REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ST. LUKE'S MEDICAL CENTER, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5068

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 17 1999

x - x

DECISION

Case before Us relates to Our decision in the above-captioned case promulgated on August 22, 1997, ordering the herein petitioner to pay the respondent Commissioner of Internal Revenue the amount of ₱3,430,967.95 as deficiency value-added tax on its pharmacy sales but which was remanded to this court by the Court of Appeals for reception of further evidence.

Petitioner is a non-stock, non-profit corporation duly organized and existing under Philippine laws, and primarily engaged in the hospital business.

The controversy started when the respondent assessed the petitioner on August 2, 1993 deficiency value-added tax (VAT) on its pharmacy sales for the year 1991 in the total amount of ₱9,866,151.23 to which the petitioner filed a protest and prayed for cancellation. However, petitioner's protest was denied by the respondent, hence, the case was elevated to this Court on February 24, 1994 through a Petition for Review.

In summary, the petitioner advanced the view in its petition that the respondent exceeded its legal authority when it assessed VAT on its use and consumption of pharmacy items for in-patients, those used by its special units such as operating and delivery rooms during medical procedures, and pharmaceutical items used by other departments of the hospital, since these items are necessarily included in the term "hospital services" which are exempt from value-added tax under Section 103(1) of the National Internal Revenue Code.

On August 22, 1997, this Court denied the Petition for Review on the ground that pharmacy services are not included in the exemptions mentioned in Section 103 of the Tax Code, thus, We had to apply the strict construction of tax exemption against the taxpayer. Furthermore, this Court relied on the clear mandate of Revenue Regulations 5-87 implementing Section 103 of the NIRC stressing that pharmacy sales are subject to value added tax if the sale of drugs and medicine exceeds ₱200,000.00 during a twelve (12) month period, the said Revenue Regulations states:

> **"Sec. 9. Exemptions.** x x x
>
> (b) Exempt Transactions. x x x

> (12) Medical, Dental, Hospital and Veterinary Services. Laboratory services are also exempted. *If the hospital or clinic operates a pharmacy or drugstore, the sale of drugs and medicine, if it exceeds ₱200,000.00 during a 12 month period is subject to VAT."*

In view of the above-quoted provisions, this Court ordered the petitioner to pay its deficiency value added tax in a reduced amount of P3,430,967.95 after a deliberate study of the evidence presented which revealed that the respondent erred in the computation of the petitioner's pharmacy sales. Likewise, We denied petitioner's plea of considering the amount of "Pharmacy Out-Patient Free Services and Discounts" as deductions from its gross receipts for purposes of computing the Value-Added Tax inasmuch as it merely presented a summary of the claimed deductions without however, showing the source documents. The "Sales Returns and Allowances" were likewise not taken into account as deductions since no evidence were offered to prove the same.

Petitioner opposed the decision of this Court by filing on September 12, 1997 a Motion for Reconsideration. On October 16, 1997, finding that, generally, the grounds relied upon by the petitioner were already thoroughly discussed and passed upon by this Court in the questioned decision, the Motion for Reconsideration was denied for lack of merit.

Unable to accept the judgment, the petitioner appealed where it ascribes to the Court of Appeals the commission of the following errors:

x x x x x x x x x

III

A.

THE COURT OF TAX APPEALS SERIOUSLY ERRED IN CONCLUDING THAT HOSPITAL SERVICE, A VAT EXEMPT TRANSACTION, DOES NOT INCLUDE THE SELLING/DISPENSING OF DRUGS AND OTHER PHARMACEUTICAL ITEMS TO IN-PATIENTS.

B.

THE COURT OF TAX APPEALS SERIOUSLY ERRED IN NOT FINDING THAT SECTION 9(b)(12) OF REVENUE REGULATIONS 5-87, INSOFAR AS IT SUBJECTS TO VAT PHARMACY SALES TO IN-PATIENTS, EXCEEDED OR EXPANDED SEC. 103(1) OF THE TAX CODE, AS AMENDED, AND IS, THUS, NULL AND VOID.

V

C.

ASSUMING BUT WITHOUT ADMITTING THAT VAT IS DUE ON TOTAL PHARMACY SALES (INCLUDING SALES TO IN-PATIENTS), THE COURT OF TAX APPEALS ERRED IN MULTIPLYING THE TOTAL AMOUNT BY A FACTOR OF 10% WHEN THE APPROPRIATE FACTOR IS $^{1}/_{11}$.

D.

THE COURT OF TAX APPEALS ERRED IN NOT HOLDING THAT PETITIONER ADDUCED SUFFICIENT AND CONVINCING EVIDENCE TO

JUSTIFY ITS CLAIM OF "FREE SERVICES AND ALLOWANCES" AS DEDUCTIONS.

In its decision promulgated on March 13, 1998, the Court of Appeals set aside the decision of this Court and held that the item "hospital services" in Section 103(1) should be construed to include sales of drugs to in-patients of the hospital and that the maintenance and operation of a pharmacy or drugstore by a hospital is a necessary and essential service or facility rendered by any hospital for its patients, thus, exempted from payment of Value Added Tax (CTA records pp. 446).

However, as regards the last assignment of error, the Court of Appeals declared, thus:

x x x x x x x x x

> "Since the petitioner appears to be in a position to present its records and supporting documents to substantiate its claim for the subject deductions, the matter is remanded to the Commission of Internal Revenue for the reception of further evidence.
>
> Wherefore, the judgment appealed from is SET ASIDE. The case is REMANDED to the Court below for the reception of further evidence in connection with the claimed deductions which were disallowed.
>
> SO ORDERED."

As pronounced by the Court of Appeals, forming the crux of the matter in this petition is whether or not the petitioner was able to present substantial evidence in connection with its claimed deductions against out-patient pharmacy sales which were disallowed.

In its Memorandum, petitioner posits the view that its testimonial and documentary evidence on record are already sufficient to establish its claimed deductions, thus, there is no longer a need to present additional evidence. Petitioner reiterates that the summary of its claimed deductions, i.e., Free Services and Allowances can already stand to support its claim even without the presentation of the source documents from which the summary was taken. In addition, the petitioner avers that since the source documents are so voluminous, its presentation of the summary would be adequate it being in accord with the requirements provided for under Circular No. 1 95 and Section 3(a) Rule 130 of the Rules of Court.

We are not persuaded.

As correctly pointed out by the respondent, this case was remanded to this Court precisely for the purpose of allowing petitioner to present "further evidence" i.e. registers, records and other documents in support of its claimed deductions.

Records of this case reveal that the petitioner, for several times, was given the opportunity to produce and present the "source documents" of the claimed deductions. However, instead of presenting the documents on the scheduled hearings, the petitioner repeatedly moved for postponement on the ground that it has yet to locate the aforesaid evidence.

In its Memorandum, petitioner relied heavily on the testimony of its witnesses who identified the Summary and testified on its authenticity and correctness. In addition, since it was not able to produce the source documents alleging that the same can no longer be located, petitioner buttressed its stance by citing Circular No. 1-95 which allows the presentation of summary in case evidence to be presented contains voluminous documents.

Certainly, considered in the light of the foregoing factual background, there could hardly be any doubt that the preponderance of probabilities veers towards the direction that the petitioner could not substantiate its claimed deductions. The unyielding stance of petitioner do not impress us since it is not anchored on solid ground but strikes us as rather whimsical in the light of the clarity of respondent's explanation in his memorandum.

Petitioner must bear in mind that any evidence which a party desires to submit for the consideration of the Court must formally be offered by him. Such a formal offer is necessary because it is the duty of the Court to rest its findings of facts and its judgment only and strictly upon the evidence offered by the parties at the trial. The offer may be made in any form sufficient to show that the party is ready and willing to submit the evidence to the Court **(U.S. vs. Solana, 33 Phil. 582; Dayrit vs. Gonzales, 7 Phil. 182 cited J. Francisco "Rules on Evidence" pp. 537-538).** Thus, evidence not formally offered although identified during the trial are of no value and cannot be considered by the Court.

In the case at bar, petitioner seemed to have been satisfied with the presentation of the Summary of its claimed deductions and the testimony of its witnesses because, as borne out by the records, it repeatedly failed to present the source documents despite the fact that the aforementioned documents is the very *lis mota* in this case. The source documents being the focal point, non-submission of which is fatal.

Likewise, petitioner's subsequent reliance on Circular No. 1-95 after repeated manifestation of its willingness to submit the source documents deserves scant consideration. Circular No. 1-95 par. 2 reads:

xxx xxx xxx

> "2. The method of individual presentation of each and every receipt or invoice or other documents for marking, identification and comparison with the originals thereof need not be done before the Court or the Commissioner anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices and other documents covering the said accounts or payments <u>must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the</u>

> adverse party whenever she/he desires to check and verify the correctness of the summary and CPA certification. However, the originals of the said receipts, invoices or documents should be ready for verification and comparison in case of doubts on the authenticity of the particular documents presented is raised during the hearing of the case." (Underscoring Ours)

A careful scrutiny of the aforequoted provision dictates that, while submission of Summary is allowed in case the evidence to be presented is so voluminous that it becomes impracticable to bring them all before the court, the same circular requires as a condition *sine qua non* that the said documents be pre-marked by the party concerned and submitted to the Court so that the adverse party may be given the opportunity to verify the correctness of the summary *vis-a-vis* the original documents. Worse, when so required by this Court to present the register which the petitioner claims to be an evidence sufficient enough to persuade us to take into account the claimed deductions, it could no longer present the same on the ground that the register was lost without, however, showing with reasonable certainty, the fact of its loss. Thus, this Court considers the said reason insufficient for purposes of giving weight to the secondary evidence presented by the petitioner involving the contents of the register whose loss is only vaguely accounted for.

Having settled the issue as regards petitioner's claimed deductions, this Court is now tasked to determine the tax liability of the petitioner in the light of the decision of the Court of Appeals exempting In-Patient Pharmacy Sales from payment of Value-Added Tax and Our own ruling on its "Pharmacy Out-Patient Free Services and Discounts" and petitioner's "Sales Returns and Allowances" as earlier discussed.

As enunciated in Our original decision, petitioner should have been liable for deficiency Value-Added tax in the amount of ₱3,430,967.95 which figure was arrived at after a thorough scrutiny of the documents submitted by the petitioner which revealed its Total Pharmacy Sales in the amount of ₱92,231,976.25 (in-patient and Out-patient). Thus, for the proper resolution of petitioner's tax liability, the previous computation of its deficiency value-added tax on its 1991 pharmacy sales is hereby reproduced:

TOTAL PHARMACY SALES	₱92,231,976.25
Output tax due (10%)	₱ 9,223,197.62
Less: Input tax on Purchases	6,376,402.49
Balance	₱ 2,846,795.13
Less: Tax paid per return	102,020.77
Deficiency VAT	₱ 2,744,774.36
Add: 25% Surcharge	686,193.59
Total amount due and refundable	₱ 3,430,967.95

It is important to point out that this Court originally ordered petitioner to pay the aforementioned amount of ₱3,430,967.95 because it is Our conclusion that pharmacy sales made to both in-patients and out-patients should be subject to VAT (see Decision, dated August 22, 1997, page 236, CTA records). However, in the light of the Court of Appeals decision which ruled that only pharmacy sales to in-patients are exempt from VAT, We now turn Our attention to petitioner's pharmacy sales to out-patients which were declared by the same Court of Appeals' decision to be subject to VAT. As earlier discussed, petitioner failed to prove by competent evidence its claimed deductions of free services and allowances even when the Court of Appeals' gave them another opportunity to do so by remanding this case to Us (see Court of Appeals' decision, dated March 13, 1998, page 448, CTA records).

Thus, after a careful study of the records of this case, We rule that petitioner is still liable to pay value added taxes in the amount of ₱823,259.19 detailed as follows:

PHARMACY SALES (Out-patient)	₱10,588,815.25
Output tax due	1,058,881.52
Less: Input tax on Purchases	298,253.40
Balance	760,628.12
Less: Tax paid per return	102,020.77
Deficiency VAT	658,607.35
Add: 25% Surcharge	164,651.84
Total amount due and refundable	₱ 823,259.19

WHEREFORE, in view of all the foregoing, the prayer for the allowance of the out-patient free services and allowances as deductions against gross receipts from petitioner's out-patient pharmacy sales, is hereby **DENIED** for lack of merit. The petitioner is hereby directed to pay the respondent the amount of ₱823,259.19 representing deficiency value added tax on its out-patient pharmacy sales for the year 1991, inclusive of surcharge, plus 20% interest per annum from the date prescribed for payment until fully paid. No pronouncement as to cost.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge