Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

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FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7531

Members:

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

Promulgated:

FEB 04 2009 ; 1:40 pm

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DECISION

CASANOVA, *J.*:

For decision is the instant Petition for Review seeking that judgment be rendered setting aside and canceling the final deficiency income tax assessment covered by Assessment Notice No. LTS-LN-116-R-02-04-S-01607-IT-05-00236 dated December 28, 2005 issued by the Bureau of Internal Revenue finding petitioner liable for P683,265.02.

Fort Bonifacio Development Corporation (petitioner) is a domestic corporation duly registered with the Securities and Exchange Commission, existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 2nd Floor, Bonifacio Technology Centre, 31st St., corner 2nd Ave., Bonifacio Global City, Taguig City, Metro Manila[1].

Respondent is the duly appointed head of the Bureau of Internal Revenue (BIR), empowered, among others, to decide on disputed deficiency internal revenue tax assessments, with office address at the Office of the Commissioner of Internal Revenue, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila[2].

On February 3, 2006 petitioner received a Formal Letter of Demand[3] and Assessment Notices[4] stating that it is liable for deficiency Income Tax and Value Added Tax (VAT) arising from the discrepancy based from the computerized matching conducted by the BIR of petitioner's sales and its customer's purchases for the 4th quarter of 2002. The demand letter showed the amounts of P683,265.02 and P236,779.59 as petitioner's deficiency income taxes and VAT, respectively, or a total of P920,044.61 which is inclusive of interests and penalties.

On March 6, 2006, petitioner filed a letter of protest[5] stating that the assessment notices and the corresponding formal letter of demand are null and void for failure to state clearly the law and facts on which the assessments were made contrary to due process requirements. With respect to the deficiency income tax assessment, petitioner argued it to be without basis while the deficiency VAT assessment was argued to have prescribed.

[1] Petition for Review, par. 1, *Rollo*, p. 1.
[2] Ibid., Par. 2, p 2.
[3] Exhibit "A", *Rollo* p. 187.
[4] Exhibits "B" and "C", *Rollo*, pp. 190-191.
[5] Annex "D" of Petition for Review, *Rollo*, pp. 20-29.

On May 5, 2006, petitioner submitted documents to the BIR in support of its arguments[6].

Come September 14, 2006, petitioner received a Final Decision on Disputed Assessment[7] dated August 18, 2006 from respondent. The decision cancelled the deficiency VAT assessment of P236,779.59 and sustained the deficiency income tax assessment of P683,265.02.

With the partial denial of its protest, petitioner filed the instant case before Us on October 16, 2006.[8]

In response to the Petition for Review, respondent filed an Answer[9] on December 27, 2006 with the following Special and Affirmative Defenses:

> "4. The assessment was issued in accordance with law and regulations.
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> 5. The assessment was issued under the objective of Revenue Memorandum Order (RMO) No. 42-03, which supplements the procedures and guidelines in handling assessments against taxpayers covered by Letter Notices (LNs) issued under the RELIEF System defined as RMO 30-2003 and other data matching processes intended to intensify the Bureau's enforcement efforts through the 'no-contact-audit approach'.
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> 6. In the said RMO No. 42-03, it provides that:
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> 1. Sec 6(A) of the Tax Code provides, among others, that 'after a return has been filed as required under the pertinent provisions of the said Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax,' and that 'the tax or any deficiency tax so assessed shall be paid upon notice and

[6] Annex "E" of Petition for Review, *Rollo*, pp. 30-41.
[7] Annex "F" of Petition for Review, *Rollo*, p. 42 Exhibit "D", *Rollo*, p. 192.
[8] *Rollo*, p. 1.
[9] *Rollo*, pp. 76-82.

demand from the Commissioner or from his duly authorized representative.'

2. In order to intensify enforcement, the power of the Commissioner to authorize any examination of taxpayer and the assessment of the correct amount of tax is hereby ordered done through the so-called 'no-contact-audit-approach'.

3. The 'no-contact-audit-approach' includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

4. Even without conducting a detailed examination of taxpayer's books and records, the computerized/manual matching of sales and purchases/expenses will reveal discrepancies which shall be communicated to the concerned taxpayer through the issuance of Letter Notice (LN) by the Commissioner.

5. LNs being served by the Bureau upon taxpayers found to have under-declared their sales or over claimed their purchases/expenses can be considered notice of audit or investigation in so far as the amendment of any return is concerned which is the subject of such LN. A taxpayer is therefore disqualified from amending his return once an LN is served upon him.

7. Its guidelines also provide that:

'The following guidelines shall be observed in handling computation of tax payment/assessments of taxpayers covered by LNs:

1. As provided for under RMO 30-2003, taxpayers with under-declared sales and over-claimed purchases shall be notified of such findings of discrepancy through the issuance of Letter Notices (LNs) herein attached as Annex 'A' and Annex 'B'. The LNs shall be generated

automatically together with the Details of Taxpayer's Customer/Supplier Records (DTCS) by the BIR computer system. The same shall be forwarded to the RDO/LTDO/LTAID for service to taxpayers concerned.

2. Letter Notices (LNs) under the Relief System shall cover only the tax indicated therein on a given particular period or quarter (e.g. VAT liabilities for 3rd quarter 2002)[.]

3. However, taxpayers who will be issued LNs may voluntarily pay the tax indicated in the LN and likewise pay the resulting deficiency income or other taxes as a result of such under or over declaration of sales or purchases/expenses as the case may be. The computation of the deficiency tax(es) should be based on herein Annex 'C'.

4. The issuance of an LN will not preclude the Commissioner from issuing a Letter of Authority covering the comprehensive audit of a taxpayer's tax liability and is not a waiver of the Commissioner's right to look into the reasonableness of taxpayer's operating and administrative expenses.

5. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer, thus, the procedures defined in RR 12-99 should likewise be observed.

6. The concerned taxpayer will be given an opportunity to reconcile the discrepancy. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the LN, the RDO/LTDO/LTAID shall issue a follow-up letter giving the taxpayer ten (10) days to [respond]. If despite the additional ten (10) days, taxpayer still fails to respond, the RDO/LTDO/LTAID shall indorse the case with least possible delay to the Assessment Division of the Region or the appropriate office authorized to review report of investigation, for the issuance of a Preliminary Assessment Notice and Final Assessment Notice, as the case may be, following the guidelines and procedures provided by RR 12-99.

7. In preparing assessments against taxpayers covered by LNs, the RDO/LTDO/LTAIS should prepare the computations in accordance with herein Annex 'C'.

8. Based on the foregoing, respondent issued to petitioner Assessment Notice Nos. LTS-LN-116-R-02-04-S-0160-IT-05-00236 and LTS-LN-L116-R-02-04-S-01607-VT-05-00237 both dated December 28, 2005, wherein respondent conducted computer matching that revealed under declared sales on petitioner's reported sales and purchases with customers for the 4th quarter of 2002.

9. Respondent issued a Formal Letter of Demand and Assessment Notice both dated December 28, 2005 which petitioner received on February 3, 2006 with respect to the contested assessment with complete details accompanying the said Formal Letter of Demand and Assessment Notice that indicated the specific provisions of the law on which the assessment was based. Hence, petitioner was duly informed of the factual and legal basis of the assessment.

10. Petitioner had been given ample time to refute the validity of the assessments. However, petitioner's documentary evidence were found insufficient, hence the assessments were maintained pursuant to Section 27 and 32 and in relation [to] Sections 105, 106 and 108, all of the NIRC of 1997, as amended.

11. The compromise penalty as imposed under to the (sic) provisions of the Revised Schedule of Compromise Penalties pursuant [to] Revenue Memorandum Circular No. 1-90.

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

Respondent filed her pre-trial brief[10] on March 7, 2007, while petitioner filed its brief[11] on March 14, 2007. Thereafter, the case was scheduled for pre-trial several times but respondent failed to appear. Hence, on June 29, 2007, respondent was declared in default in open court and petitioner was allowed to present its evidence *ex parte*[12].

Respondent filed a Motion for Reconsideration[13] on July 26, 2007 praying that the Order of Default be lifted. Pending resolution thereof, petitioner was scheduled to present its initial evidence. However, after several postponements on petitioner's instance, petitioner instead manifested during a hearing that it is considering amicable settlement of the instant case. The manifestation was denied and petitioner was deemed to have waived its right to present evidence due to its repeated postponements[14]. In a confirming Resolution[15] dated December 04, 2007, the instant Petition was dismissed and the case was deemed closed and terminated.

On January 2, 2008, petitioner filed its Motion for Reconsideration[16] of the Resolution dated December 4, 2007 dismissing the case. Respondent, for her part, filed an Opposition Re: Motion for Reconsideration[17] on January 22, 2008. In the Court's Resolution[18] promulgated on February 5, 2008, petitioner's motion was deemed submitted for resolution without taking into consideration

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[10] *Rollo*, pp. 97-101.
[11] *Rollo*, pp. 107-117.
[12] Confirmed *via* a Resolution dated July 11, 2007, *Rollo*, p. 129; Transcript of Stenographic Notes (TSN), June 29, 2007, p. 4.
[13] *Rollo*, pp. 132-134.
[14] TSN, November 20, 2007, pp. 3-5.
[15] *Rollo*, p. 160.
[16] *Rollo*, pp. 161-163.
[17] *Rollo*, pp. 169-172.
[18] Resolution, *Rollo*, p. 176.

respondent's Opposition thereto as she was rendered in default in the Court's Resolution[19] dated July 11, 2007. On April 4, 2008, petitioner's Motion for Reconsideration was granted and the Resolution dated December 4, 2007 dismissing the case for failure to prosecute was set aside[20].

During the hearing, petitioner presented evidence proving that the deficiency income tax assessment was without basis. It offered its documentary exhibits through a Formal Offer of Evidence filed on May 16, 2008 [21]. In a Resolution[22] promulgated on June 24, 2008, this Court resolved to deny some exhibits from petitioner's offer. Petitioner filed a Motion for Reconsideration on the partial denial on July 17, 2008[23]. On July 23, 2008 and July 24, 2008, petitioner filed two Manifestations with Motion for Reconsideration[24] stating that its Motion for Reconsideration filed on July 17, 2008 was without a date of hearing.

In an August 29, 2008 Resolution[25], petitioner's Motion for Reconsideration was denied while its Manifestations were noted. On September 23, 2008, a Tender of Excluded Evidence[26] was filed by petitioner. On October 8, 2008, petitioner filed its Memorandum[27]. On October 29, 2008, the Court, ruling on petitioner's Tender, issued a Resolution[28] which ordered the attachment of

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[19] *Rollo*, p. 129.
[20] Resolution, *Rollo*, pp. 178-179.
[21] *Rollo*, pp. 183-186.
[22] *Rollo*, pp. 200-201.
[23] *Rollo*, pp. 203-204.
[24] *Rollo*, pp. 209-211 and pp. 218-219.
[25] *Rollo*, pp. 232-234.
[26] *Rollo*, pp. 236-239.
[27] *Rollo*, pp. 296-305.
[28] *Rollo*, pp. 307-308.

excluded evidence as part of the records of the case deemed the case submitted for decision.

Hence, this decision.

In its pre-trial brief, petitioner submitted the following issues:

1. Whether or not petitioner was sufficiently informed in writing of the law and facts on which the alleged deficiency income tax assessment was made?

2. Whether or not the alleged deficiency income tax assessment has factual and legal bases?

3. Whether or not petitioner is liable for the compromise penalty?

4. Whether or not petitioner would be liable for deficiency income tax for taxable year 2002 even assuming without conceding that it had an undeclared sales amounting to P6,621,206.58?

The Formal Letter of Demand[29] shows the breakdown of the assessment to be as follows:

A. INCOME TAX		
Per Summary List of Purchases by Customers		58,426,473.38
Less: Sales per Tax Returns		51,805,266.80
Under-declared Sales		6,621,206.58
Gross Profit Rate		20.38%
Gross Profit Rate		1,349,401.90
Basic Tax Deficiency	32%	431,808.61
Add: Interest		226,456.41
Compromise Penalty		25,000.00
Total Income Tax Deficiency		**683,265.02**
B. VAT		
Gross Profit		1,349,401.90
VAT Rate		10%
Basic VAT Deficiency		134,940.19
Add: Interest		76,839.40
Compromise Penalty		25,000.00
Total VAT Deficiency		**236,779.59**
TOTAL DEFICIENCY TAXES		**920,044.61**

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[29] Supra, note 3.

The deficiency VAT assessment, having been cancelled by respondent in her Final Decision on Disputed Assessment[30], is no longer an issue. What remains disputed is the alleged income tax deficiency of petitioner amounting to P683,265.02.

From the evidence presented by the petitioner *ex parte*, the Court rules as follows:

Whether or not petitioner was sufficiently informed in writing of the law and facts on which the alleged deficiency income tax assessment was made?

Petitioner states that the formal letter of demand merely provided the computation of the supposed tax deficiency, interest and compromise penalty due thereon and that he Assessment Notice issued by the respondent did not provide the petitioner with the written bases of the law and facts on which the subject assessment was based in violation of its right to due process[31].

This Court does not agree.

From the Details of Discrepancies attached to respondent's Formal Letter of Demand, We find that respondent sufficiently informed petitioner that the bases of the assessment were the computerized matching conducted on the purchases of petitioner's customers and its filed Income Tax Return and that the assessment was made pursuant to Sections 27 and 32 of the 1997 National Internal Revenue Code (1997 NIRC).

[30] Supra, note 7.
[31] Petition for Review, Pars. 4.04 and 4.06, *Rollo*, pp. 7-8.

It is also wise to note that petitioner was given the chance to protest the Formal Letter of Demand. Petitioner even submitted documents to respondent in support of its claim[32].

The essential elements of due process are notice and an opportunity to present one's side. As the facts would demonstrate, petitioner was never deprived of due process. So long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with[33].

Hence, the first issue is resolved against the petitioner.

Whether or not the alleged deficiency income tax assessment has factual and legal bases?

The Details of Discrepancies[34] attached to respondent's Formal Letter of Demand reads as follows:

> **"DETAILS OF DISCREPANCIES**
> **LN No. 116-R-02-04-S-01607**
>
> **INCOME TAX**
> **Assessment No. ______________________**
>
> Computerized matching conducted by this office on the purchases by your customers for the fourth quarter of 2002 against Sales per your Income Tax Return resulted in the discrepancy; this is assessed pursuant to Sections 27 and 32 of the Tax Code.
>
> xxx xxx xxx"

In response thereto, petitioner replied through a Protest Letter[35] dated March 6, 2006 arguing that the assessment is erroneous and lacks factual basis

[32] Supra, note 6.
[33] *Calma vs. Court of Appeals*, G.R. No. 122787, February 9, 1999, 302 SCRA 682.
[34] *Rollo*, p. 189.

and that the finding is merely based on assumptions which cannot be sanctioned as valid assessments under the law.

Petitioner, in support of its claim, submitted to the respondent its Annual Income Tax Return for taxable year ended December 31, 2002 showing excess tax credits in the amount of P339,075,150.64 and Quarterly VAT Return for the 4th Quarter of 2002 filed on January 24, 2003 in support of its claim.

Respondent replied to petitioner's Protest in the following manner:

> "xxx With respect to your income tax liability[,] it appears that you have not complied with the documentary justifications as required under RMO No., 46-2004 and other related issuances. Thus, we maintain that the **Income Tax** assessment based on the Formal Letter of Demand in the amount of **Pesos: 683,265.02** inclusive of interest and penalties thereon up to January 10, 2006 is hereby upheld subject to adjustment of interest on the actual date of payment."

We agree with petitioner.

Section 5 of the 1997 National Internal Revenue Code (1997 NIRC) states that:

> "**SECTION 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.** — *In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:*
>
> xxx xxx xxx
>
> (C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before

[35] Supra, note 5.

the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and x x x"

Pursuant to such authority, respondent assessed petitioner through a "no-contact-audit approach" which is implemented by Revenue Memorandum Order (RMO) 46-2004. Under such RMO, respondent must comply with the following guidelines to ascertain the veracity of the information is derived from the "no-contact-audit approach":

"III. PROCEDURES[36]

Action on LNs that remain Unserved

xxx xxx xxx

Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:

xxx xxx xxx

3. **Obtain Sworn Statements from TPI sources (Annexes 'B' and 'C') attesting to the veracity of the data provided.**

3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

3.1.1 Prepare 'Confirmation Requests' (using the format prescribed in Annex 'C' of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the

3.1.2 If the TPI source agrees with the figures in the 'Confirmation Requests' (CR), secure a Sworn

[36] Supra, note 7.

Statement from the TPI source to allow the RO to build a case against the taxpayer.

3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

a. Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

b. Secure a sworn statement from the TPI source thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex 'D') outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes." (Emphasis Supplied)

True, that assessments are *prima* facie presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; and, in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed[37], in the present case, however, the assessment of respondent has failed to comply with the guidelines implementing the procedure it adapted.

Since respondent was not able to present to Us such certifications and statements necessary to support the audit, We cannot verify the veracity of the assessment. With the failure to present other supporting documents, We believe

[37] *Interprovincial Autobus Co., Inc. vs. CIR*, 98 Phil. 290; *Sy Po vs. CTA, et al.*, G.R. No. 81446, Aug 18, 1988; *Dayrit et al. vs. Cruz, et al.*, L-39910, Sept. 26, 1988, Aug 18, 1988; Answer, Par. 12, *Rollo*, p. 80.

that, the assessment, though possibly meritorious, cannot hold water due to unconfirmed data gathered and is concluded to be mere presumptions.

Therefore, We agree with petitioner when it cited *Collector of Internal Revenue vs. Benipayo*[38] which ruled that assessments should be based on facts and not mere presumptions. As such, the income tax deficiency assessment cannot be enforced against petitioner; otherwise, the Court stands to tax petitioner arbitrarily. In *Roxas vs. Court of Appeals*[39], the Supreme Court eloquently ruled that:

> "The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the 'hen that lays the golden egg.' And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

Having found respondent's assessment without basis, the other issues of this case are now rendered moot.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. The deficiency income tax assessment covered by Assessment Notice No. LTS-LN-116-R-02-04-S-01607-IT-05-00236, dated December 28, 2005, in the amount of P683,265.02, is hereby **CANCELLED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[38] G.R. No. L-13656, January 31, 1962, 4 SCRA 182.
[39] G.R. No. L-25043, April 26, 1968, 23 SCRA 276, 282.

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