

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

COMMISSIONER OF INTERNAL
REVENUE

Petitioner,

-versus-

COL FINANCIAL GROUP, INC.,
Respondent.

CTA EB CASE No. 1187
(CTA CASE No. 8454)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

DEC 15 2015

X-----X

3:15 p.m.

RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration¹ filed by the Commissioner of Internal Revenue (CIR) seeking to set aside this Court's Decision promulgated on June 30, 2015,² the dispositive portion of which reads:

"WHEREFORE, the petition is **DENIED.** The Decision dated April 15, 2014, rendered by the Third Division of this Court in CTA Case No. 8454, and its Resolution dated June 02, 2014 are **AFFIRMED.** No pronouncement as to costs. ⚡

¹ Filed on July 22, 2015.

² *En Banc* Docket, pp. 96-109.

SO ORDERED."

In her motion, CIR insists that once the taxpayer elected the optional standard deduction (OSD) in its first quarterly return, such election is considered irrevocable for the taxable year, as stated in Section 34(L)³ of the National Internal Revenue Code (NIRC) of 1997. Moreover, CIR is now claiming that Revenue Regulation (RR) No. 16-2008 is an erroneous interpretation of the law and COL Financial Group, Inc. (COL) should have not relied on such.

In its Comment/Opposition,⁴ COL upholds its same argument that there was a retroactive application of RR No. 02-2010, as further implemented by RMC 16-2010, which is obviously prejudicial on its part and violates Section 246⁵ of the NIRC, that it is only the election of OSD that is irrevocable, and not when the taxpayer chose the itemized method of deduction in its quarterly return and that RR No. 16-2008 was the prevailing regulation at the time COL filed its first three quarterly returns for taxable year 2009, hence, CIR cannot fault COL for relying on the said regulation.ζ

³ SECTION 34. Deductions from Gross Income. –

xxx xxx xxx

(L) Optional Standard Deduction. – xxx Unless the taxpayer signifies in his return his intention to elect the optional standard deduction, he shall be considered as having availed himself of the deductions allowed in the preceding Subsections. Such election when made in the return shall be irrevocable for the taxable year for which the return is made:
xxx

⁴ Filed on September 04, 2015.

⁵ SECTION 246. Non-Retroactivity of Rulings. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

"(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

"(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

"(c) Where the taxpayer acted in bad faith.

RESOLUTION

The motion is bereft of merit.

Section 34(L) of the NIRC provides:

“SECTION 34. Deductions from Gross Income. –

xxx xxx xxx

(L) Optional Standard Deduction. –
xxx Unless the taxpayer signifies in his return his intention to elect the optional standard deduction, he shall be considered as having availed himself of the deductions allowed in the preceding Subsections. Such election when made in the return shall be irrevocable for the taxable year for which the return is made: xxx” (Underlining supplied)

As correctly observed by COL, it is clear that Section 34(L) pertains to the irrevocability of the election of OSD. However, the election of itemized deduction will not bar the taxpayer to choose OSD later on.

Records show that RR No. 16-2008 was the prevailing ruling of the CIR when COL filed its three quarterly returns for the taxable year 2009. However, before the filing of its final return, RR No. 16-2008 was reversed by virtue of RR No. 2-2010.

COL simply relied on RR No. 16-2008 at the time of filing of the quarterly returns, the revenue regulation prevailing at such time, and it would be the height of injustice to apply a new rule on the filing of quarterly return when such was already filed. When a doctrine is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.⁶ A reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal.⁷ 4

⁶ Albino S. Co v. Court of Appeals, G.R. No. 100776, October 28, 1993.

⁷ Visayas Geothermal Company vs. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.

RESOLUTION

In fact, this argument before this Court is being raised for the first time on appeal. As the Supreme Court⁸ emphasized:

"The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party."

Time and again, this Court has ruled that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.⁹

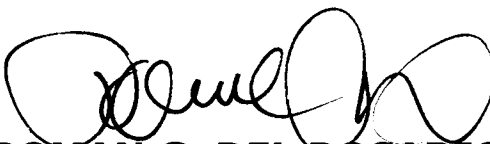
Other arguments presented by CIR readily reveal that they deal with the very same issue, which has been thoroughly passed upon by the Court in Division and clearly discussed in the Decision promulgated on April 15, 2014 and sustained in the Resolution dated June 2, 2014, by this Court's Third Division, as reiterated by the Court *En Banc* in the assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

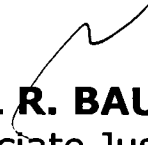
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

⁸ Carantes v. Court of Appeals, G.R. No. L-33360, 25 April 1977.

⁹ Commissioner of Internal Revenue vs. Eastern Telecommunications, G.R. No. 163835, July 07, 2010.

(On Leave)
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


AMELIA R. COTANGCO-MANALASTAS
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice