

## THIRD DIVISION

[ G.R. No. 222133, November 04, 2020 ]

### AFP GENERAL INSURANCE CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

#### D E C I S I O N

##### INTING, J.:

This resolves the Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by AFP General Insurance Corporation (AGIC) assailing the Decision<sup>[2]</sup> dated January 4, 2016 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 1223 (CTA Case No. 8191). The assailed Decision modified the Amended Decision<sup>[3]</sup> dated September 1, 2014 of the CTA Third Division (CTA Division) in CTA Case No. 8191 which ordered AGIC to pay deficiency tax assessments, plus surcharge and interests, under respondent Commissioner of Internal Revenue's (CIR) Formal Letter of Demand (FLD)<sup>[4]</sup> dated April 6, 2010.

##### *The Antecedents*

The CIR, through Deputy CIR Gregorio V. Cabantac, issued Letter of Authority (LOA) No. 00021964<sup>[5]</sup> dated May 7, 2008, empowering Bureau of Internal Revenue (BIR) Revenue Officers Mercedes J. Espina and Jonas P. Punza to examine AGIC's books of account and records in relation to taxable year 2006.<sup>[6]</sup> It contained the following notation: "[t]his [LOA] becomes void if it contains erasures, or if not served to the taxpayer within 30 days from the date hereof, or if dry seal of BIR office is not present."

As a result of the audit investigation, the CIR issued a Preliminary Assessment Notice<sup>[7]</sup> (PAN) against AGIC. AGIC responded to the PAN through a Letter<sup>[8]</sup> dated January 25, 2010 addressed to the CIR.

In turn, the CIR issued a Revised PAN<sup>[9]</sup> dated February 19, 2010, with attached details of discrepancies,<sup>[10]</sup> finding AGIC liable for deficiency income tax (IT), documentary stamp tax (DST) on the increase of capital stock, value-added tax (VAT), late remittance of DST on insurance policies, expanded withholding tax (EWT) amounting to P13,158,571.63,<sup>[11]</sup> P486,833.25,<sup>[12]</sup> P8,730,457.05,<sup>[13]</sup> P2,212,705.47,<sup>[14]</sup> and P785,077.29,<sup>[15]</sup> respectively, inclusive of penalties,<sup>[16]</sup> surcharge, and interest.

Subsequently, the CIR issued a Formal Letter of Demand (FLD)<sup>[17]</sup> dated April 6, 2010, with attached details of discrepancy<sup>[18]</sup> and assessment notices,<sup>[19]</sup> requesting AGIC to pay deficiency internal revenue taxes amounting to P25,647,389.04, computed as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise Penalty	Subtotal
IT	P8,294,889.09	-	4,976,933.45	P25,000.00	P13,296,822.54
DST*	250,000.00	62,500.00	162,500.00	16,000.00	491,000.00
VAT	4,092,402.38	2,046,201.19	2,660,061.55	-	8,798,665.12
DST**	316,237.83	1,114,521.99	710,216.39	77,000.00	2,217,976.21

EWT	470,863.74		306,061.43	16,000.00	792,925.17
Civil Penalty					<u>50,000.00</u>
Total					<u>P25,647,389.04</u>

\* DST on the increase of capital stock

\*\* late remittance of DST on insurance policies

AGIC formally protested these assessments on April 22, 2010 (administrative protest).<sup>[20]</sup>

Due to the CIR's alleged inaction on its protest, AGIC elevated the assessment case to the CTA docketed as CTA Case No. 8191.<sup>[21]</sup> In turn, the CIR filed an answer to AGIC's petition.

#### *Ruling of the CTA Division*

*Decision*<sup>[22]</sup>  
dated March  
13, 2014.

After trial, the CTA Division partially granted AGIC's petition.<sup>[23]</sup> It ruled as follows:

*First*, the assessment for unremitted DST on insurance policies must be cancelled. It pertains to taxable year 2005; thus, outside the coverage of the subject LOA, which was issued for "the examination of books of accounts and other accounting for the taxable year 2006."<sup>[24]</sup> *Second*, the period for assessment for deficiency VAT had already prescribed by the time the CIR issued the FLD on April 6, 2010. *Third*, in contrast, the CIR timely assessed AGIC for its late remittance of DST on insurance policies pertaining to January, February, and May 2006, as well as deficiency DST on the increase in capital stock. *Fourth*, AGIC failed "to substantiate its claims of undue disallowance of its legitimate expenses [in relation to IT], erroneous assessment for [EWT], and the correct computation of its deficiency [IT and EWT]."<sup>[25]</sup> *Fifth*, the amounts of compromise penalty for each tax type must be cancelled because there is no showing that the parties mutually agreed on the imposition thereof.<sup>[26]</sup> *Sixth*, AGIC applied for the tax amnesty program under Republic Act No. (RA) 9480, which covered all unpaid internal revenue taxes for taxable year 2005 and prior years. However, AGIC failed to submit its Statement of Assets, Liabilities and Net worth (SALN), a required attachment to the taxpayer's application under RA 9480. Failure to fully comply with the documentary requirements of the amnesty law disqualifies AGIC from availing itself of RA 9480's benefits.<sup>[27]</sup>

Based on its findings, the CTA Division reduced the total assessment to P12,746,567.80.<sup>[28]</sup> In addition, it ordered AGIC to pay the following: (a) *20% deficiency interest* on the amount of basic deficiency tax (IT, DST on increase of capital stock, and EWT) as prescribed under Section 249(B) of the National Internal Revenue Code of 1997 (Tax Code); (b) *20% delinquency interest* on the amount of basic deficiency tax (IT, DST on increase of capital stock, and EWT) *plus surcharge*, as prescribed under Section 249(C) of the Tax Code; (c) *20% delinquency interest* on the incremental amounts resulting from the late remittance of DST on insurance policies, as prescribed under Section 249(C) of the Tax Code; and (d) *20% delinquency interest* on the total amount of deficiency interest computed under (a) above, as prescribed under Section 249(C) of the Tax Code.

Both parties moved to reconsider the aforementioned Decision.

For its part, AGIC insisted that the CTA Division failed to resolve the principal issue of the case: LOA No. 00021964's validity. According to AGIC, the subject LOA is invalid "for failure of the concerned [r]evenue [o]fficer to have the same revalidated after x x x 120 days [*i.e.*, within which the tax authorities must issue an audit investigation report], pursuant to

Revenue Memorandum Order No. [RMO] 38-88 dated August 24, 1988, as reiterated in Revenue Memorandum Circular [RMC] No. 40-2006, dated July 13, 2006."<sup>[29]</sup> The CIR countered that "the non-revalidation of a [LOA] would only warrant a disciplinary action against the concerned [r]evenue [o]fficer, and not render the same invalid or void."<sup>[30]</sup>

On the other hand, respondent CIR pointed out that "[a]s proven during trial, [AGIC] never filed a return for [DST on] insurance policies for taxable year 2005."<sup>[31]</sup> Thus, the applicable prescriptive period is 10 years counted from the discovery of the falsity, fraud, or omission (non-filing). Further, the discrepancies between the audited financial statements and the unregistered general ledger resulted in an under-declaration of gross income subject to [VAT].<sup>[32]</sup>

*Amended  
Decision dated  
September 1,  
2014.*

Ruling on the parties' motions, the CTA Division held as follows: *first*, the revenue officers' failure to have the LOA revalidated after the 120-day reglementary period does not nullify the LOA. Under the aforementioned tax issuances, such failure gives rise to administrative sanctions/penalties, but does not invalidate the LOA itself.<sup>[33]</sup> *Second*, the cancellation of the assessment for unremitted DST on insurance policies for taxable year 2005 was proper inasmuch as the subject LOA only covered taxable year 2006. *Third*, in the PAN and Memoranda filed before the CTA Division, respondent CIR clearly alleged that the deficiency VAT assessment was grounded on the "substantial [under-declaration] of taxable sales, receipts or income and failure to report sales, receipts or income in an amount exceeding x x x 30% of that declared per return."<sup>[34]</sup> However, AGIC failed to refute the assessments, including the alleged under-declaration.

Consequently, the CTA reinstated the deficiency tax assessment and ordered AGIC to pay deficiency VAT amounting to P6,138,603.57,<sup>[35]</sup> inclusive of 50% surcharge and the following interests: 20% *deficiency interest* on the amount of basic deficiency VAT, as prescribed under Section 249(B) of the Tax Code; (b) 20% *delinquency interest* on the amount of basic deficiency VAT *plus surcharge*, as prescribed under Section 249(C) of the Tax Code.<sup>[36]</sup>

Aggrieved, AGIC brought the case before the CTA *En Banc*.

#### *Ruling of the CTA En Banc*

In its assailed Decision, the CTA *En Banc* modified the CTA Division ruling to reduce the amount of deficiency VAT assessment to P5,912,622.72, inclusive of 50% surcharge, plus applicable interests.<sup>[37]</sup>

The court *a quo* ruled as follows: *first*, when the concerned revenue officers failed to submit their report within 120 days after service of the LOA, they likewise failed to submit the subject LOA for revalidation. However, their failure to do so did not affect the LOA's validity. RMO 38-88 and RMC 40-06 do not treat an LOA as void once it is not revalidated within the said period.<sup>[38]</sup> *Second*, verily, Revenue Audit Memorandum Order No. (RAMO) 01-00 invalidates an LOA that: (a) remains unserved 30 days after its issuance, and (b) is not submitted for revalidation. However, there is proof that AGIC received the LOA dated May 7, 2008 on May 13, 2008 or within 30 days from its issuance.<sup>[39]</sup> *Third*, AGIC did not present its DST returns for taxable year 2006. "Having failed to do so, [AGIC] failed to prove that the subject deficiency DST assessment is already barred by prescription x x x."<sup>[40]</sup> *Fourth*, AGIC failed to establish that it withheld the proper taxes on its expenses. "[T]he consequence of non-withholding of taxes is the disallowance of the related expense as deduction from gross income, resulting in an increase in taxable income and consequently to the income tax due."

[41] *Fifth*, the tax authorities alleged that, for VAT purposes, AGIC failed to report gross receipts for VAT purposes by 38.88%. [42] This under-declaration is *prima facie* evidence of a false return, which allowed the BIR 10 years, instead of the usual three, to assess. Likewise, AGIC failed to dispute the output VAT it allegedly did not remit. [43] Thus, AGIC was properly assessed therefor.

After evaluation, the CTA *En Banc* upheld the assessments for IT, EWT, and DST, amounting to P12,746,567.80, [44] as computed in the CTA Division Decision dated March 13, 2014. In addition, it ordered AGIC to pay deficiency VAT amounting to P5,912,622.72, [45] which brought the total assessment to P18,659,190.52 computed as follows:

Tax Type	Basic Tax	Surcharge Sec. 248(A)(3)	20% Interest Sec. 249	Subtotal
IT	8,294,889.09	2,073,722.27		10,368,611.36
DST*	250,000.00	62,500.00		312,500.00
EWT	470,863.74	117,715.94		588,579.68
DST**	-	1,035,462.53	441,414.23	1,476,876.76
CTA Division***	9,015,752.83	P3,289,400.47	P441,414.23	P12,746,567.80
VAT****	3,941,748.48	1,970,874.24		5,912,622.72
Total	12,957,501.31	P5,260,274.98	P441,414.23	P18,659,190.52

\* on increase of capital stock

\*\* late remittance of DST on insurance policies

\*\*\* CTA Division Decision dated March 13, 2014

\*\*\*\* as modified by the CTA *En Banc*

Hence, AGIC filed the present petition.

AGIC insists that the CTA *En Banc* erred in upholding the assessments for the following reasons: *first*, the *subject LOA was invalid* because it remained "un-revalidated" [46] despite (a) belated service thereof, [47] and (b) the non-submission of a report within the reglementary 120-day period. [48] *Second*, AGIC admits that it was liable for deficiency EWT and withholding tax on compensation (WTC). [49] However, it was not liable for *deficiency IT* because: (a) the assessments amount to double taxation, [50] and (b) the CIR already recognized that the expenses in question were legitimate. [51] Thus, it was estopped from questioning its deductibility for income tax purposes. *Third*, it was not liable for *deficiency DST and VAT* because (a) the CIR's authority to assess these taxes have already prescribed, [52] (b) the assessments amount to double taxation, [53] and (c) AGIC's availment of tax amnesty extinguished its liabilities therefor. [54]

#### *Issues*

In order to ascertain AGIC's liability for deficiency taxes, the Court shall resolve the following issues:

(1) Was the subject LOA invalid?;

(2) Had the CIR's power to assess AGIC for deficiency VAT and DST already prescribed by the time it issued the FLD dated April 6, 2010?;

(3) Did the deficiency IT and VAT assessments amount to double taxation?; and

(4) Did AGIC's application for tax amnesty under RA 9480 extinguish its liabilities for the deficiency DST and VAT?

Notably, only the deficiency IT, VAT, and DST assessments remain at issue, taking into account AGIC's admission of its liability for deficiency EWT.<sup>[55]</sup>

#### *The Court's Ruling*

The petition has no merit.

It is settled that tax assessments are *prima facie* correct. At the same time, tax authorities enjoy the presumption of regularity in the performance of their duties in relation to tax investigation and assessment.<sup>[56]</sup> Thus, in denying deficiency tax liability, it is incumbent upon a taxpayer to show clearly that the assessment is void or erroneous, or that the tax authorities had been remiss in issuing the same.<sup>[57]</sup>

After a judicious review of the case records, the Court finds that AGIC failed to discharge this burden.

#### I

##### Validity of LOA No. 00021964

##### *The power to assess and the power to audit a taxpayer.*

The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him.<sup>[58]</sup> Verily, the law vests the BIR with general powers in relation to the "assessment and collection of all national internal revenue taxes."<sup>[59]</sup> However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only "the CIR or his duly authorized representative may *authorize the examination of any taxpayer*"<sup>[60]</sup> and issue an assessment against him.<sup>[61]</sup>

That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which "empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period."<sup>[62]</sup>

In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.<sup>[63]</sup> In the present case, AGIC uses this principle to invalidate the deficiency tax assessments in the present case.

Petitioner AGIC insists that the subject LOA is defective because it was not revalidated: (a) upon the expiration of the 30-day period of service and (b) upon the expiration of the 120-day period, as required by RMO No. 38-88 and RMC No. 40-06.

In other words, AGIC relies on defects allegedly arising from non-compliance with the LOA revalidation requirements. At this juncture, We must distinguish between the requirement of revalidating an LOA that is *unserved*, as opposed to revalidating it *after service*, due to the lapse of the reglementary period mentioned in RMO No. 38-88.

##### *Revalidating an unserved LOA.*