REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

OAKWOOD MANAGEMENT SERVICES (PHILS.), INC.,
Respondent.

CTA EB NO. 1080
(CTA Case No. 7989)

x - x

OAKWOOD MANAGEMENT SERVICES (PHILS.), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1083
(CTA Case No. 7989)

Members:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
APR 24 2017 4:00 p.m.

x- x

RESOLUTION

RINGPIS-LIBAN, ***J.:***

The Court issued a Decision in these consolidated cases on August 14, 2015 (assailed Decision). The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the instant Petitions for Review are **DENIED** for lack of merit. The assailed Decision and Resolution of this Court's Special Second Division in CTA Case No. 7989 are **AFFIRMED** *in toto.*

Before the Court are the following Motions for Reconsideration:

1. Motion for Reconsideration (Re: Decision dated 14 August 2015) filed by Oakwood Management Services (Phils.), Inc. (Oakwood) on September 10, 2015, raising the following arguments:

    a. The rationale in CTA Case No. 6758 is the correct application of the tax laws and jurisprudence on the taxability of the service fees;

    b. Even if the Court-commissioned CPA's findings are disregarded, the evidence submitted show that the finding of fact of the CTA-Division is incorrect; and

    c. Simultaneous application of deficiency and delinquency interest does not find support in the law, jurisprudence and rules.[1]

2. Motion for Reconsideration filed by the Commissioner of Internal Revenue (CIR) on September 10, 2015, arguing that the Court erred in affirming the Decision dated August 8, 2013 and Resolution dated October 22, 2013 issued by the Court's Special Second Division (Court in Division) in CTA Case No. 7989, insofar as it cancelled the assessed deficiency income tax and expanded withholding tax of respondent for taxable year 2005.

On February 4, 2016, Oakwood filed a Comment/Opposition (Re: Motion for Reconsideration dated 10 September 2015). Meanwhile, the CIR failed to comment on Oakwood's Motion for Reconsideration (Re: Decision dated 14 August 2015), per Records Verification Report of the Judicial Records Division dated May 31, 2016.

After a careful consideration of the grounds raised in the motions for reconsideration, the Court finds that the issues and arguments raised therein had already been amply discussed, passed upon and considered by this Court in the Decision sought to be reconsidered. The parties' arguments constitute neither compelling nor cogent reason to modify, much less reverse our Decision dated August 14, 2015.

[1] Docket (CTA EB No. 1080), p. 206.

We note that the CIR's Motion for Reconsideration is again a very close copy of its Petition for Review in CTA EB No. 1080. In the assailed Decision, we pointed out that the CIR's Petition for Review is a mere rehash, and apart from minor stylistic changes, a reproduction of its Motion for Reconsideration before the Court in Division.[2]

In the assailed Decision, the Court also stated that "[i]t is also noteworthy, and disconcerting, that the CIR, despite notice and directives from this Court, did not bother to file her Comment and Consolidated Memorandum in the instant case, which nonchalance strikes the Court as a manifestation of lack of interest to prosecute [his] appeal."[3] The same can be said of the CIR's Motion for Reconsideration.

Oakwood's arguments have also been adequately discussed in the assailed Decision.

1. CTA Case No. 6758 is not the law of the case.

We reiterate our ruling that –

> [T]he decision in CTA Case No. 6758 cannot be applied to the instant petitions as the "law of the case."
>
> > 'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. (21 C.J .S. 330).
>
> We find that Oakwood has not satisfactorily established that the facts in CTA Case No. 6758 and in the appealed case (CTA Case No. 7989) are the same. CTA Case No. 6758 is a case for refund or issuance of a tax credit certificate in the amount of ₱235,329.65 allegedly representing the amount of surcharges, interests and compromise penalties erroneously paid and remitted for 2000 and 2001 while CTA Case No. 7989 is a case for cancellation of BIR's Formal Assessment Notice (FAN) dated January 14, 2009, assessing petitioner for: (a) deficiency income tax;

2 Docket (CTA EB No. 1080), p. 185.
3 Id.

> (b) deficiency value-added tax (VAT); (c) deficiency withholding of VAT (Final VAT); deficiency expanded withholding tax (EWT); (e) deficiency final withholding tax (FWT); deficiency documentary stamp tax (DST) on subscribed capital stock; (g) deficiency stamp tax on petitioner's capital stock; (g) deficiency documentary tax on petitioner's "Due to Affiliates"; (h) compromise penalty for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to petitioner's alleged failure to file certain tax returns.

2. The Court ruled based on its own assessment of the evidence presented and is not bound by the findings of the Court-commissioned CPA.

The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.[4] The Special Second Division, making its own evaluation of the documents submitted by the Court-commissioned CPA, found that –

> Scrutiny of the following submitted documents, which were examined by the Court-commissioned CPA, proved otherwise:
>
> 1. List of Officers of OAP providing management services to petitioner in the year 2005 -*Exhibit H^6-6*
>
> 2. Bureau of Immigration Certification on the travel schedule of the officers listed- *Exhibit H^6-7 to H^6-7h(1)*
>
> 3. Certificate of Employment of OAP employees- *Exhibit H^6-8*
>
> As established, OAP sent the following employees to the Philippines in the year 2005 to perform management services: xxx
>
> Considering that the foregoing personnel performed services within the Philippines, the management services therefore, are subject to income tax and VAT and, petitioner is responsible to withhold the same from its payment to OAP. Thus, respondent is correct in disallowing said expense and in assessing petitioner for deficiency income tax. Moreover, since it cannot be ascertained which portion of the assessed amount of P6,000,000.00 pertain to services rendered outside or within the Philippines, the Court is constrained to uphold respondent's final withholding tax and final withholding of VAT assessments in its entirety.[5]

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4 Rule 13, Section 3, of the Revised Rules of the Court of Tax Appeals.

5 Docket (CTA EB No. 1083), pp. 244-245.

The findings of the Court-commissioned CPA are not authoritative. To hold otherwise would be tantamount to surrendering the Court's jurisdiction to determine the facts of the case based on the evidence presented during trial.

3. The simultaneous imposition of deficiency interest and delinquency interest is based on law and is not unconscionable.

The imposition of delinquency interest under Section 249(c)(3) of the 1997 NIRC is proper because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of 20% per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.[6]

The Supreme Court held that –

> x x x it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government.[7]

The law itself provides that in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax, delinquency interest of 20% per annum shall be assessed and collected. Hence, an administrative issuance such as Revenue Regulations No. 12-99 cannot take precedence over the mandate of the statute.

WHEREFORE, premises considered, Motion for Reconsideration (Re: Decision dated 14 August 2015) filed by Oakwood Management Services (Phils.), Inc., and the Motion for Reconsideration filed by the Commissioner of Internal Revenue, are hereby **DENIED** for lack of merit.

SO ORDERED.

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MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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6 *First Lepanto Taisho Insurance Corporation v. CIR*, G.R. No. 197117, April 10, 2013.
7 *Philippine Refining Company (now known as Unilever Philippines [PRC], Inc. v. Court of Appeals*, G.R. No. 118794, May 8, 1996.

WE CONCUR:

(I maintain my Dissenting Opinion dated August 14, 2015)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice