REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE INVESTMENT MANAGEMENT CONSULTANTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4812

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

7/22/94

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DECISION

In this suit, petitioner disputes the assessment for deficiency value-added tax (VAT) for 1988 issued by respondent ordering it to pay the sum of P1,165,700.42, inclusive of increments.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office at PHINMA Bldg., 166 Salcedo St., Legaspi Village, Makati, Metro Manila.

In the course of its business operation during the time material to this action, petitioner entered into management contract with United Pulp and Paper Co., Inc., (UPPC) and Rizal Cement Company (RCC) to manage the business as well as render technical services and other related matters to said entities.

Under the said agreement, petitioner is supposed to be paid annual incentive bonus equivalent to a certain percentage of income based on UPPC and RCC's audited financial statements for 1987.

The contracts were completed by petitioner before December 31, 1987 but payments were made thereafter. Petitioner billed UPPC and RCC for management bonus including 4% contractors tax on March 1988 based on the 1987 audited statements of said entities.

On July 20, 1988, petitioner paid contractor's tax on the basis of said billings to UPPC and RCC.

In a letter of respondent, dated June 19, 1991, which was received by petitioner on June 26, 1991, the former assessed and demanded from the latter the amount of P1,165,700.42 as deficiency VAT for the first semester of 1988, computed as follows:

Total taxable sales/receipts per filed audit	P10,588,853.00
10% Tax due thereon	1,055,855.30
Less: Tax Already Paid	474,144.73
Deficiency Tax Due	581,740.60
25% Surcharge due thereon	145,435.15
Interest	428,524.67
Compromise penalty and late payment	10,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 1,165,700.42

The aforesaid assessment was protested by petitioner in its letter, dated July 25, 1991, for lack of legal and factual basis.

On March 21, 1992, respondent rendered a final decision on the assessment which was received by petitioner on April 28, 1992 denying the protest on the ground, that the option to pay the 4% contractor's tax instead of the 10% VAT on amounts received after January 1, 1988 for billings of supposedly finished contract as of December 31, 1987 is a preferential treatment. As petitioner did not observe the conditions set forth under Section 6(g) of Revenue Regulation No. 5-87, respondent reiterated the demand for payment of the sum of P1,165,700.42.

Hence, petitioner interposed the instant appeal to this Court on May 27, 1992.

After due hearing, the case was submitted for decision on the basis of the pleadings and the records thereof, where petitioner filed its memorandum while respondent did not file any memorandum.

By and large, petitioner assails the decision of respondent holding it liable for deficiency VAT on the ground that the assessment is erroneous. Firstly, petitioner contends that strict compliance with the administrative requirements is not only impossible but also unreasonable in view of the stipulations in its contracts with UPPC and RCC which were completed on or before December 31, 1987 and payment of which are receivable on or after January 1, 1988, since the fees payable to petitioner cannot be determined prior to March 1988. Secondly, it substantially complied with Section 6(g) of Revenue Regulation No. 5-87 when it paid 4% contractors tax, on its billings to UPPC and RCC on July [illegible], 1988. Thirdly, any deficiency tax, if any, should be based on its gross receipts of P8,346,070.96 and not on P8,693,853.92.

On the other hand, respondent in answer to the petition for review and as special and affirmative defenses, alleged, among others, that: petitioner's collection in the sum of P8,693,853.92 for the first semester of 1988 was not included in the gross receipt subjected to VAT; inasmuch as petitioner failed to comply with the conditions set forth in Sec. 6(g) of Revenue Regulations No. 5-87, it is therefore liable for deficiency VAT representing the difference between the 10% VAT and the 4% contractors tax which it failed to pay for receipts after January 1, 1988; the assessment for VAT in the amount of P1,165,700.42 for the year in question is presumed correct and the burden of proof rests upon petitioner to show otherwise; and, the assailed decision is valid being in accordance with law and evidence on record.

The issue posed for resolution of this Court boils down to:

1) Whether or not petitioner is liable for deficiency VAT in the amount of P1,165,700.42 for the first semester of 1988; and

2) as a corollary, assuming arguendo that petitioner is liable for any deficiency VAT, whether the same should be based on its gross receipts of P8,346,070.96 and not on P8,693,853.92

The governing provisions of the Tax Code, in part pertinent to this controversy, provides:

> "**SEC. 102.** Value-added tax on sale of services. – (a) Rate and base of tax. – There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services. The phrase 'sale of services' means the performance of all kinds of services for others for a fee, remuneration or consideration, x x x regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: x x x .;" (Underscoring Ours)

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and Section 6(g) of the Revenue Regulations No. 5-87, reads:

> "**SEC. 6.** Computation of output tax on sale of domestic goods and services. –

xxx xxx xxx

(g) <u>On sale of services</u>:

xxx xxx xxx

Amounts due on contracts completed on or before December 31, 1987, payments of which are receivable on or after January 1, 1988, shall be considered as accrued as of December 31, 1987 for the purpose of the payment of the contractor's tax subject to the following condition:

(i) an information return shall be filed showing the name(s) of the contractee(s) and the amount(s) of the contract price outstanding as of December 31, 1987, and containing a declaration of the obligation to pay the contractor's tax due;

(ii) the contract billed the unpaid amount not later than December 31, 1987, and a copy of such billing is attached to the information return required in (i) hereof;

(iii) the contractor has recorded in his books of accounts for the year 1987 the amount receivable; and

(iv) the contractor files not later than January 20, 1988, and on or before the 20th day after each calendar quarter, the regular contractor's tax return for the payments received in 1988.

Failure to comply with the above stated condition shall automatically subject the gross receipts to the value-added tax of 10%.

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There is no question that petitioner being engaged in the sale of services is covered by the foregoing provisions of Section 102 of the Tax Code. Likewise, there is no quibble between the parties that under Section 6(g) of Revenue Regulations No. 5-87 aforequoted, amounts due on contract completed on or before December 31, 1987, payments of which are receivable on or after January 1, 1988, shall be considered as accrued as of December 31, 1987 for the purpose of the payment of the contractor's tax subject to the above-stated conditions, otherwise, the gross receipts shall automatically be subject to the VAT of 10%.

The burden lies on the petitioner to show that all the prescribed requisites have been complied with in order to exercise its option of paying only the 4% contractor's tax. While petitioner claims that it has substantially complied with Section 6(g), Revenue Regulation No.. 5-87, when it paid the contractor's tax on its billing to UPPC and RCC, we noted, and it was admitted by petitioner in its memorandum, that only the first condition in Section 6(g) had been complied with. In other words, it failed to prove its allegation. It is a basic procedural law that "each party must prove his affirmative allegation". The maxim is ei incumbit probatio qui dicit, non qui negat - which means, he who asserts, not be who denies, must prove (Pls. see Vol. 6, Moran, Comments on the Rules of Court, pp. 1-2).

The best that petitioner could have done was to show by evidence that all its collections for the first semester of 1988 were included in the gross receipts subjected to VAT. However, it failed to do so. At this juncture, it may be stated that petitioner has not also proven by any positive evidence that the assessment of respondent was erroneous. Thus, the presumption, of correctness of the assessment should prevail. It is an established rule in this jurisdiction that the determination of the Commissioner of Internal Revenue is presumed correct. It behooves the taxpayer to rebut such presumption (**Tan Guan vs. Court of Tax Appeals and the Commissioner of Internal Revenue**, 19 SCRA 903; **Collector of Internal Revenue vs. Bohol Land Transportation Co.**, 107 Phil. 965). Likewise, all presumption are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue, the taxpayer must prove the contrary (**Commissioner of Internal Revenue vs. Antonio Tuason, Inc.**, 173 SCRA 397).

Parenthetically, petitioner insists, assuming arguendo that it is liable for any deficiency VAT, the same should be based on the gross receipts of P8,346,070.96 and not on P8,693,853.92. This Court is however, of the persuasion that the latter amount should be the proper basis for the fallacy of petitioner's assertion is evident.

A careful scrutiny of the records shows that petitioner merely concentrated on the bonuses without mentioning the fixed payment stipulated in the contracts (See exhibits B-3 and C-3, pp. 84 and 90, CTA records). On this point, we are echoing what the Supreme Court has said in the case of **Bonifacia Sy Po vs. Court of Tax Appeals and Commissioner of Internal Revenue**, 164 SCRA 524. wit:

> "Where the taxpayer is appealing to the tax, court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there <u>what is the correct and just liability by a full disclosure of all pertinent data in his possession</u>. Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession." (Underscoring Ours).

This Court is unable to find that petitioner has borne or discharged its burden of proof, and therefore finds respondents decision well founded except for the imposition of compromise penalty, which presupposes agreement between the parties. This Court is powerless to impose the compromise penalty in the absence of any showing that petitioner consented thereto (Pls. see. Phil. Int'l. Fair vs. Collector, 4 SCRA 774; Eastern

Extension Australia and China Telegraph Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1817, May 27, 197).

WHEREFORE, the petition for review is hereby dismissed with costs against petitioner. Petitioner Philippines International Management Consultants, Inc. is ordered to pay respondent Commissioner of Internal Revenue the amount of P1,155,700.42, representing its 1988 deficiency value-added tax inclusive of 20% annual interest from July 19, 1991 until fully paid pursuant to Sec. 249(c)(3) of the Tax Code.

SO ORDERED.

Quezon City, Metro Manila, July 22, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

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

I hereby certify that the 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals