

SECOND DIVISION

[G.R. No. 175410, November 12, 2014]

**SMI-ED PHILIPPINES TECHNOLOGY, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

DECISION

LEONEN, J.:

In an action for the refund of taxes allegedly erroneously paid, the Court of Tax Appeals may determine whether there are taxes that should have been paid in lieu of the taxes paid. Determining the proper category of tax that should have been paid is not an assessment. It is incidental to determining whether there should be a refund.

A Philippine Economic Zone Authority (PEZA)-registered corporation that has never commenced operations may not avail the tax incentives and preferential rates given to PEZA-registered enterprises. Such corporation is subject to ordinary tax rates under the National Internal Revenue Code of 1997.

This is a petition for review^[1] on certiorari of the November 3, 2006 Court of Tax Appeals En Banc decision.^[2] It affirmed the Court of Tax Appeals Second Division's decision^[3] and resolution^[4] denying petitioner SMI-Ed Philippines Technology, Inc.'s (SMI-Ed Philippines) claim for tax refund.^[5]

SMI-Ed Philippines is a PEZA-registered corporation authorized "to engage in the business of manufacturing ultra high-density microprocessor unit package."^[6]

After its registration on June 29, 1998, SMI-Ed Philippines constructed buildings and purchased machineries and equipment.^[7] As of December 31, 1999, the total cost of the properties amounted to P3,150,925,917.00.^[8]

SMI-Ed Philippines "failed to commence operations."^[9] Its factory was temporarily closed, effective October 15, 1999. On August 1, 2000, it sold its buildings and some of its installed machineries and equipment to Ividen Philippines, Inc., another PEZA-registered enterprise, for ₱2,100,000,000.00 (P893,550,000.00). SMI-Ed Philippines was dissolved on November 30, 2000.^[10]

In its quarterly income tax return for year 2000, SMI-Ed Philippines subjected the entire gross sales of its properties to 5% final tax on PEZA-registered corporations. SMI-Ed Philippines paid taxes amounting to P44,677,500.00.^[11]

On February 2, 2001, after requesting the cancellation of its PEZA registration and amending its articles of incorporation to shorten its corporate term, SMI-Ed

Philippines filed an administrative claim for the refund of P44,677,500.00 with the Bureau of Internal Revenue (BIR). SMI-Ed Philippines alleged that the amount was erroneously paid. It also indicated the refundable amount in its final income tax return filed on March 1, 2001. It also alleged that it incurred a net loss of P2,233,464,538.00.^[12]

The BIR did not act on SMI-Ed Philippines' claim, which prompted the latter to file a petition for review before the Court of Tax Appeals on September 9, 2002.^[13]

The Court of Tax Appeals Second Division denied SMI-Ed Philippines' claim for refund in the decision dated December 29, 2004.^[14]

The Court of Tax Appeals Second Division found that SMI-Ed Philippines' administrative claim for refund and the petition for review with the Court of Tax Appeals were filed within the two-year prescriptive period.^[15] However, fiscal incentives given to PEZA-registered enterprises may be availed only by PEZA-registered enterprises that had already commenced operations.^[16] Since SMI-Ed Philippines had not commenced operations, it was not entitled to the incentives of either the income tax holiday or the 5% preferential tax rate.^[17] Payment of the 5% preferential tax amounting to P44,677,500.00 was erroneous.^[18]

After finding that SMI-Ed Philippines sold properties that were capital assets under Section 39(A)(1) of the National Internal Revenue Code of 1997, the Court of Tax Appeals Second Division subjected the sale of SMI-Ed Philippines' assets to 6% capital gains tax under Section 27(D)(5) of the same Code and Section 2 of Revenue Regulations No. 8-98.^[19] It was found liable for capital gains tax amounting to P53,613,000.00.^[20] Therefore, SMI-Ed Philippines must still pay the balance of P8,935,500.00 as deficiency tax,^[21] "which respondent should perhaps look into."^[22] The dispositive portion of the Court of Tax Appeals Second Division's decision reads:

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

SO ORDERED.^[23]

The Court of Tax Appeals denied SMI-Ed Philippines' motion for reconsideration in its June 15, 2005 resolution.^[24]

On July 17, 2005, SMI-Ed Philippines filed a petition for review before the Court of Tax Appeals En Banc.^[25] It argued that the Court of Tax Appeals Second Division erroneously assessed the 6% capital gains tax on the sale of SMI-Ed Philippines' equipment, machineries, and buildings.^[26] It also argued that the Court of Tax Appeals Second Division cannot make an assessment at the first instance.^[27] Even if the Court of Tax Appeals Second Division has such power, the period to make an assessment had already prescribed.^[28]

In the decision promulgated on November 3, 2006, the Court of Tax Appeals En Banc dismissed SMI-Ed Philippines' petition and affirmed the Court of Tax Appeals Second Division's decision and resolution.^[29] The dispositive portion of the Court of Tax Appeals En Banc's decision reads:

WHEREFORE, finding no reversible error to reverse the assailed Decision promulgated on December 29, 2004 and the Resolution dated June 15, 2005, the instant petition for review is hereby DISMISSED. Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.^[30]

SMI-Ed Philippines filed a petition for review before this court on December 27, 2006,^[31] praying for the grant of its claim for refund and the reversal of the Court of Tax Appeals En Banc's decision.^[32]

SMI-Ed Philippines assigned the following errors:

- A. The honorable CTA *En Banc* grievously erred and acted beyond its jurisdiction when it assessed for deficiency tax in the first instance.
- B. Even assuming that the honorable CTA *En Banc* has the right to make an assessment against the petitioner-appellant, it grievously erred in finding that the machineries and equipment sold by the petitioner-appellant is subject to the six percent (6%) capital gains tax under Section 27(D)(5) of the Tax Code.^[33]

Petitioner argued that the Court of Tax Appeals has no jurisdiction to make an assessment since its jurisdiction, with respect to the decisions of respondent, is merely appellate.^[34] Moreover, the power to make assessment had already prescribed under Section 203 of the National Internal Revenue Code of 1997 since the return for the erroneous payment was filed on September 13, 2000. This is more than three (3) years from the last day prescribed by law for the filing of the return.^[35]

Petitioner also argued that the Court of Tax Appeals En Banc erroneously subjected petitioner's machineries to 6% capital gains tax.^[36] Section 27(D)(5) of the National Internal Revenue Code of 1997 is clear that the 6% capital gains tax on domestic corporations applies only on the sale of lands and buildings and not to machineries and equipment.^[37] Since ¥1,700,000,000.00 of the ¥2,100,000,000.00 constituted the consideration for the sale of petitioner's machineries, only ¥400,000,000.00 or P170,200,000.00 should be subjected to the 6% capital gains tax.^[38] Petitioner should be liable only for P10,212,000.00.^[39] It should be entitled to a refund of P34,464,500.00 after deducting P10,212,000.00 from the erroneously paid final tax of P44,677,500.00.^[40]

In its comment, respondent argued that the Court of Tax Appeals' determination of petitioner's liability for capital gains tax was not an assessment. Such determination

was necessary to settle the question regarding the tax consequence of the sale of the properties.^[41] This is clearly within the Court of Tax Appeals' jurisdiction under Section 7 of Republic Act No. 9282.^[42] Respondent also argued that "petitioner failed to justify its claim for refund."^[43]

The petition is meritorious.

I

Jurisdiction of the Court of Tax Appeals

The term "assessment" refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997.

The power and duty to assess national internal revenue taxes are lodged with the BIR.^[44] Section 2 of the National Internal Revenue Code of 1997 provides:

SEC. 2. Powers and Duties of the Bureau of Internal Revenue. - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and *its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges*, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. (Emphasis supplied)

The BIR is not mandated to make an assessment relative to every return filed with it. Tax returns filed with the BIR enjoy the presumption that these are in accordance with the law.^[45] Tax returns are also presumed correct since these are filed under the penalty of perjury.^[46] Generally, however, the BIR assesses taxes when it appears, after a return had been filed, that the taxes paid were incorrect,^[47] false,^[48] or fraudulent.^[49] The BIR also assesses taxes when taxes are due but no return is filed.^[50] Thus:

SEC. 6. Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement.-

(A) Examination of Returns and Determination of Tax Due. - *After a return has been filed* as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; *That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.* The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized

representative.

.....

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.

(a) In the case of a *false or fraudulent return with intent to evade tax or of failure to file a return*, the tax may be assessed, or a preceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Emphasis supplied)

The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.

Section 7(a)(1) and Section 7(a)(2) of Republic Act No. 1125,^[51] as amended by Republic Act No. 9282,^[52] provide that the Court of Tax Appeals reviews decisions and inactions of the Commissioner of Internal Revenue in disputed assessments and claims for tax refunds. Thus:

SEC. 7. *Jurisdiction.* - The CTA shall exercise:

- a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
 1. *Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;*
 2. *Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]* (Emphasis supplied)

Based on these provisions, the following must be present for the Court of Tax Appeals to have jurisdiction over a case involving the BIR's decisions or inactions:

- a) A case involving any of the following: