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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KISHINCHAND CHELLARAM (MANILA),
INC.,
Petitioner,

\- versus - C.T.A. CASE NO. 659

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

2/24/82

D E C I S I O N

This action is one of a deficiency assessment for income and advance sales taxes in the respective amounts of ₱151,579.00 and ₱177,076.22 for the years 1953 to 1957, averred by petitioner to have been illegally imposed by the respondent Collector (now Commissioner) of Internal Revenue.

The records show that (1) Petitioner corporation duly organized under the laws of the Philippines is engaged in the importation of merchandise and as a general merchant, in wholesale and retail business with address at R-210, Marvel Building, 576 Juan Luna, Manila; (2) Sometime on September 19, 1958, petitioner's office together with other business establishments were searched upon valid warrant duly issued by Judge Amado Roan of the Manila City Court and various books of accounts, business records and commercial documents were seized by a team of the Constabulary-Revenue-Customs Service Group (C-R-C) stationed at Camp Crame, Quezon City; (3) Based on the records seized and investigation conducted by the BIR examiners, petitioner was assessed, deficiency income and advance sales taxes for the years 1953-1957, inclusive, under letters of demand dated January 23, and February 12, 1959 of the respondent, and (4) warrants of garnishment were served in March 1959 to several Manila banking institutions against any account/deposit or other property in the name of petitioner, which netted ₱539.37 deposit with the Chartered Bank; (5) On March 17, 1959 petitioner protested by filing a request for reinvestigation and formal hearing of the said assessments but respondent in his letter dated April 1, 1959 denied the same for petitioner's failure to comply with the requisite waiver of the statute of limitations and payment of 1/2 of the total assessments with surety bond for the balance thereof. Hence, petitioner's appeal.

Assailed is the validity and correctness of the assessments for deficiency income and advance sales taxes - the issue for decision.

The records show that upon order of this Court as moved by petitioner, all the pertinent records and documents which were seized and in the possession of the Constabulary-Revenue-Customs Service Group including those bearing on the instant case were forwarded and delivered to the custody of this Court under covering letter dated October 12, 1959 of the Executive Coordinator of the Service Group, and, together with the records of the Bureau of Internal Revenue pertinent to the case, were made available for petitioner's examination and scrutiny. This notwithstanding, petitioner would find an issue out of the "sales invoices and official receipts covering the period from January 1, 1953 to September 1958" allegedly seized but not among the documents brought to the Court, thereby "rendering impossible for petitioner to defend itself against what it considers an erroneous assessment." The starveling agitation therefor would persist as a disturbing pre-occupation of the petitioner through all the 20 years of the pendency of the action.

The apparent patina of cogency impressed nonetheless, we find illogic the impression precipitately broached that the sought for "invoices and receipts" could be the sole evidentiary basis in nashing every conceivable illegality in the questioned assessments. And, neither should it be narrowly or naively viewed as an excuse for petitioner from further bearing the burden of proving its cause of action. Recourse to other means or modes of ascertaining the truth of its allegation is afforded under the existing Rules. But, the respondent's findings are not short of specific support in terms of tractable data and records openly laid and disclosed for examination and verification. Suffice it to state, however, that towards the end of the two decades of the pendency of this appeal, petitioner would still find the "need for more time to go over the voluminous books of accounts and records in the custody of the court." (Petitioner's Urgent Motions to Transfer/Reset Hearings - January 25, 1974, pp. [illegible]-253 CTA Records; September 1, 1978, pp. [illegible] CTA Records; August 1[illegible], 1979, p. 31[illegible] CTA Records). This Court had coyly acquiesced as a convenient "wailing wall" to petitioner's predicament to the sufferance of that "well-known policy of the courts to expedite the disposal of cases to prevent their dockets from becoming clogged, and it is incumbent upon parties, especially plaintiff to take the initiative in the prompt disposal of cases as duty to themselves, to the court and to the public in general." (Masiglat v. Mayor of Pasay City, 104 Phil. 319; cited in 101 SCRA 654). To dispel any sprouting impression, as seems to be claimed, of a denial of "due process", what petitioner sought was heard, but after all the years, petitioner remained in impotent anguish yet troubled at fashioning possibilities out of inconclusive ends with ambiguous means of validating its principal cause of action. One can lose the forest for the trees, indeed.

Petitioner must square the issue of illegality which it posits on the assessments as thus found:

> "Testimonial and documentary evidence presented by the respondent show that petitioner herein realized during the years in question the following taxable income which it failed to declare for income taxation:

1953	₱ 119,186.04
1954	9[illegible],663.00
1955	1[illegible],[illegible]8.24
1956	70,9[illegible]3.21
1957	52,581.[illegible]3
T O T A L . . .	₱ 470,712.57

> "These undeclared incomes are clearly shown in the computations made by the said

BIR examiners including the basis thereof, in the worksheets used by them. (Exhs. 26 & 27, pages 116 & 117, Vol. 1, BIR Records, pp. 7 to 10 Tsn, taken during the hearing on August 14, 1979)

"Findings of the said BIR examiners also show that petitioner as an importer deliberately understated its actual importations for the years in question (1953 to 1957) thus resulting in its failure to report and pay the correct advance sales tax due the government. (See worksheets of examiners, pp. 116 & 117, Vol. 1, BIR Rec.) The total value of petitioner's importations which it failed to declare during the period in question are as follows:

1953	₱ 400,018.48
1954	283,437.02
1955	318,442.21
1956	90,291.49
1957	64,226.87
T O T A L . .	₱1,156,416.07"

(Memorandum for Respondent p. 3; CTA Records p. 354)

It is incongruous for petitioner to prove its cause by simply drawing an inference unfavorable to respondent by gloating over the circumstantial event of the missing invoices and receipts as thus encapsulating all that are erroneous or illegal in the assessment. Any such inference cannot operate to relieve petitioner from bearing its burden of proof and this Court has no warrant of absolution. "On the position of the burden of proof, properly so-called, the existence of any particular inference of fact can have no effect, even should it constitute a prima facie case, or should as further proof be excused by a rule of law." (31 C.J.S. 720-721). It may be necessary to repeat what so often may have been said and what so plainly apply to the case at bar. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that the taxpayer is right (Lino Gutierrez v. Collector of Internal Revenue, CTA Case No. 501, January 28, 1962; Tan Guan v. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903) otherwise the presumption in favor of the correctness of tax assessment stands. (Inter-provincial Auto-bus Co., Inc. v. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue v. Bohol Land Transportation Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965). The burden of proving the illegality of the assessment lies upon the petitioner alleging it to be so, and it had not been discharged on the facts of the case before us.

In the case at bar, petitioner has not presented any evidence of the relevance and competence required, and as such, "that if he fails satisfactorily to show the fact upon 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 it. Be it of cold comfort, "The courts cannot constitute themselves guardians of persons who are not legally incompetent. 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). We are therefore unable to find for petitioner, factual and legal, upon which to base the desired relief.

Accordingly, we hold that petitioner stands liable for the payment of the sum of P151,579.00

as deficiency income tax and surcharge for the years 1953 to 1957, inclusive, plus the delinquency penalties provided in Section 51(e) of the National Internal Revenue Code as amended, as well as the amount of ₱117,076.22 representing deficiency advance sales tax and surcharge for the years 1953 to 1957, inclusive, plus 14% annual interest thereon from January 23, 1959 to the date of full payment thereof pursuant to Section 193 of the 1977 National Internal Revenue Code, as amended; minus ₱539.37 the amount garnished from petitioner's account with the Chartered Bank.

WHEREFORE, petition is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, February 26, 1982.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge