lib

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB Case No. 593 (CTA Case No. 7255)
- versus -	Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *J.J.*
INFORMATICS ALABANG CENTER, INC., Respondent.	Promulgated: FEB 28 2011 10:00 a.m.

x---x

DECISION

CASANOVA, J.:

Before us is a Petition for Review[1] filed by petitioner, Commissioner of Internal Revenue, praying that the Decision[2] dated October 13, 2009 (the "Assailed Decision") and the Resolution[3] dated January 25, 2010 (the "Assailed Resolution") of the Former Second Division of this Court be reversed and set aside and another one be rendered declaring respondent liable for deficiency assessment on Income and Value-Added Taxes in the sum of P3,660,481.05 for the taxable year ending March 31, 2000.

---

[1] Petition for Review, CTA En Banc Rollo, pp. 9-19
[2] Ibid, pp. 21-39
[3] Ibid, pp. 41-45

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith. She holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

Respondent is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at the Lower Ground Level of SM South Mall, Las Piñas City.

The facts of the case, as found by the CTA Former Second Division, are as follows:

> "On October 31, 2000, Regional Director Lucien E. Sayuno of the BIR Revenue Region No. 8 – Revenue District Office (RDO) No. 53 issued a Letter of Authority No. 00013728, authorizing Revenue Officer Ma. Fe Lucas and Group Supervisor Regina dela Cruz to examine petitioner's books of accounts and other accounting records for taxable period 1999.[4]
>
> On January 28, 2002, Mr. Leonardo A. Rungen, President of petitioner, executed the first Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (NIRC) for the year 1999.[5]
>
> On June 19, 2003, Acting Regional Director Anselmo G. Adriano issued a Pre-Assessment Notice (PAN) finding petitioner liable for deficiency income tax and value-added tax for fiscal year ended March 2000.[6]
>
> On September 12, 2003, petitioner through counsel wrote BIR Revenue Region No. 8 – Assessment Division a letter protesting the PAN.[7]

---

[4] BIR Records, p. 1
[5] BIR Records, p. 176
[6] Exhibit "4", BIR Records, pp. 213-214
[7] Exhibit "8", BIR Records, pp. 218-222

On September 19, 2003, Mr. Rungen executed a second Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC for fiscal years 1999-2000.[8]

On March 10, 2004, Mr. Rungen executed a third Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code for fiscal year March 2000.[9]

On September 4, 2004, petitioner received from the BIR Revenue Region No. 8 – Assessment Division a Formal Assessment Notice dated August 20, 2004, assessing petitioner deficiency income tax for the year ended March 31, 2000, plus surcharges and interests, in the sum of P1,231,868.49; and deficiency value-added tax (VAT), plus surcharges and interest, in the sum of P2,428,612.56 for the period covering the first to fourth quarters of fiscal year ended March 31, 2000.[10] Said deficiency taxes are computed as follows:

I. Deficiency Income Tax

Taxable Net Income per Return			P	2,242,284.00
Add: Discrepancies per investigation				
Disallowed disbursements (unsupported expense)				52,092.20
Taxable Income per Audit			P	2,294,376.20
Tax Due thereon: 1999 (33%)			P	567,858.11
2000 (32%)				183,550.10
Total			P	751,408.21
Less: Payments				224,228.00
Basic Deficiency				527,180.21
Add: Surcharge - 50%	P	263,590.10		
Interest - 20% (7/16/00 to 9/20/04)		441,098.18		704,688.28
Total Amount Due			P	1,231,868.49

II. Deficiency Value-added Tax

Taxable Sales per Financial Statements			P	10,199,558.00
Output Tax			P	1,019,955.80
Less: Input Tax/Payments				-
Value-aAdded Tax			P	1,019,955.80
Add: Surcharge - 50%	P	509,977.90		
Interest - 20% (4/26/00 to 9/20/04)		898,678.86		1,408,656.76
Total Amount Due			P	2,428,612.56

[8] Exhibit "13", BIR Records, p. 226
[9] Exhibit "14", BIR Records, p. 233
[10] Pars. 3 and 4 of the Admissions, Joint Stipulation of Facts and Issues (JSFI), Division Docket, pp. 225-226; Exhibits "B", "C" and "D"

Petitioner filed with the BIR a letter protesting said deficiency income tax and value-added tax assessments, enclosing therewith copies of relevant documents which would aid in the resolution of the contested deficiency tax assessments. Said letter-protest was received by respondent on October 1, 2004.[11]

On October 27, 2004, petitioner wrote BIR Revenue Region No. 8-Assessment Division and submitted summary of the expenses disallowed, photocopies of the receipts, and other documents in support of its protest.[12]

Petitioner wrote a letter dated March 2, 2005 to BIR RDO-53 Las Piñas-Alabang to follow up the status of its protest, after being advised by the BIR Revenue Region No. 8-Assessment Division that its letter-protest, together with the entire tax docket thereof, was transmitted to BIR RDO-53 Las Piñas-Alabang for evaluation and necessary action.[13]

As the one hundred eighty (180) day-period has lapsed without respondent resolving petitioner's protest, petitioner filed the instant case on May 25, 2005.

In his Answer filed on August 25, 2005, respondent denied petitioner's allegations in the instant Petition and interposed the following Special and Affirmative Defenses:[14]

A) DEFICIENCY INCOME TAX:

11) Section 34(A)(1)(b) of the 1997 Tax Code provides that no deduction for expenses shall be allowed unless the taxpayer shall substantiate with sufficient evidence, such as official receipt or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of trade, business or profession of the taxpayer;

12) Verification of the BIR record of this case disclosed that Petitioner failed to substantiate the various expenses of their books of accounts in the amount of P52,092.20, hence, the

[11] Par. 6 of the Admissions and Par. 1 of the Additional Matters Admitted and Stipulated Upon, JSFI, Division Docket, pp. 226-227; Exhibit "D"
[12] Exhibits "F," "H" to "FF-2"
[13] Par. 5 of the Admissions, JSFI, Division Docket, p. 227; Exhibit "G"
[14] Division Docket, pp. 189-191

same was disallowed in accordance with the foregoing provision;

13) Further, Section 27(B) of the 1997 Tax Code provides for a rate of 10% on the taxable income of proprietary educational institution with a permit to operate from the Department of Education, Culture and Sports (DECS), Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case maybe;

14) Verification disclosed that Petitioner failed to submit its permit to operate from TESDA for the curricular year 1999-2000, hence, it was subjected to an income tax rate of 33% and 32% for taxable years 1999 and 2000, respectively;

***B) DEFICIENCY VALUE ADDED TAX*:**

15) Section 109(m) of the 1997 Tax Code provides that educational services rendered by private educational institution, duly accredited by TESDA are exempt from VAT;

16) As mentioned in the preceding paragraphs, Petitioner failed to show any accreditation from TESDA for curricula year 1999-2000, thus, its educational services are not exempt from VAT;

17) Section 222(b) of the 1997 Tax Code provides that if before the expiration of the prescriptive period for the assessment of tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement before the expiration of the period previously agreed upon;

18) In this case, Petitioner executed two waivers of prescription, the first, extended the period of assessment until June 2004 and the other extended the period of assessment until 30 September 2004;

19) Granting but without admitting that the waivers are invalid, Petitioner did not file any VAT return for taxable year 1999-2000 despite being liable for VAT due to its failure to submit any TESDA accreditation for the said period, thus, the

applicable prescriptive period is ten years in accordance with Section 222(a) of the 1997 Tax Code;

C) SURCHARGE:

20) Section 248(B) of the 1997 Tax Code provides that in case of willful neglect to file a return or in case of a false return, the penalty to be imposed is fifty percent of the tax or deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud;

21) In this case, Petitioner filed a false income tax return as it subjected its taxable income for fiscal year that ended 31 March 2000 to a tax rate of ten percent under Section 27 (B) despite knowing fully well that it does not qualify therefrom as it has no permit to operate from TESDA for the year 1999-2000;

22) A false return has been defined as a deviation from the truth, whether intentional or not (Aznar vs. CIR, G.R. L-20569, 23 August 2003);

23) Further, Petitioner willfully neglected to file a VAT return for taxable year 1999-2000. This is shown by the fact that it purposely did not file a VAT return for 1999-2000 notwithstanding its failure to obtain a permit to operate from TESDA for the said period, thus, was not qualified to claim an exemption from VAT;[15]"

After trial on the merits, the CTA Former Second Division promulgated a Decision, on October 13, 2009, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the Petition for Review is hereby **GRANTED**. The Formal Assessment Notice dated August 20, 2004 against petitioner for deficiency income tax and value-added tax in the sum of THREE MILLION SIX HUNDRED SIXTY THOUSAND FOUR HUNDRED EIGHTY-ONE and FIVE CENTAVOS (P3,660,481.05) for taxable year ended March 31, 2000 is hereby **WITHDRAWN** and **CANCELLED**.
>
> **SO ORDERED.**"

---

[15] CTA En Banc Rollo, pp. 22-27

Not satisfied with the above decision, petitioner filed her Motion for Reconsideration[16] on October 29, 2009, which motion was denied by this Court, for lack of merit in its Resolution[17] promulgated on January 25, 2010.

Petitioner, hence, filed the instant Petition for Review, on March 1, 2010, raising the following issues[18]:

> "14) Whether the Honorable 2nd Division of the Court of Tax Appeals erred in granting Respondent's Petition for Review and ordering the withdrawal and cancellation of Petitioner's Income Tax and Value-Added Tax deficiency assessments for taxable year ended 31 March 2000;
>
> 15) Whether the Honorable 2nd Division of the Court of Tax Appeals erred in denying Petitioner's Motion for Reconsideration;"

On June 11, 2010, respondent filed its Comment (To Petition for Review)[19].

Pursuant to the Resolution[20] of the CTA *En Banc* dated June 28, 2010, ordering both parties to submit their respective memorandum, respondent filed its Memorandum[21] on August 4, 2010 while petitioner failed to file her memorandum.

In a Resolution[22] promulgated on September 15, 2010, the CTA *En Banc* deemed the case submitted for resolution.

---

[16] Division Docket, pp. 621-633
[17] CTA En Banc Rollo, pp. 41-45
[18] Petition for Review, par. 6 & 7, CTA En Banc Rollo, p. 11
[19] CTA En Banc Rollo, pp. 127-131
[20] Ibid, pp. 133-134
[21] Ibid, pp. 135-173
[22] Ibid, p. 176-177

On October 14, 2010, petitioner filed a Manifestation[23] stating that she is "adopting her Memorandum dated 16 October 2008 (Respondent's Memorandum filed in the 2nd Division) and her Petition for Review dated 25 February 2010, as her Memorandum in this *En Banc* case considering that these pleadings already embodies the arguments of the Petitioner."

In support of the instant Petition for Review, petitioner presented the following arguments[24], to wit:

> "16) The Honorable 2nd Division of this Court committed reversible error when it held that the availment of tax abatement is not an admission of tax liability as it is not so provided under Revenue Regulations (RR) No. 15-2006 or the implementing rules on the 'One-Time Administrative Abatement **of all Penalties/Surcharges and Interest** on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006'; (Emphasis supplied)
>
> 28) The Honorable 2nd Division likewise committed reversible error when it held that the first waiver of prescription does not show that petitioner was furnished a copy after it was accepted by the BIR;
>
> 37) The Honorable 2nd Division erred when it concluded that Respondent was not informed that his request for re-investigation was granted;"

After a careful and thorough evaluation of the case, the CTA *En Banc* finds no merit in the Petition.

The records of the case show that the CTA Former Second Division had already fully and exhaustively resolved the issue in relation to the arguments/grounds raised in the Petition.

---

[23] Ibid, p. 178
[24] Petition for Review, par. 16, 26 & 37; En Banc Rollo, pp. 12, 13 & 15

As aptly discussed by the CTA Former Second Division and, We quote with approval, to wit:

> "First availment of tax abatement is not an admission of its tax liability.
>
> Section 204 (B) of the NIRC of 1997 provides:
>
> *SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (B) Abate or cancel a tax liability, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>
> (2) The administration and collection costs involved do not justify the collection of the amount due.
>
> xxx xxx xxx."
>
> Further, Section 1 of R.R. 15-2006 states:
>
> 'SECTION 1. PURPOSE. – These regulations prescribe the guidelines for the availment by taxpayers of the opportunity to settle their delinquent accounts or assessments, preliminary and final, disputed or not, by way of application for abatement of all penalties, including surcharge and interest, under Section 204 of the National Internal Revenue Code (NIRC) of 1997 as another step towards the collection and reduction of the Bureau's Accounts Receivable and pending assessments.'
>
> Nothing the above-quoted provisions states that availment of an abatement program is an admission of tax liability on the part of taxpayers who wish to settle assessments issued by the BIR. Likewise, there is nothing in the foregoing provisions which would indicate that once a taxpayer avails of the abatement program, the taxpayer abandons or

waives the right to pursue remedies provided under the NIRC.

Like other taxpayers, petitioner may exhaust options or remedies available to settle the assessments issued by the BIR and avoid paying disputed taxes, interest, surcharges, and penalties.

Second, the *first Waiver of the Defense of Prescription Under the Statute of Limitations* does not show that petitioner was furnished a copy after it was accepted by the BIR. As stated in the assailed *Decision*, such requirement is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.

Third, as previously ruled by this Court, respondent has three (3) years to assess petitioner for deficiency taxes, as provided in Section 203 of the NIRC of 1997. Assuming respondent's allegation that he granted petitioner's request for re-investigation or reconsideration is true, petitioner was not informed of respondent's action purportedly granting its request. Consequently, respondent's right to assess petitioner for deficiency taxes had already prescribed.

Finally, the testimony of witness Irene M. Isaac, Director of TESDA was given probative value as she was the Regional Director of TESDA-NCR when TESDA Recognitions were issued in favor of petitioner for the years 1999 and 2000. While respondent has his own interpretation or petitioner's TESDA Recognitions, this Court finds no basis, testimonial or documentary, to rule in respondent's favor."

In sum, the Court *En Banc* finds no cogent reason and justification to disturb the findings and conclusion spelled out in the Assailed Decision dated October 13, 2009 and the Assailed Resolution dated January 25, 2010 of the CTA Former Second Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED** and **DISMISSED** for lack of merit. Accordingly, the October 13, 2009 Decision and January 25, 2010 Resolution of the CTA Former Second Division are hereby **AFFIRMED** *in toto*.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice