REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BONIFACIA SY PO, as widow
and heir of deceased
Po Bien Sing,
Petitioner,

- versus -

C.T.A. CASE NO. 3386

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

9/30/87

D E C I S I O N

This case is about respondent's decision in assessment letters dated August 16, 1972 and September 26, 1972 (Exhs. 6 and 8, pp. 17-19, and p. 107, Folder I, BIR rec.) demanding from petitioner payment of internal revenue taxes, as follows:

a) Deficiency Income Tax for 1966 to 1970	₱7,154,685.16
b) Deficiency Specific Tax for Jan. 2, 1964 to January 19, 1972	5,595,003.68

Petitioner is the widow of the late Mr. Po Bien Sing who died on September 7, 1980. In the taxable years 1964 to 1972, the deceased Po Bien Sing was the sole proprietor of Silver Cup Wine Factory (Silver Cup for brevity), Talisay, Cebu. He was engaged in the business of manufacture and sale of compounded liquors, using alcohol and other ingredients as raw materials.

On the basis of a denunciation against Silver Cup allegedly "for tax evasion amounting to millions of pesos" the then Secretary of Finance Cesar Virata directed the Finance-BIR-NBI team constituted under Finance Department Order No. 13-70 dated February 19, 1971 (Exh. 3, pp. 532-533, Folder II, BIR rec.) to conduct the corresponding investigation in a memorandum dated April 2, 1971 (p. 528, Folder II BIR rec.). Accordingly, a letter and a subpoena duces tecum dated April 13, 1971 and May 3, 1971, respectively, were issued against Silver Cup requesting production of the accounting records and other related documents for the examination of the team. (Exh. 11, pp. 525-526, Folder II, BIR rec). Mr. Po Bien Sing did not produce his books of accounts as requested (Affidavit dated December 24, 1971 of Mr. Generoso Quinain of the team, p. 525, Folder II, BIR rec.). This prompted the team with the assistance of the PC Company, Cebu City, to enter the factory bodega of Silver Cup and seized different brands, consisting of 1,555 cases of alcohol products. (Exh. 22, Memorandum Report of the Team, dated June 5, 1971, pp. 491-492, Folder II, BIR rec.). The inventory lists of the seized alcohol products are contained in Volumes I, II, III, IV and V (Exhibits 14, 15, 16, 17 and 18, respectively, BIR rec.) On the basis of the team's report of investigation, the respondent Commissioner of Internal Revenue assessed Mr. Po Bien Sing deficiency income tax for 1966 to 1970 in the amount of ₱7,154,685.16 (Exh. 6 pp. 17-19, Folder I, BIR rec.) and for deficiency specific tax for January 2, 1964 to January 19, 1972 in the amount of ₱5,595,003.68 (Exh. 8, p. 107, Folder I, BIR rec.).

Petitioner protested the deficiency assessments through letters dated October 9 and October 30, 1972 (Exhs. 7 and 9, pp. 27-28; pp. 152-159, respectively, BIR rec.), which protests were referred for reinvestigation. The corresponding report dated August 13, 1981 (Exh. 10, pp. 355, Folder I, BIR rec.) recommended the reiteration of the assessments in view of the taxpayer's persistent failure to present the books of accounts for examination (Exh. 8, p. 107, Folder I, BIR rec.), compelling respondent to issue warrants of distraint and levy on September 10, 1981 (Exh. 11, p. 361, Folder I, BIR rec.).

The warrants were admittedly received by petitioner on October 14, 1981 (Par. IX, Petition; admitted par. 2, Answer), which petitioner deemed respondent's decision denying her protest on the subject assessments. Hence, petitioner's appeal on October 29, 1981.

The record raises the precise issue as to whether or not the assessments have valid and legal basis.

As disclosed, the controverted assessments have for their basis the report of investigation arrived at by resorting to the best evidence obtainable sanctioned under Section 16 of the Tax Code, which in sofar as pertinent reads:

> SEC. 16. Power of the Commissioner of Internal Revenue to make assessments. - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or regulation, or when there is reason to believe that any such report is false, incomplete, or erroneous, the Commissioner of Internal Revenue shall assess the proper tax on the best evidence obtainable.

As thus shown, on the basis of the quantity of bottles of wines seized during the raid and the sworn statements of former employees Messrs. Nelson S. Po and Alfonso Po taken on May 26, and 27, 1971, respectively, by the investigating team in Cebu City (Exhs. 4 and 5, pp. 514-517, pp. 511-513, Folder II, BIR rec.), it was ascertained that the Silver Cup for the years 1964 to 1970, inclusive, utilized and consumed in the manufacture of compounded liquors and other products 20,105 drums of alcohol as raw materials 81,288,787 proof liters of alcohol. As determined, the total specific tax liability of the taxpayer for 1964 to 1971 amounted to ₱5,593,003.68 (Exh. E, petition, p. 10, CTA rec.)

Likewise, the team found due from Silver Cup deficiency income taxes for the years 1966 to 1970 inclusive in the aggregate sum of ₱7,154,685.16, as follows:

1966	-	₱ 207,636.24
1967	-	645,335.04
1968	-	1,683,588.48
1969	-	1,589,622.48
1970	-	3,028,502.92
Total amount due and collectible		₱7,154,685.16

The 50% surcharge has been imposed, pursuant to Section 72 of the Tax Code and tax 1/2% monthly interest has likewise been imposed pursuant to the provisions of Section 51(d) of the Tax Code (Exh. D, petition).

As testified to by Mr. Nelson S. Po, Assistant Factory Superintendent of Silver Cup, given on May 26, 1971 before the investigating team, large quantities of untaxed alcohol were surreptitously brought inside the factory, outside of regular office hours and in the absence of the BIR storekeeper, insofar as pertinent, to wit:

> "Annexes "A", "A-1" to "A-17" show that from January to December 1970, Silver Cup had used in production 189 drums of untaxed distilled alcohol and 3,722 drums of untaxed distilled alcohol. Can you tell us how could this be possible with the presence of a revenue inspector in the premises of Silver Cup during working hours?
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> "Actually, the revenue inspector or storekeeper comes around once a week on the average. Sometimes, when the storekeeper is around in the morning and Po Bien Sing wants to operate with untaxed alcohol as raw materials, Po Bien Sing tells the storekeeper to go home because the factory is not going to operate for the day. After the storekeeper leaves, the illegal operation then begins. Untaxed alcohol is brought in from Cebu Alcohol Plant into the

> compound of Silver Cup sometimes at about 6:00 A.M. or at 12:00 noon or in the evening or even at mid-night when the storekeeper is not around. When the storekeeper comes, he sees nothing because untaxed alcohol is brought directly to, and stored at, a secret tunnel within the bodega itself inside the compound of Silver Cup."

In the same vein, the factory personnel manager testified that false entries were entered in the official register book: thus,

> "A - As factory personnel manager and all-around handy man of Po Bien Sing, owner of Silver Cup, these labels were entrusted to me <u>to make the false entries in the official register book of Silver Cup, which I did under the direction of Po Bien Sing</u>." (Sworn statement, p. 512, Folder II, BIR rec.) (Underscoring ours)

In support of his contention that Silver Cup evaded payment of lawful taxes, the informant, Nelson S. Po, presented a notebook consisting of 95 leaves (Exh. 12, BIR rec.) wherein he recorded the sales of finished products of Silver Cup. He testified as follows:

> "Q - How about the figures contained in Annex "B", what do you say?
>
> "A - I do not know how much of those figures are duly recorded in this books of accounts of Silver Cup, but I am certain that not all of that are reflected in the books,

> considering that from January to July, 1970, Silver Cup reported to the BIR a consumption of only 125 drums of distilled alcohol, the sales from which would amount to, at most, ₱120,000.00. Yet, the figures Annex "B" show that from January to July 1970, Silver Cup grossed ₱1,899,666.45."
> (Exh. 4, Sworn Statement, p. 516, BIR rec.)

In the course of his testimony before the investigating team the informant submitted a bundle of fake auxiliary labels (Exh. 13, BIR rec.) indicating that the taxpayer resorted to illegal means to evade payment of specific tax on its finished products. (Sworn Statement, p. 514, BIR rec.)

More, the auxiliary labels affixed to the bottles of wine manufactured by Silver Cup upon laboratory examination made by respondent were found to be fake (Exhs. 24, 25, 26 and 27, pp. 380, 381, 382, 460 and 461, respectively, Folder II, BIR rec.) This is proof that the specific tax on the alcohol used as raw material by taxpayer in its business of compounding liquors was not paid.

On the income tax aspect, Silver Cup did not truthfully declare in its income tax returns for taxable years 1966, 1967, 1968, 1969 and 1970 by deliberately understating its sale. Its underdeclaration of sales for five (5) consecutive years constitutes fraud necessitating the imposition of 50% surcharge. "As rightly argued by the Solicitor General's Office, since fraud is a state of the mind, it need not be proved by direct evidence but may be inferred from the circumstances of the case. The failure of the appellant to declare for taxation purposes his true and actual income x x x for two consecutive years is an indication of his fraudulent intent to cheat the government of its due taxes." (Eugenio Perez v. CTA, Collector of Internal Revenue, G.R. No. 10507, May 30, 1958).

Petitioner, however, lays stress on the import and force of the provision of Section 150 (now Sec. 160) of the Tax Code, which provides:

> Sec. 160. Records to be kept by manufacturers. - Assessment based thereon. - Manufacturers of articles subject to specific tax shall keep such records as are required by regulations recommended by the Commissioner and approved by the Secretary of Finance, and such records, whether of raw materials received into the factory or of articles produced therein, shall be deemed public and official documents for all purposes.
>
> The records of raw materials kept by such manufacturers may be used as a species of evidence by which to determine the amount of specific tax due them, and whenever the amounts

> of raw materials received into any factory exceeds the amount of manufactured or partially manufactured products on hand and lawfully removed from the factory, plus waste removed or destroyed, and a reasonable allowance for unavoidable loss in manufacture, the Commissioner may assess and collect the tax due on the products which should have been produced from the excess.

It is urged upon Us by the petitioner that the records referred are no other than the Register Book (Exh. G, petition) which contains all the activities and transactions transpiring in the liquor compounding business of deceased Po Bien Sing as authenticated by the respondent's own representative, including the volume of raw materials (alcohol) received, amount of specific taxes paid, and the volume of finsihed products removed for dispostion. There can be no raw materials subject to specific tax which can be received into the factory and be used therein without said tax being paid first and there can be no finished product which can be removed from the factory without first being recorded in the Registry Book to be witnessed and attested by a representative of the respondent. Any such assessment to be valid and legal must therefore be based on the entries reflected therein after an inventory and stock taking shall have been undertaken. It is primarily for reasons of public policy that assessments cannot be based on presumption other than those made in accordance with the aforesaid Section 160 of the National Internal Revenue Code.

In essence, specific tax assessments when made on the strength of mere statements are without legal basis, for to allow such situation would likely expose innocent parties from malicious imputation of an alleged tax violation on the strength of a statement made even without the production or presentation of the goods supposedly subject to tax. Assessment based upon presumptions is not applicable in the present case because there is no showing that there exists an excess of the recorded raw materials received over the products produced as provided for in the second paragraph of Section 160 of the NIRC. Neither Section 16 of the said Code applies in this case because Po Bien Sing has his Official Register Book (Exh. G) as required by law and he has been submitting to the BIR the transcripts thereof.

Be that as it may.

The apparent patina of cogency nonetheless impressed. We find illogic the impression precipitately breached by the petitioner that the Official Registry Book (Exh. T) which entries were hewed close to the mandate of Section 150 (now Sec. 160) of the Tax Code, supra, encapsulates the flurry of activities and transactions in the petitioner's compounding liquor business. Perhaps a "consummation devoutedly to be wished" but that's not the way the records obtain and the attendant circumstances, as shown, do not necessarily equate and reconcile on the case at bar. The report itself furnishes the best means of its own exposition.

What We have in the case is a virtual Pandora's box of incriminating evidence, documentary as well as testimonial. The factual findings are not short of specific support in terms of tractable data and relevant records openly laid and fully disclosed, as such, deserve the credence that should normally be accorded in the absence of contrary evidence. And, not that the investigating team's credentials are impeccable but to their favor must be conceded the presumption of regularity in the performance of official duty. In the instant case, petitioner's repeated refusal and failure to present the pertinent accounting records and other related documents implacably demonstrate a clumsy evasive indifference irrelevant to his ebulient stance of righteous conduct in the business undertaking. A case of an aggravated chutzpah on the team's effort. Accordingly, We feel compelled to affirm the import and force of the report of findings which may not be suffered to petrify in futility.

Moreover, the revenue laws could not have wished that the respondent Commissioner of Internal Revenue to merely rubber-stamp an imprimatur of acquiescence over the recorded entries and neither do We think that by a simple expedient of a Registry Book the law can be flouted with impunity and its effective enforcement defused into a cul de sac of impotency. The chips must somehow fall and having fallen petitioner must bear the burden and assume the full liability for the undertaking in fealty to the governing law and regulations. In the case at bar, petitioner has not presented any evidence of relevance and competence required to bash the troubling discrepancies and square the issue of illegality posited on the subject assessments.

So it appears and We so hold that the respondent

Commissioner of Internal Revenue fared consistent with the provision of Section 16 of the Tax Code, supra, in ascertaining the deficiency assessments in question by availing of the best evidence obtainable under the circumstances.

WHEREFORE, petition is hereby dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, September 30, 1987.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(On leave)
CONSTANTE C. ROAQUIN
Associate Judge