REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ALTIMAX BROADCASTING CO., INC.,
Petitioner,

CTA CASE NO. 8828

- versus-

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 09 2016

4:10 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

Before this Court is the Petition for Review filed on June 3, 2014 by Altimax Broadcasting Co., Inc. to seek the cancellation and withdrawal of the assessment issued against it for alleged deficiency income tax for calendar year (CY) 2008 in the aggregate amount of ₱19,453,340.54[1], inclusive of interest.

STATEMENT OF FACTS

Petitioner Altimax Broadcasting Co., Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Unit 507, The Taipan Place, F. Ortigas Jr. Road, San Antonio, Ortigas Center, Pasig City.[2] Petitioner is duly registered with the Bureau of Internal Revenue (BIR), as shown by its Certificate of Registration dated April 7, 2009, with Taxpayer's Identification No. 272-993-967-000.[3]

[1] ₱19,453,340.45 in the Petition for Review.
[2] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 229.
[3] Par. 3, Stipulated Facts, JSFI, docket, p. 230.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia,* the power to issue assessments, to decide disputed assessments, and to cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 24, 2009, petitioner received Tax Verification Notice (TVN) No. 00123168 dated September 23, 2009 signed by Revenue District Officer Rey Asterio L. Tambis, authorizing Revenue Officer Abdul Jala Hilal to conduct a verification/examination of petitioner's internal revenue tax liabilities covering taxable year January 1, 2008 to December 31, 2008 and unverified prior years.[4]

On February 28, 2012, petitioner received respondent's Preliminary Assessment Notice (PAN) dated February 23, 2012, which included a short description of the tax assessment in which respondent informed petitioner of the proposed assessment for deficiency income tax for CY 2008 in the aggregate amount of ₱16,216,785.34, inclusive of interest from April 16, 2009 to February 16, 2012.[5]

On September 3, 2013, petitioner received a copy of respondent's Formal Letter of Demand (FLD) with Demand No. 043A-B263-08 and Assessment Notice dated August 31, 2013. In the FLD, respondent ordered petitioner to pay its alleged deficiency income tax for CY 2008 in the total amount of ₱19,453,340.54.[6]

Petitioner then filed its protest to the FLD and Assessment Notice on September 13, 2013, requesting the reconsideration of the deficiency tax assessment for having been issued arbitrarily and without legal and factual bases.[7]

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[4] Par. 4, Stipulated Facts, JSFI, docket, p. 230.
[5] Par. 5, Stipulated Facts, JSFI, docket, p. 230; Exhibit "P-3", docket, p. 267.
[6] Par. 6, Stipulated Facts, JSFI, docket, p. 230; Exhibit "R-13-A", docket, p. 306.
[7] Exhibit "P-6", docket, pp. 307-310.

Thereafter, respondent issued its final decision dated April 30, 2014, requesting payment of petitioner's tax liability per Final Assessment Notice/Demand Letter No. 043A-B263-08 dated August 30, 2013.[8] Thus, petitioner filed the instant Petition for Review on June 3, 2014.[9]

Respondent, for her part, filed an Answer[10] on July 25, 2014, interposing the following special and affirmative defenses:

> "7. The assessment is already final, executory and demandable due to the failure of the petitioner to submit all the relevant documents in support of its request for reinvestigation in accordance with the pronouncement of the Supreme Court in the case of Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue;
>
> 8. Finally, settled in the rule that the tax assessments by tax examiners are presumed correct and made in good faith (Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671). It is the taxpayer and not the Bureau of Internal Revenue who has the duty of providing otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

The case was scheduled for Pre-Trial Conference on September 11, 2014.[11] Petitioner's Pre-Trial Brief[12] and respondent's Pre-Trial Brief[13] were filed on September 8, 2014 and September 9, 2014, respectively.

The parties filed their Joint Stipulation of Facts and Issues[14] on October 1, 2014. It was later approved by the Court via the Pre-Trial Order[15] dated October 8, 2014.

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[8] Exhibit "P-7", docket, p. 311.
[9] Docket, pp. 6-14.
[10] Docket, pp. 88-90.
[11] Notice of Pre-Trial Conference issued on July 30, 2014, docket, p. 91.
[12] Docket, pp. 201-212.
[13] Docket, pp. 213-217.
[14] Docket, pp. 229-235.
[15] Docket, pp. 237-241.

During trial, petitioner presented its lone witness, Mr. James Kenneth Venta, who testified on direct examination by way of Judicial Affidavit[16] filed on September 5, 2014.

After presentation and identification of petitioner's marked documents, and the filing of its Formal Offer of Evidence on November 6, 2014, the formally offered Exhibits "P-1" to "P-11-a" were admitted as part of petitioner's documentary evidence.[17]

On the other hand, respondent presented the testimony of her witnesses, Mr. Elmer O. Jimenez and Ms. Jamilah L. Dianalan, who both testified by way of their respective Judicial Affidavits filed on January 14, 2015[18] and January 28, 2015[19]. As to her documentary evidence, respondent formally offered Exhibits "R-1" to "R-18a"[20], which were admitted as part of her evidence pursuant to this Court's Resolution[21] dated April 10, 2015; except Exhibits "R-4a" and "R-9a" which were denied admission.

In a Resolution[22] dated June 30, 2015, the Court declared the case submitted for decision, considering petitioner's Memorandum[23] filed through registered mail on June 15, 2015 and received by the Court on June 25, 2015, and respondent's Memorandum[24] filed on May 15, 2015.

STATEMENT OF ISSUES

The parties submitted the following issues[25] for this Court's disposition:

1. Whether or not respondent had informed petitioner of the facts and the law upon which the deficiency income tax assessment is based;

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[16] Minutes of the October 27, 2014 hearing, docket, p. 242; Exhibit "P-11", docket, pp. 100-106.
[17] Resolution dated December 15, 2014, docket, p. 345.
[18] Exhibit "R-17", docket, pp. 349-353.
[19] Exhibit "R-18", docket, pp. 361-364.
[20] Docket, pp. 370-375.
[21] Docket, pp. 378-379.
[22] Docket, p. 440.
[23] Docket, pp. 417-436.
[24] Docket, pp. 380-384.
[25] Issues, JSFI, docket, p. 231.

2. Whether or not respondent may validly disallow a deduction that petitioner had not claimed in its Income Tax Return;

3. Whether or not the deficiency income tax assessment arising from "unsupported direct write-off of other assets" in the amount of ₱19,453,340.54 has factual and legal bases; and

4. Whether or not petitioner is liable to pay the amount of ₱19,453,340.54.

DISCUSSION/RULING

Petitioner alleges that the deficiency income tax assessment is null and void because the PAN and the FLD/FAN failed to state the facts and the law on which the assessment was based. It likewise asserts that it is not liable to pay deficiency tax assessment which was based on the disallowance of a deduction that was never made in violation of the law and regulations.

Respondent counter-argues that, contrary to petitioner's allegations, the FLD and the Notice of Assessment contained the factual and legal bases of the assessment. Respondent also insists that the factual and legal bases of the deficiency assessment were discussed by her witness, Revenue Officer Elmer O. Jimenez, in his Judicial Affidavit.

In the present case, petitioner was assessed for alleged deficiency income tax in the amount of ₱19,453,340.54, inclusive of interest, computed as follows:[26]

DEFICIENCY INCOME TAX

Taxable revenue per Income Tax Return (ITR)	₱
Add: Adjustments per investigation	
Unsupported direct write-off of other assets	29,555,733.00
Taxable income per investigation	**₱ 29,555,733.00**
Income tax due thereon	₱ 10,344,506.55
Less: Allowed tax credits/payments:	
Payments	-
Deficiency Income Tax	₱ 10,344,506.55
Add: 20% Interest p.a. (04/16/2009 to 9/9/13)	9,108,833.99
TOTAL AMOUNT DUE	**₱19,453,340.54**

[26] Exhibit "R-13-A", docket, p. 306.

The FLD further states that the complete factual and legal details covering the afore-mentioned discrepancies established during the investigation of the case are as follows:

> "***Unsupported direct write-off of other assets (₱29,555,733.00)*** - Verification disclosed that you failed to present evidence as to the actual occurrence of the aforementioned amount of other assets written-off, hence, disallowed pursuant to Section 34 (D) (2) of the NIRC of 1997, as amended."

Based on the FLD, respondent assessed petitioner of the deficiency income tax in the total amount of ₱19,453,340.54 by disallowing the alleged unsupported direct write-off of other assets in the amount of ₱29,555,733.00 pursuant to Section 34(D)(2) of the NIRC of 1997, as amended. However, perusal of the said provision shows that the same pertains to deductible losses involving either a non-resident alien individual or a foreign corporation.

The purported basis of the deficiency income tax assessment was also explained by Revenue Officer Elmer O. Jimenez in his Judicial Affidavit executed on January 14, 2015[27], the pertinent portion of which reads:

> **"12. How did you come up with findings of deficiency assessment?**
>
> The assessment arose from the disallowance of the write-off of other assets which is reflected in the audited financial statement for the year 2008 filed on April 15, 2009. Upon perusal of the financial statements such as the Balance Sheet and the Comparative Income Statement, there was a declaration of a write-off of other assets, however, there were no supporting documents to substantiate the same. In effect, there was an unaccounted direct write-off, since in taxable year 2008, it was not deducted in the asset account. Furthermore, in the Statement of Comprehensive Income for the year 2009 with Comparative Figures for 2008, the petitioner considered direct write-off of other assets as part of costs and expenses and declared a net loss for the taxable year 2008 in the amount of Php29,558,836.00. Thus, I added it back to the Income Account computed as follows: xxx"

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[27] Exhibit "R-17", docket, pp. 349-353 and 351.

Section 34(D)(2) of the NIRC of 1997, as amended, which is cited in the FLD as the legal basis of respondent's assessment, is quoted hereunder for ready reference:

> "SEC. 34. *Deductions from Gross Income.* – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> xxx xxx xxx
>
> (D) Losses. –
>
> xxx xxx xxx
>
> (2) *Proof of Loss.* – In the case of a nonresident alien individual or foreign corporation, the losses deductible shall be those actually sustained during the year incurred in business, trade or exercise of a profession conducted within the Philippines, when such losses are not compensated for by insurance or other forms of indemnity. The Secretary of Finance, upon recommendation of the Commissioner, is hereby authorized to promulgate rules and regulations prescribing, among other things, the time and manner by which the taxpayer shall submit a declaration of loss sustained from casualty or from robbery, theft or embezzlement during the taxable year: *Provided,* That the time to be so prescribed in the rules and regulations shall not be less than thirty (30) days nor more than ninety (90) days from the date of discovery of the casualty or robbery, theft or embezzlement giving rise to the loss; xxx"

Petitioner, being a corporation duly organized and existing under the laws of the Republic of the Philippines,[28] is neither a non-resident alien individual nor a foreign corporation. Thus, respondent committed an error in her application of Section 34(D)(2) of the NIRC of 1997, as amended, in the computation of petitioner's deficiency income tax assessment.

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[28] Exhibit "P-1", docket, pp. 251-264.

The Court further observes that the amount of ₱29,555,733.00 disallowed as deduction by respondent was not even claimed as deduction in petitioner's 2008 Annual Income Tax Return.[29] This was also admitted by respondent's witness, Revenue Officer Elmer O. Jimenez, during his cross-examination on January 21, 2015, to wit:

> "Q Was the amount of ₱29,555,733.00 claimed as a deduction by the petitioner in its 2008 income tax return?
>
> A Yes.
>
> Q I show you a copy of petitioner's Income Tax Return (ITR) for the year 2008. Could you please read to me *20-C* which is deduction claimed by the petitioner?
>
> WITNESS:
>
> A Yes, sir.
>
> *Deductions claimed: ₱3,103.00*
>
> **Q So was the amount of ₱29,555,733.00 claimed as a deduction by the petitioner in its 2008 income tax return?**
>
> **A No.**"[30] *(Emphasis supplied)*

In this case, what was claimed as deduction in petitioner's 2008 Annual Income Tax Return was only the amount of ₱3,103.00 pertaining to petitioner's other expenses as per the Statement of Comprehensive Income for the Year ended December 31, 2009 (With Comparative Figures for 2008)[31].

Respondent has no legal basis to require petitioner to support the direct write-off of other assets in the amount of ₱29,555,733.00 for it to be allowed as deduction under Section 34(D)(2) of the NIRC of 1997 since the same amount was not even claimed as deduction in petitioner's 2008 Annual Income Tax Return.

[29] Exhibit "P-8", docket, pp. 312-313.
[30] Transcript of Stenographic Notes, January 21, 2015 hearing, p. 9.
[31] Exhibit "R-16-A", docket, p. 326.

Consequently, the tax assessment which resulted from the erroneous disallowance of the unclaimed deduction pertaining to the direct write-off of other assets in the amount of ₱29,555,733.00 has no factual and legal basis.

It is true that all presumptions are in favor of the correctness of a tax assessment. However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis.[32]

In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, an assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[33]

Considering the foregoing, the income tax assessment issued by respondent against petitioner for calendar year 2008 must be cancelled.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the FLD and the Assessment Notice dated August 31, 2013, holding petitioner liable for deficiency income tax for calendar year 2008 in the total amount of ₱19,453,340.54, is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[32] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.
[33] *Commissioner of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987.

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice