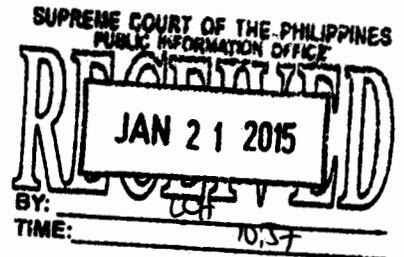




Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**



**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **December 10, 2014**, which reads as follows:*

**“G.R. No. 208554 (The Secretary of Finance and Commissioner of Internal Revenue vs. Court of Tax Appeals [Third Division] and Egis Road Operations S.A.).** – This petition under Rule 65 of the Rules of Court assails the March 22, 2013<sup>1</sup> and July 3, 2013<sup>2</sup> resolutions of the Court of Tax Appeals (CTA) in CTA Case No. 8414.

Respondent Egis Road Operations, SA (EGO), a non-resident foreign corporation, filed a tax treaty relief application on March 18, 2011 inquiring whether it was liable to pay tax on dividends it received from Egis Road Operations Philippines (EGO Phil.).<sup>3</sup> On August 15, 2011, the Commissioner of Internal Revenue (CIR) issued an Opinion requiring respondent to pay income tax amounting to 30% of the gross income pursuant to Section 28 of the National Internal Revenue Code.<sup>4</sup> The CIR ratiocinated that respondent cannot avail of the preferential tax rate under the Philippines’ tax treaty with France due to its failure to observe Revenue Memorandum Order (RMO) No. 72-2010.<sup>5</sup>

On appeal, the Secretary of Finance affirmed the August 15, 2011 Opinion of the CIR.<sup>6</sup>

Aggrieved, respondent filed a petition under Rule 65 in the CTA assailing the constitutionality of RMO 72-2010 and RMO 1-2000 and questioning the assessment made by the CIR in the August 15, 2011 Opinion.<sup>7</sup> Petitioners moved to dismiss the said action on the ground that

<sup>1</sup> Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice Erlinda P. Uy of the First Division of the Court of Tax Appeals and dated 22 March 2013. *Rollo*, pp. 35-44.

<sup>2</sup> Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice and concurred in by Associate Justice Lovell R. Bautista and Ma. Belen M. Ringpis-Liban. *Id.* at 46-50.

<sup>3</sup> *Id.* at 102.

<sup>4</sup> *Id.* at 105.

<sup>5</sup> Published on 20 October 2010 and took effect on 04 November 2010.

<sup>6</sup> *Rollo*, p. 43.

<sup>7</sup> *Id.* at 47.

*Handwritten initials*

December 10, 2014

the tax court does not have jurisdiction to hear cases involving actions questioning the constitutionality of the CIR's acts and issuances.<sup>8</sup> The CTA denied the motion to dismiss. It opined that while it cannot rule on questions of constitutionality involving the acts and issuances of the CIR,<sup>9</sup> it has jurisdiction to review the propriety of the August 15, 2011 Opinion of the CIR.

Both petitioners filed motions for reconsideration but these were denied for lack of merit.

Petitioners assail the resolutions of the CTA and argue that the matters involved are beyond the jurisdiction of the tax court.

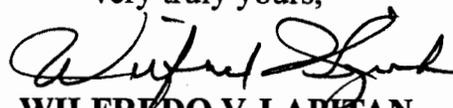
We deny the petition to conform to our decision in *City of Manila v. Judge Grecia-Cuerdo*.<sup>10</sup>

The CTA has the power to determine "whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court."<sup>11</sup> This involves a petition for certiorari involving the question whether or not the CTA acted arbitrarily in denying the motion to dismiss in an action involving an assessment of income tax.<sup>12</sup> Our recent decision in *City of Manila v. Judge Grecia-Cuerdo* is therefore applicable.

**ACCORDINGLY**, the petition is hereby **DENIED**. The Court of Tax Appeals is hereby ordered to proceed expeditiously with the proceedings in CTA Case No. 8414. No pronouncement as to costs. (Leonen, *J.*, Additional Member in lieu of Jardeleza, *J.* per Raffle dated September 24, 2014)

**SO ORDERED."**

Very truly yours,

  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court

OFFICE OF THE SOLICITOR GENERAL  
 134 Amorsolo Street  
 Legaspi Village, 1229 Makati City

<sup>8</sup> Id. at 47; 238-253.

<sup>9</sup> Id. at 43.

<sup>10</sup> GR No. 175723, 04 February 2014 (*Supreme Court of the Philippines*)  
 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/february2014/175723.pdf>>.

<sup>11</sup> Id.

<sup>12</sup> Section 7(a)(1) grants jurisdiction the CTA jurisdiction to review the "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."

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(CTA Case No. 8414)

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