REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

JIMENEZBASIC ADVERTISING, INC.,
Petitioner,

CTA Case No. 7240

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Promulgated:

FEB 19 2009 ; 10:00 a.m.

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DECISION

CASANOVA, ***J.*:**

The instant Petition for Review prays for a judgment (1) reversing respondent's Final Decision on Disputed Assessment which found petitioner liable for alleged deficiency VAT in the amount of P6,872,273.32 covering the third and fourth quarters of 2002; and (2) declaring petitioner entitled to claim input tax in the amount of P4,556,985.17.

STATEMENT OF FACTS

Petitioner Jimenezbasic Advertising, Inc. is a domestic corporation duly organized and existing under Philippine laws with office address at 23/F Pacific Star Building, Makati Ave., Makati City.[1]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue with office address at 5th Floor, Room 511, BIR National Office Building, Agham Road, East Triangle, Diliman, Quezon City.[2]

Petitioner is the surviving entity in the merger of two corporations, Jimenez D' Arcy, Inc. and Basic Advertising, Inc.[3] Petitioner is an advertising agency which acts as an agent of advertisers in getting Basic Advertising's products, names or brands advertised in media outlets. As an agent, it allegedly receives compensation or income in the form of commissions which are formally fifteen percent (15%) of the total amount billed to the advertiser [4].

Petitioner received Letter Notice Nos. 116-R-02-03-S-01597[5], 116-R-02-03-P-01762[6], 116-R-02-03-S-01598[7] and 116-R-02-03-P-01763,[8] all dated October 17, 2003, from the BIR informing the petitioner of the alleged under-declaration in its tax returns on its sales and purchases for the 3rd and 4th quarters of taxable year 2002.

On March 22, 2004, petitioner received Reminder Letters[9] corresponding to the aforesaid letter notices.

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[1] Petition for Review, Rollo, p. 1.
[2] Joint Stipulation of Facts and Issues, Rollo, p. 163.
[3] Joint Stipulation of Facts and Issues, Rollo, p. 170.
[4] Supra, note 1.
[5] Exhibit "B", Rollo, p. 237; Joint Stipulation of Facts and Issues, Rollo, p. 164.
[6] Exhibit "C", Rollo, p. 240 ; ibid.
[7] Exhibit "D", Rollo, p. 241; ibid.
[8] Exhibit "E", Rollo, p. 242; ibid.
[9] Exhibits "F","G","H" and "I", Rollo, pp. 246-249; ibid.

On March 29, 2004, petitioner filed its Reply[10] to the Reminder Letters explaining the cause of the discrepancy on sales and purchases.

Petitioner received a Preliminary Assessment Notice (PAN)[11] dated March 29, 2004 from respondent assessing petitioner a 10% Value Added Tax (VAT) on discrepancies on the Sales for the 3rd and 4th quarters of 2002 plus interest.

On May 19, 2004, petitioner transmitted to the BIR the same letter dated March 29, 2004 requesting that respondent cancels the PAN, to wit:

> "**SALES**
>
> The advertising agency bills 100% the advertisers for media and production transactions. However, only 15% of the billings is the agency commission while the 85% are paid to media or production suppliers. For VAT purposes, the agency only subjects the 15% commission it earns while the 85% media or production cost is not since the agency only acts as a conduit between the advertisers and the suppliers.
>
> The advertisers on their end claims the Input VAT on the whole billing against the ad agency upon payment since the agency issues an Official Receipt on the whole amount collected. This will now result to discrepancies between the Output VAT declared on the tax returns of the agency as against the claimed Input VAT of the advertiser.
>
> **PURCHASES**
>
> The agency claims Input VAT only on agency expenses. The media and the production costs are not agency expenses. As mentioned above only 15% of the billings are recognized as agency revenues, the media and the production costs are taken up as payables only. The media and the production suppliers, since the billings are addressed to the agency, they claim the whole VAT amount against us instead of claiming it from advertisers."[12]

On June 28, 2004, petitioner received a Formal Letter of Demand[13] dated May 31, 2004 from respondent which reads as follows:

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[10] Exhibit "J", Rollo, pp. 250-251; ibid.
[11] Exhibit "K", Rollo, pp. 252-253; ibid.
[12] Rollo, p. 41.
[13] Exhibit "L", Rollo, pp. 254-257; Joint Stipulation of Facts and Issues, Rollo, pp. 164-165.

"Accordingly, all valid VAT official receipts issued to your clients are deemed Vatable sales in pursuant to the invoicing requirement of Sec. 4.113-1 of the Revenue Regulation 7-95 in relation to Sections 109, 110, and 113 of the Tax Code. This resulted to an assessment of **P6,118,826.06** inclusive of interest as shown below:

Deficiency VALUE ADDED TAX

Discrepancy on sales per LN	
3rd Quarter	31,763,990.48
4th Quarter	15,815,291.81
Total discrepancy	47,579,282.29
Multiply by VAT Rate	10.00%
Basic VAT Deficiency	4,757,928.23
Add: Interest (1/25/03 to 6/30/04)	1,360,897.83
Total Amount Due	**6,118,826.06"**

Petitioner filed a protest letter[14] with respondent on July 27, 2004 requesting that the deficiency output VAT assessment against it be reduced to P200,943.06. The details of the proposed re-computation are as follows:

Discrepancy on sales per LN		
3rd Quarter	P	31,763,990.48
4th Quarter		15,815,291.81
Total Discrepancy	P	47,579,282.29
Multiply by VAT rate		10%
Basic VAT Deficiency	P	4,757,928.23
Less: Input VAT		4,556,985.17
Net VAT Deficiency	P	200,943.06

On March 31, 2005, petitioner received a "Final Decision on Disputed Assessment,"[15] dated March 18, 2005, signed by the Deputy Commissioner Special Concerns Group, Large Taxpayers Division, stating the following:

"Please be informed that we have considered your position paper and other documents you have submitted in support of your request. However, despite our consideration there still remains (sic) some assessments, which are premised on the following:

[14] Exhibit "M", Rollo, , pp. 258-264; ibid, p. 165.
[15] Exhibit "N", Rollo, p. 265; ibid, pp. 165-166.

Deficiency **VALUE ADDED TAX**

Total VAT Deficiency (per Formal Assessment)	4,757,928.23
Add: Interest (1/25/03 to 4/15/05)*	2,114,345.09
Total Amount Due	6,872,273.32

*Please note that the interest is computed up to April 15, 2005. This will have to be adjusted if paid beyond this period.

In view of the foregoing, you are therefore requested that the aforesaid deficiency tax liabilities be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeal within thirty (30) days from receipt hereof, otherwise, our said deficiency tax assessment shall become final, executory and demandable."

Hence, this petition was filed on May 3, 2005.[16]

Respondent, in his Answer[17] interposed the following Special and Affirmative Defenses:

"5.) The assessment against petitioner for Value Added Tax liability has attained finality. Petitioner did not submit to the Bureau within sixty days from the filing of its protest the original invoices/receipts to support its claim that it has creditable input taxes against its output tax liability. The basis of the Value Added Tax assessment against petitioner is beyond dispute. The figures from which the output VAT due was drawn arose from invoices issued by petitioner to payees/advertisers. In fact, under paragraph 4.7 of the petition, petitioner candidly admitted that it has a basic VAT deficiency of Php4,757,938.23, the same amount being assessed petitioner as basic deficiency output VAT due. Thus, the only issue left for the determination of the respondent during the administrative protest, and of this Honorable Court, is whether the petitioner may be allowed to claim input taxes, allegedly arising from said underdeclared sales, despite not having claimed them as input taxes in the returns filed with the Bureau during the taxable year 2002. Petitioner failed to submit these invoices/receipts during the audit/investigation of the case, and during the time it filed its protest up to this date. To reiterate, these are the only documents which support petitioner's theory in assailing the

[16] Rollo, p. 1.
[17] Rollo, pp. 89-94.

assessment. Thus, this Honorable Court is bereft of jurisdiction to entertain the instant petition.

6.) The summary of unclaimed input taxes attached to the petition as Annex 'P' is a mere self-serving document devoid of evidentiary value. It does not, and cannot prove that petitioner indeed has unclaimed input VAT. Its submission to respondent did not thus constitute as compliance with the requirement under the tax code of submission of documents supporting the protest within sixty (60) days from its filing.

7.) Likewise in the petition, petitioner was unabashed enough to admit that it did not declare the amounts it now alleges as input taxes in its 3rd and 4th quarterly VAT return. This despite the clear wording of Section 4.104-2 of Revenue Regulations 7-95 providing that 'the input tax credit on purchase of...services shall be creditable...xxx to the purchaser of the services or the lessee or licensee **upon payment of the compensation, rental, royalty or fee...**' It being the case that petitioner failed to claim these alleged input taxes during the return period within which it is allowed by law to claim so, the petitioner is deemed to have lost its right to claim these input taxes.

8.) It is a basic principle in taxation that exemptions are construed in *strictissimi juris.* Since the nature of input taxes are deductions from VAT payable, a claim for input tax is to be construed like a claim for exemption. The entitlement and manner of availing of such exemptions and deductions are to be construed strictly. Thus petitioner's manifest failure to declare and claim its alleged input taxes for the period in which they are allegedly due militates heavily against petitioner's claimed entitlement.

9.) It is presumed that tax assessments are correctly and legally made. The burden of assailing the same rests on the party alleging irregularity."

After trial on the merits, this case was submitted for decision on March 4, 2008 considering petitioner's Memorandum filed on October 26, 2007, without respondent's memorandum.

STATEMENT OF THE ISSUE

The sole issue submitted for this Court's resolution is, to wit:

"As presented by the parties and discussed during the pre-trial conference of 11 November 2005, the issue to be resolved by the Honorable Court is whether or not JIMENEZBASIC is precluded by Section 4.104-2 of Revenue Regulations No. 7-95 from claiming Input VAT."[18]

THE COURT'S RULING

Petitioner alleges that it is an advertising agency that acts as an agent of advertisers in getting the latter's products, names or brands advertised in media outlets. As an agent, petitioner receives compensation or income in the form of commissions, i.e. fifteen percent (15%) of the total amount billed to the advertiser[19].

Petitioner further states that it is a peculiar practice in the industry of advertising that agents bill the advertisers for the gross charges of media and advertising production cost plus commission. Petitioner claims that it issued invoices and official receipts for the amounts received from advertisers which includes both the commissions it received and the amounts pertaining or payable to the media outlets[20]; the cost of advertisement will in turn be remitted or paid to the media outlet. Thereafter, petitioner allegedly records the amount received from advertisers corresponding to the commission earned as its income while the amount received for the cost of media and production which is eventually remitted to the media outlet is recorded as its Accounts Payable Trade[21].

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[18] Joint Stipulation of Facts and Issues, Rollo, p.170.
[19] Petition for Review, Rollo, p. 2.
[20] Petition for Review, Rollo, p. 2.
[21] Ibid.

As a result of the aforesaid peculiar practice, petitioner argues that an output VAT is then recognized only with respect to the commission income. No input taxes were recognized on these transactions even if valid invoices and official receipts were issued by the media outlets in the name of petitioner[22].

This Court finds for petitioner.

A perusal of the records reveals that petitioner was not able to claim the input taxes since the same were not recorded as its cost, notwithstanding that the invoices and official receipts were under its name. Petitioner's advertisers cannot also claim the input tax for the said invoices and official receipts were issued in the name of petitioner. Nonetheless, petitioner was assessed an output tax for the entire amount of the invoices/official receipts it issued to advertisers for the third and fourth quarters of 2002, which included the media and production cost.

Petitioner anchors its claim on Section 110(A)(1)(b) of the NIRC of 1997, as implemented by Section 4.104-2(c) of Revenue Regulations (RR) No. 7-95 which reads as follows:

> "**Sec. 4.104-2**. Persons who can avail of the input tax credit. – The input tax credit on the purchase of goods or properties or services shall be creditable:
>
> (a) To the purchaser of the domestic goods or properties upon consummation of the sale and on importation of said goods or properties.
>
> (b) To the importer upon payment of VAT prior to the release of goods from the Customs custody.
>
> (c) To **the purchaser of services** or the lessee of licensee **upon payment of the compensation**, rental, royalty or **fee.**" (Emphasis Supplied)

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[22] Ibid.

From the foregoing, to be entitled to claim an input tax on payments made to media outlets, petitioner must comply with the following requirements:

1. the input tax sought to be claimed is covered by VAT invoices and official receipts issued by media outlets in the name of the petitioner;

2. the said receipts were issued in consideration for services rendered by the said media outlets; and

3. petitioner actually paid and has been assessed output VAT for the said transactions.

From the report of the Court-commissioned independent CPA[23], petitioner was found to have complied with the above requirements[24]. In addition, the independent CPA arrived at the following findings[25]:

"We summarize below the results of the procedures that we have performed on the unclaimed input taxes of the Company, to wit:

1. Unclaimed input VAT with original and appropriate supporting documents **see Annex "B" - Exhibit "Q"**	P 4,429,811.83
2. Unclaimed input VAT without original and appropriate supporting documents **see Annex "C" - Exhibit "R"**	100,236.95
3. Unclaimed input VAT with defective supporting documents **see Annex "D" - Exhibit "S"**	24,497.72
4. Incorrectly computed input VAT **see Annex "E" - Exhibit "T"**	2,438.67
Total Unclaimed Input VAT	P 4,556,985.17

We report our specific findings on the components of this amount below:

[23] C.L. Manabat & Co., through its Partner, Mr. F.B. Landicho.
[24] Exhibits "B" to "E" and "P" to "W".
[25] Rollo, pp. 270-271.

1. Our examination reveals that the claim for input VAT amounting to P4,429,811.83 was duly substantiated with original copies of BIs and ORs. We were likewise able to determine that the same were not claimed in the Company's monthly/quarterly VAT Returns for the period of July to December 2002.

2. The claim for input VAT in the amount of P100,236.95 was not substantiated with original BIs and/or ORs.

3. The claim for input VAT in the amount of P24,497.72 was supported with original BIs and ORs. However, the ORs in support thereof are either undated, unvalidated, have no indication that payments were received by media outlets from the company, or the OR number cannot be verified.

4. We determined that the input VAT in the amount of P2,438.67 was incorrectly computed and that the company is entitled to claim a higher input VAT thereon in the amount of P7,872.65.

Overall, the company has unclaimed input VAT in the amount of P4,437,684.48 which are substantiated with valid documents while input VAT amounting to P124,734.67 did not comply with the substantiation requirements as discussed above."

As per verification of the abovementioned CPA report and petitioner's supporting documents[26], this Court finds that out of the claimed input VAT of P4,556,985.17, the amount of P4,437,684.48 is duly substantiated with valid VAT official receipts issued by media outlets in the name of petitioner.

Since the receipts were issued in consideration of services rendered by the said media outlets, the input VAT of P4,437,684.48 is creditable against petitioner's output tax liability on the entire amount it billed and received from the advertiser pursuant to Section 110(A)(1)(b) of the NIRC of 1997 and Section 4.104-2(c) of RR No. 7-95.

[26] Exhibits "P" to "W", with sub-markings.

Moreover, Revenue Memorandum Circular (RMC) No. 4-96 caters to petitioner's peculiar circumstances. It allows the input taxes to be credited from output taxes in case the advertising agency issues a VAT official receipt to the advertiser for the entire amount received including that pertaining to the media entity. The pertinent portion of the said RMO reads as follows:

> "Q-4 What is the basis of computing VAT in the case of media?
>
> A-4 The basis for computing VAT payable on transactions of media shall be the gross receipts.
>
> To illustrate: Assume that an advertiser pays an advertising agency the amount of P100,000 to create a commercial and run the same on print and/or broadcast media with the advertising agency getting 15% of such amount as commission/service fee.
>
> xxx
>
> Assumption 2:
>
> The advertising agency issues a VAT official receipt to the advertiser for the total amount of P100,000 and Media issues a VAT official receipt for P85,000.00 to the advertising agency for the payment of the advertisement
>
> (a) The VAT payable by the advertising agency shall be computed as follows:

Gross Receipts	P100,000.00
Output VAT (1/11 of P100,000)	P 9,090.90
Less: Applicable Input VAT Credits (1/11 of P85,000)	(7,727.27)
VAT Payable	P 1,363.63

> (b) The VAT payable by the print/broadcast media, using a VAT invoice issued in the name of the advertising agency, shall be computed as follows:

Amount received for advertising space, Radio/TV Spots/Airtime (85% of P100,000)	P 85,000.00

a

Output VAT (1/11 of P85,000)	P	7,727.27
Less: Applicable Input VAT Credits		(x x x)
VAT Payable by Media	P	x x x"

From the foregoing illustration in Assumption 2, it is clear that if the total amount received from the advertiser is subject to output VAT, a corresponding input tax credit shall be allowed on the payment pertaining to the share of the media entity to determine the correct VAT liability.

Since petitioner issued VAT official receipts covering the third and fourth quarters of 2002 for the entire amount received which includes the amount received by the media entity; and was assessed by the respondent of its corresponding output tax, it is but proper and just that petitioner be allowed to claim the input VAT credits on the amounts it paid to media entity.

Petitioner should not be reprimanded for issuing an invoice to its advertisers on the whole amount it received, which includes the costs of production and media. Moreover, no party in the transactions involving the petitioner was able to claim the input tax pertaining to the share of the media. The government is unduly benefited at the expense of the petitioner. Hence, it is but proper and equitable to allow petitioner to claim its input VAT credits for the third and fourth quarters of 2002.

Considering all the foregoing, this Court finds petitioner Jimenezbasic Advertising, Inc. entitled to input VAT credits in the amount of P4,437,684.48, and the same should be deducted from the basic deficiency VAT assessment of P4,757,928.23. Hence, petitioner's deficiency VAT payable amounts to P401,313.67, inclusive of interest, which is computed as follows:

Discrepancy on sales per LN	
3rd Quarter	P 31,763,990.48
4th Quarter	15,815,291.81
Total discrepancy	P 47,579,282.29
Multiply by VAT rate	10%
Basic VAT Deficiency	P 4,757,928.23
Less: Input VAT Credits	4,437,684.48
Add: VAT Still Payable	P 320,243.75
Interest (1/25/03 to 4/30/04)	81,069.92
Total Amount Due	**P 401,313.67**

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner Jimenezbasic Advertising, Inc. is entitled to claim input VAT credits, covering the third and fourth quarters of 2002, in the reduced amount of P4,437,684.48. Respondent Commissioner of Internal Revenue is **ORDERED** to **DEDUCT** from petitioner's basic deficiency VAT assessment the amount of P4,437,684.48. Hence, petitioner is **ORDERED TO PAY** the deficiency VAT payable after such deduction in the amount of **FOUR HUNDRED ONE THOUSAND THREE HUNDRED THIRTEEN PESOS AND 67/100 (P401,313.67)**, inclusive of interest. Accordingly, respondent's Final Decision on Disputed Assessment, dated March 31, 2005, is hereby **REVERSED and SET ASIDE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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
Chairperson, First Division