**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

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| **MERIDIEN EAST REALTY & DEVELOPMENT CORPORATION,** Petitioner, | **CTA CASE NO. 9130** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: JUN 03 2020 |

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4:30 p.m.

# RESOLUTION

***CASTAÑEDA, JR., J.:***

Before this Court is respondent's **Motion for Reconsideration**, filed through registered mail on January 24, 2020 and received by this Court on January 30, 2020, with petitioner's **Comment (Re: Motion for Reconsideration dated 24 January 2020)**, filed through registered mail on March 2, 2020 and received by the Court on March 5, 2020.

On January 7, 2020, a Decision was promulgated by this Court, cancelling respondent's deficiency assessments for retroactively applying Revenue Memorandum Circular (RMC) No. 20-2010 to assess petitioner for deficiency taxes, the dispositive portion of which is quoted as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, respondent's FDDA dated July 27, 2015, assessing petitioner for deficiency income tax, VAT, EWT, and DST, in the total amount of ₱35,666,837.02,

inclusive of interest, penalty and surcharge, for TY 2010, is **WITHDRAWN** and **SET ASIDE**.

**SO ORDERED.**

In his motion, respondent primarily argues that the retroactive application of Bureau of Internal Revenue (BIR) Rulings or Circulars may be made, even if the same is prejudicial to the taxpayers, where the facts subsequently gathered by the BIR are materially different from the facts on which the ruling was initially based and where the taxpayer acted in bad faith. Respondent asserts that petitioner deliberately misrepresented material facts in its request for ruling thereby resulting in the issuance of BIR Ruling No. DA-245-05. He asserts that after an investigation was made, it was discovered that the co-development scheme employed by petitioner and Century Properties, Inc. is considered as pre-selling which is subject to expanded withholding tax (EWT) and documentary stamp tax (DST). Thus, this is the main reason why the respondent subsequently issued RMC No. 20-2010 which nullified BIR Ruling No. DA-245-05.

Respondent further explains that the non-retroactivity principle does not apply when the ruling involved is null and void for being contrary to law. Well-entrenched are the principles that the government is never estopped from collecting taxes because of mistakes and errors of its agents and there are no vested rights in a wrong interpretation of the law. As such, the Commissioner of Internal Revenue (CIR) may *motu propio*, reverse, modify or alter any such ruling issued by his subordinates at any time after its issuance if he determines the same not to be in accordance with the established precedent rulings or pertinent tax laws and revenue issuances. Lastly, respondent insists that the ruling invoked by petitioner as legal and factual antecedent is a ruling of first impression which must be signed by the CIR and not merely by the then Deputy Commissioner for Legal and Enforcement Group.

On the other hand, in its comment, petitioner asserts that the subsequent revocation of a ruling cannot be given retroactive application. It claims that respondent failed to discharge the burden of proving that petitioner committed any misrepresentation. Petitioner highlights that in order to apply any of the exceptions under Section 246 of the National Internal Revenue Code (NIRC) of 1997, as amended, the facts at the time of such representation of facts must be misstated or omitted such that the facts subsequently gathered are materially different. However, a plain reading of BIR Ruling No. DA-

245-05, together with its implementing documents, reveals that no such material difference exists. In fact, the revocation of the said ruling is not based on materially different facts but rather on respondent's subsequent realization that the ruling is not in accordance with established precedents. Nonetheless, petitioner also points out that Section 246 of the NIRC of 1997, as amended, is an exception to the rule that estoppel does not apply against the government.

More so, petitioner also claims that the ruling is not a ruling of first impression. Petitioner submits that the established precedent with regard to the present subject matter is BIR Ruling No. 108-99 dated February 11, 1999, which involves a joint venture between Megaworld Properties and Holdings, Inc. and LAO David Agro Development Corporation and Realty Office for the construction and development of a condominium project. Nevertheless, petitioner explains that a ruling of first impression may be validly delegated by respondent under Section 7 of the NIRC of 1997, as amended, and further asserts that RMC No. 39-10 actually states that "in order to expedite actions on certain cases and documents with established precedents and pursuant to Section 7 of the National Internal Revenue Code of 1997, the Assistant Commissioner, Legal Service, is hereby authorized to sign rulings and actions that are clearly covered by precedent rulings and guidelines as well as pertinent issuances on the subject."

Finally, petitioner argues that the "build-to-own" concept is not a sale. In fact, the Housing and Land Use Regulatory Board (HLURB) has expressly stated in its letter dated September 17, 2009 that petitioner in not engaged in pre-selling.

After due consideration, respondent's Motion has no merit.

Obviously, there is no doubt that BIR Ruling No. DA-245-05 dated June 7, 2005 was revoked by RMC No. 20-2010. The RMC mainly states that the pre-selling of build-to-own scheme is considered as sale transaction. Thus, in view of the revocation, petitioner was assessed by the BIR for the subject deficiency taxes.

The basic rule is that if any BIR ruling or issuance promulgated by the CIR is subsequently revoked or nullified by the CIR herself or by the court, the revocation/nullification cannot be applied retroactively to the prejudice of the taxpayers.[1] The exceptions to this rule are: (1) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the BIR; (2) where the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or (3) where that taxpayer acted in bad faith.[2]

Unfortunately, however, respondent failed to prove the existence of any of the foregoing exceptions on the part of the petitioner. As already held in the assailed Decision, respondent's claim that petitioner committed misrepresentation of facts when it sought respondent's ruling leading the issuance of BIR Ruling No. DA-245-2005, is not supported by evidence. Respondent likewise failed to prove the existence any circumstance showing bad faith on the part of the petitioner. Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It partakes of the nature of fraud; a breach of a known duty through some motive of interest or ill will.[3] It is worth stressing at this point that bad faith cannot be presumed. It is a question of fact that must be proven by clear and convincing evidence, and the burden of proving bad faith rests on the one alleging it.[4]

In the present case, respondent merely alleges that petitioner deliberately misstates material facts or acted in bad faith, when it sought the confirmation from the BIR since it was discovered that the co-development scheme employed by petitioner and Century Properties, Inc. is considered as pre-selling without further presenting any proof. Perforce, the Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence. Moreover, fraud is not presumed – it must be proved by clear and convincing evidence.[5]

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[1] *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016.

[2] **SEC. 246.** *Non-Retroactivity of Rulings.* – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

[3] *Commissioner of Internal Revenue v. Court of Appeals, et al.*, G.R. No. 117982, February 6, 1997.

[4] *Spouses Bernadette and Rodulfo Vilbar v. Angelito L. Opinion*, G.R. No. 176043, January 15, 2014.

[5] *Spouses Nilo Ramos and Eliadora Ramos vs. Raul Obispo, et al.*, G.R. No. 193804, February 27, 2013.

Hence, without any sufficient evidence showing the existence of any of the exceptions enumerated in Section 246 of the NIRC of 1997, as amended, RMC No. 20-2010 cannot be given retroactive effect. Therefore, respondent cannot effectively deprive petitioner of its rights under the ruling prior to its revocation.

Moreover, in the case of *Commissioner of Internal Revenue vs. Benguet Corporation*[6], the Supreme Court held that the doctrine of estoppel admits of exceptions in the interest of justice, as follows:

> This Court is not unaware of the well-entrenched principle that the [g]overnment is never estopped from collecting taxes because of mistakes or errors on the part of its agents. But, like other principles of law, this also admits of exceptions in the interest of justice and fairplay . . . In fact, in the United States, . . . it has been held that the Commissioner [of Internal Revenue] is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom or where there has been a misrepresentation to the taxpayer.

As to the issue that a ruling of first impression may be validly delegated by respondent, the same has long been settled in the case of *Procter and Gamble Asia Pte Ltd. vs. Commissioner of Internal Revenue*[7], to wit:

> BIR Ruling No. DA-489-03 is valid
> even if issued by the Deputy
> Commissioner.
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> The respondent now impugns the validity of BIR Ruling No. DA-489-03. The CIR argues that the BIR ruling was issued only by the Deputy Commissioner and not by the CIR, who, under Section 4 of the NIRC, has original and exclusive jurisdiction in interpreting provisions of the NIRC.
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> We are not persuaded by the CIR's contention.
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> This issue has been settled in the Court *en banc's* resolution dated October 8, 2013 in the consolidated cases

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[6] G.R. Nos. 134587 & 134588, July 8, 2005, citing *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals, et al.*, G.R. No. L-52306, October 12, 1981.
[7] G.R. No. 204277, May 30, 2016.

> of *San Roque-Taganito* where we upheld the validity of the BIR ruling, because the power to interpret rules and regulations is not exclusive and may be delegated by the CIR to the Deputy Commissioner.

All told, it is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power. But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[8]

**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration**, is **DENIED** for lack of merit.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

We Concur:

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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[8] *Commissioner of Internal Revenue v. San Miguel Corporation,* G.R. No. 205045 and G.R. No. 205723, January 25, 2017; citing *Commissioner of Internal Revenue v. Algue, Inc., et al.*, G.R. No. L-28896, February 17, 1988.