REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HONDA CARS MAKATI, INC., *Petitioner*,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

CTA Case No. 9986

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

DEC 11 2019 : 10:52 a

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RESOLUTION

On September 5, 2019, respondent filed his *Omnibus Motion* arguing that the instant case should be dismissed on the grounds of *litis pendentia* and violation of the rule on non-forum shopping. Respondent states that petitioner admitted that it received the Final Decision on Disputed Assessment (FDDA) on November 12, 2018, assessing petitioner for deficiency taxes in the total amount of Php145,539,268.94 for taxable year 2013.

On December 12, 2018, petitioner filed a request for reconsideration (MR) of the FDDA addressed to the respondent at around 3:04 p.m. praying that the deficiency tax assessments be withdrawn and cancelled because the same were not validly issued and had no factual and legal bases. On the same day, at around 4:10 p.m., petitioner also filed the subject petition for review with the Court of Tax Appeals (CTA) praying for the cancellation of the FDDA.

Respondent states that all the elements of *litis pendentia* exists, and that petitioner violated the rules against forum shopping. Thus, the instant petition should be dismissed.

On the other hand, petitioner argues that the simultaneous filing of a motion for reconsideration (MR) to the CIR and a petition for review before the CTA is allowed under Revenue Regulations No. (RR) 12-99, as amended by RR 18-13. Petitioner states that the only effect of filing an MR with the CIR is that it will not toll the thirty (30)-day period to appeal to the CTA. In the alternative, petitioner argues that the filing of the MR with respondent is ineffective as it was filed beyond the 180-day period given to respondent to resolve the same under RR 12-99.

There is forum shopping when a party seeks a favorable opinion in another forum, other than by an appeal or by *certiorari*, as a result of an adverse opinion in one forum, or when he institutes two or more actions or proceedings grounded on the same cause, hoping that one or the other court would make a favorable disposition on his case.[1] This principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, in order, to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling.[2] What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[3]

In the instant case, the following incidents are relevant:

1. Formal Letter of Demand was issued on March 2, 2018, signed by Teresita M. Dizon, OIC-Assistant Commissioner, Large Taxpayers Service; and

2. Final Decision on Disputed Assessment was issued on November 12, 2018, signed by Caesar R. Dulay, Commissioner of Internal Revenue.

From this FDDA, petitioner filed an MR with the CIR, and also an appeal with the CTA, both on December 12, 2018, both praying for the cancellation of the assessments.

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[1] *Commissioner of Customs v. Pilipinas Shell Petroleum Corp.*, G.R. No. 205002, April 20, 2016.

[2] *Antonio M. Villanueva and Fulgencio B. Lavarez v. Honorable Abednego O. Adre, Presiding Judge, Regional Trial Court, Branch 22, 11th Judicial Region, and Lucio Velayo*, G.R. No. 80863, April 27, 1989.

[3] *Philip S. Yu v. Hernan G. Lim*, G.R. No. 182291, September 22, 2010.

Based on these circumstances, the Court finds that the elements of forum shopping are present, namely: (a) identity of parties; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding elements, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration,[4] or will give rise to conflicting decisions in the administrative and judicial levels.

The parties involved are the same, with the issues arising from the same assessment and denial of petitioner's protest, and the reliefs prayed for are found on the same facts.

As to the liability of petitioner for the commission of forum shopping, Section 5, Rule 7 of the Rules of Court states:

> SEC. 5. Xxx If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

However, as to whether the forum shopping was deliberate or not needs to be examined. In *Dator v. Carpio-Morales,*[5] (*Dator* case) the Supreme Court discussed as follows:

> The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. xxx
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> xxx
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> Ultimately, Dator's petition for injunction and the petition for review sought similar reliefs – which essentially constitute the review and eventual reversal of the said decision finding him guilty of simple misconduct. A resolution of the petition for injunction, which as discussed above, substantially questions the assailed decision, would result in *res judicata* to the petition for review, which likewise questions the same decision.

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[4] *Lanao Del Norte Electric Cooperative,Inc. v. Provincial Government of Lanao Del Norte,* G.R. No. 185420, August 29, 2017.
[5] G.R. No. 237742, October 8, 2018.

A finding of forum shopping, however, does not automatically render both cases dismissible. The disquisition in the case of *Yamson vs. Castro* can similarly apply in this case, thus:

> xxx. The consequence of forum shopping depend on whether the act was willful and deliberate or not. If it is not willful and deliberate, the subsequent cases shall be dismissed without prejudice. But if it is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice on the ground of either *litis pendentia* or *res judicata*. In this case, the Court cannot grant the petitioners' prayer for the dismissal of the two administrative cases as there is no clear showing that the respondents' act of filing these was deliberate and willful. Records show that these cases were premised on the two criminal complaints for Violation of Section 3(e) of R.A. No. 3019, which were separately filed and entertained by the Ombudsman. At the most, **OMB-M-A-05-104-C** (VES 15 Project), which was filed subsequent to **OMB-M-A-05-093-C** (VES 21 Project), should be, and is hereby, dismissed.

Contrary to the OSG's submission, We find Dator's acts neither willful nor deliberate. As can be gleaned from the sequence of events, Dator was constrained to file an action to question the immediately executory suspension because of the seemingly conflicting penalties set out in the March 20, 2017 Decision, and the Order resolving his motion for clarification and motion for reconsideration, was only received by him on June 4, 2018. We cannot fault Dator for doing the same considering the extreme urgency of the situation, and the public interest aspect of the case. We note that Dator did not hide the fact that he had a pending petition for review on *certiorari* before this court when he filed the petition for review under Rule 43 dated June 19, 2018 with the CA. Given the foregoing, We are hard-pressed to conclude that there was willful and deliberate forum shopping on the part of Dator. Be that as it may, the subsequent petition for review before the CA shoud be, and is hereby, dismissed. (*Emphasis and underscoring in the original*)

The circumstances for appeal after protest are provided under Section 228 of the 1997 National Internal Revenue Code, as amended (NIRC), which states:

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

RR 12-99,[6] as amended by RR 18-13,[7] elaborates on the procedures on disputed assessments and states as follows:

> 3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. Xxx
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> xxx
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> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
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> xxx

In the instant case, the protest was denied by the CIR himself, in the form of the FDDA. Thus, the taxpayer may appeal the same to the CTA within 30 days from receipt of the said FDDA. This, the petitioner performed. However, petitioner also filed an MR with the CIR, within the same 30-day period.

Petitioner avers that under RR 12-99, as amended by RR 18-13, it is not prohibited from filing an MR with the CIR simultaneously with the filing of an appeal to the CTA, especially when the rules themselves only provide that the only

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[6] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[7] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

effect of filing the MR is that it shall not toll the 30-day period to appeal to the CTA.

It may be gleaned that petitioner was merely exhausting its remedies at the administrative level by filing an MR with the CIR, and at the same time, protecting its right to appeal with the CTA, by also filing its appeal within the 30-day period to appeal, as provided in RR 12-99, as amended by RR 18-13. Thus, the forum shopping could not be said to be willful and deliberate.

We note also that petitioner indicated in its Verification and Certification Against Forum-Shopping that it has a pending request for reconsideration filed with the Office of the Commissioner of Internal Revenue in connection with this case.

Given the foregoing circumstances, We find, as in the abovecited *Dator* case, that the forum shopping was not willful and deliberate. Be that as it may, this case should be dismissed.

WHEREFORE, respondent's *Omnibus Motion* filed on September 5, 2019 is hereby **GRANTED**.

Accordingly, the instant case is **DISMISSED** without prejudice due to forum shopping.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice