REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORTE REALTY CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5110

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 14 1998

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DECISION

In the case at bar, the issue which is presented for our consideration is whether or not petitioner is liable to a deficiency income tax for 1987 in the amount of P695,993.61, inclusive of surcharge and interest.

Petitioner is a domestic corporation and is engaged in the business of rendering services in the market of real estate. As such, petitioner receives commission income and pays commission expenses to its sub-agent. On April 13, 1991, respondent issued a deficiency income tax assessment against petitioner for the year 1987 in the total amount of P695,993.61, broken down as follows:

Net Income disclosed by the return as audited	P 92,827.00
Add: Discrepancies (Unallowable Deductions & Add'l. Income)	
Commissions payable prior period adjustment account	266,309.81
Additional taxable income rep. prior period adjustment	14,880.02
Adjusted commission income	690,109.84
Net Income per investigation	P1,064,126.60*
Income tax due thereon	P 372,444.31
Less: Amount already assessed/paid	32,490.00
Deficiency Income Tax	P 339,954.31

(64)

Add:	25% Surcharge	84,988.58
	Interest	255,050.72
	Compromise	16,000.00
TOTAL AMOUNT DUE		₱ 695,993.61

* should be ₱1,064,126.67

Thru a letter, dated November 27, 1991, received by the respondent on same date, petitioner formally protested the aforesaid tax assessment. On April 20, 1994, petitioner received the decision of respondent, dated February 17, 1994, denying petitioner's protest with finality. Hence, the instant petition.

As earlier adverted to, the issue to be resolved by the Court is whether or not petitioner is liable to a deficiency income tax for 1987 in the amount of ₱695,993.61, inclusive of surcharge, interest and compromise penalty.

Petitioner presents as principal reason for the petition for review that the assessment for deficiency income tax for 1987 was arbitrary since it did not receive any commission income in the amount of P690,109.84 during the year 1987. It is petitioner's theory that respondent based the assessed amount on the commissions it paid to its sub-agents, by applying the method of matching income and expenses. Petitioner further added that, granting arguendo, the method of matching expenses and income can be utilized in the

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instant case, the amount of P690,109.84 representing commission income would be inaccurate as respondent applied a uniform rate of 9% in the computation of its commission income and 2.75% in the computation of its commission expenses when in fact said rates vary from 7% to 9% and 2.75% to 5%, respectively.

Further, petitioner emphasized that since the Letter of Authority issued on January 8, 1990 specifically limits the year of examination to 1987, the adjustment of prior years income in the amount of P266,309.81 in the assessment made by the respondent was in effect made without authority.

Respondent on the other hand demurs and maintains that petitioner is liable to the subject assessment. She reasoned that upon examination of the petitioner's books of accounts it was discovered that petitioner recorded commission expenses for which no corresponding income was recorded, thus, the assessment on commission income. She also stressed that during the year 1987 the overstatement of petitioner's expenses, in the prior years, were adjusted. Instead of crediting said adjustment to corresponding expense accounts, the same was credited to "Prior Period Adjustments", thereby, making the petitioner's income for 1987 understated.

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Respondent also contends that the petitioner's books of accounts were not properly maintained and since petitioner failed to furnish the BIR some of the documents necessary in the examination, respondent made the assessment based on the available evidence, invoking Section 16 of the Tax Code, thus:

> SEC. 16. ***Power of the Commissioner to make assessments.*** - (a) Examination of returns and determination of tax. - x x x
>
> (b) Failure to submit required returns, statements, reports and other documents. - 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 shall assess the proper tax on the best evidence obtainable.
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> xxx xxx xxx

We find the petition devoid of merit, for petitioner has failed to rebut the validity or correctness of the aforementioned tax assessment.

It is a well-settled rule in taxation that, all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of the property for taxation will knowingly violate the duties imposed upon them by law. As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner to show that the assessment was erroneous, in order to relieve himself from it **(Kischinchand Chellaram (Manila) Inc. v. Court of Tax Appeals, G.R. 60787, 27 March 1990, En Banc, Minute Resolution).**

The examiner's assessment should be given full faith and credit, in the absence of proof submitted by the taxpayer to the contrary. Tax assessments of tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. Absent 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 **(Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc. G.R. 76281, 30 Sept. 1991).**

In the case at bar, petitioner failed to establish that there was no undeclared commission expense and that

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there was no undeclared commission income for the year 1987. The evidence that were presented during the trial did not controvert the findings of the respondent. The petitioner's evidence merely tried to establish that the rates, used by the respondent in the computation of the petitioner's alleged undeclared commission income and expenses for 1987, were different from the actual rates used by the petitioner. It was not clearly established by the petitioner that the use of the actual rates will eliminate or diminish the amounts mentioned in the assessment notice. Neither did it adduce evidence to prove that there was no over-set-up of its liabilities and expenses in the prior years which were taken and adjusted in the year 1987.

In other words, petitioner has not presented any evidence as the relevance and competence required, and as such, "that if he fails satisfactorily to show the fact which he bases his claim, the defendant is under no obligation to prove his exceptions or defense" **(Belen v. Belen, 13 Phil. 202)**. Further, if the facts have not produced a valid case as a consequence of frustration to secure the supporting evidence such frustration does not operate to automatically prove petitioner's case. For such default, the action must fail and this Court cannot afford a remedy, it having no power nor duty to provide

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it. Be it of cold comfort that "the court cannot constitute themselves guardians of persons who are not legally incompetent. x x x. Men may do foolish things, make ridiculous contracts, use miserable judgments, and lose money by them - indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actionable wrong, before the courts are authorized to lay hold of the situation and remedy it." **(Vales v. Villa, 35 Phil. 769)** Thus, We are unable to find for petitioner, factual and legal, upon which to base the desired relief.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition is hereby **DISMISSED** for lack of merit. Petitioner is hereby **ORDERED** to **PAY** the respondent Commissioner of Internal Revenue the amount of P679,993.61 (net of the compromise penalty) as its deficiency income tax for the year 1987, plus 20% delinquency interest per annum from April 20, 1994 until fully paid, pursuant to Section 283(c)(3) of the 1987 Tax Code. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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
Court of Tax Appeals