REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EGIS PROJECTS S.A., Petitioner,	**CTA CASE NO. 8413**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
THE SECRETARY OF FINANCE AND COMMISSIONER OF INTERNAL REVENUE, Respondents.	**Promulgated:** JAN 29 2013 2:35pm

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RESOLUTION

This resolves respondent Commissioner of Internal Revenue's (CIR's) **"Motion To Dismiss"** filed on December 5, 2012, with petitioner's **"Comment"** filed on January 4, 2013.

Respondent CIR contends that petitioner seeks the revocation and nullification of Revenue Memorandum Order (RMO) Nos. 1-2000 and 72-2010 or its relevant provisions for being unconstitutional since the same was allegedly issued beyond respondent CIR's rule-making power or quasi-legislative power. Respondent argues that said issue does not fall under the specialized jurisdiction of this Court but under the general jurisdiction of the regular courts. The decisions mentioned under the special jurisdiction of this Court are those issued in the exercise of the quasi-judicial power bestowed by law. When the CIR renders a decision on a disputed assessment, claim for refund including penalties, charges or other matters related thereto; she is rendering such after a quasi-judicial proceeding provided by law. This decision made after a quasi-judicial proceeding is what is encompassed by the special jurisdiction of this Court.

On other hand, RMO Nos. 1-2000 and 72-2010, were issued in accordance with the rule making power or quasi-legislative power of respondent CIR. The same were promulgated to interpret, clarify or explain statutory regulations. Being so, respondent claims that the reliefs prayed for by petitioner are beyond the ambit of this Court's jurisdiction and the instant case should be dismissed on the ground of lack of jurisdiction.

Respondent continues that while Republic Act (RA) No. 1125, as amended by RA 9282, confers to this Court jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. And, while under its Revised Rules, this Court has jurisdiction over "other matters arising under the National Internal Revenue Code", the "other matters" contemplated therein must also be directly related to the disputed assessment and cannot be taken in isolation to invoke the specialized jurisdiction of this Court. Notably, respondent posits that petitioner never alleged that there was any kind of assessment notice against it or that it filed any administrative refund.

For its part, petitioner argues that the subject matter of the instant case is to appeal the ruling of the Secretary of Finance. Thus, it falls within the jurisdiction of this Court pursuant to Section 11 of RA 1125, as amended, to wit:

> "**SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal.**- Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, xxx the Secretary of Finance xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling xxx"

Petitioner also asseverates that this Court's jurisdiction over the instant case also finds basis in Section 7(a)(1) of RA. 1125, as amended, when it provides that this Court has exclusive appellate jurisdiction to review by appeal, decisions of the Commissioner of Internal Revenue over "other matter matters arising under the National Internal Revenue Code."

After a careful evaluation of the parties' arguments, this Court finds respondent CIR's *Motion* meritorious.

In this case, as can be gleaned from petitioner's allegations, petitioner filed a Tax Treaty Relief Applications (TTRA) with respondent CIR to request confirmation that the dividends received by petitioner from Manila North Tollways Corporation (MNTC) are subject to the preferential tax rate of 10%. Respondent issued the assailed BIR Ruling ITAD No. 203-11 denying the tax treaty relief application of petitioner on the basis of RMO. No. 72-2010. Said Ruling was appealed to respondent Secretary of Finance, who in turn, issued the assailed DOF Ruling. Hence, the instant Petition, where petitioner substantially argues that RMO No 72-2010 is unconstitutional for being issued beyond the rule making power of respondent CIR. Petitioner likewise questioned the validity of RMO 1-2000 based on the same ground. Accordingly, petitioner prays for this Court to render judgment as follows:

> a. reversing BIR Ruling No. ITAD 203-11 and the DOF Ruling that affirmed the same;
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> b. revoking and nullifying RM Nos. 72-2010 and 1-2000 or its relevant provisions for being unconstitutional since the same was issued beyond respondent CIR's rule-making powers; and
>
> c. declare petitioner to be entitled to the 10% preferential tax rate under the RP-France double tax treaty on dividends received from MNTC, regardless of the time when it filed the application for tax treaty relief.

By the jurisdiction of the Court over the subject matter is meant the nature of the cause of action and of the relief sought. This is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.[1] Corollary thereto, the subject matter of the instant petition is the validity and/or constitutionality of the assailed RMOs. While other issues had been raised by petitioner; nonetheless, they appear to be mere ancillary to the "constitutionality issue".

The jurisdiction of this Court over nullity and constitutionality issue had been explained in the case of *British American Tobacco v. Camacho*[2], when the Supreme Court held that this Court's jurisdiction to resolve tax disputes in general does not include cases where the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function is challenged, as quoted below:

> **While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-**

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[1] Idonah Slade Perkins v. Mamerto Roxas, et al., 72 Phil. 514 (1941).
[2] G.R. No. 163583, August 20, 2008.

> **legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts.** Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (*Emphasis supplied.*)

Thus, in the recent case of *St. Paul College of San Rafael vs. Commissioner of Internal Revenue*[3], this Court ruled in this wise:

> "xxx the **validity of BIR Ruling No. 143-2010 should have been elevated** to the Secretary of Finance and eventually **before the regular courts, and not with the CTA**.
>
> Indeed, **petitioner's immediate filing of the instant case with the CTA resulted to the dismissal of the present case due to** its failure to exhaust administrative remedies and the **absence of the CTA's jurisdiction**." (*Emphases supplied.*)

Guided by the foregoing, it follows that the primordial issue on the constitutionality or validity of RMO Nos. 72-2010 and 1-2000 or its relevant provisions is indeed beyond the jurisdiction of this Court. With this conclusion, this Court deems it unnecessary to discuss the other arguments and issues raised by the parties.

WHEREFORE, premises considered, respondent CIR's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the instant Petition for Review, docketed as CTA Case No. 8413, is hereby **DISMISSED** for lack of jurisdiction.

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[3] CTA Case No. 8217, November 9, 2011.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

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