REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

HOTEL SPECIALIST (TAGAYTAY), INC.,
Petitioner,

CTA EB NO. **2084**
(CTA Case No. 9349)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. **2092**
(CTA Case No. 9349)

- versus -

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

HOTEL SPECIALIST (TAGAYTAY), INC.,
Respondent.

Promulgated
MAR 1 6 2023 2:02pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is Commissioner of Internal Revenue's (**CIR's**) "Amended Motion for Reconsideration"[1] (**Amended MR**) filed on 07 November 2022 which amended his or her "Motion for Reconsideration"[2] (**MR**) filed on 02 November 2022, with the Office of the Solicitor General's (**OSG's**) "Comment (to CIR's Amended Motion for Reconsideration dated November 2, 2022)"[3] filed on 16 November 2022.[4]

The Amended MR seeks the reversal of the Court *En Banc*'s Resolution dated 12 October 2022. The dispositive portion thereof reads:

> ...
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> **WHEREFORE**, the Office of the Solicitor General's "*Ex Abudanti Ad Cautelam* Motion for Partial Reconsideration" is hereby **GRANTED.** Accordingly, the Bureau of Internal Revenue is **DIRECTED TO REMIT** to the Office of the Solicitor General 5% of the total compromise amount paid by Hotel Specialist (Tagaytay), Inc. pursuant to their Judicial Compromise Agreement.
>
> **SO ORDERED.**
>
> ...

In the Amended MR, the CIR claims that the OSG is not entitled to 5% of the total compromise amount paid by Hotel Specialist (Tagaytay), Inc. (**HSTI**), debunking thus the application of the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[5] (**Kepco**). The CIR likewise claims that the decision in *Kepco* is not yet final and argues that the Supreme Court misapprehended the facts in concluding that the OSG acted as counsel for the Bureau of Internal Revenue (**BIR**) during the proceedings before the Court in Division. On the contrary and similar to the case herein, the OSG did not act as counsel for the BIR or actively participate in the proceedings before the Court in Division.

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1 *Rollo* (CTA EB No. 2084), Volume II, pp. 611-616.
2 Id., pp. 599-605.
3 Id., 632-640.
4 Received on 29 November 2022.
5 G.R. Nos. 225750-51, 28 July 2020.

The CIR submits that the OSG should be entitled to the 5% success fee only when it actively participated in the litigation of the case and was able to successfully secure a monetary award in favor of its client departments, agencies and government instrumentalities. In addition, he or she contends that it was not the OSG which negotiated the compromise agreement herein. Thus, it would be the height of injustice to give the OSG 5% of the compromise amount.

The CIR further asserts that a plain reading of Section 11(i)[6] of Republic Act (**RA**) No. 9417[7] will show that the OSG will be entitled to 5% of the monetary award only in an action for monetary claim by the government or 5% of the amount paid if there is a court-approved compromise in the said case.

To recall, this case stemmed from the Final Decision on Disputed Assessment (**FDDA**) issued by the CIR against HSTI. As such, the issue involved herein is whether the CIR's assessment has factual and legal bases. Hence, the CIR is of the position that herein case is not an action that the BIR instituted for the recovery of a monetary claim (which the Court may grant unto it). Thus, even granting for the sake of argument that the OSG actively participated in the case, it is still not entitled to the claim because there was no monetary award given to the CIR's favor in the first place.

On the other hand, the OSG counters that in *Commissioner of Internal Revenue v. Secretary of Justice, et al.*[8] (**Secretary of Justice**) and in *Kepco*, the CIR's assessments were assailed by the taxpayers therein. Hence, the fact that the issue in the main case is for the validity of the assessment proves trivial, contrary to the CIR's allegation. The OSG adds that even if a determination on the merits has been made, the

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6 SEC. 11. *Funding*. - The funds required for the implementation of this Act, including those for health care services, insurance premiums, professional, educational, registration fees, contracted transportation benefits, the other benefits above, shall be taken from:

(i) five percent (5%) of monetary awards given by the Courts to client departments, agencies and instrumentalities of the Government, including those under court-approved compromise agreements[.]

...

7 AN ACT TO STRENGTHEN THE OFFICE OF THE SOLICITOR GENERAL BY EXPANDING AND STREAMLINING ITS BUREAUCRACY, UPGRADING EMPLOYEE SKILLS AND AUGMENTING BENEFITS, AND APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.

8 G.R. No. 177387, 09 November 2016.

payment pursuant to the ruling that found the assessment valid is still in the nature of a monetary award contemplated in RA No. 9417.

According to the OSG, in the *Kepco* case, the Supreme Court acknowledged its participation in the court proceedings before the Court in Division, which was instituted long before the parties entered into a compromise agreement. On the other hand, in *Secretary of Justice*, albeit the case was not appealed before the Court in Division and *En Banc*, the Supreme Court nevertheless granted the OSG the amount of 5% of the total tax liabilities pursuant to RA No. 9417 for its participation in the court proceedings. As such, the OSG is entitled to the 5% of the monetary award on the basis of its active participation in any stage of the case proceedings.

The OSG thus reiterates that it remains to be the lead lawyer in tax cases filed before this Court, pursuant to its Memorandum of Agreement (**MOA**) with the BIR dated 17 March 2010.[9] Further, the OSG has actively represented the BIR through the filing of Petition for Review on Certiorari and Manifestation and Motion to Suspend Proceedings with the Supreme Court. Lastly, the OSG has actively monitored the case, including the settlement through compromise agreement while pending before this Court.

We resolve.

In the instant MR, the CIR emphasizes that since this case is a disputed assessment (and thus limited to the determination of validity and correctness of the assessment), there will be no monetary award in favor of the CIR. As such, Section 11(i) of RA No. 9417 should not apply because the same speaks of "monetary awards given by the courts".

We do not agree.

First, the CIR's insistence that a disputed assessment case does not involve a monetary award is flawed. It must be noted that a ruling of this Court finding the assessment valid includes an order for the taxpayer to pay the CIR the correct amount of deficiency taxes as well as the

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9 As circularized through the issuance of Revenue Memorandum Circular No. 25-2010 with the subject "Publishing the Full Text of the Memorandum of Agreement Between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General".

increments thereto. In fact, Section 13 of RA No. 9282[10] additionally provides that a ruling favorable to the government shall include an order authorizing the distraint and/or levy of personal and real properties, respectively, *viz*:

> ...
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> Sec. 13. *Distraint of Personal Property and/or Levy on Real Property.* - **Upon the issuance of any ruling, order or decision by the CTA favorable to the national government, the CTA shall issue an order authorizing the Bureau of Internal Revenue, through the Commissioner to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of such persons in sufficient quantity to satisfy the tax or charge together with any increment thereto incident to delinquency.** This remedy shall not be exclusive and shall not preclude the Court from availing of other means under the Rules of Court.[11]
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> ...

Second, this CIR's new argument is not supported by Section 11(i) of RA No. 9417, as interpreted in *Kepco*. The subject provision reads as follows:

> ...
>
> SEC. 11. *Funding.* — The funds required for the implementation of this Act, including those for health care services, insurance premiums, professional, educational, registration fees, contracted transportation benefits, and other benefits above, shall be taken from:
>
> (i) **five percent (5%) of monetary awards given by the Courts** to client departments, agencies and instrumentalities of the Government, **including those under court-approved compromise agreements**[.][12]
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> ...

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[10] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[11] Emphasis supplied.

[12] Emphasis supplied.

From the foregoing and consistent with *Kepco*, as long as there is a court-approved compromise agreement despite the fact that it did not originate from an action involving monetary claim, the OSG will be entitled to 5% of the amount involved in the compromise agreement.

In sum, considering that the OSG merely deputized the BIR lawyers for the cases appealed herein and that it remains to be the lead counsel, the Court *En Banc* upholds the OSG's entitlement to the 5% of the amount paid as Judicial Compromise Amount.

WHEREFORE, the Commissioner of Internal Revenue's Amended Motion for Reconsideration filed on 07 November 2022 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice