REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JIMENEZ OIL MILLS, INC.,
Petitioner,

\- versus -

C.T.A. CASE NO. 5971

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 17 2002

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DECISION

This Petition for Review seeks the cancellation and withdrawal of the revised deficiency income tax assessment against petitioner covering the taxable year 1990 in the amount of P3,640,508.26.

The facts are as hereunder stated.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at Room 1805, 18th Floor, Herrera Towers, Herrera corner Velasco Streets, Makati City (par.1, Stipulation of Facts).

On April 15, 1991, petitioner filed its Annual Income Tax Return for the calendar year ending December 31, 1990, declaring a taxable income of P13,469,537.00 with the tax due thereon in the amount of P4,714,338.00. Petitioner's total tax credits for the year amounted to P3,655,282 (Exhibit "A").

Pursuant to Letter of Authority No. 008602 dated November 27, 1991, respondent, through Revenue Officer Enrique C. Pinos, conducted an investigation of petitioner's

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books of accounts and other accounting records for income purposes. On November 12, 1993, the said revenue officer submitted a memorandum addressed to respondent recommending the issuance to petitioner of a notice demanding payment of deficiency income tax in the amount of P4,203,047.12, inclusive of increments, on account of the following findings:

> "1. The reported export sales is understated by P2,210,169.04. Schedule of export sales is over by what has been reported by taxpayer as its taxable sale for the period.
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> 2. Taxpayer paid documentary stamp tax on February 28, 1991 amounting to P1,062,457.50. It misrepresented itself that the payment is for the issuance of stock certificate that transpired on the aforementioned date, thus, avoiding payment of penalties attendant for late payment, when the truth is said payment is for the documentary stamp tax accrued in 1990 and availed as deduction from payor's gross income. Since it was alleged by them that this is for 1991 transactions, then, the accrual of said expense is not valid.
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> 3. A check with income payments subject to withholding tax showed that certain expenses were not subjected to tax, therefore unallowable deduction from taxpayer's gross income pursuant to Revenue Regulations No. 13-78 as amended by Revenue Regulations No. 6-78 and further amended by Revenue Regulations No. 5-82." (page 104, BIR records)

On December 13, 1993, respondent issued Assessment Notice No. FAS-2-90-93-5372 with the attached Demand Letter showing petitioner's 1990 deficiency income tax, computed as follows:

Net income per return		P13,469,537.00
Add: Disallowances		
Understatement of export sales	P2,210,169.04	
Documentary stamp	1,062,457.50	
Expenses not covered by w/holding tax	2,916,443.77	6,189,070.31
Net Income per review		P19,658,607.31
Tax Due thereon 35%		6,880,513.00
Less: Tax paid per return		4,714,338.00
Deficiency Income Tax		P 2,166,175.00

25% Surcharge	541,543.75
20% Interest from 4-16-91 to 12-31-93	1,470,328.37
Compromise penalty	25,000.00
Total Amount Due and Collectible	P 4,203,047.12

(pp. 112 & 113, BIR records)

On January 26, 1994, petitioner filed a letter protesting the assessment for the following reasons:

1. For Understatement of Export Sales: P2,210,169.04

Petitioner explained that the discrepancy was due to the fact that the monthly export negotiation report is prepared for the purpose of recording orders of customers, which is still subject to adjustments and therefore not a conclusive basis of the actual taxable sales for the year. On the other hand, the audited financial statements are prepared and audited after the adjustments have already been accounted for.

2. Documentary Stamp Tax: P1,062,457.50

Petitioner argued that while there is no dispute that the documentary stamp tax was paid on February 28, 1991 and that it pertains to fully paid-up shares of stocks in 1990, the recognition of the DST as a 1990 expense was in accordance with standard accounting principles and jurisprudence on tax accrual because the actual issuance of the certificate was held in abeyance pending the approval by the Securities and Exchange Commission (SEC) of petitioner's request for exemption of the said securities from SEC registration. According to petitioner, it is settled both in financial and tax accounting that the accrual of income and expenses is permitted when the "all-events" test is satisfied.

3. Expenses not subjected to withholding tax: P2,916,443.97

The disallowed amounts were computed by comparing the figures reported by petitioner in its per books and its alpha list, thus:

	Per Books	Alpha List	Discrepancy
Salaries and Wages	P11,150,854.93	P8,303,198.60	P2,847,656.33
Commission	860,615.04	791,827.60	68,787.94
		TOTAL	P2,916,443.77

(p. 120, BIR records)

Petitioner explained that the per books figures are subject to adjustments and therefore not representative of the actual payments covered by the withholding tax system.

On July 25, 1997, petitioner filed a supplemental protest letter reiterating its stance in its previous protest letter.

On November 9, 1999, petitioner received a letter from respondent dated April 30, 1999, informing petitioner that the amount of P4,203,047.12 was reduced to P3,640,508.26, inclusive of increments up to September 16, 1997, as a result of the allowance of some previously disallowed deductions such as understatement of export sales and portion of expenses not subjected to withholding tax.

On December 8, 1999, petitioner elevated its case before this Court.

In his Answer filed on January 25, 2000, respondent raised the following Special and Affirmative Defenses:

> "4. Petitioner actually paid the documentary stamp tax on February 28, 1991, in the amount of P1,062,457.50, and since it pertains to 1991 transaction, accrual of the same in 1990 is not valid.
>
> 5. Direct labor expense of P1,719,199.41 which represents payments to contractor for the supply of messengerial, janitorial and laborer's assistance should have been subjected to withholding tax of 1% pursuant to Sec.

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1(2)(g), Revenue Regulations No. 6-85 dated July 1, 1985. Said provision does not provide that payments should be to regular or permanent employees. It does not distinguish the labor contractor to whom payment is made, whether he is a labor contractor or labor recruiting agency, as long as payment is for a contractor who provides messengerial or janitorial job.

6. Disallowed indirect labor expense (P767,452.20) as well as commission expense (P68,787.44) were not protested nor supported by documents showing that the same were subjected to the required withholding taxes.

7. The assessment was issued in accordance with law and regulations.

8. All presumptions are in favor of the correctness of tax assessments."

The following issues have been jointly stipulated by the parties:

"1. Whether or not the accrual in 1990 of documentary stamp tax in the amount of P1,062,457.50 paid on February 28, 1991 is valid;

2. Whether or not petitioner's direct labor expense (P1,719,199.41) which represents payments to contractors for the supply of messengerial, janitorial and laborers' assistance, which includes assistance in the boiler feeder and milling section of the petitioner, is subject to 1% withholding tax pursuant to Section 1(2)(g) of Revenue Regulations No. 6-85;

3. Whether or not petitioner's disallowed labor expense (P767,452.20) as well as commission expense (P68,787.44) were protested and supported by documents showing that the same were subjected to the required withholding taxes; and

4. Whether or not the disallowance of the commission expense in the amount of P68,787.44 is valid and proper."

On the first issue, petitioner averred that the DST on the original issuance of shares of stock was paid on February 28, 1991 but the liability for such payment was accrued in 1990. Petitioner invoked the "all-events" test in financial and tax accounting as its basis for the accrual of the subject DST, which test requires that "(a) the right to income or liability to pay be fixed and (b) that there be a reasonably accurate determination of such

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income or liability (***Filipinas Synthetic Fiber Corporation vs. Court of Appeals, et. al.*, G.R. Nos. 118498 and 124377 [1999]; *Paramount Insurance Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 4844 [1996]**" (p. 133, CTA records).

Further, petitioner cited Section 224 (sic) of the old NIRC which provides that the liability for DST on the original issuance of shares of stock shall become due at the time of said issuance. Petitioner cited the case of ***Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.* 145 SCRA 677 [1986],** where the Supreme Court held that "(w)hat is taxed is the privilege of issuing shares of stock and, therefore, the taxes accrue at the time the shares are issued."

We do not agree with petitioner's contentions.

Section 175 of the old National Internal Revenue Code provides:

> **Section 175. *Stamp tax on original issue of certificates of stock.* -** On every original issue, whether on organization, reorganization or for any lawful purpose, of certificates of stock by any association, company, or corporations, there shall be collected a documentary stamp tax of one peso and seventy centavos on each two hundred pesos, or fractional part thereof, of the par value of such certificates: *Provided,* That in the case, of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends on the actual value represented by each share.

Based on the aforequoted provision of law, the documentary stamp tax on the original issuance of certificates of stock attaches at the time of their issuance. However, for purposes of imposing the tax, it is necessary to determine when the certificates of stock are deemed issued.

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The "issue of stock" means the act or contract of the corporation by which shares of its capital stock are vested in persons as stockholders or members, and not merely the issue of certificates of stock, which as we have seen, are not the stock itself, but merely the evidence of the ownership of stock and the rights of the owners as a stockholder (Words and Phrases, Volume 22, p. 704).

In the case of ***Philippine Consolidated Coconut Industries, Inc. vs. Collector of Internal Revenue*, 70 SCRA 22**, the Supreme Court passed upon the issue:

> "Bearing in mind that the cost of this imposition is borne by the corporation originally issuing the stock certificate, a literal interpretation of the word "issue" must necessarily mean at the time of release of the stock certificate (document as properly filled up) to the stockholder, the actual or constructive possession by the stockholder of the certificate of stock being immaterial and of no consequence. If We interpret in a strictly literal manner the meaning of the word "issue", then it follows that appellant must pay the documentary stamp tax as the Court of Tax Appeals ordered him to do."
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> x x x
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> "Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription), the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.
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> x x x
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> "x x x the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership

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> and with value at the time they are originally issued. **As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners."** *(supra)*

Furthermore, the "all-events" test relied upon by petitioner has been explained in this wise:

> "Any item, including the tax, is deductible in the year in which all the events upon which the tax is predicated occur. This is known as the all events test. The amount of the liability is then fixed by law and ascertainable, regardless of the time the tax may be assessed or become due and payable.
>
> All the events which establish liability are not treated as occurring any earlier than the time "economic performance occurs", if economic performance has occurred and all the other requirements of the all events test are met, the amount is treated as incurred for deduction purposes.
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> The right to deduct accrued taxes depends essentially on the broad principles which underlie the use of the accrual method of accounting. One of these fundamental principles involves the determination of the year in which the liability for tax becomes fixed, rather than contingent or estimated, and in which the amount of liability can be determined with reasonable accuracy.
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> The Supreme Court has held that **a taxpayer may not deduct an estimate of an anticipated expense, no matter how statistically certain, if it is based on events that have not occurred by the close of the taxable year."** (pp. 124-126, Chapter 27, Volume 7, Mertens, Law of Federal Income Taxation) (Emphasis supplied)

Clearly from the foregoing, while the subscribed shares have been fully paid in 1990, such shares of stock were not yet deemed "issued" at that time for purposes of imposing the documentary stamp tax. The certificates of stock were temporarily subjected to a suspensive condition, that is, the approval by the SEC of petitioner's

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request for exemption from registration. Accordingly, prior to the said SEC approval, the shares have not yet acquired any practical value for their owners.

Under the circumstances, accrual of the documentary stamp tax expense in 1990 was not proper although the shares of stock have been fully paid for that year. There being a suspensive condition which had to be fulfilled before the shares are deemed issued to their owners, petitioner's reliance on the "all-events" test in the accrual of the documentary stamp tax expense is misplaced.

Prescinding therefrom, the disallowance made by the Revenue Officer on the documentary stamp tax expense for the year 1990 was correct. The liability for payment of the documentary stamp tax on the original issuance of shares accrued only from the time the suspensive condition was fulfilled, which was in the succeeding year 1991.

With reference to the second issue, petitioner averred that the disallowed amount of P1,719,199.41 representing Direct Labor pertains to payments made to a labor contractor for the supply of workers or laborers to perform irregular and odd jobs such as housekeeping and assisting in the boiler feeder and milling section, that they are not its regular nor permanent employees and that the payments made by petitioner to the labor contractor are not subject to the 1% expanded withholding tax prescribed under Revenue Regulations No. 6-85, otherwise known as the Revised and Consolidated Expanded Withholding Tax Regulations. Petitioner contended that the "labor contractor" is not similar to a "labor recruiting agency".

Respondent, on the other hand, argued that Section 1(2)(g) of Revenue Regulations No. 6-85 does not distinguish the contractor to whom payment is made, whether he is a

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labor contractor or a labor recruiting agency, as long as payment is for a contractor who provides both messengerial or janitorial job.

We agree with the respondent.

For clarity, We quote the pertinent provisions of Revenue Regulations No. 12-85:

> "**Section 1.** ***Income payments subject to creditable withholding tax and rates prescribed thereon.*** - Except as herein otherwise provided, there shall be withheld a creditable withholding income tax at rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
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> x x x
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> (2) Other contractors
>
> x x x
>
> (g) Messengerial, janitorial, private detective and/or security agencies and credit and/or collection agencies.
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> x x x

In its memorandum, petitioner admitted that the disallowed amount pertains to payments to the labor contractor for the messengerial, janitorial and like services rendered thereto but at the same time claimed that it should not be subject to the 1% withholding tax. Petitioner likewise asserts that the workers are not its own employees but part of the staff of the labor contractor and that petitioner paid the labor contractor as billed by the latter who, in turn, paid the laborers or workers.

Applying the above provisions of Revenue Regulations No. 12-85 to the present case, it is clear from petitioner's own assertions that there exists an agency between petitioner and the contractor and that the payments made by petitioner for direct labor pertain to payments to a messengerial or janitorial agency falling under subsection (2)(g) of Revenue Regulations 12-85. We agree with respondent that the said revenue regulations made no distinction as to the kind of contractor payment is made, as long as the contractor provides messengerial or janitorial jobs.

Finally, while it is true that petitioner has protested the disallowances pertaining to its indirect labor expense and commission expense in its letter protest dated January 25, 1994, it nonetheless failed to satisfactorily refute the findings of the revenue examiners, hence, the presumption of correctness of the assessments subsists. "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments **(*Bonifacio Sy Po vs. Court of Tax Appeals and Commissioner*, 164 SCRA 524).** Failure to present proof of error in the assessment will justify judicial affirmance of said assessment **(*Delta Motors Co. vs. Commissioner*, CTA Case No. 3782, May 21, 1986).**

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, petitioner is **ORDERED to PAY** to the respondent the amount of P3,640,508.26 representing deficiency income tax for the taxable year ended December 31, 1990, inclusive of surcharges and deficiency interest, computed as follows:

Net Income Per Return		P 13,469,537.00
Add: Disallowances:		
Documentary Stamp Tax	P 1,062,457.50	

Expenses w/out withholding tax			
1) Direct Labor	P 1,719,199.41		
2) Indirect Labor	767,452.20		
3) Discrepancy (Commission)	68,787.44	2,555,439.05	3,617,896.55
Net Income per re-computation			P 17,087,433.55
Tax Due Thereon (35%)			P 5,980,601.74
Less: Tax Paid Per Return			4,714,338.00
Deficiency Income Tax			P 1,266,263.74
Add: 25% Surcharge			316,565.94
20% interest from 4-16-91 to 9-16-97			2,057,678.58
TOTAL AMOUNT DUE AND COLLECTIBLE			**P 3,640,508.26**

In addition, petitioner is likewise **ORDERED to PAY** 20% delinquency interest computed from November 24, 1999 until fully paid pursuant to Section 249 of the 1997 Tax Code.

SO ORDERED.

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

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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

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