Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

BENJOHNSON U. SIAO,
Petitioner,

- versus -

C.T.A. CASE NO. 5080

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
DEC 18 1995

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D E C I S I O N

This case involves an assessment for Value Added Tax in the amount of P261,873.25 on gross sales of copra for the year 1991.

Petitioner is a copra dealer-trader and a resident of San Miguel, Pala-o, Iligan City.

On 31 August 1993, respondent thru its Collection Division sent an assessment letter to herein petitioner.

Subsequently a BIR final notice dated 23 November 1993 was sent to the petitioner, upon receipt thereof an Answer protest dated October 19, 1993 was made.

Finally on 22 January 1994 petitioner formally protested the assessment, then on February 22, 1994 petitioner received a letter from respondent denying such protest.

1526

On 23 March 1994 petitioner filed its petition for review before this Court.

Petitioner averred that respondent acted without jurisdiction and with grave abuse of discretion in its assessment and in attempting to collect Value Added Tax (VAT) on its gross sales of copra for the year 1991.

Corollarily, it maintains that copra is an agricultural food product and when sold by farmers/producers in their natural state should thus be exempt from VAT.

Also, petitioner asserts that there is no constitutional and legal basis to impose VAT on them as there is no scientific basis for classifying copra as non-agricultural food.

It is contended that respondent acted whimsically in enforcing VAT Ruling 190-90 and RMC 47-91 on August 17, 1990 considering that these rulings and regulations were never published hence unconstitutional and void for being violative of due process.

Moreover, petitioner held that the assessment against the petitioner is erroneous as the method of computation is palpably wrong.

Respondent by way of special and affirmative defense alleged among others the following that:

> 1.) Petitioner has no cause of action as there is no final decision yet by the respondent on its protest.

2.) Copra per se is non-food agricultural product, thus it is exempt from VAT provided the sale is made by the primary copra producers later sold the same to other persons or buyers. Therefore, as copra trader it is subject to 10% VAT in accordance with Section 103 (a) of the National Internal Revenue Code and Sec. a(b) of Revenue Regulations 5-87.

3.) Petitioner bought copra from primary copra producers later sold the same to other persons or buyers. Therefore, as copra trader it is subject to 10% VAT in accordance with Section 103 (a) of the National Internal Revenue Code and Sec. a(b) of Revenue Regulations 5-87.

4.) Administrative rules and regulations enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force and effect of law and are entitled to great respect.

5.) In case an administrative agency renders an opinion by means of a circular or memorandum it merely interprets a pre-existing law, and no publication is necessary for its validity.

The fundamental issue involved here in order to determine whether Petitioner is liable for the assessed deficiency tax is: whether or not copra in its original state is considered agricultural food product or not. The corollary question that should be answered is: whether the BIR or the BFAD is the proper agency to determine the classification of copra as an agricultural food product or otherwise. The other corollary issues brought for resolution are: whether or not petitioner and all other copra traders are afforded constitutional right to equal protection of laws in their sales of copra subjected to VAT and, whether or not VAT Ruling No. 190-90 dated August 17, 1990 classifying copra as an agricultural food product is enforceable against petitioner despite the lack of notice and publication requirements mandated by law.

This case is not of first impression as We similarly ruled in the case of **Joebon Marketing Corporation vs. CIR**, CTA Case No. 5001, April 26, 1992, thus:

> Undoubtedly, the BFAD and NOT the BIR is the proper agency of the government empowered to determine the correct classification of agricultural products as food or otherwise. It is the agency tasked exclusively to rule on the matter. This is so, since the matter of classifying an agricultural product as food or otherwise involves scientific skills and thorough know-how patently lacking in the BIR. To rule otherwise will render the BFAD, a technical agency of the government inutile. Needless to emphasize that the power and duties conferred upon the BIR under Section 3 of the NIRC are anchored, if not limited, only to areas of assessment, collection, enforcement of all forfeitures as well as administering the supervisory powers conferred upon the Bureau. In fine, its function is limited to raising taxes and similar revenues for the government. Since when, then, was the BIR empowered to classify an agricultural product as food or otherwise?
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> If the government, then, desires to confer the BIR of such authority, the Legislature can easily do so in the form of an amendment to the law. To do otherwise, is rather arbitrary, if not beyond the scope of the BIR's powers and authority.
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> In the similar case of **Lim Hoa Ting vs. Central Bank of the Philippines**, (104 Phil 574) of which this case should be decided in the same light, the High Court thus, said:
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>> With no disrespect to the scientific opinions cited by the defendant Bank, we prefer to accept the opinion of our local Institute of Science and Technology,

which holds that mono-sodium glutamate is a flavor or flavoring extract, and that it even includes condiments. Furthermore, according to the record, mono-sodium glutamate has in the past been consistently classified and considered as a flavor and flavoring extract, not only by the Import Control Commission, but also by its successor, the defendant Bank itself, to say nothing of the fact that the law itself seems to have favored this interpretation. This contemporaneous construction is highly persuasive:

"The practice and interpretive regulations by officers, administrative agencies, departmental heads and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute." (2 Sutherland, Statutory Construction, p. 516)

"In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who are called upon to act under the law, and were appointed to carry its provision into effect, is entitled to very great respect." (Edwards Lessee vs. Darby, 12 Wheat. 206, 210).

Finding that the BFAD is the proper agency to classify an agricultural product as food or otherwise and having said agency classified copra as an "agricultural food product, since copra is produced from coconut meat which is food and based on available information, more than 80% of products derived from copra are edible products" (Annex "D", *ibid*) nothing is left for Us to do but to resolve this case in favor of the Petitioner pursuant to Section 103(b) exempting from VAT the "sale or importation in their original state of agricultural and marine *food* products". (Emphasis supplied) Although "as a rule, any claim for exemption from tax statute is strictly construed against the taxpayer, however, where the law is clear and unambiguous, the law must be taken as it is devoid of judicial additional or subtraction" (Acting Commissioner of Customs vs. Manila Electric

> **Company,** 77 SCRA 469). the applicable law above-cited is too plain to be missed and too categorical to be misunderstood. Moreover, "tax statutes are to be construed strictly against the government for tax, being burdens, are to be presumed beyond what the applicable statute expressly and clearly declares" (**Republic vs. Intermediate Appellate Court,** 196 SCRA 335) Indeed taxes are burdens which if not properly applied will work an injustice against if not profusely bleed an already ailing and anemic copra industry. Let not the government cut open the abdomen of the goose that lays the golden eggs.

The above-qouted case, however, was promulgated on April 26, 1994 long before the case of **Misamis Oriental Association of Coco Traders, Inc., vs. Department of Finance,** G.R. No. 108524 was decided by the Supreme Court on November 10, 1994 which virtually overturned this Court's ruling on the matter. In the said case, the Supreme Court in disposing all the above issues brought for resolution ruled, thus:

> The question is whether copra is an agricultural food or non-food product for purposes of this provision of the NIRC. On June 11, 1991, respondent Commissioner of Internal Revenue issued the circular in question, classifying copra as an agricultural non-food product and declaring it "exempt from VAT only if the sale is made by the primary producer pursuant to Section 103 (a) of the Tax Code, as amended."
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> The reclassification had the effect of denying to the petitioner the exempt it previously enjoyed when copra was classified as an agricultural food product under #103 (b) of the NIRC. Petitioner challenges RMC No. 47-91 on various grounds, which will be presently discussed although not in the order raised in the petition for prohibition.

First. Petitioner contends that the Bureau of Food and Drug of the Department of Health and not the BIR is the competent government agency to determine the proper classification of food products. Petitioner cites the opinion of Dr. Quintin Kintanar of the Bureau of Food and Drug to the effect that copra should be considered "food" because it is produced from coconut which is food and 80% of coconut products are edible.

On the other hand, the respondents argue that the opinion of the BIR, as the government agency charged with the implementation and interpretation of the tax laws, is entitled to great respect.

We agree with respondents. In interpreting #103 (a) and (b) of the NIRC, the Commissioner of Internal Revenue gave it strict construction consistent with the rule that tax exemptions must be strictly construed against the taxpayer and liberally in favor of the state. Indeed, even Dr. Kintanar said that his classification of copra as food was based on "the broader definition of food which includes agricultural commodities and other components used in the manufacture/processing of food." The full text of his letter reads:

10 April 1991

MR. VICTOR A. DEOFERIO, JR.
Chairman VAT Review Committee
Diliman, Quezon City

Dear Mr. Deoferio:

This is to clarify a previous communication made by this Office about copra in a letter dated 05 December 1990 stating that copra is not classified as food. The statement was made in the context of BFAD's regulatory responsibilities which focus mainly on foods that are processed and packaged, and thereby copra is not covered.

However, in the broader definition of food which include agricultural commodities and other components used in the manufacture/processing of food, it is our opinion that copra should be classified as an agricultural food product since copra is produced from coconut meat which is food and based on available information, more than 80% of products derived from copra are edible products.

Very truly yours,

QUINTIN L. KINTANAR, MD. Ph.D.
Director
Assistant Secretary of Health
for Standards and Regulations

Moreover, as the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight. Indeed, the ruling was made by the Commissioner of Internal Revenue in the exercise of his power under #245 of the NIRC to "make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, *including rulings on the classification of articles for sales tax and similar purposes.*"

Second. Petitioner complaints that it was denied due process because it was not heard before the ruling was made. There is a distinction in administrative law between legislative rules and interpretative rules. There would be force in petitioner's argument if the circular in question were in the nature of a legislative rule.

The reason for this distinction is that a legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing. In this connection, the Administrative Code of 1987 provides:

Public Participation. - If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed.

In addition such rules must be published. On the other hand, interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.

Accordingly, in considering a legislative rule a court is free to make three inquiries: (i) whether the rule is within the delegated authority of the administrative agency; (ii) whether it is reasonable; and (iii) whether it was issued pursuant to proper procedure. But the court is not free to substitute its judgment as to the desirability or wisdom of the rule for the legislative body, by its delegation of administrative judgment, has committed those questions to administrative judgments and not to judicial judgments. In the case of an interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. As a matter of power a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authorities weight to the interpretative rule.

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In the case at bar, we find no reason for holding that respondent Commissioner erred in not considering copra as an "agricultural food product" within the meaning of #103 (b) of the NIRC. As the Solicitor General contends, "*copra per se* is not food, that is, it is not intended for human consumption. Simply stated, nobody eats copra for

> food." That previous Commissioners considered it so, is not reason for holding that the present interpretation is wrong. The Commissioner of Internal Revenue is not bound by the ruling of his predecessors. To the contrary, the overruling of decisions is inherent in the interpretation of laws.

The High Court has already spoken. Though its wisdom runs counter to Our position, We nevertheless submit to it.

WHEREFORE, petitioner is hereby ordered to pay respondent the amount of P261,873.25 representing deficiency tax for non-payment of VAT on its copra transactions for the year 1991.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals