REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

\- versus -

YUMEX PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1139
(CTA Case No. 8331)

Present:

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

Promulgated:

AUG 11 2015
2:51 p.m.

x - x

DECISION

UY, ***J.*:**

This Petition for Review[1] filed on April 4, 2014 by petitioner, Commissioner of Internal Revenue, against respondent Yumex Philippines Corporation, seeks to set aside the Decision dated November 28, 2013[2] and the Resolution dated March 3, 2014[3], both promulgated by the Special Second Division of this Court (or "Court in Division") in CTA Case No. 8331, entitled *"Yumex Philippines Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read:

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[1] EB Docket, pp. 7 to 28.

[2] EB Docket, pp. 29 to 55; Penned by Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.

[3] EB Docket, pp. 56 to 59; *supra.*

Decision dated November 28, 2013:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the assessment issued by respondent against petitioner for deficiency improperly accumulated earnings tax is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED."

Resolution dated March 3, 2014:

"**WHEREFORE,** finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent's *Motion for Reconsideration* filed on December 12, 2013 is hereby **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of her office, including, among others, the power to decide disputed assessments, and such other matters vested in her in the National Internal Revenue Code (NIRC) and other special laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Yumex Philippines Corporation (YPC) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at First Cavite Industrial Estate, Special Economic Zone, Bo. Langkaan, 4126, Dasmariñas, Cavite.

THE FACTS

As found by the Court in Division, these are the facts of the case.

A Notice of Informal Conference dated March 4, 2010, with attached Details of Discrepancy and Preliminary Audit Findings with Schedule 2 Salaries and Compensation and Schedule 1 Fringe

Benefits Tax, was issued by Revenue District Officer Edgar B. Tolentino, informing YPC that the investigation of its accounting records for the taxable year 2007 resulted in a preliminary assessment of income tax, value-added tax, expanded withholding tax, fringe benefits tax, improperly accumulated earnings tax, and compromise penalty.

YPC responded to the preliminary audit findings by filing the letter dated June 2, 2010, stating that it is registered under the Philippine Economic Zone Authority (PEZA) and that it is enjoying payment of special rate on registered activities; thus, the company is not subject to improperly accumulated earnings tax.

Subsequently, the CIR sent the letter dated August 12, 2010 and a Summary of Deficiencies to YPC, which were received by the latter on August 20, 2010 and August 25, 2010, respectively. YPC thereafter sent its reply to the CIR's letter dated August 12, 2010.

A Preliminary Assessment Notice dated December 16, 2010 (PAN), with attached Details of Discrepancies, was issued by Regional Director Rodita B. Galanto, finding YPC liable to pay deficiency income tax, fringe benefits tax, improperly accumulated earnings tax, and compromise penalty.

A Formal Letter of Demand dated January 10, 2011 (FLD) with Details of Discrepancies and Audit Results/Assessment Notice were likewise issued by Regional Director Rodita B. Galanto, finding YPC liable to pay deficiency income tax in the amount of ₱589,961.46, fringe benefits tax in the amount of ₱1,097,855.50, improperly accumulated earnings tax in the amount of ₱9,077,695.05, and compromise penalty in the amount of ₱25,000.00.

On January 20, 2011, YPC filed with the CIR its Protest on the FLD, stating that it is registered under PEZA and that it is enjoying payment of special tax rate on registered activities. Hence, the company is not subject to improperly accumulated earnings tax. YPC added that all its activities are registered under PEZA.

YPC sent the letter dated February 2, 2011, which was received by the CIR on February 4, 2011, informing the latter that it is paying the amount of deficiency income tax amounting to ₱372,106.45 and deficiency fringe benefits tax in the amount of ₱584,355.38, while contesting the amount of interest and penalty. Respondent likewise stated that it paid in full the total deficiency tax amounting to

₱981,461.83, including the compromise penalty of ₱25,000.00 as evidenced by the receipts attached thereto.

After a re-investigation, Revenue District Officer (RDO) Honorata S. Aguilar issued the letter dated July 25, 2011, informing YPC that its request for cancellation of civil increments and penalties is subject to the approval of the CIR or the Deputy Commissioner/Assistant Commissioner/Regional Director, pursuant to Section III(6) of Revenue Memorandum Order No. 19-2007. In the same letter, the said RDO reiterated its position on the assessment of improperly accumulated earnings tax and civil increments and further informed YPC that the whole docket of the case will be forwarded to the Regional Office for pursuance of collection.

Treating the said letter as the CIR's Final Decision on Disputed Assessment, YPC appealed the same by filing a Petition for Review before the Court in Division on September 7, 2011.

In her Answer filed on October 14, 2011, the CIR alleged, among others, the following special and affirmative defenses to prove that YPC is liable to pay its deficiency Improperly Accumulated Earnings Tax (IAET) for calendar year 2007 in the aggregate amount of P9,077,695.05 including penalties, surcharges and interest because the subject assessment was issued in accordance with law and regulations; comprehensive study of petitioner's books of accounts and pertinent accounting records disclosed that YPC is liable to pay the total deficiency IAET assessment as discussed in the Memorandum Report dated September 13, 2007 of the examiner who conducted the investigation of petitioner's case.

By agreement of the parties' counsels during the Pre-trial Conference held on November 24, 2011, the parties filed with the Court in Division their Joint Stipulation of Facts[4] or JSFI on December 15, 2011. In the Resolution dated December 19, 2011[5], the Court in Division approved the said JSFI and considered pre-trial terminated and ordered the parties to proceed with the trial on the merits presenting evidence not covered by their Joint Stipulation of Facts.

During trial, both parties presented their respective testimonial and documentary evidence. YPC presented as its witness Leonora Perez-Sangalang, the Division Manager of its Administration Department. YPC also presented and formally offered Exhibits "A" to

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[4] Division Docket, (CTA Case No. 8331), pp. 198-200
[5] Division Docket, (CTA Case No. 8331), p. 202

"AA," which were admitted as part of its documentary evidence in the Court in Division's Resolutions dated March 23, 2012 and May 22, 2012.

On the other hand, the CIR presented as witnesses Bayani A. Atienza, Jr., Revenue Officer I, formerly assigned at Revenue District Office No. 54-A, Trece Martires City in 2007 and Ernesto Generoso, Revenue Officer I, formerly assigned at RDO No. 54-A, Trece Martires City in 2011. The CIR likewise presented and formally offered Exhibits "1" to "21-A", which were admitted as part of her documentary evidence in the Court in Division's Resolutions dated October 25, 2012, December 17, 2012, and during the hearing held on March 11, 2013.

After the submission by YPC of its Memorandum on December 5, 2012 and Supplemental Memorandum on April 8, 2013; and the CIR's Memorandum on April 10, 2013, CTA Case No. 8331 was submitted for decision in the Resolution dated May 16, 2013.[6]

On November 28, 2013, the Court in Division rendered the assailed Decision[7] ordering the cancellation and setting aside of the assessment issued by the CIR against YPC for deficiency improperly accumulated earnings tax. The Court in Division found that YPC was not accorded due process in the issuance of the subject assessment and that said assessment lacks factual basis.

Undaunted, the CIR filed her *Motion for Reconsideration* on December 12, 2013.[8] YPC filed its *Opposition (To Motion for Reconsideration)* on December 27, 2013.[9]

The said Motion was found to be bereft of merit, and was denied, by the Court in Division in the assailed Resolution dated March 3, 2014.[10]

Subsequently, the CIR filed before the Court *En Banc*, a *Motion for Extension of Time to File Petition for Review* on March 19, 2014.[11]

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[6] Division Docket, (CTA Case No. 8331) p. 640
[7] EB Docket, pp. 29 to 55; Division Docket (CTA Case No. 8331) –Vol. II, pp. 642 to 668.
[8] Division Docket (CTA Case No. 8331) – Vol. II, pp. 669 to 678.
[9] Division Docket (CTA Case No. 8331) – Vol. II, pp. 681 to 697.
[10] EB Docket, pp. 56 to 59; Division Docket (CTA Case No. 8331) – Vol. II, pp. 699 to 702.
[11] EB Docket, pp. 1 to 5.

The Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from March 20, 2014, or until April 4, 2014, within which to file her Petition for Review.[12]

On April 4, 2014, the CIR filed the instant Petition for Review[13] praying that the Decision dated November 28, 2013 and the Resolution dated March 3, 2014 be set aside, and a new decision be rendered, ordering YPC to pay the amount of ₱9,077,695.05 as deficiency improperly accumulated earnings tax for calendar year 2007, plus 20% deficiency and delinquency interest for late payment of said tax from January 1, 2011 until fully paid, pursuant to Section 248 and 249 of the NIRC of 1997, plus increments and penalties in the amount of ₱217,855.01 on income tax and ₱513,500.12 on fringe benefit tax plus 20% deficiency and delinquency interest for late payment from January 1, 2011 until fully paid pursuant to Sections 248 and 249 of the NIRC.

Without necessarily giving due course to the Petition for Review, YPC was ordered by the Court *En Banc* to file its Comment thereto.[14] YPC filed its *Comment (to the Petition for Review)* on June 2, 2014.[15] After considering the arguments/discussion raised by the parties in their respective pleadings, the Court *En Banc* resolved to give due course to the Petition for Review, and required the parties to submit their respective memoranda.[16]

In her *Manifestation* filed on July 22, 2014, the CIR manifested that she is adopting the arguments raised in her Petition for Review filed on April 4, 2014 as her Memorandum;[17] while YPC filed its Memorandum on July 25, 2014.[18] Thereafter, the case was submitted for decision on August 28, 2014.[19]

Hence, this Decision.

THE ISSUE

The issues raised in the instant Petition for Review for the

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[12] Minute Resolution dated March 21, 2014, EB Docket, p. 6.
[13] EB Docket, pp. 7 to 26.
[14] Resolution dated May 2, 2015, EB Docket, pp. 64 to 65.
[15] EB Docket, pp. 66 to 85.
[16] Resolution dated June 18, 2014, EB Docket, pp. 192 to 193.
[17] EB Docket, pp. 194 to 197.
[18] EB Docket, pp. 199 to 224.
[19] Resolution dated August 28, 2014, EB Docket, pp. 226 to 227.

consideration of the Court *En Banc* are as follows:

> "I. THE HONORABLE SECOND DIVISION ERRED IN DENYING THE VALIDITY OF THE ASSESSMENT BASED ON A MATTER THAT WAS NEVER AN ISSUE DURING THE TRIAL OF THE CASE.
>
> II. ASSUMING NON-ISSUES COULD BE UTILIZED IN DECIDING A CASE, STILL THE HONORABLE SECOND DIVISION ERRED IN READILY BELIEVING RESPONDENT'S BELATED ALLEGATION THAT THE ASSESSMENT IS INVALID AS THE PAN AND FAN WERE RECEIVED ON THE SAME DAY.
>
> III. THE HONORABLE SECOND DIVISION ERRED IN DENYING THE DEFICIENCY IAET ASSESSMENT FOR PETITIONER'S ALLEGED FAILURE TO PROVIDE PRIMA FACIE BASIS FOR THE SAME".[20]

<u>Petitioner's Arguments:</u>

The CIR argues that the Court in Division erred in denying the validity of the assessment based on a matter that was never an issue during the trial of the case. The CIR submits that considering that the issue on simultaneous receipt of the PAN and FAN was never raised by YPC in its Petition for Review dated September 7, 2011, or in its Pre-Trial Brief dated November 21, 2011, or in the Joint Stipulation of Facts and Issues dated December 13, 2011, but only in the Supplemental Memorandum dated April 14, 2013, it was clearly an error on the part of the Court in Division to decide the case based on this belated assertion which was raised long after trial and after the parties have rested their cases.

Moreover, the CIR contends that even assuming that non-issues could be utilized in deciding the case, the Court in Division erred in readily believing YPC's belated allegation that the assessment is invalid as the PAN and FAN were received on the same day. The CIR points out that: first, the Court in Division should have looked into the BIR records, which clearly shows that the PAN was mailed on December 17, 2010 while the FAN was mailed on January 10, 2011; and second, if YPC firmly believed that the assessment process was invalid, it should not have paid majority of the items in the said assessment; since YPC agreed to these

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[20] EB Docket, p. 11.

assessments and paid the same, it is now estopped from questioning the validity of the assessment process.

Furthermore, the CIR asserts that as can be seen in Section 29(C)(2) of the NIRC of 1997 and the case of *Cyanamid Philippines, Inc. vs. Court of Appeals*,[21] that it was error for the Court in Division to heap the burden of proof on her. According to the CIR, the said law provides that the mere accumulation is already determinative; and the said jurisprudence provides that when an improperly accumulated earnings tax assessment has been issued, the burden of disproving the same lies on the taxpayer.

Lastly, the CIR submits that in any case, sufficient factual basis for the assessments were given, and that this is easily proven by YPC's actions on record.

Respondent's Counter-arguments:

YPC counters that the Court in Division did not err in ruling that the CIR failed to comply with the due process requirements in issuing the subject assessment.

To elaborate its point, YPC avers that: *first*, contrary to the CIR's claim, the irregular issuance of the PAN, Formal Assessment Notice (FAN) and FLD was raised as an issue in its pleadings; *second*, even assuming that it failed to raise the irregular issuance of the subject assessment as an issue in its pleadings, said issue is nonetheless ripe for resolution because, during trial, YPC presented evidence regarding the irregular issuance of the subject assessment without any objection from the CIR, which had the opportunity to present countervailing evidence; *third*, the CIR violated the due process requirements in issuing the subject assessment by depriving YPC of the 15-day period within which to answer the PAN; *fourth*, the date of mailing of the PAN and FAN is immaterial in determining the CIR's compliance of the due process requirements; and *fifth*, YPC's payment of the deficiency income tax assessment and deficiency fringe benefits tax assessment does not cure or excuse the invalidity of the subject assessment for deficiency improperly accumulated earnings tax.

Lastly, YPC emphasizes that the Court in Division did not err in ruling that the subject assessment has no factual basis.

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[21] G.R. No. 108067, January 20, 2000.

THE COURT *EN BANC*'S RULING

The instant Petition lacks merit.

The Court in Division committed no error in considering the propriety or impropriety of the issuance of the PAN, FLD and FAN.

The CIR imputes error on the Court in Division in denying the validity of the subject assessment based on a matter that was never raised as an issue during trial.

The CIR is mistaken.

The Court *En Banc* finds that YPC, as petitioner in CTA Case No. 8331, in fact, made sufficient allegations in its Petition for Review regarding the issuance and receipt of the subject PAN and FLD/FAN, as well as, offered during trial, both documentary and testimonial evidence to prove the same. Pertinent portions of said pleading and the corresponding proof are summarized as follows:

Petition for Review dated September 7, 2011	Formal Offer of Evidence dated February 15, 2012
"8. On December 16, 2010, Regional Director Rodita B. Galanto of Revenue Region No. 9, San Pablo City issued a Preliminary Assessment Notice (PAN) assessing petitioner the following deficiency taxes for the year 2007, thus: xxx	Exhibits "P"[22] and "P-2"[23]
9. Without waiting for petitioner's receipt of the PAN and the lapse of petitioner's time to respond to the PAN, Regional Director Galanto issued a Formal Letter of Demand dated January 10, 2011 with an attached Details of Discrepancy and the corresponding Audit Results/Assessment Notices assessing petitioner the following deficiency taxes for the year 2007, thus: xxx	Exhibits "Q"[24] and "Q-1"[25]

[22] Division Docket (CTA Case No. 8331) – Vol. I, pp. 356 to 357.
[23] Division Docket (CTA Case No. 8331) – Vol. I, p. 358.
[24] Division Docket (CTA Case No. 8331) – Vol. I, pp. 359 to 360.
[25] Division Docket (CTA Case No. 8331) – Vol. I, p. 361.

10. On January 18, 2011, petitioner received the PAN as well as the Formal Letter of Demand and Audit Results/Assessment Notices issued by Regional Director Galanto."	Exhibits "P-1"[26] and "AA"[27]

Considering that the foregoing documents form part of the records of CTA Case No. 8331, it is only proper that the Court in Division consider the same in rendering the assailed Decision.

But even granting that a specific issue was not stipulated during trial, the Court in Division may rule on related issues, pursuant to Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**" *(Emphasis supplied)*

Thus, whether or not YPC specifically raised the issue on simultaneous receipt of the subject PAN and FLD/FAN in its pleadings or during trial, is of no moment. Based on the foregoing rule, the Court in Division is not precluded from considering other related issues, not otherwise stipulated by the parties, which may be necessary to achieve a just and orderly disposition of the case. Without a doubt, the propriety of the issuance of the subject PAN and FLD/FAN is a related issue, the resolution of which is pertinent and necessary in determining the validity and correctness of the said assessments.

The BIR failed to comply with due process requirements in the issuance of the subject assessment.

The CIR strongly insists that there is no denial of due process in this case.

[26] Division Docket (CTA Case No. 8331) – Vol. I, p. 356.
[27] Division Docket (CTA Case No. 8331) – Vol. I, p. 218.

We are not persuaded.

Section 228 of the NIRC of 1997 provides:

SEC. 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: xxx

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

xxx xxx xxx."*(Emphasis supplied)*

In relation thereto, Section 3.1.2 of Revenue Regulations (RR) No. 12-99[28] reads:

"3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.2 **Preliminary Assessment Notice (PAN).** – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in

[28] SUBJECT: 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 Extrajudicial Settlement of a Taxpayer's Criminal Violation of the code through payment of a Suggested Compromise Penalty.

> detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). <u>If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.</u>" *(Underscoring supplied)*

It is a settled doctrine that the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[29] The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored.[30]

In this case, fairness was ignored by petitioner when she did not provide an opportunity on the part of respondent to contest the issued PAN. For lack of said opportunity, there was a violation of respondent's right to due process.

The subject assessment lacks legal basis.

The CIR further argues that it was erroneous for the Court in Division to impose upon her the burden to establish the factual basis of the subject assessment.

We agree with the CIR.

Section 29(C)(2) of the NIRC of 1997 provides as follows:

> "SEC. 29. *Imposition of Improperly Accumulated Earnings Tax.*—
>
> xxx xxx xxx
>
> (C) *Evidence of Purpose to Avoid Income Tax.*—

[29] *Flores, et al. vs. Montemayor*, G.R. No. 170146, June 8, 2011.
[30] *Samalio vs. Court of Appeals, et al.*, G.R. No. 140079, March 31, 2005.

> xxx xxx xxx
>
> (2) *Evidence Determinative of Purpose.*— **The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members <u>unless the corporation, by the clear preponderance of evidence, shall prove to the contrary.</u>**" *(Emphasis and underscoring supplied)*

Moreover, in relation to the foregoing provision, the Supreme Court said in *Cyanamid Philippines, Inc. vs. Court of Appeals, et al.* ("*Cyanamid* case"):[31]

> "**If the CIR determined that the corporation avoided the tax on shareholders by permitting earnings or profits to accumulate, and the taxpayer contested such a determination, <u>the burden of proving the determination wrong, together with the corresponding burden of first going forward with evidence, is on the taxpayer</u>.** This applies even if the corporation is not a mere holding or investment company and does not have an unreasonable accumulation of earnings or profits.
>
> In order to determine whether profits are accumulated for the reasonable needs of the business to avoid the surtax upon shareholders, it must be shown that the controlling intention of the taxpayer is manifested at the time of accumulation, not intentions declared subsequently, which are mere afterthoughts. Furthermore, the accumulated profits must be used within a reasonable time after the close of the taxable year. In the instant case, petitioner did not establish, by clear and convincing evidence, that such accumulation of profit was for the immediate needs of the business." *(Emphasis and underscoring supplied)*

However, as the Court *En Banc* sees it, the crux of the controversy in the instant case is not so much as to who bears the burden of proof: the taxpayer or CIR, but rather, whether or not, the subject improperly accumulated earnings tax was properly imposed

[31] G.R. No. 108067, January 20, 2000.

upon YPC.

The imposition of improperly accumulated earnings tax is provided under Section 29(B)(2) of the NIRC of 1997, which reads as follows:

> "SEC. 29. *Imposition of Improperly Accumulated Earnings Tax.—*
>
> (A) *In General.* – In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.
>
> (B) *Corporations Subject to Improperly Accumulated Earnings Tax.* –
>
> (1) *In General.* – The improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.
>
> **(2) *Exceptions.* – The improperly accumulated earnings tax as provided for under this Section shall <u>not</u> apply to:**
>
> **(a) Publicly-held corporations;**
> **(b) Banks and other nonbank financial intermediaries; and**
> **(c) Insurance companies.**" *(Emphasis and underscoring supplied)*

The scope of the foregoing exceptions was expanded in RR No. 02-01,[32] to wit:

> "SECTION 4. *Coverage.* — The 10% Improperly

[32] SUBJECT: IMPLEMENTING THE PROVISION ON IMPROPERLY ACCUMULATED EARNINGS TAX UNDER SECTION 29 OF THE TAX CODE OF 1997, February 12, 2001.

Accumulated Earnings Tax (IAET) is imposed on improperly accumulated taxable income earned starting January 1, 1998 by domestic corporations as defined under the Tax Code and which are classified as closely-held corporations. Provided, however, that **Improperly Accumulated Earnings Tax shall not apply to the following corporations:**

a) Banks and other non-bank financial intermediaries;
b) Insurance companies;
c) Publicly-held corporations;
d) Taxable partnerships;
e) General professional partnerships;
f) Non- taxable joint ventures; and
g) **Enterprises duly registered with the Philippine Economic Zone Authority (PEZA) under R.A. 7916, and enterprises registered pursuant to the Bases Conversion and Development Act of 1992 under R.A. 7227, as well as other enterprises duly registered under special economic zones declared by law which enjoy payment of special tax rate on their registered operations or activities in lieu of other taxes, national or local.**" *(Emphasis and underscoring supplied)*

A careful reading of the foregoing provisions would reveal that while the improperly accumulated earnings tax, as a rule, is imposable on domestic corporations, the said tax may not be imposed on the specifically enumerated corporations under Section 29(B)(2) of the NIRC of 1997 and Section 4 (a) to o(g) of RR No. 02-01, one of which class includes *"(e)nterprises duly registered with the Philippine Economic Zone Authority (PEZA) under R.A. 7916".*

As regards **enterprises duly registered with the Philippine Economic Zone Authority (PEZA) under R.A. 7916**, as among those falling within the exceptions on the imposition of improperly accumulated earnings tax, it is noted said Section 4(g) of RR No. 02-01 does not qualify whether or not the said corporation or enterprise enjoys an ITH or the special tax regime at the rate of 5% on its registered activities.

In other words, if it is shown that the concerned corporation is an enterprise registered with the PEZA under Republic Act No. 7916, such fact, already excludes the said PEZA registered enterprise from the imposition of the improperly accumulated earnings tax, without further qualification.

Thus, We find no legal basis for the imposition of improperly accumulated earnings tax by the BIR upon YPC's supposed improperly accumulated earnings pertaining to its unregistered activity.

As We have already pointed out, Section 4(g) RR No. 02-01 made no distinction whether or not the concerned corporation or enterprise enjoys an ITH or the special tax regime at the rate of 5% on its registered activities, to qualify it as an excepted corporation or enterprise from the imposition of the improperly accumulated earnings tax.

When the law does not distinguish, neither should the Court.[33]

Considering that it was clearly established that YPC is a PEZA-registered enterprise,[34] YPC is excepted from the imposition of improperly accumulated earnings tax.

In the light of the foregoing discussions, the Court *En Banc* finds no error committed by the Court in Division and hereby upholds its ruling cancelling and setting aside the improperly accumulated earnings tax assessment for taxable year 2007 issued by the CIR against YPC.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED**, for lack of merit. The Decision dated November 28, 2013 and Resolution dated March 3, 2014, issued by the Court in Division in CTA Case No. 8331 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[33] *Cruz, et al. vs. Commission on Audit*, G.R. No. 134740, October 23, 2001.
[34] Exhibits "C" and "D", Division Docket (CTA Case No. 8331) – Vol. I, pp. 314 to 322.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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 *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice