REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

AQUAFRESH SEAFOODS, INC.,
Petitioner,

\- versus -

C.T.A. CASE NO. 6409

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR BIR REVENUE REGION NO. 11-Iloilo City,
Respondents,

Promulgated:
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DECISION

BAUTISTA, L., *J.*:

Petitioner filed a Petition for Review on March 19, 2002 seeking for the reversal of: (a) the assessments issued by BIR Revenue Region No. 11-Iloilo City ["RR-Iloilo"] for deficiency capital gains taxes ["CGT"] and documentary stamp taxes ["DST"] in the total combined sum of P1,728,439.08; (b) the denial of petitioner's protests against said deficiency assessments by RR-Iloilo; and (c) the subsequent denial of the administrative appeal filed with the Appellate Division, Office of the BIR Commissioner.

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Culled from the evidence adduced and from the stipulated facts of the parties, the uncontroverted facts are as follows:

In a Deed of Sale dated June 7, 1999, petitioner sold two parcels of land, including improvements thereon, situated in Barrio Banica, Roxas City, Panay, to Phillips Seafood Holdings, Inc. ["Phillips"] for THREE MILLION ONE HUNDRED THOUSAND PESOS (₱3,100,000.00).[1] Petitioner filed a CGT Return/Application for Certificate of Authorizing Registration on said date. It also paid the amount of ₱186,000.00 as CGT[2] and ₱46,500.00 as DST[3] on same date. Petitioner was issued the corresponding Revenue Official Receipt Nos. 00578424 and 00578425 for the said payments.[4] Subsequently, Revenue District Officer ["RDO"] Gil G. Tabanda issued a Certificate Authorizing Registration No. 1071477.[5]

However, one Mrs. Melita Alba wrote to the RDO-Roxas City, RR-Iloilo, and the Tax Fraud Office of BIR-Head Office denouncing the undervaluation of lots sold by petitioner to Phillips Seafood Holdings, Inc. sometime in August 1999.

In view thereof, an investigation and ocular inspection were conducted and found the subject lots as COMMERCIAL with zonal value of ₱2,000.00 per square meter. Thus, petitioner received a Preliminary Assessment dated May 12, 2000 from Regional Director ["RD"] Sonia L. Flores[6] wherein it was found liable to pay deficiency CGT and DST in the amounts of ₱1,316,665.78 and ₱242,193.75, computed as follows:

Lot No. 351-5-A	5,857 sq. ms.	x	P2,000.00	P11,714,000.00

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1 The first lot was covered by TCT No. T-21799 and has a total area of 5,857 sq.m. The second lot was covered by TCT No. T-21804 and has a total area of 385 sq.m.
2 Annex "G" of the Petition for Review also marked as Exhibit "B".
3 Annex "H" of the Petition for Review also marked as Exhibit "C".
4 Annexes "J-1" and "J-2" of the Petition for Review.
5 Annex "J" of the Petition for Review.
6 Annex "K" of the Petition for Review also marked as Exhibit "E".

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Lot No. 3515-A-6-D	385 sq. ms.	x P2,000.00	770,000.00
Improvements -	Bldg.		2,910,647.35
Water Tank			129,582.18
Fence			492,480.00
Total Basis			P16,016,709.53

Capital Gains Tax Due Thereon	P 961,002.57
Less: Amount Paid	186,000.00
Deficiency Capital Gains Tax	P 775,002.57
Add: 50% Surcharge	387,501.28
20% interest per annum from 7-06-99 to May 6, 2000 (.16666)	129,161.93
Compromise penalty	25,000.00
Total	**P 1,316,665.78**

Doc. Stamps	P 240,255.00
Less: Amount Paid	46,500.00
Deficiency Doc. Stamp	193,755.00
Add: 25% Surcharge	48,438.75
TOTAL	**P 242,193.75**

It was also stated therein that petitioner failed to include in the CGT Return the following improvements:

1.	Commercial Building per Tax Dec. No. 1768	₱2,910,647.00
2.	Water Tank Tax Dec. No. 0867	129,582.18
3.	Fence – Tax Dec. No. 0868	429,480.00

Subsequently, Asst. Chief Esteban V. Largo and IO Rey Jorge V. Pallon sent a Letter, dated July 12, 2000, to the RD of RR-Iloilo recommending that an Assessment Notice be sent to petitioner.[7] It was alleged therein that they acted on the August 5, 1999 letter-complaint of certain Amelita Alba of Roxas City against petitioner for undervaluation of the deed of sale of the subject lots. While the informant failed to substantiate her allegation with documentary evidence, still, the Special Investigation Division ["SID"]

7 Annex "M" of the Petition for Review also marked as Exhibit "G".

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proceeded with the investigation and conducted an ocular inspection of the properties on November 4 and 5, 1999 to determine the correct valuation thereof. It was discovered that there were improvements on the subject lots and the same were used in business. This was confirmed by the letter dated September 9, 1999, of RDO Gil G. Tabanda to the RD.

Meanwhile, the Assessment Division of RR-Iloilo conducted a routine post audit review of the CGT-DST returns and payments and found that one of the properties sold was incorrectly classified as General Purpose (GP) with zonal value of ₱300 per square meter when the same should have been classified as residential regular (RR) with zonal value of ₱650 per square meter. Thus, petitioner was found to have deficiency CGT and DST in the aggregate amount of ₱71,808.00 computed as follows:[8]

"Zonal Value Banica, Roxas City (RR) ₱650.00 per sq.m."

1. CGT deficiency:		
6242 sq.m. x 650.00		₱4,057,300.00
6% CGT due		243,430.00
less: CGT paid O.R. 005782424		186,000.00
Deficiency CGT		57,430.00
2. DS deficiency:		
Doc. Stamps due	₱60,870.00	
Less: O.R. 00578425	46,500.00	
Deficiency Doc stamps		
Stamps due	14,370.00	14,370.00
Total Def. CGT & Ds tax due		**₱71,800.00**

Thereafter, the RDO sent a Preliminary Assessment Notice ["PAN"], dated July 25, 2000, informing petitioner of the revision and its deficiency CGT and DST.

8 Annex "N" of the Petition for Review also marked as Exhibit "H".

Petitioner paid on October 5, 2000 the said amount of deficiency DST and CGT due[9] and sent a letter informing RD Sacamos of RR-Iloilo of the payment of the said deficiency taxes.[10]

Despite petitioner's payment of the deficiency taxes, RR-Iloilo sent two separate Assessment Notices, both dated September 15, 2000, for deficiency CGT and DST in view of the recommendation of the SID.[11] The deficiency "CGT" in the total amount of ₱1,372,171.46 was computed as follows:[12]

Net Income per return Selling Price		P 3,100,000.00
Add: Disallowance per audit/investigation:		
Zonal Value per investigation:		
Lot# 351-5-a-5857 sq.m. x.P2,000	P 11,714,000.00	
# 351-5-A-6-D-585 sq. m. x P2,000	770,000.00	
Total	12,484,000.00	
Add: Improvements		
Building	2,910,647.35	
Water Tank	129,582.18	
Fence	492,480.00	12,916,709.53
Net Income per audit investigation Total	16,016,709.53	16,016,709.53
Less: Selling Price/Deed of Sale	3,100,000.00	-
Net Taxable Income		-
Income tax due thereon: 6% CGT		961,002.57
Less: Tax Credits:	186,000.00	186,000.00
Add: 50% surcharge		775,002.57
20% interest per annum from	387,501.28	
7-16-99 to 9-15-00 (.23828)	184,667.61	
Compromise Penalty for late payment	25,000.00	597,168.89
TOTAL AMOUNT DUE AND COLLECTIBLE		P 1,372,171.46

The deficiency DST in the total amount of ₱356,267.62 was computed as follows:[13]

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9 Annexes "O" up to "O-2" of the Petition for Review.
10 Annex "P" of the Petition for Review.
11 Annexes "E" and "E-3" of the Petition for Review also marked as Exhibits "K" and "K-3".
12 Assessment marked as Annex "E-1" of the Petition for Review and as Exhibit "K-1".
13 Annexes "E-4" and "E-5" of the Petition for Review also marked as Exhibits "K-4" and "K-5".

Net Taxable Income	P	P	16,016,709.50
Income tax due thereon			240,255.00
Less: Tax Credits	46,500.00		46,500.00
Deficiency Tax Due			193,755.00
Add: 50% surcharge	96,877.50		
20% interest per annum			
from 7-11-99 to 9-15-00 (.23553)	45,635.12		
Compromise penalty for late payment	20,000.00		162,512.62
TOTAL AMOUNT DUE AND COLLECTIBLE]		P	356,267.62

On October 1, 2000, petitioner filed its Protest to RR-Iloilo.[14]

Regional Director ["RD"] Leonardo Q. Sacamos of RR-Iloilo, in his Letter dated December 11, 2000, did not give due course to petitioner's protest for lack of legal basis and attached a copy of the approved Report of Intelligence Officer I ["IO"] Rey Jorge V. Pallon.[15] In the said Report,[16] IO Pallon recommended that petitioner's letter-protest be denied on the following grounds:

> 1. The classification of lands as stated in the tax declarations does not automatically bind the BIR for tax purposes until an actual ocular inspection has been made to determine the ACTUAL USE OF PROPERTY.
>
> The classification of the subject lots should be COMMERCIAL as petitioner and the subsequent owner Phillips Seafoods Holdings, Inc. use the same as a processing plant for seafoods products.
>
> 2. The Audit Manual mandates BIR personnel to conduct ocular inspection to determine ACTUAL USE of the property as basis of correct computation of taxes.
>
> In addition, RDO Gil G. Tabanda of RDO 72 confirmed in his September 7, 1997 Memorandum that the subject real property with improvement were actually used in business as per attached tax declaration.
>
> 3. BIR's classification of the 2 lots as commercial reflects the real situation which are as follows:
>
> > a. The said lots were used in pursuit of business and the building standing thereon was used as processing plant by petitioner;
> >
> > b. Petitioner did not submit retirement papers for its business;

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14 Annex "D" of the Petition for Review also marked as Exhibit "L".

15 Annex "C" of the Petition for Review also marked as Exhibit "M".

16 Annex "C-1" of the Petition for Review also marked as Exhibit "M-1".

c. The second owner Philipps Seafoods Holdings, Inc. uses the same as its processing plant.

4. The improvement found in the lots sold is a building, not intended as residential, with concrete fence.

5. The imposition of surcharge and interest on delinquency is mandatory under Sections 248 (a) (1) and (3) and 249 of the Tax Code.

6. There was an actual conduct of investigation and ocular inspection of the premises before submitted a report. The report became the basis for the Assessment Division to recommend a pre-assessment notice be sent to the taxpayer.

7. The collection of the amount assessed in the subsequent assessment notice is proper to finance the present cash deficit of the government.

There is also no truth to the allegation of railroading as petitioner was given the opportunity to furnish necessary papers to rebut the allegations of the "Third Party Informant" ["TPI"]. The TPI merely gave basis to open the case against petitioner and for the BIR to conduct an investigation.

Petitioner then asked for an extension of time to file a reconsideration of the denial and the same was granted by RR-Iloilo.[17] Petitioner's counsel elevated its appeal to respondent, thru the Appellate Division, from the denial of its protest by RR-Iloilo. Regional Director of RR-Iloilo Rene Q. Aguas, through a Letter dated February 13, 2002, denied with finality the appeal of the petitioner for lack of legal basis and with demand for petitioner to settle its tax liability.[18]

Hence, this Petition for Review.

The parties stipulated on the following issues:

1. At the time of the sale of the properties located in Brgy. Poblacion, Banica, Roxas City, which was on June 7, 1999, what was the zonal classification and valuation of all the properties found therein, based on the officially approved revised zonal valuation for said properties?

2. Without going through the process for amending said zonal classification and valuation as prescribed under Rev. Memo Order No. 56-89, can respondent CIR on his own and in individual cases, change them?

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17 Annex "Q" of the Petition for Review.

18 Annex "A" of the Petition for Review also marked as Exhibit "O".

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3. Whether or not respondent CIR's classification of the subject lot as commercial based on actual use is proper?

4. Whether or not the imposition of the prescribed Zonal Valuation in the amount of Php:2000 per square meter is justified?

5. Whether or not the deficiency assessments in the amount of Php:1,372,171.46 and Php:356,267.62 as deficiency capital gains tax and documentary stamp tax respectively are proper?

One of the powers and duties of the BIR, headed by respondent, is to assess and to collect all national internal revenue taxes, fees and charges to ensure success in the tax administration and enforcement and this Court always underscores the importance of taxation as the government chiefly relies on it in carrying out its operations.

In the present case, petitioner were assessed of deficiency CGT and DST for the sale of two lots in Barrio Banica in Roxas City. The focal point to resolve is: what is the fair market value to be applied in determining the deficiency tax liabilities of petitioner?

CGT is a tax on the gain presumed to have been realized by the seller arising from the transfer. It is simply a tax on a person's income, wages, salary, commission, emoluments, profits and the like.[19] Thus, a final tax of six percent (6%) is imposed on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value, whichever is higher, of subject property.[20] The 1997 National Internal Revenue Code ("NIRC") does not give Us the definition of "fair market value" but provides in Section 6(E) that:

> "The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair

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19 *Planters Development Bank vs. CIR*, CTA Case No. 6574, November 18, 2003.

20 Section 27 (D) (5) of the NIRC.

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market value of real properties located in each zone or area. For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of:

(1) the fair market value as determined by the Commissioner; or
(2) the fair market value as shown in the schedule of values of the Provincial and City Assessors."

On the other hand, DST is an excise tax imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. The same is levied and paid only once at the time the taxable document is issued.[21] DST, based on **"consideration contracted to be paid for such realty or on its fair market value** [as determined in accordance with Section 6(E) of the NIRC], whichever is higher xxx", shall be computed as follows:[22]

1. When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed P1,000.00 – P15.00;

2. For each additional P1,000.00, or fractional part thereof in excess of P1,000.00 of such consideration or value – P15.00

In the Contract of Sale between petitioner and Phillips, the gross selling price is ₱3,100,000.00 for the two lots, including the "improvements" thereon *("Exhibit A")*. However, at the time of sale, the Revised Zonal Values of Real Properties in the City of Roxas under RDO No. 72, Barrio Banica (where the subject properties are found) is classified as "RR" or "residential regular" which is defined as land/building principally devoted to habitation with zonal value of P650.00 per square meter.[23]

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21 *Lincoln Philippine Life Insurance Co., Inc. vs CIR*, CTA Case No. 4583, March 30, 1993.
22 Section 196 of the NIRC.
23 The said zonal valuation under Ministry Order No. 21-86 (as amended by Department Orders No. 13-89 and 11-92) was approved on October 6, 1994 and became effective on April 21, 1995.

In assessing for deficiency taxes, respondent submits that the subject lots should be classified as "commercial" based on the actual use by petitioner with a zonal value of P2,000.00 per square meter at the time of sale.

The Court disagrees.

While respondent is given the authority to determine the fair market value of the subject properties for the purpose of computing internal revenue taxes, such authority is not without restriction or limitation. The first sentence of Section 6(E) sets the limitation or condition in the exercise of such power by requiring respondent to consult with competent appraisers both from private and public sectors. As there was no re-evaluation and no revision of the zonal values of real properties in Roxas City at the time of sale, respondent can not unilaterally determine the zonal values of the subject properties by invoking his powers of obtaining information and making assessments under Sections 5 and 6 of the NIRC. The existing Revised Zonal Values of Real Properties in the City of Roxas shall prevail for the purpose of determining the proper tax liabilities of petitioner.

While our Tax Code vests unto respondent several powers for the purposes of tax enforcement and administration, such powers shall not be capriciously, despotically and arbitrarily exercised. Zonal valuation was established with the objective of having an "efficient tax administration by minimizing the use of discretion in the determination of the tax base on the part of the administrator on one hand and the taxpayer on the other hand."[24] Respondent cannot arrogate upon himself in classifying the subject properties as COMMERCIAL based on the actual use and apply the zonal value of ₱2,000.00 in determining the tax base and deficiency taxes of petitioner.

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24 Gallardo, *Zonal – A Property Valuation For Income & Transfer Taxes*, Philippine Revenue Journal, p. 8, March-April 1994.

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In computing the tax liabilities of petitioner, the tax base shall be either the gross selling price or fair market value, whichever is higher. The fair market values of the subject lots sold, based on the existing zonal valuation in Roxas City, are as follows:

Lot No. 351-5-A	5,857 sq.ms.	x	₱650.00	₱3,807,050.00
Lot No. 3515-A-6-D	385 sq.ms.	x	₱650.00	₱ 250,250.00
Total				**₱4,057,300.00**

Further, as established by evidence on record, there exist improvements on the lots sold which include water tank, fence and building on the date of sale with the following valuation:

	Market Value
Building	₱2,910,647.35
Fence	492,480.00
Water Tank	129,582.18
Total	**₱3,532,709.53**

The Court does not subscribe to petitioner's claim that it should not be held liable for CGT and DST on the improvements found on the subject lots sold. While the subsequent owner Phillips made considerable improvements or renovations on the building and converted the same as a processing plant in relation to the latter's business at the time the SID made an the investigation, petitioner admitted and respondent was able to prove that there was a residential building, a fence and a water tank on the subject lots and it was paying real property taxes as evidenced by Tax Declarations.[25] Hence, the value of the improvements found on the lots sold shall be taken into consideration in determining the CGT and DST liabilities of petitioner.

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25 Exhibits "18", "19" and "20" for respondent.

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As the fair market values of the subject properties are higher than the selling price, petitioner is liable to pay deficiency CGT and DST, computed as follows:

Lots		₱ 4,057,300.00
Improvements		3,532,709.00
Total		₱ 7,590,009.53
6% CGT	₱ 455,400.57	
Less CGT paid	-243,430.00	
CGT due		₱ 211,970.57
DST	113,865.00	
Less DST paid	-60,870.00	
DST due		₱ 52,995.00
TOTAL		₱ 264,965.57

While petitioner was twice assessed for deficiency CGT and DST, there is no double taxation. Double taxation is defined as taxing the same property twice when it should be taxed but once.[26] In the present case, petitioner was twice assessed for deficiency CGT and DST resulting from an error committed by RR-Iloilo when it initially computed the tax liabilities of petitioner arising from the sale. It must be stressed that respondent has the power to reassess and collect any additional tax due if there is an error resulting to an under assessment of tax.[27] This is consistent with the principle that errors of certain administrative officers should not be allowed to jeopardize the government's financial position.[28]

Petitioner cannot impute ill-motive when the Bureau of Internal Revenue ["BIR"] pursued its investigation based on the complaint filed by a certain Mrs. Alba. The BIR, in conducting investigations and assessing taxpayers of deficiency internal revenue taxes, is acting within its powers granted under the Tax Code as it is the government agency in charge of tax enforcement and administration.

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26 Aban, *Law of Basic Taxation in the Philippines*, revised ed., p. 113.
27 *Siasat vs. Commissioner of Internal Revenue*, CTA Case No. 3097, August 30, 1982.
28 *Commissioner of Internal Revenue vs. Court of Appeals*, 234 SCRA 348, July 21, 1994.

In sum, there is no contest on the authority of respondent to prescribe real property values and his power to obtain information in determining the tax liability of any person for any internal revenue tax subject to the limitation set forth in the NIRC. Hence, the Court will strike as arbitrary and, therefore, declare as illegal, any act of respondent beyond his statutory authority. This is in consonance with the principle that: "[T]ax collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved. xxx [Besides], the power to tax must be exercised with caution to minimize injury to the proprietary rights of a taxpayer."[29]

IN VIEW OF THE FOREGOING, respondent's assessments for deficiency capital gains tax and documentary stamp taxes are hereby **CANCELLED** and **SET ASIDE**. However, petitioner is **ORDERED to PAY** the respondent deficiency capital gains and documentary stamp taxes in the sum of P394,197.22, computed as follows:

	CGT	DST
Basic Deficiency Tax	P 211,970.57	P 52,995.00
Add: 25% Surcharge	52,992.64	13,248.75
20% Interest	50,508.35	12,481.91
Total Deficiency Taxes Due	P315,471.56	P 78,725.66

plus 20% delinquency interest computed from October 17, 2000 until fully paid pursuant to Section 249 of the 1997 Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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29 *Philippine National Bank vs. Commissioner of Internal Revenue Tax*, CA-GR Sp. No. 76488, October 14, 2003.

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

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