LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BRAULIO C. PETALVER,
Petitioner,

- versus -

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5066

Promulgated:
SEP 02 1996

x - x

DECISION

This refers to the assessments issued against petitioner involving the amounts of P296,985.25, P217,937.50 and P33,000.00 or a total sum of P547,922.75, as deficiency income tax, deficiency business tax (VAT), and penalties for failure to submit schedule of taxes, audited financial statements and failure to withhold, respectively, all for the taxable year 1990.

Petitioner was the operator/proprietor of the now defunct Mayon Private Detective and Watchman Agency (MPDWA, for short). He is also a lawyer by profession, with residence and postal address at No. 73 Baltazar St., 10th Ave., Kalookan City. As such, he represented himself both in the administrative and judicial levels of the case.

Per his narration, and as borne by the B.I.R. records of the case, it all started with the filing of his 1990 Income Tax Return by his wife, Lolita Caasi Petalver (Resp's. Exh. 1, p. 3, B.I.R. records). Based on the income and deductions declared therein, the B.I.R. office in Valenzuela sent to petitioner by mail, a Letter of Authority No. OAS 3704, dated May 7, 1993 (Resp's. Exh. 2, p. 5, Ibid), requesting him to present his books of accounts for 1990, and other documents needed in the examination of his return. This triggered an exchange of communications between respondent and petitioner, with the latter alleging that he had ceased operations of his business effective September 1, 1989, and therefore, he had no more books and other documents to present for the year 1990.

Not having been convinced by petitioner's defense of cessation of business, respondent sent to petitioner an assessment notice and two demand letters, the details of which are as follows:

Assessment/Demand No.	Amount Due	Year Covered	Exhs.
01-21-03B-000075-90/93	P296,985.25	1990	15
Demand No. 14110	217,937.50	1990	14
Demand No. 9130	33,000.00	1990	13
TOTAL	P547,922.75		

In a letter, dated December 13, 1993 (Pet's. Exh. N, see also p. 44, BIR rec.), petitioner protested the above-mentioned assessment and demand letters and alleged as follows:

(1) That he failed to renew his license to operate his business for 1989 due to incomplete requirements such as lack of the required number of security guard force (200), and his failure to submit SSS clearance;

(2) As a result of which a Cease Operation order was issued by the Philippine Constabulary-Supervisory Unit for Security and Investigation Agencies (PC-SUSIA) to petitioner to stop its operations effective September 1, 1989; and

(3) That for the year 1990, since it ceased its operations in 1989, he has no tax liabilities to be settled with the Bureau of Internal Revenue.

In a letter, dated January 7, 1994, Regional Director, Romeo S. Panganiban, denied petitioner's formal protest, which was received by the latter on January 14, 1994 (Exh. Q, Annex N of the Petition, pp. 23-24, CTA rec.). Hence, the instant Petition for Review filed with this Court on February 10, 1994.

Respondent filed her Answer (pp. 31-35, CTA rec.) on April 4, 1994, alleging several special and affirmative defenses which are summarized hereunder as follows:

1. Petitioner's income tax return for 1990, filed by his wife as his representative, is presumed to have been filed by him pursuant to Section 44(g) of the Tax Code, as amended;

2. The Bureau of Internal Revenue is empowered to make assessments on the basis of the best evidence obtainable pursuant to Section 16 of the Tax Code;

3. The final decision issued by the Regional Director is presumed legal and valid, being authorized to promulgate said decision pursuant to Executive Order No. 132, as implemented by Revenue Administrative Order No. 4-93. Besides, the legality of such decision is an issue not raised by petitioner in the administrative level. Therefore, he is estopped from raising the same for the first time before this Honorable Court (**Aguinaldo Industries vs. Commissioner of Internal Revenue** 112 SCRA 136); and

4. All presumptions are in favor of the correctness of the tax assessment (**Interprovincial Autobus Co., Inc. vs. Commissioner of Internal Revenue,** 98 Phil. 290, **Commissioner of Internal Revenue vs. Avelino,** 8 SCRA 538). The taxpayer has the duty to prove otherwise.

The issues raised by both parties are the following:

1. Whether or not petitioner has ceased operating his security agency (MPDWA) business in 1990; and

2. Whether or not the assessments issued against petitioner have legal and factual bases.

Petitioner's defense that as early as September 1, 1989 he had ceased operating his security agency business, and therefore, he had no tax liabilities for the year 1990 is untenable. His only proof to support his contention of closure of business, was the letter dated August 25, 1989 (Pet's. Exh. "A") of the Commanding Officer of the Supervising Unit for Security and Investigation Agencies, advising him to cease operations effective September 1, 1989. The Court believes that this letter is not a conclusive proof of cessation of business. It is highly disputable for it was mere <u>advise</u> to cease operations. As to whether petitioner <u>actually</u> ceased operation is the real issue which petitioner miserably failed to pursue and prove. Petitioner's self-declaration that he stopped operating his business does not carry weight, it being self-serving and without any corroborating evidence.

On the other hand, the Income Tax Return for 1990 of petitioner, which was marked as Exh. "1" for respondent, sufficiently proved that the former never stopped operating his business up to taxable year 1990. As correctly alleged by respondent, this return is presumed valid pursuant to Section 44(g) of the Tax Code as amended by Exec. Order No. 37, stating that:

> "(g) Signature presumed correct. - The fact that an individual's name is signed to a filed return shall be *prima facie* evidence for all purposes that the return was actually signed by him."

And even in the absence of the above-quoted legal provision, the signatures of Lolita Caasi Petalver appearing on the 1990 return filed for and in behalf of petitioner, will nonetheless be considered as genuine for its authenticity was never assailed or questioned by petitioner, Although in the beginning of the trial of the instant case, petitioner denied having filed any return for 1990, he later on admitted that his return was filed by his aforesaid legitimate wife. Thus, during his cross-examination conducted on June 9, 1994 by Atty. Mendoza, respondent's counsel, petitioner's testimony ran as follows:

> "ATTY. MENDOZA
>
> Q. For the year 1989 you did not file any income tax return?
>
> A. I think I file[d] but for the year ..., no, no, 1989 should be filed 1990?
>
> Q. Yes.
>
> A. And 1990 should be filed 1991?
>
> Q. 1991.
>
> A. 1989 yes, I think I have filed. <u>But 1990 the subject matter of this assessment, I think I did not file because I have no source of income.</u>" (T.S.N., June 9, 1994 Hearing, pp. 36-37; Underscoring supplied.)

Then during the hearing on March 8, 1995, while conducting his cross examination of respondent's witness, petitioner was interrogated by this Court relative to the return filed by his wife. In the course of such interrogation, petitioner finally admitted the filing of his 1990 Income Tax Return by his wife. Thus:

"JUDGE ACOSTA

That is why you are disowning the filing of the income tax return. So in effect you did not file any return?

ATTY. PETALVER

No, I cannot disown the filing. [M]y wife filed this but as to the contents of the return I did not authorize her.

JUDGE DE VEYRA

You are legally married to the one who filed the income tax return?

ATTY. PETALVER

Yes, your Honor. (TSN, March 8, 1995 Hearing, p. 31.)

x x x x x x x x x.

JUDGE DE VEYRA

You better make that clear.

ATTY. PETALVER

She is my wife and she was not authorized to make such entries here.

JUDGE GRUBA

Why not authorized, no basis, the entries has no basis?

JUDGE ACOSTA

But is she authorized to file the return?

ATTY. PETALVER

No, not even authorized to file the return.

JUDGE ACOSTA

So you did not file any return.

ATTY. PETALVER

No, I consider this already having [been] filed." (Ibid., pp. 34-35.)

In resolving the first issue, the Court observes the immateriality of whether or not petitioner has authorized his wife to file his 1990 Income Tax Return. It is likewise not material whether or not he has authorized his wife to make the entries in the said return. The Court believes that for Section 44(g) of the Tax Code to apply, it is sufficient that petitioner admits that it was his wife who filed his 1990 income tax return. The authority of the husband, allowing his legal wife either to file his Income Tax Return or to make the entries therein, is of no moment.

No legal wife in her sane mind, will file an Income Tax Return which is not lawfully due to be filed, and much more to declare entries therein that will incriminate her husband. The return filed by petitioner's wife showed income realized and expenses incurred in 1990 from operating the security agency business of petitioner. Such return has complied substantially with the law because:

> (1) it was made in good faith and was not false or fraudulent;
>
> (2) it covered the entire period involved; and
>
> (3) it contained information as to the various items of income, deduction and credit with such definiteness as to permit the computation and assessment of the tax **(Commissioner of Internal Revenue vs. Gonzales and the Court of Tax Appeals, L-19495, November 24, 1966, 18 SCRA 757, 766).**

By reason of its substantial compliance with law, the 1990 Income Tax Return of petitioner is accorded more weight by this Court, as evidence that petitioner has not ceased operation of his business in 1990.

Relative to the second issue, petitioner contends that respondent has no basis in law and in fact in making the questioned tax assessment for it was merely based on a non-existing or defunct business entity. This will not hold water. As previously discussed in this case, the return itself filed by his wife is the best evidence that petitioner's business was still existing or in operation in 1990. Such return has substantially complied with the requirements of law for three (3) reasons, namely:

> (a) It was not proven to be false or fraudulent as petitioner himself admitted during the hearing that his 1990 Income Tax Return was filed by his legal wife. Because of

this admission, there was no more need for respondent to identify or prove that the signature appearing in said return was that of his wife.

(b) The return filed was intended for the year 1990, the taxable year involved in this case.

(c) The return provided all the necessary information required by law that enabled the respondent's examiner to compute and assess the tax due based on the best evidence obtainable pursuant to Section 16(b) of the Tax Code. Petitioner failed, despite several requests made upon him by the BIR Chief, Assessment Branch, to present his books of accounts for said year and other related documents necessary for examination.

On account of the unavailability of his book of accounts, respondent proceeded to make an assessment on the basis of the return filed by petitioner's wife, which in the instant case was the best evidence obtainable. This is legally permissible pursuant to Section 16(b) of the Tax Code, which states:

"(b) ***Failure to submit required returns, statements, reports and other documents.*** - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or regulation or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence."

Thus, in one case it was held by the Supreme Court that:

"The law is specific and clear. The rule on the 'best evidence obtainable' applies when

> a tax report required by law for the purpose of assessment is not available or when the tax report is incomplete or fraudulent.
>
> In the instant case, the persistent failure of the late Po Bien Sing and the herein petitioner to present their books of accounts for examination for the taxable years involved left the Commissioner of Internal Revenue no other legal option except to resort to the power conferred upon him under Section 16 of the Tax Code." **(Bonifacio Sy Po vs. Hon. Court of Tax Appeals and Hon. Commissioner of Internal Revenue, L-81446, Aug. 18, 1988, 164 SCRA 524, 528)**

Respondent's assessments issued against petitioner find legal bases in all the provisions of the Tax Code herein before quoted or cited. Their factual bases are the entries declared in the return itself filed by petitioner's legal wife.

Above all, of utmost importance is the well-entrenched rule in taxation upholding the correctness of tax assessments. To that effect, the Supreme Court has held in several cases that:

> "All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called." (Collector **of Internal Revenue v. Bohol Land Trans. Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965, 974; cited in Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., and The Court of Tax Appeals, L-68230, Nov. 25, 1986, 145 SCRA 671, 679).**
>
> "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." (Gutierrez vs. Villegas, L-17117, July 31, 1963, 8 SCRA 527)

On the whole, petitioner's evidence both documentary and testimonial, failed to rebut the above-mentioned presumption of the correctness of tax assessment. They did not serve the purpose of proving petitioner's allegation of cessation of business in 1989.

Petitioner is therefore liable to pay the deficiency income tax and 10% VAT for the year 1990, inclusive of surcharge. The compromise penalties for the extrajudicial settlement of the deficiency income tax due and deficiency 10% VAT, in the amounts of P16,000.00 and P12,000.00, respectively, cannot be imposed without the agreement and conformity of petitioner. **(Wonder Mechanical Engineering Corp. vs. Court of Tax Appeals, L-22805 and L-27858, June 30, 1975, 64 SCRA 559.)**

Per our computation, petitioner is liable to pay the following deficiency taxes and penalties:

10% VAT for 1990, inclusive of surcharge		P123,562.50
Def. income tax for 1990, inclusive of surcharge		184,276.77
		P307,839.27
Penalties for: (Exh. 12-b, p. 34, BIR rec.)		
Failure to w/hold	P12,000.00	
No schedule of taxes	7,500.00	
No CPA cert.	6,000.00	
No comparative I/S	7,500.00	33,000.00
TOTAL		P340,839.27

WHEREFORE, in the light of all the foregoing, the Court finds the instant petition for review without merit and therefore, **DENIES** the same. Petitioner is hereby **ORDERED to PAY** the respondent the amounts of P33,000.00, representing penalties imposed under Sections 250 and 251 of the Tax Code; and P307,839.27 deficiency income tax and VAT, inclusive of surcharge, <u>plus</u> 20% interest from the date prescribed for payment until the amount is fully paid pursuant to Section 249 of the same Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
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