REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CHUAYUCO STEEL MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6642

Members:

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

Promulgated:

OCT 23 2008 ; 2:35 pm

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DECISION

CASANOVA, J.:

Statement of the Case

This is a Petition for Review seeking the cancellation and withdrawal of deficiency income, value-added, and expanded withholding tax assessments issued against petitioner in the amounts of **ONE HUNDRED EIGHTY THREE MILLION NINETY FIVE THOUSAND THREE HUNDRED SEVENTY FOUR AND 87/100 PESOS** (P183,095,374.87), **FIFTY THREE MILLION TWO HUNDRED THIRTY EIGHT THOUSAND TWO HUNDRED NINETY EIGHT AND 06/100 PESOS** (P53,238,298.06), and **THREE HUNDRED FIFTY SEVEN THOUSAND FOUR HUNDRED SIXTY EIGHT AND 71/100 PESOS** (357,468.71), respectively, inclusive of surcharges and interests covering the taxable years 1996 and 1997.

Statement of Facts

Petitioner Chuayuco Steel Manufacturing Corporation is a corporation duly organized and existing under the laws of the Philippines.[1] It is engaged in the business of manufacturing, processing, buying, and selling of iron, steel, and tin products.[2]

Respondent Commissioner of Internal Revenue, on the other hand, is the officer vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws and in particular, to decide disputed assessments.[3]

For the taxable years 1996 and 1997, petitioner filed its corresponding Corporate Annual Income Tax Returns on April 15, 1997 and April 15, 1998.[4]

Pursuant to a Revalidated Letter of Authority issued on November 5, 1998, petitioner's books of accounts, as well as, its other accounting records were examined by respondent's authorized representatives for "all internal revenue taxes" covering the periods from January 1, 1997 to December 31, 1997. For the taxable year 1996, however, the Bureau of Internal Revenue Tax Fraud Unit conducted an investigation.[5]

Consequently, on July 10, 2000, respondent issued a Preliminary Assessment Notice to petitioner covering the taxable years 1996 and 1997. Subsequently, on June 11, 2002, petitioner received the Final Assessment Notices dated May 20, 2002 for deficiency income, value-added, and withholding tax assessments in the following amounts and details[6], *viz:*

Year	Tax	Assessment Notice No.	Date of Issuance	Amount
1996	EWT	TFD-96-EWT-014-02	20-May-00	357,468.71
1996	VAT	TFD-96-VAT-015-02	20-May-00	41,866,480.41
1996	Income	TFD-96-IT-016-02	20-May-00	144,030,765.23
1997	Income	TFD-97-IT-017-02	20-May-00	39,064,609.64
1997	VAT	TFD-97-VAT-018-02	20-May-00	11,371,817.65
		Total		**236,691,141.64**

[1] Paragraph 1, Joint Stipulations of Facts, Rollo, page 141
[2] Paragraph 3, ibid, page 142
[3] Paragraph 2, ibid, page 141
[4] Paragraphs 4-5, ibid, page 142
[5] Paragraph 8, ibid, page 142
[6] Paragraph 11, ibid, pages 143-144

On July 10, 2002, petitioner filed its letter-protest dated July 8, 2002, with the Office of the Assistant Commissioner (Enforcement Services). A Supplemental Memorandum dated September 6, 2002 was likewise filed by petitioner on September 9, 2002, attaching thereto documents in support of its protest.

Having received no immediate response from respondent, petitioner then, pursuant to Section 228 of the National Internal Revenue Code of 1997, as amended, elevated this Petition for Review on April 4, 2003.

On June 11, 2003, respondent filed his Answer, raising the following Special and Affirmative Defenses, viz:

> "7. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 8. Petitioner, in its [P]etition for [R]eview, assailed the validity of the deficiency assessments issued against it for the years 1996 and 1997 in the total amounts of *P186,254,714.35* and *P50,436,427.29*, respectively, on the following grounds that: (1) Petitioner availed of the VAP pursuant to RMO 59-97, hence, there should be no investigation conducted relative to its taxable period ending 31 December 1996; (2) The right of the government to assess petitioner for the years involved has prescribed; (3) That petitioner's books of account for the year 1997 had been examined and completed under Letter of Authority Number 000009234; (4) That the tax assessments for the years 1996 and 1997 have no factual and legal basis;
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> 9. On the first issue raised, assuming that petitioner indeed applied for the Voluntary Assessment Program (VAP) under RMO 59-97 for the taxable period 1996, it bears stressing that the availment of said program is not a guarantee of the absolute immunity from investigation. When there is a finding of fraud, as in this case, the taxpayer availing of the VAP may still be investigated and assessed deficiency taxes if warranted;
>
> 10. On the claim that the government's authority to assess petitioner has prescribed, this position is without merit. Be it noted that as per result of the investigation by the Revenue Officers, a prima facie case was established that there were huge discrepancies in the amounts declared as purchases of raw materials per VAT returns as compared to its data per information supplied by third party, the *National Steel Corporation*. The finding yielded the result that petitioner has under-declared its purchases of raw materials intended for its business deliberately or intentionally in huge amount. Because of this, there exists sufficient proof to support respondent's findings that petitioner's

1996 and 1997 returns filed were false and/or fraudulent. The three (3) year prescriptive period within which the government is authorized to assess petitioner is, therefore, not applicable. Instead, the ten (10) year period should apply in this case[;]

11. As to the third issue, petitioner contended that its book of accounts for the years 1996 and 1997 had been examined under the Letters of Authority Nos. 000009081 and 000009063, respectively, dated 29 June 1998 issued by the RDO *Anselmo G. Adriano*, Revenue District No. 51, Pasay City. *We disagree*. Worth stressing is the fact that the Letters of Authority (LOA) mentioned were revalidated by the Letters of Authority Nos. 000009291 and 000009263 dated 15 November 1998, respectively. The LOA dated 29 June 1998 was limited to the examination of petitioner's books of account for VAT purpose only, whereas, the LOA issued dated 15 November 1998, covers all internal revenue taxes. Nevertheless, it should be noted also that the Letter of Authority in question was issued by the Commissioner himself on the strength of a prima facie evidence of fraud as provided in Section 235 of the Tax Code[;]

12. Lastly, petitioner's contention that the subject assessments lack factual and legal basis, deserves no credence. Be it noted that the issuance of the subject tax assessment was based on the data taken from a third party, in this case, the supplier, National Steel Corporation which is allowed under Section 6 (A)(B) of the Tax Code, because of petitioner's failure to present its books of account. And based on the records obtained from such entity, in 1996, petitioner's purchases of raw material per VAT returns amounted to *Php 661,442,857.54* as against the amount of *Php 777,533,539.40* as raw materials purchases per access to records, or with a total undeclared amount of *Php 111,090,681.86* for that year alone. And, for the year 1997, petitioner's purchases of raw materials per VAT returns amounted to *Php 648,191,647.80* as compared to the amount of *Php 694,334,340.90* per access to records, hence, a difference of ***Php 46,142,693.10***. The above-stated undeclared purchases refer to the purchases of raw materials intended to be used in business. If indeed, the funds used for the purchases came from any of the assets or said goods had been acquired on credit, then the corresponding account should have been included in the balance sheet as of the year end. Also, the undeclared purchases were no longer included in the inventory at the year end. Logically, the same were presumed to have been sold at regular gross profits as appearing in the income statement[;]

13. Perusal of the income statement disclosed no interest expense was claimed. Loans payable account had been idle for a long period and considering the huge amount, it is highly questionable that no interest expense will be incurred. Inasmuch as the nature of the business of petitioner is VATABLE, the likely source of undeclared income is also VATABLE. Hence, deficiency VAT is due from petitioner;

14. Petitioner failed to submit documents or proof that appropriate taxes on its income payments for 1996 were withheld and remitted. This resulted in deficiency assessment for expanded withholding tax; [and]

15. Finally, it is a well settled rule in taxation that assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

During the hearing on the merits, and before this case could have been submitted for decision, petitioner's counsel manifested that herein petitioner has availed of the provisions of Republic Act (R.A.) No. 9480, otherwise known as the Tax Amnesty Program of 2007. Effectively, in a Resolution[7] dated April 24, 2008, petitioner's Motion for Partial Withdrawal of Petition for Review filed on April 9, 2008[8] was granted and this instant Petition for Review was partially withdrawn. Consequently, pursuant to the provisions of R.A. 9480, the following assessment notices were deemed withdrawn, viz:

A. Assessment Notice No. **TFD-96-VAT-015-02** for deficiency VAT in the amount of P41,866,480.41, inclusive of 50% surcharge and 20% interest;

B. Assessment Notice No. **TFD-96-IT-016-02** for deficiency income tax in the amount of P144,030,765.23, inclusive of 50% surcharge and 20% interest;[9]

C. Assessment Notice No. **TFD-97-IT-017-02** for deficiency income tax in the amount of P39,064,609.64, inclusive of 50% surcharge and 20% interest; and

D. Assessment Notice No. **TFD-97-VAT-018-02** for deficiency VAT in the amount of P11,371,817.65, inclusive of 50% surcharge and 20% interest.

However, as regards petitioner's deficiency expanded withholding taxes for the year 1996 covered under Assessment Notice No. TFD-96-EWT-014-02 in the amount of P357,468.71 inclusive of the 50% surcharge and 20% interest remained, pursuant to

[7] Rollo, page 643
[8] Rollo, pages 626-639
[9] Per this Court's Resolution dated September 30, 2008, the amount of P14,030,765.23 was corrected to read P144,030,765.33, Rollo, p. 684.

Section 8 of R.A. 9480, which states that withholding agents as regards their withholding tax liabilities are excluded from the immunities and benefits granted under the same law.

Inasmuch as the parties have submitted their respective Memorandum in support of the remaining issues excluded by provisions of R.A. 9480 within the period granted by the Court, this case was submitted for decision on June 30, 2008.

Statement of Issues

The remaining issues for this Court's consideration are:

1. Whether or not the right of the state to assess petitioner for deficiency withholding taxes covering the taxable year 1996 has prescribed; and

2. Whether or not the deficiency withholding tax assessment issued against petitioner covering the taxable year 1996 has factual and legal basis.

Findings/Discussion

Petitioner argues that respondent's right to assess deficiency income taxes for the taxable year 1996 had already prescribed, pursuant to Section 203 of the National Internal Revenue Code of 1977, as amended, which provides that:

> "**Sec. 203. Period of Limitation Upon Assessment and Collection.** — Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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-year period shall be counted from the day the return was filed. For the 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."

From the foregoing provision of law, respondent has a period of three (3) years from the last day prescribed for the filing of the return within which to issue the assessment for deficiency taxes against petitioner. Consequently, for the taxable year 1996, respondent had, at the latest, until the year 2000 within which to assess petitioner for deficiency taxes.

After a thorough examination of the facts of the case, evidence presented, and applicable jurisprudence, this Court finds for petitioner.

Based on the records of the case, petitioner filed its Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes for the year 1996 on January 29, 1997[10]. Counting from this date, pursuant to Section 203 of the NIRC of 1977, as amended, respondent has until January 29, 2000 within which to assess petitioner for deficiency withholding taxes. The Final Assessment Notice was stipulated as received by petitioner on June 11, 2002, or more than five (5) years from the date the return was filed by petitioner on January 29, 1997. Unmistakably, respondent's assessment was issued way beyond the period allowed by law.

Respondent's argument on the existence of fraud so as to apply the ten-year prescriptive period for the issuance of the assessment likewise cannot be accepted. It must be stressed that the existence of fraud is never presumed; but must be proven by clear and convincing evidence. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. It is a cardinal rule in taxation that fraud is a question of fact and the circumstances constituting it must be alleged and proved. Fraud is a serious charge and to be sustained, it must be supported by clear and convincing proof which is lacking in this case.[11]

It is incumbent upon respondent to prove the existence of fraud. Whether the taxpayer has been guilty of fraud with intent to evade tax, the burden of proof with respect to such issue shall be upon the Commissioner of Internal Revenue[12]. Unfortunately, in the case at bar, the existence of fraud has not been clearly shown by respondent since she offered no evidence to prove her accusation. It was merely alleged by respondent that fraud

[10] Exhibit "S[13] and "T[14]"
[11] *The Collector of Customs vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182.
[12] *Andrew D. Gruber vs. Commissioner of Internal Revenue*, CTA Case No. 2278, March 5, 1982 citing Jacob Mertens Jr., Law of Federal Income Taxation, Vol. 10, Chapter 55.18, 1958 Ed., pp. 71-72

exists to justify the application of the ten-year prescriptive period instead of the three-year period to assess. This Court cannot just accept mere allegations without supporting evidence to prove the same. It is incumbent upon the Commissioner of Internal Revenue to show the specific act or omission which pictures fraud, the absence of which, no fraud penalty attaches.[13]

As to the issue of substantiation, petitioner has duly supported its claim that it properly and correctly withheld and remitted the corresponding taxes on all its income payments with its Monthly Remittance Return of Income Taxes Withheld and Annual Information Return of Income Taxes Withheld on Compensation, Expanded and Final Withholding Taxes[14]. Based on these documents, petitioner indeed withheld and remitted the taxes on its income payments for the taxable year 1996 in the total amount of P515,241.92[15], contrary to respondent's findings of under-withholding. These same documents and a summary of remittance were likewise submitted by petitioner to respondent[16].

In fact, based on the findings[17] of Revenue Officers Vicente Gamad, Jr., Henry Sarmiento and Raul Magtagnob, with the corresponding approval of the Assistant Commissioner of Internal Revenue – Enforcement Division, Mr. Percival Salazar, it was recommended that the assessment issued against petitioner for deficiency expanded withholding taxes for the taxable year 1996 be cancelled. Accordingly, upon review of the records, they admit to errors as properly pointed out by petitioner, and made revisions on the assessments, this time, canceling the alleged deficiency expanded withholding taxes for the taxable year 1996.

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[13] *Yutivo & Sons Hardware Co. vs. Commissioner of Internal Revenue*, G.R. No. L-13203, January 28, 1961, 110 Phil. 751, cited in the case of *Commissioner of Internal Revenue vs. Visayan Electric Co. and the CTA*, G.R. No. L-22611, May 27, 1968, 23 SCRA 715
[14] Exhibits "S^{13}", "S^{14}", "T^{13}", and "T^{14}"
[15] Exhibits "S^{13}" and "T^{14}"
[16] BIR Records, page 674
[17] Memorandum, June 2, 2003, BIR Records, pages 756-764

Inasmuch as petitioner has satisfactorily proven its withholding and remittance of the proper taxes for the taxable year 1996, this Court deems it proper to cancel the assailed assessment notice.

WHEREFORE, premises considered, the instant Petition for Review as regards the remaining assessment notice is hereby **GRANTED**. Accordingly, Assessment Notice No. **TFD-96-EWT-014-02** for deficiency expanded withholding tax for the taxable year 1996 in the amount of **P357,468.71** inclusive of 50% surcharge and 20% interest is hereby **CANCELLED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ON LEAVE
LOVELL R. BAUTISTA
Associate Justice

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.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

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