REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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VIRICSON CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE; OFFICE OF THE REGIONAL DIRECTOR, BUREAU OF INTERNAL REVENUE REGION NO. 8 – MAKATI CITY; BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 52, PARAÑAQUE,
Respondents.

CTA Case No. 8709

Members:

DEL ROSARIO, *Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

APR 0 4 2017, 2:30 p.m.

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RESOLUTION

UY, *J.*:

For resolution is respondent's **"MOTION FOR RECONSIDERATION"** filed on February 9, 2017, with petitioner's **"OPPOSITION [To the Motion for Reconsideration dated February 9, 2017]"** filed on February 24, 2017, praying for the reversal and setting aside of this Court's Decision dated January 24, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The deficiency income tax and EWT assessments issued by respondents against petitioner for taxable year 2009 are hereby **CANCELLED** and **SET ASIDE**. On the other hand, petitioner is

ORDERED TO PAY the deficiency VAT for taxable year 2009 in the modified amount of ₱68,914.54, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic VAT due	₱ 55,131.63
Add: 25% Surcharge	13,782.91
Total Deficiency VAT	**₱68,914.54**

In addition, petitioner is likewise **ORDERED TO PAY** delinquency interest at the rate of 20% per annum on the total amount of ₱68,914.54, computed from September 20, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

In respondents' *Motion*, it is argued that the Protest Letter dated January 10, 2013 is fatally defective and void, hence, the assessment issued by respondent has become final, executory, and demandable; and that the exhibits of petitioner should not be given any probative value for being hearsay evidence.

On the other hand, in petitioner's *Opposition*, it is alleged that the said Motion should not be considered and thrown out as a mere scrap of paper having failed to comply with the mandatory three (3) day notice rule; and that contrary to the assertion of respondent, the typographical error in the Protest did not serve to nullify the same, thus depriving this Court of jurisdiction following the long standing pronouncement of the Supreme Court in *Quibuyen vs. Court of Appeals* (G.R. No. L-16854, December 26, 1963).

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

Petitioner's Protest Letter dated January 10, 2013 is valid.

Respondents emphasize that the Protest Letter dated January 10, 2013 from petitioner's counsel was invalid and defective for referring to a total amount completely different from the total amounts of taxes stated in the Formal Assessment Notice (FAN) dated December 10, 2012. Parenthetically, the first paragraph of the body of the said Protest Letter reads:

> "This letter refers to the Formal Assessment Notice (FAN) addressed to VIRICSON CORPORATION, (Viricson), dated 10 December 2012, for the collection of alleged internal revenue tax liabilities, amounting to One Million Two Hundred Thirty Five Thousand Five Hundred Twenty One Pesos and Eighty Three Centavos (Php595,443.03)."

On the other hand, the FAN contains the following assessments: Income Tax in the amount of ₱352,813.04, Value-Added Tax (VAT), ₱233,707.69, and Expanded Withholding Tax, ₱8,922.30. Thus, according to respondents, this fatal error rendered the said FAN as final, executory, and demandable.

Respondents' argument is untenable.

Section 3.1.5 of Revenue Regulations No. 12-99 requires that "*(t)he taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered* void and without force and effect." A careful examination of petitioner's Protest Letter dated January 10, 2013[1] would reveal that it is substantially compliant with the said provision. We agree with petitioner that the body of the said Protest Letter correctly cites the amounts protested and provides in detail the reason and legal basis therefor.

In any event, as correctly pointed out by petitioner, a mere *lapsus calami* should not prejudice the latter.

It must be noted that all throughout the administrative proceedings, respondents have acknowledged that the same Protest Letter dated January 10, 2013 from petitioner's counsel referred to the FAN dated December 10, 2012. This is apparent in the communications made by respondent Regional Director.

In his letter dated January 18, 2013,[2] respondent Regional Director acknowledged the same Protest Letter dated January 10, 2013 as follows:

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[1] Exhibit "P-4", Docket – Vol. I, pp. 351 to 354.
[2] BIR Records, p. 270.

"**This has reference to your letters both dated January 10, 2013 filed on your behalf by your representative,** Dario, Reyes, Hocson & Viado Law Firm, **relative to our Formal Assessment Notice (FAN) dated December 10, 2012, representing deficiency Income Tax, Value Added Tax and Expanded Withholding Tax in the amounts of P352,813.04, P233,707.69 and P8,922.30 respectively, inclusive of increments, for the year 2009**.

In reply, please be informed that the entire tax docket together with the protest letter will be forwarded to Revenue District Office, (RDO) No. 52 – Parañaque City under 1st Indorsement dated Jan 18 2013 for further evaluation and necessary action. xxx." *(Emphases supplied)*

Furthermore, in the letter dated June 25, 2013[3] of respondent Regional Director, the following statements can be found, to wit:

"**This is in reference with your letter dated January 10, 2013 relative to the Formal Assessment Notice (FAN) addressed to Viricson Corporation (Viricson) dated December 10, 2012 representing deficiency income tax, value added tax and expanded withholding tax in the amount of P352,813.04 P233,707.69 and P8,922.30 respectively**.

Sometime(s) on June 2013, we discussed the alleged deficiency as stated in the Formal Assessment Notice (FAN) on your client Viricson Corporation (Viricson).

Further, for purpose of verification please submit the original receipts and documents that will justify the dropping of the assessment and to discuss to allow your client to pay the adjusted deficiency taxes due as reflected in Annex 'F' hereof." *(Emphases supplied)*

Moreover, the *Final Decision on Disputed Assessment* (FDDA) dated August 16, 2013,[4] respondent Regional Director is unequivocal that one of the communications he is addressing is the same Protest Letter dated January 10, 2013, to wit :

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[3] Exhibit "P-7", Docket, p. 370.
[4] Exhibit "P-3", Docket, p. 347; Exhibit "R-13", BIR Records, p. 330.

> "**This has reference to your letters dated January 10, 2013** and March 11, 2013 **in reply to our Formal Assessment Notice (FAN) dated December 10, 2012 covering the deficiency Income Tax, Value Added Tax and Expanded Withholding Tax in the amounts of P352,813.04, P233,707.69 and P8,922.30 respectively inclusive of increments for taxable year 2009**.
>
> **In reply, please be informed that your request for reinvestigation has been given due action**, however, you failed to submit the original documents as requested in our letter dated June 25, 2013 after a considerable period of time given to support your protest in violation of Section 228, of the Tax Code xxx." *(Emphases supplied)*

With the foregoing acknowledgements, respondents are guilty of estoppel.

Estoppel, an equitable principle rooted in natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them.[5] Through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. Estoppel *in pais* (equitable estoppel) arises when one, by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally, or *through culpable negligence*, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[6]

When respondent Regional Director, acting for the Bureau of Internal Revenue (BIR), acknowledged, not only once, but thrice, that the Protest Letter dated January 10, 2013, as containing the protest of petitioner against the FAN dated December 10, 2012, notwithstanding that it has mistakenly indicated the wrong total amount in words, respondent Regional Director had effectively induced petitioner to believe that there is nothing erroneous in the said Protest Letter. This belief is acted upon by petitioner, and is manifested in the following subsequent communications made by its counsel to the BIR after the filing of the same Protest Letter, to wit:

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[5] *British American Tobacco vs. Camacho, et al.*, G.R. No. 163583, August 20, 2008.
[6] *Panay Electric Co., Inc. vs. Court of Appeals, et al.*, G.R. No. 81939, June 29, 1989.

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1. Letter dated March 11, 2013[7] (in reply to respondent Regional Director's letter dated January 18, 2013), submitting certain documents in support of the Protest Letter dated January 10, 2013; and

2. Letter dated July 10, 2013[8] (in response to respondent Regional Director's letter dated June 25, 2013), informing the BIR that petitioner's counsel had advised its client (petitioner) to comply with its request, with a qualification that they will not submit the original receipts and documents.

Thus, respondents cannot now assail such Protest Letter dated January 10, 2013 as fatally defective, that would have the effect of making the said FAN final, executory, and demandable.

On the applicability of the hearsay evidence rule.

I. *Sale of motor vehicle*

Respondents assail the probative value of the Deed of Sale dated July 30, 2009[9], which supposedly reflected petitioner's sale of the 1996 Honda Accord 2.2 A/T, since the signatories thereto, namely, Ricardo T. Singson and Alfredo S. Marbella, were not presented to testify on such relevant and material matter. They point out that the testimony of petitioner's witness, Racquel Singson-Jugo, should have been limited only to those facts which she has personal knowledge.

We disagree with respondents.

Section 36 of Rule 130 of the Revised Rules of Court provides the rule on hearsay evidence, to wit:

> "SEC. 36. *Testimony generally confined to personal knowledge; hearsay excluded.* – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules."

Indeed, any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the

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[7] Exhibit "P-5", Docket – Vol. I, pp. 362 to 363.
[8] Exhibit "P-6", Docket – Vol. I, p. 369.
[9] Exhibit "P-4A", Docket – Vol. I, p. 355.

witness but on the knowledge of another person who is not on the witness stand. Hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule.[10]

Personal knowledge means those facts which are derived from one's own perception.[11]

In this case, however, it was established that Racquel Singson-Jugo has personal knowledge as to the transaction of petitioner in relation to this case. At the hearing held on October 7, 2014, upon cross-examination, Racquel Singson-Jugo testified as follows:

"<u>CROSS-EXAMINATION BY ATTY. CARL FITRI A. HUSSIN</u>

ATTY. HUSSIN

Q Ms. Witness, why are you here today?

xxx xxx xxx

MS. JUGO

A Because I wanted to present the Judicial Affidavit and confirm that it was mine.

ATTY. HUSSIN

Q Isn't it the fact that the President of Viricson Corporation is Mr. Ricardo Singson?

MS. JUGO

A Yes.

ATTY. HUSSIN

Q And he is your father?

MS. JUGO

A Yes.

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[10] *PNOC Shipping and Transport Corporation vs. Court of Appeals, et al.*, G.R. No. 107518, October 8, 1998.

[11] Refer to Section 36, Rule 130 of the Rules of Court.

ATTY. HUSSIN
Q However, he could not testify today because he passed away last April of 2014?

MS. JUGO
A Yes.

ATTY. HUSSIN

Q And your knowledge as to the transaction of Viricson in relation to this case is because he is your father and you are familiar with his signature?

MS. JUGO

A Yes."[12]

Correspondingly, witness Racquel Singson-Jugo is competent to testify as to the due execution and authenticity of the said Deed of Sale dated July 30, 2009.

In any event, even granting that the same Deed of Sale dated July 30, 2009 lacks probative value, the same is of no significance insofar as the subject deficiency income tax is concerned.

It must be remembered that in the assailed Decision, the Court ruled that respondents' finding that there was *"Unrecorded Gain on Sale of Motor Vehicle"* in the amount of ₱646,148.08 cannot be sustained because the same was erroneously arrived at. In other words, the basis for the disallowance of the said finding is not the testimony of Racquel Singson-Jugo vis-à-vis the contents of the said Deed of Sale dated July 30, 2009, but that the said finding is without foundation. To reiterate, it was error for respondents to treat the amount of ₱904,467.00 as *"Proceeds from sale of motor vehicle"*, because the same actually represents the *"Cost"* of the *"Retirement/disposals"* of *"Motor Vehicle"* on the basis of petitioner's Audited Financial Statements[13].

II. ***<u>Unaccounted Rent Expense</u>***

Respondent likewise raise the same argument, invoking the

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[12] Transcript of Stenographic Notes at the hearing held on October 7, 2014, pp. 9 to 10.
[13] Petitioner's Audited Financial Statements for the year ended December 31, 2009, BIR Records, p. 7.

hearsay evidence rule, as regards the Contract of Lease[14] entered into by petitioner with Hitoshi Sakamoto, and petitioner's BIR Form Nos. 1601-E and 1604-E, since they were never identified and testified to by a credible witness.

Suffice it to state that while the said Contract of Lease may fall under the hearsay evidence rule because it was not identified by one who has personal knowledge thereof, the same is still of no consequence. This is because petitioner need not establish that the amount of ₱55,000.00 is its *Rent Expense*, since respondents themselves found that it was so, albeit it was allegedly *"Unaccounted"*.[15]

Moreover, petitioner is not required to identify its BIR Form Nos. 1601-E and 1604-E, because it did not present the same in evidence. It must be emphasized that in the assailed Decision, reference to the said Forms was based on the BIR Records, not as petitioner's evidence.[16]

Nevertheless, even granting that the subject documents have no probative value for being hearsay, this Court's ruling on the matter would still prevail.

It must be remembered that in the assailed Decision, the cancellation of the deficiency income tax and VAT assessments, insofar as the *Unaccounted Rent Expense* in the amount of ₱55,000.00 is concerned, rests on different grounds. For the deficiency income tax assessment, the same is cancelled because the elements on the imposition of income tax are not present; while the deficiency VAT assessment is cancelled upon the reason that VAT is imposed when one leases goods or properties and is paid therefor, not when one rents out and pays for the rental.

III. <u>*"Entries in official records" are* prima facie *evidence of the facts therein stated.*</u>

Regarding the disallowed professional fee due to non-withholding of tax in the amount of ₱55,650.00, respondent submits that the mere presentation of the *Amended Articles of Partnership* and *Withdrawal of Partner with Amended Articles of Partnership* does not operate to give credence to the contents indicated in these documents. According to petitioner, it was incumbent on the part of

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[14] Exhibit "P-4C", Docket, pp. 356 to 360.
[15] Refer to Exhibit "P-3", Docket, p. 349.
[16] Decision, at p. 20, vis-à-vis BIR Records, pp. 75 and 83.

petitioner to at least present a partner of Sicangco Menor Villanueva and Co., to prove that such an entity was in fact and in truth a General Professional Partnership.

We disagree.

Section 44, Rule 130 of the Revised Rules of Court, which provides an exception to the hearsay rule, reads:

> "SEC. 44. *Entries in official records.* – **Entries in official records made in the performance of his duty by a public officer of the Philippines**, or by a person in the performance of a duty specially enjoined by law, **are *prima facie* evidence of the facts therein stated.**" *(Emphasis supplied)*

Furthermore, Section 23, Rule 132 of the Revised Rules of Court provides as follows:

> "SEC. 23. *Public documents as evidence.* – **Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.** All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter." *(Emphasis supplied)*

Relative to the foregoing, Article 1772 of the Civil Code of the Philippines states:

> "Art. 1772. **Every contract of partnership having a capital of three thousand pesos or more, in money or property, shall appear in a public instrument, which must be recorded in the Office of the Securities and Exchange Commission.**
>
> Failure to comply with the requirements of the preceding paragraph shall not affect the liability of the partnership and the members thereof to third persons."

In this case, to establish that Sicangco Menor Villanueva and Co. is a general professional partnership, petitioner presented in evidence certified copies of the said firm's amended contracts of partnership or specifically, their *Amended Articles of Partnership*[17]

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[17] Exhibit "P-10", Docket, pp. 374 to 384.

and *Withdrawal of Partner with Amended Articles of Partnership*[18], with corresponding certifications[19] issued by the Securities and Exchange Commission that the said documents have been presented to, and entered into the records of, the said office.

Thus, on the basis of the aforequoted Section 44, Rule 130, and Section 23, Rule 132, both of the Rules of Court, the contents of the said *Amended Articles of Partnership* and *Withdrawal of Partner with Amended Articles of Partnership*, which effectively shows the formation of Sicangco Menor Villanueva and Co. as a general professional partnership, are *prima facie* evidence thereof. In other words, there is no need to present as witness at least one of the partners of the said firm.

There is still no basis to disallow the Net Operating Loss Carry-Over (NOLCO), excess Minimum Corporate Income Tax (MCIT) and excess tax credits.

Considering that respondents, in the instant Motion, failed to convince this Court that there was error in its findings insofar as the deficiency income tax assessment is concerned, the allowance of the NOLCO, excess MCIT and excess tax credits to be carried-over to the succeeding year, as ruled in the assailed Decision, must be maintained.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(I concur with the result but maintain my Separate Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

[18] Exhibit "P-9", Docket, pp. 385 to 393.
[19] Exhibits "P-9" and "P-10", Docket, pp. 373 and 384.