

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **04 December 2019** which reads as follows:

“**G.R. No. 209725 (Commissioner of Internal Revenue v. United Distribution Management, Inc.)** – This is a petition for review on *certiorari*¹ taken under Rule 45 of the Rules of Court seeking to nullify the Decision² dated October 30, 2013 of the Court of Tax Appeals (CTA) sitting *En Banc* in CTA EB No. 974.

Factual Antecedents

United Distribution Management, Inc. (respondent) is a domestic corporation duly organized and existing under Philippine law, with principal office at 497 President Quirino Avenue corner Zulueta Street, Malate, Manila.³ On January 26, 2008, respondent received an Assessment Notice No. 34-2004, with Demand No. 34-2004 both dated January 23, 2004 from the Regional Director of Revenue Region No. 6, Manila, assessing it with deficiency income tax, value-added tax (VAT), documentary stamp tax (DST), and final tax in the total amount of ₱33,779,639.11, inclusive of interest, penalties and surcharges.⁴

In response, on February 22, 2008, the respondent filed a Protest and Reply to the said Assessment Notice on the ground that it availed a tax amnesty on October 26, 2007. The respondent also received a letter from the Bureau of Internal Revenue (BIR) dated February 10, 2009 informing it that its deficiency assessment for final tax in the amount of ₱1,675,034.65 will be forwarded to the Collection Division for enforcement of collection.⁵

¹ *Rollo*, pp. 15-47.

² Penned by Associate Justice Erlinda P. Uy and concurred in by Associates Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban; *id.* at 49-67.

³ *Id.* at 50.

⁴ *Id.* at 51.

⁵ *Id.*

The aforementioned deficiency final tax was computed as follows:⁶

Payment made to stockholders	₱	8,180,100.00
Interest paid to stockholders		739,248.66
Total	₱	<u>8,919,348.66</u>
Applicable Rate		10%
Final Tax Due	₱	891,934.87
Add: 25% Surcharge		222,983.72
20% Interest		540,116.06
Compromise Penalty		20,000.00
Total Amount Due	₱	<u>1,675,034.65</u>

On March 19, 2009, respondent received an undated letter acknowledging its availment of the tax amnesty and confirming the cancellation of the deficiency income tax, VAT, and DST assessments for 2004.⁷ However, it also stressed that the respondent's assessment for deficiency final tax is not covered by the amnesty.⁸ This was deemed by the respondent as a partial denial of its protest.⁹

Accordingly, on March 20, 2009, respondent appealed the said partial denial by filing a Petition for Review before the CTA in division.¹⁰

Ruling of the CTA Division

On September 24, 2012, the CTA Division promulgated a decision¹¹ granting the respondent's petition, to wit:

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessment issued against petitioner for deficiency final tax, including surcharges, interests and compromise penalty in the aggregate amount of ₱1,675,034.65 for taxable year 2004 is hereby **CANCELLED**.

SO ORDERED.¹²

The CTA found the assessment of deficiency final tax lacking in factual basis. The respondent did not issue any dividend which can be subject to a final tax.¹³

⁶ Id. at 63.
⁷ Id. at 51.
⁸ Id.
⁹ Id.
¹⁰ Id.
¹¹ Id. at 69-81.
¹² Id. at 80.
¹³ Id.

Dissatisfied, the Commission on Internal Revenue (petitioner) filed a motion for reconsideration on October 12, 2012. This was, however, denied in a resolution dated December 13, 2012.¹⁴

Unfazed, the petitioner filed a petition for review before the CTA *En Banc*.

Ruling of CTA *En Banc*

On October 30, 2013, the CTA *En Banc* promulgated a decision denying the petition, to wit:

WHEREFORE, all the foregoing considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated September 24, 2012 and Resolution dated October 10, 2012 of the Court in Division in CTA Case No. 7885 are hereby **AFFIRMED**.

SO ORDERED.¹⁵

According to the CTA *En Banc*, through preponderance of evidence, the respondent was able to overturn the presumption of correctness of the disputed final tax assessment. Based on the evidence presented, the payments made by the respondent to Enrique Fernandez (Enrique), its stockholder, are not dividends as defined by law and jurisprudence, but merely advances made to the latter.¹⁶ The ₱8,000,000.00 loan obtained by the respondent from Enrique is supported by the adequate documentary evidence.¹⁷

The CTA *En Banc* noted that, aside from self-serving statements, the petitioner failed to explain why it treated the respondent's payments to Enrique as dividends subject to final tax.

Hence, the instant Petition.

Issue

Whether or not the CTA *En Banc* committed reversible error in affirming the cancellation of respondent's assessment for final tax.

The Ruling of this Court

The petition is bereft of merit.

¹⁴ Id. at 52.

¹⁵ Id. at 66.

¹⁶ Id. at 56.

¹⁷ Id at 57-58.

The petitioner contended that the respondent is liable for a final tax deficiency in the total amount of ₱8,919,348.66 for the dividend it allegedly paid to Enrique in 2004. According to the petitioner, the respondent's tax assessment for the said tax deficiency should not be cancelled because all presumptions are in favor of the correctness and validity of the tax assessment it made, and the respondent has failed to rebut said presumption.

This Court disagrees.

While tax assessments by tax examiners are presumed correct and made in good faith, it is to be presumed, however, that such assessments were based on sufficient evidence.¹⁸ As the Court held in *Collector of Internal Revenue v. Benipayo*,¹⁹ in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.²⁰

In the instant case, the CTA *En Banc* correctly ruled that this presumption was overturned by the evidence which the respondent presented.

At the outset, the respondent proved that the amount of ₱8,919,348.66, which the petitioner sought to subject to final tax as a dividend, is not a dividend payment but a payment for a loan with interest. Although no loan contract was presented, the respondent showed adequate documentary evidence to support the claim that it obtained an ₱8,000,000.00 loan from Enrique, to wit:

- (a) The Certification from Planters Bank of the issuance of Check No. 73671 to United Distribution Management Inc., payee, in the amount of ₱4,000,000.00 on November 19, 2004 and Check No. 73719 to Enrique Cacho Fernandez, payee, also for the amount of ₱4,000,000.00 on November 26, 2004 from the proceeds of the placement of Enrique Fernandez with said bank shows that the source of the amount of ₱8,000,000.00 is from Fernandez's bank account.
- (b) Respondent's bank statements under Current Account No. 044-030-00033-9 with the International Exchange Bank-Intramuros Branch reflecting the entries made on November 19, 2004 and November 26, 2004 crediting the amount of ₱4,000,000.00 on each date demonstrates receipt of the same amount by the respondent.
- (c) Proofs of repayment of the loan granted by Enrique C. Fernandez in 2005 with interests, confirm the treatment of the said amount as "Advances from a Stockholder" in respondent's financial statements, namely: Duplicate Original of Respondent's Disbursement Voucher No. 1605 dated December 18, 2004; Certified True Copy of Respondent's International Exchange Bank Check No. 97257 dated December 21,

¹⁸ *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, 494 Phil. 306, 335 (2005).

¹⁹ 114 Phil. 135 (1962).

²⁰ *Id.* at 138.

2004 issued to Mr. Enrique C. Fernandez; Certified True Copy of Respondent's International Exchange Bank Check No. 97260 dated December 28, 2004 issued to Mr. Enrique C. Fernandez; Certified True Copy of Respondent's International Exchange Bank Check No. 97259 dated January 5, 2005 issued to Mr. Enrique C. Fernandez; Certified True Copy of Respondent's International Exchange Bank Check No. 97261 dated January 12, 2005 issued to Mr. Enrique C. Fernandez; Certified True Copy of Respondent's International Exchange Bank Check No. 97263 dated January 28, 2005 issued to Mr. Enrique C. Fernandez; Duplicate Original of Respondent's Disbursement Voucher No. 1604 dated December 18, 2004 showing payment of loan to Mr. Enrique C. Fernandez; and Entries in Respondent's Bank Statement on various dates showing that petitioner's account were debited the total amount of Eight Million One Hundred Eighty Thousand Pesos [P8,180,000.00]; Respondent's Audited Financial Statements for taxable years ended December 31, 2004 and 2003; and Respondent's Comparative Audited Financial Statements for taxable years ended December 31, 2005 and 2004.²¹

To properly determine whether the respondent issued a dividend that must be subjected to a final tax, the legal definition of a dividend must be considered. It bears stressing that Section 73(A) of the National Internal Revenue Code (Tax Code) expressly defined dividends as payments made by the corporation to its shareholders from its profits or earnings, to wit:

SEC. 73. Distribution of dividends or Assets by Corporation.-

(A) Definition of Dividends. - The term "dividends" when used in this Title means any distribution made by a corporation to its shareholders out of its earnings or profit and payable to its shareholders, whether in money or in other property. (Emphasis supplied)

In light of the foregoing legal definition of dividends under the Tax Code, the CTA *En Banc* correctly ruled that the following are essential requisites for a payment to be considered a dividend:

1. **The concerned corporation must have earnings or profits;**
2. **Such corporate earnings or profits must be set aside, declared, and ordered by the directors to be paid to the stockholders, on demand or at a fixed time; and**
3. **The distribution or payment of said corporate earnings or profits in in money or in other property. (Emphasis supplied)**

In the instant case, the three requisites are all absent. *First*, the respondent has no sufficient unrestricted retained earnings to support the

²¹ *Rollo*, pp. 57-58.

alleged dividend declaration. In fact, as per its audited financial statements for the year 2004, its retained earnings for the year 2004 amounted only to ₱1,895,658.00.²² *Second*, no document allowing the respondent to declare any dividend in 2004 was presented. *Third*, aside from the self-serving statements of the petitioner, no evidence was presented to prove that the respondent actually distributed any of its earnings or profit, whether in the form of cash or property. Considering the absence of any dividend to speak of, the deficiency final tax assessment against the respondent has no factual and legal basis to stand on.

In other words, the respondent proved that no dividend was released to any stockholder on the assessed taxable year. Thus, the absence of legal and factual basis for the petitioner's tax assessment has sufficiently overturned the disputable presumption of correctness in petitioner's favor.

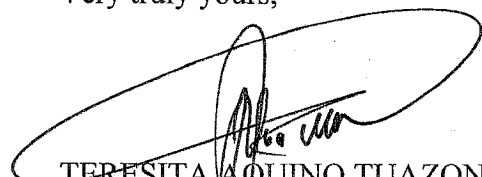
Furthermore, the general rule is that findings of fact of the CTA are not to be disturbed by this Court unless clearly shown to be unsupported by substantial evidence.²³ Since by the very nature of its functions, the CTA has developed an expertise to resolve tax issues, this Court will not set aside lightly the conclusions reached by them, unless there has been an abuse or improvident exercise of authority.²⁴

Considering the substantial evidence supporting the decision of the CTA *En Banc* and the failure to prove any abuse of authority, this Court finds no reversible error in the assailed decision of the CTA *En Banc* affirming the decision of the CTA Division.

WHEREFORE, the Petition is **DENIED**. The assailed Decision dated October 30, 2013 of the Court of Tax Appeals sitting *En Banc* in CTA EB No. 974 is **AFFIRMED**.

SO ORDERED." (*Bernabe, J., on official business; Zalameda, J., on official leave*)

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Wrt*
10 7 JAN 2020

²² Id. at 77.

²³ *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, 807 Phil. 912, 932 (2017).

²⁴ Id.

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