Library

August 27, 1963

THOMSON SHIRT FACTORY
(Aaron Go & Company),
Petitioner,

-versus- C.T.A. CASE NO. 377

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Collector (now Commissioner) of Internal Revenue assessing against and demanding from petitioner the sum of ₱20,775.03 as deficiency sales tax and surcharges for the period from January 1, 1954 to June 30, 1955, and the respective sums of ₱1,200.00 and ₱5,000.00 as extrajudicial penalties for failure to pay the tax on time and for knowingly making false entries in its books of accounts.

It appears that on July 23, 1955, upon information by one Cresencia V. Reyes that petitioner was hiding and keeping unregistered books of accounts and other papers used or intended to be used for tax evasion in its establishment, the agents of respondent, armed with a search warrant, searched petitioner's premises and seized several notebooks with Chinese writings, check books, sales invoices, books of accounts and loose papers with Chinese writings, and other miscellaneous documents (Exh. 30). These books, papers and documents, registered and unregistered, were found kept in two (2) wooden cabinets in petitioner's establishment.

Of the documents seized from petitioner, there were 58 loose sheets of paper and 2 lecture notebooks on which Chinese characters were written. These were referred to Examiner Ong Seng Hoon on August 1, 1955 (Exhs. 9 & 9-A) for translation into the English language. Examiner Ong Seng Hoon, a Chinese employed as interpreter of Chinese documents and writings for the Bureau of Internal Revenue, submitted his translation in 6 worksheets (Exhs. 10, 10-A to 10-E).

Again, on August 12, 1955 (Exh. 12), another pocket notebook was referred to Examiner Hoon for translation of its contents from Chinese into English, which he translated in 5 worksheets (Exhs. 12, 12-A to 12-B).

On the basis of petitioner's registered books of accounts, and of the translation of Examiner Ong Seng Hoon, which shows unrecorded sales of polo shirts and pajamas manufactured by petitioner and purchases made by it of raw materials used in the manufacture of its products during the period from January 1, 1954 to June 30, 1955, respondent, upon recommendation of its agents (Exhs. 14 & 14-A), wrote a letter to petitioner (Exh. 16), informing it that it was assessed the sum of ₱20,775.03 as deficiency sales tax for the period from January 1, 1954 to June 30, 1955. At the same time, respondent requested petitioner to appear with evidence which could be of help in computing its correct tax liability. This letter was received by petitioner's manager.

On October 21, 1955, one Chan Han Sing, a brother of a partner in petitioner's business, appeared for petitioner, but for his lack of knowledge of the case and for the reason that his authority was limited to that of accompanying the bookkeeper whom he failed to bring, he was not able to help in shedding light on the case.

On October 31, 1955, respondent issued against petitioner an assessment for deficiency sales tax and surcharge in the amount of ₱20,775.03, plus the respective amounts of ₱1,200.00 and ₱5,000.00 as extrajudicial penalties for failure to pay the tax on time and for knowingly making false entries in its books of accounts (Exh. 18). The deficiency sales tax and surcharges in the total sum of ₱20,-775.03, are computed as follows:

Gross sales per unregistered books of accounts	₱564,893.12
Less: Cost of sales	404,597.73
Taxable sales	₱160,295.39
7% tax due on ₱160,295.39	11,220.68
75% surcharge thereon	8,415.50

Total deficiency sales tax		₱19,636.18
Gross sales per registered books of account	₱365,823.40	
Less: Cost of sales...	262,183.12	
Taxable sales	₱103,640.28	
7% tax due on ₱103,640.28	911.08	
25% surcharge thereon	227.77	
Deficiency sales tax		1,138.85
TOTAL AMOUNT STILL DUE & COLLECTIBLE		₱20,775.03

In view of this assessment, petitioner, thru its manager, requested respondent to give it an opportunity to explain the entries contained in the notebooks and papers which were admitted to have been seized from petitioner's premises, which request was granted b y respondent in his letter dated December 19, 1955 (Exh. 19).

Despite the time allowed it, petitioner or its duly authorized representatives failed to appear to explain the entries.

It was only on March 15, 1956 (Exh. 27), or almost three (3) months later that petitioner, thru its manager, was heard from. Instead of making explanation on the entries, petitioner wrote a letter to respondent, asserting that the memorandum notebooks and other papers do not belong to it. However, it offered to compromise the tax case by proposing to pay the deficiency sales tax in the amount of ₱1,-138.85.

During the first week of March, 1956, or on-week before petitioner's letter denying ownership over the seized notebooks and papers, the notebooks and papers were found to have been lost while in the possession of the Chief, Assessment Department of the Bureau of Internal Revenue (See Exh. 28, p. 103 BIR rec.).

Subsequently, on March 23, 1956, the Acting Chief of the Business Division of the Bureau of Internal Revenue proposed the change of the assessment from ₱26,975.03 to only ₱1,438.85, which proposal was not however favorably acted upon by Deputy Collector of Internal Revenue Jose Arañas (Exhs. F & F-1 taken in relation to Exh. 28.).

After a thorough examination of the tax case of petitioner, respondent, on March 21, 1957 (Exh. 29), reiterated his previous assessment against petitioner and demanded from it the payment of the total amount of ₱26,975.03, inclusive of compromise penalties.

On April 15, 1957, counsel for petitioner requested for reinvestigation on the grounds that petitioner was heard without benefit of counsel and that the findings made thereon were not in accordance with the facts and evidence (p. 108 BIR record), which request was denied by respondent on April 17, 1957 (Exh. 24).

Consequently, petitioner appealed to this Court and assailed the decision of respondent in so far as it was based upon the unregistered notebooks or books of accounts. It did not question the accuracy of the mathematical computation of the questioned deficiency sales tax assessment.

The issues presented for our determination may be stated as follows:

(1) Whether or not the unregistered notebooks or books of accounts (58 loose sheets of papers and 3 notebooks) seized by the Bureau of Internal Revenue agents on July 23, 1955 are owned by petitioner;

(2) Whether or not the translations made by Examiner Ong Seng Hoon of the Chinese characters contained in the unregistered books of accounts are correct; and

(3) Whether or not the translations made by Examiner Ong Seng Hoon are admissible in evidence in lieu of the alleged lost original unregistered books of accounts, in support of the deficiency sales tax assessment.

It is asserted by petitioner that it does not own the unregistered notebooks or books of accounts; that respondent had failed to establish that it owns them; that respondent failed to prove the correctness of the translations made by Examiner Ong Seng Hoon; and that said translations are inadmissible in evidence in lieu of the original documents. Respondent contends otherwise.

We are in accord with the stand taken by respondent both on the standpoint of the facts of and the provisions of law applicable to this case. The documents and notebooks used as the basis of the assessment in question are owned by petitioner as they were admittedly taken from the locked drawers of petitioner's two wooden cabinets found in its establishment. Petitioner's possession of the seized documents and notebooks creates a presumption that the same are owned by it (Sec. 69 (j), Rule 123, Rules of Court.). It is, therefore, incumbent upon petitioner to overthrow this presumption of ownership by credible evidence. This presumption cannot be overcome merely by general disavowal of ownership. Inasmuch as these notebooks contain names of Chinese who are textile dealers with whom petitioner had entered into business transactions, petitioner should have presented its purchase and sales invoices and other books of accounts to show that it never had any transaction with the persons whose names are found in the said notebooks. The fact that petitioner did not present evidence to rebut the presumption of ownership arising from its possession of the documents and notebooks strengthens the conclusion that same are owned by it. The claim that these notebooks contain the household expenses of one of the partners to the business is without credence. It is irreconcilliably inconsistent with the contents of the notebooks which also indicate textile materials purchased in yards and the corresponding prices (See Exhs. 10-A to 10-F; 12-A to 12-E). We are, therefore, of the opinion and so hold that petitioner owns the unregistered notebooks or books of accounts in question.

Anent petitioner's contention that the translations of the unregistered notebooks or books of accounts made by Examiner Ong Seng Hoon are not correct, we are satisfied that said Ong Seng Hoon is a regularly appointed government employee and, therefore, his translations of the unregistered notebooks or books of accounts written in the Chinese language were regularly performed and are correct. (Sec. 69 (l) and (m), Rule 123, Rules of Court). The burden is on the petitioner to show the incorrectness of the translations. It should have exerted efforts to confront Examiner Ong Seng Hoon and point out the incorrectness of his translations while it had all the chances to do so. That said Examiner Ong Seng Hoon is now dead and can no longer be examined on the correctness of his translations will not shield petitioner from the adverse effects of its own negligence or default. Having slept on its rights, it has no cause to complain.

In view of this, we are constrained to uphold the correctness of the translations.

In connection with the claim of petitioner that said translations are inadmissible in evidence, we have held heretofore that the unregistered notebooks or books of accounts are owned by petitioner. The evidence of respondent further shows that they were translated by Examiner Ong Seng Hoon in the presence of other revenue agents. The evidence also establishes that these unregistered notebooks or books of accounts were lost in the custody of the Chief, Assessment Department. Being official and authentic records, the translations are admissible as secondary evidence in lieu of the originals pursuant to Section 51 of Rule 123 of the Rules of Court.

Consequently, having failed to show the invalidity or illegality of the deficiency sales tax assessment at bar, we are of the opinion and so hold that petitioner is liable for deficiency sales taxes and surcharge in the amount of ₱20,775.03. However, in accordance with established doctrine, it can not be held liable for the compromise penalties in the amounts of ₱1,200.00 and ₱5,000.00 (Central

Azucarera de Tarlac vs. Collector of Internal Revenue C.T.A. No. 206, October 15, 1956, affirmed in G.R. Nos. L-11760 and L-11761, July 31, 1958; Western Mindanao Lumber vs. Collector of Internal Revenue, C.T.A. Case No. 223, October 27, 1956, affirmed in G.R. No. L-11710, June 30, 1958.).

WHEREFORE, the decision of respondent is hereby modified. Petitioner is hereby ordered to pay the sum of ₱20,775.03 as deficiency sales tax and surcharges for the period from January 1, 1954 to June 30, 1955, without pronouncement as to costs.

SO ORDERED.

Manila, August 27, 1963.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge