REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CONTEX CORPORATION,
Petitioner,

CTA *EB* NO. 1332
(CTA Case No. 8493)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1358
(CTA Case No. 8493)

-versus-

CONTEX CORPORATION,
Respondent.

Present:

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

Promulgated:

JUL 25 2017 3:54 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution are:

1. The Commissioner of Internal Revenue ("CIR")'s Motion for Reconsideration (Re: Decision dated 03 March 2017) filed on

March 28, 2017, with Contex Corporation ("Contex")'s Comment (Re: Motion for Reconsideration dated March 24, 2017) filed on June 5, 2017; and

2. Contex's Motion for Reconsideration filed by registered mail on March 29, 2017, with no comment from the CIR despite due notice and order.

On March 3, 2017, the Court *En Banc* promulgated a Decision, the dispositive portion thereof reads as follows:

> **WHEREFORE**, the instant Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Decision dated April 22, 2015, the Amended Decision dated June 30, 2015, and the Resolution dated August 27, 2015, all promulgated by the Second Division of the Court of Tax Appeals, are hereby **AFFIRMED**.
>
> **SO ORDERED.**[1]

In the assailed Decision, the Court *En Banc* declared that while it can rule on the issue of prescription, it cannot determine whether the CIR's right to assess has prescribed based on the evidence offered by Contex. The Court *En Banc* explained that in order to determine whether the right to assess has prescribed, it needs to refer to the dates when the returns were filed; that not only were the returns not offered in evidence, they were likewise unmarked and unidentified; and that Contex never even gave any reason for its failure to offer the returns as evidence in its Motion to Present Additional Evidence. Hence, the Court *En Banc* found that Contex has waived its right to offer the returns as evidence, and denied Contex's prayer for the reopening of trial to allow it to present additional evidence in support of its cause of action. Having no basis upon which to compute the running of the prescriptive period to assess, the Court *En Banc* cannot determine whether Contex's claim of prescription is true and if the Waivers were entered into before the right to assess has prescribed.

The Court *En Banc* went on to explain that while the Court of Tax Appeals ("CTA") is not governed strictly by technical rules of evidence, the presentation of the evidence is not a mere procedural

[1] Emphases retained.

technicality which may be disregarded, considering that it is the only means by which the CTA may ascertain and verify the truth of the party's claims; and that failure to formally offer these pieces of evidence is fatal to Contex's cause, which is aggravated by the fact that not even a single reason was advanced to justify such fatal omission.

As to the question of whether the Revenue Officer ("RO") who conducted the audit investigation has the requisite authority, the Court *En Banc* found that the said Letter of Authority ("LOA") was likewise never offered in evidence by Contex or the CIR, in order to prove who was actually granted the authority to conduct tax audit. Having no basis for its claim of absence of authority, the Court *En Banc* upheld the presumption of regularity of performance of the RO's audit.

Next, the Court *En Banc* discussed interest, it cited *Section 247(a) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*, which clearly states that the additions under *Chapter I, Title X* are applicable to all taxes imposed under the *1997 NIRC*, regardless of the title under which they are classified; and that accordingly, the additions to the tax or deficiency tax, such as deficiency interest under *Section 249(B) of the 1997 NIRC* and delinquency interest under *Section 249(C) of the 1997 NIRC*, are applicable to income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), fringe benefit tax ("FBT"), and final withholding tax ("FWT").

As to the parties' other contentions, the Court *En Banc* found that they did not contain any new and/or compelling averment as they merely rehashed previously discredited arguments.

Accordingly, the Court *En Banc* denied the parties' Petitions for Review for lack of merit; and affirmed the Decision dated April 22, 2015, the Amended Decision dated June 30, 2015, and the Resolution dated August 27, 2015, all promulgated by the CTA Second Division ("Court in Division").

In his Motion for Reconsideration filed on March 28, 2017, the CIR claims that Contex should be taxed as a regular entity and all its income should be subject to all relevant internal revenue taxes under the *1997 NIRC*, such as VAT; that Contex is not qualified to avail the tax benefits under *Revenue Memorandum Circular ("RMC") No. 50-2007;* and that Contex is liable to pay deficiency VAT assessment.

In Contex's Motion for Reconsideration submitted on March 29, 2017, it avers that the evidence on record clearly show that the CIR's right to assess Contex's deficiency taxes for calendar year ("CY") 2007 has already prescribed pursuant to *Section 203 of the 1997 NIRC;* and that the waiver is invalid because *(1)* its tenor varies significantly from what is required under *Revenue Memorandum Order ("RMO") No. 20-90, (2)* it failed to show the date of acceptance thereof by the CIR, *(3)* it failed to specify the amount of tax assessed, and *(4)* there is absence of any written authority from Contex's Board of Directors authorizing the signatory to sign on its behalf. It claims that the deficiency tax assessments are null and void since the RO who examined Contex's books did not have the requisite authority; and that even assuming that the right to assess has not prescribed and that the RO was authorized, the deficiency taxes should be cancelled for lack of legal and factual basis. Contex further posits that there is no basis for the imposition of deficiency interest on WTC, FBT and FWT; and that the higher interest of substantial justice dictates that the Court *En Banc* should have allowed the reopening of trial and the admission of additional evidence.

On April 25, 2017, the Court *En Banc* ordered the parties to file their comments to the other's Motion for Reconsideration within ten (10) days from notice. Records reveal that the April 25, 2017 Resolution was received both by the BIR Litigation Division and by Contex on May 10, 2017. Therefore, both parties only had until May 22, 2017[2] to file their comments.

On May 19, 2017, Contex filed its Motion for Extension of Time to File Comment, which was granted by the Court *En Banc* on May 23, 2017 through a Minute Resolution, giving Contex an extension of fifteen (15) days or until June 5, 2017[3] to file its comment.

In Contex's Comment filed on June 5, 2017, it counters that there is no basis for the CIR's argument that Contex is liable for twelve percent (12%) VAT on its sales to Unet, a customs territory customer, if more than thirty percent (30%) of its total income is generated from the customs territory; and that Contex is registered

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[2] May 20, 2017 fell on a Saturday.
[3] June 4, 2017 fell on a Sunday.

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with the Subic Bay Metropolitan Authority ("SBMA") and is qualified to avail of the tax privileges under *Republic Act ("RA") No. 7227.*

On June 6, 2017, the Judicial Records Division issued a Records Verification Report stating that the CIR failed to file his comment to Contex's Motion for Reconsideration.

After a careful study of the grounds raised by the parties, the Court *En Banc* finds no merit in their Motions for Reconsideration since they failed to raise any new argument that would warrant a reconsideration of the assailed Decision, considering that the arguments were mere reiterations of the allegations in Contex's Memorandum and the CIR's Petition for Review[4]. Reproduced hereunder are the parties' arguments, as summarized in the March 3, 2017 Decision:

> ***Contex's Arguments***
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> Contex claims that the CIR's right to assess has already prescribed due to the invalidity of the Waiver of the Defense of Prescription ("Waiver"); that the deficiency tax assessments are null and void since the RO who examined its books of accounts did not have the requisite authority to do so under the LOA; that the assessments should be cancelled for lack of legal and factual basis; that the Court in Division erred in the computation of deficiency and delinquency interest due; and that the higher interest of substantial justice dictates that re-opening of trial should have been allowed for the identification of documents in the BIR Records.
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> ***The CIR's Arguments***
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> The CIR claims that Contex should be taxed as a regular entity and all its income should be subject to all relevant internal revenue taxes under the *1997 NIRC*, such as VAT; that Contex is not qualified to avail the tax benefits clarified in *Revenue Memorandum Circular ("RMC") No. 50-07*; and that it is liable to pay deficiency VAT assessment.

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[4] The CIR failed to file his Memorandum despite notice.

WHEREFORE, the CIR's Motion for Reconsideration (Re: Decision dated 03 March 2017) and Contex Corporation's Motion for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(I maintain my Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR WITH PJ DEL ROSARIO'S CONCURRING AND DISSENTING OPINION
Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice