REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PASIG GREEN PARK VILLAGE HOMEOWNERS ASSOCIATION, INC., *Petitioner,*	**CTA CASE NO. 10149**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 06 2025 4:15 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

The instant Petition for Review ("Petition") seeks the cancellation of the deficiency assessment on value added tax ("VAT") for taxable year ("TY") 2015 in the amount of One Million Ninety-Five Thousand Two Hundred Fifty One and 75/100 Pesos (Php1,095,251.75).[1]

The Parties

Petitioner is a non-stock non-profit corporation organized and existing under Philippine laws with Housing and Land Use Regulatory Board ("HLURB") Registration No. 04-610 with the following corporate purposes: a) to initiate and undertake worthwhile projects for the benefit of the community; b) to foster brotherhood, neighborliness, cooperation and understanding among the members and their dependents through unified, social, moral, spiritual, cultural and civic action for the promotion/maintenance of the general welfare of the community; c) to serve

[1] See Statement of the Case, Pre-Trial Order, *Rollo* Vol. II, p. 665.

as forum of information, discussion of common problems and the adoption/implementation of lawful measures to solve such problems; d) to serve as an instrumentality for enforcing rules and regulations as may be agreed upon by the association; and e) to prepare the Association for its eventual take-over of the administration of Pasig Green Park Village from Solid Homes, Inc.[2]

Meanwhile, respondent is the duly appointed Commissioner of Internal Revenue ("CIR") mandated by law to enforce and implement the *National Internal Revenue Code, as amended* ("*NIRC*") and related statutes, including, among others, the power to decide disputed assessments. He holds office at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.[3]

The Facts

On November 18, 2016, petitioner received Letter of Authority ("LOA") SN: eLA201200026340 authorizing the tax audit of petitioner's books of accounts covering TY starting from January 1, 2015, to December 31, 2015.[4]

Thereafter, on November 13, 2018, respondent issued a Preliminary Assessment Notice ("PAN") finding petitioner liable for VAT in the total amount of Php2,182,881.74, inclusive of surcharge and interest, and expanded withholding tax ("EWT") in the total amount of Php163,619.49, inclusive of surcharge and interest.[5]

In response thereto, petitioner filed a Request for Reconsideration, dated November 22, 2018, manifesting that it would settle the deficiency EWT but requesting that the BIR remove the deficiency VAT findings considering that association dues and the cost of vehicle stickers are not gross receipts obtained from business undertakings which are subject to VAT. Petitioner insisted that it is solely a homeowners' association formed to manage and maintain the basic needs of the village, that is not engaged in commercial business, and that the association dues and cost of vehicle stickers are merely member's contributions to subsidize the deficiency in cash of the operations of the homeowners' association in maintaining their village, which are reported and classified as part of the member's equity in petitioner's books and not declared as income. Thus, per petitioner, these amounts are VAT exempt.[6]

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2 Exhibits "P-1" to "P-1-2, *Rollo* Vol. II, pp. 853-870.
3 Petition, *Rollo* Vol. I, p. 11.
4 Exhibits "R-1", *Rollo,* Vol. II, p. 738.
5 Exhibit "R-16", *id.* at 760-764.
6 Exhibit "R-18", *id.* at 768.

On January 7, 2019, respondent issued the Final Assessment Notices ("FAN")[7] and Formal Letter of Demand ("FLD").[8] The FAN did not provide a specific date as to when the tax assessment contained therein should be paid. Moreover, the FAN/FLD simply reiterated the deficiency VAT and EWT findings contained in the PAN. Respondent in the FAN/FLD posits that VAT is due from petitioner since it engaged in the sale of services during TY 2015 and earned gross receipts from Revenue from Members' Due and Services, Monthly Association Dues, Stickers and Entry Fees, Rental on Stalls and Club House Facilities, Permits and Clearances on Specific Member's Project, and Revenue from Miscellaneous Services which exceeded the then VAT threshold of Php1,919,500.00.

Through a Letter, dated February 4, 2019, petitioner filed its Protest to the FAN/FLD. It alleged that VAT cannot be imposed on the dues that it collects from its homeowners-members as these do not constitute income but merely funds held in trust which are necessary to defray the operational expenses of the homeowners' association. According to petitioner, *Revenue Memorandum Circular No. 9-2013* ("*RMC 9-13*") which was used by respondent as basis to impose VAT on petitioners' gross receipts from homeowners' dues, is procedurally and substantially void. Following petitioner's line of argument, membership dues are not gross receipts derived from sale or exchange of services since they merely implement the administration of required services to collect the association dues from homeowners pursuant to its corporate purpose as "trustee" of the fund. As such, per petitioner, VAT is not due from such receipts. Further, according to petitioner, the subsequent passage into law of *Republic Act No. 10963* ("*TRAIN Law*"), where membership dues to a homeowners' association were specifically exempted from tax, confirms that homeowners' dues are indeed exempt from VAT.

As regards the EWT assessment, petitioner changed its stance that it would simply settle the same. It argued that it is not subject to EWT since it is exempt from income tax and withholding tax and should thus not be found liable for such.

On April 5, 2019, petitioner submitted to respondent the supporting documents to its Protest via registered mail.[9]

Eventually, petitioner paid the EWT assessment.[10]

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[7] Exhibits "R-19" and "R-19-a", *id.* at 769-770.
[8] Exhibit "R-20", *id.* at 771-774.
[9] Exhibit "R-27", *id.* at 792-802.
[10] Exhibit "R-32", *id.* at 909.

On July 9, 2019, respondent issued the Final Decision on Disputed Assessment ("FDDA"). This was received by petitioner on July 10, 2019.[11] The BIR did not remove the VAT assessment. It alleged that fees and dues collected by a homeowners' association are subject to VAT since these constitute income payments or compensation for the beneficial services it provided to its homeowner members. Further, respondent cited *Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation*,[12] where it was declared that even a non-stock non-profit organization or government entity is liable to pay VAT on the sale of goods or services.

Thus, on August 8, 2019, petitioner filed the instant Petition with a Motion for Suspension of Collection of Taxes.[13]

On September 13, 2019, an Opposition (Re: Petitioner's Motion for Suspension of Collection of Tax) was filed by respondent.[14] In support of the Motion for Suspension of Collection of Taxes, petitioner offered the testimony of Ms. Criste B. Villanueva, its President.[15] During the hearing on September 24, 2019, petitioner withdrew its Motion for Suspension of Collection of Taxes.[16]

On October 21, 2019, Summons were issued to respondent to file an Answer to the instant Petition.[17] On October 24, 2019, respondent filed his Answer.[18] On January 23, 2020, respondent elevated the BIR Records.[19]

After a full-blown trial, on October 13, 2022, petitioner filed through registered mail its Memorandum.[20] On the other hand, respondent did not file a Memorandum.[21]

On February 6, 2024, this Court submitted the instant case for Decision.[22]

Hence, this Decision.

[11] Exhibit "R-34", *id.* at 791-793.
[12] G.R. No. 125355, 20 March 2000.
[13] *Rollo* Vol. I, pp. 10-151.
[14] *id.* at 162-168.
[15] Exhibit "P-8", *id.*, at 169-212.
[16] *Rollo* Vol. 1, pp. 219-221.
[17] *id.* at 230.
[18] *id.* at 231-243.
[19] *id.* at 282-283.
[20] *Rollo* Vol. II, pp 1010-1039.
[21] *Rollo* Vol. III, pp. 1147-1149.
[22] *id.* at 1150.

The Issues

The following issues are for resolution by this Court: a) whether or not the Court has jurisdiction over the instant case; and b) whether or not petitioner is liable for deficiency taxes for TY 2015.[23]

Arguments of the Parties

Petitioner's Arguments[24]

Petitioner avers that the Court of Tax Appeals ("CTA") has exclusive appellate jurisdiction to review by appeal the decision of the Commissioner of Internal Revenue involving petitioner's disputed assessment.

Further, petitioner argues that it is not liable for deficiency taxes for TY 2015. Per petitioner, Association Dues, Membership Fees, and Other Association Charges are not profit or income. These are simply collected by petitioner to cover administration and operating expenses, in particular, basic security expenses, salaries, and maintenance of the Village with an area of about 100 hectares and population of over 2000 homes and families, repair, restoration or replacement of homeowners' facilities and other portions of property it manages, as well as for areas, and other expenses on such area and property. The Association Dues, Membership Fees, and Other Association Charges, not being considered as profit or income, are therefore not subject to income tax. Consequently, the Association Dues, Membership Fees, and Other Association Charges, not being considered as profit or income, are therefore not subject to VAT per *Section 105 of the NIRC*. *RMC 9-13* is void since its interpretation is beyond the ambit of the law. An administrative revenue regulation, issuance or revenue circular should not go beyond the statute it seeks to implement or interpret. The tax exemption of Association Dues, Membership Fees, and Other Association Charges under the *TRAIN Law* is tantamount to legislative approval of administrative interpretation by re-enactment.

Petitioner is not liable to pay 50% of the surcharge as provided in *Section 248 (B) of the NIRC*.

Petitioner is not a delinquent taxpayer. Hence, it should not be held liable for delinquency interest.

[23] See Issue, Pre-Trial Order, *id.* at 666.
[24] See Memorandum (For Petitioner), *id.* at 1067-1084.

Respondent's Arguments[25]

Respondent, meanwhile argues that the Court has no jurisdiction to rule on the validity of *RMC 9-13.* Even if the Court has jurisdiction to rule on such revenue issuance, it remains that the instant VAT assessment against petitioner has factual and legal bases.

The Ruling of the Court

The instant Petition is meritorious.

The Court has jurisdiction over the instant Petition.

Jurisdiction by this Court over the instant case is conferred by *Section 7 (1) of RA 1125*, to wit:

> SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> (1) *Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,* refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;
> (Italics, Ours)

In the instant case, petitioner appeals the FDDA, dated July 9, 2019, which affirmed the VAT assessment contained in the FAN/FLD. In totality, the FDDA is a decision of the CIR, issued through an authorized representative, pertaining to deficiency tax assessments referred to in the above cited provision that may be appealed before this Court. Accordingly, the said subject matter is within the jurisdiction of this Court and it may validly try the same as long as the appeal has been timely made.

In the present case, petitioner received the FDDA on July 10, 2019. Under *Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals* ("*RRCTA*"), "[a] party adversely affected by a decision... of the Commissioner of Internal Revenue... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision." Following this, petitioner had 30 days from receipt of the Assailed Decision (*i.e.,* July 10, 2019), or until August 9, 2019, within which to file a judicial appeal before this Court. As petitioner filed the instant Petition on August 8, 2019, this Court properly assumed jurisdiction over the present case.

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[25] See Answer, *Rollo* Vol. I, pp. 232-241.

This Court's exclusive appellate jurisdiction over the instant case involving a disputed assessment remains despite the fact that the validity or constitutionality of a revenue issuance (*i.e., RMC 9-13*) is being assailed. In *San Miguel Brewery, Inc. v. Commissioner of Internal Revenue*,[26] the Court *En Banc* ruled that the "CTA has jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund." Thus, it cannot be denied that this Court has jurisdiction over the instant case.

With the issue of jurisdiction settled, We shall now proceed to determine whether petitioner is entitled to the reliefs sought.

Association Dues, Membership Fees, and Other Association Charges collected by homeowners' associations are not subject to VAT.

In *In the Matter of the Declaratory Relief on the Validity of Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations"*, the Supreme Court held that "[a]ssociation dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are not subject to value-added tax per Section 105 of RA 8424".[27] The High Court explained, as follows:

> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
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> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business.
>
> The value-added tax is a burden on transactions imposed at every stage of the distribution process on the sale, barter, exchange of goods or

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[26] CTA *EB* Nos. 2320 and 2327, CTA Case No. 9223, February 21, 2022.
[27] G.R. No. 215801, January 15, 2020

property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay value-added tax on the sale of goods or services.

Section 106 of RA 8424 imposes value-added tax on the sale of goods and properties. The term 'goods' or 'properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation. These 'goods' or 'properties' include real property, intellectual property, equipment, and rights over motion picture films. Section 106 of RA 8424 likewise imposes value-added tax on transactions such as transfer of goods, properties, profits, or inventories.

Section 108 of RA 8424 further imposes value-added tax on sale of services and use or lease of properties. It defines 'sale or exchange of services,' as follows:

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest-houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. . . .

The phrase 'sale or exchange of services' shall include the use of intellectual property, use of certain types of equipment, supplying certain types of knowledge or information, lease of motion picture films, and use of transmission or air time.

Both under RA 8424 (Sections 106, 107, 52 and 108) and the TRAIN Law, there, too, is no mention of association dues, membership fees, and other assessments/charges collected by condominium corporations being subject to VAT. And rightly so. For when a condominium corporation manages, maintains, and preserves the common areas in the building, it does so only for the benefit of the condominium owners. It cannot be said to be engaged in trade or business, thus, the collection of association dues, membership fees, and other assessments/charges is not a result of the *regular conduct or pursuit of a commercial or an economic activity, or any transactions incidental thereto.*

Neither can it be said that a condominium corporation is rendering services to the unit owners for a fee, remuneration or consideration. Association dues, membership fees, and other assessments/charges form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses and other administrative expenses.

Indisputably, the nature and purpose of a condominium corporation negates the carte blanche application of our value-added tax provisions on its transactions and activities. CIR v. Magsaysay Lines, Inc., stated:

> Yet VAT is not a singular-minded tax on every transactional level. Its assessment bears direct relevance to the taxpayer's role or link in the production chain. Hence, as affirmed by Section 99 of the Tax Code and its subsequent incarnations, the tax is levied only on the sale, barter or exchange of goods or services by persons who engage in such activities, in the course of trade or business. These transactions outside the course of trade or business may invariably contribute to the production chain, but they do so only as a matter of accident or incident. As the sales of goods or services do not occur within the course of trade or business, the providers of such goods or services would hardly, if at all, have the opportunity to appropriately credit any VAT liability as against their own accumulated VAT collections since the accumulation of output VAT arises in the first place only through the ordinary course of trade or business.

Too, ANPC held that membership fees, assessment dues, and the like collected by recreational clubs are not subject to value-added tax 'because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. As such, there could be no 'sale, barter or exchange of goods or properties, or sale of a service' to speak of, which would then be subject to VAT under the 1997 NIRC.' This principle equally applies to condominium corporations which are similarly situated with recreational clubs insofar as membership fees, assessment dues, and other fees of similar nature collected from condominium owners are devoted to the operations and maintenance of the facilities of the condominium. In sum, RMC No. 65-2012 illegally imposes value-added tax on association dues, membership fees, and other assessments/charges collected and received by condominium corporations.
(Italics, Ours)

While the subjects of the above cited case are the Association Dues, Membership Fees, and Other Association Charges collected by condominium corporations, the pronouncements made by the Supreme Court therein are equally applicable to homeowners' associations such as herein petitioner. This is because a homeowners' association has the same functions as a condominium corporation, which is to maintain, repair, safeguard and safekeep the common areas and facilities used by homeowners/condominium owners, and to provide security and other community services to the homeowners/condominium owners, among others.

Accordingly, Association Dues, Membership Fees, and Other Association Charges collected by homeowners' associations are equally VAT exempt considering that when these fees are collected by homeowners' associations, there is no sale of services as contemplated under *Section 105 of the NIRC* which are subject to VAT. There is no commercial activity per se that may be subjected to VAT. These fees are merely collected to answer for the costs for maintenance, repair, improvement, reconstruction expenses, and other administrative expenses to be incurred by homeowners' associations in rendering services to homeowners who are members of such homeowners' associations.

Based on this, *RMC 9-13* is null and void in so far as it subjects to VAT Association Dues, Membership Fees, and Other Association Charges collected by homeowners' associations despite the clear mandate under *Section 105 of the NIRC* of what transactions can be subjected to VAT.

In the case at bar, petitioners' corporate purposes are as follows: a) to initiate and undertake worthwhile projects for the benefit of the community; b) to foster brotherhood, neighborliness, cooperation and understanding among the members and their dependents through unified, social, moral, spiritual, cultural and civic action for the promotion/maintenance of the general welfare of the community; c) to serve as forum of information, discussion of common problems and the adoption/implementation of lawful measures to solve such problems; d) to serve as an instrumentality for enforcing rules and regulations as may be agreed upon by the association; and e) to prepare the Association for its eventual take-over of the administration of Pasig Green Park Village from Solid Homes, Inc.[28] Certainly, these purposes show that petitioner is indeed a homeowners' association. The Association Dues, Membership Fees, and Other Association Charges collected by it from the various homeowners at Pasig Green Park Village are consequently VAT exempt.

The VAT assessment issued against petitioner is thus null and void.

ACCORDINGLY, the Petition for Review filed by petitioner **PASIG GREEN PARK VILLAGE HOMEOWNERS ASSOCIATION, INC.** is hereby **GRANTED.** The subject VAT assessment is declared **NULL** and **VOID.** The instant PAN, FAN/FLD and the FDDA are **WITHOUT**

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[28] Exhibits "P-1" to "P-1-2, *Rollo* Vol. II, pp. 853-870.

EFFECT. Respondent is hereby **ENJOINED** from proceeding with the collection of the subject VAT Assessment.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice