REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NICKEL ASIA CORPORATION,
Petitioner,

CTA Case No. 8662

Members:

BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 02 2015
1:00 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J*.:

Before the Court is a Petition for Review filed on June 21, 2013 against the Final Decision on Disputed Assessment (FDDA) dated May 4, 2013 issued by the respondent against the petitioner, for alleged basic deficiency VAT of ₱5,070,184.44 plus penalties and interest of ₱2,383,673.93, for a total of ₱7,453,858.37.

THE PARTIES

The petitioner is a corporation organized and existing under Philippine laws, with Certificate of Registration No. CS200811530 issued by the Securities and Exchange Commission. Petitioner is registered with the Bureau of Internal

Revenue as a VAT entity, with Tax Identification Number (TIN) 007-085-191-000.

The respondent is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to, *inter alia*, decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the BIR, and holding office at the BIR National Office Building, Diliman, Quezon City.

JURISDICTIONAL FACTS

The instant petition was filed on June 21, 2013, within the thirty-day period from the receipt of the FDDA dated May 4, 2013 by the petitioner on May 22, 2013. Under the last paragraph of Section 228 of the NIRC of 1997:

> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Although the FDDA was signed solely by OIC-Assistant Commissioner Alfredo V. Misajon (OIC-Assistant Commissioner Misajon) and not by the respondent Commissioner herself, it has been held that a letter signed by an acting chief revenue collection officer of a revenue district, so long as it contains a decision on a disputed assessment, such as a final notice before seizure of a taxpayer's property, is appealable to this Court for review.[1] The authority to make tax assessments may be delegated to subordinate officers; said assessment has the same force and effect as that issued by the Commissioner himself, if not reviewed or revised by the latter.[2] A demand letter for tax deficiency assessments issued and signed by a subordinate officer who was acting in behalf of the Commissioner of Internal Revenue, is deemed final and executory and subject to an appeal to the Court of Tax Appeals; the determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.[3] The FDDA in the instant case ended on the following note, which left no doubt as to its finality:

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[1] See *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001.
[2] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, Court of Tax Appeals, and Court of Appeals*, G.R. No. 148380, December 9, 2005.
[3] *Ibid.* In the case, the signatory was the chief of the BIR Accounts Receivable and Billing Division.

"x x x This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency tax assessment shall become final, executory and demandable."

The instant petition for review against the FDDA is thus squarely within the jurisdiction of this Court.

FACTUAL ANTECEDENTS

Petitioner rendered management services to four (4) mining companies in the year 2009. These were the Rio Tuba Nickel Mining Corporation, Taganito Mining Corporation, Hinatuan Mining Corporation, and Cagdianao Mining Corporation. All of these companies were VAT-registered with the BIR, as well as registered with the Board of Investments (BOI) as 100% exporters pursuant to Executive Order No. 226.

To each of these four mining firms, the BOI issued a separate certification that the company exported 100% of its total sales for the year 2009. The BOI copy furnished the BIR these certifications.

Pursuant to Revenue Memorandum Order (RMO) No. 9-2000 ("Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales"), petitioner deemed its sale of services to the four mining firms as subject to zero percent (0%) VAT when it billed the said firms for services. The corresponding invoices issued by the petitioner reflected the sales of services as zero-rated sales.

On November 9, 2011, petitioner received from the respondent Letter Notice No. LN (TRS) 10-0000015 for income tax and VAT liabilities for calendar year 2010.

On July 25, 2012, respondent served on petitioner a Preliminary Assessment Notice (PAN) for alleged basic deficiency VAT of ₱5,070,184.44 plus penalties and interest. This PAN was issued by the respondent thru OIC-Assistant Commissioner Misajon of the Large Taxpayers Service. This assessment was based on: (1) management fees of ₱42,173,079.00 paid by the four mining firms, and (2) "Other Income" of ₱78,458.00 which was allegedly not subjected to VAT.

On August 9, 2012, petitioner disputed the PAN by filing a protest letter with the BIR's Large Taxpayers Service. Petitioner invoked Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005, as amended, in relation to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, as its basis for subjecting the sale of services to 0% VAT. For excluding its Other Income from the 12% VAT, petitioner cited as basis Section 105 of the NIRC.

On February 8, 2013, petitioner received from respondent a Formal Letter of Demand with Final Assessment Notice (FAN), assessing petitioner the same amount of ₱5,070,184.44 plus updated penalties and interest.

On February 27, 2013, by protest letter dated February 25, 2013, petitioner contested the FAN. Petitioner again invoked the same provisions of the NIRC and RR No. 16-2005, as amended.

On May 22, 2013, petitioner received respondent's Final Decision on Disputed Assessment (FDDA) dated May 4, 2013, for alleged basic deficiency VAT of ₱5,070,184.44 plus penalties and interest of ₱2,383,673.93, for a total of ₱7,453,858.37. The FDDA thereby denied the petitioner's protest with finality.

On June 21, 2013, the petitioner filed the instant petition for review. The respondent, by summons dated July 2, 2013, was required to file its Answer within fifteen (15) days from service of summons. Respondent received the summons on July 3, 2013, and filed on July 17, 2013 a Motion for Extension of Time to File Answer. On July 26, 2013, the Court granted the respondent an extension of time to file its Answer, until August 17, 2013, with a "warning of no further extension."[4] It was not until August 22, 2013, however, that respondent actually filed its Answer dated August 16, 2013.

On August 27, 2013, the Court issued the Notice of Pre-Trial Conference, which was set for October 24, 2013.

On October 21, 2013, petitioner submitted its Pre-Trial Brief dated October 18, 2013.

On October 22, 2013, respondent filed its Pre-Trial Brief, dated October 21, 2013.

At the hearing on October 24, 2013, the parties manifested in open court their agreement to limit the issues to questions of law inasmuch as the

[4] Order dated July 26, 2013.

evidence already formed part of the BIR records. The parties were given ten (10) days within which to file their Joint Stipulation of Facts and Issues.[5]

On November 14, 2013, the parties submitted their Joint Motion to Admit the Joint Stipulation of Facts and Issues. This Joint Motion was granted by Order dated November 18, 2013.

On January 30, 2014, the Court issued the Pre-Trial Order enumerating the facts stipulated upon by the parties, defining the issues and the applicable laws, rules, regulations and jurisprudence, terminating the Pre-Trial, and giving the parties fifteen (15) days from notice within which to file their respective memorandum.

On February 20, 2014, respondent moved for an extension of thirty (30) days for the filing of its Memorandum; this was granted by Resolution dated February 24, 2014, which gave the respondent until March 22, 2014.

On February 28, 2014, petitioner also moved for an additional fifteen (15) days, or until February 7, 2014 (sic) for the filing of its Memorandum; the Court by Resolution dated March 4, 2014 granted petitioner an extension until March 7, 2014.

Petitioner on March 18, 2014 moved for the admission of its Memorandum dated March 10, 2014. On March 20, 2014, the Court by Resolution ordered the respondent to comment on this motion within ten (10) days from notice.

On March 26, 2014, respondent filed a Manifestation that it had filed its Memorandum dated March 19, 2014 by registered mail on March 24, 2014, and was submitting four (4) copies thereof, which it sought to be admitted. This Manifestation was noted by the Court and the additional copies of the respondent's Memorandum were admitted by Order of March 27, 2014.

On April 10, 2014, respondent filed another Manifestation dated April 8, 2014, informing the Court of the filing by registered mail on April 7, 2014 of its Comment, and submitting four (4) additional copies of the same. In its Comment, respondent asked that the Memorandum of the petitioner be denied admission for being filed out of time.

By Resolution dated April 14, 2014, the Court admitted the petitioner's Memorandum and declared the case submitted for decision.

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[5] TSN, hearing of October 24, 2013, pp. 3-4.

On April 24, 2014, the Court by another Resolution deemed moot the Comment of the respondent, which the Court received only on April 15, 2014, a day after it had already admitted the petitioner's Memorandum.

On May 6, 2014, the Court by Order of even date noted but deemed moot the Manifestation filed by the respondent on April 10, 2014.

ISSUES

The parties agreed to submit only issues of law, dispensing with the presentation of witnesses and evidence. In the Pre-Trial Order dated January 30, 2014, these issues were restated as follows:

I

> Whether or not the petitioner is liable for deficiency assessment amounting to ₱78,458.00 on Other Income.

II

> Whether or not the management fees subject of the Petition are subject to VAT.

The resolution of the first issue requires a determination of whether or not Other Income arising from isolated activities not conducted in the course of trade or business of a VAT-registered taxpayer is subject to 12% VAT.

The second issue turns on whether or not the sale of services by the petitioner to the four mining firms is subject to zero-rated VAT under Section 4-106.5(a)(5) of RR 16-2005.

APPLICABLE LAWS AND REGULATIONS

The laws applicable to the case are the relevant provisions of the NIRC of 1997, as amended in 2005 by R.A. No. 9337, and as implemented by administrative issuances, notably Revenue Regulations 16-2005.

DISCUSSION

Statutes granting tax exemptions are construed *stricissimi juris* against the taxpayer and liberally in favor of the taxing authority.[6] A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken.[7]

On the first issue, pertaining to Other Income, petitioner insists that Other Income arising from isolated activities, which cannot be considered as conducted in the course of trade or business of a VAT-registered taxpayer, is subject to 0% VAT, and not to the 12% under Section 105 of the NIRC of 1997, "the same being merely incidental to its regular business activities."[8]

Section 105 of the NIRC defines the phrase "in the course of trade or business" as "the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization x x x."

Petitioner seemingly contradicts itself when it alleged in its petition, on the one hand, that isolated activities that are *incidental* to its regular business activities are outside the purview of the 12% VAT under Section 105 of the NIRC, yet cites, on the other hand, the definition of "in the course of trade or business" under Section 105 as "including transactions *incidental* thereto."

The petitioner subsequently tried to dispel this seeming contradiction, through its Memorandum, by invoking *Commissioner of Internal Revenue v. Magsaysay Lines, Inc., et al.*[9] That case, however, was decided under the Tax Code of 1986, and the petitioner failed to establish a substantial analogy in the factual circumstances between that case and its petition, that would have justified the application of the ruling therein to this case. Here, the Other Income being subjected to the 12% VAT under Section 105 of the NIRC of 1997 consists of the "refund of an unissued ticket, a donation and gain from proceeds from the sale of assets."[10] In the *Magsaysay* case, the sale that was held to be neither in the course of business nor incidental thereto was the sale by the National Development Company (NDC) of five ships and all its shares in the National Marine Corporation (NMC); the NDC was not engaged in the real property business, and was selling the ships and NMC shares *involuntarily*, preparatory to retirement from business pursuant to the government's privatization program.

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[6] *Diageo Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183553, November 12, 2012.
[7] *Ibid.*, citing *Quezon City v. ABS-CBN Broadcasting Corp.*, G.R. No. 166408, October 6, 2008, 568 SCRA 496, 515.
[8] Petition, p. 15.
[9] G.R. No. 146984, July 28, 2006.
[10] Petitioner's Memorandum, p. 7.

Respondent, on the other hand, cited *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue.*[11] In this case, Mindanao II argued that the sale of a fully depreciated Nissan Patrol was not an incidental transaction in the course of business, but an isolated transaction. The Supreme Court, noting that the vehicle was acquired for and used in the course of business before being sold, held the sale to be "an incidental transaction made in the course of Mindanao II's business which should be liable for VAT."

However, the respondent's invocation of *Mindanao II* does little, if any, to establish that the refund of an unissued ticket and a donation to the petitioner should likewise be deemed to be incidental to petitioner's business. On the other hand, the petitioner correspondingly failed to sufficiently support its contention that they are isolated transactions not subject to the 12% VAT.

The well-established rule is that claims in the nature of tax exemptions are construed strictly against the taxpayer and liberally in favor of the government; thus, the burden of proof is upon the claimant to prove the factual basis of his claim. [12] We find that the petitioner failed to discharge this burden, as to its Other Income subject of the FDDA. Accordingly, we sustain the respondent's contention that its assessment is entitled to the presumption of correctness.[13]

For the second issue, the respondent relies anew on the presumptive correctness of an assessment. However, for the reasons set forth below, we cannot indulge respondent a second time.

The second issue deserves more consideration than the first. The parties cite a variety of provisions of laws and regulations, but cutting through the thicket, the Court finds at the core of the dispute Section 4-106.5(a)(5) of RR 16-2005 (Consolidated VAT Regulations of 2005), as amended by RR 4-2007, which states as follows:

> "SEC. 4.106.5. *Zero-Rated Sales of Goods or Properties.* – x x x The following sales by VAT-registered persons shall be subject to zero percent (0%) rate: (a) Export Sales.
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> x x x

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[11] G.R. No. 193301, March 11, 2013.

[12] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012.

[1313] Answer, p. 10, citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005; *Sy Po v. Court of Tax Appeals*, 164 SCRA 524; and *Marcos II v. Court of Appeals*, G.R. No. 120880, June 5, 1997.

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

x x x

'Considered export sales under Executive order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents;

x x x

Provided, finally, that sales of goods, properties or **services** made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investments (BOI) which shall be good for one year unless subsequently re-issued by the BOI." *(Emphasis supplied)*

The petitioner claims entitlement to the zero percent (0%) rate on the sale of its services, as a VAT-registered person, to the four (4) BOI-registered mining firms whose products were 100% exported as certified by the BOI. Under the last sentence of Section 4-106.5(a)(5) of RR 16-2005, as quoted above, such sale of services are considered export sales subject to zero percent (0%) rate.

In the FDDA, however, the respondent posited that the inclusion of "services" in the last-quoted sentence of Section 4-106.5(a)(5) of RR 16-2005 above was an error and thus cannot be given effect. Ergo, the petitioner was excluded from entitlement to the zero percent (0%) VAT rate. We quote the ratiocination of the respondent addressed to the petitioner:

> "We find this allegation of yours to be incorrect simply because Section 4.106-5 of RR 16-2005 pertains only to sale of goods or properties, as the Section's title, which is '*Zero-Rated Sales of Goods or Properties*', clearly indicates. Thus, **any reference to sale of services under this Section must be erroneous, and accordingly, we believe that the inclusion of services in the reference to sales to Board of Investments (BOI)-registered manufacturer/producer in the proviso in paragraph (a)(5) of Section 4.106-5 is an inadvertent or typographical error**. Further, we believe that Section 4.108-5 of RR 16-2005, with the title 'Zero-Rated Sale of Services', is intended to govern zero-rated sales of services, including sale of services to BOI-registered manufacturer/producer. Paragraph (b) of said Section 4.108-5 entitled 'Transactions Subject to Zero percent (0%) VAT Rate', enumerates the various zero-rated sales of services -- numbering seven (7) kinds of transactions -- which enumeration should have included the sale of services to BOI-registered manufacturer/producer if it were the intention of the Revenue Regulations to provide that such sale of services is subject to zero-rating." *(Emphasis supplied)*

The FDDA was signed solely by OIC-Assistant Commissioner Misajon, a fact which prompted the petitioner to raise the point that a subordinate officer acting on the respondent's behalf cannot "correct" and change by a mere letter to a taxpayer an alleged error committed by the respondent in a Revenue Regulation.[14]

There is more to this matter than meets the eye. While it is indeed "commonsensical", as the petitioner puts it, that a subordinate who acts on behalf of the superior cannot declare a prior act of that superior to be erroneous and thereupon amend or overrule that act, such action by the subordinate is capable of ratification by the superior, if so allowed by law. Ratification may be express or implied. Implied ratification may take various forms -- like silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.[15]

In the instant case, the respondent appears to have both disowned and ratified the FDDA issued by OIC-Assistant Commissioner Misajon. By insisting that the FDDA is entitled to the presumption of correctness, thereby ratifying it, the respondent inaccurately contended in its Answer that "the entire Section 4.106 covers matters that only involve VAT on sale of goods or properties"[16] – a posture that disowns or contradicts OIC-Assistant

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[14] Petition, p. 16.
[15] *Prime White Cement Corporation v. Intermediate Appellate Court and Alejandro Te*, G.R. No. 68555, March 19, 1993.
[16] Answer, No. 9, p. 4.

Commissioner Misajon's admission that "services" is included in the section, albeit "erroneously." In its subsequent Memorandum, however, respondent modified its posture and became more supportive of the language of the FDDA, by agreeing that "any reference to sale of services under the aforementioned section is erroneous and unmistakably in conflict with the governing law, specifically Section 108 of the Tax Code."[17]

This ambivalence of the respondent, however, slight or otherwise, does not affect the jurisdiction of the Court over the FDDA. As pointed out at the onset, the authority to make tax assessments may be delegated to subordinate officers; said assessment has the same force and effect as that issued by the Commissioner himself, if not reviewed or revised by the latter.[18] The decision embodied in the FDDA is appealable to this Court under Section 228 of the NIRC.

OIC-Assistant Commissioner Misajon was also the official who signed the PAN dated July 24, 2012, and the FAN dated February 4, 2013, each of which was protested by the petitioner. The protest against the FAN was denied by him thru the issuance of the FDDA dated May 4, 2013. When he issued the FDDA, he was a subordinate officer: he was not OIC-Commissioner, but OIC-*Assistant* Commissioner. Assistant Commissioners occupy the third level of the BIR hierarchy, after the Commissioner and the Deputy Commissioners. While his rank has no bearing on his authority to sign the FDDA, it is material to his legal capacity to interpret RR 16-2005 and the applicability thereof.

Under Section 4 of the NIRC, the power to interpret the provisions of the NIRC and other tax laws shall be under the *exclusive and original jurisdiction* of the Commissioner of Internal Revenue (CIR), subject to review by the Secretary of Finance. Section 4 also vests in the CIR 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 BIR. Under Section 7 of the NIRC, the CIR has no authority to delegate "the power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau."

> "As amended by Republic Act No. 8424, Section 7 of the Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:

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[17] Respondent's Memorandum, p. 6.

[18] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, Court of Tax Appeals, and Court of Appeals*, G.R. No. 148380, December 9, 2005.

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau xxx"[19]

There is thus substance, in law and jurisprudence, to the contention of the petitioner that OIC-Assistant Commissioner Misajon had no authority to "correct" an alleged error committed by the CIR and to "change" by a mere letter to a taxpayer the import of RR 16-2005.

But did OIC-Assistant Commissioner Misajon actually make any change in RR 16-2005? Technically, he did not. However, he gave RR 16-2005 an interpretation that effectively held the "inclusion of services in the reference to sales to BOI-registered manufacturer/producer in the proviso in paragraph (a)(5) of Section 4.106-5" to be "an inadvertent or typographical error." He reached this conclusion based on the observation that Section 4.106-5 is entitled "Zero-Rated Sales of Goods or Properties."

OIC-Assistant Commissioner Misajon may have a point, but that alone does not authorize him to render ineffective the "inclusion of services in the reference to sales to BOI-registered manufacturer/producer in the proviso in paragraph (a)(5) of Section 4.106-5." He concedes that "services" are included in the cited proviso, but opines that such inclusion was "an inadvertent or typographical error." Thus, he should have raised the matter to the CIR, for the CIR to issue a ruling and/or to recommend to the Secretary of Finance the issuance of the appropriate amendment or a new revenue regulation, following Section 244 of the NIRC. Indeed, what the law prescribes, under Section 106(D)(3) of the NIRC [now Section 106(E), per amendment by R.A. No. 9337], is that --

"The Commissioner shall, <u>by rules and regulations prescribed by the Secretary of Finance</u>, determine the appropriate tax base in cases where a transaction is deemed a sale, barter or exchange of goods or properties under Subsection (B) hereof, or where the gross selling price is unreasonably lower than the actual market value." *(Emphasis supplied)*

It is the Secretary of Finance who possesses the mandate, under Section 23 of R.A. No. 9337 of May 2005, which amended the VAT provisions of the 1997 NIRC, to issue rules and regulations implementing the amended VAT provisions. Thus did the Secretary of Finance issue on September 1, 2005 RR 16-2005, which became effective on November 1, 2005. Not even the

[19] *Ibid.*

respondent CIR can unilaterally declare erroneous and immediately amend any of the provisions of RR 16-2005, for want of authority; the CIR can only interpret, but not amend, RRs issued by the Secretary of Finance. What OIC-Assistant Commissioner Misajon (and subsequently the respondent CIR) declared to be the "erroneous" inclusion of "services" in Section 4-106.5(a)(5) of RR 16-2005 was made by no less than Secretary of Finance Margarito B. Teves, upon the recommendation of OIC-CIR Jose Mario C. Buñag.

Otherwise, OIC-Assistant Commissioner Misajon (or other parties, including the respondent CIR or aggrieved taxpayers) should have obtained from competent authorities, possibly from the courts, a ruling that Section 4.106-5 of RR 16-2005, an administrative issuance, is inconsistent with the NIRC, as amended. This had been done before, when the Supreme Court held a provision in RR 16-2005 subjecting the PAGCOR to 10% VAT to be invalid for being contrary to R.A. No. 9337.[20]

At the time that OIC-Assistant Commissioner Misajon issued the FDDA, Section 4-106.5(a)(5) of RR 16-2005 clearly included "services" in the enumeration of items that are deemed to be "export sales" subject to the zero-percent VAT rate, when sold by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported. Whether the inclusion of "services" among "export sales" subject to the zero-percent VAT rate was "erroneous" or not is a point distinct from the fact of the inclusion. Respondent was not accurate in contending that "the entire Section 4.106 covers matters that only involve VAT on sale of goods or properties."[21]

OIC-Assistant Commissioner Misajon, thus, should have applied that provision of RR 16-2005, instead of subjecting it to interpretation and twisting it to suit his opinion or belief. Firstly, it is hornbook doctrine that "if the language of the law is clear, explicit and unequivocal, it admits no room for interpretation but merely application. A statute clear and unambiguous on its face need not be interpreted; stated otherwise, the rule is that only statutes with an ambiguous or doubtful meaning may be the subject of statutory construction."[22] Secondly, he was without authority to interpret tax laws, a power lodged *exclusively* in the CIR by Section 4 of the NIRC.

While it is true that the respondent CIR has clarified that "any reference to sale of services under the aforementioned section [Section 4-106.5(a)(5) of RR 16-2005] is erroneous and unmistakably in conflict with the governing law, specifically Section 108 of the Tax Code," this pronouncement was made only in her Memorandum, rather than in a ruling, and has not at all changed the text

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[20] *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*, G.R. No. 172087, March 15, 2011, *en banc*.
[21] Answer, No. 9, p. 4.
[22] *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185432, June 4, 2014.

of Section 4-106.5(a)(5) of RR 16-2005, which can only be changed by the Secretary of Finance upon the CIR's recommendation.

All told, this Court cannot extend the presumption of correctness to an FDDA that openly deviates from and refuses to apply a provision of a duly-issued revenue regulation, especially where the officer who issued the FDDA interpreted tax laws without authority.

Moreover, it is settled that a taxpayer's reliance in good faith on revenue rules and regulations cannot be prejudiced by subsequent changes in the interpretation/s thereof:

> "Since the Commissioner has **exclusive and original jurisdiction to interpret tax laws**, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that 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. x x x
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> Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "***Any*** revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.
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> Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. x x x
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> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was

prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.

This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd.*, *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.*, *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc.*, and *Commissioner of Internal Revenue v. Court of Appeals*. **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.**[23]"

In adherence to the foregoing pronouncements of the Supreme Court, it now becomes manifest that the FDDA subject of this case cannot lawfully and justly be given effect. Courts are bound by prior decisions. Thus, once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issue in the same manner.[24]

This case is yet another reminder, especially to the respondent, that "even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure."[25]

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** The assessment issued by respondent against petitioner covering deficiency VAT for taxable year 2010 is hereby **REDUCED** to **ELEVEN THOUSAND SEVEN HUNDRED SIXTY EIGHT PESOS and 70/100 (₱11,768.70)**, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

Receipts from Other Income not subjected to VAT	₱	78,458.00
Multiply by VAT Rate		12%
Basic deficiency VAT	₱	9,414.96
Add: 25% Surcharge		2,353.74
Total Amount Due	**₱**	**11,768.70**

[23] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, *en banc*. Emphases in the original. See also *Taganito Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 197591, June 18, 2014, and *Republic v. GST Philippines, Inc.*, G.R. No. 190872, October 17, 2013, *en banc*.

[24] *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 184360 and 184361, February 19, 2014, citing *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 177127, October 11, 2010, 632 SCRA 517, 518, citing *Agencia Exquisite of Bohol, Incorporated v. Commissioner of Internal Revenue*, G.R. Nos. 150141, 157359 and 158644, February 12, 2009, 578 SCRA 539, 550.

[25] *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012, citing *Commissioner v. Algue, Inc.*, 241 Phil. 829, 830, at 836 (1988).

In addition, petitioner is **ORDERED TO PAY:**

1) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT in the amount of ₱9,414.96 computed from January 25, 2011 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

2) Delinquency interest at the rate of 20% per annum on the total amount of ₱11,768.70 and on the deficiency interest which have accrued as aforestated in (a) computed from May 22, 2013 until full payment thereof, pursuant to Section 249(c) of the NIRC of 1997, as amended.

SO ORDERED.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

Efuie

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice