REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

JTKC LAND, INC.,
Respondent.

CTA EB NO. 2800
(CTA Case No. 10059)

x- x

JTKC LAND, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2808
(CTA Case No. 10059)

Present:

DEL ROSARIO, *PJ,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES *JJ.*

Promulgated:

AUG 04 2025 2:22pm

x- x

DECISION

FERRER-FLORES, J.:

Before the Court *En Banc* are consolidated **Petitions for Review** filed by the following:

1. the **Commissioner of Internal Revenue (CIR)** filed through registered mail on October 16, 2023,[1] docketed as CTA EB No. 2800, with *Comment/Opposition (to the Petition for Review dated 11 October 2023)* filed by JTKC Land, Inc. on February 13, 2024;[2] and,

2. **JTKC Land Inc. (JTKC)** filed on October 20, 2023,[3] docketed as CTA EB No. 2808.

The CIR's *Petition* assails both the Decision dated April 26, 2023 (assailed Decision)[4] and the Resolution dated September 4, 2023 (assailed Resolution)[5] rendered by the Special Second Division of this Court (Court in Division) in CTA Case No. 10059 entitled *"JTKC Land Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent."* On the other hand, JTKC's *Petition* is a partial appeal against the assailed Resolution rendered by the Court in Division.

The dispositive portions of the assailed Decision and assailed Resolution respectively read as follows:

Assailed Decision:

> **WHEREFORE**, the foregoing considered, the Petition for Review filed by petitioner JTKC Land, Inc. on 05 April 2019 is hereby **GRANTED**. Accordingly, the Final Assessment Notice (FAN) dated 23 September 2016 and the Final Decision on Disputed Assessment (FDDA) dated 27 February 2019 issued by respondent Commissioner of Internal Revenue are **CANCELLED** and **SET ASIDE**.
>
> Respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising from the said FAN and FDDA.
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, the foregoing premises considered, the "Motion for Reconsideration (to the Decision dated April 26, 2023)" filed by respondent Commissioner of Internal Revenue on 29 May 2023 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

---

[1] *Rollo* (EB No. 2800), pp. 18 to 41.
[2] *Id.* at 128 to 155.
[3] *Rollo* (EB No. 2808), pp. 1 to 43.
[4] Penned by Associate Justice Jean Marie A. Bacorro-Villena with the concurrence of Associate Justice Lanee S. Cui-David; *Rollo* (EB No. 2800) at pp. 45 to 90.
[5] *Rollo* (EB No. 2800) at pp. 93 to 102.

THE PARTIES

The CIR is a government agency tasked with the enforcement of revenue laws and the collection of taxes and duties. He is sued in his nominal and official capacity as the CIR, having been duly appointed to perform the duties of his office, including, among others, the power to decide disputed assessments.[6] The CIR is represented by the Legal Division of Revenue Region No. 8A-Makati with office address at 36th Floor, Export Bank Plaza Building, Sen. Gil Puyat Avenue corner Chino Roces Ave., Makati City.[7]

JTKC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at G/F Amorsolo Mansion, 130 Amorsolo St., San Lorenzo Village, Makati City.[8]

THE ANTECEDENT FACTS

The pertinent factual antecedents as narrated in the assailed Decision of the Court in Division are as follows:[9]

> On 28 August 2008, [the CIR] issued BIR Ruling DA-(JV-023) 178-08 (hereinafter referred to as Ruling 178-08) as a response to [JTKC]'s request for a ruling on the various tax consequences arising from the development and construction of a condominium project. The ruling is replicated below:
>
> x x x
>
> In reply, please be informed as follows:
>
> 1. Pursuant to Section 22 (B) of the Tax Code of 1997, the term corporation includes partnership, no matter how created or organized, joint stock companies, joint accounts (*cuentas en participacion*), associations or insurance companies, but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government.
>
> P.D. No. 929 amended the definition of the taxable corporation so as not to include joint venture formed for the purpose of undertaking construction projects. The reasons for such amendment are: (1) Local contractors contribute substantially to the development program of the country; (2) Local contractors are at a disadvantage in competitive bidding with foreign contractors

---

6 JSFI dated September 27, 2019; Division Docket, p. 587.
7 *The Parties, Petition for Review, Rollo* (EB No. 2800), p. 20.
8 *The Parties, Petition for Review, Rollo* (EB No. 2808), p. 3.
9 *Facts of the Case*, Decision dated April 26, 2023, *Rollo* (EB No. 2800), pp. 45 to 91; citations omitted.

in view of limited capital and financial resources; (3) In order to be able to compete with big foreign contractors, it may be necessary for them to enter into joint ventures to pool their limited resources in undertaking big construction projects; (4) To assist them in achieving competitiveness with foreign contractors, the joint ventures formed by them should not be considered an additional income tax lien.

Considering the provision of Sec. 22 (B) which clearly manifests the intention of the legislature to exclude from the definition of taxable corporation joint venture/s (or consortium) formed for the purpose of undertaking construction projects, this Office hereby confirms your opinion that the joint venture by and among Aldex, JTKC and the Investors is not a corporation subject to corporate income tax. (BIR Ruling No. DA-506-2005 dated December 16, 2005) However, for VAT purposes, the joint venture (or consortium) is by itself a taxable entity.

2. The conveyance of the parcel of land from Aldex to the condominium corporation as its capital contribution is not subject to income tax/creditable withholding tax and value-added tax (VAT).

The conveyance of the parcel of land from Aldex to a condominium corporation as its capital contribution to the Project is not a taxable event that will give rise to the payment of regular income tax/creditable withholding tax. The conveyance of the property is merely a capital contribution to the joint venture and therefore, not a taxable event.

The conveyance is likewise not subject to VAT because VAT is imposed on any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, or imports goods as stated in Section 105 of the Tax Code of 1997. The contribution by Aldex of its parcels of land is by way of capital contribution and not by way of sale, barter or exchange of goods or property nor rendering of service or importation of goods and as such, the transaction is not subject to VAT. (BIR Ruling No. DA-240-2001 dated November 16, 2001)

3. The assignment of rights under the Project Investment Agreement by an Investor is not subject to capital gains tax, creditable withholding tax, VAT and documentary stamp tax under Section 196 of the 1997 Tax Code, as amended. The transaction is not deemed a sale or assignment of real property. Rather, the transaction is a mere assignment of rights whereby the assignee merely steps into the shoes of the assignor without acquiring a better right than what the assignor had in the property to which the rights assigned pertains. A deed of assignment of rights in real property is not a deed of sale of real property itself but only the rights pertaining to such property. (BIR Ruling No. DA-506-2005 dated December 16, 2005)

4. The consequent allocation and delivery of serviced apartments to Aldex and residential condominium units to JTKC and the Investors, and their appurtenant parking spaces, in consideration of their respective contributions, as stipulated in the Joint Venture Agreement and the Project Investment Agreements, respectively, is likewise not a taxable event. The delivery of the properties is not subject to income tax or any withholding tax because the allocation is a mere return of capital that each has contributed. (BIR Ruling No. DA-455-2007 dated August 17, 2007)

The transaction is neither in the nature of a sale, barter, exchange or lease of goods and properties, or rendering of services, or importation of goods as defined under Section 105 of the Tax Code of 1997 and therefore, not subject to VAT under Sections 106 and 108 of the same Tax Code.

The Partition Agreement allocating to Aldex, JTKC and the Investors their respective units in the Project in consideration of their respective contributions is not subject to the documentary stamp tax imposed under Section 196 of the Tax Code of 1997 because the allocation is made without monetary consideration and is not in connection with a sale. The allocation is made merely to segregate the saleable area among the parties as the return of the capital which each has contributed. However, the acknowledgment to said Partition Agreement is subject to the documentary stamp tax pursuant to Section 188 of the Tax Code of 1997, as amended.

However, upon the subsequent disposition by Aldex and JTKC of the areas allocated to them, being corporations engaged in real estate development, the gain that may be realized by them from such sale will be subject to the creditable withholding tax, under Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-2001, and VAT. The sale of the unit or parking space by the Investor (either an individual or corporation not engaged in real estate development) shall be subject to capital gains tax under Sections 24 (D) (1) or 27 (D) (5) based on the gross selling price or fair market value of the properties, whichever is higher. Consequently, all such sales shall be subject to the documentary stamp tax imposed under Section 196 of the Tax Code of 1997, based on the gross selling price or fair market value of the properties, whichever is higher.

5. Conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable. Thus, the transaction transferring to the condominium corporation the management of the common areas of the Project will not be subject to creditable withholding tax pursuant to Section 57 (B) in relation to Section 27 of the Tax Code of 1997. Neither is it subject to the documentary stamp tax imposed under Section 196 of the same Code. (BIR Ruling No. DA-506-2005 dated December 16, 2005)

This will authorize the Revenue District Officer (RDO) of the revenue district where the properties are located to issue the

> corresponding Certificate Authorizing Registration (CAR) and Tax Clearance Certificate (TCL) involving the transfer of the titles to the parties based on their respective allocations pursuant to the Project Partition, without need of the presentation of proof of payment of the creditable withholding tax, VAT and the corresponding documentary stamp tax. Provided, that the parties to the joint venture shall cause the Register of Deeds to annotate on the TCT that a development project is being undertaken on the land and is the object of the joint venture agreement between the parties, and that the joint venture is held to be a tax-exempt entity pursuant to this Ruling issued by this Office. Provided further, that parties to the joint venture shall inform the Bureau of Internal Revenue, through the Law Division, of the fulfillment of the requirement on the distribution of the units/parking spaces in accordance with the allocation ratio in the joint venture agreement. For this purpose, a compliance report of the project indicating the number of units/parking spaces, the respective CCTs and the party in whose name the corresponding title was issued. (BIR Ruling No. DA UV-007) 019-2008 dated July 9, 2008)

x x x

Based on the foregoing ruling, ALDEX Realty Corporation (ALDEX) and [JTKC] entered into a Joint Venture Agreement (JVA) for the construction of the condominium project (later known as Discovery Primea). [JTKC] then executed several Project Investment Agreements (PIAs) with different "investors" in exchange for their capital contributions that shall be invested and infused in the construction of the condominium project. The construction of Discovery Primea started in 2009.

On 09 February 2015, [JTKC] received a Letter of Authority (LOA) No. LOA-050-2015-00000059 (eLA201100080567) for the assessment of its Capital Gains Tax (CGT) for the period of 01 January 2012 to 31 December 2012 or TY 2012. The LOA was issued by Regional Director Jonas DP Amora (RD Amora) of Revenue Region No. 008-Makati City. On 03 October 2016, [JTKC] received the following notices:

a. Formal Assessment Notice (FAN) Part I, dated 23 September 2016, with the attached Details of Discrepancies and Assessment Notice No. WO-ELA80567-12-16-885 for the alleged WT liability in the amount of ₱15,585,232.79 for TY 2012; and,

b. FAN Part II, dated 23 September 2016, with Assessment Notice No. MC-ELA80567-12-16-885 for the compromise penalty of ₱125,000.00 for TY 2012.

On 24 October 2016, [JTKC] then filed its protest against the assessment. On 06 March 2019, [JTKC] received the FDDA with the attached Details of Discrepancies dated 27 February 2019, finding petitioner liable for the alleged WT deficiency of ₱20,424,868.48 (inclusive of surcharge and interest) and a compromise penalty of ₱125,000.00. In the Details of Discrepancies, [CIR] explained the reason for the assessment, to wit:

> ...
>
> Verification disclosed that the Units described hereunder, which [have] been sold under Project Investment Agreement (PIA) have been partially paid but no withholding tax and withholding tax return [were] remitted/filed to the BIR[;] such being the case, [they are] hereby assessed pursuant to the provisions of Revenue Regulations (RR) 2-98, as amended, in relation to Section 4 of RR 17-2003.
>
> Since you failed to prove during the conduct of reinvestigation, the exemption from tax on distribution or delivery of the condominium units to the investors pursuant to Project Investment Agreements nor adduced evidence to support the same, the reiteration of the herein case is warranted.
>
> In addition, your contention anchored [on] BIR Ruling No. DA-455-2007 is bereft of merit considering that the said ruling has been voided by the subsequent issuance of RMC No. 055-2010. Furthermore, the said ruling constitute violation of PD 957.
>
> ...

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

As detailed by the Court in Division in the assailed Decision, the proceedings before the Court are as follows:

> Aggrieved, on 05 April 2019, [JTKC] filed the present Petition for Review with Motion for Suspension of Collection of Taxes. In an Order dated 29 April 2019, the Court granted the motion subject to the posting of bond. After [JTKC] posted a Supersedeas Bond in the amount of ₱20,549,868.48, the Court ordered the [CIR] to refrain from collecting the alleged deficiency taxes against [JTKC].
>
> On 03 June 2019, [the CIR] filed the Answer to the petition essentially contending that the FAN and the FDDA contained factual and legal bases for the deficiency tax assessments against [JTKC].
>
> On 14 June 2019, the Court issued a Notice of Pre-Trial Conference. On 28 June 2019, [JTKC] and [the CIR] filed their respective Pre-Trial Briefs (PTBs). Later, the case was referred to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for a possible amicable settlement. However, the parties decided not to have their case mediated.
>
> During the pre-trial conference conducted on 29 August 2019, the Court ordered the parties to submit their Joint Stipulation of Facts and Issues (JSFI) within fifteen (15) days from the hearing date. On 13 September 2019, [JTKC] requested for an additional 15 days or until 28 September 2019 to file the JSFI, which request the Court granted. On 27 September 2019, the parties filed their JSFI.
>
> [JTKC] also filed a motion to commission Clark Joseph C. Babor (Babor) as an Independent Certified Public Accountant (ICPA). After due hearing, the Court commissioned Babor as the ICPA and directed him to file

his report. Within the allowed extended period, the ICPA report was filed on 12 November 2019.

Thereafter, the Court issued the Pre-Trial Order adopting the parties' JSFI and setting the hearing dates. When trial ensued, [JTKC] presented two (2) witnesses, namely: (1) Romualdo Macasaet (Macasaet), its Managing Director and former Vice-President for Finance; and, (2) Babor, the court commissioned ICPA.

In his Judicial Affidavit, Macasaet testified that: (1) upon [JTKC]'s request, the BIR issued Ruling 178-08 on 28 August 2008; (2) Ruling 178-08 confirmed that the distribution of condominium units and parking lots (of Discovery Primea) to Aldex and to various investors are not subject to income tax (IT), CGT, creditable withholding tax (CWT), value-added tax (VAT) and documentary stamp tax (DST); (3) the BIR did not revoke the said ruling; (4) [JTKC] relied heavily on the exemption granted by Ruling 178-08; and, (5) [JTKC] will suffer prejudice or damage if the collection of the alleged deficiency taxes will proceed.

In his cross-examination, Macasaet stated that taxes are withheld only when the transactions are sales and not when they are investments (as in this case). Macasaet also reiterated that [JTKC] relied on the exemption granted by Ruling 178-08. No re-direct and re-cross examinations were conducted.

For his part, Babor, by way of Judicial Affidavit, testified that: (1) he reviewed the JVA and the PIAs, together with the non-VAT Official Receipts (ORs) and WT returns, as part of the audit procedures performed; (2) based on the documents he reviewed, he noted that the "investor's" participation in the condominium project was purely investment and funding hence, there was no sharing of profits among them; (3) based on the JVA, ALDEX has been assigned with 142 units of service apartment on 12 floors and 381 parking spaces while [JTKC] was to be entitled to 90 residential units on 47 floors and 274 parking spaces, representing a return of their invested capital. With the arrangement, no sale of units transpired between the two; (4) pursuant to the Deed of Partition and Conveyance, a condominium certificate title shall be issued in the investor's name and the corresponding transfer taxes and fees shall be for the investor's own personal account; (5) the amounts stated in the non-VAT ORs only pertained to the investment payments and no WT and VAT were passed on; (6) based on [JTKC]'s Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Tax Payments Exempt from Withholding Tax (BIR Form No. 1604-E) and the "Alphalist of Payees subject to Expanded Withholding Tax," [JTKC] did not withhold any taxes from the investors; and, (7) he reviewed and studied Ruling 178-08 in relation to the transactions subject of this case.

In his cross-examination, Babor explained that, in his ICPA Report, the PIA's (executed between the "investors") carry identical provisions. According to Babor, the details of columns 1-4 in "Table 2-Investors" were lifted from the JVA and PIAs, while the amounts reflected as receipts from "investors" in column 5 are the summary of the non-VAT ORs obtained from [JTKC]. Babor clarified further that although the assessment pertains to TY 2012, he extended the validation of the non-VAT ORs from 2009 until 2015. Hence, the non-VAT ORs pertaining to TY 2012 are complete.

During his re-direct examination, Babor stated that he has yet to see the BIR Assessment Division reversing a BIR ruling. No re-cross examination was conducted.

Without other witnesses to present, the Court directed [JTKC] to file a Formal Offer of Evidence (FOE) within five (5) days from the hearing date. [the CIR] was also granted an equal period from its receipt of the FOE to file a comment/opposition thereto. After [JTKC] filed its FOE on 10 February 2020, [the CIR] belatedly filed his/her Comment thereto. [JTKC] filed a Reply to the Comment and [the CIR] filed a Rejoinder to the Reply. [JTKC] then still filed its Surrejoinder Ad Cautelam. Further, [JTKC] filed a "Motion for Remarking of Evidence" to which [the CIR] filed a Comment thereto. [JTKC] thereafter filed a "Second Motion for Remarking."

In a Resolution dated 06 October 2020, the Court considered the first motion for remarking as withdrawn and granted the second motion for remarking, and set a new commissioner's hearing. After the said hearing, [JTKC] filed its Amended FOE on 09 December 2020.

Acting on all the aforesaid incidents, in a Resolution dated 28 January 2021, the Court denied Exhibits "P-1", "P-2", "P-3", "P-5", "P-5a", "P-5b", "P-5c", "P-5d", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-14", and "P-16" for failure to submit the duly marked exhibits; "P-13" for failure to present the original for comparison, failure to submit the duly marked exhibit and failure to identify; "P-15" for failure to present the original for comparison and failure to submit the duly marked exhibit; "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-89", and "P-90" for failure of the exhibit formally offered and identified in the ICPA Report to correspond to the document actually marked.

As for [the CIR]'s witnesses, Revenue Officers (ROs) Raymond A. Pasco (Pasco) and Joey Fragrante (Fragrante) were presented.

In his direct examination by way of Judicial Affidavit, RO Fragrante testified that he conducted an audit of [JTKC]'s books of accounts pursuant to the original LOA (LOA-050-2015-00000059/eLA201100080567). Upon his investigation, he discovered that the PIAs between [JTKC] and several investors were not subjected to any withholding taxes. As the result of his investigation, the Preliminary Assessment Notice dated 10 April 2015 (PAN) and FAN were subsequently issued.

During his cross-examination, RO Fragrante explained that at the time the report was made, Ruling 178-08 was yet to be revoked. However, when he made the assessment, he disregarded it because there were similar rulings with the same scheme as [JTKC] that were revoked subsequently. When asked to elaborate on the said scheme, RO Fragrante stated that there have been instances when real estate developers made it appear that a buyer (of a condominium unit) was an investor (in the condominium project) to avoid paying taxes. According to him, [JTKC] was insisting on the same scheme when it invoked an investor-investee relationship rather than a buyer-seller relationship with its supposed "investors."

RO Fragrante attested that although no written evidence could be proffered, the revocation of Ruling 178-08 was explained verbally to [JTKC] during the informal conferences conducted. In addition, RO Fragrante stated that he was not aware of the earlier BIR Ruling No. 317-92 that declared investments in building constructions to be a non-taxable event. He also admitted that he also has yet to see a BIR Ruling providing that an investment should be considered as a sale.

In his re-direct examination, RO Fragrante stated further that he is aware of Revenue Memorandum Circular (RMC) No. 55-2010. As for BIR Ruling No. 317-92, he averred that [JTKC] was not mentioned therein. In his re-cross examination, RO Fragrante said that although it was part of the BIR Records, he did not read the decision in G&W Architects, Engineers and Project Consultants Co. v. Commissioner of Internal Revenue docketed as CTA Case Nos. 8358, 8426 and 8489 so he was not aware of RMC No. 55-2010's revocation.

When called to the witness stand, RO Pasco testified through his Judicial Affidavit that he was assigned to handle the reinvestigation of [JTKC]'s books of account pursuant to Memorandum of Assignment (MOA) No. RR8-050-REA/PRO-100318-460. The reinvestigation covered [JTKC]'s protest filed against the FAN. According to him, [JTKC] failed to prove that the distribution and/or delivery of the condominium units to the "investors" were exempt from taxes. He averred that [JTKC]'s alleged legal basis (BIR Ruling No. 455-2007) was rendered null and void by RMC No. 55-2010.

In his cross-examination, Pasco answered that there was no document or written evidence that would show that [JTKC] was informed of the revocation of Ruling 178-08 although he attested that in a series of meetings with the latter, he and his Group Supervisor (GS) had mentioned the revocation to [JTKC]. When asked if the meetings with [JTKC] were recorded, he replied in the negative explaining that there were only verbal communications. When also asked about Memorandum dated 30 January 2018 (which recommended the cancellation of the FAN), he answered that he was not aware of it and he made a different recommendation because he based his findings on RMC No. 55-2010 (as the original examiner [RO Fragrante] had advised). For the content of his Memorandum, he stated that he had not seen any document which considered the transaction on the units under the PIAs as sale transactions.

In his re-direct examination, RO Pasco stated that when he conducted the reinvestigation, he evaluated [JTKC]'s protest letter with the supporting documents against the available regulations applicable at that time. In his re-cross examination, he answered that the applicable issuance was RMC No. 55-2010 which revoked BIR Ruling 455-2007. He admitted that [JTKC] was never mentioned in both issuances.

After [CIR]'s witnesses were presented, the Court ordered [the CIR] to file his or her FOE within twenty (20) days from the last hearing date. [JTKC] was given a similar period from receipt of the FOE within which to file a comment/opposition thereto. Also, another hearing date was set for the presentation of [JTKC]'s rebuttal evidence. [the CIR] filed the FOE on 04 March 2021 while [JTKC] filed a Motion to Admit Comment on respondent's FOE on 31 March 2021. [the CIR] then filed an Opposition to the said motion on 20 May 2021.

Later, [JTKC] requested for the issuance of a Subpoena Ad Testificandum["] for Joel L. Tan-Torres (Torres), the previous CIR who issued RMC No. 55-2010. [the CIR] then interposed an objection to the request for subpoena.

In a Resolution dated 19 July 2021, the Court admitted all of [the CIR]'s exhibits and denied [JTKC]'s request for a Subpoena Ad Testificandum. Afterwards, [JTKC] presented Torres as a rebuttal witness.

In his Judicial Affidavit, Torres attested that: (1) he was the previous CIR from November 2009 until July 2010; (2) he issued RMC No. 55-2010 that specifically revoked BIR Ruling No. DA-455-2007 and it does not extend to other BIR Rulings that were not mentioned; (3) the said RMC did not revoke Ruling 178-08 because [JTKC]'s factual circumstances are not similar with the "build to own" transactions of G&W Architects; (4) the RMC was issued because there was a finding that G&W Architects misrepresented itself when it applied for the revoked ruling; (5) there is no provision in the RMC that would conclude that Ruling 178-08 was automatically revoked; (6) there were previous BIR rulings that treated the distribution of condominium units in proportion to the "investor's" contribution as a non-taxable event; and, (7) there was no application for the revocation of Ruling 178-08 nor was there any investigation regarding that matter.

In his cross-examination, Torres only confirmed that BIR Ruling DA-455-2007 was revoked in RMC No. 55-2010. No re-direct and re-cross examinations were conducted.

[JTKC] then filed the following: (1) Motion for Remarking on 29 November 2021, (2) Supplemental FOE on 02 December 2021; and, (3) Manifestation with Motion to Admit on 15 December 2021. Acting on the motions and supplemental FOE, in a Resolution dated 24 February 2022, the Court granted the motions and admitted [JTKC]'s supplemental offer of evidence except Exhibit "P-132" which was denied admission for failure of identification. The Court thereafter directed the parties to submit their memoranda within 30 days from receipt of such resolution. [the CIR] filed his or her Memorandum on 05 April 2022 while [JTKC] filed its Memorandum on 20 April 2022. Accordingly, the case was submitted for decision.

On April 26, 2023, the Court in Division rendered the assailed Decision granting JTKC's *Petition for Review* and cancelling and setting aside the Final Assessment Notice (FAN) dated September 23, 2016 and Final Decision on Disputed Assessment (FDDA) dated February 27, 2019 issued by the CIR.

In the assailed Decision, the Court in Division held that Revenue Region No. 008 – Makati City had jurisdiction to assess JTKC, as the assessment was done pursuant to a valid LOA issued by Regional Director

(RD) Amora of Revenue Region No. 008 – Makati City, which JTKC duly received. It further noted that JTKC's condominium project, which is the subject of the assessment, is located within the territorial jurisdiction of Revenue Region No. 008 – Makati City.

The Court in Division also ruled that the Project Investment Agreements (PIAs) are contracts to sell, not contracts of sale. As such, they are subject to withholding tax (WT). Moreover, it found that the FAN and FDDA state the facts and laws on which the assessment was based. Thus, contrary to JTKC's assertion, it was clearly apprised of the facts and the law on which the alleged deficiency assessment was based.

Finally, the Court in Division held that JTKC can rely on BIR Ruling No. DA-(JV-023) 178-08 (Ruling No. 178-08) being a specific interpretative ruling as it was issued by the CIR to address the particular concerns that JTKC had raised. It thus binds the CIR.

Aggrieved, the CIR filed his *Motion for Reconsideration (to the Decision dated April 26, 2023)* on May 29, 2023.[10]

On June 5, 2023, the Court in Division directed JTKC to file its comment on the CIR's *Motion for Reconsideration (to the Decision dated April 26, 2023).*[11]

Subsequently, JTKC filed its *Comment on Motion for Reconsideration (to the Decision dated April 26, 2023) dated 29 May 2023.*[12]

On September 4, 2023, the Court in Division rendered the assailed Resolution denying the CIR's *Motion for Reconsideration (to the Decision dated April 26, 2023)* for lack of merit.

On September 12, 2023, the Court received JTKC's *Supplement (to Comment on Motion for Reconsideration dated 29 May 2023)* but was considered by the Court in Division moot and academic considering that the Court had already resolved CIR's *Motion for Reconsideration (to the Decision dated April 26, 2023).*

Hence, the instant *Petitions for Review.*

---

[10] Division Docket, Volume III, pp. 1524 to 1535.
[11] *Id.* at 1538.
[12] *Id.* at 1539 to 1563.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On September 25, 2023, the CIR filed through registered mail a *Motion for Extension of Time to File Petition for Review*, seeking an additional period of 15 days from September 29, 2023, or until October 14, 2023, to file a *Petition for Review*.[13] The Court *En Banc* granted the same on October 4, 2023.[14]

On October 5, 2023, JTKC filed its *Opposition (to Motion for Extension of Time to File Petition for Review dated September 25, 2023)*.

Thereafter, the CIR filed through registered mail his *Petition for Review*, which was received by this Court on October 18, 2023. The case was docketed as CTA EB No. 2800.

On October 20, 2023, JTKC filed its *Petition for Review*, which was docketed as CTA EB No. 2808.

In the Resolution dated October 24, 2023, the Court ordered the consolidation of CTA EB No. 2800 and CTA EB No. 2808 (Consolidated Cases) pursuant to Section 1, Rule 31 of the Rules of Court, as amended.[15]

Subsequently, in a Resolution dated November 16, 2023,[16] the Court noted the *Opposition (to Motion for Extension of Time to File Petition for Review dated September 25, 2023)* in CTA EB No. 2800. The Court then directed JTKC to submit a Verification containing all the required details in Section 4, Rule 7, of the Rules of Court; and directed the counsel for the CIR, Atty. Albert C. Arpon, to clarify as to the year/s of IBP due covered by IBP No. 220760 5/13/12.

On January 16, 2024, the Court *En Banc* noted the *Compliance (to Resolution dated 16 November 2023)* filed by JTKC on December 6, 2023 and *Manifestation to Clarify Atty. Albert C. Arpon's IBP dues* filed by the CIR via registered mail on December 15, 2023. The Court then directed JTKC to file its comment on the *Petition for Review* filed by the CIR within 10 days from notice.[17]

---

13 *Rollo* (EB No. 2800), pp. 1 to 3.
14 *Id.* at 6.
15 *Id.* at 107.
16 *Id.* at 108.
17 *Id.* at 123.

On January 24, 2024, JTKC filed a *Motion for Extension of Time to File Comment*, praying for an additional 15 days from January 29, 2024, or until February 13, 2024, within which to file a Comment.[18] The Court *En Banc* granted the same on February 1, 2024.[19]

On February 13, 2024, JTKC filed its *Comment/Opposition (to the Petition for Review dated 11 October 2023)*,[20] while the CIR failed to file his comment on JTKC's Petition despite due notice.[21]

In a Resolution dated March 8, 2024,[22] the Court referred the Consolidated Cases to the Philippine Mediation Center – Court of Tax Appeals (PMC – CTA) for mediation pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[23]

On May 29, 2024, the Philippine Mediation Center Unit of the Court issued a certification that the parties decided not to have their case mediated by the PMC – CTA.[24]

On July 3, 2024, the Court issued a Resolution[25] which noted the PMC CTA Form 6 – No Agreement to Mediate dated May 29, 2024.

The case was then submitted for decision.

THE ISSUES

In CTA EB No. 2800, the CIR assigned the following errors:[26]

I. Whether or not the Court in Division erred in granting JTKC's Petition for Review, cancelling and setting aside the FAN dated September 23, 2016 and the FDDA dated February 27, 2019;

II. Whether or not JTKC was still entitled to rely on the BIR Ruling No. 178-08 despite that its legal basis was

---

[18] Rollo (EB No. 2800), pp. 124 to 126.
[19] *Id.* at 127.
[20] *Id.* at 128 to 155.
[21] *Id.* at 156.
[22] *Id.* at 157.
[23] *Id.* at 157.
[24] *Id.* at 158.
[25] *Id.* at 159.
[26] *Issues, Rollo* (EB No. 2800), p. 31.

subsequently revoked by BIR's issuance of RMC No. 55-2010; and,

III. Whether or not Section 246 (Non-Retroactivity of Rulings) of the NIRC of 1997, as amended, applies on all fours in the instant case.

On the other hand, in CTA EB No. 2808, JTKC raised the sole issue[27] of whether the Court in Division should have stopped at ruling that JTKC can rely on Ruling No. 178-08 and cannot be revoked and applied retroactively.

THE ARGUMENTS

CTA EB No. 2800

In support of his *Petition*, the CIR argues that JTKC is no longer entitled to rely on Ruling No. 178-08 issued in its favor at the time the assessment was made because the basis for the issuance of the said ruling was hinged entirely on the existence and validity of BIR Ruling No. DA-455-2007, which was already nullified by Revenue Memorandum Circular (RMC) No. 55-2010. The CIR further maintains that there is no retroactive application of RMC No. 55-2010 in the present case because the assessment in issue is for taxable year (TY) 2012, which is two years after RMC No. 55-2010 had been issued.

The CIR, thus, reiterates his position that JTKC's PIAs with its investors are contracts of sale subject to EWT and DST assessments. Corollary thereto, JTKC is liable for deficiency withholding tax for TY 2012 and that the FDDA/FAN must be held valid for being issued by Revenue Region No. 008 – Makati City which has jurisdiction over the location of the condominium project of JTKC.

JTKC counters that the CIR's *Petition* does not provide how the Court in Division deviated from established law, rules, or jurisprudence or erred in rendering the assailed Decision and assailed Resolution; hence, the Court correctly ruled that JTKC can rely on the BIR Ruling No. DA-(JV-023) 178-08.

JTKC further avers that the characterization as to whether the PIAs are either a contract of sale or *akin* to a contract to sell is not identified in the Pre-Trial Order dated October 9, 2019. Hence, the Court should not have gone beyond resolving the limited question of whether JTKC is entitled to rely on

[27] *Statement of Issues, Petition for Review, Rollo* (EB No. 2808), pp. 17 to 18.

Ruling No. 178-08 confirming that the distribution of the condominium units to investors are not sale transactions.

CTA EB No. 2808

In JTKC's *Petition*, it argues that the Court in Division should have stopped further discussion and confined its resolution to whether JTKC can rely on Ruling No. 178-08. JTKC submits that Court in Division's opinions relating to the characterization of the PIAs or the intent of the parties or the relevance of "Howey Test" to taxation, if any, are *obiter* not being necessary or relevant for the resolution of the issue before the Court.

Nonetheless, JTKC avers that the PIAs satisfy the requirements of the Howey Test and the PIAs are investment contracts as there are common interests among investors when they pooled investment resources, and they share the same expectation of the conversion of their contributions to property assets; the conversion of the investors' capital contribution to property assets is not a transaction where income is realized or gained. It is only the subsequent sale of the asset which can provide a realized taxable income. Lastly, JTKC and the investors allegedly agreed that the allocation of the designated unit is a mere return of the investor's total investment contribution. Thus, consent to transfer of ownership is absent.

THE RULING OF THE COURT *EN BANC*

After careful and thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, this Court finds no legal basis to reverse the assailed Decision and assailed Resolution of the Court in Division.

The CIR's Petition is timely filed; thus, the Court has jurisdiction over his Petition.

Under Section 3 (b) and Section 4 (b), Rule 8 of the Revised Rules of the CTA (RRCTA), as amended, a party adversely affected by a decision or resolution of the Court in Division on a motion for reconsideration or new trial, may file a petition for review with the Court *En Banc* within 15 days from receipt of the question decision or resolution, viz.:

> SEC. 3. Who may appeal; period to file petition.-
>
> x x x
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review with in **fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis added*)
>
> x x x
>
> SEC. 4. Where to appeal,· mode of appeal.-
>
> x x x
>
> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. **The Court *en banc* shall act on the appeal.** (*Emphasis added*)

On September 4, 2023, the Court in Division rendered the assailed Resolution denying the *Motion for Reconsideration (to the Decision dated April 26, 2023)* filed by the CIR. The assailed Resolution was received by the CIR on September 14, 2023.[28]

Accordingly, the CIR had 15 days from receipt of the assailed Resolution, or until September 29, 2023, within which to file its appeal with the Court *En Banc*.

On September 25, 2023, the CIR filed a *Motion for Extension of Time to File Petition for Review*,[29] praying that he be granted an additional period of 15 days from September 29, 2023 or until October 14, 2023, within which to file his *Petition for Review*, which was granted by the Court in its Resolution dated October 4, 2023.[30]

Thus, the filing of the *Petition for Review* by the CIR on October 16, 2023,[31] vested this Court with jurisdiction over his *Petition*.

[28] *Division Docket* (CTA Case No. 10059) – Vol. III, unpaginated
[29] Rollo (EB No. 2800), pp. 1 to 3.
[30] Rollo (EB No. 2800), p. 6.
[31] October 14, 2023, falls on a Saturday. Hence, the last day to file the Petition was moved to the next working day, October 16, 2023.

JTKC's Petition was not preceded by a Motion for Reconsideration; thus, the Court has no jurisdiction over its Petition.

To recall, the CIR and JTKC received the assailed Decision on May 12, 2023 and May 11, 2023, respectively. The CIR timely filed his *Motion for Reconsideration (to the Decision dated April 26, 2023)* on the assailed Decision on May 29, 2023, while no motion for reconsideration or new trial was filed by JTKC. Thus, on September 4, 2023, the Court in Division rendered the assailed Resolution denying the CIR's *Motion.* Unsatisfied, the CIR and JTKC proceeded to file the present *Petitions for Review* before the Court *En Banc*.

An issue now arises as to whether it was proper for JTKC to directly seek recourse with the Court *En Banc* without first filing a motion for reconsideration relative to the assailed Decision.

Section 18 of R.A. No. 1125,[32] as amended by R.A. No. 9282[33] and R.A. No. 9503,[34] explicitly provides:

> SEC. 18. Appeal to the Court of Tax Appeals En Banc. — No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> **A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.** (*Emphasis added*)

Corollary thereto, Section 1, Rule 8 of the RRCTA provides:

> SECTION 1. Review of cases in the Court *en banc*. — In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, **the petition for review of a decision or resolution of the Court in Division**

---

32 AN ACT CREATING THE COURT OF TAX APPEALS.

33 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

34 AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.** (*Emphasis added*)

It can, thus, be inferred from the foregoing that no petition for review assailing a resolution or decision of the Court in Division may be entertained by the Court *En Banc* unless preceded by a motion for reconsideration or new trial, as the case may be, with the Division.

Considering that no motion for reconsideration was filed by JTKC in CTA Case No. 10059 to assail the Decision of the Court in Division, the Decision promulgated on April 26, 2023, therefore, has attained finality and can no longer be opened for review or modification in so far as JTKC is concerned.

In view of the foregoing, JTKC's *Petition* shall be dismissed on account of its failure to file a motion for reconsideration of the assailed Decision.

The Court shall now proceed to determine the merits of the CIR's *Petition*.

The Court in Division did not err in cancelling the deficiency tax assessment issued against JTKC.

The CIR argues that the issuance of RMC No. 55-2010[35] nullified BIR Ruling No. DA-455-2007, which was the basis for its issuance of Ruling No. 178-08 in favor of JTKC. Consequently, JTKC is no longer entitled to rely on the said ruling, and the assessment issued against it was valid.

We are not convinced.

At the onset, the Court finds that the issues and arguments raised by the CIR in its *Petition* had already been amply discussed, passed upon and considered by the Court in Division. Nevertheless, the Court shall discuss these issues anew, if only to underscore and reaffirm the earlier disquisition of the Court in Division.

Section 7 of the National Internal Revenue (NIRC) of 1997, as amended, grants the CIR the power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the BIR. Section 246 of the

---

[35] SUBJECT: Circularizing Revocation of BIR Rulings issued to G&W Architects, Engineers and Project Development Consultants Relative to its "Build-To-Own" Transactions, June 28, 2010.

same law, however, provides that such revocation, modification or reversal cannot be given retroactive effect if it would be prejudicial to the taxpayer, except in limited instances: (a) where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the BIR; (b) where the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or, (c) where the taxpayer acted in bad faith.

A close reading of RMC No. 55-2010 reveals that the same was issued in relation with rulings previously secured by G&W Architects, Engineers and Project Development Consultants (G&W) relative to their "Build-To-Own" and "Build-Your-Own" transactions. These rulings were revoked after an investigation conducted by the BIR which eventually arrived at the conclusion that the subject taxpayer misrepresented the facts upon which the revoked rulings were based. The RMC, thus, expressly enumerated the specific rulings revoked due to factual misrepresentation, specifically:

1. BIR Ruling No. DA-056-2003 dated February 24, 2003 (Penhurst Parkplace Condominium)
2. BIR Ruling No. DA-624-2004 dated December 10, 2004 (Kensington Place Condominium)
3. BIR Ruling No. DA-455-2007 dated August 17, 2007 (Kensington Condominium)
4. BIR Ruling No. DA-410-2007 dated July 26, 2007 (Sapphire Residences)
5. BIR Ruling No. DA-409-2007 dated July 26, 2007 (Blue Sapphire Residences Condominium)
6. BIR Ruling No. DA-337-2007 dated June 20, 2007 (Grand Hamptons Place Condominium)

Notably, Ruling No. 178-08 issued in favor of JTKC, is not among the rulings expressly revoked. Moreover, there is nothing in RMC No. 55-2010, either express or implied, that revokes or invalidates other rulings. Instead, it merely directed the Revenue Officers (ROs) to conduct further investigation into other taxpayers who were granted similar rulings. It did not, by its language or intent, extend the effect of nullification to other rulings automatically.

It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[36] Hence, what is not included in the express terms of a regulation cannot be impliedly included.

Moreover, the Court agrees with the finding of the Court in Division that Ruling 178-08 is a specific interpretative ruling as it was issued by the CIR to address the particular concerns JTKC had raised. While the CIR cited BIR Ruling No. DA-455-2007 as the legal basis, the factual milieu surrounding JTKC is not identical with BIR Ruling No. DA-455-2007, which pertained to G&W's "Build-To-Own" transactions.

Ruling 178-08 was issued after the CIR's independent assessment and evaluation of the unique factual circumstances presented by JTKC which made specific reference to the delivery of properties to Aldex, JTKC and the Investors, as stipulated in their Joint Venture Agreement (JVA) and PIAs. Accordingly, the Court *En Banc* finds no error in the conclusion of the Court in Division that Ruling No. 178-08 binds both the CIR and JTKC. We thus quote, with approbation, the disquisitions of the Court in Division:

> Applying the same principle in the instant case, We can conclude that Ruling 178-08 is a specific interpretative ruling as it was issued by the CIR to address the particular concerns that [JTKC] had raised. Logically, being a specific interpretative ruling, it binds [the CIR]. Therefore, [the CIR] cannot be allowed to later on take a contrary position where injustice would result to the taxpayer (since equitable estoppel has set in as expressly authorized under Section 246 of the NIRC of 1997, as amended).
>
> In addition, the exceptions under Section 246 of the NIRC of 1997, as amended, are not present here. [JTKC] did not deliberately misstate or omit material facts from when it applied for the ruling; the actual facts are not materially different from the facts on which the ruling is based; and, [JTKC] did not act in bad faith.
>
> Contrary to [the CIR]'s contention, there is nothing in RMC No. 55-2010 that states, expressly or impliedly, that Ruling 178-08 is revoked or reversed. The said RMC only revoked expressly the rulings issued to G&W Architects, Engineers and Project Development Consultants, which is not the petitioner in the instant case, as shown by the subject of the said RMC i.e., Circularizing Revocation of BIR Rulings Issued to G&W Architects, Engineers and Project Development Consultants Relative to Its "Build-to-Own" Transactions. As other taxpayers are not at liberty to rely on other taxpayers' ruling, then it is reasonable to say that the revocation of the other taxpayers' ruling should not also affect other taxpayers given the different factual circumstances upon which the revocation or reversal was based. The same is bolstered by the provision of the RMC, which enjoins revenue officials and employees to report similar schemes for appropriate investigation. Hence, there is no specific, concrete proof or documentary evidence that would show that Ruling 178-08 was revoked or reversed in TY 2012. As such, it is binding to both [JTKC] and [the CIR].

---

[36] *Development Bank of the Philippines vs. Commission on Audit*, G.R. No. 221706, March 13, 2018.

Consequently, the Court finds no reversible error in the ruling of the Court in Division. JTKC was entitled to rely on the exemption granted by Ruling No. 178-08 at the time the assessment was issued. Accordingly, the FAN dated September 23, 2016 and the FDDA dated February 27, 2019 were correctly cancelled and set aside.

JTKC relied in good faith on Ruling No. 178-08. Accordingly, it was entitled to rely upon the same at the time the assessment was issued.

The CIR maintains that there was no retroactive application of RMC No. 55-2010 because the assessment in issue is for TY 2012, two years after the said RMC had been issued. He further claims that while there was no express voiding of Ruling No. 178-08 issued by the CIR in favor of JTKC, RMC No. 55-2010 categorically voided BIR Ruling No. 455-2007 which was the sole basis in favorably issuing Ruling No. 178-08.

We find this argument to be flawed.

While it is true that the RMC was issued prior to the taxable period assessed, the CIR's position reflects a myopic interpretation of the principle embodied in Section 246 of the NIRC of 1997, as amended. It bears emphasis that Section 246 is not merely concerned with chronology. Rather, its essence lies in protecting the interest of taxpayers who, in good faith, rely on rulings or interpretations issued by the BIR. Once a taxpayer has been granted a ruling and acts thereon in good faith, the subsequent revocation or modification of that ruling cannot be given retroactive effect if it will be prejudicial to the taxpayer, save for the limited exceptions expressly provided by law.

As the Supreme Court elucidated in *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals*[37]:

> This Court is not unaware of the well-entrenched principle that the Government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. In fact, utmost caution should be taken in this regard. But, like other principles of law, this also admits of exceptions in the interest of justice and fairplay. The insertion of Sec. 338-A [now Sec. 246] into the National Internal Revenue Code, as held in the case of Tuason, Jr. vs. Lingad, is indicative of legislative intention to support the principle of good faith. In fact, in the United States, from where Sec. 24 (b) was patterned, it has been held that **the Commissioner of Collector is precluded from**

[37] G.R. No. L-52306, October 12, 1981.

> **adopting a position inconsistent with one previously taken where injustice would result therefrom, or where there has been a misrepresentation to the taxpayer**. (*Emphasis added*)

The same doctrine was reaffirmed in *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*,[38] where the Supreme Court categorically held that:

> In ABS-CBN Broadcasting Corp. v. Court of Tax Appeals, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer**. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
>
> This Court has consistently reaffirmed its ruling in ABS-CBN Broadcasting Corp. in the later cases of Commissioner of Internal Revenue v. Borroughs, Ltd., Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp. Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc., and Commissioner of Internal Revenue v. Court of Appeals. The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case. *(Emphasis added)*

As found by the Court in Division, the CIR did not proffer any evidence to prove that RMC No. 55-2010 also pertains to the revocation of Ruling No. 178-08. Thus, the imposition of deficiency tax for TY 2012 would result in prejudice and injustice to JTKC, as it covers transactions previously deemed exempt under a ruling on which JTKC had relied upon in good faith.

WHEREFORE, in light of the foregoing considerations, the **Petition for Review** in CTA EB No. 2800 filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit. On the other hand, the **Petition for Review** filed by JTKC Land, Inc. in CTA EB No. 2808 is **DISMISSED** for lack of jurisdiction. Accordingly, the Decision dated April 26, 2023 and Resolution dated September 4, 2023, both rendered by the Court in Division in CTA Case No. 10059 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

---

[38] G.R. No. 168129, April 24, 2007.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice