

FIRST DIVISION

[G.R. No. 201530, April 19, 2017]

**ASIATRUST DEVELOPMENT BANK, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

[G.R. Nos. 201680-81]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
ASIATRUST DEVELOPMENT BANK, INC., RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

An application for tax abatement is deemed approved only upon the issuance of a termination letter by the Bureau of Internal Revenue (BIR).

These consolidated Petitions for *Review on Certiorari*^[1] under Rule 45 of the Rules of Court assail the November 16, 2011 Decision^[2] and the April 16, 2012 Resolution^[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 614 and 677.

Factual Antecedents

On separate dates in February 2000, Asiatrust Development Bank, Inc. (Asiatrust) received from the Commissioner of Internal Revenue (CIR) three Formal Letters of Demand (FLD) with Assessment Notices^[4] for deficiency internal revenue taxes in the amounts of P131,909,161.85, P83,012,265.78, and P144,012,918.42 for fiscal years ending June 30, 1996, 1997, and 1998, respectively.^[5]

On March 17, 2000, Asiatrust timely protested the assessment notices.^[6]

Due to the inaction of the CIR on the protest, Asiatrust filed before the CTA a Petition for Review^[7] docketed as CTA Case No. 6209 praying for the cancellation of the tax assessments for deficiency income tax, documentary stamp tax (DST) - regular, DST - industry issue, final withholding tax, expanded withholding tax, and fringe benefits tax issued against it by the CIR.

On December 28, 2001, the CIR issued against Asiatrust new Assessment Notices for deficiency taxes in the amounts of P112,816,258.73, P53,314,512.72, and P133,013,458.73, covering the fiscal years ending June 30, 1996, 1997, and 1998, respectively.^[8]

On the same day, Asiatrust partially paid said deficiency tax assessments thus leaving the following balances:

Fiscal Year**1996**

Documentary Stamp Tax	P 13,497,227.80
Final Withholding Tax - Trust	8,770,265.07
Documentary Stamp Tax - Industry Issue	<u>88,584,931.39</u>
TOTAL	<u>P 110,852,424.26</u>

Fiscal Year**1997**

Documentary Stamp Tax	P 10,156,408.63
Documentary Stamp Tax - Industry Issue	<u>39,163,539.57</u>
TOTAL	<u>P 49,319,948.20</u>

Fiscal year 1998

Documentary Stamp Tax	P 20,425,770.07
Final Withholding Tax - Trust	10,183,367.80
Documentary Stamp Tax - Industry Issue	<u>93,430,878.54</u>
TOTAL	<u>P 124,040,016.41</u> ^[9]

On April 19, 2005, the CIR approved Asiatruster's Offer of Compromise of DST - regular assessments for the fiscal years ending June 30, 1996, 1997, and 1998.^[10]

During the trial, Asiatruster manifested that it availed of the Tax Abatement Program for its deficiency final withholding tax - trust assessments for fiscal years ending June 30, 1996 and 1998; and that on June 29, 2007, it paid the basic taxes in the amounts of P4,187,683.27 and P6,097,825.03 for the said fiscal years, respectively.

^[11] Asiatruster also claimed that on March 6, 2008, it availed of the provisions of Republic Act (RA) No. 9480, otherwise known as the Tax Amnesty Law of 2007.^[12]

Ruling of the Court of Tax Appeals Division

On January 20, 2009, the CTA Division rendered a Decision^[13] partially granting the Petition. The CTA Division declared void the tax assessments for fiscal year ending June 30, 1996 for having been issued beyond the three-year prescriptive period.^[14] However, due to the failure of Asiatruster to present documentary and testimonial evidence to prove its availment of the Tax Abatement Program and the Tax Amnesty Law, the CTA Division affirmed the deficiency DST - Special Savings Account (SSA) assessments for the fiscal years ending June 30, 1997 and 1998 and the deficiency DST - Interbank Call Loans (IBCL) and deficiency final withholding tax - trust

assessments for fiscal year ending June 30, 1998, in the total amount of P142,777,785.91.^[15] Thus:

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, Assessment Notices issued against [Asiitrust] for deficiency documentary stamp, final withholding, expanded withholding, and fringe benefits tax assessments for the fiscal year ended June 30, 1996 are VOID for being [issued] beyond the prescriptive period allowed by law.

The Assessment Notices issued by [CIR] against [Asiitrust] for deficiency income, documentary stamp - regular, documentary stamp - trust, and fringe benefits tax assessments for the fiscal years ended June 30, 1997 & 1998 are hereby ordered CANCELLED and WITHDRAWN. Moreover, [Asiitrust's] deficiency documentary stamp tax IBCL assessment for the fiscal year ended June 30, 1997 is ordered CANCELLED and WITHDRAWN.

However, [Asiitrust's] deficiency documentary stamp tax - Special Savings Account assessments for the fiscal years ended June 30, 1997 & 1998, and deficiency documentary stamp tax - IBCL and deficiency final withholding tax - trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of P142,777,785.91 are hereby AFFIRMED. The said amount is broken down as follows:

Fiscal Year	
1997	
Documentary	
Stamp Tax -	P 39,163,539.57
Industry Issue	
Fiscal Year	
1998	
Final	
Withholding Tax	10,183,367.80
- Trust	
Documentary	
Stamp Tax -	<u>93,430,878.54</u>
Industry Issue	
Total	P
Deficiency	<u>142,777,785.91</u>
Tax	

SO ORDERED.^[16]

Asiitrust filed a Motion for Reconsideration^[17] attaching photocopies of its Application for Abatement Program, BIR Payment Form, BIR Tax Payment Deposit Slip, Improved Voluntary Assessment Program Application Forms, Tax Amnesty Return, Tax Amnesty Payment Form, Notice of Availment of Tax Amnesty and Statement of Assets and Liabilities and Networth (SALN) as of June 30, 2005.

The CIR, on the other hand, filed a Motion for Partial Reconsideration of the assessments assailing the CTA Division's finding of prescription and cancellation of assessment notices for deficiency income, DST - regular, DST trust, and fringe

benefit tax for fiscal years ending June 30, 1997 and 1998.^[18]

On July 6, 2009, the CTA Division issued a Resolution^[19] denying the motion of the CIR while partially granting the motion of Asiatrust. The CTA Division refused to consider Asiatrust's availment of the Tax Abatement Program due to its failure to submit a termination letter from the BIR.^[20] However, as to Asiatrust's availment of the Tax Amnesty Law, the CTA Division resolved to set the case for hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration.^[21]

Meanwhile, the CIR appealed the January 20, 2009 Decision and the July 6, 2009 Resolution before the CTA *En Banc* via a Petition for Review^[22] docketed as CTA EB No. 508. The CTA *En Banc* however dismissed the Petition for being premature considering that the proceedings before the CTA Division was still pending.^[23]

On December 7, 2009, Asiatrust filed a Manifestation^[24] informing the CTA Division that the BIR issued a Certification^[25] dated August 20, 2009 certifying that Asiatrust paid the amounts of P4,187,683.27 and P6,097,825.03 at the Development Bank of the Philippines in connection with the One-Time Administrative Abatement under Revenue Regulations (RR) No. 15-2006.^[26]

On March 16, 2010, the CTA Division rendered an Amended Decision^[27] finding that Asiatrust is entitled to the immunities and privileges granted in the Tax Amnesty Law.^[28] However, it reiterated its ruling that in the absence of a termination letter from the BIR, it cannot consider Asiatrust's availment of the Tax Abatement Program.^[29] Thus, the CTA Division disposed of the case in this wise:

WHEREFORE, premises considered, [Asiatrust's] *Motion for Reconsideration* is hereby PARTIALLY GRANTED and this Court's *Decision* dated January 20, 2009 is hereby MODIFIED. Accordingly, the above captioned case as regards [Asiatrust's] liability for deficiency documentary stamp tax is CLOSED and TERMINATED, subject to the provisions of R.A. No. 9480. However, [Asiatrust's] liability for deficiency final withholding tax assessment for fiscal year ended June 30, 1998, subject of this litigation, in the amount of P10,183,367.80, is hereby REAFFIRMED.

SO ORDERED.^[30]

Still unsatisfied, Asiatrust moved for partial reconsideration^[31] insisting that the Certification issued by the BIR is sufficient proof of its availment of the Tax Abatement Program considering that the CIR, despite Asiatrust's request, has not yet issued a termination letter. Asiatrust attached to the motion photocopies of its letter^[32] dated March 17, 2009. requesting the BIR to issue a termination letter, Payment Form^[33] BIR Tax Payment Deposit Slips,^[34] Improved Voluntary Assessment Program (IVAP) Payment Form,^[35] and a letter^[36] dated October 17, 2007 issued by Revenue District Officer (RDO) Ms. Clavelina S. Nacar.

On July 28, 2010, the CTA Division issued a Resolution^[37] denying Asiatrust's

motion. The CTA Division maintained that it cannot consider Asiatrust's availment of the Tax Abatement Program in the absence of a termination letter from the BIR.^[38] As to the Certification issued by BIR, the CTA Division noted that it pertains to fiscal period July 1, 1995 to June 30, 1996.^[39]

Both parties appealed to CTA *En Banc*.

Ruling of the Court of Tax Appeals En Banc

On November 16, 2011, the CTA *En Banc* denied both appeals. It denied the CIR's appeal for failure to file a prior motion for reconsideration of the Amended Decision,^[40] while it denied Asiatrust's appeal for lack of merit.^[41] The CTA *En Banc* sustained the ruling of the CTA Division that in the absence of a termination letter, it cannot be established that Asiatrust validly availed of the Tax Abatement Program.^[42] As to the Certification issued by the BIR, the CTA *En Banc* noted that it only covers the fiscal year ending June 30, 1996.^[43] As to the letter issued by RDO Nacar and the various BIR Tax Payment Deposit Slips, the CTA *En Banc* pointed out that these have no probative value because these were not authenticated nor formally offered in evidence and are mere photocopies of the purported documents.^[44]

On April 16, 2012, the CTA *En Banc* denied the motions for partial reconsideration of the CIR and Asiatrust.^[45]

Issues

Hence, the instant consolidated Petitions under Rule 45 of the Rules of Court, with the following issues:

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I.

WHETHER X X X THE [CTA] *EN BANC* ERRED IN FINDING THAT [ASIATRUST] IS LIABLE FOR DEFICIENCY FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998.

II.

WHETIIER X X X THE ORDER OF THE [CTA] *EN BANC* FOR PETITIONER TO PAY AGAIN THE FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998 WOULD AMOUNT TO DOUBLE TAXATION.

III.

WHETHER X X X THE [CTA] *EN BANC* ERRED IN RESOLVING THE ISSUE OF ALLEGED DEFICIENCY FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998 BASED ON MERE TECHNICALITIES.^[46]

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