**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

**CTA EB No. 678**
**(CTA Case No. 7416)**

**Present:**

**- versus-**

**Acosta,** *PJ,*
**Castañeda,Jr.,**
**Bautista,**
**Uy,**
**Casanova,**
**Palanca-Enriquez,**
**Fabon-Victorino,**
**Mindaro-Grulla,** and
**Cotangco-Manalastas,** *JJ.*

**SYDENHAM LABORATORIES, INC.,**
*Respondent,*

**Promulgated:** OCT 24 2011 Apolinario 2:45 p.m.

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# DECISION

**COTANGCO-MANALASTAS, J.**:

On appeal before the Court *En Banc* is the *Decision* of the CTA Special First Division dated May 12, 2010, partially cancelling petitioner's (respondent in the assailed *Decision*) assessments for deficiency taxes against respondent, to wit:

> "WHEREFORE, the instant Petition for Review is PARTIALLY GRANTED. Respondent's assessment for deficiency Income Tax, VAT, and DST in the amounts of P250,955.06, P1,572,580.24, P76,339.76, respectively, inclusive of interest, surcharge and compromise penalty for taxable year 2001 is hereby ordered CANCELLED. However, petitioner is ORDERED TO PAY the deficiency Expanded Withholding Tax in the amount of P144,548.37, computed as follows:

| | |
|---|---|
| Basic | P 91,677.79 |
| Interest | 52,870.58 |
| TOTAL | **P144,548.37** |

> The compromise penalty of P12,000.00, imposed by respondent is excluded, there being no compromise agreement between the parties. In addition, petitioner is liable to pay 20% delinquency interest on the amount of P144,548.37, computed from January 14, 2005 until full payment thereof pursuant to Section 249 (c)(3) of the 1997 Tax Code."

## The Parties

Petitioner is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national and internal revenue taxes.[1]

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.[2]

## The Facts[3]

For taxable year 2001, respondent filed its Annual Corporate Income Tax Return (ITR) with the Bureau of Internal Revenue (BIR) on April 15, 2002.

Respondent received a Preliminary Assessment Notice (PAN) dated October 27, 2004 from petitioner assessing it for alleged deficiency income tax, documentary stamp tax, value added tax and expanded withholding tax for calendar year 2001. Respondent contested the said assessment through a letter dated December 1, 2004 for lack of factual and legal basis.

On December 21, 2004, respondent received an Assessment Notice and a Formal Letter of Demand (FLD), both dated December 15, 2004, stating that it is

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[1] *Rollo*, C.T.A. EB Case No. 678, p. 9.
[2] *Ibid.*
[3] *Rollo*, pp. 9-12, and as found by the CTA Special First Division.

liable for deficiency income tax, documentary stamp tax, value added tax and expanded withholding tax for calendar year 2001.

Respondent filed its protest to the assessment on January 18, 2005. Thereafter, respondent issued a letter dated February 24, 2005 addressed to the BIR Revenue District Office No. 54, submitting relevant and pertinent documents in support of its protest.

On February 1, 2006, respondent received a letter which, in effect, denied respondent's protest on the ground that its alleged supporting documents did not substantiate its protest.

Hence, the original petition for review before the CTA Special First Division, which was decided on May 12, 2010, partially granting respondent's prayer and partially cancelling the assessments for taxable year 2001.

Petitioner filed a Motion for Partial Reconsideration on June 3, 2010, which was denied by the Special First Division in a Resolution dated August 17, 2010. Hence, the present petition before the Court *En Banc*.

## Issues

Petitioner raises the following issues:

I. Whether or not respondent is liable for deficiency income tax, value added tax and documentary stamp tax assessments for taxable year 2001.

II. Whether or not respondent duly protested the assessments against it.

## Ruling of the Court

The petition has no merit.

A perusal of the grounds raised by petitioner reveals that these same grounds have been passed upon and considered in the Assailed Decision of the CTA Special First Division.

Petitioner assessed respondent for deficiency income tax and value-added tax (VAT) on the basis of alleged sales of fixed assets by respondent. Petitioner argues that respondent failed to recognize and declare in its income tax return the gain from the said sale of fixed assets. Further, petitioner argues that respondent's books of accounts and other accounting records disclosed that respondent over-declared its depreciation expense and recognized losses corresponding to Income Tax Holiday (ITH). These resulted to under-declaration of taxable income and makes respondent liable for deficiency income tax.[4] The undeclared sale of fixed assets is also subject to VAT pursuant to Section 106 of the NIRC of 1997, thus, petitioner argues that respondent is liable for deficiency VAT.[5]

The foregoing grounds were discussed by the CTA Special First Division, to wit:

> "The various pieces of evidence submitted by the parties to this Court failed to show that petitioner entered into a contract of sale. The existence of proofs to this matter is very crucial considering that the assessment was based on the alleged sale of fixed assets.
>
> xxxxx
>
> Respondent's exhibits failed to prove the sale of petitioner's fixed assets which is the basis for the alleged deficiency VAT and Income Tax, due to over depreciation and unreported gain on sale. Although, the BIR Records were forwarded to this Court, yet, it was not formally offered except for the above-mentioned exhibits of respondent. Being so, this Court cannot consider the entire records in resolving the issue on hand irrespective of whether they may contain the best evidence to prove respondent's assertions.
>
> xxxxx

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[4] *Rollo*, pp. 13-14.
[5] *Rollo*, pp. 14-15.

> Taking into consideration the supporting evidence of petitioner in light of respondent's evidence, this Court decides to take petitioner's side and cancel the assessments on income tax due to over declaration of depreciation expense and unreported gain on sale of assets and the assessment for VAT.
>
> xxxxx
>
> Anent the loss corresponding to income tax holiday, a review of the records would show the loss corresponding to ITH, allegedly deducted by petitioner from its gross income, xxxxx.
>
> xxxxx
>
> This Court agrees that any loss corresponding to ITH should be added back. The amount, however, is computed based on the actual net loss per ITR instead of the adjusted net loss considering that over declaration of depreciation expense and the rental expense should not be recognized in the first place. xxxxx
>
> xxxxx
>
> Notwithstanding the foregoing, there is still no basis for the deficiency income tax brought about by the loss corresponding to income tax holiday because petitioner is not in a taxable position, that is, petitioner incurred a net loss of P1,060,671.47 for 2001, xxxxx."[6]

Considering the several pieces of evidence for the respondent and the independent Certified Public Accountant's (ICPA) findings that there are no proofs as to the sale of the fixed assets upon which the assessments are based, the Court finds no reason to reverse the foregoing findings of the Special First Division.

Petitioner also argues that respondent is liable for deficiency documentary stamp tax (DST) on its Lease Agreement with UCPB Leasing and Finance Corporation.[7]

The CTA Special First Division ruled that the assessment for deficiency DST has prescribed. We find no reason to reverse the findings, to wit:

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[6] *Rollo*, pp. 30-36.
[7] *Rollo*, p. 15.

"Pursuant to the aforecited Section 203 of the NIRC of 1997, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. In the case of DST, it is within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred. Hence, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed or filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

Therefore, respondent had until the following dates within which to assess petitioner for deficiency DST or for late remittance of DST:

| Reference | Particulars | Date | Date Filed | Last Day to File Return | Last Day to Assess |
|---|---|---|---|---|---|
| Exhibit HH | Lease Contract – TCT360374 | 10-Mar-00 | - | 10-Apr-00 | 10-Apr-03 |
| Exhibit HH | Lease Contract – TCT360373 | 10-Mar-00 | - | 10-Apr-00 | 10-Apr-03 |
| Exhibit L | DST Declaration/ Return | | 12-Mar-01 | | 12-Mar-03 |

Clearly, the DST assessment is already barred by prescription since the Preliminary Assessment Notice (PAN), and the Assessment Notice and Formal Letter of Demand for deficiency DST covering the year 2001 were issued only on October 27, 2004 and December 15, 2004, respectively.[8]

With respect to the timeliness of the protest and whether the protest submitted by respondent was merely *pro forma*, this Court rules in favor of respondent. As discussed by the CTA Special First Division:

"The Court believes that what are 'relevant supporting documents' lies on the sound discretion of the taxpayer filing the protest. The purpose is to prevent the BIR from abusing its power by always declaring insufficient the documents that petitioner will submit. This will lead to an unending cycle and the taxpayer's protest will never be decided.

In the case at bar, the February 26, 2004 letter of petitioner showed that it submitted documents which it deemed relevant to support its protest. Thus, respondent cannot say that petitioner did not submit documents in accordance with Section 228 of the 1997 Tax Code."

[8] *Rollo*, pp. 38-39.

Evidently, the arguments raised by petitioner have been discussed and passed upon in the assailed Decision. Petitioner has shown no compelling reason for this Court to reverse the said findings.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

**SO ORDERED.**

**AMELIA R. COTANGCO- MANALASTAS**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

(On Leave)
**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

# CERTIFICATION

Pursuant to Section 13, Article VIII 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