REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERVET PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6226

COMMISSIONER OF INTERNAL REVENUE DAKILA FONACIER and BIR REGIONAL DIRECTOR OSCAR L. SEVILLA,
Respondents.

Promulgated:
DEC 0 3 2002

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DECISION

This case seeks to declare as null and void two (2) Assessment Notices, both bearing Assessment No. 001113, issued by the respondent against petitioner Intervet Philippines, Inc. (Intervet) on May 15, 2000, for alleged deficiency income and expanded withholding taxes for the fiscal year 1996.

Petitioner is a corporation organized and existing under and by virtue of Philippine laws with business address located at 3608 Robinsons Equitable Tower, ADB Avenue cor. Poveda Street, Ortigas Center, Pasig City.

On June 11, 1998, Regional Director Virginia L. Trinidad issued Letter of Authority No. 170177, authorizing Revenue Officer Edwin T. Guzman of Revenue District Office No. 39, South Quezon City, to examine petitioner's books of accounts and other accounting records for all taxes except VAT for the period from January 1, 1996 to December 31, 1996 (*Exhibit "F"*). A Waiver of the Statute of Limitations was then

144

executed by petitioner on October 29, 1999 which extended the period to assess until July 31, 2000 (*Exhibit "L"*).

On November 15, 1999, petitioner was invited by respondent to an informal conference to be held on November 17, 1999, relative to the report of investigation on petitioner's 1996 Corporate Tax Return (*Exhibit "G"*). In response, petitioner wrote a letter to respondent requesting for additional information that will aid the former in analyzing the transactions involved. Petitioner asked for the postponement of the informal conference to a later date.

On January 19, 2000, respondent issued a Preliminary Assessment Notice (*Exhibit "I"*) which was received by petitioner on February 22, 2000, informing the latter that after investigation there has been found due from petitioner deficiency income taxes in the amount of P2,259,251.48 and deficiency withholding tax amounting to P177,026.56, both for the calendar years 1996.

On March 7, 2000, petitioner filed its answer to said notice, stating that it would not be able to completely present its side because there are some details that it would like to request from the respondent's bureau. In the said letter, however, petitioner agreed to pay the amount of P98,141.78 based on the computation attached as Schedule 1 of respondent's Preliminary Assessment Notice (*Exhibit "J"*).

On May 23, 2000, petitioner received two (2) Assessment Notices, both dated May 5, 2000 and bearing Assessment No. 001113, with an attached formal letter of demand for alleged deficiency expanded withholding tax and income tax for the fiscal year 1996 in the amounts of P184,406.75 and P2,342,869.06, respectively (*Exhibits "B"*

195

and "C"). The deficiency arose from the disallowance of certain items of expenses deducted by petitioner from its gross income for the taxable year 1996 and the claim that petitioner failed to deduct and/or remit certain withholding taxes for the said taxable year (*p. 80, CTA Records*).

On June 23, 2000, petitioner registered its protest to the formal letter of demand and Assessment Notice No. 001113. Petitioner averred that it has always been complying with the BIR rules insofar as substantiation of expenses and payment of the correct amount of taxes are concerned. Petitioner reiterated its request for details on the alleged unsupported transactions in order that it may be able to "fully analyze and explain our alleged deficiencies if we shall be provided with the details that we had been requesting since 15 November 1999" (*Exhibit "D"*).

For failure on the part of respondent to act on petitioner's protest letter within the one-hundred eighty (180) day period prescribed by law, petitioner filed its petition with this court and questioned the assessment notices on the following grounds:

> I. The issuance of the assessment notices despite the obstinate refusal of respondents and/or their representatives to furnish Intervet with the requested information that will aid the latter in rebutting the alleged tax deficiencies is illegal and improper.
>
> II. In any event, the amount of 1996 taxes declared and paid by Intervet is in accord with law and fully substantiated by its financial records.

Respondent, in his Answer filed on March 16, 2001, raised the following Special and Affirmative Defenses:

"1. That the investigation of the petitioner's internal tax liabilities for the year 1996 revealed a tax obligation of P2,304,431.20 as deficiency income tax and P184,406.35 as deficiency withholding tax.

2. That the subject deficiency income tax and withholding tax assessments (Assessment No. 001113) was issued in accordance with law and pertinent regulations and has substantially complied with the provisions of Section 228 of the Tax Reform Act relative to the taxpayer being informed in writing of the facts and law in which the assessment is based.

3. That the 180 day period provided for in Section 3.1.5 of Revenue Regulations 12-99 and Section 228 of the Tax Code, should be reckoned from the date of submission by the taxpayer of the required documents in support of his protest and from the date of the filing of the said protest as pointed out by petitioner.

4. That the petitioner failed to submit said documents containing vital and indispensable information necessary to arrived (sic) at a correct, judicious and final determination of its protest.

5. Therefore, technically speaking, the 180 day period did not commence to run. Such being the case, the petitioner has not exhausted the administrative remedies required by law and jurisprudence on cases of this nature, hence petitioner has no cause of action.

6. This Honorable Court therefore has as yet no jurisdiction over this petition for review.

7. Furthermore, the petitioner's failure to submit all relevant supporting documents will make the assessment final, executory and demandable.

8. That all presumptions are in favor of the correctness of tax assessments and the burden of proof to prove otherwise is upon the petitioner."

The issues for this court's consideration are as follows:

1. Whether or not the issuance of the assessment notices is illegal, improper and lacks basis.

2. Whether or not petitioner is subject to the deficiency income tax and deficiency withholding tax for the taxable year 1996.

147

With reference to the first issue, petitioner contends that the issuance of the disputed assessment notice(s) is illegal and improper as it failed to comply with the provisions of the Tax Reform Act of 1997 which provides, thus:

> "**SEC. 228**. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing <u>of the law and the facts</u> on which the assessment is made; otherwise the assessment shall be void.
>
> xxx xxx xxx

According to petitioner, the law requires disclosure of law and facts upon which the assessment is based. But since the assessment is wanting in facts which are material to the proper contest of said assessment, the two assessment notices must perforce be declared void.

We do not agree.

A perusal of the Assessment Notices, both bearing No. 001113, with the attached Formal Letter of Demand and "Schedule 1" containing the details of discrepancies, revealed that petitioner was properly informed of the facts and the law on which the assessment was made. For clarity, the Assessment Notices and Formal Letter of Demand with the attached schedule are hereby reproduced:

Assessment Notice No. 001113 (*Exhibit "B"*)
(Deficiency Withholding Tax)

Tax Due	P110,641.60
Add: Surcharge	
Interest from 1-26-97 to 5-15-00	73,764.75
Total Amount Payable	P184,406.35

(198)

Assessment Notice No. 001113 (*Exhibit "C"*)
(Deficiency Income Tax)

Tax Due	P1,449,167.48
Add: Surcharge	
Interest from 4-16-97 to 5-15-00	893,701.58
Total Amount Payable	P2,342,869.06

FORMAL LETTER OF DEMAND

Deficiency Income Tax:

Net Income per return		P10,483,758.41
Add: Discrepancies/disallowance per audit		
Promotion	P1,516,059.74	
Representation	184,624.77	
Miscellaneous	10,000.00	
Gas & Oil	38,680.52	
Incentives	292,400.00	
Retirement	175,757.46	
Inventory losses	257,260.48	
Releasing charges	13,676.55	
Salaries – discrepancy	198,657.63	
Audit fee – no EWT	150,000.00	
Legal fee – no EWT	117,360.00	
Rental – no EWT	64,000.44	
Repairs and maintenance – no EWT	55,898.29	
Commission – no EWT	767,773.30	
Advertisement – no EWT	139,982.34	
Direct Labor – no EWT	158,347.00	4,140,478.52
Taxable Income per audit		14,624,236.93
Tax due thereon		P5,118,482.92
Less: Tax credits/payments		
Paid per return	P3,525,333.20	
Creditable tax withheld	143,982.24	3,669,315.44
Deficiency tax		P1,449,167.48
Add: 20% Interest per annum from 4-16-97 to 5-15-00		855,153.72
Total Amount Due		P2,304,321.20

Deficiency Expanded Withholding Tax:

	Amount	Rate	Tax Due
Income Payments			
Commission	P767,773.30	10%	P76,777.33
Rental	64,000.00	5%	3,200.00

149

Professional fee/ legal fee	267,360.00	10%	26,736.00
Advertisement	139,982.34	1%	1,399.82
Direct labor	158,347.00	1%	1,583.47
Brokerage & handling	17,441.99	5%	872.09
Storage	7,289.81	1%	72.89
Deficiency tax			P110,641.60
Add: 20% Interest per annum from 1-26-97 to 5-15-00			73,764.75
Total Amount Due			P184,406.35

This court believes that the formal letter of demand accompanying the assessment notices was clear enough to inform the petitioner of the nature of the discrepancies and disallowances made by respondent. Likewise, the items which should have been subjected to the expanded withholding tax such as audit fee, legal fee, rental, repairs and maintenance, commission, and direct labor were specified (*Exhibit "A"*). Moreover, in the attached Details of Discrepancies *(p. 80, CTA Records)*, respondent informed the petitioner of the particular provisions of law upon which the assessments were based, thus:

DETAILS OF DISCREPANCIES

"1. Verification revealed that various expenses was (sic) unsupported, hence, disallowed as deduction from income pursuant to Section 29, now 34 of the National Internal Revenue Code as amended by R. A. No. 8424 x x x

2. Verification revealed that various income payment which are subject to withholding tax were not properly withheld the required tax thereon, hence, assessed the corresponding deficiency taxes pursuant to Section 57, of the same code. (implemented by RR 6-85, as amended)"

From the foregoing, this court is convinced that the requirement under Section 228 of the NIRC was substantially complied with by respondent and the petitioner was sufficiently informed of the legal and factual bases of the assessments.

As to whether or not petitioner is subject to deficiency income and withholding taxes for the taxable year 1996, the court rules in the affirmative.

To prove its case, petitioner presented during the trial of this case the formal letter of demand (*Exhibit "A"*), assessment notices bearing assessment no. 001113 (*Exhibits "B" & " C"*), protest letter of petitioner dated May 31, 2000 (*Exhibit "D"*), letter of petitioner dated July 23, 2000 (*Exhibit "E"*), BIR Letter of Authority No. 170177 dated June 11, 1998 (*Exhibit "F"*), letter-invitation of Revenue District Officer Corazon Pangcog dated November 15, 1999 (*Exhibit "G"*), letter of petitioner dated November 15, 1999 (*Exhibit "H"*), Preliminary Assessment Notice (*Exhibit "I"*), letter-protest of petitioner dated February 28, 2000 (*Exhibit "J"*), letter of respondent dated March 7, 2000 (*Exhibit K*) and waiver dated October 29, 1999 (*Exhibit "L"*).

Noticeably, these documents were offered by petitioner only to prove that the assessment notices are invalid in accordance with Section 228 of the Tax Reform Act of 1997. Nothing was presented by petitioner to rebut the assessments issued by respondent. A request for a more detailed explanation of the assessments in question is not enough. Considering that respondent had made an enumeration of the items of expenses which were disallowed and the income payments subject to expanded withholding tax, petitioner could have submitted to respondent and to this court its books of accounts and the pertinent accounting records if only to prove its claim that it has always been complying with BIR rules insofar as substantiation of expenses and payment of the correct amount of taxes are concerned. Unfortunately, petitioner just kept on requesting for details of the assessment and failed to submit supporting documents.

157

It is also worth stressing that the conference scheduled by respondent on November 17, 1999 was not attended by petitioner. This could have been an opportunity for the petitioner to clarify matters and verify the details of computation of the assessments in question.

It is a basic rule in evidence that each party must prove his affirmative allegation (*p.8, Remedial Law, Herrera, 1999 Ed.*). Considering that petitioner herein asserts that the amount of 1996 taxes declared and paid by petitioner is in accord with law and fully substantiated by its financial records, it has the duty to prove that fact.

For failure of the petitioner to satisfactorily refute the findings of the revenue examiners, the court is constrained to uphold the assessments. Since assessments are *prima facie* presumed correct and made in good faith, it was incumbent upon the petitioner to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments (***Bonifacio Sy Po vs. Court of Tax Appeals and Commissioner, 164 SCRA 524***). Failure to present proof of error in the assessment will justify judicial affirmance of said assessment (***Delta Motors Co. vs. Commissioner, CTA Case No. 3782, May 21, 1986***).

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby denied for lack of merit. Accordingly, petitioner is hereby **ORDERED** to **PAY** deficiency withholding and income taxes in the amounts of P184,406.35 and P2,342,869.06, respectively. In addition, petitioner is also liable to pay respondent 20%

delinquency interest on the total deficiency withholding and income taxes computed from June 13, 2000 until fully paid pursuant to Section 249 (a)(C)(3) of the 1997 Tax Code.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

153