REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2083
(CTA Case No. 9148)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

- versus -

IFC CAPITALIZATION (EQUITY) FUND, LP.,
Respondent.

Promulgated:
JUN 16 2021

x - x

RESOLUTION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is IFC Capitalization (Equity) Fund, LP.'s (**respondent**'s/**ICEF**'s) Motion for Reconsideration (**MR**)[1] filed on 04 December 2020, without comment[2] from petitioner Commissioner of Internal Revenue (**petitioner/CIR**).

The MR seeks the reversal of the Court *En Banc*'s Decision promulgated on 05 November 2020[3] (**assailed Decision**). The dispositive portion of the assailed Decision reads:

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[1] *Rollo*, pp. 493-521.
[2] *Per* Records Verification dated 04 February 2021.
[3] *Rollo*, pp. 455-488.

> ...
>
> **WHEREFORE**, with the foregoing, this instant Petition for Review filed by Commissioner of Internal Revenue is hereby **GRANTED**. Accordingly, the Decision dated 17 January 2019 and Resolution dated 03 June 2019, respectively, of the Special First Division in CTA Case No. 9148, entitled *IFC Capitalization (Equity) Fund, LP v. Commissioner of Internal Revenue,* are hereby **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**
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> ...

In its MR, respondent reiterates that petitioner is already barred from raising before the Court *En Banc* the issue of the characterization of Stock Transaction Tax (**STT**) as percentage tax and not as income tax (**IT**). Relatedly, respondent claims that without any compelling or meritorious reason, the Court *En Banc* cannot *motu proprio* consider this new theory or defense on appeal, or resolve the same on its own initiative. Respondent then insists that there is nothing in petitioner's Answer before the Court in Division that properly and timely raised the issue of the nature of STT as percentage tax.

As to the substantive aspect, respondent also asserts that it is exempt from STT, which is essentially a tax on income.

Specifically, respondent claims that the Court *En Banc* disregarded the former's reliance on several recent Bureau of Internal Revenue (**BIR**) rulings declaring STT as IT and instead accorded weight to DA ITAD BIR Ruling No. 022-07 dated 09 February 2007, an older issuance. Respondent contends that in DA ITAD BIR Ruling No. 022-07, the BIR only cited the congressional deliberations of the Committee on Ways and Means on 26 May 1993 and Congressional Floor Deliberations on 02 September 1993, and conveniently left out Congressional Deliberations on 28 September 1993. According to respondent, the later floor interpellations would show that the Congress did not categorically determine that STT is separate and distinct from IT.

Moreover, respondent avers that the Court *En Banc* cannot apply BIR Ruling No. 152-14 dated 29 May 2014, BIR Ruling No. 1300-18 dated 23 October 2018 and BIR Ruling No. 1301-18 also dated 23 October 2018 herein because the transaction at issue transpired between

20 September 2013 to 03 September 2014. Instead, respondent wants the Court *En Banc* to apply BIR Ruling No. ITAD-153-15, dated 30 April 2015, that specifically dealt with International Finance Corporation (**IFC**) and respondent's exemption from STT. Respondent thus claims that assuming that the BIR erred in its earlier interpretation that STT is essentially a tax on income, it should not be prejudiced for its reliance thereon in good faith.

Respondent further argues that the Court *En Banc* disregarded the significance of the treaties it cited which commonly stated that STT applies to "taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied". Each of such treaties cited the types of IT to which the former will apply, which all included STT.

In addition, respondent contends that the Philippine government still considered STT as an IT in the various treaties it entered into after Republic Act (**RA**) No. 7717[4] took effect and even after the BIR issued DA ITAD BIR Ruling No. 022-07. According to respondent, such is further proof that the Philippine government, including the CIR, continued to characterize STT as an IT.

Lastly, respondent submits that the tax exemption granted to IFC under Section 9, Article VI of IFC's Articles of Agreement applies to it whether an STT is considered a tax on income or percentage tax.

Respondent thus remains firm that given its ownership structure, there is no doubt that IFC controls and manages its affairs, and its operations and transactions are effectively and necessarily that of IFC. As such, respondent's sale of Banco De Oro (**BDO**) shares through the Philippine Stock Exchange (**PSE**) falls within the ambit of IFC's exemption from all taxes, including STT. To allow the imposition of STT on respondent's activities will unlawfully permit the Philippine

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4 AN ACT IMPOSING A TAX ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE OR THROUGH INITIAL PUBLIC OFFERING, AMENDING FOR THE PURPOSE THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, BY INSERTING A NEW SECTION AND REPEALING CERTAIN SUBSECTIONS THEREOF.

government to shirk from its obligation to IFC and its member-states, and render IFC's absolute tax exemption under RA No. 1604[5] illusory.

Respondent also avers that under Philippine laws, the separate personality of a judicial entity may be set aside where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. In this case, IFC's operations and transactions were conducted through respondent, an entity that IFC owns and controls. The sale of respondent of listed shares in the PSE that was subjected to STT is no different from the sake made by IFC itself because respondent is a mere conduit or vehicle through which IFC conducts certain aspects of its operations and transactions.

Furthermore, as it was found that respondent is a creature of IFC (which, in turn, is a vehicle established by various governments), and that the latter enjoys exemption from "all taxation", the same should devolve unto or benefit respondent as a matter of law.

We resolve.

At the onset, it is worth noting that the arguments raised by respondent have already been thoroughly passed upon and resolved in the assailed Decision. Nonetheless, for emphasis, the Court *En Banc* shall oblige to discuss anew its reasons for denying respondent's MR.

First, respondent's contention that petitioner is already barred from raising the issue of the characterization of STT as percentage tax and not as IT is clearly bereft of merit.

As appropriately ruled, petitioner has timely refuted in his Answer before the Court in Division respondent's allegation that it is exempt from STT. It bears pointing out that respondent itself, in its prior Petition for Review, raised the issue on the characterization of STT as a tax on income. Petitioner, however, was specifically denied the same and instead claimed that respondent paid the correct taxes

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[5] AN ACT AUTHORIZING PHILIPPINE MEMBERSHIP IN THE PROPOSED INTERNATIONAL FINANCE CORPORATION AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR.

pursuant to Section 127(A)[6] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

To reiterate, Section 1, Rule 8 of the Rules of Court, as revised, merely requires that "[i]f a cause of action or defense relied on is based on law, the pertinent provisions thereof and their applicability to him or her shall be clearly and concisely stated".

Even assuming for the sake of argument that petitioner failed to timely raise the said issue, the Revised Rules of the Court of Tax Appeals (**RRCTA**) explicitly provide that "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".[7]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[8], the Supreme Court affirmed such position of this Court, to wit:

> ...
>
> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> > SECTION 1. *Rendition of judgment.* - xxx
> >
> > In deciding the 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.[9]
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> ...

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6 **SEC. 127.** *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.* –

(A) Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange. - There shall be levied, assessed and collected on every sale, barter, exchange or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be paid by the seller or transferor.

...

7 Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals.

8 G.R. No. 183408, 12 July 2017; Citation omitted.

9 Citation omitted.

Second, it is clear from the provisions of the NIRC of 1997, as amended, that the exemption clause relied upon by respondent is limited only to taxation under Title II of the same law, referring to IT. Specifically, Section 32(B)(7)(a) of the NIRC of 1997, as amended, reads as follows:

> ...
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> **TITLE II**
> **TAX ON INCOME**
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> ...
>
> **SEC. 32.** *Gross Income.* -
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> ...
>
> *(B) Exclusions from Gross Income.* - The following items **shall not be included in gross income and shall be exempt from taxation under this Title**:
>
> ...
>
> *(7) Miscellaneous Items.* -
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> *(a) Income Derived by Foreign Government.* - Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments.[10]
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> ...

From the foregoing alone, it is evident that respondent could not claim exemption from STT as the latter is embodied in Title V of the NIRC of 1997, as amended, referring to Other Percentage Taxes (**OPT**).

Under the rules of statutory construction, exceptions, as a general rule, should be strictly but reasonably construed. They extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception. **Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication.**[11]

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[10] Emphasis supplied.

[11] *Commissioner of Internal Revenue v. The Court of Appeals, et al.*, G.R. No. 107135, 23 February 1999.

Respondent, however, points out that in DA ITAD BIR Ruling No. 022-07, the BIR conveniently left out Congressional Deliberations on 28 September 1993 where the later floor interpellations would show that the Congress has not categorically determined that STT is separate and distinct from IT. Respondent thus cited in its MR the following exchange:

> ...
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> Mr. Lagman: May we also know whether the BIR Commissioner was invited to testify on this measure?
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> Mr. Javier (E): Yes, Mr. Speaker, we invited the Commissioner of the BIR, the Secretary of Finance, the NTRC and, of course, the Philippine Stock Exchange. We invited all of them. The NTRC, of course, supported this, except that they had some reservations regarding the transfer of this tax from income tax to percentage tax. That was their only reservation.
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> ...

A cursory reading of the foregoing discussion immediately yields the absence of any indication that the Congress has not categorically determined that STT is separate and distinct from IT, contrary to what respondent claims. At most, what was conveyed was simply the National Tax Research Center's (**NTRC**'s) reservation on the transfer of STT from percentage tax to IT.

Conversely, with the passage of RA No. 7717, as well as in the subsequent tax laws such as the present NIRC of 1997, as amended, the Congress has undeniably re-categorized STT as percentage tax instead of IT. As previously held, **legislative intent must be determined from the language of the statute itself.**[12]

Moreover, respondent cannot take refuge from BIR Ruling No. ITAD-153-15 dated 30 April 2015 and claim reliance thereon in good faith since the same was issued only after the subject transactions were entered into during the period of 20 September 2013 to 03 September 2014.

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12 *Tañada v. Yulo, et al.*, G.R. No. L-43575, 31 May 1935.

At any rate, **in case of discrepancy between a provision of a statute and a rule or regulation issued to implement said statute, the statutory provision prevails.**[13]

Furthermore, in *Banco de Oro, et al. v. Republic of the Philippines, et al.*[14], the Supreme Court ruled:

> ...
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> In *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary,* this court stated that the Commissioner of Internal Revenue is not bound by the ruling of his predecessors, but, to the contrary, the overruling of decisions is inherent in the interpretation of laws:
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> > ... *As a matter of power a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authoritative weight to the interpretative rule.*
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> ...

With respect to respondent's insistence that the Philippine government still supposedly considered STT as an IT in the various treaties it entered into after RA No. 7717 took effect and even after the BIR issued DA ITAD BIR Ruling No. 022-07, nothing in the said tax treaty provisions categorically support respondent's claim that STT is an income tax.

Additionally, it is clear from the tax immunity provisions of IFC[15] that the same is limited to its assets, property, income and its

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13 *Echegaray v. The Secretary of Justice, et al.*, G.R. No. 132601, 12 October 1998.

14 G.R. No. 198756, 13 January 2015; Citations omitted.

15 **Sec. 9.** *Immunities from Taxation.* – (a) The Corporation, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held:

(i) which discriminates against such obligation or security solely because it is issued by the Corporation; or operations and transactions, and does not extend to any other entity, even to the corporation it owns or controls. Respondent's insistence that such immunity from taxation should devolve or benefit it is simply beyond the statutory provisions relied upon by respondent, whether on the basis of the NIRC of 1997, as amended, the various tax treaty provisions or the *Articles of Agreement of the International Finance Corporation* appended to RA No. 1604.

We also find no merit in respondent's claim that the doctrine of piercing the veil of corporate fiction supports its argument that the tax immunity privileges granted to IFC may be extended to it. In *California Manufacturing Company, Inc. v. Advanced Technology System, Inc.*[16], the Supreme Court limited the application of the said doctrine to three (3) areas, to wit:

> ...
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> The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation: 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[17]
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> ...

None of these three (3) circumstances are present in the case at bar. As such, there is no reason for the Court *En Banc* to apply the said doctrine (which is mainly applied to prevent injustice) to even benefit respondent.

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held:

(i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.

...

16 G.R. No. 202454, 25 April 2017.

17 Citation omitted.

In sum, the Court *En Banc* still finds the Supreme Court's discussion in *Commissioner of Internal Revenue v. Solidbank Corporation*[18] apt to address of all of respondent's arguments, *viz*:

> ...
>
> **A taxing act will be construed, and the intent and meaning of the legislature ascertained, from its language.** Its clarity and implied intent must exist to uphold the taxes as against a taxpayer in whose favor doubts will be resolved. No such doubts exist with respect to the Tax Code, because the income and percentage taxes we have cited earlier have been imposed in clear and express language for that purpose.
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> **This Court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms -- construction and interpretation being called for only when such literal application is impossible or inadequate without them.** In Quijano v. Development Bank of the Philippines, we stressed as follows:
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> > **"No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application."**
>
> A literal application of any part of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contradict the evident meaning of the statute taken as a whole. Unlike the CA, **we find that the literal application of the aforesaid sections of the Tax Code and its implementing regulations does not operate unjustly or contradict the evident meaning of the statute taken as a whole. Neither does it lead to absurd results.** Indeed, our courts are not to give words meanings that would lead to absurd or unreasonable consequences. We have repeatedly held thus:
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> ...
>
> > "While it is true that the contemporaneous construction placed upon a statute by executive officers whose duty is to enforce it should be given great weight by the courts, **still if such construction is so erroneous, x x x the same must be declared as null and void."**
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> ...
>
> Respondent claims that it is entitled to a refund on the basis of excess GRT payments. We disagree.

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[18] G.R. No. 148191, 25 November 2003; Citations omitted and emphasis supplied.

Tax refunds are in the nature of tax exemptions. Such exemptions are strictly construed against the taxpayer, being highly disfavored and almost said "to be odious to the law." Hence, those who claim to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. **They must be able to point to some positive provision, not merely a vague implication, of the law creating that right.**

The right of taxation will not be surrendered, except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty -- its most essential power of taxation -- by vague or ambiguous language. Since tax refunds are in the nature of tax exemptions, these are deemed to be "in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption."

No less than our 1987 Constitution provides for the mechanism for granting tax exemptions. **They certainly cannot be granted by implication** or mere administrative regulation. **Thus, when an exemption is claimed, it must indubitably be shown to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim.**

...

WHEREFORE, with the foregoing premises, respondent IFC Capitalization (Equity) Fund, LP.'s Motion for Reconsideration filed on 04 December 2020 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate 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