18

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ARMANDO T. ROMUALDEZ,
Petitioner,

- versus -

C.T.A. CASE NO. 5022

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 15 1997

x - x

DECISION

Before us for consideration is a petition to review the assessments issued by respondent against petitioner on alleged income tax deficiency in the total amount of P27,590,925.19 for the years 1980, 1981, 1983, 1984 and 1985.

Petitioner is of legal age, married, Filipino and resident of no. 4, Yakan St., La Vista Subdivision, Quezon City. As per records of respondent's Bureau, petitioner is a brother of former First Lady Imelda Romualdez-Marcos and that during the incumbency of her husband, the late President Ferdinand E. Marcos, petitioner was actively engaged in various business concerns and owned stocks in numerous corporations either in his name or in the name of relatives and close associates (Exhibit "1", BIR records, folder 1, p. 43).

The antecedent facts are as hereunder stated.

On June 23, 1992, petitioner received a letter of assessment dated June 8, 1992 inclusive of several assessment notices (Exhibits "A", "B" to "B-4", folder of petitioner's exhibits), namely:

Assessment Number	Date Issued	Amount
FAC-1-80-92-002781	12-23-91	P 5,978,620.90
FAC-1-81-92-002782	12-23-91	415,339.00
FAC-1-83-92-002783	12-23-91	104,028.44
FAC-1-84-92-002779	12-23-91	5,162,839.24
FAC-1-85-92-002780	12-23-91	15,929,098.61
	TOTAL -	P27,589,926.19*

* As corrected

On June 29, 1992, petitioner filed with respondent a protest through a request for reconsideration of the above assessments. Without acting on the protest, however, respondent's Head Revenue Executive Assistant and Officer-in-Charge of Collection, Herminia D. De Guzman, issued a Warrant of Distraint and Levy designated as N.A.-1002-93 upon petitioner for his refusal to pay the aforementioned assessments despite demands (Exhibit "C").

On July 27, 1993, petitioner, in opposing the warrant, allegedly orally informed Herminia De Guzman of the pendency of both the letter of protest dated June 29, 1992 and of the letter of explanation/reply dated June 10,1992 which he filed with respondent's Bureau. Allegedly for lack of knowledge thereof and upon her advice, petitioner furnished her copies of said documents on the same date. The following day, petitioner wrote respondent informing her that all of his properties are being held in *custodia legis* by the Sandiganbayan under Civil Case No. 0019.

It is worthwhile to note that the basis for the assessments issued by the respondent was almost entirely taken from the list of real and personal properties gathered and deemed as ill-gotten wealth by the Philippine Commission on Good Government (PCGG), the ownership of which are allegedly imputable to the petitioner (Exhibit "1", p. 2,). Proceeding from the PCGG data and other "paltry number of documents", members of respondent's Special Tax Audit Team (STAT) tasked to conduct investigation on the petitioner considered it proper to use the Net Worth Method of assessment, as sanctioned under Section 37 of the Tax Code, as amended. The method is authorized in case the taxpayer's net worth has increased in an amount not commensurate with his reported income (ibid).

On July 29, 1993, Herminia De Guzman endorsed petitioner's papers to the Assistant Commissioner for Legal Service for appropriate action. Up to the time of filing of herein petition, however, no action has been allegedly taken by the respondent.

Hence, this appeal.

Petitioner submits, *inter alia*, that the Warrant of Distraint and/or Levy on his properties is not legal because they are in *custodia legis* and there is a pending and unresolved protest on the assessments; that the assessments totalling P27,590,928.19 are erroneous because for the year 1980 for instance, he filed a tax amnesty return under Presidential Decree No. 1840, and as regards ownership of the various assets imputed to him, most of them are either owned or registered in the name of different persons or corporations or simply exaggerated in number, that the assessments are based on hearsay and not on actual fact because the list of properties contained in the Special Tax Audit Team (STAT) Memo Report, dated December 23, 1991, supporting the assessments which properties were mostly taken from the list made by PCGG and submitted with the Sandiganbayan in Civil Case No. 0019 has not yet been proven to be owned by the Republic of the Philippines inasmuch as the case with the Sandiganbayan has not even reached the pre-trial stage, hence, no facts can be used to justify the assessments; that respondent's right to assess petitioner on the basis of the property imputed to him has prescribed; and that the petitioner has left for the United States and has no income for the years 1986 to 1990.

Respondent, on the other hand, contends in her Answer the following pertinent special and affirmative defenses, to wit:

xxx xxx xxx

6. On the bases of the records of the case, petitioner is the registered owner of several parcels of land located at Mamburao, Occidental Mindoro; Cattle ranches at Alegre, Isabela, Daegon Island, Masbate, Pamplona, Camarines Sur and in Masbate; beach resorts/club at Tumaluini, Isabela; seven (7) aircrafts; cattle (200 head) in Brgy. Alegre, Sta. Maria, Isabela, (300) heads in Brgy. Tumaluini, Isabela; a horse (House "Sammy") at Forbes Park, Makati not to mention various equipments/facilities and other properties likewise belonging to petitioner. Petitioner is also the owner and/or majority stockholders in twelve (12) corporations namely:

a. Dio Island Resort Inc.

b. Romson Realty Inc.

c. New Majestic Exchange Trading & Development Corporation

d. Rockshield Trading Co., Inc.

e. Chrysanthemum Realty & Development Corporation

f. Romarts Trading and Realty Inc.

g. Fidelity Management Inc.

h. R and S Transport Co. Inc.

i. Bacolod Real Estate and Development Corporation

j. Commercial Restaurant/Resort

k. Poultry House

l. Romus Realty; and,

m. Highway Builders Inc.

xxx xxx xxx

8. Petitioner having consistently underdeclared his income for the period under review makes him liable for fraud pursuant to Section 51 (b) of the Tax Code, as amended.

Hence, the imposition of 50% fraud penalty is proper and legal;

xxx xxx xxx

12. There is yet no final decision rendered by respondent on petitioner's alleged protest on his deficiency income tax assessments appealable to this Honorable Court. Hence, this Honorable Court has no jurisdiction to take cognizance of this case;

13. As stated earlier, based on the investigation conducted, it was ascertained that petitioner has consistently underdeclared his taxable income for the years 1980 to 1990 thereby rendering his returns filed therefore false and fraudulent, pursuant to Section 50(b) of the 1977 Tax Code, as amended. Thus, respondent has within ten (10) years from the date of the discovery of the fraud and/or petitioner's underdeclaration of his taxable income within which to assess the corresponding deficiency income taxes. Since, the discovery of the fraud committed by herein petitioner was only in 1991, the issuance of petitioner's deficiency income tax for the year 1980 to 1990 on December 25, 1991 was well-within the prescriptive period as provided for under Section 223 (then 319) of the Tax Code, as amended;

xxx xxx xxx

15. Property/ies under custodia legis can now be attached pursuant to Section 7, Rule 57 of the Rules of Court (Pedro Regonan et al vs. Imperial, G.R. No. L-24434, January 17, 1968, 22 SCRA 80);

xxx xxx xxx

17. Likewise, mere allegation that petitioner has availed of the Tax Amnesty under Presidential Decree No. 1840 is not sufficient. To be entitled to the privilege granted under such Decree, petitioner must prove that he complied with the requirements set forth under P.D. 1840 and that said availment was within the coverage of the aforesaid decree;

Records show that the issue on the legality or appropriateness of the issuance of the Warrant of Distraint and Levy against petitioner in relation with his properties held in *custodia legis* was resolved by this Court in its Resolution, dated February 4, 1994, (pp. 442 to 448, CTA records). Said resolution enjoined the respondent from collecting the tax herein involved subject to the filing by petitioner within fifteen (15) days from receipt of the resolution of a surety bond in the amount of P27,990,926.19, otherwise the Court has no alternative but to maintain the warrant over all personal and real properties to safeguard the interest of the Government. Likewise, in the interest of justice and to allow the petitioner to pursue his business and daily livelihood, the warrant of garnishment over his bank accounts were lifted without the necessity of filing a bond. We further ordered petitioner to notify the Sandiganbayan of the issuance of the Warrant of Distraint and/or Levy on the properties at bar which are being held in *custodia legis* by said court. A search into the records reveal that petitioner did not file any surety bond pursuant to the resolution.

During one of the trials conducted on this case, respondent admitted that there was a denial of petitioner's protest through the issuance of warrant of distraint and/or levy, which in effect, constituted the final decision of the respondent on the protest. Thus:

Q. What was the result of Exhibit "J" dated June 10,1992, the explanation of the petitioner on the assessment?

A. The protest and request for reconsideration was denied and there was a subsequent issuance of warrant of distraint and/or levy.

Q. Do you have a denial by the respondent on the explanation and protest made by the petitioner?

A. We did not issue a letter of denial but we issued a warrant of distraint and/or levy.

Q. And you considered that as already a denial of the...

A. Yes, that is quite a denial.

(Punzalan, TSN, pp. 21-22, dated August 15, 1995)

With the above admission by the respondent that there was a denial on petitioner's protest, the issue on the jurisdiction of this Court is already settled and well established.

The issues confronting us are thus limited to:

1. Whether or not petitioner committed fraud in the filing of his individual tax returns for the years involved; and if in the negative,

2. Whether or not the power of the respondent to issue the subject assessments has prescribed pursuant to Section 203 of the Tax Code.

3. Whether or not the net worth method of Assessment used by the respondent is warranted and correct.

After a careful study of the attending circumstances, the provisions of law and regulations in point and the applicable jurisprudence, We rule in favor of the petitioner.

Anent the first issue, We consider it crucial and primordial to tackle the argument of respondent that there was fraud committed by the petitioner in the filing of his income tax returns for the years involved in view of its importance in determining, in case there is no fraud, whether the assessments were issued beyond the statutory prescriptive period of five or three years as provided in the Tax Code. The prescriptive period is five years if it is on or before the year 1983 and as introduced by Batas Pambansa Blg. 700, three (3) years from 1984 onwards. If fraud does exist then the prescriptive period is ten years after the discovery thereof (Section 223 of Tax Code, as amended).

In her answer, *supra*, respondent asseverates that petitioner's consistent underdeclaration of his income makes him liable for fraud. In trying to prove her case, she submitted in evidence the abovestated assessments, STAT Memo Report, dated December 23, 1991, and the supporting annexes thereof (Exhibits "1" to "7" inclusive of submarkings, BIR records, folder I; TSN, July 20, 1995, pp. 8-21). We consider such evidence insufficient to arrive at a conclusion of fraud as having been committed by petitioner. What is "consistent underdeclaration" as constituting fraud has not been fully explained to the satisfaction of this Court during any of the hearings held or in any pleading submitted in this case.

Fraud is a question of fact and the circumstances constituting fraud must be alleged and proved in the court (Commissioner of Internal Revenue vs. Ayala Securities Corporation, 70 SCRA 209, emphasis supplied). Respondent has alleged fraud but to our mind she never proved her case. It must be noted that underdeclaration of income is not by itself a clear showing of fraud. The Supreme Court has enunciated the rule that fraud is never imputed and the courts never sustain findings of fraud upon circumstances which, at most, create only suspicion and the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion (Commissioner of Internal Revenue v. Javier, Jr., 199 SCRA 831; emphasis supplied).

In the case at bar, respondent accuses petitioner of fraud by not having reported his true income for the years concerned just because her findings show higher figures from that declared by the petitioner. As it is, however, respondent's finding of consistent underdeclaration is more of a suspicion rather than one founded on hard evidence. As a matter of fact, respondent never attempted to refute petitioner's evidence that shows convincingly the errors committed by her in imputing properties that are not owned by the petitioner.

In a meticulous manner, petitioner proved that most of the properties assigned to him by the respondent, as listed in the Answer, are not, in whole or in part, actually owned by him (Petition, pp. 9-16; Exhibits "N" to "N-21", "O" to "O-2", "P-1" to "P-6", "Q" to "Q-4", "R" to "R-3", "T" to "T-3", "U", "U-A", "U-1" to "U-5", "V" to "V-4", "W", "X" to "X-3", "Y", "Z", "Z-A" to "Z-C", "Z-1" to "Z-12" inclusive of submarkings, "AA" to "AA-2" inclusive of submarkings, "BB" to "BB-13" inclusive of submarkings, "CC" to "CC-4" inclusive of submarkings, "DD", "DD-1", "EE" to "ZZ", "AAA" to "ZZZ" inclusive of submarkings, and "AAAA" to "FFFF" inclusive of submarkings).

Coupled with this, respondent admitted that the various properties that were taken into account in arriving at petitioner's deficiency assessments, as shown by the STAT Memo Report and its supporting annexes (Exhibits "1" to "7" inclusive of submarkings, supra), are not registered in the name of the petitioner. Thus:

> Q. In your assessment in Exhibit "3" in which..., I withdraw the question.
>
> In Exhibit "2"..., no, I have already asked Exhibit "2", I withdraw that.

> In all these real properties which you considered as undeclared income of petitioner from Exhibits "2" "4", "5" and "6", in whose names are these properties registered or to shorten it, is there any property registered in the name of the petitioner?

A. It was registered under various names.

Q. Is there any property registered in the name of the petitioner Armando T. Romualdez?

A. There appears to be none.

(Punzalan, TSN, September 11, 1995, pp. 5-6)

In fine, the presumption of correctness enjoyed by the assessments has been succinctly controverted with respondent's own admission above and failure to make any attempt to demolish petitioner's material evidence. In such regard, respondent's allegation of "consistent underdeclaration" as amounting to fraud has no leg to stand on in the light of the fact that it was mainly based on the PCGG list of properties that were not duly proven before this Court to be owned by the petitioner.

We thus arrive at the conclusion that fraud was not simply established in this particular case by reason of respondent's failure to prove fraud and at the least disprove petitioner's proofs.

On the second issue, therefore, there being no fraud, the ten (10) year prescriptive period for the issuance of assessment is not applicable and instead, the five (5) or three (3) year prescriptive period, supra, applies. The respondent only assessed the petitioner on June 8, 1992 (Exhibit "A", petitioner's folder of exhibits). Evidently, the power of the respondent to assess has prescribed, as follows:

Income Tax Return Filed (ITR)	Date of Assessment	Years elapsed from filing of ITR to Assessment	Prescriptive Period	Result
4/15/80	6/8/92	12 years	5 years	Prescribed
4/15/81	6/8/92	11 years	5 years	Prescribed
4/15/83	6/8/92	9 years	5 years	Prescribed
4/15/84	6/8/92	8 years	3 years	Prescribed
4/15/85	6/8/92	7 years	3 years	Prescribed

With respect to the third issue, petitioner has also invoked other errors, aside from those mentioned and discussed above, in the issuance of the assessments by way of the net worth method, which respondent again failed to controvert, namely: that the assessments are inadmissible in evidence; that there was wrong valuation of the properties; that there was double counting of the properties; that there was wrong period of application of property assessed; and lastly, the opening net worth of 1980 and increased net worth of 1980 were wrong (Petitioner's memorandum, pp. 13-26; pp. 635-648, CTA records).

Prescindingly, however, We opt not to dwell anymore into the merit of the above propositions due to the prescribed nature of the subject assessments.

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments involved in the case at bar are hereby **CANCELLED** and **SET ASIDE**. No Costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals