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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHICAGO BRIDGE & IRON
COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 2817

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - x

3/18/82

D E C I S I O N

Sometime in the year 1971, respondent Commissioner of Internal Revenue caused the investigation of the income tax returns and books of accounts of petitioner Chicago Bridge & Iron Company for the year 1969. As a result of such investigation, respondent issued an assessment letter dated June 15, 1971 demanding the payment of the total amount of ₱328,732.89 as deficiency income tax, inclusive of interest.

In a letter dated July 31, 1971, filed with the office of respondent on August 3, 1971, petitioner contested and disputed the said assessment. However, without formally or categorically replying to, or deciding, petitioner's protest against the assessment, respondent filed a complaint in the Court of First Instance of Manila on June 14, 1976, docketed as Civil Case No. 102781 entitled Republic of the Philippines vs. Chicago Bridge & Iron Co., for the collection of the alleged deficiency income tax of ₱328,732.89, plus surcharge and interest thereon.

Hence, the instant petition for review.

The sole basis of the deficiency assessment is the contention of respondent that petitioner is a nonresident foreign corporation not engaged in trade or business in the Philippines, and therefore, not entitled to claim any deduction from its gross income derived from Philippine sources nor to exclude from the gross income 75% of the dividends received by it from a domestic corporation.

Four-square with the case at bar on this point, by reason of the exact identity of the parties and the law involved, as well as the issue litigated, is Chicago Bridge & Iron Company vs. Commissioner of Internal Revenue, CTA Case No. 2481. In that case, this Court ruled that herein petitioner Chicago Bridge & Iron Company, during the years 1965, 1966, 1967 and 1968, was a foreign corporation not engaged in trade or business within the Philippines and not having any office or place of business therein. Accordingly, pursuant to the provisions of Section 24(b)(1) of the then in force National Internal Revenue Code, as a nonresident foreign corporation not engaged in trade or business in the Philippines, petitioner was taxable on its gross income.

The year involved in the instant case is 1969. However, the deficiency income tax assessment under review is based on the finding of respondent, upon investigation, that petitioner Chicago Bridge & Iron Company was not engaged in business in the Philippines in the year 1969, and in accordance with Section 24 of the National Internal Revenue Code, it is not entitled to any deduction from its income.

During the hearing of this case on August 28, 1981, respondent manifested that the parties have already agreed that whatever decision rendered in CTA Case No. 2481 would be binding in the case at bar. (Minutes of the session of the Court, August 28, 1981, p. 45, CTA records.) On November 11, 1981, petitioner filed a manifestation and motion, which reads: (pp. 50-52, CTA records)

> COMES NOW the petitioner through the undersigned counsel, and to this Honorable Court most respectfully manifests that:
>
> 1. At the last hearing of the above-entitled case, undersigned counsel reserved the filing of a memorandum on the basis of the pleadings and the B.I.R. records inasmuch as he had not received specific instructions to confess judgment

in said case, notwithstanding previous advice of the taxpayer that they were contemplating payment of the assessment at bar.

2. Accordingly, undersigned counsel intended to file a memorandum and had in fact requested for extensions of time to file said memorandum.

3. On November 16, 1981, undersigned counsel was requested to compute the tax and interest due to date, with a view to settling this case.

4. On verifying the correctness of the assessment per letter of demand of respondent dated June 15, 1971 (Annex "A"), undersigned counsel who did not handle the protest of this case at the administrative level, nor prepared the petition for review, discovered the following discrepancies in the assessment:

| | Computation per BIR demand letter | Should be |
|---|---|---|
| Net income per investigation | ₱886,768.19 | ₱886,768.19 |
| Tax due thereon | ₱310,369.00 | ₱300,369.00 |
| Less: Amount already assessed | 13,142.00 | 13,142.00 |
| Balance | ₱307,227.00 | ₱287,227.00 |
| Add: ½% mo. int. fr. 4-16-70 to 6-15-71 (or 7%) | 21,505.89 | 20,105.89 |
| Total amount due and collectible | ₱328,732.89 | ₱307,372.89 |

5. The excess of ₱21,400.00 is attributable to the following errors:

a. Computation of basic tax is erroneous:

| | | |
|---|---|---|
| 25% of ₱100,000.00 | ₱ 25,000.00 | |
| 35% of ₱786,768.19 | 275,368.88 | |
| Total (centavos rounded off) | ₱300,369.00 | |
| Per letter of demand | 310,369.00 | |
| Error (overstated) | | ₱10,000.00 |

| | |
|---|---|
| b. Error in subtraction - ₱310,369 minus ₱13,142.00 is only ₱297,227.00 and not ₱307,227.00 - error is thus | 10,000.00 |
| Total overstatement of basic deficiency | ₱20,000.00 |
| c. Interest on above (1/2% per month for 14 months or a total of 7%) | 1,400.00 |
| Total error (overstatement) | ₱21,400.00 |

6. As may be seen from the nature of the errors, the same are clear, demonstrable and palpable errors, involving merely the mechanical processes of multiplication and addition in the case of the computation of the basic tax; the mechanical process of subtraction of ₱13,142.00 from ₱310,369.00; and the application of the interest rate to the correct interest base.

7. Even judgments can be corrected for clear errors, whereas in the instant case there has not even been rendered any judgment.

8. Petitioner is willing to forego the filing of a memorandum, and to confess judgment for the corrected amount of ₱307,372.89, plus 5% surcharge on the basic deficiency of ₱287,227, and additional interest on ₱307,372.89 of 1% per month from June 16, 1971 to December 31, 1972 (pursuant to Section 51 of the Tax Code then in force) and 14% interest per annum from January 1, 1973 to June 15, 1974 (as increased by Presidential Decree No. 69).

9. Petitioner's willingness to forego the filing of a memorandum is premised on respondent's willingness to correct the obvious errors in the computation of the assessment.

WHEREFORE, it is respectfully prayed that, after due hearing of this manifestation and motion, and the manifestation of respondent's counsel agreeing to the correction of the errors pointed out hereinabove, judgment be rendered in respondent's favor for the amount of ₱307,372.89, plus surcharge and interest as provided in Section 51 of the Tax Code then applicable, as amended by Presidential Decree No. 69.

Makati, Metro Manila for Quezon City.

November 17, 1981.

And on March 1, 1982, respondent likewise filed a manifestation as follows:

COMES NOW respondent, by undersigned counsel, and to this Honorable Court respectfully manifests that he totally agrees with the observation of petitioner's counsel as contained in the latter's manifestation and motion dated November 17, 1981 that there was an overstatement of ₱21,400.00 in the computation of the tax assessment contained in respondent's letter of demand dated June 15, 1971.

WHEREFORE, it is respectfully prayed that judgment be rendered herein against the petitioner for the amount of ₱307,372.89 as deficiency income tax for 1969, plus 5% surcharge on the basic deficiency of ₱287,227.00, 1% monthly interest on ₱307,372.00 from June 16, 1971 to December 31, 1972 and 14% annual interest thereafter from January 1, 1973 to June 15, 1974, pursuant to Section 51(e) of the National Internal Revenue Code as amended by R.A. No. 2343, and as further amended by P.D. No. 69.

Respondent further prays for such other relief and remedies as may be just and equitable in the premises.

Quezon City, Metro Manila, February 26, 1982.

During the hearing of this case on March 5, 1982, petitioner manifested that it is amenable to confess judgment against it for the corrected amount of ₱307,372.89, plus surcharge and interest pursuant to Section 51(e) of the National Internal Revenue Code then applicable, as amended by Presidential Decree No. 69. (Minutes of the session of the Court, March 5, 1982, p. 57, CTA records.) Respondent being in agreement thereto, the above manifestation and motion dated November 17, 1981 of petitioner, confirmed by it during the hearing on March 5, 1982, which is a confession of judgment, is hereby granted and approved.

WHEREFORE, petitioner Chicago Bridge & Iron Company is hereby ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱307,372.89 as deficiency income tax for the year 1969, plus surcharge and interest incident to delinquency pursuant to the provisions of Section 51(e) of the then applicable National Internal Revenue Code as amended.

SO ORDERED.

Quezon City, Metro Manila, March 18, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge