



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF OPINION NO. 004.2021

HON. EDGARDO C. LABELLA

City Mayor

Cebu City Hall, M.C.

Briones St., Cebu City

**Subject: Request for Review of Bureau of Internal Revenue (BIR)
Decision in Case No. P-18-33 dated 29 June 2018**

Dear Mayor Labella:

This is in reference to the request for review of the Cebu City Government (CEBU) of Bureau of Internal Revenue (BIR) Final Decision on the Motion for Reconsideration of the 28 September 2016 Final Decision on Disputed Assessment (FDDA) in Case No. P-18-33 dated 29 June 2018,¹ which held that CEBU is liable for deficiency taxes for the taxable year 2010. The dispositive portion of the decision reads:

"WHEREFORE, predicated on the foregoing, the Motion for Reconsideration filed by CEBU CITY GOVERNMENT is hereby denied. Consequently, this Office hereby orders CEBU CITY GOVERNMENT to pay the aggregate amount of P1,278,349,609.52, representing deficiency income tax, VAT, VAT withholding tax and expanded withholding tax, for the taxable year 2010, including interests that may have accrued thereon until actual payment thereof, to the Collection Service, BIR National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof shall be effected through summary remedies provided by law.

This constitutes the Final Decision of this Office on the matter."

As culled from the records, the pertinent facts are as follows:

On 15 October 2014, a Preliminary Assessment Notice (PAN) was issued against CEBU, assessing the local government unit (LGU) of deficiency taxes in the aggregate amount of P1,118,132,323.05, as a result of an examination and investigation of the latter's book of accounts and accounting records pursuant

¹ Re: In the Matter of the Appeal on the Decision Denying the Protest of Cebu City Government Against the Assessments Demanding the Payment of the Aggregate Amount of P1,278,349,609.52 as the Deficiency Income Tax, Value-Added Tax (VAT), VAT Withholding Tax and Expanded Withholding Tax, for Taxable Year 2010.

to a Letter of Authority dated 22 May 2012. Pursuant to an Amended PAN dated 5 December 2014, and as a result of re-computation and review, the assessed amount was amended to P1,144,264,972.34.

On 28 January 2015, a Formal Letter of Demand (FLD) was issued assessing CEBU of deficiency taxes in the aggregate amount of P1,170,683,885.51.

On 30 April 2015, CEBU filed a Protest to the FLD contending that it is not liable for deficiency income tax, VAT, and withholding taxes as it is engaged in governmental functions and not proprietary functions.²

On 1 June 2015, CEBU a filed Supplemental Protest reiterating the arguments contained in its 30 April 2015 Protest. However, on 26 August 2016 based on a reinvestigation conducted by the BIR, the assessment on CEBU was upheld holding that the protest was without legal nor factual basis and should not be given due course.

Hence, an FDDA dated 28 September 2016 was issued, which CEBU received on 7 October 2016, assessing CEBU the aggregate amount of P1,278,349,609.52, for alleged deficiency for income tax, value-added tax (VAT), expanded withholding tax and VAT withholding tax for taxable year 2010.

On 15 November 2016, CEBU filed a Motion for Reconsideration with the CIR. Pending consideration, CEBU filed a Supplemental Motion for Reconsideration on 18 January 2018.

On 29 June 2018, the Commissioner of Internal Revenue (CIR) rendered a Final Decision, (which is the subject of this review and to be referred hereafter as the Assailed Decision), denying with finality CEBU's request for reconsideration.

On 11 July 2018, CEBU received the Assailed Decision and thereafter filed on 10 August 2018 this pertinent Request for Review.

We find this request devoid of merit.

In elevating the case to this Department, CEBU alleged that the matter falls under the first paragraph of Section 4 of the National Internal Revenue Code (NIRC), as amended, which provides:

² Prior to the filing of the Protest, CEBU filed a request for time to submit documents dated 20 February 2015, and the same was granted by the BIR in a letter dated 26 February 2015.



Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

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 portion thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

CEBU alleged that the request for review is on the interpretation of the CIR on what is considered as “essential governmental functions”, and what are those that are deemed as done in the “exercise of corporate or proprietary function” – hence, making an LGU, such as CEBU, liable for income tax from whatever may be the proceeds thereof.

We beg to disagree.

The CIR exercises the first paragraph of the aforementioned Section through its issuance of interpretative rulings. In particular, BIR rulings are administrative interpretations of the tax laws as applied and implemented by the agency. They are those which purport to do no more than interpreting the statute being administered. Tax rulings are the official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the NIRC, other tax laws, or their implementing regulations.³

On the other hand, the instant request for review is an appeal of the Commissioner’s 29 June 2018 Final Decision of CEBU’s Motion for Reconsideration and Supplementary Motion for Reconsideration assessing CEBU of deficiency income tax, VAT, withholding VAT, and expanded withholding tax for the taxable year 2010 on various types of income of CEBU.

As such, we believe that the matter is clearly within the ambit of the second paragraph of Section 4 of the NIRC, as amended, which is proper subject to the **exclusive appellate jurisdiction** of the Court of Tax Appeals.

Section 7 of Republic Act (RA) No. 9282⁴ provides:

³ Banco de Oro v. Republic. G.R. No. G.R. No. 198756. August 16, 2016.

⁴ An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, amending for the Purpose Certain



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; (*underscoring and emphasis supplied*)

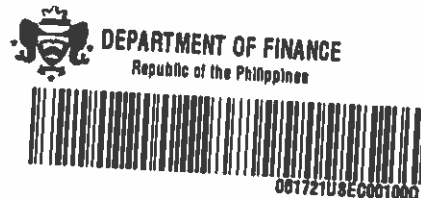
It is clear that Section 7 of RA 9282 expressly provides that the CTA exercises exclusive appellate jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments.⁵ The word “decisions” in the above quoted provision of RA 9282 has been interpreted to mean the decisions of the CIR on the protest of taxpayer against the assessments.⁶

In view of the foregoing, this Office hereby denies the request for review for lack of jurisdiction. Kindly note that this ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall be disclosed that the facts are different, then this ruling shall be considered as null and void.

Thank you.

Very truly yours,


CARLOS G. DOMINGUEZ
Secretary



JUN 16 2021
CC: **HON. CAESAR R. DULAY**
Commissioner, Bureau of Internal Revenue

HON. MICHAEL L. RAMA
Vice Mayor, Cebu City

Sections of Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and For Other Purposes

⁵ Allied Banking Corporation v. CIR. G.R. No. 175097. 5 February 2010.

⁶ *Id.* Citing CIR v. Villa, 130 Phil. 3, 6 (1968).