DELTA MOTORS CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3782

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x ------------------------ x

D E C I S I O N

This is an appeal from the decision dated February 24, 1984 of respondent Commissioner of Internal Revenue denying the protest of petitioner Delta Motors Corporation against the tax assessments issued against it in the amounts of ₱46,526,110.74 and ₱42,323,986.19 or a total of ₱88,850,097.13 representing deficiency percentage taxes for the years 1975, 1976, 1977 and first semester of 1978. For repeated failure of petitioner to appear or to prosecute its action by presenting evidence at the scheduled hearings, the case was submitted for decision by respondent on the basis of the pleadings and the records of the Bureau of Internal Revenue bearing on the case.

The material facts as stated in the petition for review and admitted in the answer are:

1. That petitioner is a domestic corporation engaged in the business of, among others, manufacture and sale of passenger cars and commercial vehicles, with principal offices at 2285 Pasong Tamo Extension, Makati, Metro Manila, where it may be served with notices, writs, processes and other legal papers.

2. That respondent is the duly appointed head of the Bureau of Internal Revenue, the office charged with the duty of enforcing revenue laws and collecting internal revenue taxes, who holds office at the BIR National Building, Diliman, Quezon City, where he may be served with summons, processes, notices and other legal papers.

3. That petitioner is a registered pioneer enterprise, having been granted by the Board of Investments a certificate of qualification which entitles the firm to certain privileges concerning taxes on manufactured automobile engines.

4. That for the years 1975, 1976, 1977 and the first two quarters of 1978, petitioner filed the required business tax returns for trucks and automobiles and paid the taxes due thereon, although respondent specifically denies this allegation for lack of knowledge and information sufficient to form a belief as to the truth thereof and whether the

amounts claimed to have been paid were actually paid and remitted to the government is subject of verification.

5. That on April 18, 1980, respondent assessed against and demanded from petitioner payment of the amount of ₱35,117,207.56 allegedly due as deficiency percentage (sales) tax, inclusive of interests and penalties for 1975 and 1976.

6. That on May 19, 1980, petitioner contested the aforesaid assessment and further requested administrative hearing of the case.

7. That respondent, on January 15, 1982, while the case mentioned in paragraphs 5 and 6 is still pending resolution by his office, issued another letter of demand urging petitioner to pay the sum of ₱42,323,986.19 allegedly representing deficiency percentage (sales) taxes for the year 1977 and the first semester of 1978.

8. That on February 4, 1982, petitioner protested said assessment and requested that a "conference hearing" be held in the appellate division of the Bureau of Internal Revenue to include likewise the other assessments which involve the same issues.

9. That after the submission of "written rebuttal memorandum", respondent denied petitioner's protest and modified the original assessments by adding thereto the sum of ₱11,408,823.38 as alleged additional deficiency

percentage (sales) taxes for the periods involved. The final decision is embodied in respondent's letter dated February 24, 1984.

Hence, the instant appeal.

The records of the Bureau of Internal Revenue bearing on this case show that per investigation conducted by a revenue examiner of said office for business tax purposes covering the years 1975 and 1976, it was ascertained that petitioner failed to pay the correct amounts of sales tax as manufacturer of cars and commercial vehicles pursuant to Section 183(a), in relation to Sections 184-A and 186, penalized under Section 209, all of the National Internal Revenue Code (Sections 193(a), 195, 199 and 221, respectively, Tax Code of 1977, as amended). The same investigation also revealed that during the same years petitioner failed to pay the correct amounts of sales tax as manufacturer of electric fans, refrigerators, air conditioners (Daikin brand), television sets, stereo sets (Sharp brand) as provided for in said Section 183(a), in relation to Sections 185(i), 185-A and 185-B, penalized under Section 209, all of the same Code (consolidated under Sections 196 and 197, and Section 221, Tax Code of 1977, as amended). It was likewise ascertained that during the years in question, petitioner failed to pay the correct amounts of percentage tax as contractor engaged in the servicing of the motor vehicles and appliances sold by it pursuant to Section 183(a) and Section 191, also penalized under Section 209, all of the same Code (Sections 193(a), 205 and 221, respectively, Tax Code of 1977, as amended). Finally, the said investigation also disclosed that during the year 1976, petitioner failed to pay the correct amount of advance sales tax due on its imported raw materials for air conditioners, as provided for in Section 183(b), in relation to Section 185-A of the same Code (Sections 193(b) and 197, Tax Code of 1977, as amended).

Accordingly, as averred in paragraph 5 in the petition for review stated above, respondent assessed and demanded from petitioner payment of the amount of ₱35,117,287.56 as deficiency percentage (sales, contractor's and advance sales) taxes, inclusive of interests and penalties for 1975 and 1976. As afore-said in paragraph 6 of the petition for review, petitioner contested the assessment and requested an administrative hearing of the case.

Again on January 15, 1982, as stated in paragraph 7 above, upon investigation of petitioner, there was found due from it the total amount of ₱42,323,986.19 representing sales tax, surcharge and interest for the year 1977 and the first two quarters of 1978. Petitioner likewise protested this assessment (paragraph 8, above) and requested an administration hearing of the case.

The records of the Bureau of Internal Revenue also reveal that in a letter dated January 15, 1982 petitioner explained its position to respondent Commissioner of Internal Revenue on the aforesaid assessments and the reasons why they should be cancelled and withdrawn.

However, on the contention of petitioner that in the determination of the sales tax due on its manufactured cars, it correctly deducted the cost of the engines which petitioner alleged is tax exempt under Section 186-A of the Revenue Code, respondent in his letter decision of February 24, 1984 rejected this argument as not valid. As resolved by the Commissioner of Internal Revenue:

> "Beginning 1973, the car industry has been authorized to adopt the sales tax crediting system under Section 184-A of the Tax Code, while the other industries were still using the costs deduction method until 1978. Since you are already covered by Section 184-A of the Tax Code which allows you to credit sales tax on your raw materials used in the manufacture of cars, you cannot therefore validly adopt the cost deduction method which was no longer permitted by Section 184-A of the Tax Code. To do so would therefore contravene rules and regulations issued by this Office in implementing the sales tax crediting system as formally introduced by Section 184-A of the Tax Code. Accordingly, the deficiency percentage tax assessment on the cost of the engines for the said period is hereby reiterated. It appears also that during the said period covered by this particular assessment, you allowed the "taxes deemed paid" on your engines to be deducted as part of the creditable taxes against the gross sales tax due thereon, thus reducing your sales tax liability by ₱11,408,823.38. This is patently illegal considering that the "tax deemed paid provisions" which you invoked became effective

> only on July 1, 1978; hence, the same applies to your case during the second semester of 1978 only. Consequently, this particular assessment of ₱35,117,287.56 is being modified to include the sum of ₱11,408,823.38 making a total recomputed sales tax liability of ₱46,526,110.94, which represents the deficiency percentage tax on the cost of your engines as well as the unauthorized imputation of "taxes deemed paid" on said engines, during the period under review. We therefore reiterate the collection of the said tax liability from you."

On the deficiency sales tax on optional parts and accessories which were included in the gross selling prices of the Toyota cars manufactured and sold by petitioner, respondent ruled in the same decision that:

> This Office has already issued a categorical ruling on the contested assessment cases of General Motors Corporation, which upheld the view that optional parts and accessories are considered standard parts of a car and therefore, the prices of such optional parts and accessories should form part of the gross selling prices of the cars. This ruling was principally based on the decision of the Supreme Court in the Eulogio Rodriguez case (G.R. L-12783 dated March 25, 1961), which ruled that said optional parts and accessories constitute standard parts of a car and therefore, the prices thereof should be included in the invoice price of the car. Incidentally, the General Motors Corporation has paid the sales tax arising from said optional parts and accessories. Consequently, we reject your protest on this assessment and we reiterate collection.

And with respect to the other issues involved in the assessment, the Commissioner of Internal Revenue sustained the following findings:

1. That there was an overstatement of your deductible raw materials used in the manufacture of commercial vehicles and appliances for 1975-1976 and 1977-1978 for sales tax purposes, was clearly established by the examiners, in accordance with Revenue Regulations No. 7-75 dated March 15, 1975. The deficiency sales taxes on your commercial vehicles and appliances in the total amount of ₱5,759,804.94 is therefore reiterated for collection.

2. That you are subject to the 3% contractor's taxes of ₱11,094.83 for 1975-76. This finding has not been contested by you; hence, you accepted this liability.

3. That you are subject to the advance sales tax of ₱128,712.44 for 1976. You failed to introduce evidence to warrant the imposition of lower tax rate of 7% than the 15% levied thereon. A mere simple denial is not sufficient to reverse the findings/recommendation of the investigating officers for the imposition of the 15% tax rate.

Accordingly, petitioner was requested to pay the amounts of ₱46,526,110.94 and ₱42,323,986.19 or a total of ₱88,850,097.13 as deficiency percentage taxes, subject to the updating of interest and penalties, for 1975-1976 and 1977-1978.

There is no showing in the pleadings or in the records that petitioner questioned the computations of the deficiency taxes assessed against it by respondent. We take it that this is not an issue in this case. While petitioner prays in its petition for review filed with this Court that after hearing, this Court renders judgment in its favor by holding that the assessments of ₱46,526,110.94 and ₱42,323,086.19 representing deficiency percentage taxes, inclusive of interests and penalties, for 1975-1976 and 1977-1978, are null and void which should be withdrawn and cancelled, petitioner either failed to appear or to present evidence at the scheduled hearings to substantiate the nullity and illegality of the assessments.

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, 1967, 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 assessments 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.
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> "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, Meyer & 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)"

This is specially true in this case where respondent's special and affirmative defenses, the validity of which as borne out from the records of the case, have the effect, if not controverted by adequate and competent evidence, of nullifying petitioner's cause of action. Thus:

<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>

5. Investigation disclosed that in subject taxable years, petitioner failed to pay -

a) The correct sales tax as manufacturer of cars and commercial vehicles pursuant to the provisions of Section 183(a) in relation to Sections 184-A and 186, and penalized under Section 209 (now Secs. 193(a), 195, 199 and 221), all of the Tax Code, as amended;

b) The correct sales tax as manufacturer of appliances pursuant to the provisions of Section 183(a) in relation to Sections 185(i), 185-A and 185-B, and penalized under Section

209 (now consolidated in Sections 196 and 197, and 221), all of the Tax Code, as amended;

c) The correct percentage tax as contractor engaged in servicing of motor vehicles and appliances sold by petitioner, pursuant to Sections 193(a) and 191, penalized under Section 209 (now Sections 193(a), 205 and 221), all of the Tax Code as amended;

d) The correct advance sales tax due on imported raw materials for air-conditioners pursuant to Section 183(b) in relation to Section 185-A (now Sections 193(b) and 197), all of the Tax Code, as amended;

5. Investigation also disclosed that -

a) Petitioner issued additional billings through debit memos, for the optional parts installed and services rendered on each car sold without including the corresponding amount as part of the gross selling price of the car for sales tax purposes in violation of the Supreme Court's decision in Eulogio Rodriques case (G.R. No. L-12783 dated March 25, 1961, 1 SCRA 766), which held that said optional parts and accessories constitute standard parts of a car and therefore, the price thereof should be included in the invoice price of the car;

b) Petitioner deducted the cost of the tax-exempt engines it manufactured from the gross selling price of the car sold that reduced the tax base for sales tax purposes, in contravention of Section 184-A of the Tax Code;

c) Petitioner overstated the deductible raw materials used in the manufacture of commercial vehicles and appliances for sales tax purposes;

d) Petitioner maintains a service department where it earned income subject to 3% contractor's tax in the amount of ₱11,094.83

for 1975-1976, and which finding was not contested;

e) In 1976, petitioner paid only 7% advance sales tax on all of its importations although the imported Daikin airconditioner above 3 tons is classified as "non-integrated" subject to 15% sales tax. Hence, the deficiency advance sales tax of ₱128,712.44 representing the difference between the rate of 7% and 15%, is still due and collectible;

6. Petitioner executed a Waiver of the Statute of Limitation on July 28, 1983;

7. The assessment levied against petitioner is presumed correct and valid, and it is incumbent upon taxpayer to prove the contrary (Interprovincial Autobus Co., Inc. vs. Col. of Int. Rev., L-6741, Jan. 31, 1966, 98 Phil. 290; Tan Guan vs. Court of Tax Appeals, L023676, April 27, 1967, 19 SCRA 903);

8. The assessments of ₱46,526,110.94 and ₱42,323,986.19 representing deficiency percentage taxes, inclusive of interests and penalties for 1975-1976 and 1977-1978, respectively, or a total of ₱88,850,097.13, is in accordance with law and revenue regulations.

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.)

At any rate, the merit of respondent's assessments involved in this case is clear on the face of the appealed decision, the pertinent portions of which have already been quoted at length above, and of which petitioner has failed to show to the Court that the determination was erroneous.

Accordingly, petitioner Delta Motors Corporation is hereby ordered to pay respondent Commissioner of Internal Revenue the amount of ₱88,850,097.13 as deficiency percentage taxes for the years 1975, 1976, 1977 and 1978, plus 20% interest per annum from February 24, 1984 until fully paid pursuant to the provisions of Section 193 of the 1977 National Internal Revenue Code, as amended by Presidential Decree No. 1705 dated August 1, 1980.

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

SO ORDERED.

Quezon City, Metro Manila, May 21, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge