REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ANAPI MULTI-PURPOSE COOPERATIVE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, BIR REGIONAL DIRECTOR, REGION 12, BACOLOD CITY,
Respondents.

CTA Case No. 9787

Members:

DEL ROSARIO, *P.J., Chairperson,* *and*
MANAHAN, *JJ.*

Promulgated:
NOV 16 2020 3:02 pm

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DECISION

MANAHAN, *J.*:

This involves a Petition for Review filed by petitioner ANAPI Multi-Purpose Cooperative (ANAPI) against respondents Commissioner of Internal Revenue (CIR) and Bureau of Internal Revenue (BIR) Regional Director, Region 12, Bacolod City, praying that judgment be rendered cancelling the assessment on alleged deficiency Value-Added Tax (VAT) and compromise penalties in the aggregate amount of Php48,075,359.69 for taxable year 2006.

FACTS

The parties have stipulated as to the existence of the Letter of Authority, Preliminary Assessment Notice, Formal Letter of Demand, Assessment Notice, and Final Decision.[1]

The facts as recited in the Petition for Review and stipulated by the parties follow:

Petitioner is a multi-purpose agricultural cooperative duly organized in accordance with Philippine laws, more particularly

[1] Docket, Pre-Trial Order (PTO), p. 362.

Republic Act (R.A.) No. 6938 (Cooperative Code), with license to transact business and sue in the Philippines in accordance with the Cooperative Code, having its principal office address at No. 22, 13th St., Bacolod City.[2] It is represented by Freddie W. Zayco, of legal age, married, resident of Bacolod City and Chairperson of the Board of ANAPI Multi-Purpose Cooperative and authorized through a Board Resolution.[3]

Respondent CIR is the Chief of the BIR, the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcements of all forfeitures, penalties and fines connected with such taxes. He may be served with summons, notices and other legal processes at Room 703, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Respondent BIR Regional Director, Region 12, Bacolod City, is holding office at the BIR Regional Office, Hernaez St., Brgy. Taculing, Bacolod City.[5]

Letter of Authority (LOA) No. 00024477[6] dated February 6, 2008 was issued, authorizing Revenue Officer Amor Leilani M. Tayo and Group Supervisor Richard R. Oquendo to examine petitioner's books of accounts and other accounting records for income and all other internal revenue taxes for the period from January 1, 2006 to December 31, 2006. The LOA was received by petitioner on February 28, 2008.[7]

On July 16, 2009, a Preliminary Assessment Notice (PAN)[8] was issued against petitioner for taxable year 2006.

The Formal Letter of Demand (FLD) with Assessment Notices (FAN), all dated October 12, 2009, were received by ANAPI on October 26, 2009,[9] assessing petitioner for deficiency VAT, expanded withholding tax (EWT), and compromise penalties.

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[2] Docket, PTO, p. 362.
[3] *Id.*
[4] Docket, PTO, p. 362.
[5] Docket, PTO, p. 362.
[6] BIR Records, Exhibit "R-1", p. 53.
[7] *Id.*
[8] BIR Records, Exhibit "R-12", pp. 95-100.
[9] Docket, Petition for Review (PFR), p. 12.

Petitioner filed a letter of protest dated November 16, 2009 assailing the assessment notice and letter of demand on the grounds that it was exempt from payment of all internal revenue taxes, including VAT, on the sale of its refined sugar; that there is no provision in the National Internal Revenue Code of 1997, as amended (NIRC), imposing tax before the sale of refined sugar; and, that the assessment was issued beyond the three-year prescriptive period.[10] Petitioner further stated that it has remitted to the BIR the amounts withheld from payments to management and other professional fees to various recipients.[11]

The Amended FLD/FAN,[12] all dated December 9, 2010, were issued demanding payment of the amount of Php48,075,359.69, representing deficiency VAT and compromise penalty for taxable year 2006.[13] The assessment for EWT was no longer included therein. The assessment was computed as follows:

VALUE-ADDED TAX			
No. of LKG per BIR data			232,533.36
Rate per LKG			850.00
Gross Value-Sugar Sales			197,653,356.00
Output Tax			
January	16,471,113.00	10%	1,647,111.30
February to December	181,182,243.00	12%	21,741,869.16
			23,388,980.46
Less: Input Tax			-
VAT Payable			23,388,980.46
Less: Payments made			-
Deficiency VAT			23,388,980.46
Add: Surcharge		5,847,245.12	
Interest (1/25/07 to 1/31/11)	0.80	18,788,134.11	24,635,379.23
TOTAL AMOUNT DUE			48,024,359.69

Compromise penalties of Php51,000.00 were also assessed.

On March 6, 2013,[14] petitioner received the Final Decision[15] issued by Myrna S. Leonida, Assistant Regional Director of BIR RR-12. The Final Decision provided that ANAPI was liable to pay advance VAT for the reasons that:

a. BIR Ruling No. 12-08-2001, granting ANAPI tax exempt status, is null and void due to the

[10] Docket, PFR, p. 12.
[11] BIR Records, Letter of Protest dated November 16, 2009, p. 120.
[12] BIR Records, Exhibit "R-15", "R-15-a" to "R-15-b", pp. 239-248.
[13] Docket, PTO, p. 362.
[14] BIR Records, Motion for Reconsideration dated April 2, 2013, par. 14, p. 295.
[15] BIR Records, Exhibit "R-16", pp. 251-255.

misrepresentation committed by ANAPI in obtaining the said BIR Ruling, and ANAPI was not the owner of the refined sugar it withdrew from the sugar mill.

b. ANAPI was not the owner/producer of the sugar as shown in the sugar quedans, and

c. ANAPI failed to submit its books of accounts and other accounting records, thus the resort to best evidence obtainable, which pertains to documents in the possession of the BIR.

d. The rules and regulations (RR) issued by administrative authorities pursuant to the powers delegated to them have the force and effect of law, and are binding to all persons subject to them.

On April 2, 2013, petitioner elevated the issue to the respondent CIR assailing the Final Decision of the BIR Revenue Region (RR) -12 on the grounds that ANAPI is a duly registered multi-purpose cooperative which was exempt from paying internal revenue taxes, including VAT, and that the assessment made was null and void having been issued beyond the three-year prescriptive period as provided in Section 203 of the NIRC.[16]

A Supplement to Motion for Reconsideration with attached Official Sugar Warehouse Receipt (Quedan) with serial numbers a. 004025, b. 005187, c. 006747, and d. 008855 dated May 3, 2013, was also filed by ANAPI before the Office of the CIR on the same date.[17]

On January 30, 2018, the respondent CIR issued a Decision, the dispositive portion of which provides "*IN VIEW OF ALL THE FOREGOING, the decision dated February 26, 2013 denying the protest of ANAPI against the Formal Letter of Demand and Assessment Notice with Assessment Number 00198-2010 and 00199-2010 both dated December 9, 2010 demanding payment of the total amount of Php48,075,359.69 as*

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[16] Docket, PFR, p. 13.
[17] Docket, PTO, p. 362.

deficiency value added tax and compromise penalties for taxable year 2006 is hereby affirmed in all respects. xxx"[18]

On March 22, 2018,[19] ANAPI filed the instant Petition for Review.

On May 7, 2018, petitioner filed its *Urgent Motion to Lift Warrants of Distraint and Garnishment and to Suspend Collection of Taxes with Application for Waiver of Deposit/Bond Requirement.*[20] After hearing[21] on petitioner's *Urgent Motion*, the Court granted the suspension of collection of taxes, subject to the filing of a bond in the amount of Php23,396,655.46. Petitioner's prayer to waive the bond requirement was denied.[22] On August 10, 2018, the Court reduced the surety bond amount from Php23,396,655.46 to Php2,339,665.55.[23] Petitioner was able to comply with the requirements as found in the Resolution[24] dated October 29, 2018, and the Writ of Preliminary Injunction/Suspension Order was issued.[25]

On June 8, 2018, respondent CIR filed his Answer,[26] within the extended periods[27] granted by the Court.

On September 25, 2018, the case was transferred to the First Division.[28]

Pre-trial of the case proceeded on February 21, 2019,[29] with *Respondent's Pre-Trial Brief*[30] having been filed on July 13, 2018, while the *Pre-Trial Brief of Petitioner*[31] was filed on February 18, 2019.

The parties filed their *Joint Stipulation of Facts and Issues*,[32] which was approved in the Resolution[33] dated March

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[18] Docket, PTO, p. 362.
[19] Docket, p. 10.
[20] Docket, pp. 49-66.
[21] Docket, Minutes of Hearing and Order dated May 16, 2018, pp. 90-91.
[22] Docket, Resolution dated May 30, 2018, pp. 111-114.
[23] Docket, pp. 159-163.
[24] Docket, pp. 203-205.
[25] Docket, pp. 206-207.
[26] Docket, pp. 118-127.
[27] Per Order dated May 2, 2018 and Resolution dated June 5, 2018, docket, pp. 48 and 116-117, respectively.
[28] Docket, p. 174.
[29] Docket, pp, 310-311; Order on pp. 315-316.
[30] Docket, pp. 152-156.
[31] Docket, pp. 211-215.
[32] Docket, pp. 323-327.
[33] Docket, pp. 335.

28, 2019. The Pre-Trial Order[34] (PTO) was issued on June 4, 2019 to govern the proceedings of the case.

Trial proceeded with petitioner presenting its sole witness, Mr. Jose V. Ramos on June 11, 2019. Respondent CIR manifested that he will no longer present witnesses considering that his documents/exhibits have likewise been identified by petitioner's witness. However, respondent requested that he be allowed to file his Formal Offer of Evidence.

Thus, on June 27, 2020, the Court received the *Formal Offer of Exhibits For The Petitioner*[35] and respondents' *Formal Offer of Documentary Evidence.*[36] The Court resolved the parties' respective offers of evidence on September 25, 2019, thereby admitting and denying certain exhibits.[37]

On October 31, 2019, respondent CIR filed his *Memorandum,*[38] while the Court received *Memorandum for Petitioner*[39] on November 25, 2019. Thereafter, the case was submitted for decision on December 5, 2019.[40]

ISSUE

The parties stipulated the following issue:

> Whether or not petitioner is liable to pay the alleged deficiency VAT and compromise penalties in the aggregate amount of Php48,075,359.69 for taxable year 2006.[41]

Petitioner's Arguments

Petitioner argues that as an agricultural cooperative, it is entitled to VAT exemption, neither is it required to pay or file VAT returns for refined sugar withdrawn for the year 2006.

Petitioner states that all the refined sugar withdrawals made in 2006 were covered by the Authorization Allowing

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[34] Docket, pp. 361-368.
[35] Docket, pp. 399-404.
[36] Docket, pp. 407-412.
[37] Docket, Resolution dated September 25, 2019, pp. 440-442.
[38] Docket, pp. 443-451.
[39] Docket, pp. 452-464.
[40] Docket, p. 467.
[41] Docket, PTO, p. 363.

Release of Refined Sugar (AARRS). Among the requirements in order to secure the release of AARRS in favor of the cooperative was that the sugar quedan presented to the BIR must be in the name of the cooperative. When the BIR issued the AARRS to petitioner, there is a presumption that all the requirements for the release of the AARRS had been submitted. In line with the presumption of regularity in the performance of duties of public officers, the issuance of the AARRS in favor of petitioner presupposes that the cooperative submitted to the BIR the complete documentary requirements for its applications, including the sugar quedans in its name.

Petitioner argues that the BIR was not able to present proof to the contrary except mere baseless and unsubstantiated allegations that the refined sugar was not owned by petitioner.

Petitioner further states that it is not required to file VAT returns, and argues that the assessment is void for having been issued beyond the three-year period provided in Section 203 of the NIRC.

Respondents' arguments

Respondents argue that petitioner is not the owner/producer of the sugar as shown by sugar quedans which are not in the name of the cooperative. Respondents allege that some of the quedans were in the name of the individual member-planter/cooperative, while others in the name of the cooperative but show different plantation audit numbers (PANs) and tax identification numbers (TINs).

As to period to assess the deficiency VAT, respondents allege that the assessment is valid having been issued within ten (10) years from the time of discovery of the non-filing of the VAT returns.

Respondents also argue that all presumptions are in favor of the correctness of tax assessments.

RULING OF THE COURT

The petition has merit.

The BIR does not question petitioner's standing as a duly registered cooperative, but instead, argues that petitioner is liable for deficiency VAT on the ground that it does not own the refined sugar withdrawn from the sugar mill. Thus, the assessment is based on the total alleged withdrawals of refined sugar, on the argument that such withdrawals should have been subject to the payment of advance VAT.

The Amended FLD computed the deficiency VAT, as follows:

VALUE-ADDED TAX			
No. of LKG per BIR data			232,533.36
Rate per LKG			850.00
Gross Value-Sugar Sales			197,653,356.00
Output Tax			
January	16,471,113.00	10%	1,647,111.30
February to December	181,182,243.00	12%	21,741,869.16
			23,388,980.46
Less: Input Tax			-
VAT Payable			23,388,980.46
Less: Payments made			-
Deficiency VAT			23,388,980.46
Add: Surcharge		5,847,245.12	
Interest (1/25/07 to 1/31/11)	0.80	18,788,134.11	24,635,379.23
TOTAL AMOUNT DUE			48,024,359.69

The Details of Discrepancies[42] explain the assessment as follows:

> The assessment was based on the Authorization Allowing the Release of Refined Sugar (AARRS) issued to you on the withdrawal of refined sugar without the payment of Advance VAT. The assessment was made on best evidence obtainable pursuant to Section 6(B) of the National Internal Revenue Code, as amended, for your failure to submit the following:
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> 1. Books of Accounts and its supporting documents;
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> 2. List of Buyer;
>
> 3. Documents to prove that your Cooperative is a **producer**
>
> (Listings of Official Warehouse Receipt Quedan showed the Names of Planters, they being the holders of Planters Code or Plantation Audit No., therefore, you are not the planter-producer and your role was only to market the produce of the planters.

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[42] BIR Records, pp. 243-244.

> Moreover, your financial statements failed to prove that indeed you incurred production expenses that would make you a co-producer as per your allegation.
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> Based on the foregoing, hereunder are the assessed deficiency taxes and penalties:
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> **DEFICIENCY VALUE ADDED TAX**
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> Per BIR data, you had withdrawn 232,533.36 LKG of refined sugar for the taxable year 2006 without payment of Advance VAT, thus deficiency VAT was assessed in the total amount of P 48,024,359.69, inclusive of penalties. The assessment was based on Revenue Regulations (RR) No. 29-2002 dated December 9, 2002, as amended by Revenue Regulations No. 2-2004 dated January 2, 2004. Surcharge and interest were imposed pursuant to Sections 248(A) and 249(A) of the National Internal Revenue Code (NIRC), as amended. Section 4.115(b) of RR 16-2005 further enunciated the imposition of surcharge, interest and other penalties to VAT liabilities determined per audit.

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,*[43] the Supreme Court discussed the interplay of the presumption in favor of the correctness of assessments and the presence of sufficient evidence.

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have

[43] G.R. No. 136975, March 31, 2005.

> access to relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
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> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all evidence introduced and its ultimate determination must find support in credible evidence.*
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> xxx xxx xxx
>
> The petitioner cannot rely on the presumption that she and other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption. *(Italics in the original)*

Applying the foregoing, the Court finds that the assessment against petitioner lacks factual basis.

The assessment is based on alleged "BIR data" stating that petitioner withdrew 232,533.36 LKG of refined sugar for taxable year 2006. However, respondents did not attach nor show any breakdown of this alleged 232,533.36 LKG of refined sugar. Neither did respondents explain how it computed this total amount.

The Details of Discrepancies refer to a "Listings of Official Warehouse Receipt Quedan" which allegedly show that petitioner is not the owner of the refined sugar withdrawn from the mill. In respondents' Answer, respondents refer to the portion of the CIR's Decision stating that the "Abstract of Official Sugar Warehouse Receipt" indicate different plantation audit numbers and tax identification numbers supposedly proving that the quedans are not owned by the cooperative itself.

However, this alleged Listing or Abstract was not presented in evidence.

Respondents submitted in evidence Exhibits"R-17-a to d",[44] which are allegedly quedans not in the name of petitioner. However, a perusal of said quedans would show that the same are in the name of ANAPI. While the subject four (4) quedans do show different planter's numbers, respondents failed to prove that this means that petitioner is not the owner of the sugar.

Granting *arguendo* that these sugar quedans prove that petitioner is not the owner of the sugar, respondents failed to allege which AARRS is rendered void by a defective sugar quedan, and would therefore subject petitioner to the corresponding deficiency VAT on such sugar withdrawal. On the other hand, petitioner presented AARRS[45] duly issued and in the name of ANAPI supporting its withdrawal of sugar for year 2006. These AARRS are unrefuted by respondents' evidence.

Thus, absent sufficient evidence to support the assessment, the presumption of correctness of assessment no longer applies. There being no factual or supporting evidence, the assessments must be cancelled.

Unfortunately, the Court notes a procedural lapse on the part of the petitioner which renders the subject assessment final, executory and demandable.

It is undisputed that the Amended FLD/FAN,[46] all dated December 9, 2010, were issued demanding payment of the amount of Php48,075,359.69, representing deficiency VAT and compromise penalty for taxable year 2006. The Amended FLD specifically stated that: "This cancels FLD/FAN 00229-00230-00231/2009 all dated October 12, 2009."[47]

Nowhere in the records does it show that petitioner filed a protest to the said Amended FLD/FAN, as required by Section

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[44] BIR Records, pp. 299-302.
[45] Docket, Exhibits "P-8" to "P-49", except Exhibits "P-11" and "P-43", which were denied, pp. 265-306.
[46] BIR Records, Exhibit "R-15", "R-15-a" to "R-15-b", pp. 239-248.
[47] BIR Records, Exhibit "R-15", p. 245.

228[48] of the NIRC, and implemented by Sec. 3.1.5[49] of Revenue Regulation No. 12-99.

The above notwithstanding, the Court shall look into respondent's right to collect the assessed deficiency VAT. The period for assessment and collection of taxes is provided in Section 203 of the NIRC, as follows:

> SEC. 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.

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, the Supreme Court stated:

> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and the three year period for collection of the

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[48] Section 228. *Protesting of Assessment.* – xxx
xxx
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
xxx

[49] Section 3.1.5. *Disputed Assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.
xxx

assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.

In the instant case, the parties had stipulated only that the Amended FLD/FAN dated December 9, 2010 were issued demanding payment of the amount of Php48,075,359.69, representing deficiency VAT and compromise penalty for taxable year 2006.[50] A perusal of the Amended FLD/FAN in the BIR Records show that there is a stamp indicating that said documents were mailed on December 22, 2010.[51] Thus, applying the foregoing discussion, respondent had three (3) years from December 22, 2010 within which to collect the said assessed deficiency VAT, or until December 22, 2013. The Warrant of Distraint and/or Levy[52] was issued on March 8, 2018 and served on March 14, 2018, and Warrants of Garnishment[53] were issued on March 16, 2018. Clearly, these collection efforts by respondent were way beyond December 22, 2013, and therefore prescribed.

WHEREFORE, the instant Petition for Review is **GRANTED**. Respondent's right to collect the subject deficiency VAT has prescribed. Accordingly, the Warrant of Distraint and/or Levy issued on March 8, 2018, and Warrants of Garnishment issued on March 16, 2018 are **CANCELLED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[50] Docket, PTO, par. 5, p. 362.
[51] BIR Records, Exhibit "R-15", "R-15-a" to "R-15-b", pp. 239-248.
[52] Docket, p. 82.
[53] Docket, pp. 83-84.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice