Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 30, 2014**, *which reads as follows:*

"G.R. No. 191999 ***(Commissioner of Internal Revenue v. Julita Campos Benedicto as Administratrix and Legal Representative of the Intestate Estate of Deceased Roberto S. Benedicto).*** – This petition for review on *certiorari* under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue *(CIR)* assails the March 1, 2010 Decision[1] of the Court of Tax Appeals En Banc *(CTA En Banc)* in C.T.A. EB No. 529, and the April 22, 2010 Resolution,[2] dismissing the CIR's petition for review and affirming the April 2, 2009 Decision of its Second Division *(CTA Division)* which canceled Assessment Notice No. FAC-1-90-92-003066, assessing respondent Judith Campos Benedicto *(Julita)* with deficiency in one tax amounting to ₱183,334,238.92 with summary and indent for taxable year 1990.

Julita was the duly appointed administratrix of the intestate estate of her late husband, Roberto S. Benedicto *(Benedicto)*. Benedicto was identified as one of the business associates/cronies of former President Ferdinand E. Marcos *(Marcos)*. Pursuant to Executive Order *(E.O.)* Nos. 1, 2, 14 and 14-A, issued by then President Corazon C. Aquino in 1986 to recover the ill-gotten wealth amassed by Marcos, members of his immediate family, close relatives, subordinates, business associates, dummies, agents or nominees, the Presidential Commission on Good Government *(PCGG)* ran after Benedicto's assets, including his deposits in Swiss Credit Bank in the amount of US$22,269,722.53 and in Swiss Bank Corporation in the amount of US$9,635,000.00, totalling US$31,904,722.53. The Swiss deposits

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[1] *Rollo*, pp. 9-34. Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta and Associate Justices, Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, concurring.

[2] Id., Associate Justice Erlinda P. Uy, on leave.

became the subject of a request by the Republic of the Philippines *(Republic)*, thru the PCGG, of international legal cooperation and freeze order in 1986.[3]

On July 16, 1990, a compromise agreement was executed between the PCGG, represented by PCGG Chairman Mateo Caparas *(Caparas)*, and Benedicto in Berne, Switzerland, wherein they agreed that the Swiss cases involving the latter's bank deposits would be terminated with the withdrawal of his (Benedicto's) opposition to the appeals filed against the grant of international legal cooperation. On the other hand, the Republic would request the Swiss authorities to unfreeze all deposits with the Swiss Federal and Cantonal authorities in order to comply with the agreement. It was also agreed upon that the PCGG shall grant Benedicto immunity from civil, criminal and tax liabilities over his 49% share in the Swiss deposits amounting to US$15,633,722.53 in consideration of his having ceded to the Republic 51% of the total amount of the said deposits.[4]

Consequently, the CIR, through a letter to Benedicto, proposed to assess his "deficiency income tax for 1986" based on the amount of US$15,633,722.53 described as "unfreezed to Roberto S. Benedicto." A second letter was sent, revising the proposed assessment by mainly changing 1] the name of the taxpayer from Roberto S. Benedicto to "Spouses Roberto S. Benedicto and Julita C. Benedicto"; 2] the year of alleged deficiency in income tax payment from "deficiency in income tax payment for 1986" to "deficiency income tax for 1990"; 3] the amount of the income allegedly being assessed from ₱320,960,323.54 to ₱370,040,784.76; and 4) the "total deficiency tax" from ₱345,645,138.42 to ₱183,334,238.95.[5]

The CIR eventually issued the Assessment Notice, where the taxpayer's name was again changed from "Spouses Roberto S. Benedicto and Julita C. Benedicto" to only "Roberto S. Benedicto," and the Notice to Taxpayer for alleged deficiency income tax for the year 1990 in the amount of ₱183,334,238.93.[6]

Benedicto protested the assessment and requested for a reconsideration which the CIR denied.

Benedicto then filed a petition for review before the CTA. When Benedicto died in 2000, Julita was appointed administratrix and legal representative of the former's intestate estate. Julita filed a request for

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[3] Id. at 11.
[4] Id. at 12.
[5] Id.
[6] Id. at 12-13.

reinvestigation with the CIR, which was granted, subject to the requirement that the same be authorized by the court. Eventually, upon Julita's motion, the petition before the CTA was dismissed without prejudice to the re-filing of the same should the need arises.

Despite reinvestigation, the CIR still affirmed the assessment, prompting Julita to re-file her petition for review. The CIR alleged in his Answer that the BIR was not taxing the share in the agreement as income from abroad, but as ill-gotten wealth amassed in the Philippines during the reign of Marcos and hidden in a foreign country to escape taxation. The CIR also averred that the PCGG's grant of immunity from taxation over Benedicto's 49% share pursuant to the Compromise Agreement did not preclude him from assessing the taxes due on the amount retained by Benedicto.[7]

The CTA Division then rendered judgment in favor of Benedicto, ruling that he was not liable for deficiency income tax for taxable year 1990 for the reason that, among others, the portion given to him was not income, but a mere return of his capital. If at all, the amount of the Swiss deposits would only be subjected to interest income.[8] Further, the CTA Division did not find merit in the CIR's argument that Benedicto's share was being taxed as ill-gotten wealth because the Compromise Agreement did not state that the Swiss deposits were such.

The CIR moved for reconsideration, but the motion was denied.

The case was then elevated to the CTA *En Banc*, which affirmed the decision of the CTA Division, agreeing that the Swiss deposits were a mere return of capital. Further, the CIR failed to present evidence to prove that Benedicto amassed great wealth which was greatly disproportionate to the salary of a public servant.[9] The tax court explained that a declaration and forfeiture of ill-gotten wealth pursuant to R.A. No. 1379 required an appropriate court petition and judicial declaration of the ill-gotten nature of the wealth. As there was no petition filed against Benedicto, but instead a civil case with the Sandiganbayan which eventually led to the compromise agreement, there was no basis for a tax liability for ill-gotten wealth.

Aggrieved, the CIR filed a motion for reconsideration, but it was likewise denied.

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[7] Id.
[8] Id.
[9] Id. at 27.

Hence, the present petition.

ISSUES:

I

THE PCGG HAS NO POWER TO GRANT TAX EXEMPTIONS EVEN UNDER COVER OF ITS AUTHORITY TO COMPROMISE ILL-GOTTEN WEALTH CASES.

II

PETITIONER FIRMLY ESTABLISHED THAT AMBASSADOR ROBERTO S. BENEDICTO AMASSED WEALTH THAT IS GREATLY DISPROPORTIONATE TO THE SALARY OF A PUBLIC SERVANT.

III

DUE PROCESS WAS OBSERVED IN ASSESSING AND INFORMING RESPONDENT OF DEFICIENCY TAX LIABILITIES.[10]

The fundamental issue to be resolved is whether or not the Intestate estate of Roberto S. Benedicto can be held liable for deficiency income tax.

Briefly, the CIR argues that *first*, nowhere in Executive Order (E.O.) No. 1 can it be inferred that the PCGG can grant tax exemptions as an incident of its authority.[11] *Second,* it was established that Benedicto amassed wealth that was greatly disproportionate to the salary of a public servant. The original report of investigation was amended in that Benedicto's share in the deposits could be considered as income only for taxable year 1990 on the hypothesis that back in 1986, the rightful ownership of the deposits was disputed, and it was only at the time of the execution of the compromise agreement when his ownership of a portion of the deposits was established.[12] The 49% share that was subject of the assessment notice arose from his income for taxable year 1990 by virtue of the compromise agreement.[13] *Third*, due process was observed in assessing and informing Benedicto of his deficiency tax liabilities. Due process simply requires a reasonable opportunity to be heard, and Benedicto was afforded said opportunity in no small measure. His representatives were given free access to BIR records.[14]

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[10] Id. at 91-92.
[11] Id. at 99.
[12] Id.
[13] Id. at 102.
[14] Id. at 103.

Although due process was indeed observed by the CIR at the time the assessment was made because Section 229 of the (NIRC) of 1986 merely required that the taxpayer be first notified of the CIR findings, still, the CIR in this case cannot collect deficiency income tax from the intestate estate.

Income means all the wealth which flows into the taxpayer other than a mere return on capital. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. For income to be taxable, the following requisites must exist:

(1) there must be gain;
(2) the gain must be realized or received; and
(3) the gain must not be excluded by law or treaty from taxation.[15]

Here, the CIR himself specifically declared that the amount being assessed for deficiency income tax against the intestate estate arose from the "income" Benedicto got in taxable year 1990 by virtue of the compromise agreement.[16] In other words, without the said agreement, Benedicto would not have received his 49% share in the Swiss deposits.

The argument fails to persuade.

It has been clearly established that, although the deposits were subject of a freeze order by the Swiss authorities, they remained, and were later confirmed, to be owned by Benedicto as early as 1986 when they were frozen. The compromise agreement only led to the unfreezing of these deposits and termination of the Swiss cases against Benedicto in exchange for the withdrawal of his opposition and appeal against the grant of international legal cooperation requested by the Republic. The 49% share in the deposits was in no way an income because Benedicto did not gain any wealth or did not become any richer than he was before. In fact, his wealth was diminished by virtue of the agreement for having ceded 51% to the Republic. The 49% share was, therefore, a mere return of capital which was not subject to income tax. The CTA *En Banc* was correct in affirming the CTA Division's disposition that "if there would be any amount of the Swiss deposits that may be subjected to income tax, the same pertains only to the interest income component of said deposits, for the interest income earned

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[15] *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*, G.R. No. 160756, March 9, 2010. 614 SCRA 605, 627.
[16] *Rollo*, p. 102.

by said Swiss deposits is a gain derived and severed from capital, or a flow of wealth."[17]

Further, the argument of the CIR that the amount was being taxed as ill-gotten wealth under R.A. No. 1379 cannot be given consideration. Other than bare allegations, the CIR did not adduce any proof that indeed Benedicto greatly amassed wealth that was disproportionate to the salary of a public servant. Neither the compromise agreement stated that the Swiss deposits were ill-gotten wealth nor was there a judicial declaration as required by R.A. No. 1379, the same law relied upon by the CIR.

The issue of the power of the PCGG to grant tax exemption is now irrelevant here. It is clear from the records that Roberto was not being made liable for deficiency income tax because of a tax exemption granted by the PCGG, but because the amount being subjected to income tax was not income but a mere return of capital. Again, let it be emphasized that only the interest income of the said Swiss deposits may be subjected to income tax because such can be deemed a gain. Considering that the interest income component was not identified and segregated from the principal amount, the CTA was correct in cancelling and setting aside the CIR assessment as there was no way of determining the said amount. To proceed heedlessly with the tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.[18]

Premises considered, the CTA *En Banc* did not commit any reversible error in affirming the April 2, 2009 decision of the CTA Division.

WHEREFORE, the petition is **DENIED.** *(Villarama, Jr., J., designated Acting Member in view of the vacancy in the Third Division, per Special Order No. 1691, dated May 22, 2014)*

SO ORDERED."

Very truly yours,

WILFREDO V. LAPITAN
Division Clerk of Court 8/11/14

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[17] Id. at 26.
[18] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633, 644.

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