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REPUBLIC OF ...
COURT OF TAX APPEALS
QUEZON CITY

PRIMITIVO SIASAT,
Petitioner,

- versus - C.T.A. CASE NO. 3097

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/30/82

x - - - - - - - - - - - - - - - x

D E C I S I O N

On the basis of a letter dated March 10, 1975 of one Pablo de Jesus Tan-gatue, proprietor of the International Flag House, informing respondent Commissioner of Internal Revenue that petitioner Primitivo Siasat had sold Philippine flags to the Department (now Ministry) of Education and Culture worth ₱939,960.00, revenue examiners Jose de la Peña and Emilio Bergantiños of respondent's special investigation division were authorized to conduct an investigation of petitioner's business transactions in 1974. And from petitioner's 1974 income tax return and worksheet, said examiners ascertained that petitioner disbursed more money in 1974 than his return showed was available to him as income, which was considered by them as undeclared income from other sources, prompting respondent to issue a deficiency income tax assessment against petitioner.

As alleged in the petition for review and admitted in the answer, the antecedents of the case are as follows:

1. Petitioner is of legal age, with postal address at 819 Ilaya Street, Manila.

2. In 1974 he was engaged, among others, in the manufacture and sale of Philippine flags under the name and style of United Flag Industries, a single proprietorship of petitioner.

3. Within the period prescribed by law, petitioner filed his income tax return for taxable year 1974 declaring the amount of ₱45,060.00 as net income and paid the tax due thereon.

4. On August 16, 1979, petitioner received a letter and assessment notice both dated July 21, 1979 requiring him to pay the amount of ₱309,700.58 as alleged deficiency income tax for 1974, inclusive of interest, details of which are as follows:

<u>1</u> <u>9</u> <u>7</u> <u>4</u>

Net income per return - - - - - - - - - - - - -		₱45,060.25
Add: Additional income		
Excess of cash disbursements over receipts considered income from other sources		
Cash disbursements (January to September 1974) - - - - - - - - -	₱703,300.90	

Cash receipts (January to September 1974 inclusive of beg. balance)	356,825.13	346,475.77
Net income per investigation - - - - - - - - -		391,536.02
Less: personal exemption - - - - - - - - - - -		3,000.00
Amount subject to tax - - - - - - - - - - - -		₱388,536.02
Income tax due thereon - - - - - - - - - - - -		228,444.00
Income tax already paid - - - - - - - - - - -		10,345.00
B a l a n c e - - - - - - - - - - - - - - - -		₱218,099.00
Add: 14% int. p.a. fr. 4-16-75 to 4-16-78 -		91,601.58
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - - -		₱309,700.58

5. The basis of the assessment is the sum of ₱346,475.77 allegedly realized by petitioner which he failed to declare for income tax purposes.

6. By letter dated August 27, 1979, petitioner protested the assessment, but the protest was denied by respondent in a letter dated November 6, 1979, which was received by said petitioner on May 20, 1980.

Hence, the present petition for review filed on May 22, 1980.

Contending that the assessment has no factual basis for herein petitioner has reported his income for the year 1974 and paid the tax due thereon, petitioner also avers that he has already been previously investigated for income and business tax liabilities for the same year by an examiner of the Regional Office, Manila, of the Bureau of Internal Revenue, and after paying the deficiency income tax per investigation, Letter of Confirmation No. 684306 dated July 3, 1975 was issued by respondent relieving him of further tax liability. To investigate and assess again petitioner for deficiency income tax for the same year would therefore be a violation of Revenue Memorandum Circular No. 35-76 dated July 28, 1976, prohibiting the examination and inspection of the taxpayer's books of accounts and other accounting records more than once in one taxable year.

As special and affirmative defense, however, respondent states, among others, that he is not precluded to reinvestigate tax cases if, as obtains in this case, there are mistakes or irregularities committed in the original investigation. Moreover, estoppel will not operate against the State in the collection of correct taxes. Respondent also contends that the limitation does not apply where there is an erroneous treatment of account or where the taxpayer omits or misstates facts in his return, as in the instant case, such that a loss of revenue on the part of the government results. According to respondent, the revenue examiner who first investigated petitioner's books of accounts failed to analyze cash transactions reflected in petitioner's income tax return. Since the records show that petitioner disbursed the amount of ₱356,475.77, much more than his available cash for the months of January, February, March, May, August and September, 1974, and this was discovered only in the second investigation spawned by the letter-denunciation dated March 10, 1975, respondent maintains that he acted within his authority when he caused the second investigation of petitioner's records and other pertinent data, and issued an assessment based on facts uncovered by the second investigation. (pp. 130-131, CTA records.)

The first question to be resolved therefore, as posed by the parties, is whether or not the deficiency income tax assessment under consideration was issued in violation of Revenue Memorandum Circular No. 36-76, which provides that taxpayers' books of accounts and other accounting records shall be subject to examination only once in a taxable year.

Section 337 (now Section 324) of the National Internal Revenue Code requires that books of accounts and other accounting records must be preserved for at least five years from the date of the last entry, and are subject to examination and inspection at any time by internal revenue officers. However, examination and inspection may be made only once in a taxable year during the five-year period they are required to be preserved, except in cases of fraud, irregularity or mistake, or unless the taxpayer requests otherwise.

In implementing the provision of the law, Revenue

Memorandum Circular No. 35-76 dated July 28, 1976, insofar as pertinent hereto, provides that:

> "Section 337 of the Tax Code provides that the books of accounts and other records of taxpayers shall be subject to examination and inspection only once in a taxable year, except in cases of (a) fraud; (b) irregularity; (c) mistake; and (d) when the taxpayer request for reinvestigation of his case. In other words, in such cases, a re-investigation is authorized and consequently, the aforesaid limitation on the examination and inspection of books of accounts and records of taxpayers concerned will not apply."

In ordering the re-investigation of petitioner, we notice, as stated earlier, that respondent acted on a letter dated March 10, 1975 of one Pablo de Jesus Tan-gatue, proprietor of the International Flag House, informing (or denouncing to) him that the United Flag Industries of which petitioner is the owner sold Philippine flags to the Department (now Ministry) of Education and Culture worth ₱939,960.00. (Exh. "1", pp. 4-5, BIR records). Enclosed therewith are xerox copies of Requisition for Equipment or Supplies No. 375568 dated September 27, 1974 and No. 375586 dated October 18, 1974 with a stamp that they have already been paid. (pp. 2-3, BIR records.) Since the informer wanted to know if the corresponding sales and other taxes for these transactions had been paid by the registered owner of the business, petitioner herein, respondent caused a re-investigation of petitioner's business transactions in 1974. However, in re-investigating the tax liabilities of petitioner, respondent's examiners did not conduct an examination and inspection of petitioner's books of accounts and other accounting records. They merely analyzed the 1974 income tax return and worksheet of petitioner on file with the office of respondent and forming part of his official records, xerox copies of which were furnished them by the Regional Office, Manila. And from such analysis, the examiners ascertained that petitioner disbursed more than his available cash in the amount of ₱956,475.77, which was considered by them as undeclared income, and which, in turn, was the basis of the deficiency income tax assessment under consideration. (Exhs. "3", "4", "4-A" & "4-b", pp. 11, 20, 21, 22 and 23, BIR records.)

It seems clear therefore that when respondent issued the deficiency income tax assessment under consideration, petitioner's books of accounts and other accounting records were not subjected to examination and inspection for a second time in the same year. Analyzing an income tax return on file with the office of respondent, which is the official record of the Bureau of Internal Revenue, cannot by any stretch of the imagination be considered as an examination and inspection of the books of accounts and other accounting records of taxpayers which are kept in their place of business or residence. It seems well-settled that if, in assessing income tax upon the return of a taxpayer, an error is made with the result that the tax is underassessed, the Commissioner of Internal Revenue has the power to reassess and collect any additional tax due upon such return, provided it is done within the prescriptive period. Since the deficiency income tax assessment in question was issued on the basis of the 1974 income tax return and worksheet of petitioner on file with the Bureau of Internal Revenue, and not on the basis of a second examination and inspection of petitioner's books of accounts and other accounting records, its issuance was not in violation of Revenue Memorandum Circular No. 35-76.

This brings us to the second issue presented by the parties as to whether or not the deficiency income tax assessment has legal and factual basis.

As already stated, respondent's deficiency assessment is based on his revenue examiners' findings that petitioner disbursed more than his available cash for the months of January to September, 1974, so that the highest credit balance for the month of September was considered taxable income from other sources. (Examiners' report, Exh. "6", p. 34, BIR records.).

Two investigations of petitioner's 1974 business transactions were authorized by respondent in 1975. The first (Exh. "I", p. 58, CTA records), which was conducted by revenue examiner Perfecto Lacuesta in June, 1975, was terminated on July 3, 1975, and a letter of confirmation was issued accordingly. (Exh. "I-1", p. 59, CTA records.). The second investigation (Exh. "J", p. 60, CTA records) was made by revenue examiners Jose de la Peña and Emilio Bergantiños in July, 1975, as a result of which petitioner was assessed deficiency income tax for 1974 in the amount of ₱309,700.58. (Exh. "7", p. 39, BIR records.).

In the course of the first examination of petitioner's books of accounts and accounting records, petitioner's bookkeeper, Magno Magugat, submitted a worksheet (Exh. "10", pp. 13-15, BIR records) to examiner Lacuesta showing the 1974 monthly totals of the accounts. The xerox copy of this worksheet, together with petitioner's income tax return (pp. 13-19, BIR records), was the sole basis of respondent's second set of examiners' determination of the deficiency income tax against petitioner. (t.s.n. pp. 11-12, hearing of October 2, 1981.) They were unable to examine the 1974 books of accounts and other accounting records of petitioner as all of these books and records were attested to by petitioner and his accountant Narciso Maturgo as having been burned in the fire which gutted the office of the latter on December 14, 1975. (Exhs. "A", "A-1" to "A-4", pp. 42-45, CTA records; t.s.n. pp. 40-44, hearing of July 10, 1981.)

Revenue examiners Bergantiños and de la Peña contend that there is no showing in the balance sheet attached to petitioner's return that the taxpayer is on the accrual method of accounting because there is no separate account for accounts payable reflected in his balance sheet (p. 17, BIR records), in which case, all of his purchases were in cash. (t.s.n. p. 14, hearing of October 2, 1981.) On this premise, they arrived at the deficiency income tax assessed against petitioner by adding all the "purchases" in petitioner's worksheet to all other disbursements per month, which resulted in cash credit balances for the months of January to September. (See examiners' worksheet, Exh. "5", p. 31, BIR records.) The highest credit balance of cash for the month of September, 1974, was then considered by them as income unaccounted for, and assessed petitioner accordingly. (Exh. "6", p. 34, BIR records.)

Petitioner's bookkeeper, in his testimony before the Court, avers that these transactions on credit were recorded in the books of accounts, but since respondent's examiners did not see the books, they concluded that all purchases made by petitioner from January to September were in cash when actually some were on credit. (t.s.n. pp. 10-11, hearing of May 12, 1981; pp. 32-39, hearing of October 2, 1981.) To prove his claim, petitioner's bookkeeper prepared a breakdown of the cash disbursements and purchases monthly totals, which is found in Exhibit "10" (xerox copies of the worksheet were submitted to first examiner, pp. 14-15, BIR records), reflecting the purchases on account and the cash purchases. (Exhs. "M" & "M-1", pp. 72-73, CTA records.) And in support thereof, petitioner produced in Court certifications from his suppliers on credit and their subsidiary ledgers evidencing these payables. (Exhs. "C" to "G-6", inclusive; "N", "N-1" to "N-4", pp. 47-56; p. 64, CTA records.) As corroborating evidence, petitioner also presented as witnesses the following bookkeepers of his suppliers who testified on the various credit purchases recorded in their respective subsidiary ledgers and the subsequent payments thereof: (t.s.n. pp. 1-54, hearing of July 27, 1981; t.s.n. pp. 1-21, hearing of August 20, 1981.)

1. Remedios de Guzman for the Society Mfg. Co.;
2. Nila de Guzman for the Kundiman Enterprises;
3. Leonardo Alcala for the Balboa's Enterprises and J.D. Textiles; and
4. Filma Madrid for the Wonder Textiles.

Respondent, however, disputes the evidentiary value of these subsidiary ledgers for lack of corroborative evidence presented, such as copies of the invoices and official receipts, although the numbers of which were entered in the ledgers. It is argued that "standing alone, the subsidiary and envelope ledgers are insufficient to overcome the presumption of correctness of respondent's assessment." (Respondent's memo., p. 135, CTA records.)

Respondent's stand is not well taken. The subsidiary ledgers, together with the certifications of petitioner's suppliers and the testimonies of their bookkeepers, have sufficiently established the existence of petitioner's credit purchases in 1974, even without the introduction of the copies of the official receipts and the invoices. The above-mentioned oral and documentary evidence offered by petitioner served to confirm the purchases on credit appearing in petitioner's worksheets. (Exhs. "M" & "M-1", pp. 72-73, CTA records.) These worksheets, which were reconstructed by petitioner's bookkeeper from the records of the Court and petitioner's suppliers showing the breakdown of the cash disbursements and purchases monthly totals in Exhibit "10" (pp. 14-15, BIR records), reflect the purchases on credit in 1974 and their payments during the year. A careful scrutiny of the worksheets will readily show that the figures appearing therein, representing these purchases on credit, reconcile with those in the suppliers' subsidiary ledgers. The fact that no accounts payable appear in petitioner's balance sheet is of no consequence, as petitioner's bookkeeper has satisfactorily explained that all purchases on account were liquidated by the end of the year, hence, they would no longer be reflected in the financial statements. (t.s.n. pp. 44-47, hearing of October 2, 1981.)

Respondent has failed to impugn the correctness of the purchases on credit and the cash account of petitioner as reconstructed by his bookkeeper. Neither was he able to impeach the credibility of the testimonies of petitioner's witnesses. Although respondent's assessment is based on petitioner's own worksheet, nevertheless respondent's determination is founded on an assumption which petitioner has satisfactorily proven to be erroneous. Accordingly, the decision of respondent dated November 6, 1979 holding petitioner Primitivo Siasat liable for deficiency income tax for the year 1974 in the amount of ₱309,700.58, inclusive of interest, cannot be sustained.

WHEREFORE, the judgment under review should be as it is hereby reversed.

SO ORDERED.

Quezon City, Metro Manila, August 30, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge