WHEREFORE, the petition is hereby **DISMISSED**. The Resolutions of the Court of Appeals in CA-G.R. SP No. 127984 dated May 23, 2013 and January 21, 2014 are hereby **AFFIRMED**.


SO ORDERED.


PRESBITERO J. VELASCO, JR.
Associate Justice


²⁶ **SEC. 246. Non- Retroactivity of Rulings.** - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

- (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
- (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
- (c) Where the taxpayer acted in bad faith.

WE CONCUR:




DIOSDADO M. PERALTA
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

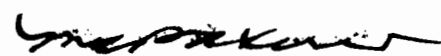
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
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.



MARIA LOURDES P. A. SERENO
Chief Justice