REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST KIMEX TRADE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6148

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 23 2003

x -

DECISION

This is an appeal from the Final Decision on Disputed Assessment dated May 3, 2000 of respondent Commissioner of Internal Revenue (CIR) holding petitioner liable for deficiency income tax and value-added tax, in the amounts of P12,534,007.50 and P3,682,039.60, respectively, for calendar year 1994.

The facts of the case as disclosed by the records are as follows:

A Letter of Authority dated August 11, 1995 and issued by Revenue District Officer (RDO) Mamerto P. Silangcruz, Jr. of the Revenue District No. 50, South Makati was served on the petitioner sometime between August and September 1995, for the purpose of conducting an investigation or examination of its books of accounts and other accounting records for income and other taxes covering the period of 1994. *(Par. 9, Joint Stipulation of Facts, November 9, 2001)*

Thereafter, sometime in June 1998, petitioner received a Pre-Assessment Notice/Letter No. 154-56 and dated May 18, 1998, informing petitioner that after investigation it was found out that it owes the amount of P9,985,149.06 as deficiency corporate income tax and the amount of P3,084,959.49 as deficiency value-added tax for the calendar year 1994. *(Petitioner's Exhibit, Exhibit "C")*

On November 20, 1998, the petitioner filed a letter dated November 10, 1998, with the Assessment Division of Revenue Region No. 8, Makati City, contesting the aforesaid pre-assessment and seeking the cancellation thereof on the ground of prescription. *(Petitioner's Exhibit, Exhibit "D")*

Sometime towards the end of March 2000, petitioner received Assessment No. 000162-94-00-590 dated March 15, 2000 notifying petitioner that after investigation there has been found due therefrom deficiency income and value-added taxes amounting to P12,534,007.50 and P3,682,039.59, respectively, for the calendar year 1994. *(Petitioner's Exhibit, Exhibit "E")*

On April 17, 2000, petitioner filed with the Regional Director of Revenue Region No. 8, Makati City a protest letter dated April 15, 2000 *(Exhibit "F" of petitioner)*, protesting the aforesaid assessment and seeking the cancellation thereof primarily by reason of prescription.

On June 29, 2000, petitioner received a Final Decision On Disputed Assessment dated May 3, 2000 (Exhibit "G" of petitioner), thereby denying petitioner's protest for lack of factual and legal basis.

Hence, this instant Petition for Review.

In his Answer filed on October 5, 2000, respondent asserted the following Special and Affirmative Defenses, to wit:

> "11. Section 203 of the Tax Code is a general provision which admits of certain exceptions such as the one provided in Section 223 (a) [now 222 (a)] of the same Code, among others;

12. The petitioner filed a false or fraudulent return with intent to evade the tax, hence the prescriptive period of the right of the government to assess petitioner for deficiency taxes is ten (10) years pursuant to Section 223 (a) above;

13. After investigation, our revenue officers found that petitioner did not declare in its income tax and value-added tax returns sales/revenues amounting to P 9,917,089.73 and did not pay the corresponding corporate income tax and the ten percent value-added tax thereon, thus the assessment in question;

14. Based on the documents audited and presented, it was ascertained that only one-half of the expenses declared in the financial statements are allowable as deduction;

15. The under declaration of sales revenues made by the petitioner in this case is very substantial in amount *per se* which can be considered as the basis for concluding that petitioner committed fraud with intent to evade the tax or that the return filed by petitioner is a false return, in either case the right of the government to assess is ten years;

16. Contrary to the allegation of the petitioner in paragraph 5.7 of the petition, the undeclared sales was discovered by the investigating revenue officers from other companies, aside from the three big oil companies mentioned therein by petitioner;

17. As shown by the BIR records of this case, petitioner failed to introduce any evidence to overthrow the findings of the revenue officers;

18. The letter-response dated November 10, 1998, which was received by the respondent on November 20, 1998, was filed beyond the fifteen-day period required under Revenue Regulations No. 12-85;

19. It has been the consistent and uniform holding of the Supreme Court in a long line of cases that assessment issued by the Commissioner of Internal Revenue or his subordinate official is presumed correct and the taxpayer has the burden of showing that the assessment is illegal or improper;

20. It is presumed that official duties have been regularly performed."

The issues to be resolved by the court as raised by petitioner are as follows:

1. Whether or not the period for the issuance of the subject Assessment on March 15, 2000 on alleged deficiency income and value-added taxes has already prescribed; and

2. Whether or not there has been an infringement on petitioner's right to due process in the issuance of the subject Assessment on March 15, 2000.

After considering the attending facts, the evidence adduced and the applicable laws and jurisprudence, the court finds for the respondent.

At the outset, it should be pointed out that the issues raised by petitioner rely mainly on the alleged failure of respondent to follow certain procedural requirements on tax assessment.

Inasmuch as the crux of the controversy depends on the proper interpretation and application of **Section 203 of the Tax Code**, it is quoted hereunder for easy reference, to wit:

> "Section 203. Period of Limitation Upon Assessment and Collection. – **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period:** Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphasis supplied)*

From the foregoing, it is clear that Section 203 is merely a general provision hence, admits of certain exceptions such as the one provided in Section 223 (a) [now Section 222 (a)] of the same Code, which provides thus:

> **"Section 222. Exceptions as to the Period of Limitation of Assessment and Collection of Taxes. –**
>
> **"(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission:** Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. x x x" *(Emphasis supplied)*

Based on the aforequoted provisions, the prescriptive periods for tax liability assessment may be outlined, as follows:

1. **Three (3) years** – from filing of the return (as of the last date fixed for its filing if filed earlier) *(Section 203, Tax Code)* and
2. **Ten (10) years** – when (1) no return is filed, (2) the return is false or fraudulent with intent to evade the tax counted from discovery *(Section 223 [now Section 222] of the Tax Code).*

In the case at bar, it appears that after the examination and investigation of the books of petitioner, the revenue officers found that petitioner did not declare in its income tax and value-added tax returns sales/revenues amounting to P9,917,089.73 and did not pay the corresponding corporate income tax and the ten percent value-added tax thereon. Likewise, it was ascertained that only one-half of the expenses declared in the financial statements are allowable as deduction.

As correctly pointed out by respondent, petitioner's underdeclaration of sales revenues in this case is very substantial in amount **per se** which logically points to a conclusion that petitioner committed fraud with intent to evade the tax or that the return filed by petitioner is a false return. According to jurisprudence, such fact can be considered as a basis for conclusion that you committed fraud with intent to evade the tax, hence, the prescriptive period for issuance of the deficiency tax assessment is ten (10) years from its discovery. Moreover, even granting, for the sake of argument, that the taxpayer did not commit fraud with intent to evade the tax, it has been held by the Supreme Court, however, that filing of a false tax return, even without intent to evade the tax, is likewise embraced under the aforementioned 10-year statute of limitation (**Estate of Aznar vs. BIR Commissioner,** *L-20569, August 23, 1974*). In either case, the right of the government to assess does not prescribe until ten (10) years from discovery of such fraud, falsity or omission.

Since the petitioner filed a false or fraudulent return with intent to evade the tax, accordingly, the right of the government to assess petitioner for deficiency taxes has not yet prescribed.

Proceeding now to the second issue.

Petitioner argued that the omissions on the part of respondent and/or his duly authorized representatives, especially the alleged lack of preliminary conference constituted an infringement of petitioner's right to due process of law which grants or would have otherwise granted petitioner such opportunities to contest the doubtful findings of the Revenue Officers concerned and/or the irregular implementation of tax laws or regulations by said Revenue Officers.

The High Tribunal has been consistent and uniform in a long line of cases in holding that an assessment issued by the Commissioner of Internal Revenue or his subordinate official is presumed correct and the taxpayer has the burden of showing that the assessment is illegal or improper. The presumption that official duties have been regularly performed is one of long standing. And reliance on such allegation of non-compliance with certain internal procedural rules will not overcome this presumption.

Assuming that the insubstantial procedural lapses of the revenue officers amounted to a denial of one of petitioner's many opportunities to contest the assessment, the same will not be sufficient to tilt the scale in its favor. Besides any minor infractions or omission in the subject assessment procedure was corrected during the hearing of this petition before this court. The Court of Tax Appeals is the most appropriate venue for weighing the revenue claims of both parties. Unfortunately, it did not present any evidence to refute the validity of the assessment but relied merely on the alleged procedural inadvertence of the respondent.

Finally, it is cardinal rule in taxation that exemptions from payment of taxes are highly disfavored in law, and the party claiming exemption must justify his claim by clear, positive, or express grant of such privilege by law. (**Collector of Internal Revenue vs. Manila Jockey Club, Inc.**, *98 Phil. 670*; **House vs. Posada**, *53 Phil.338*; **Asiatic Petroleum Co., vs. Llanes**, *49 Phil. 466*, cited in **Philippine Bank of Communications vs. Commissioner of Internal Revenue**, *CTA Case No. 2725, January 6, 1988*). The burden of proof is upon petitioner who claims a tax exemption in his favor to point out some provisions of law granting the exemption and to bring himself within the terms of those exempting provisions. In case of failure to meet the said requirement, the presumption that the deficiency tax assessments were made in accordance with law and regulations are maintained.

WHEREFORE, in view of the foregoing, herein petition is **DENIED** and petitioner is ordered to pay the amounts of P12,534,007.50 and P3,682,039.60, as deficiency income tax and value-added tax, respectively for calendar year 1994, plus 20% delinquent interest from April 18, 2000 until fully paid pursuant to Section 249 (c) of the old Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

We concur:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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