Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TRANSFIELD PHILIPPINES, INC.,
Respondent.

CTA EB CASE NO. 907
(CTA Case No. 7842)

Present:
DEL ROSARIO, *PJ.*
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS
RINGPIS-LIBAN, JJ.

Promulgated:
AUG 05 2013 *9:00 a.*

x--x

D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review for the Court *En Banc* under Section 18 of Republic Act 1125 [1], as amended, and *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8* [2], and Section 3 (b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals[3] (RRCTA) *as amended.*

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[1] An Act Creating the Court of Tax Appeals
[2] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
xxx xxx xxx
Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.

Petitioner Commissioner of Internal Revenue (CIR) prays that the Amended Decision[4] dated February 28, 2012, rendered by the First Division of this Court[5] in CTA Case No. 7842, and its Resolution[6] dated May 14, 2012, be REVERSED and SET ASIDE, and that the Decision[7] dated September 20, 2011 be REINSTATED, dismissing the petition on jurisdictional ground. The dispositive portions thereof, respectively, read as follows:

Amended Decision dated February 28, 2012:

*"**WHEREFORE**, the Motion for Reconsideration (from the Decision dated 20 September 2011) dated October 11, 2011 filed by petitioner is hereby **GRANTED**.*

*Consequently, the Warrant of Distraint and/or Levy dated September 08, 2008 is hereby declared **NULL and VOID** and of no legal effect. Respondent is now precluded from collecting the amount of ₱563,168,996.70, representing petitioner's tax liability for taxable year 2002, which is deemed settled.*

SO ORDERED."

Resolution dated May 14, 2012:

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

(c) xxx.

[3] Sec. 3. *Who may appeal; period to file petition.* –

(a) xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[4] *En banc* Docket, pp. 56-74

[5] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy.

[6] *En Banc* Docket, pp. 75-81

[7] *En Banc* Docket, pp. 24-55

> "***WHEREFORE***, *the Motion for Reconsideration dated March 15, 2012, filed by respondent is hereby* ***DENIED***, *for lack of merit.*
>
> ***SO ORDERED***."

Decision dated September 20, 2011:

> "***WHEREFORE***, *the instant Petition for Review dated October 10, 2008, filed by petitioner TRANSFIELD PHILIPPINES, INC., is hereby DISMISSED, on jurisdictional ground.*
>
> ***SO ORDERED***."

The facts culled from the records are undisputed:

"On May 30, 2007, Transfield Philippines, Inc. (Transfield) received from CIR a copy of Final Assessment Notices (FAN) Nos. LTDO-122-IT-2002-00014, LTDO-122-WE-2002-00011, LTDO-122-VT-2002-00012, LTDO-122-PEN-2002-00002 assessing it a total amount of ₱563,168,996.70 as alleged deficiency income tax, expanded withholding tax, and Value Added Tax (VAT), inclusive of interest and compromise penalties for the fiscal year covering the period from July 01, 2001 to June 30, 2002, the details of which are as follows:

Kind of Tax	Basic	Interest	Compromise	Total
Income Tax	291,320,169.28	271,335,605.67	25,000.00	562,680,774.95
EWT	66,497.56	69,996.28	14,000.00	150,493.84
VAT	147,156.30	164,071.61	24,500.00	335,727.91
VAT penalty			2,000.00	2,000.00
Total	**291,533,823.14**	**271,569,673.56**	**65,500.00**	**563,168,996.70**

On June 7, 2007, Transfield filed with the BIR a protest against the foregoing assessment in a letter dated June 05, 2007.

On August 28, 2007, Transfield received CIR's First Collection Letter dated August 03, 2007, demanding immediate payment of the assessed amount. *ℓ*

On January 17, 2008, a Final Notice Before Seizure dated December 20, 2007 was served upon Transfield.

On February 29, 2008, Transfield allegedly availed of the amnesty under Republic Act (RA) No. 9480, by submitting to the BIR its Notice of Availment of Tax Amnesty, Tax Amnesty Return (BIR Form No. 2116), Statement of Assets Liabilities and Networth as of December 31, 2005, and Tax Amnesty Payment Form (BIR Form No. 0617) together with the BIR Tax Payment deposit Slip evidencing payment of amnesty tax of ₱112,500.00.

On April 23, 2008, Transfield paid CIR the VAT penalty of ₱2,000.00 as indicated in the Final Assessment Notice No. LTDO-122-PEN-2002-00002.

On May 05, 2008, Transfield, through a Letter dated April 28, 2008, informed the BIR Large Taxpayers District Office of Makati City that it availed of tax amnesty under RA No. 9480, and that it was willing to pay compromise penalties due on the deficiency expanded withholding tax assessment and penalty of ₱2,000.00 for failure to file Summary of Sales & Purchases for the 1st and 2nd quarters of 2002. Moreover, it explained that no VAT was collectible from it as its input tax exceeded its output tax even after deducting the disallowed input tax.

In a Letter dated July 10, 2008, CIR, through its representative Marissa O. Cabreros, advised Transfield that it could not avail of the amnesty as RMC No. 19-08 which she issued states that those with delinquent accounts/ accounts receivable considered as assets of the BIR/ Government, including self-assessed tax, are not allowed to avail of the benefits under Republic Act (RA) No. 9480.

On September 08, 2008, CIR issued a Warrant of Distraint and/ or Levy (WDAL) against Transfield's goods, chattels, or effects, and other personal property, and/ or real property and any interest or rights thereto to the extent of ₱563,168,996.70.

On even date, the Bank of the Philippine Islands (BPI) formally informed Transfield that its account had been placed on hold in compliance with the WDAL dated Spetember 08, 2008 issued by the BIR."[8]

On October 10, 2008, Transfield filed a Petition for Review which was raffled to the First Division of this Court claiming immunity from payment of taxes by virtue of its availment of tax amnesty under RA No. 9480 in turn praying for the nullification of Revenue Memorandum Circular (RMC) No. 19-08 or a portion thereof expanding the exceptions enumerated in RA 9480 and its Implementing Rules and Regulations (IRR), the nullification of the WDAL issued against it, and the issuance of an order directing CIR to desist from collecting the amount of ₱563,016,502.86, which represented its deficiency income tax and Value Added Tax (VAT) for the fiscal year ended June 30, 2002.[9] This was subsequently dismissed on jurisdictional ground.

On October 11, 2011, following the dismissal of its Petition for Review on the ground of lack of jurisdiction, Transfield filed a Motion for Reconsideration praying that the Court reverse and set aside the adverse Decision promulgated on September 20, 2011. In the assailed Amended Decision dated February 28, 2012, said Motion for Reconsideration was granted and accordingly, the WDAL dated September 08, 2008 was declared null and void and of no legal effect precluding the CIR from collecting the ₱563,168,996.70 representing Transfield's tax liability for the taxable year 2002.

On March 20, 2012, CIR filed a Motion for Reconsideration praying for the reversal of the Amended Decision dated February 28, 2012 but it was denied in the assailed Resolution dated May 14, 2012 for lack of merit.[10]

The issue submitted to this Court *en banc* for consideration is whether this Court in Division erred in assuming jurisdiction over the petition. CIR claims that the

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[8] *En Banc* Docket, pp. 25-28
[9] *En Banc* Docket, pp. 24-25
[10] Supra, note 4.

Court in Division erred in assuming jurisdiction over the instant petition because it was filed out of time.

The question arising from the issue is whether the subject WDAL was legally/validly issued by CIR considering that Transfield claims immunity from payment of the alleged tax liability, having availed of tax amnesty under Republic Act No. 9480.

Petitioner's Petition for Review is bereft of merit.

Suffice it to say that Transfield is not assailing the correctness or the validity of assessment as contained in the Final Assessment Notices in the total amount of ₱563,168,996.70 issued against it by the CIR; and that the finality of the assessment against Transfield does not preclude them from questioning the validity of the right of the CIR to exact payment of the alleged tax liabilities for the taxable year 2002, by way of the issuance and implementation of the WDAL dated September 8, 2008.

In the instant case, the Court has jurisdiction to rule on the petition when the CIR issues WDAL's on erroneous and void determinations. This is based on the fact that the instant case is not an appeal of the disputed assessment which is subject to a reglementary period, but it is a case to determine whether the issuance of the WDAL's are proper.

Further, the issue to be addressed is not the timeliness of the protest of the assessment issued against it, but rather, whether the CIR may validly collect taxes from Transfield by way of the WDAL despite of Transfield having availed of the tax amnesty under RA 9480.

Section 7(a)(1) of Republic Act No. 1125, as amended, provides:

"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 or other laws administered by the Bureau of Internal Revenue**" (Emphasis supplied)

Thus, the Supreme Court in *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[11] stated that, it is possible that a ruling or inaction of the CIR is not what is being appealed to this Court, but the validity of the right of the government to collect taxes.

In the instant case, Transfield properly availed of the immunity from payment of taxes under RA 9480 and as such, creates the necessary consequence of an invalid issuance of a WDAL, thus justifying the filing of said Petition within 30 days from receipt of said WDAL which violated its right to immunity.

Section 2 of RA 9480 states the requirements to qualify under the tax amnesty program of the government:

> Sec. 2. Availment of the Amnesty. Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR. c

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[11] G.R. No. 169225, November 17, 2010

Section 6 of the IRR of RA 9480 enumerates what the taxpayer must submit to the BIR to avail of the tax amnesty, to wit:

AVAILMENT AND PAYMENT OF AMNESTY
Sec. 6 Method of Availment of Tax Amnesty. –

1. Forms/ Documents to be filed. – To Avail of the general tax amnesty. Concerned taxpayers shall file the following documents/ requirements:

    a. Notice of Availment in such form as may be prescribed by the BIR.
    b. Statement of Assets and Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR.
    c. Tax Amnesty Return in such form as may be prescribed by the BIR

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2. Payment of Amnesty Tax and Full Compliance. – Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

    The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of – or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance of the amnesty tax payment. In case of the authorized agent bank, the branch manager shall sign the acceptance of payment form.

    <u>The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.</u> (Underscoring ours)

Transfield has complied with all the legal requirements for the application of tax amnesty by submitting to the BIR its Notice of Availment of Tax Amnesty,[12] Tax Amnesty Return (BIR Form No. 2116),[13] Statement of Assets Liabilities and Networth as of December 31, 2005[14] and Tax Amnesty Payment Form (BIR Form No. 0617)[15] together with the BIR Tax Payment Deposit Slip[16] evidencing payment of amnesty tax of ₱112,500.00. Compliance with said legal requirements effectively bars CIR from collecting from Transfield the alleged tax liabilities.

Having availed of the tax amnesty program, Transfield shall be immune from payment of taxes as well as any prosecution, whether it be civil, criminal or administrative, arising from failure to pay any and all internal revenue taxes for the taxable year 2005 and prior years.

Section 6 of RA 9480 provides that:

> Sec. 6. Immunities and Privileges. Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privilieges:
>
> (1) **The taxpayer shall be immune from the payment of taxes**, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. (Emphasis supplied)

WHEREFORE, the petition is **DENIED**. The Amended Decision dated February 28, 2012, rendered by the First

[12] Exhibit I.
[13] Exhibit J.
[14] Exhibit K.
[15] Exhibit M.
[16] Exhibit N.

Division of this Court in CTA Case No. 7842, and its Resolution dated May 14, 2012 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice