Lit

FIRST LEGASPI REALTY
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3748

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

10/28/88

D E C I S I O N

This case was considered submitted for decision on the basis of the pleadings and records, upon motion of respondent Commissioner of Internal Revenue, after petitioner First Legaspi Realty Corporation, or counsel, failed to appear at the hearing on September 17, 1986 to prosecute its action, despite proper notice thereof. While petitioner was given ample time within which to file its memorandum, no memorandum was filed by it.

The background facts are not disputed. As alleged in the petition for review and admitted by respondent:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal offices at 4th Floor, Planters Development

Bank Building, 149 Legaspi St., Legaspi Village, Makati, Metro Manila, while respondent is the duly appointed Commissioner of Internal Revenue of the Philippines with offices at the BIR Building, Diliman, Quezon City, where he may be served with summons. Respondent may, likewise be served with summons through the Solicitor General at his official address.

During the taxable year from January 1, 1976 to December 31, 1976, petitioner filed its quarterly and final corporate income tax returns and paid the proper taxes thereon.

During the taxable year from January 1, 1976 to December 31, 1976, petitioner filed its quarterly returns for income tax withheld at source and remitted to the Bureau of Internal Revenue the proper withholding taxes.

Petitioner received an assessment notice and covering letter dated March 22, 1982 requesting payment of the amount of P24,953.16 as deficiency income tax for the year 1976.

The above captioned assessment was arrived at by respondent through the following computation:

Net income per return		P10,414.79
Adjustments:		
Rental income (undeclared)	P20,100.00	
Interest expense (over claimed)	32,730.37	
Professional fees (unsupported and prior year's expense)	8,840.00	
Light and water (Prior year's expense)	4,080.90	
Repairs and maintenance (-do-)	1,021.67	
Leasehold improvements (-do-)	3,517.67	70,290.61
Net income per investigation		P80,705.40
Tax due thereon		P20,176.35
Less: Tax already assessed		2,603.70
Deficiency tax		17,572.65
Add: Interest at 42%		7,380.51
TOTAL AMOUNT DUE AND COLLECTIBLE		P24,953.16

From the covering letter, it could be gleaned that the deficiency income tax charged against petitioner is due to the disallowance of the following deductions:

(a) Rental income

(b) Interest expense

(c) Professional fees

(d) Light and water

(e) Repairs and maintenance

(f) Leasehold improvements.

On April 1, 1982, petitioner requested respondent to reconsider the assessment and to withdraw and cancel the demand for payment.

On August 18, 1983, a warrant of distraint and levy was served on petitioner.

On September 27, 1983, petitioner sought reconsideration and lifting of the Warrant of Distraint and Levy.

On February 20, 1984, petitioner received letter of respondent denying the request and the protest stating that this action constitutes the final decision on the matter.

Hence, the present appeal.

The basic question for determination is whether or not petitioner is liable for the deficiency income tax for the year 1976 in the amount of P24,953.16.

In asking that the petition for review be dismissed and judgment be rendered ordering petitioner First Legaspi Realty Corporation to pay the deficiency income tax i question, respondent contends: (p. 71, CTA records.)

> During the proceeding of this case petitioner failed to submit and offer its documentary evidence in support of its claimed deductions for the year in question. Neither did petitioner file its memorandum in support of its case. More, it failed to present evidence disputing the findings of respondent's Revenue Examiner that the amount of P59,100.00 received by petitioner as rent deposit is not considered income. No evidence

was likewise shown that the interest expense it claimed as deduction was not excessive.

On the claim for professional fees, expenses for light and water, repairs and maintenance and leasehold expenses, petitioner failed to present receipts or vouchers evidencing expenses thus so incurred.

Moreover, petitioner, on several occasions had shown lack of interest in pursuing its petition for review filed with this Honorable Court. Its failure to present any evidence showing the incorrectness of the assessment is fatal considering that the assessment made by the Commissioner of Internal Revenue is correct unless controverted (Bohol Land Transportation Co. vs. Commissioner of Internal Revenue, L-13099 and L-12462, April 29, 1960, 107 Phil. 168).

We agree.

The Court recognizes that 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 he (taxpayer) is right. (Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; see also Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 19[illegible], 19 SCRA 903.) And if the taxpayer fails to present evidence or proof in support of his allegations in his petition for review, or to prosecute his action, as in this case, conformably to the doctrine of the presumption in favor of the correctness of the tax assessment (Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 and L-13463, April 29, 1960, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer. (Caresosa vs. Bureau of Internal Revenue, CTA Case No. 3713, January 25, 1985, certiorari denied in G.R. No. L-70758, Aug. 30, 1985.)

Since no evidence was presented by petitioner to substantiate the errors that are claimed to have been committed by the Commissioner of Internal Revenue in making the assessment in question, this Court has no other alternative than to resort to the legal truism that "all presumptions are in favor of the correctness of tax assessments." The burden of proof is on the taxpayer to show the contrary. Petitioner utterly failed to do. This action finds support in the following authorities: (See Collector of Internal Revenue vs. Bohol Land Transportation Co.; Bohol Land Transportation Co. vs. Collector of Internal Revenue, L-13099 & L-13462, April 29, 1960, 107 Phil. 965.)

"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 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 clearly to show that the assessment was erroneous, in order to relieve himself from it. (51 Am. Jur. pages 620-621)." (Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil., 290; 52 Off. Gaz. /2/ 791.)

"When an importer challenges by legal steps the correctness of the assessment of a duty by the Collector of Customs, the question to be decided is not whether the Collector was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contention." (Behn, Mayer & Co. vs. Collector of Customs, 26 Phil., 647.)

"That the determination of the tax deficiency by the Government has prima facie validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct." (Perez vs. Court of Tax Appeals, et al., G.R. No. L-10507, May 30, 1958.)"

Even more, under section 3 of Rule 17, Rules of Court, if plaintiff (petitioner herein) fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, which actually happened in this case, the action may be dismissed upon motion of the defendant (respondent) or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court. Parenthetically, it may be stated that the general rules provided in the Rules of Court govern proceedings in the Court of Tax Appeals. The rules promulgated by the Court of Tax Appeals are merely supplementary. (Perez vs. Araneta, 103 Phil. 1167.)

Accordingly, petitioner First Legaspi Realty Corporation is ordered to pay to respondent Commissioner of Internal Revenue the amount of P24,953.16 as deficiency income tax for the year 1976, plus surcharges and interest incident to delinquency pursuant to the provisions of Section 51(e)(2)(3) of the applicable National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, October 28, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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

AMANTE FILLER
Presiding Judge