REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BIG AA CORPORATION, represented
By **Erlinda L. Stohner,**
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7093

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
FEB 22 2006

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DECISION

ACOSTA, E., P.J.:

This case seeks the declaration of nullity of Revenue Memorandum Circular 40-2003 dated July 3, 2003 which clarified the issue that a letter notice being served by the office of the respondent upon a taxpayer who is found to have underdeclared its sales or purchases through the Third Party Information Program can be considered a notice of audit or investigation which would in effect disqualify the taxpayer concerned from amending its return which is the subject of such audit or investigation.

Petitioner is a domestic corporation duly created and registered under the law with principal address at No. 305, Zaragosa Street, Tondo, Manila. It is engaged mainly in the distributorship of San Miguel beer and soft drinks products (*pars. 1 & 3, Amended Complaint/Petition*).

For the taxable year 2001, petitioner filed its original Quarterly Value-Added Tax (VAT) Returns on April 25, 2001, July 24, 2001, October 9, 2001 and January 10, 2002, showing the total purchases for the period in the amount of P12,338,206.40.

In March, 2004, petitioner, relying on the provisions of Section 6(A) of the National Internal Revenue Code of 1997, filed its 2001 Amended Annual Income Tax Return and Amended Quarterly Value-Added Tax Returns to reflect the correct total purchases in the amount of P235,579,870.00 and paid the corresponding additional income tax and VAT, including interests and compromise penalties before the authorized bank of the respondent *(par. 2.b, Facts Stipulated).*

Prior to petitioner's filing of the amended returns, respondent, through the Bureau's Third Party Information Program, found that there was a discrepancy in the amount of total purchases made by petitioner based on the List of Sales and Purchases of San Miguel Corporation and the original returns filed by petitioner in the amount of P211,467,735.02 or 94.49% of the total and actual purchases. Thus, Letter Notice No. VAT-S-237-01-02 dated November 28, 2002 was issued by the respondent, requiring petitioner to avail of the Voluntary Assessment and Abatement Program (VAAP) pursuant to Revenue Regulations No. 12-2002. Having received no reply from the petitioner, respondent then issued the 2nd Notice dated January 15, 2003.

Due to petitioner's disregard of respondent's notices and orders, a criminal complaint against petitioner's General Manager, Erlinda I. Stohner, was then filed on August 31, 2004 before the City Prosecutor's Office of the City of Manila for violation of Sections 254, 255, 256, 257 and 267 of the National Internal Revenue Code of 1997.

On November 5, 2004, while the criminal complaint before the City Prosecutor's Office of the City of Manila was still pending further investigation, petitioner filed this instant Petition for Review questioning the validity of Revenue Memorandum Circular No. 40-2003 which clarified that a Letter Notice is considered as a Notice of Audit or Investigation for purposes of barring petitioner in amending its income and value-added tax returns for the taxable year 2001. Petitioner likewise prays that the Office of the City Prosecutor of the City of Manila cease and desist from further proceeding with the criminal complaint docketed as I.S. No. 04H-19924.

On April 26, 2005, petitioner formally amended its Petition for Review pursuant to this Court's order made in open court considering that the real party-in-interest in this case is the corporation itself. Respondent submitted its Amended Answer on June 8, 2005 refuting petitioner's claims, as follows:

> 7. The power to interpret the provisions of the National Internal Revenue Code (NIRC) and other tax laws is vested in the Commissioner of Internal Revenue pursuant to Section 4 thereof, thus:
>
> > "Section 4. *Power of the Commissioner to Interpret Tax laws and to Decide Tax Cases* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."
>
> 8. Revenue Issuances promulgated by the Commissioner of Internal Revenue (CIR) clarifying and/or interpreting the provisions of the NIRC has the force and effect of a law until otherwise declared by the Court (Republic vs. Hizon).
>
> 9. Letter Notice (LN) is a notice for audit or investigation contemplated under Section 6 (A) paragraph 3 of the 1997 Tax Code which provides:
>
> > "*Section 6. Power of the Commissioner to Make Assessments and Prescribed Additional Requirements for Tax Administration and Enforcement –*
> >
> > xxx xxx xxx

> Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed or amended: Provided, further, That no notice of audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer".

The foregoing is clarified and/or interpreted by Revenue Memorandum Circular No. 40-2003 duly promulgated by the CIR, thus:

REVENUE MEMORANDUM CIRCULAR NO. 40-2003

SUBJECT: Effect of the Issuance and Receipt of Letter Notice to the Taxpayer's Right to Amend its Tax Returns as Provided under Section 6 of the National Internal Revenue Code

TO: All Internal Revenue Officers and Others Concerned

For the information and guidance of all internal revenue officers and others concerned, please refer to the attached copy of the memorandum of Deputy Commissioner Jose Mario C. Buñag of the Legal and Inspection Group dated June 9, 2003 clarifying the following issues:

Whether or not the Letter Notice (LN) being served by the Bureau upon taxpayers who were found to have under-declared their sales or purchases through the Third Party Information Program can be considered a notice or audit or investigation which would in effect disqualify the taxpayers concerned from amending any return which is the subject of such audit and investigation.

The Deputy Commissioner for Legal and Inspection Group opines and I quote:

LN being served by the Bureau upon the taxpayers who were found to have under-declared their sales or purchases through the Third Party Information Program can be considered a notice of audit or investigation which would in effect disqualify the taxpayers concerned from amending any return which is the subject of such audit or investigation.

Please be guided accordingly.

Guillermo L. Parayno, Jr.
Commissioner

10. The Letter Notice (LN) sent to BAAC is considered as notice for audit or investigation of its income and VAT returns which would in effect disqualify BAAC from amending its income and VAT returns. Thus, BAAC amendments are not in order and not acceptable to the BIR.

11. BAAC's filing of amended income tax return on March 23, 2004 and VAT returns on March 25, 2004 was a mere subterfuge to cover the fraudulent act of substantial under-declaration that BAAC has committed, thus, inconsequential and will not alter the fact that BAAC has violated Sections 254, 255, 256, 257 and 267 of the 1997 Tax Code. This is particularly so where BAAC failed to explain its substantial under-declaration of purchases despite notice.

12. The Court of Tax Appeals cannot issue a writ of preliminary injunction and/or temporary restraining order in order to stay the preliminary investigation of a criminal case filed before the Office of the City Prosecutor of Manila for violation of Sections 254, 255, 256, 257 and 267 of the 1997 Tax Code which is criminal in nature.

13. The Supreme Court made the proscription in criminal cases on injunctions in the cases of *Gorospe vs. Penaflorida 101 Phil 886 (1957); Romero vs. Chief of Staff, 170 SCRA 408 (1989); Reyes vs. Judge Camilon, 192 SCRA 445 (1990); and Cesar Virata vs. Sandiganbayan, GR No. 86926, October 13, 1999,* thus:

    "The general rule is that criminal prosecution may be not restrained or stayed by injunction, preliminary or final. Public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society."

14. Section 218 of the 1997 Tax Code expressly provides that *no court shall have authority to grant injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by the 1997 Tax Code*. The tax evasion case filed against the BAAC's responsible officer before the Office of the City Prosecutor of Manila necessarily includes the collection of 2001 deficiency income and VAT amounting to P5,590,793.26 and P1,791,601.34, respectively. Hence, injunction will not stand.

Meanwhile, on May 2, 2005, the City Prosecutor of Manila rendered a Resolution dismissing the criminal case filed by the respondent against petitioner docketed as I.S. No. 04H-19924. After both parties have filed their respective memoranda, this case was deemed submitted for decision on September 29, 2005.

The parties have jointly stipulated that the following are the issues to be resolved by this Court:

1. Whether or not the Letter Notice (LN) issued by the respondent to the petitioner is a notice of audit or investigation contemplated under Section 6(A) paragraph 3 of the 1997 Tax Code;

2. Whether or not the receipt of the LN issued by the respondent to the petitioner barred the latter to amend its Income and Quarterly VAT Returns for the taxable year 2001; and

3. Whether or not Revenue Memorandum Circular No. 40-2003 was issued in accordance with law.

The above issues may be summed up as to whether Revenue Memorandum Circular No. 40-2003 issued on July 3, 2003 is valid or constitutional.

Petitioner argues that the letter notice issued by respondent is not the same as a "notice of audit or investigation" contemplated under the provisions of Section 6(A) of the NIRC of 1997. It contends that if the law had intended to mean that a notice of audit or investigation is similar to a letter notice, then the same should have been included in the provisions of Section 6(A) of the same Code. Petitioner further submits that administrative circulars cannot supersede, abrogate, modify or nullify a statute, as where conflict exists, the substantive Tax Law prevails.

On the other hand, respondent maintains that the Commissioner of Internal Revenue has the power to interpret the provisions of the NIRC of 1997 pursuant to Section 4 thereof. And that revenue issuances promulgated by the respondent clarifying or interpreting the provisions of the NIRC of 1997 have the force and effect of law unless otherwise declared by the court.

This Court agrees with the respondent.

First of all, consistent with the decision of the Honorable Supreme Court in the case of **Commissioner of Internal Revenue vs. Josefina Leal, 392 SCRA 9 (2002)**, the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, to wit:

"While the Court of Appeals correctly took cognizance of the petition for certiorari, however, let it be stressed that the ***jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals****, not to the RTC.*

xxx xxx xxx

Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals [CTA, for brevity]), as amended, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

SEC. 7. ***Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive 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 in relation thereto, *or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;*
xxx xxx xxx (emphasis added)"

Although the case quoted the provisions of the original law creating the Court of Tax Appeals, that is, Republic Act No. 1125, it must be pointed out that Republic Act No. 9282 (an Act Expanding the Jurisdiction of the Court of Tax Appeals) in expanding the jurisdiction of this Court, did not remove any of the existing jurisdiction of the Court of Tax Appeals, more particularly, its jurisdiction over decisions of the Commissioner of Internal Revenue or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue. To quote:

"SEC. 7. *Jurisdiction.* - The CTA shall exercise:

(a) 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 in relation thereto, ***or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;***

xxx xxx xxx"

In the present case, it is unarguable that the power of the Commissioner of Internal Revenue to interpret the provisions of the National Internal Revenue Code of 1997 is provided under Section 4 of the said Code, thus:

> **"Section 4. Power of the Commissioner to Interpret Tax laws and to Decide Tax Cases.** – The power to interpret the provisions of this code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

Based on the above provision of law, the Commissioner has the power to issue rules and regulations to interpret the provisions of the law, subject to the review by the Secretary of Finance. And it is pursuant to this power that respondent issued RMC No. 40-2003 clarifying that a "letter notice" issued by the respondent to taxpayers pursuant to the Third Party Information Program is considered as a "notice of audit or investigation", contemplated under paragraph 3, Section 6(A) of the National Internal Revenue Code of 1997 which, in effect, bars a taxpayer from amending its returns once the said letter notice has already been issued against it.

Under the provisions of Section 6(A) of the NIRC of 1997, a taxpayer can no longer amend its tax returns once a notice of audit or investigation is issued against it within the three-year period allowed by law for such amendment. A notice of audit or investigation, as the name implies, is a letter informing the taxpayer that there exists certain discrepancies or inconsistencies in its annual returns, thus, there is a need to inspect or examine its books of account. In practice, the respondent issues Letters of Authority (LOA) in cases where there are inconsistencies between petitioner's returns filed and respondent's records of documents, a Tax Verification Notice (TVN) for refund cases filed by taxpayers. Nonetheless, their designations may be different, but an LOA or a TVN also constitutes an audit or investigation.

On the other hand, the subject letter notice issued to the petitioner was pursuant to the findings by the respondent of a discrepancy in petitioner's list of sales and purchases in the amount of P211,467,735.02 or a 94.49 percent (94.49%) difference from petitioner's original return. This, too, in effect, was a notice to the petitioner that as per respondent's books and examination, there exist inconsistencies with regard to its VAT and Annual Income Tax Returns filed, and thus, petitioner is given an opportunity to contest or refute the findings of the respondent. Evidently, the same constitutes a notice of audit or investigation. It is therefore incomprehensible to even consider that the letter notice was issued to directly assess petitioner of its deficiency VAT and income taxes, as argued by petitioner.

When respondent issued RMC No. 40-2003, it was with the intention of clarifying what constitutes a notice of audit or investigation. There can be no legislation when what the revenue memorandum circular seeks to implement is merely an elucidation of what the law already prescribes. RMC No. 40-2003 was issued as an administrative circular which is clarificatory in nature. No other prejudicial consequence may come out of its issuance, than what has already been defined under the provision of Section 6(A) of the NIRC of 1997. In other words, no additional burden has been increased so as to affect the taxpayers upon its application.

More so, it has always been the rule firmly established in this jurisdiction that contemporaneous interpretations of a statute or implementing rules or regulations by executive or administrative officials charged with the implementation of such statute or regulations, are entitled to great weight and respect from the courts. Thus, the general rule is that the construction of a statute by an administrative agency charged with the task of interpreting or applying the same is entitled to great weight and respect **(National Food Authority (NFA) et al. vs. Masada Security Agency, Inc., G.R. No. 163448, March 8, 2005)** unless such interpretations are against the law it seeks to interpret, evidently erroneous, or when there is a clear abuse of discretion.

In the case at bar, this Court gives great weight to the determination of the Commissioner of Internal Revenue that "letter notices" issued against a taxpayer in connection with the information of under declarations of sales and purchases gathered through the Third Party Information Program may be considered as a "notice of audit or investigation" in the absence of evident error or clear abuse of discretion.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

(On official function)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.

ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice