OLTS sessions

29 March 2023

Multi-Purpose Hall, Court of Tax Appeals Building II
Agham Road, Quezon City

Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue

G.R. No. 249153, 12 September 2022

Antecedents / Facts:

- **7 January 2009** – petitioner received the *Preliminary Assessment Notice* (PAN) dated 19 December 2008, assessing it with deficiency income, value-added tax (VAT), and expanded withholding tax (EWT) for taxable year 2005.

- **22 January 2009** – petitioner filed a letter protesting the PAN.

- **12 February 2009** – petitioner received the *Final Assessment Notice* (FAN) and *Formal Letter of Demand* (FLD) dated **14 January 2009**, which reiterated the findings contained in the PAN.

Antecedents / Facts (continuation):

- Subsequently, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated 14 April 2014, which maintained petitioner's liability for deficiency income tax and VAT, inclusive of interest and compromise penalties.

- Petitioner then filed a *Petition for Review* before the CTA, before which it challenged the validity of the assessments. It claimed, *inter alia*, that the BIR's right to assess had already prescribed in this case.

Antecedents / Facts (continuation):

- In the Decision dated 23 January 2017, the CTA 3rd Division partially granted the *Petition*, and cancelled the deficiency VAT assessment against petitioner, while still upholding its deficiency income tax assessment.

- The CTA 3rd Division found that respondent's right to assess petitioner for VAT had already prescribed.

- Both parties moved for partial reconsideration, but their pleas were denied by the CTA 3rd Division.

Antecedents / Facts (continuation):

- Both parties filed their respective *Petitions for Review* before the CTA *En Banc*. The cases were consolidated.

- The parties were directed to file their respective memoranda.

- After the case was deemed submitted for decision, petitioner filed a *Motion to Admit Supplemental Memorandum* (with leave of Court), seeking to present additional arguments that purportedly deserved the CTA *En Banc*'s consideration. The CTA *En Banc* admitted the same.

Antecedents / Facts (continuation):

- In its *Supplemental Memorandum*, petitioner raised, for the first time on appeal, the following arguments:

(1) no *Letter of Authority* (LOA) was offered in evidence by respondent, hence, the entire audit and the resulting assessment were all void;

(2) the FAN was issued prior to the lapse of the fifteen (15)-day period given to a taxpayer to protest the PAN, hence petitioner's right to due process was violated; and

(3) the FAN and FLD did not set and fix the tax liability contrary to the requirements of the Tax Code since the interest and total tax due was still subject to modification.

Antecedents / Facts (continuation):

- In the challenged *Decision*, the CTA *En Banc* denied the parties' *Petitions* and affirmed the ruling of the CTA 3rd Division.

- With regard to the matters raised by respondent, the CTA *En Banc* declared that these were mere reiterations of the same arguments which were already extensively discussed and disposed of by the CTA 3rd Division when it rendered its *Decision*.

Antecedents / Facts (continuation):

- On the other hand, the CTA *En Banc* noted that petitioner no longer questioned the timeliness of the issuance of the FAN and FLD, but instead mainly argued that respondent's *right to collect* the alleged deficiency taxes had already prescribed.

- Petitioner anchored its theory on the premise that its protest was a mere request for reconsideration, which did not toll the running of the prescriptive period for the collection of the assessed taxes.

- In rejecting this notion, the CTA *En Banc* held that the underlying premise was belied by the records.

Antecedents / Facts (continuation):

- Per the CTA *EB Banc*'s finding, although its protest contained the same arguments raised in its reply to the PAN, petitioner submitted additional documents to support its protest.

- The CTA *En Banc* observed that the submitted documents provided a new perspective to the examiners as to petitioner's tax liability and it even led to the reduction in the assessed amounts as seen in the FDDA; thus, it was in the nature of a request for reinvestigation which effectively tolled the running of the five-year period. Necessarily, respondent's right to collect had not yet prescribed.

Antecedents / Facts (continuation):

- The CTA *En Banc* likewise found no merit in the three (3) issues raised by petitioner in its *Supplemental Memorandum*.

- While the CTA *En Banc* acknowledged that it had the authority to pass upon related issues even if not stipulated by the parties, it stressed that the resolution of the same should still be in line with the relevant rules of evidence.

Antecedents / Facts (continuation):

- On the first issue, the CTA *En Banc* decreed that petitioner failed to discharge its burden to prove the supposed lack of authority of the revenue examiners to conduct the audit investigation.

- On the second issue, the CTA *En Banc* adjudged that **there was substantial compliance with the due process requirements in this case considering that petitioner was still able to submit a well-prepared protest letter**.

Antecedents / Facts (continuation):

- On the third issue, the CTA *En Banc* explained that the modification or adjustments to be made as to the applicable interests will not make the FAN and FLD legally infirm because such amounts would necessarily depend on petitioner's actual date of payment of the assessed amounts.

- Both parties moved for reconsideration, but were denied by the CTA *En Banc*.

- Petitioner then instituted a *Petition for Review on Certiorari* before the Supreme Court (SC).

Antecedents / Facts (continuation):

Before the SC, petitioner raised only two (2) grounds in support of its *Petition*:

(1) the five-year period for respondent to collect the assessed taxes had already prescribed; and

(2) its right to due process was violated when the BIR issued the FAN without observing the 15-day period provided by revenue regulations to allow taxpayers to reply to the PAN.

Issue:

At its core, the main issue tendered for the SC's resolution is whether or not the CTA *En Banc* erred in upholding the deficiency income tax assessment against the petitioner for taxable year 2005.

The Ruling of the SC

The *Petition for Review on Certiorari* was granted.

The assailed Decision and Resolution of the CTA *En Banc* was reversed and set aside.

The subject tax assessments were declared null and void, and were cancelled.

Discussion:

At the outset, the SC delved into the propriety of the CTA *En Banc*'s action of entertaining petitioner's additional arguments, including the alleged violation of its right to due process when the BIR prematurely issued the FAN and FLD in this case, which were raised for the very first time on appeal, and only in its *Supplemental Memorandum*.

Discussion *(continuation)*:

- As correctly held by the CTA *En Banc*, in deciding a case, the tax court *« may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. »* (Section 1, Rule 14 of the RRCTA)

- However, this authority of passing upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues submitted during the pre-trial stage is *not* unbridled.

- As the CTA *En Banc* itself recognized, such issues *« should be dealt with, based not only on substantive law but in light of the relevant rules of evidence. »*

Discussion *(continuation)*:

- Certainly, the thrust of proscribing a change of argument on appeal rests on upholding the basic tenets of equity and fair play.

- When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.

Discussion *(continuation)*:

- The foregoing principle is also laid down in the Rules of Court which applies suppletorily to the RRCTA (cf: Section 15, Rule 44 [Court of Appeals] of the Rules of Court).

Section 15. Questions that may be raised on appeal. — Whether or not the appellant has filed a motion for new trial in the court below he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.[36]

Discussion *(continuation)*:

- Hence, in other civil cases, this Court has allowed derogation from this principle only in exceptional cases and only if the factual bases of the new theory would not require presentation of further evidence:

> In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[37]

[*Boston Equity Resources, Inc., et al. vs. Del Rosario*, 821 Phil 701 (2017)]

Discussion *(continuation)*:

- For tax cases before the CTA, the SC pronounced that:

« [t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case **matters of record** having some beaing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. »

[*Commissioner of Internal Revenue vs. Eastern Telecommunications Phils., Inc.* (638 Phil 334-352 (2010)]

Discussion *(continuation)*:

- Conspicuously, it is this same spirit of liberality which impelled the SC to recognize that the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.

Discussion *(continuation)*:

- From the foregoing, the SC held that the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two (2) conditions concur:

➢ ***one***, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; **and**

➢ ***two***, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.

Discussion *(continuation)*:

- The aforementioned parameters were employed by the CTA *En Banc* when it deigned to pass upon the issue on respondent's supposed lack of authority to conduct the audit investigation in this case. The SC quoted with approbation the following disquisition of the CTA *En Banc*:

> It is not the failure of the party to raise the issue during the trial stage that renders it futile to raise it on appeal but the lack of opportunity of the other party to rebut or present evidence to contravene the same during the

Discussion *(continuation)*:

trial of the case that makes it objectionable for a court to rule on this issue at this stage of appeal. The allegation of the lack of an LOA or invalidity thereof conjures up secondary issues and factual matters that need to be adjudicated upon based on evidence or lack thereof. x x x

This is the reason why we cannot entertain such issue at this stage, especially so when it was raised for the first time in [petitioner's] *Supplemental Memorandum* at the *En Banc* level. x x x[41]

- Conversely, the same procedural hindrance does not exist in resolving the issue on the violation of petitioner's right to due process.

Discussion *(continuation)*:

- **First.** The issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment. It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of petitioner's right to due process is indispensable for an orderly and comprehensive disposition of the case.
- **Second.** Unlike the issue on the invalidity or non-existence of the LOA, the non-observance of the 15-day period to reply to PAN may be resolved by an examination of the evidence on record without requiring the presentation of additional proof. Thus, the CTA *En Banc* correctly took cognizance of this new issue.

Nevertheless, the SC disagreed with the CTA's conclusion on the finding that there was substantial compliance with the due process requirements.

Discussion *(continuation)*:

- There is no true disagreement that the FAN was issued well within the 15-day period for petitioner to reply to the PAN. As recounted above, the PAN was received by petitioner 7 January 2009 and its reply thereto was filed on 22 January 2009. Without waiting to receive petitioner's reply, the BIR apparently issued the FAN on 14 January 2009, albeit it was received by petitioner only on 12 February 2009.
- The CTA *En Banc* noted such discrepancy but brushed this aside by saying that the requirements of due process were already substantially complied with considering that petitioner was, in any event, given an opportunity to be heard on its grounds for disputing the assessment.

Discussion *(continuation)*:

- The respondent, through the Office of the Solicitor General, does not deny that the 15-day period was not observed; it simply reverberates the declaration of the CTA *En Banc* that there was substantial compliance with the requirements of the due process.

- ***This line of reasoning does not stand judicial muster***.

Discussion *(continuation)*:

- In several cases, the SC has enjoined strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayers' constitutional rights. (Please refer to footnote no. 48 of the case)

- In the oft-cited case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.* [652 Phil. 172-188 (2010)], the SC held that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules.

Discussion *(continuation)*:

- The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.

- In the case of *Commissioner of Internal Revenue vs. Yumex Philippines Corp.* (G.R. No. 222476, 5 May 2021), the SC had the occasion to state that the 15-day period provided under RR No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The SC highlighted that "[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN."

Discussion *(continuation)*:

- While *Yumex* rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. **There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.**

- As held in *Yumex*, "[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment." "Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from **receipt** of the PAN to file a response."

Discussion *(continuation)*:

- In the same vein, it is beside the point that petitioner was able to submit a "well-prepared protest letter." The fact remains that respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.

- Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and RR No. 12-99 is void and produces no effect.

- With the foregoing conclusion, the SC found no compelling reason to resolve the other matters raised by the parties.

Other jurisprudential references (on the CTA's power or authority to resolve issues not raised by the parties):

- *Commissioner of Internal Revenue vs. Yumex Philippines Corporation* (G.R. No. 222476, 5 May 2021, 1st Division, *C.J.* Gesmundo)
- *Republic of the Philippines vs. First Gas Power Corporation* (G.R. No. 214933, 15 February 2022, 1st Division, *J.* J. Lopez)
- *IFC Capitalizatin (Equity) Fund, L.P. vs. Commissioner of Internal Revneue* (G.R. No. 256973, 15 November 2021, 3rd Division, *J.* Carandang)
- *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.* (G.R. No. 183408, 12 July 2017, 2nd Division, *J.* Martires)

Other jurisprudential references (on the CTA's power or authority to resolve issues not raised by the parties) (continuation):

- *National Power Corporation vs. The Province of Pampanga, et al.* (G.R. No. 230648, 6 October 2021, 1st Division, *J.* M. Lopez)
- *M/V "Don Martin" Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. vs. Hon. Secretary of Finance, et al.* (G.R. No. 160206, 15 July 2015, 1st Division, *J.* Bersamin)
- *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.* (G.R. No. 163835, 7 July 2010, 3rd Division, *J.* Brion)

Other jurisprudential references (re: administrative due process in the issuance of tax assessments):

- *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* (G.R. Nos. 201398-99 and 201418-19, 3 October 2018, 3rd Division, *J.* Leonen)
- *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (G.R. No. 215957, 9 November 2016, 2nd Division, *J.* Leonen)
- *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.* (G.R. No. 227544, 22 November 2017, 3rd Division, *J.* Leonen)

Question(s) & Response(s)