550 Phil. 304

FIRST DIVISION

[G.R. NO. 168129, April 24, 2007]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PHILIPPINE HEALTH CARE PROVIDERS, INC., RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Decision[1] dated February 18, 2005 and Resolution dated May 9, 2005 of the Court of Appeals (Fifteenth Division) in CA-G.R. SP No. 76449.

The factual antecedents of this case, as culled from the records, are:

The Philippine Health Care Providers, Inc., herein respondent, is a corporation organized and existing under the laws of the Republic of the Philippines. Pursuant to its Articles of Incorporation,[2] its primary purpose is "To establish, maintain, conduct and operate a prepaid group practice health care delivery system or a health maintenance organization to take care of the sick and disabled persons enrolled in the health care plan and to provide for the administrative, legal, and financial responsibilities of the organization."

On July 25, 1987, President Corazon C. Aquino issued Executive Order (E.O.) No. 273, amending the National Internal Revenue Code of 1977 (Presidential Decree No. 1158) by imposing Value-Added Tax (VAT) on the sale of goods and services. This E.O. took effect on January 1, 1988.

Before the effectivity of E.O. No. 273, or on December 10, 1987, respondent wrote the Commissioner of Internal Revenue (CIR), petitioner, inquiring whether the services it provides to the participants in its health care program are exempt from the payment of the VAT.

On June 8, 1988, petitioner CIR, through the VAT Review Committee of the Bureau of Internal Revenue (BIR), issued VAT Ruling No. 231-88 stating that respondent, as a

provider of medical services, is exempt from the VAT coverage. This Ruling was subsequently confirmed by Regional Director Osmundo G. Umali of Revenue Region No. 8 in a letter dated April 22, 1994.

Meanwhile, on January 1, 1996, Republic Act (R.A.) No. 7716 (Expanded VAT or E-VAT Law) took effect, amending further the National Internal Revenue Code of 1977. Then on January 1, 1998, R.A. No. 8424 (National Internal Revenue Code of 1997) became effective. This new Tax Code substantially adopted and reproduced the provisions of E.O. No. 273 on VAT and R.A. No. 7716 on E-VAT.

In the interim, on October 1, 1999, the BIR sent respondent a Preliminary Assessment Notice for deficiency in its payment of the VAT and documentary stamp taxes (DST) for taxable years 1996 and 1997.

On October 20, 1999, respondent filed a protest with the BIR.

On January 27, 2000, petitioner CIR sent respondent a letter demanding payment of "deficiency VAT" in the amount of P100,505,030.26 and DST in the amount of P124,196,610.92, or a total of P224,702,641.18 for taxable years 1996 and 1997. Attached to the demand letter were four (4) assessment notices.

On February 23, 2000, respondent filed another protest questioning the assessment notices.

Petitioner CIR did not take any action on respondent's protests. Hence, on September 21, 2000, respondent filed with the Court of Tax Appeals (CTA) a petition for review, docketed as CTA Case No. 6166.

On April 5, 2002, the CTA rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is PARTIALLY GRANTED. Petitioner is hereby ORDERED TO PAY the deficiency VAT amounting to P22,054,831.75 inclusive of 25% surcharge plus 20% interest from January 20, 1997 until fully paid for the 1996 VAT deficiency and P31,094,163.87 inclusive of 25% surcharge plus 20% interest from January 20, 1998 until paid for the 1997 VAT deficiency. Accordingly, VAT Ruling No. 231-88 is declared void and without force and effect. The 1996 and 1997 deficiency DST assessment against petitioner is hereby CANCELLED AND SET ASIDE. Respondent is ORDERED to DESIST from collecting the said DST deficiency tax.
>
> SO ORDERED.

Respondent filed a motion for partial reconsideration of the above judgment concerning its

liability to pay the deficiency VAT.

In its Resolution[3] dated March 23, 2003, the CTA granted respondent's motion, thus:

> WHEREFORE, in view of the foregoing, the instant Motion for Partial Reconsideration is GRANTED. Accordingly, the VAT assessment issued by herein respondent against petitioner for the taxable years 1996 and 1997 is hereby WITHDRAWN and SET ASIDE.
>
> SO ORDERED.

The CTA held:

> Moreover, this court adheres to its conclusion that petitioner is a **service contractor** subject to VAT since it does not actually render medical service but merely acts as a conduit between the members and petitioner's accredited and recognized hospitals and clinics.
>
> However, after a careful review of the facts of the case as well as the Law and jurisprudence applicable, this court resolves to grant petitioner's "Motion for Partial Reconsideration." We are in accord with the view of petitioner that it is entitled to the benefit of non-retroactivity of rulings guaranteed under Section 246 of the Tax Code, in the absence of showing of bad faith on its part. Section 246 of the Tax Code provides:
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> > ***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, x x x.
>
> Clearly, undue prejudice will be caused to petitioner if the revocation of VAT Ruling No. 231-88 will be retroactively applied to its case. VAT Ruling No. 231-88 issued by no less than the respondent itself has confirmed petitioner's entitlement to VAT exemption under Section 103 of the Tax Code. In saying so, respondent has actually broadened the scope of "medical services" to include the case of the petitioner. This VAT ruling was even confirmed subsequently by Regional Director Ormundo G. Umali in his letter dated April 22, 1994 (*Exhibit M*). Exhibit P, which served as basis for the issuance of the said VAT ruling in favor of the petitioner sufficiently described the business of petitioner and there is no way BIR could be misled by the said representation as to the real nature of petitioner's business. Such being the case, this court is convinced that

> petitioner's reliance on the said ruling is premised on good faith. The facts of the case do not show that petitioner deliberately committed mistakes or omitted material facts when it obtained the said ruling from the Bureau of Internal Revenue. Thus, in the absence of such proof, this court upholds the application of Section 246 of the Tax Code. Consequently, the pronouncement made by the BIR in VAT Ruling No. 231-88 as to the VAT exemption of petitioner should be upheld.

Petitioner seasonably filed with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 76449.

In its Decision dated February 18, 2005, the Court of Appeals affirmed the CTA Resolution.

Petitioner CIR filed a motion for reconsideration, but it was denied by the appellate court in its Resolution[4] dated May 9, 2005.

Hence, the instant petition for review on certiorari raising these two issues: (1) whether respondent's services are subject to VAT; and (2) whether VAT Ruling No. 231-88 exempting respondent from payment of VAT has retroactive application.

On the first issue, respondent is contesting petitioner's assessment of its VAT liabilities for taxable years 1996 and 1997.

Section 102[5] of the National Internal Revenue Code of 1977, as amended by E.O. No. 273 (VAT Law) and R.A. No. 7716 (E-VAT Law), provides:

> SEC. 102. *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 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> The phrase "sale or exchange of service" means the performance of all kinds of services in the Philippines for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors x x x.

Section 103[6] of the same Code specifies the exempt transactions from the provision of Section 102, thus:

> SEC. 103. *Exempt Transactions.* — The following shall be exempt from the value-added tax:
> x x x

> (l) Medical, dental, hospital and veterinary services except those rendered by professionals
> x x x

The import of the above provision is plain. It requires no interpretation. It contemplates the exemption from VAT of taxpayers engaged in the performance of medical, dental, hospital, and veterinary services. In *Commissioner of International Revenue v. Seagate Technology (Philippines)*,[7] we defined an exempt transaction as one involving goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT, under the Tax Code, without regard to the tax status of the party in the transaction. In *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.,*[8] we reiterated this definition.

In its letter to the BIR requesting confirmation of its VAT-exempt status, respondent described its services as follows:

> Under the prepaid group practice health care delivery system adopted by Health Care, individuals enrolled in Health Care's health care program are entitled to preventive, diagnostic, and corrective medical services to be dispensed by Health Care's duly licensed physicians, specialists, and other professional technical staff participating in said group practice health care delivery system established and operated by Health Care. Such medical services will be dispensed in a hospital or clinic owned, operated, or accredited by Health Care. To be entitled to receive such medical services from Health Care, an individual must enroll in Health Care's health care program and pay an annual fee. Enrollment in Health Care's health care program is on a year-to-year basis and enrollees are issued identification cards.

From the foregoing, the CTA made the following conclusions:

> a) Respondent **"is not actually rendering medical service but merely acting as a conduit between the members and their accredited and recognized hospitals and clinics."**
> b) It merely **"provides and arranges for the provision of pre-need health care services to its members for a fixed prepaid fee for a specified period of time."**
> c) It then **"contracts the services of physicians, medical and dental practitioners, clinics and hospitals to perform such services to its enrolled members;"** and
> d) Respondent **"also enters into contract with clinics, hospitals, medical professionals and then negotiates with them regarding payment schemes, financing and other procedures in the delivery of health services."**

We note that these factual findings of the CTA were neither modified nor reversed by the Court of Appeals. It is a doctrine that findings of fact of the CTA, a special court exercising particular expertise on the subject of tax, are generally regarded as final, binding, and conclusive upon this Court, more so where these do not conflict with the findings of the Court of Appeals.[9] **Perforce, as respondent does not actually provide medical and/or hospital services, as provided under Section 103 on exempt transactions, but merely arranges for the same, its services are not VAT-exempt.**

Relative to the second issue, Section 246 of the 1997 Tax Code, as amended, provides that rulings, circulars, rules and regulations promulgated by the Commissioner of Internal Revenue have no retroactive application if to apply them would prejudice the taxpayer. The exceptions to this rule are: (1) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (2) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (3) where the taxpayer acted in bad faith.

We must now determine whether VAT Ruling No. 231-88 exempting respondent from paying its VAT liabilities has retroactive application.

In its Resolution dated March 23, 2003, the CTA found that there is no showing that respondent "deliberately committed mistakes or omitted material facts" when it obtained VAT Ruling No. 231-88 from the BIR. The CTA held that respondent's letter which served as the basis for the VAT ruling "sufficiently described" its business and "there is no way the BIR could be misled by the said representation as to the real nature" of said business.

In sustaining the CTA, the Court of Appeals found that "the failure of respondent to refer to itself as a health maintenance organization is not an indication of bad faith or a deliberate attempt to make false representations." As "the term health maintenance organization did not as yet have any particular significance for tax purposes," respondent's failure "to include a term that has yet to acquire its present definition and significance cannot be equated with bad faith."

We agree with both the Tax Court and the Court of Appeals that respondent acted in good faith. In *Civil Service Commission v. Maala*,[10] we described good faith as "that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."

According to the Court of Appeals, respondent's failure to describe itself as a "health

maintenance organization," which is subject to VAT, is not tantamount to bad faith. We note that the term "health maintenance organization" was first recorded in the Philippine statute books only upon the passage of "The National Health Insurance Act of 1995" (Republic Act No. 7875). Section 4 (o) (3) thereof defines a health maintenance organization as "an entity that provides, offers, or arranges for coverage of designated health services needed by plan members for a fixed prepaid premium." Under this law, a health maintenance organization is one of the classes of a "health care provider."

It is thus apparent that when VAT Ruling No. 231-88 was issued in respondent's favor, the term "health maintenance organization" was yet unknown or had no significance for taxation purposes. Respondent, therefore, believed in good faith that it was VAT exempt for the taxable years 1996 and 1997 on the basis of VAT Ruling No. 231-88.

In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*,[11] this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.

This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd.,*[12] *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.*[13] *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc.,*[14] and *Commissioner of Internal Revenue v. Court of Appeals*.[15] The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.

More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*,[16] wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer.

WHEREFORE, we **DENY** the petition and **AFFIRM** the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 76449. No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and *Garcia, JJ.,* concur.

[1] *Rollo,* pp. 36-43. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justice Remedios Salazar-Fernando and Associate Justice Monina Arevalo-Zenarosa.

[2] *Id.,* pp. 86-99.

[3] *Id.,* pp. 46-57.

[4] *Id.,* p. 45.

[5] Now Section 108 of the National Internal Revenue Code of 1997.

[6] Now Section 109 (l) of the National Internal Revenue Code of 1997.

[7] G.R. No. 153866, February 11, 2005, 451 SCRA 132.

[8] G.R. No. 150154, August 9, 2005, 466 SCRA 211.

[9] *Far East Bank and Trust Co. v. Court of Appeals,* G.R. No. 129130, December 9, 2005, 477 SCRA 49, 52, citing *Commissioner of Internal Revenue v. Court of Appeals,* 301 SCRA 152 (1999).

[10] G.R. No. 165523, August 18, 2005, 467 SCRA 390.

[11] G.R. No. 52306, October 12, 1981, 108 SCRA 142.

[12] G.R. No. 66653, June 19, 1986, 142 SCRA 324.

[13] G.R. No. 59315, September 30, 1988, 166 SCRA 166.

[14] G.R. No. 103915, October 23, 1995, 249 SCRA 401.

[15] G.R. No. 117982, February 6, 1997, 267 SCRA 557.

[16] G.R. Nos. 134587-88, July 8, 2005, 463 SCRA 28.