Significant Court of Tax Appeals Decisions
June 2019

The TRAIN Law introduced the following amendments: (1) the rate of interest for deficiency and/ or delinquency was reduced to 12%; (2) the running of the period for the computation of deficiency interest starts from the date prescribed for its payment until either full payment thereof or upon issuance of notice or demand by the CIR, whichever comes earlier; (3) the simultaneous imposition of deficiency and delinquency interests is effectively eliminated.

The taxpayer alleged that the court erred in its computation of the applicable interest and surcharge. The taxpayer posits that the 40% interest rate on the deficiency taxes partake of the nature of an imposition that is penal, rather than compensatory and is clearly excessive and unconscionable. The taxpayer further believes that the provisions of the TRAIN Law should be applied as to the interest rate since the TRAIN Law was already in effect when the decision was promulgated.

The CTA held that the interest rate used in the decision, i.e, (a) 20% deficiency interest rate from the date prescribed for its payment until December 31, 2017; (b) 20% delinquency interest from May 16, 2015 until December 31, 2017; and (c) 12% delinquency interest from January 1, 2018 until full payment thereof, was correct and is in consonance with the Tax Code, as amended by the TRAIN Law.

The CTA ruled that it is clear from the transitory provision of the TRAIN Law that, in cases where the deficiency taxes became due before the effectivity of the TRAIN Law on January 1, 2018 and the full payment thereof will only be accomplished after the said effectivity date, the interest rate of 20% shall be applied for the period up to December 31, 2017 while the interest rate of 12% shall be applied for the period January 1, 2018 until full payment thereof. The simultaneous imposition of deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017. *(Solid Video Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9051, May 2, 2019)*

The use of the word "or" in the third requisite that "the articles, materials or supplies should not be locally available in reasonable quantity, quality or price" connotes alternative, not cumulative qualification for the determination whether there is locally available Jet A-1 fuel.

The taxpayer's franchise under RA 8339 provides that in the event that any competing person enjoys tax privileges which tend to place the grantee at any disadvantage, then such provision shall be deemed ipso facto part hereof and shall operate equally in favour of the grantee. Thus, just like Philippine Airlines, the taxpayer may be exempted from excise taxes on importation of Jet A-1 fuel subject to the following conditions: (1) The basic corporate income tax or franchise/ tax, whichever is lower, must be paid, under the conditions set forth in [Section 13 of PD No. 1590]; (2) The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and (3) The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

The importations of the taxpayer were supported by the Air Transport Office ("ATO") to the effect that the imported Jet A-1 fuel were not locally available in reasonable quantity, quality and price and it was necessary/incidental for the business operation of the taxpayer. Under RA 9497, the ATO has competence to issue certifications pertaining to the availability of supply of aviation fuel.

The use of the word "or" in the third requisite connotes alternative, not cumulative qualification for the determination whether there is locally available Jet A-1 fuel. Thus, it was sufficient that the taxpayer to prove one qualification to avail of the exemption, i.e., that at the time of the subject importations there was no locally available Jet A-1 fuel in reasonable quantity. *(Commissioner of Customs and Commissioner of Internal Revenue vs. Air Philippines Corporation, CTA EB No 1704 and 1707 (CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, & 7566), May 2, 2019)*

Belated filing of a Petition for Review to question the implied denial of a claim for refund or issuance of TCC within the 120/30-day prescriptive period is fatal to a judicial claim for refund.

The BIR alleged that the taxpayer filed the administrative claim for refund on September 23, 2008. Counting 120 days after filling of the administrative claim with the respondent and 30 days after the respondent's denial by inaction, the last day for filling of the judicial claim with the CTA, is on February 20, 2009. Respondent further argues that Petitioner filed the judicial claim only on September 28, 2018, thus, the CTA can no longer exercise jurisdiction on the Petition as this was allegedly filed out of time.

The taxpayer opposed the motion on the ground that it was entitled to a refund or tax credit of its excess input tax credit and the judicial claim was timely filed and has not prescribed. The taxpayer alleged that it filed the application for issuance of tax credit certificate on September 23, 2008 but it received a letter denying said application only on August 31, 2018. Hence the petition filed on September 28, 2018, according to the taxpayer, was timely filed.

The CTA ruled in favour of the BIR and held that the 120/30 day prescriptive periods are mandatory and are not mere technical requirements. Under the Tax Code, the failure on the part of the BIR to act on the application is deemed a denial and the taxpayer has 30 days to appeal therefrom. Thus, the filing of the Petition for Review more than 9 years after the prescribed period did not confer jurisdiction before the CTA. *(Lapanday Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9938, May 2, 2019)*

DST may be imposed on advances to related parties based on Notes to the Audited Financial Statements because DST is a tax on the transaction rather than a document.

The BIR assessed the taxpayer with deficiency DST, among others, stating that it did not pay the DST on the loan transactions with related parties. In 2014, the taxpayer paid the assessed deficiency DST and later on filed a claim for refund before the BIR and the CTA.

The taxpayer alleged that the ruling in the Filinvest case stating that documents were not necessary for the imposition of the DST should not be given retroactive effect to the prejudice of the taxpayer which merely relied on previous rules and rulings. The BIR insisted that the Filinvest

case was merely an affirmation of its view that intercompany loans and advances covered by mere office memo and vouchers qualify as loan agreements that are subject to DST.

The CTA ruled in favour of the BIR and denied the application for refund stating that the Filinvest case was not a reversal of an old doctrine and the adoption of a new one but merely an interpretation made by the Supreme Court which attaches to the law from the time of its enactment, thus may be given retroactive effect. Furthermore, the Court ruled that the taxpayer has admitted the existence of the loan when it stated in its Reply to the PAN that these were evidenced by board resolutions and cash vouchers. *(San Miguel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9374, May 3, 2019)*

There is no obligation on the part of the buyer to withhold taxes in cases of sale of foreclosed property from the local government unit which foreclosed the same for non-payment of real property taxes.

In 2014, the taxpayer received a PAN which alleged that it was liable for deficiency CGT and DST in connection with the purchase of buildings, machineries, and equipment collectively known as the "Iligan Power Plants" from the City of Iligan which foreclosed said property for non-payment of real property taxes. Later, the taxpayer would receive an amended PAN which cancelled the assessment for deficiency CGT and DST but assessed the taxpayer with deficiency EWT.

The CTA Division ruled in favour of the taxpayer and the CTA En Banc affirmed the same. The CTA En Banc held that the City Government of Iligan was simply exercising its governmental functions when it sold the power plants to the taxpayer because it was for the purpose of recovering the real property taxes due to it and to increase the supply of electricity to the area, in addition to the obvious reason that the city was not habitually engaged in the business of operating power plants.

Section 2.57.5(A) of RR No. 2-98 clearly states that income payments made to the national government and its instrumentalities including provincial, city, or municipal governments and barangays are not subject to the withholding of creditable withholding tax. *(Commissioner of Internal Revenue vs. Conal Holdings Corporation, CTA EB No. 1732 (CTA Case No. 9099) May 3, 2019)*

The BIR's power to abate tax liability is discretionary in nature and is limited to the instances specified under the law. Continuous heavy losses cannot be treated as falling under the category of a tax being "unjustly" assessed.

The taxpayer filed its Quarterly Excise Tax Returns for the 3rd and 4th quarters of both 2008 and 2009 as well as the 1st quarter of 2010 but failed to remit the taxes due thereon due to financial losses. The taxpayer therefore requested that it be allowed to pay the corresponding excise taxes through a proposed program, which it did. Subsequently it filed an application for abatement of surcharge and compromise penalties on the ground of "continuous heavy losses for the last 3 years."

In 2014, the BIR denied the applications for abatement for lack of legal basis and demanded the payment of the penalties within 10 days from notice. Rather than paying the penalties, the

taxpayer filed a protest. Thereafter, the taxpayer filed a Petition for Review before the CTA in order to compel the BIR to abate the said penalties. However, the CTA denied the same.

The CTA En Banc affirmed the decision of the CTA Division. The CTA En Banc stated that the power to abate tax liability is discretionary on the part of the BIR since the Tax Code used the word "may". In addition, "continuous heavy losses" is not one of the instances under the Tax Code when the BIR may exercise its power to abate tax liability. The provision of RR No. 13-2001 which provides that "continuous heavy losses incurred by the taxpayer for the last two (2) years" is an instance where penalties on the taxpayer may be abated or cancelled is void because it is inconsistent with the law it seeks to implement. *(Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue, CTA EB Case No. 1720 (CTA Case No. 8889), May 3, 2019)*

Sending of PAN to a Taxpayer to inform it of the assessment made is part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment by BIR.

Taxpayer was assessed by the BIR of all of its internal revenue taxes. However, the taxpayer contended that it did not receive a PAN from the BIR, hence, the assessment was void.

The CTA has held that the issuance of PAN must be made in order for the taxpayer to be informed that it is liable for deficiency taxes. It is a substantive, not merely a formal, requirement because the taxpayer should be able to present its case and adduce supporting documents observing its right to due process. Hence, failure to send the PAN stating the facts and the law on which the assessment was made renders the assessment made by BIR void.

In this case, instead of sending the PAN to the taxpayer, BIR sent the PAN to a different entity. Taxpayer was not able to present its case and adduce sufficient evidence to rebut the assessment against it. Hence, the taxpayer was not afforded its right to due process. *(Mindanao Sanitarium & Hospital College Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8673, May 6, 2019)*

An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

Taxpayer-Accused is criminally prosecuted for tax evasion. Allegedly, he substantially understated his reported income by 552%. In his defense, the accused stated that the difference in income represents the percentage paid to his talents.

The CTA has held that to sustain a conviction for failure to supply correct and accurate information in the return, the following elements must be established by the prosecution beyond reasonable doubt: (1) Accused is required under the Tax Code or its rules and regulations to supply correct and accurate information in the return; (2) accused failed to supply correct and accurate information at the time required by law, rules or regulations; and (3) That such failure to supply correct and accurate information is done willfully.

Here, the Prosecution failed to prove the elements beyond reasonable doubt because the evidence presented in this case raises doubt and confusion as to whether the accused supplied incorrect and inaccurate information in his ITR. It appears that both Taxpayer-Accused and its talents record the same transaction in a different manner and it is not clear whether the accused incorrectly recorded these transactions. Hence, the Court finds that the prosecution was not able to prove beyond reasonable doubt that the accused failed to supply the correct and accurate information in his ITR filed for taxable year 2009.

Also, the Taxpayer-Accused was acquitted without civil liability because the BIR failed to issue a valid assessment. The FAN it issued does not indicate the definite date and actual demand to pay. *(People of the Philippines vs. Bernardo Anacta y Basada, CTA Crim. Case No. O-415, May 6, 2019)*

In order that a shipment be held liable to forfeiture, it must be proven that fraud has been committed by the importer/consignee to evade payment of the duties due.

The District Collector (DC) issued a warrant of seizure and detention regarding the shipment of the Importer-Consignee due to the fact that the shipment contained shipping labels and documents with a different named consignee. During the ocular and physical inspection, the shipping labels attached to the shipment appeared to have been tampered as they contained an additional label which was not existing before when the said shipment arrived at the Customhouse apparently to make it appear that the same belongs to the Importer-Consignee. Subsequently, the Commissioner of Customs (COC) forfeited the shipment due to fraud. Hence, the Importer-Consignee contends before the CTA that the difference in consignee in the shipment was only an inadvertent error in labelling the subject shipments and not an intentional wrongful declaration by the shipper for purposes of evading payment of any tax due.

The CTA has held that in order that a shipment be held liable to forfeiture, it must be proven that fraud has been committed by the importer/consignee to evade payment of the duties due. The burden of proof is on the part of COC who ordered the forfeiture of the subject shipments.

Here, COC has proven that there were circumstantial evidence that concludes that the shipments were not really consigned to the Importer-Consignee, to wit: First, the contract between the supplier and the Importer-Consignee was executed and signed subsequent to the shipment date; and second, the Importer-Consignee intended to use its tax and duty exempt privilege endorsement made exclusively in its favor to another entity that would only lead to the conclusion that it intended to use such privilege over the shipment.

In effect, the supplier would clearly benefit from such tax-exempt privilege which is exclusive to the Importer-Consignee over articles that are not really consigned to, nor really intended in its favor, thereby evading the taxes and duties legally due to the government. Therefore, the shipment should be forfeited. *(National Grid Corporation of the Philippines vs. Commissioner of Customs and the District Collector, NAIA Customs Collection District, CTA EB No. 1574 (CTA Case No. 8663), May 7, 2019)*

Without a validly issued LOA, a revenue officer has no authority to conduct a tax investigation and any assessment issued on the basis thereof is null and void.

On August 3, 2010, taxpayer received LOA No. 32527 signed by the Assistant Regional Director authorizing RO Cruz and GS Amatorio to examine taxpayer's books of accounts and other records for all internal revenue taxes for year 2009. In November 2010, taxpayer received another LOA stating that the previously issued LOA was converted to an electronic LOA. Thereafter, a Memorandum of Assignment signed by the RDO authorized RO Sunga and GS Cabel to continue the audit and investigation of the taxpayer pursuant to LOA No. 32527 and to replace the previously assigned officers who were reassigned. On the basis of the MOA, RO Sunga conducted his audit and thereafter, recommended the issuance of the PAN and Assessment Notice with FLD.

The taxpayer elevated the case to the CTA alleging that the assessment was void because RO Sunga and GO Cabel was not authorized by a valid LOA. The Court in Division ruled for the taxpayer and cancelled the FAN with FLD. The BIR appealed to the CTA En Banc.

The CTA En Banc affirmed the decision of the CTA in Division and held that the MOA issued by RDO cannot be construed as an LOA as required by law. RMO No 43-90 enumerated the persons authorized to issue an LOA which are the Commissioner, Deputy Commissioners, and Regional Directors. While the RMO did not prohibit the modification of the LOA, and assuming that the MOA is such a modification, it still cannot be given any legal effect since the RDO is not empowered by law to modify a LOA. *(Commissioner of Internal Revenue vs. Sugar Crafts, Inc., CTA EB No. 1757 (CTA Case No. 8738), May 7, 2019)*

All violations of any provision of the Tax Code shall prescribe after five (5) years counted from the day of the commission of the violation of the law, and if the same is not known at the time, from the discovery thereof and the institution of judicial proceedings for investigation and punishment

The taxpayer was criminally charged for willful failure to file a quarterly VAT return for the second quarter of taxable year 2008. The discovery of the offense together with the institution of judicial proceedings for preliminary investigation was on January 30, 2014. On March 18, 2019, the Information against the taxpayer was filed with the CTA.

The CTA dismissed the criminal action on the ground of prescription. In arriving at its decision, the CTA made reference to Section 281 of the Tax Code, as amended, which provides that all violations of any provision of the Tax Code shall prescribe after five (5) years counted from the day of the commission of the violation of the law, and if the same is not known at the time, from the discovery thereof and the institution of judicial proceedings for investigation and punishment.

Since the period from the institution of judicial proceedings for investigation, which was on January 30, 2014 in this case, up to the filing of the information in court, which was on March 18, 2019 in this case, exceeds five (5) years, then the Government's right to file an action has prescribed. *(People of the Philippines vs. Ulysses Palconet Consebido CTA Crim. Cases Nos. O-699 and O-701, May 7, 2019)*

For purposes of computing the deficiency and delinquency interest, it is the Final Decision on Disputed Assessment (FDDA), and not the Final Letter of Demand (FLD), which should be considered as the "notice and demand by the CIR."

The Court ruled that, for purposes of computing the deficiency and delinquency interest, it is the FDDA, and not the FLD, which should be considered as the "notice and demand by the CIR" since it contains the CIR's final decision in the subject assessment and resolves the taxpayer's tax liability with finality in the administrative level. Moreover, it fixes a new due date for the payment of the tax liabilities and surcharge of the taxpayer, which in itself suggests that the due date indicated in the FLD had already become irrelevant. *(Commissioner of Internal Revenue vs. Total (Philippines) Corporation, CTA EB Case No. 1616 (CTA Case No. 8479) and Total (Philippines) Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 1621 (CTA Case No. 8479), May 10, 2019)*

The filing of the taxpayer's administrative claim for refund with the CIR after the COC failed to act on the protests is procedurally appropriate considering that it is within the CIR's power to refund internal revenue taxes.

The taxpayer filed a claim for refund for the excise tax it paid on its importations of Jet A-1 fuel used for its domestic operations. The COC submits, among others, that the case is not within the Court's jurisdiction and that the taxpayer is guilty of forum shopping when it filed a claim for refund with the BIR after COC's inaction on its protests.

The CTA En Banc held that the filing of the taxpayer's administrative claim for refund with the CIR after the COC failed to act on the protests is procedurally appropriate considering that it is within the CIR's power to refund internal revenue taxes. Moreover, the taxpayer is correct in invoking the jurisdiction of the Court in Division since it is vested with authority to review on appeal inaction of the CIR on claims for refund, as provided in the Tax Code, as amended.

Finally, the Court also ruled that the taxpayer is entitled a refund or issuance of a tax credit certificate representing its payment of excise taxes. The law provides the following requisites to be exempt from excise tax on importations of Jet A-1 fuel: (i) the taxpayer paid its corporate income tax and VAT liabilities for the subject period of importation; (ii) the imported Jet A-1 fuel was actually used for its transport operations; and (iii) the imported Jet A-1 fuel was not locally available in reasonable quantity and price at the time of the importations. The Court held that the taxpayer sufficiently proved that it used the imported Jet A-1 fuel in its transport and non-transport operations with its presentation of ATRIGs, pieces of evidence, and testimonies of witnesses. As to the other requisites, the Court reiterated a prior ruling when it affirmed that ATRIGs and the testimonies of witnesses are sufficient in granting the refund *sans* specific EVIDENCE on the actual use of imported fuel in the taxpayer's domestic operations when the matter was not raised as an issue in the pleadings, as in this case when the issue was raised only in the Motion for Reconsideration. *(Commissioner of Internal Revenue vs. Philippine Airlines, Inc., CTA EB Case No. 1752 (CTA Case No. 8143) and Commissioner of Customs vs. Philippine Airlines, Inc., CTA EB Case No. 1756 (CTA Case No. 8143), May 10, 2019)*

Any input tax evidenced by a VAT invoice or official receipt shall be creditable against the output tax on the purchase of services on which a value-added tax has been actually paid. The law includes purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed, and is not limited to those intended to form part of a finished product for sale or to be used in the chain of production. So long as the input VAT being claimed are evidenced by the pertinent documents, the same input VAT is creditable against the output VAT.

The taxpayer, a VAT-registered entity, filed a claim for the issuance of a tax credit certificate representing its unutilized input taxes on its purchases and importation of goods and services attributable to zero-rated sales. The BIR opposed and posited that the taxpayer failed to prove that the subject input tax was not utilized and that such is creditable and directly attributable to its zero-rated sales. The taxpayer refuted this and claimed that its input VAT is entirely attributable to its reported sales since all were zero-rated, and that the same was not applied against any output tax.

The Court decided in favor of the taxpayer since it was able to present its Quarterly VAT Returns showing that the subject amount was not carried over to succeeding periods and, as ascertained by the ICPA, the taxpayer did not utilize in subsequent periods the amount of input VAT being claimed for refund.

Furthermore, the Court held that any input tax evidenced by a VAT invoice or official receipt shall be creditable against the output tax on the purchase of services on which VAT has been actually paid. The law includes purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed, and is not limited to those intended to form part of a finished product for sale or to be used in the chain of production. So long as the input VAT being claimed are evidenced by the pertinent documents, the same input VAT is creditable against the output VAT. Thus, even when the VAT official receipts show payment to hotels and resorts, the input VAT paid thereon is creditable against its output VAT. When the law provides that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. *(Commissioner of Internal Revenue vs. CBK Power Company, Limited, CTA EB Case No. 1791 (CTA Case No. 7887), May 14, 2019)*

Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case.

The Department of Energy is being held liable for deficiency taxes on exported crude oil by the BIR. Eventually, the case matter was elevated to the CTA. The Court in its decision resolved whether or not it has jurisdiction to take cognizance of the case.

The CTA held that considering that the subject disputed assessment is between the Department of Energy and the Bureau of Internal Revenue, both government entities, the provisions of PD No. 242 shall apply. Under the said decree, all disputes, claims and controversies solely between

or among the departments, bureaus, offices, agencies and instrumentalities of the National Government shall be submitted to and settled by the Solicitor General, the Government Corporate Counsel, or the Secretary of Justice, as the case may be. Thus, the CTA has no jurisdiction over the present case. *(Department of Energy vs. Commissioner of Internal Revenue, CTA Case No. 9596, May 16, 2019)*

Any reassignment or transfer of cases to another Revenue Officer or revalidation of an expired Letter of Authority (LOA) shall require the issuance of a new LOA.

The taxpayer argues that the tax assessment was not valid because the Revenue Officer has no right to conduct the same because his authority emanated not from a Letter of Authority ("LOA"), but only from a Reassignment Notice signed by the RDO Officer.

The CTA held that the necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement, which is vital to the validity of an audit of a taxpayer, and consequently, to the validity of the Final Assessment Notice ("FAN"), that may be issued after said audit. The provisions of the Tax Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority issued by the Regional Director. The Reassignment Notice is not equivalent to an LOA nor does it cure RO's lack of authority. *(Commissioner of Internal Revenue vs. Ryan Neil Erasmo Valdez, CTA OC No. 020, May 17, 2019)*

The recourse of a taxpayer who paid input VAT, notwithstanding that it is subject to VAT at zero percent rate, is against the seller who shifted to it the output VAT and not against the government.

The taxpayer is a BOI-registered export entity, located within the customs territory of the Philippines. It filed a claim for refund of excess input VAT which was partially granted by the Court in Division. It elevated the matter to the CTA En Banc.

The CTA held that one of the requirements for the zero-rating of sales by a VAT taxpayer to a BOI registered exporter is that the BOI-registered buyer must furnish each of its suppliers with a copy of its BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers. The taxpayer, being a BOI-registered export entity located within the customs territory, incurred expenses with a VAT component from its suppliers. It failed to claim the benefits accorded to it as several suppliers were not furnished with the requisite BOI Certification. Consequently, the suppliers shifted the output tax to the taxpayer. Thus, the Court considered it as a waiver of the said benefit but reiterated that the taxpayer may seek reimbursement from the suppliers but not from the government. *(Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA EB Case No. 1711 (CTA Case No. 8680) and Commissioner of Internal Revenue vs. Taganito Mining Corporation, CTA EB Case No. 1719 (CTA Case No. 8680), May 20, 2019)*

The requirements of the law and the rules on waivers and final assessment notices must be complied with, otherwise, the waiver or the FAN, as the case may be, shall be invalid and without any legal consequence.

The Court held that Section 222(b) of the NIRC, as amended, along with RMO No. 20-90 and RDAO 5-01 requires, inter alia, the following requisites for the validity of a waiver, to wit: first, receipt of the taxpayer of a copy of the duly executed waiver; second, the date of acceptance by the BIR; and third, the specific type and the amount of tax involved. Per jurisprudence these requirements are mandatory in nature and non-compliance thereof is fatal.

The Court found that the taxpayer's copy of the 1st waiver was received by a someone which is neither its personnel nor under its employ and that the taxpayer's date of acceptance was not convincingly established because it stated that it was accepted two days before it was even transmitted. Moreover, the 1st waiver merely contains a sweeping declaration that it covers "all internal revenue taxes". There can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.

The CTA En Banc likewise held that even if the waivers were valid, the FAN/FLD issued to the taxpayer, in itself is not valid since it failed to indicate a fixed and definite amount of tax liability to be paid. This is because the FAN indicated that the tax liabilities were still for computation since the amount of tax due and interest thereon would vary depending on the actual date of payment. *(Commissioner of Internal Revenue vs. 2100 Customs Brokers, Inc., CTA EB No. 1729 (CTA Case No. 8972), May 20, 2019)*

Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest.

The taxpayer sought reconsideration of a decision rendered by the CTA En Banc denying its Petition for Review. The taxpayer maintained that it was entitled to rely in good faith on the prevailing judicial interpretation in 2008 which provides that intercompany advances not evidence by loan agreements are not subject to DST.

The CTA En Banc partially granted the taxpayer's motion for reconsideration and deleted the imposition of surcharge and interests. It ruled that while there was no prevailing judicial interpretation to speak of because only the decisions of the Supreme Court constitute binding precedents, nevertheless, the reliance on the decisions of the Court of Appeals and the CTA may be used as basis of good faith sufficient to negate petitioner's liability for surcharge and interests. The Court ruled that a mistake upon a doubtful or difficult question of law may properly be the basis of good faith. *(E.E. Black Ltd. – Philippine Branch vs. Commissioner of Internal Revenue, CTA EB Case No. 1611 (CTA Case No. 8719), May 20, 2019)*

Property owned by the Philippine government and the fruits thereof, i.e. the dividends and interest earned from respondent's money placements are beyond the ambit of the City's taxing power on the strength of Section 133(o) of the LGC.

The City alleges that the taxpayer is a non-bank financial intermediary (NBFI), therefore, subject to local business taxes under Sec. 143(f) of the Local Government Code. Respondent alleges that it is not a NBFI but a mere holding company engaged in direct ownership of shares of stocks.

The Court held that the taxpayer was not a NBFI because it was not shown that its principal and habitual business activity is that of a NBFI pursuant to pertinent laws, rules, and regulations. Neither was it shown that it was authorized to perform as a NBFI by the Monetary Board. Since it is not a NBFI, it cannot be imposed a local business tax for as a NBFI.

Even granting arguendo that taxpayer a NBFI as the City insinuates, the subject SMC shares, along with the dividend and interest realized therefrom are owned by the Republic of the Philippines, hence, absolved from the imposition of LBT following Section 133(o) of the same Code. *(City of Davao vs. Arc Investors, Inc. (CTA EB No. 1705 (CTA AC No. 153), May 21, 2019)*

The CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The BIR sought reconsideration on the decision of the CTA in Division cancelling and setting aside the final decision of the Commissioner of Internal Revenue affirming the tax assessment notices. The BIR alleged that the court passed upon issues that were not raised by the taxpayer in its original petition but were only raised for the first time in its memorandum.

In brushing aside the contentions of the BIR, the Court held that the issues and arguments raised in the motion for reconsideration had already been sufficiently addressed in the assailed decision. Likewise, the Court held that the legal authority of the revenue officer to conduct a valid tax audit for the issuance of a valid assessment is a related issue for determination in achieving an orderly disposition of the case. *(Builders Steel Corporation CTA Case No. 9050, May 27, 2019)*

Proof of actual remittance is not needed in order to prove withholding and remittance of taxes. Proof of remittance is the responsibility of the withholding agent and not the taxpayer-refund claimant.

The CTA held that withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, the taxpayer has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of BIR. As held by the Supreme Court in its decided cases, there is no need for the claimant/taxpayer to prove actual remittance by the withholding agent to the BIR. *(McKinsey Co. vs. Commissioner of Internal Revenue, CTA Case No. 9332, May 28, 2019)*

Submission of Confirmation Letter issued by PEZA itself is sufficient to prove the entitlement of taxpayer's clients to VAT zero-rating.

The BIR alleges that the taxpayer failed to provide the Court with the originals or certified true copies of the Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA) certificate of registration of taxpayer's clients/customers. It further contends that absent this PEZA Certification, the taxpayer should not be allowed zero-rating sales for the said enterprise.

The CTA held that the taxpayer's submission of Confirmation Letter issued by PEZA itself is sufficient to prove the entitlement of taxpayer's clients to VAT zero-rating. It found that the Certification dated February 16, 2016 issued by PEZA, confirming that the latter issued VAT zero-rating certifications to the PEZA-registered enterprises enumerated therein, has sufficiently evidenced the entitlement of petitioner's buyer to tax incentives. *(Colt Commercial Inc. v. Commissioner of Internal Revenue, CTA Case No. 9539, May 28, 2019)*

A valid Letter of Authority must be issued to legally examine or audit a taxpayer's books of account or other accounting record.

The BIR filed an appeal, arguing that the non-issuance of a valid Letter of Authority is of no consequence to the validity of the subject assessments which were arrived at after comparing the ITR with the summary list of purchases submitted by the taxpayer's customers. The BIR stated that since the result of the process was duly reflected in the Letter Notice, the issuance of a Letter of Authority to authorize the examining revenue officers to audit respondent's books of account or other accounting records could be dispensed with. The taxpayer did not file a comment or opposition.

The CTA ruled against the BIR. The CTA noted that the BIR admitted that no Letter of Authority was issued authorizing the examination or audit of respondent's books of account and other accounting record. The CTA emphasized that under Section 13 of the NIRC, as amended, a valid Letter of Authority must be issued by the CIR or his authorized representative in favor of a revenue officer performing assessment functions to legally examine or audit a taxpayer's books of account, or other accounting record. Hence, there must be a grant of authority before any revenue officer can conduct an examination or issue and assessment against a taxpayer, and such revenue officer must not go beyond the authority given. Absent such authority, the assessment is void.

The CTA also reiterated the Supreme Court's ruling that a Letter Notice is not a valid substitute for a Letter of Authority. A previously issued Letter Notice must be transmuted to a Letter of Authority before a revenue officer may proceed with further examination and assessment of the taxpayer. Thus, the examination and audit conducted by the BIR was invalid since the record does not show that such Letter Notice was converted into a Letter of Authority. *(Commissioner of Internal Revenue v. Admorlina L. Fontejon CTA EB Case No. 1813 (CTA Case No. 9314), May 28, 2019)*

Tax assessments, which came about as a result of the examination of the taxpayer's books of accounts and accounting records by a revenue officer who is not authorized through a Letter of Authority, are void.

The BIR filed a Petition for Review, claiming that taxpayer's subsequent recourse to elevate its protest/request for reconsideration to the ACIR is not sanctioned the pertinent rules and regulations by the BIR, and that the proper remedy is to elevate its protest to the CIR or appeal to the CTA.

The CTA denied the Petition for Review for lack of merit and found it unnecessary to address the issues raised by the BIR since the records did not show that the revenue officer who made the recommendation for the issuance of a PAN and FAN against the taxpayer was named in the Letters of Authority. The revenue officer's authority can only be traced from a Memorandum Referral issued by the OIC-Chief for the LT Regular Audit Division I.

The Court ruled that since no Letter of Authority was issued in favor of the revenue officer, he cannot be considered as legally authorized to conduct an examination of the taxpayer's books of accounts and other accounting records. Correspondingly, the subject tax assessments, which came about as a result of the examination of the taxpayer's books of accounts and accounting records by a revenue officer who is not authorized through a Letter of Authority, are void. For being void, the same bears no valid fruit. *(Commissioner of Internal Revenue v. Capitol Steel Corporation CTA EB Case No. 1796 (CTA Case No. 9240), May 28, 2019)*

A certification that a taxpayer did not file her ITR in itself is not enough to prove that the failure to file the ITR is willful warranting for conviction for Tax Evasion.

The taxpayer was charged with tax evasion for not declaring all her income for taxable year 2010 and by failing to file her annual income tax return and payment thereof for taxable years 2011 and 2012. Accused, in her memorandum argues that the prosecution failed to prove that there was willfulness or deliberate intent on the part of the accused to evade or defeat the payment of income taxes.

The Court held that to sustain a conviction for attempt to evade or defeat tax under Section 254 of the NIRC of 1997, as amended, the following elements must be established:

1) An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and

2) Such attempt to evade or defeat tax or the payment thereof is willful.

In connection, it is essential for BIR to prove the following:

1) That accused is a registered taxpayer in the Philippines;
2) That for taxable year 2010, the accused is required to pay income tax and did not pay the tax due or paid the income tax less than that is ought to be due; and
3) that the non-payment or payment of less than that is ought to be due was willful.

As to the second element, BIR failed to establish that for taxable year 2010, the accused is required to pay income tax and did not pay the tax due or paid the income tax less than that is ought to be due. BIR contends that there was underdeclaration of purchases which resulted to the underdeclaration of sales, underdeclaration of income and finally underdeclaration of tax due. However, a finding of underdeclaration of purchases does not in itself result in the imposition of income tax and VAT.

On the other hand, to sustain a conviction for failure to make or file a Return under Section 255 of the NIRC of 1997, as amended, the following elements must be established:

1) Accused is a person required by the NIRC or rules and regulations to make or file a return;

2) Accused failed to make or file the return at the time or times required by law or rules and regulations; and

3) The failure to make or file the return was wilful.

As to the third element, it requires that the failure to make or file the return was willful. A Certification alone that the accused did not file her Income Tax Returns for taxable years 2011 and 2012 is not enough to prove that the failure to file the ITR is wilful. *(People of the Philippines v. David, CTA Crim Case No. 0-656, May 29, 2019)*

All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, shall be administratively settled or adjudicated, by the Secretary of Justice or the Solicitor General, depending on the question involved therein, and whether the latter officer is the principal law officer or general counsel of the government offices involved, as the case may be.

The taxpayer argues that RA No. 10351 (TRAIN Law) did not repeal its exemption from paying "duties and taxes, including excise and VAT, relative to the importation of merchandise for sale" under Section 95 of RA No. 9593. It further argues that Section 7 of RA No. 10351 did not authorize the BIR to impose VAT on alcohol and tobacco products.

The BIR counter-argues that the exemption of petitioner under R.A. 9593 has already been repealed by the enactment of Republic Act No. 10351 or An Act Restructuring The Excise Tax On Alcohol and Tobacco Products By Amending Sections 141, 142, 143, 144, 145, 8, 131 And 288 Of Republic Act No. 8424.

The Court did not rule on the merits of the case because it lacks jurisdiction to entertain the same. It explained that all disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, shall be administratively settled or adjudicated, by the Secretary of Justice or the Solicitor General, depending on the question involved therein, and whether the latter officer

is the principal law officer or general counsel of the government offices involved, as the case may be. An agency refers to any of the various units of the Government. Relative thereto, the taxpayer is attached to the Department of Tourism. Correspondingly, the taxpayer is considered as a unit of the Government, and thus, an agency thereof. On the other hand, BIR is a bureau, which is defined as "any principal subdivision or unit of any department. "

Thus, the parties herein are both public entities under the Executive Branch of the Republic of the Philippines, albeit there is no showing that their principal law officer or general counsel is the Solicitor General. Correspondingly, the subject dispute or claim is one falling under jurisdiction of the Secretary of Justice. (*Duty Free Philippines Corp. v. BIR, CTA Case No. 9548, May 30, 2019*)

The imposition of deficiency interest applies to all internal revenue taxes imposed by the present Tax Code.

The taxpayer alleges that the deficiency interest under Section 249 (B) of the Tax Code, as amended, should be applied only whenever there is a deficiency income tax, a deficiency estate tax and deficiency donor's tax.

The CTA held that the imposition of deficiency interest under Section 249 (B) of the Tax Code, as amended, applies to all internal revenue taxes imposed by the preseznt Tax Code. Section 249(B) should not be read in isolation but must be read in light of the provisions of Section 247(a) and 249(a) of the same Code. *(Hotel Specialist, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9349, May 30, 2019)*

A certificate of compliance is not a mere procedural requirement under Epira Law. It is determinative whether the taxpayer is entitled to its claim for tax refund.

The taxpayer argues that the Certificate of Compliance (COC) is a mere procedural requirement under RA 9136 or the "Epira Law" and that it is not a factor in determining whether it is entitled to its claim for refund based on Section 108 (B) (7) of the 1997 NIRC.

On the other hand, the BIR reiterates that the taxpayer failed to prove, by sufficient evidence, that it is engaged in the sale of power or fuel generated through renewable sources of energy. It further explains that to be considered a generation company, it should be authorized by the Energy Regulatory Commission (ERC) to operate the generation facility and this requires a COC issued by the latter agency.

The Court ruled that the date of issuance of the required COC in favor of taxpayer, is crucial in determining whether it had zero-rated sales for the taxable year being raised. Records show that the taxpayer was able to secure a COC from the ERC only on a latter date, hence during the second quarter of taxable year in question, the taxpayer was not yet authorized by the ERC to operate its generation facility, hence petitioner is not entitled to VAT zero-rating on its sales for the aforesaid period. *(Hector Sabangan Inc. v. Commissioner of Internal Revenue, CTA Case No. 9276, May 30, 2019)*

When one of the parties in a loan transaction is a bank, the presumption is that the bank is the one directly liable for the payment and remittance of the DST.

Taxpayer entered into a loan agreement with borrower SNAP-BI from which the latter drew an amount of P4.34 Billion evidenced by a Promissory Note (PN). Later, taxpayer entered into a facility and security agreement with another borrower, Hedcor, from which the latter drew an amount of P1.6 Billion evidenced by a fixed rate note (FRN). It is alleged that both SNAP-BI and Hedcor paid the DST on the transaction, with SNAP-BI paying based on the amount of the PN and Hedcor paying based on the total credit commitment of P5 Billion. Despite the payments made by both SNAP-BI and Hedcor, the taxpayer still paid the DST on the two loan transactions based on the PN and the FRN.

Taxpayer thereafter filed separate administrative claim for refund representing the alleged overpayment of DST on its transactions with Hedcor and SNAP-BI. Since the BIR failed to act on the claim, the taxpayer filed the instant case, alleging overpayment or erroneous payment and unjust enrichment.

The CTA denied the claim, stating that the taxpayer did not even allege that it is exempt from the DST on the FRN issued by Hedcor as well as the PN issued by SNAP-BI and that it is tasked to remit the said tax only as a collecting agent. Under RR No. 9-2000, if one of the parties to the transaction is a bank, the remittance of the DST shall be the responsibility of such bank. The burden of refuting the presumption that the taxpayer is the one directly liable for the payment and remittance of the DST on the FRN and the PN was not discharged by the taxpayer. *(Bank of the Philippine Islands v. CIR, CTA Case No. 9692, May 31, 2019)*

Income from PAGCOR's related services, which include junket operations, is not subject to the provisions of Section 13(2)(b) of PD 1869 but Section 14(5) of the same law, hence subject to corporate income tax.

The taxpayer, a junket operator, filed a claim for refund of income taxes, alleging that by virtue of the Section 13(2)(b) of PD 1869, it is liable only to the payment of 5% franchise tax, rather than the regular income tax.

The CTA rejected the claim for refund and ruled that income from operation of other related services, including income from junket operations, is subject to corporate income tax not only pursuant to PD No. 1869, as amended, as well as RA No. 9337.

The CTA held that under the express provisions of Section 14(5) of PD 1869, any income that may be realized from related services shall not be included as part of the income of the PAGCOR for the purpose of applying the franchise tax but shall be considered as a separate income subject to income tax. The enactment of RA No. 9337, which withdrew the income tax exemption of PAGCOR under RA No. 8424, reinforced PAGCOR's tax liability on income from other related services. *(Prime Investments Korea, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9573, May 31, 2019)*