Supreme Court E-Library

WHEREFORE, the Decision dated February 27, 2004 and Resolution dated February 14, 2006 of the Court of Appeals in CA-G.R. SP No. 71911, finding petitioner guilty of *DISHONESTY* and dismissing her from government service, with forfeiture of retirement benefits and perpetual disqualification to hold public office, are hereby *AFFIRMED*. The Civil Service Commission is ordered to cancel her civil service eligibility, if any, in accordance with Section 9,[32] Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-de Castro, and *Brion, JJ.*, concur.

Nachura, J., no part. Appeared as counsel (Solicitor General).

SECOND DIVISION

[G.R. No. 172457. December 24, 2008]

CJH DEVELOPMENT CORPORATION, *petitioner, vs.* **BUREAU OF INTERNAL REVENUE, BUREAU OF CUSTOMS, and DISTRICT COLLECTOR OF CUSTOMS EDWARD O. BALTAZAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR DECLARATORY RELIEF; REQUISITES. — The

[32] SEC. 9. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for reemployment in the government service. Further, it may be imposed without prejudice to criminal or civil liability.

Supreme Court E-Library

requisites for a petition for declaratory relief to prosper are: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.

2. ID.; ID.; ID.; PETITIONS INVOLVING TAX ASSESSMENTS REMOVED FROM JURISDICTION OF COURTS. —As a substantive law that has not been repealed by another statute, CA No. 55 is still in effect and holds sway. Precisely, it has removed from the courts jurisdiction over petitions for declaratory relief involving tax assessments. The Court cannot repeal, modify or alter an act of the Legislature.

3. ID.; ID.; ID.; PETITIONS INVOLVING COURT DECISIONS ARE NOT ALLOWED IN PETITIONS FOR DECLARATORY RELIEF. — A petition for declaratory relief cannot properly have a court decision as its subject matter. In *Tanda v. Aldaya*, we ruled that: x x x [A] court decision cannot be interpreted as included within the purview of the words "other written instrument," as contended by appellant, for the simple reason that the Rules of Court already provide[s] for the ways by which an ambiguous or doubtful decision may be corrected or clarified without need of resorting to the expedient prescribed by Rule 66 [now Rule 64].

4. ID.; ID.; ID.; ID.; REMEDIES AVAILABLE TO A PARTY NOT AGREEABLE WITH A COURT DECISION. — There are other remedies available to a party who is not agreeable to a decision whether it be a question of law or fact. If it involves a decision of an appellate court, the party may file a motion for reconsideration or new trial in order that the defect may be corrected. In case of ambiguity of the decision, a party may file a motion for a clarificatory judgment.

5. TAXATION; TARIFF AND CUSTOMS CODE; ASSESSMENT; ADMINISTRATIVE AND JUDICIAL REMEDIES TO CONTEST ASSESSMENT. — The Tariff and Customs Code (TCC) provides for the administrative and judicial remedies available to a taxpayer who is minded to contest an assessment, subject of course to certain reglementary periods. The TCC provides that a protest can be raised provided that payment first be made of the amount due. The decision of the Collector

Supreme Court E-Library

can be reviewed by the Commissioner of Customs who can approve, modify or reverse the decision or action of the Collector. If the party is not satisfied with the ruling of the Commissioner, he may file the necessary appeal to the Court of Tax Appeals. Afterwards, the decision of the Court of Tax Appeals can be appealed to this Court.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.
The Solicitor General for respondents.

D E C I S I O N

TINGA, *J.*:

Before us is a petition for review on *certiorari*[1] seeking the reversal of the orders dated 14 October 2005[2] and 04 April 2006[3] of the Regional Trial Court (RTC) of Baguio City, Branch 5. The RTC dismissed the petition for declaratory relief filed by petitioner CJH Development Corporation (CJH). This petition was brought directly to this Court since it involves a pure question of law in accordance with Rule 50 of the 1997 Revised Rules of Court.

Proclamation No. 420 (the Proclamation) was issued by then President Fidel V. Ramos to create a Special Economic Zone (SEZ) in a portion of Camp John Hay in Baguio City. Section 3[4]

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[1] *Rollo*, pp. 9-68.

[2] *Id.* at 69-76.

[3] *Id.* at 77.

[4] Entitled, "CREATING AND DESIGNATING A PORTION OF THE AREA COVERED BY THE FORMER CAMP JOHN AS THE JOHN HAY SPECIAL ECONOMIC ZONE PURSUANT TO REPUBLIC ACT NO. 7227. Sec. 3. *Investment Climate in John Hay Economic Zone*.— Pursuant to Section 5(m) and Section 15 of Republic Act No. 7227, the John Hay Poro Point Development Corporation shall implement all necessary policies, rules, and regulations governing the zone, including investment incentives, in consultation with pertinent government departments. Among others, the zone

Supreme Court E-Library

of the Proclamation granted to the newly created SEZ the same incentives then already enjoyed by the Subic SEZ. Among these incentives are the exemption from the payment of taxes, both local and national, for businesses located inside the SEZ, and the operation of the SEZ as a special customs territory providing for tax and duty free importations of raw materials, capital and equipment.[5]

In line with the Proclamation, the Bureau of Internal Revenue (BIR) issued Revenue Regulations No. 12-97[6] while the Bureau of Customs (BOC) issued Customs Administrative Order No. 2-98.[7] The two issuances provided the rules and regulations to be implemented within the Camp John Hay SEZ. Subsequently, however, Section 3 of the Proclamation was declared unconstitutional in part by the Court *en banc* in *John Hay Peoples Alternative Coalition v. Lim*,[8] when it ruled that:

> WHEREORE, the second sentence of Section 3 of Proclamation No. 420 is hereby declared NULL and VOID and is accordingly declared of no legal force and effect. Public respondents are hereby enjoined from implementing the aforesaid void provision.
>
> Proclamation No. 420, without the invalidated portion, remains valid and effective.[9]

The decision attained finality when the Court *en banc* denied the motion for reconsideration through a resolution dated 29 March 2005.[10]

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shall have all the applicable incentives of the Special Economic Zone under Section 12 of Republic Act No. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991, and new investment laws that may hereinafter be enacted.

[5] Sec. 12. Republic Act. No. 7227 (1992), Sec. 12.

[6] *Rollo*, pp. 106-109.

[7] *Id.* at 110-116.

[8] 460 Phil. 530 (2003).

[9] *Id.* at 554.

[10] *Id.* at 225-246.

Supreme Court E-Library

While the motion for reconsideration was pending with the Court, on 16 January 2004 the Office of the City Treasurer of Baguio sent a demand letter[11] which stated that:

> In view of the Supreme Court decision dated October 24, 2003 on G.R. No. 119775, declaring null and void Section 3 of Proclamation 420 on applicable incentives of Special Economic Zones, we are sending you updated statements of real property taxes due on real estate properties declared under the names of the Bases Conversion and Development Authority and Camp John Hay Development Corporation totaling ₱101,935,634.17 inclusive of penalties, as of January 10, 2004.
>
> May we request for the immediate settlement of the above indebtedness, otherwise this office shall be constrained to hold the processing of your business permit pursuant to Section 2 C c.1 of Tax Ordinance 2000-001 of Baguio City.

Five months later, on 26 May 2005, the BOC followed suit and demanded[12] of CJH the payment of ₱71,983,753.00 representing the duties and taxes due on all the importations made by CJH from 1998 to 2004. For its part, the BIR sent a letter dated 23 May 2005 to CJH wherein it treated CJH as an ordinary corporation subject to the regular corporate income tax as well as to the Value Added Tax of 1997.[13]

CJH questioned the retroactive application by the BOC of the decision of this Court in G.R. No. 119775. It claimed that the assessment was null and void because it violated the non-retroactive principle under the Tariff and Customs Code.[14]

The Office of the Solicitor General (OSG) filed a motion to dismiss.[15] The OSG claimed that the remedy of declaratory relief is inapplicable because an assessment is not a proper subject

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[11] *Id.* at 211.

[12] *Id.* at 255.

[13] *Id.* at 118.

[14] *Id.* at 120-154.

[15] *Id.* at 330-346.

Supreme Court E-Library

of such petition. It further alleged that there are administrative remedies which were available to CJH.

In an Order[16] dated 28 June 2005, the RTC dropped the City of Baguio as a party to the case. The remaining parties were required to submit their respective memoranda. On 14 October 2005, the RTC rendered its assailed order.[17] It held that the decision in G.R. No. 119775 applies retroactively because the tax exemption granted by Proclamation No. 420 is null and void from the beginning. The RTC also ruled that the petition for declaratory relief is not the appropriate remedy. A judgment of the court cannot be the proper subject of a petition for declaratory relief; the enumeration in Rule 64 is exclusive. Moreover, the RTC held that Commonwealth Act No. 55 (CA No. 55) which proscribes the use of declaratory relief in cases where a taxpayer questions his tax liability is still in force and effect.

CJH filed a motion for reconsideration but the RTC denied it.[18] Hence this petition, which, as earlier stated, was filed directly to this Court, raising as it does only pure questions of law.

There are two issues raised in this petition, one procedural and the other substantive. First, is the remedy of declaratory relief proper in this case? Second, can the decision in G.R. No. 119775 be applied retroactively?

The requisites for a petition for declaratory relief to prosper are: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.[19]

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[16] *Id.* at 264.

[17] *Id.* at 69-76.

[18] *Supra* note 3.

[19] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, 5 August 2007, 530 SCRA 341, 355 citing *Republic v. Orbecido III*, G.R. No. 154380, 5 October 2005, 472 SCRA 114; *Board of Optometry v. Colet*, 328 Phil. 1187 (1996); *Macasiano v. National Housing Authority*, G.R. No. 107921, 1 July 1993, 224 SCRA 236.

Supreme Court E-Library

CJH alleges that CA No. 55[20] has already been repealed by the Rules of Court; thus, the remedy of declaratory relief against the assessment made by the BOC is proper. It cited the commentaries of Moran allegedly to the effect that declaratory relief lies against assessments made by the BIR and BOC. Yet in *National Dental Supply Co. v. Meer*,[21] this Court held that:

> From the opinion of the former Chief Justice Moran may be deduced that the failure to incorporate the above proviso [CA No. 55] in Section 1, Rule 66, [now Rule 64] is not due to an intention to repeal it but rather to the desire to leave its application to the sound discretion of the court, which is the sole arbiter to determine whether a case is meritorious or not. And even if it be desired to incorporate it in Rule 66, it is doubted if it could be done under the rule-making power of the Supreme Court considering that the nature of said proviso is **substantive** and not adjective, its purpose being to lay down a policy as to the right of a taxpayer to contest the collection of taxes on the part of a revenue officer or of the Government. With the adoption of said proviso, our law-making body has asserted its policy on the matter, which is to prohibit a taxpayer to question his liability for the payment of any tax that may be collected by the Bureau of Internal Revenue. As this Court well said, quoting from several American cases, "The Government may fix the conditions upon which it will consent to litigate the validity of its original taxes . . ." "The power of taxation being legislative, all incidents are within the control of the Legislature." In other words, it is our considered opinion that the proviso contained in Commonwealth Act No. 55 is still in full force and effect and bars the plaintiff from filing the present action.[22] (Emphasis supplied) (Citations omitted.)

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[20] CA No. 55 amended Section 1 of Act No. 3736 the proviso is as follows:

> Sec. 1. *Construction*.— Any person interested under a deed, contract or other written instrument, or whose rights are affected by a statute, may bring an action in a Court of First Instance to determine any question of construction or validity arising under such deed, contract, instrument or statute and for a declaration of his rights or duties thereunder: *Provided, however,* That the provisions of this Act shall not apply to cases where a taxpayer questions his liability for the payment of any tax, duty, or charge collectible under any law administered by the Bureau of Customs or the Bureau of Internal Revenue.

[21] 90 Phil. 265 (1951).

[22] *Id.* at 268-269.

Supreme Court E-Library

As a substantive law that has not been repealed by another statute, CA No. 55 is still in effect and holds sway. Precisely, it has removed from the courts jurisdiction over petitions for declaratory relief involving tax assessments. The Court cannot repeal, modify or alter an act of the Legislature.

Moreover, the proper subject matter of a declaratory relief is a deed, will, contract, or other written instrument, or the construction or validity of statute or ordinance.[23] CJH hinges its petition on the demand letter or assessment sent to it by the BOC. However, it is really not the demand letter which is the subject matter of the petition. Ultimately, this Court is asked to determine whether the decision of the Court *en banc* in G.R. No. 119775 has a retroactive effect. This approach cannot be countenanced. A petition for declaratory relief cannot properly have a court decision as its subject matter. In *Tanda v. Aldaya*,[24] we ruled that:

> x x x [A] court decision cannot be interpreted as included within the purview of the words "other written instrument," as contended by appellant, for the simple reason that the Rules of Court already provide[s] for the ways by which an ambiguous or doubtful decision may be corrected or clarified without need of resorting to the expedient prescribed by Rule 66 [now Rule 64].[25]

There are other remedies available to a party who is not agreeable to a decision whether it be a question of law or fact. If it involves a decision of an appellate court, the party may file a motion for reconsideration or new trial in order that the defect may be corrected.[26] In case of ambiguity of the decision, a party may file a motion for a clarificatory judgment.[27] One of the requisites of a declaratory relief is that the issue must be ripe for judicial determination. This means that litigation is

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[23] *Mangahas v. Paredes*, G.R. No. 157866, 14 February 2007, 515 SCRA 709, 716.

[24] 98 Phil. 244 (1956).

[25] *Id.* at 247.

[26] *Id*.

[27] REGALADO, FLORENZ, *REMEDIAL LAW COMPENDIUM*, Vol. 1. 7th ed. p. 694.

Supreme Court E-Library

inevitable[28] or there is no adequate relief available in any other form or proceeding.[29]

However, CJH is not left without recourse. The Tariff and Customs Code (TCC) provides for the administrative and judicial remedies available to a taxpayer who is minded to contest an assessment, subject of course to certain reglementary periods. The TCC provides that a protest can be raised provided that payment first be made of the amount due.[30] The decision of the Collector can be reviewed by the Commissioner of Customs who can approve, modify or reverse the decision or action of the Collector.[31] If the party is not satisfied with the ruling of the Commissioner, he may file the necessary appeal to the Court of Tax Appeals.[32] Afterwards, the decision of the Court of Tax Appeals can be appealed to this Court.

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[28] *Bayan Telecommunications, Inc. v. Republic*, G.R. No. 161140, 31 January 2007, 513 SCRA 562, 569 citing *Office of the Ombudsman v. Ibay*, G.R. No. 137538, 3 September 2001, 364 SCRA 281, 286.

[29] *Ollada v. Central Bank of the Philippines*, No. L-11357, 37 May 1962, 5 SCRA 297, 303.

[30] SECTION 2308. *Protest and Payment upon Protest in Civil Matters.* — When a ruling or decision of the Collector is made whereby liability for duties, fees, or other money charge is determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made.

[31] SECTION 2313. *Review by Commissioner.* — The person aggrieved by the decision or action f the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen days after notification in writing by the Collector of his action or decision, give written notice to the Collector of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision.

[32] SECTION 2402. *Review by Court of Tax Appeals.*— The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest

Supreme Court E-Library

With the foregoing disquisition on the first issue, there is no need to delve into the second issue at this juncture. It should be noted though, as admitted by CJH in its *Certificate of Non-Forum Shopping*,[33] that even before the filing of this petition, it already had a pending petition for review with this Court, docketed as G.R. No. 169234[34] and entitled, *Camp John Hay Development Corporation v. Central Board of Assessment Appeals, et al.* That case emanated from assessments made in 2002 for real estate taxes on CJH by the City of Baguio. Said assessments were duly challenged before the Local Board of Assessment Appeals, the Central Board of Assessment Appeals and the Court of Tax Appeals. The petition in G.R. No. 169234 was filed with this Court in September 2005, or after our 2003 Decision in *John Hay Peoples Alternative Coalition* had attained finality. CJH therein raised the same question of law, as in this case, whether the doctrine of operative fact applies to G.R. No. 119775. Clearly, the Court in G.R. No. 169234 is better positioned to resolve that question of law, there being no antecedent jurisdictional defects that would preclude the Court from squarely deciding that particular issue. CJH is free to reiterate this current point of clarification as it litigates the petition in G.R. No. 169234.

WHEREFORE, the Petition is *DENIED.*

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

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or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive.

[33] *Rollo*, pp. 64-65.

[34] Currently assigned to the Court's Third Division.