

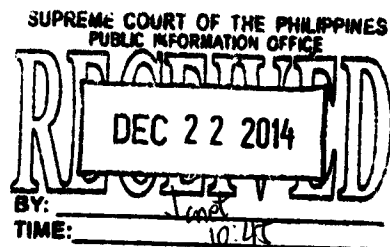
6 P10



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

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

“G.R. No. 213528 (Commissioner of Internal Revenue v. Eco Leisure and Hospitality Holding Company, Inc.)- After a judicious perusal of the records, the Court resolves to **DENY** the petition and **AFFIRM** the January 14, 2014 Decision¹ and July 17, 2014 Resolution² of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1013 for failure of the Commissioner of Internal Revenue (CIR) to show that the CTA *En Banc* committed any reversible error in upholding the award of tax refund representing the excess payment of the Documentary Stamp Tax (DST) made by Eco Leisure and Hospitality Holding Company, Inc. (respondent) in the total amount of ₱3,066,823.75, and in not holding the latter liable to pay for the 25% surcharge and 20% interest *per annum* on account of the late payment of the DST.

As correctly held by the CTA *En Banc*, the correct tax base in computing the DST due on the sale of shares of stock acquired by respondent from Biscom, Inc., is the total par value of the shares, and not their gross purchase price, as explicitly provided under Section 175 of the 1997 National Internal Revenue Code (NIRC), as amended, as well as Section 4 of Revenue Regulation No. 13-04.³ Also, the CTA *En Banc* properly denied CIR’s claim of 25% surcharge and 20% interest for the late payment of the DST since it failed to furnish respondent of an assessment

¹ *Rollo*, pp. 52-59. Penned by Presiding Justice Roman G. del Rosario with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, concurring.

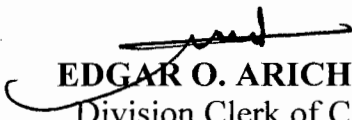
² *Id.* at 61-64. Penned by Presiding Justice Roman G. del Rosario with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring; Associate Justices Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban were on official business.

³ “Implementing the Provisions of Republic Act No. 9243, An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes,” issued on December 23, 2004.

therefor in accordance with Section 228⁴ of the 1997 NIRC. Due process impels that such assessment be given so that the taxpayer may duly contest the same. Besides, said claim was belatedly raised only on appeal.

SO ORDERED.” SERENO, C.J., on official travel; **DEL CASTILLO, J.**, acting member per S.O. No. 1862 dated November 4, 2014. **BERSAMIN, J.**, on official travel; **VELASCO, JR., J.**, acting member per S.O. No. 1870 dated November 4, 2014.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court *of 12/10*

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National Government Center
Diliman 1128 Quezon City
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⁴ Section 228 of the NIRC provides:

SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

- (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
- (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
- (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
- (d) When the excise tax due on excisable articles has not been paid; or
- (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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