4

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 18, 2019** *which reads as follows:*

"G.R. No. 230759 – *(Lacson and Lacson Insurance Brokers, Inc. v. Commissioner of Internal Revenue)*

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking the review and nullification of the October 4, 2016 Decision[2] and March 17, 2017 Resolution[3] of the Court of Tax Appeals En Banc (*CTA En Banc*) in CTA EB Case No. 1272. The CTA En Banc affirmed the October 10, 2014 Decision[4] and January 30, 2015 Resolution[5] of the CTA Second Division *(CTA Division)* in CTA Case No. 8203.

Lacson and Lacson Insurance Brokers, Inc. *(petitioner)* was assessed by the Bureau of Internal Revenue *(BIR)* of deficiency value-added tax *(VAT)* for taxable year 2006 in the amount of ₱3,528,825.28, inclusive of surcharge and interests, resulting from substantial underdeclaration of its sales.[6]

- over – seven (7) pages ...

220

[1] *Rollo*, pp. 9-19.
[2] Id. at 25-40; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Ma. Belen M. Ringpis-Liban, concurring; Presiding Justice Roman G. Del Rosario, inhibited; Associate Justice Lovell R. Bautista, dissented; and Associate Justice Esperanza R. Fabon-Victorino, on official leave.
[3] Id. at 84-87; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Ma. Belen M. Ringpis-Liban, concurring; Presiding Justice Roman G. Del Rosario, inhibited; Associate Justices Lovell R. Bautista and Catherine T. Manahan, dissented; and Associate Justice Esperanza R. Fabon-Victorino, no part.
[4] Id. at 144-163; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.
[5] Id. at 188-194.
[6] Id. at 144.

The CTA Division in its Decision dated October 10, 2014 upheld the assessment finding basis thereof and ordered petitioner to pay ₱2,517,305.33, consisting of the assessed basic deficiency VAT and 50% surcharge. Petitioner was likewise ordered to pay an additional 20% deficiency interest per annum on the basic deficiency VAT of ₱1,678,203.55 computed from January 25, 2007 until full payment thereof; and 20% delinquency interest per annum on the 20% deficiency interest and on the total amount of ₱2,517,305.33, computed from November 26, 2010 until full payment thereof.[7]

The CTA En Banc in its Decision dated October 4, 2016, affirmed the findings of the CTA Division.

Petitioner filed a motion for reconsideration raising almost the same issues as in its petition. Thereafter, it filed a Supplement to Motion for Reconsideration[8] dated November 2, 2016 *(supplemental motion)* where it raised the issue of the imposition of the 20% deficiency interest. Citing *Ace/Saatchi & Saatchi Advertising, Inc. v. The Honorable Commissioner of Internal Revenue*,[9] petitioner argued that a reading of Section 249(B) of the National Internal Revenue Code (*NIRC*) of 1997, as amended, showed that deficiency interest may only be imposed in instances where there is deficiency in the tax due as the term is defined in the tax code. A review of the tax code showed that "deficiency in the tax due" was defined only in three types of taxes: income tax, estate tax, and donor's tax.[10]

The motion was denied as the arguments raised therein had already been passed upon and fully discussed by the CTA Division and the CTA En Banc in their respective decisions. As to the issue of the 20% deficiency interest, the CTA En Banc found that this issue was raised for the first time on appeal. Petitioner passed up the opportunity to raise the same defense at the administrative level, during the trial of the case, in the motion for reconsideration before the CTA Division, and in the petition before the CTA En Banc. Thus, the appellate court ruled that basic consideration of due process impels not to consider/entertain any question unless it had first been raised in the court below.[11]

[7] Id. at 162.
[8] Id. at 77-81.
[9] CTA Case No. 8439, December 9, 2015.
[10] *Rollo*, p. 78.
[11] Id. at 85-86.

ISSUE

Petitioner raises the sole issue of the imposition of 20% deficiency interest.

OUR RULING

We deny the petition.

At the outset, We emphasize that this is an appeal under Rule 45 of the Rules of Court. A petition under Rule 45 is limited to errors of judgment and such "errors" which We may review in a petition for review on *certiorari* are those of the CTA En Banc, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance.[12]

Moreover, petitioner's invocation that the appellate court acted in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction is not a proper ground for a petition under Rule 45.

Petitioner argues that it could not have possibly raised the argument that the imposition of 20% deficiency interest lacked basis in its protest with the BIR, as well as in its petitions before the CTA Division and CTA En Banc, since the case of *Ace/Saatchi & Saatchi Advertising, Inc. v. The Honorable Commissioner of Internal Revenue* (*cited CTA case*) was only decided on December 9, 2015. It reiterates the ground raised in its supplemental motion, that the imposition of the deficiency interest is utterly baseless as it may be imposed only in instances where there is "deficiency in the tax due, as the term is defined in the Code" pursuant to Section 249(B)[13] of the NIRC.

In this case, petitioner raises the sole issue on the imposition of the 20% deficiency interest when the CTA En Banc did not even bother to discuss it in the assailed decision and resolution as it was ruled that such issue was belatedly raised by petitioner. Since this is a petition under Rule 45, We are limited to rule upon whether or not the CTA En Banc erred in not considering petitioner's arguments on the imposition of the deficiency interest as it was raised for the first time at a very late stage.

[12] *Gatan, et. al. v. Vinarao, et. al.*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 610 (2017), citing *Miro v. Vda de Erederos, et al.*, 721 Phil. 772, 785-786 (2013).
[13] Supra note 11.

This Court finds nothing erroneous in the disposition of the CTA En Banc.

The deficiency interest was imposed by the CTA Division as early as its Decision dated October 10, 2014; thus, the earliest opportunity for petitioner to raise the issue questioning the imposition of the deficiency interest was upon its filing of the motion for reconsideration before the CTA Division on October 28, 2014.[14] It may be said that petitioner already assailed the findings of the CTA Division in general, which includes the imposition of the deficiency interest. Nevertheless, a reading of the motion for reconsideration filed by petitioner shows that it did not proffer any argument on the imposition of deficiency interest, to wit:

A.

> WITH ALL DUE RESPECT, THIS HONORABLE COURT ERRED IN FINDING THAT MERE FALSITY IN THE RETURNS FILED BY PETITIONER SUFFICES TO WARRANT THE APPLICATION OF THE TEN (10) YEARS PRESCRIPTIVE PERIOD OF ASSESSMENT UNDER SECTION 222 OF THE NIRC, AS AMENDED.

B.

> WITH ALL DUE RESPECT, THIS HONORABLE COURT ERRED IN FINDING THAT THE RETURNS FILED BY PETITIONER WERE ACTUALLY FALSE.

C.

> WITH ALL DUE RESPECT, THIS [HONORABLE] COURT ERRED IN NOT APPLYING THE RULING IN *WINTERNITZ ASSOCIATES INSURANCE BROKERS CORP., V. CIR, (CTA CASE NO. 7971)* IN DECIDING THE INSTANT CASE.

D.

> WITH ALL DUE RESPECT, THIS HONORABLE COURT ERRED IN HOLDING THAT PETITIONER IS LIABLE FOR 50% SURCHARGE UNDER SECTION 248(B) OF THE NIRC, AS AMENDED, DESPITE THE ABSENCE OF FRAUD ON THE PART OF PETITIONER.[15]

[14] Id. at 164-186.
[15] Id. at 164-165.

Records further show that in its petition before the CTA En Banc on March 5, 2015,[16] petitioner claimed only the following errors committed by the CTA Division:

> A. MERE FALSITY IN THE RETURNS FILED BY PETITIONER SUFFICES TO WARRANT THE APPLICATION OF THE TEN (10) YEARS PRESCRIPTIVE PERIOD OF ASSESSMENT UNDER SECTION 222 OF THE NIRC, AS AMENDED;
>
> B. THE RETURNS FILED BY PETITIONER WERE ACTUALLY FALSE;
>
> C. IN NOT APPLYING THE RULING IN *WINTERNITZ ASSOCIATES INSURANCE BROKERS CORP., V. CIR (CTA CASE NO. 7971)* IN DECIDING THE INSTANT CASE; AND
>
> D. IN HOLDING THAT PETITIONER IS LIABLE FOR 50% SURCHARGE UNDER SECTION 248(B) OF THE NIRC, AS AMENDED, DESPITE THE ADMITTED ABSENCE OF FRAUD ON THE PART OF PETITIONER.[17]

Petitioner never questioned the imposition of deficiency interest even until the CTA En Banc petition.

It must be emphasized that the cited CTA case was already promulgated before the CTA En Banc rendered its Decision on October 4, 2016, thus, petitioner could have timely filed its supplemental petition but did not do so. Then again, when the motion for reconsideration was filed on November 4, 2016[18] before the CTA En Banc, petitioner did not even argue the imposition of deficiency interest in its pleading. Thus, petitioner's claim that it could not have raised its argument as to the limited scope of imposition of the deficiency interest is baseless. The cited CTA case could have served as additional argument of petitioner had it questioned the imposition of deficiency interest early on. Petitioner's arguments in its motion for reconsideration of the CTA En Banc decision were summed up in the following subheadings:

> The Assessment Has No Factual and Legal Basis.
>
> MERE FALSITY OF RETURNS DOES NOT WARRANT AUTOMATIC APPLICATION OF THE TEN-YEARS [PRESCRIPTIVE] PERIOD.
>
> THE PETITIONER'S RETURNS WERE TRUE, ONLY THE RECEIPTS WERE FALSE.

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[16] Id. at 195-222.
[17] Id. at 200.
[18] Id. at 53-75.

THE WINTERNITZ ASSOCIATES INSURANCE BROKERS CORP. SHOULD HAVE BEEN APPLIED IN THIS CASE.

THE IMPOSITION OF FIFTY PERCENT (50%) IS LEGALLY AND FACTUALLY BASELESS.[19]

Clearly, the imposition of the deficiency interest was never raised as an issue even up to the CTA En Banc's motion for reconsideration. It was only in the supplemental motion filed on November 24, 2016[20] that petitioner raised "that this Honorable Court [CTA En Banc] erred in affirming the Decision of the Court of Tax Appeals (CTA) 2nd Division of imposing deficiency interest."[21] Obviously, this is not a mere shift of emphasis or elaboration of a priorly argued defense, but is a new and different theory altogether. In fact, in its petition filed before this Court, petitioner abandons all of its defenses and pursues only the issue of imposition of deficiency interest.

The CTA En Banc also cannot be faulted for not applying the cited CTA case as it was already settled that decisions of lower courts or other divisions of the same court are not binding on the others.[22]

It is evident that the only basis of petitioner's plea is the case of *Ace/Saatchi & Saatchi Advertising, Inc. v. The Honorable Commissioner of Internal Revenue* which was decided by a Division of the CTA. Although the decision in the aforementioned case was not overturned by the CTA En Banc upon appeal, as it dealt with another issue, it is worthy to note that the interpretation on the imposition of deficiency interest was not a binding precedent. It was not even affirmed by the CTA En Banc in a different case. In other words, such interpretation was never made doctrinal by the CTA En Banc. More importantly, it must be stressed that the judicial decisions that form part of our legal system are only the decisions of the Supreme Court.[23]

To reiterate, issues and arguments not presented before the trial court cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.[24] Besides, a change of theory or line of defense is also not allowed in our jurisdiction. In *Manila Electric Company v. Benamira, et al.*,[25] We said:

[19] Id. at 54, 61 and 67-69.
[20] Id. at 77-81.
[21] Id. at 77.
[22] *Yukit, et. al. v. Tritran, Inc. et. al.*, 800 Phil. 210, 222 (2016).
[23] *Agustin-Se, et al. v. Office of the President, et al.*, 780 Phil. 371, 397 (2016).
[24] *Del Rosario v. Bonga*, 402 Phil. 949, 958 (2001).
[25] 501 Phil. 621 (2005).

> x x x [I]t is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. The individual respondents are bound by their submissions that AFSISI is their employer and they should not be permitted to change their theory. Such a change of theory cannot be tolerated on appeal, not due to the strict application of procedural rules but as a matter of fairness. A change of theory on appeal is objectionable because it is contrary to the rules of fair play, justice and due process.[26]

WHEREFORE, premises considered, the instant petition is hereby **DENIED**.

SO ORDERED." ***Bersamin, C.J.****, on official leave;* ***Del Castillo, J.****, designated as Acting Chairperson of the First Division per Special Order No. 2645 dated March 15, 2019.*

Very truly yours,

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220

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[26] Id. at 638.