REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

METRO PACIFIC CORPORATION [now NEO ORACLE HOLDINGS, INC.], Petitioner,	CTA EB No. 1228 (CTA CASE No. 8318)
	Present :
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	OCT 18 2016 3:36 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On May 4, 2016, the Court *En Banc* denied the Petition for Review dated October 21, 2014 filed by petitioner and sustained the finding of the Court in Division in its Decision dated June 11, 2014 and Resolution dated September 16, 2014 that petitioner is liable for deficiency donor's tax.

Aggrieved, petitioner filed the instant Motion for Reconsideration dated May 24, 2016, praying to reverse the adverse Decision of May 4, 2016.

Petitioner argues that contrary to the Court's ruling, it did not make any admission in its CGT Return that the market value of the shares of stocks sold to Columbus Holdings, Inc. (CHI) was P332.78. Allegedly, the figure indicated in Schedule I of its CGT Return was the book value and not the fair market value of the subject shares of stocks.

While petitioner admits that Schedule I of the CGT Return provides a column for "Taxable Base" "Selling Price or FMV whichever is higher", it counters that such terms were part of the CGT form itself. Moreover, it consistently questions the BIR's interpretation of Section 7(c.2.2.) of Revenue Regulations (RR) No. 6-2008 and maintains that the term fair market value in Section 100 of the National Internal Revenue Code (NIRC), as amended, is equivalent to book value.

Petitioner likewise takes exception to the ruling that it should have first assailed the validity of RR No. 6-2008 and Revenue Memorandum Circular (RMC) No. 25-2011 before the Secretary of Finance before going to the Court for the same purpose. Petitioner explains that it could not possibly take the suggested action since RR No. 6-2008 was issued two (2) years before it received the Notice for Informal Conference citing the said BIR issuance as basis therefor. At that time, there was no indication that respondent would use the said issuance against it. That being the case, the logical remedy was the present court action. Further, the rule on exhaustion of administrative remedies does not apply when the issue involved is purely a legal question, or when the administrative action being assailed is patently illegal, or when the exhaustion of administrative remedies would be unreasonable, all of which are present in the instant case.

The same holds true with RMC No. 25-2011. Petitioner claims that it received the said issuance only on July 11, 2011, hence, it was unreasonable to expect it to appeal it with the Secretary of Finance within 30 days after the date of issuance on March 2, 2011 as provided in RMC No. 44-2001. Besides, RMC No. 44-2001 applies only to BIR rulings and not to BIR issuances such as RMC 25-2011.

Further, the case of *Philippine American Life and General Insurance Company vs. The Secretary of Finance and The Commissioner of Internal Revenue,*[1] cited in the

[1] G.R. No. 210987, November 24, 2014

assailed Decision is not a binding precedent as it pertains to the validity of RR No. 6-2008 and RMC 25-11. The discussion on the subject matter was only incidental and should be deemed a mere *obiter dictum*.

Petitioner also reiterates that no donation as contemplated under Section 100 of the NIRC occurred, as the evidence presented show that the sale of the subject shares was for adequate and full consideration, based on the prevailing price at the time of the sale.

Petitioner was also able to prove that the subject sale, being an ordinary business transaction negotiated in good faith by unrelated parties for legitimate business purposes without donative intent on the part of the transferor, does not fall under Section 100 of the NIRC. Even assuming that the subject sale of shares was for less than adequate consideration, jurisprudence holds it could remain a bona fide business purpose, and at arm's length without being deemed a donation.

Further, that Section 7(c.2.2.) of RR No. 6-2008 is void as it equates book value with fair market value, which is contrary to Section 100 of the NIRC which pertains only to fair market value. Also the determination of fair market value is a judicial function, hence, beyond the authority of an administrative body such as the BIR. Being void, Section 7(c.2.2.) of RR No. 6-2008 cannot be the basis of respondent's assessment for donor's tax against petitioner.

Finally, RMC No. 25-2011 revoking BIR Ruling DA (DT-065) 715-2009 is void for it denied petitioner the right to due process as it was issued without according petitioner the benefit of a hearing with notice.

By way of comment, respondent points out that the arguments of petitioner are merely rehash of its arguments in its Petition for Review which had been fully dealt with by the Court in the assailed Decision.

Contrary to petitioner's asseveration, it made judicial admission in its CGT Return about the fair market value of the subject shares of stock. A simple mathematical computation of the figures in the CGT Return would show that the fair market value of the said shares was P332.78 per share. *Sans* any showing that the same was made through palpable mistake, the said admission is binding upon petitioner.

Respondent is firm that the Court has no authority to rule on the validity of Section 7(c.2.2) of RR No. 6-2008. Under Section 1, Rule 63 of the 1997 Rules of Court, any action assailing the validity of an administrative regulation must be treated as one for declaratory relief and should be lodged with the proper Regional Trial Court (RTC). Republic Act (RA) No. 1125, as amended, confers upon the CTA the jurisdiction to resolve tax disputes in general, but not on matters questioning the validity of a law, rule or regulation such as RR No. 6-2008.

Even assuming that the Court can rule on the validity of RR No. 6-2008, still jurisdiction has not been acquired since petitioner failed to exhaust administrative remedies in assailing the said administrative issuance.

As to RMC No. 25-2011, the same correctly revoked BIR Ruling DA (DT-065) 715-2009 dated November 27, 2009 since the latter ruling is void and in contravention of the law it was supposed to interpret.

BIR Ruling DA (DT-065) 715-2009 is a ruling of first impression, or one without established precedents, the issuance of which could not be delegated by respondent. In fine, BIR Ruling DA (DT-065) 715-2009 was invalidly issued by a mere Assistant Commissioner in violation of Section 7 of the NIRC, as amended. Further, it granted an exemption not provided in Section 100 of the NIRC, the law it sought to interpret.

Even assuming that BIR Ruling DA (DT-065) 715-2009 was validly issued, it had already been revoked by RMC No. 25-2011. Moreover, RMC No. 25-2011 could be given retroactive effect by virtue of petitioner's misrepresentation of the facts upon which the issuance of BIR Ruling DA (DT-065) 715-2009 was based.

Lastly, the questions on the validity of RMC No. 25-2011 were deemed waived when petitioner failed to exhaust administrative remedies in assailing the said issuance.

Evidently, and the Court agrees with respondent that the arguments in petitioner's Motion for Reconsideration are mere rehash of those in its Petition for Review, which have already been addressed in full and rejected in the assailed Decision dated May 4, 2016. Significantly, petitioner's contentions were not supported by evidence on record upon which the Court based its ruling. There being no new matter raised which warrants modification, much less reversal of the assailed Decision, petitioner's bid for reconsideration should be denied.

WHEREFORE, petitioner's Motion For Reconsideration dated May 24, 2016 is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice