REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WORLD WIDE PROGRESSIVE
CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1803

4/2/82

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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DECISION

Petitioner World Wide Progressive Co., Inc., appealed to this Court from a decision of respondent Commissioner of Internal Revenue dated April 12, 1966 holding it liable for the aggregate amount of ₱407,216.88 as deficiency income tax including surcharge and interest for taxable years 1957 to 1960, inclusive.

World Wide Progressive Co., Inc., is a corporation duly organized and existing under the laws of the Republic of the Philippines engaged in the exportation of copra and importation of general merchandise. Its principal office and place of business are located at 1877 F. B. Harisson St., Pasay City.

The records show that:

1. On May 31, 1962, upon a search warrant issued by the then Quezon City Court of First Instance Judge Nicasio Yatco, a combined team of Department (now Ministry) of Finance representatives, CIS, PC and PCPD, led by a certain Col. Bienvenido Santiago, operation chief, Finance Intelligence, Department of Finance, raided and searched the office and premises of petitioner and took therefrom books, booklets, documents, receipts, receipt books, checks, check stubs and other papers which were listed and inventoried and duly acknowledged to have been taken by the team leader, Col. Bienvenido Santiago, in a certification signed by him dated May 31, 1962.

2. On February 25, 1963, respondent issued a deficiency income tax assessment against petitioner in the amount of ₱1,070,183.52 for the year 1957, accompanied by a warrant of distraint and levy. However, said assessment of ₱1,070,183.52 as deficiency income tax for 1957, together with the warrant of distraint and levy, was cancelled by respondent in a letter dated May 28, 1963.

3. On the basis of a reinvestigation report dated March 18, 1966 submitted by BIR examiners

Alejo P. Sibayan and Ernesto Sunga, respondent issued on April 12, 1966 another deficiency income tax assessment against petitioner for the years 1957, 1958, 1959 and 1960 in the amounts of ₱149,582.16, ₱131,265.12, ₱82,879.44 and ₱43,490.16, respectively, or a total of ₱407,216.88, details of which are as follows:

43-ACR-40090-65/57

Net income per investigation - - - - - - - -		₱2,365,000.77
Less: Undeclared profit on copra export sales erroneously included as additional income in previous investigation - - - -	₱2,279,070.75	
Add: Undeclared sales due to overshipment - - - -	322,008.49	1,957,062.26
Net income per final investigation - - - -		₱ 407,938.51
Tax due thereon - - - - - - - - - -		₱ 106,223.00
Less: Amount already assessed - - - - - - -		17,186.00
B a l a n c e - - - - - - - - - -		₱ 89,037.00
Add: 50% surcharge - - - - - - - - - -		44,518.50
½% mo. int. fr. 6-20-59 to 6-20-62-		16,026.66
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - - -		₱ 149,582.16

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Net income per investigation - - - - - - - -	₱ 84,552.81
Add: Additional Income: Undeclared sales due to overshipment-	283,382.31
Net income per final investigation - - - -	₱ 367,935.12
Tax due thereon - - - - - - - - - -	₱ 95,022.00
Less: Amount already assessed - - - - - - -	16,888.00
B a l a n c e - - - - - - - - - -	₱ 78,134.00
Add: 50% surcharge - - - - - - - - - -	39,067.00
½% mo. int. fr. 6-20-59 to 6-20-62-	14,064.12
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - - -	₱ 131,265.12

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Net income per investigation - - - - - - - -	₱129,867.35
Add: Additional Income:	
Undeclared sales due to overshipment-	165,443.31
Net income per final investigation - - - -	₱294,310.66
Tax due thereon - - - - - - - -	₱ 80,293.00
Less: Amount already assessed - - - - - -	30,960.00
B a l a n c e - - - - - - - -	₱ 49,333.00
Add: 50% surcharge - - - - - - -	24,666.50
½% mo. int. fr. 4-19-60 to 4-19-63 -	8,879.94
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - -	₱ 82,879.44

46-ACR-400701-65/60

Net income per investigation - - - - - - - -	₱128,532.87
Add: Additional Income:	
Undeclared sales due to overshipment-	86,289.33
Net income per final investigation - - - -	₱214,822.20
Tax due thereon - - - - - - - -	₱ 56,447.00
Less: Amount already assessed - - - - - -	30,560.00
B a l a n c e - - - - - - - -	₱ 25,887.00
Add: 50% surcharge - - - - - - - -	12,943.50
½% mo. int. fr. 4-18-61 to 4-18-64 -	4,659.66
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - -	₱ 43,490.16

4. In a letter dated June 8, 1966 to respondent, petitioner denied the overshipment of copra, as well as the legality and correctness of the deficiency income tax assessment. In the same letter, petitioner also requested, in order to give it "a chance to explain and refute" the assessment, that petitioner be furnished with detailed data representing alleged overshipment, as well as the return of all its books of accounts and other supporting documents that were

seized from its firm during the search conducted in May 1962 by agents of the Department of Finance under the supervision of Col. Bienvenido Santiago covering the years 1957 to 1961. (p. 38, CTA records.) The aforesaid request was reiterated by petitioner in another letter to respondent dated September 1, 1966, with the entreaty that pending verification of the data and records of petitioner within a reasonable time, action on the deficiency income tax assessment be suspended. (pp. 39-40, CTA records.)

5. However, for failure of petitioner to pay the aforementioned income tax liability of ₱407,216.88, a warrant of distraint and levy was issued by respondent on August 5, 1966 against the properties and interest in or rights to real property of petitioner. The warrant was served and received by petitioner's counsel on September 16, 1966. (p.41, CTA records.)

Hence, the present petition for review filed on October 4, 1966.

The lone question tendered for resolution by petitioner World Wide Progressive Co., Inc., in this appeal is: Petitioner herein herein has not been given a chance, or has been refused the chance, to actually avail of the records in order to defend itself against the assessment. To qoute petitioner: (p. 190, CTA records.)

> "In view of the futile efforts of herein petitioner to effect the return to them of the seized books of accounts and supporting documents, inspite of legal orders of this Court, coupled with the desire of the same petitioner to help this Honorable Court to dispose of this case, since this case is already twelve (12) years old, petitioner through counsel submitted their case on only one single issue . . . . . THAT THE PETITIONER HEREIN HAS NOT BEEN GIVEN A CHANCE OR, HAS BEEN REFUSED THE CHANCE TO ACTUALLY AVAIL OF THE RECORDS IN ORDER TO DEFEND THEMSELVES AGAINST THE ASSESSMENT. (pp. 2-4, t.s.n., Hearing of March 17, 1978);"

Having submitted this case only on this lone issue, petitioner likewise limited itself to the presentation of evidence, both oral and documentary, which was connected with this question. (pp. 190-194, CTA records.) No evidence whatsoever was presented by petitioner to disprove the deficiency income tax assessment of ₱407,216.88 for taxable years 1957 to 1960, or to prove its illegality or invalidity.

Upon the other hand, respondent presented and submitted the reinvestigation report of BIR examiners Alejo P. Sibayan and Ernesto S. Sunga, their report of investigation and adjustment for the years 1957 to 1960 duly approved by the Commissioner of Internal Revenue (Exhs. 4, 5, 6 & 7, pp. 248, 252, 256 & 260, BIR records), including the worksheets showing the undeclared sales of copra due to overshipment (Exhs. 8, 9, 10 & 11, pp. 242, 243 & 244, BIR records.) to support his assessment. And after the Court has admitted all the evidence of respondent, petitioner submitted this case for decision without presenting any rebuttal evidence to controvert the evidence of respondent. (p. 184, CTA records.)

Petitioner's position calls to mind a similar issue which was recently settled by this Court in the case of Kishinchand Chellaram (Manila), Inc. vs. Collector of Internal Revenue, CTA Case No. 659, promulgated February 26, 1982, the factual setting of which is on all fours with the case at bar, and where this Court disposed of the same charge and contention in clear and unequivocal terms, in the following wise:

> "The records show that upon order of this Court as moved by petitioner, all the pertinent records and documents which were seized and in the possession of the Constabulary-Revenue-Customs Service Group including those bearing on the instant case were forwarded and delivered to the custody of this Court under covering letter

dated October 12, 1959 of the Executive Coordinator of the Service Group, and, together with the records of the Bureau of Internal Revenue pertinent to the case, were made available for petitioner's examination and scrutiny. This notwithstanding, petitioner would find an issue out of the "sales invoices and official receipts covering the period from January 1, 1953 to September 1958" allegedly seized but not among the documents brought to the Court, thereby "rendering impossible for petitioner to defend itself against what it considers an erroneous assessment." The starveling agitation therefor would persist as a disturbing pre-occupation of the petitioner through all the 20 years of the pendency of the action.

The apparent patina of cogency impressed nonetheless, we find illogic the impression precipitately broached that the sought for "invoices and receipts" could be the sole evidentiary basis in bashing every conceivable illegality in the questioned assessments. And, neither should it be narrowly or naively viewed as an excuse for petitioner from further bearing the burden of proving its cause of action. Recourse to other means or modes of ascertaining the truth of its allegation is afforded under the existing Rules. But, the respondent's findings are not short of specific support in terms of tractable data and records openly laid and disclosed for examination and verification. Suffice it to state, however, that towards the end of the two decades of the pendency of this appeal, petitioner would still find the "need for more time to go over the voluminous books of accounts and records in the custody of the court." (Petitioner's Urgent Motions to Transfer/Reset Hearings - January 25, 1974, pp. 251-253 CTA Records; September 1, 1978, pp. 288-290 CTA Records; August 10, 1979, p. 312 CTA Records). This Court had coyly acquiesced as a convenient "wailing wall" to petitioner's predicament to the sufferance of that "well-known policy of the courts to expedite the disposal of cases to prevent their dockets from becoming clogged, and it is incumbent upon parties, especially plaintiff to take the initiative in the prompt disposal of cases as duty to themselves, to the court and to the public in general." (Masiglat v. Mayor of Pasay City, 104 Phil. 319; cited in 101 SCRA 654). To dispel any sprouting impression, as seems to be claimed, of a denial of "due process", what petitioner sought was heard, but after all the years, petitioner remained in impotent anguish yet troubled at fashioning possibilities out of inconclusive ends with ambiguous means of validating its principal cause of action. One can lost the forest for the trees, indeed.

Petitioner must square the issue of illegaility which it posits on the assessments.

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It is incongruous for petitioner to prove its cause of simply drawing an inference unfavorable to respondent by gloating over the circumstantial clout of the missing invoices and receipts as thus encapsulating all that are erroneous or illegal in the assessment. Any such inference cannot operate to relieve petitioner from bearing its burden of proof and this Court has no warrant of absolution. "On the position of the burden of proof, properly so-called, the existence of any particular inference of fact can have no effect, even should it constitute a prima facie case, or should as further proof be excused by a rule of law." (31 C.J.S. 720-721). It may be necessary to repeat what so often may have been said and what so plainly apply to the case at bar. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that the taxpayer is right (Lino Gutierrez v. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; Tan Guan v. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903) otherwise the presumption in favor of the correctness of tax assessment stands. (Inter-provincial Auto-bus Co., Inc. v. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue v. Bohol Land Transportation Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965). The burden of proving the illegality of the assessment lies upon the petitioner alleging it to be so, and it had not been discharged on the facts of the case before us.

In the case at bar, petitioner has not presented any evidence of the relevance and competence required, and as such, "that if he fails satisfactorily to show the fact upon which he bases his claim, the defendant is under no obligation to prove his exceptions or defense." (Belen v. Belen, 13 Phil. 202). Further, if the facts have not produced a valid case as a consequence of frustration to secure the supporting evidence such frustration does not operate to automatically prove petitioner's case. For such default the action must fail and this Court cannot afford a remedy, it having no power nor duty to provide it. Be it of cold comfort, "The courts cannot constitute themselves guardians of persons who are not legally incompetent. Men may do foolish things, make ridiculous contracts, use miserable judgments, and lose money by them - indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actionable wrong, before the courts are authorized to lay hold

> of the situation and remedy it." (Vales v. Villa, 35 Phil. 769). We are therefore unable to find for petitioner, factual and legal, upon which to base the desired relief."

We find no valid and cogent reason to modify, much less depart from the conclusion reached in Kishinchand Chellaram, as expressed in the above-quoted observations of the Court there. The same should therefore resolve the identical problem now brought before us in this appeal.

Here, in the instant case, all the records of this proceeding in the possession of the Bureau of Internal Revenue consisting of two (2) volumes of 352 pages; three hundred eighty (380) folders of 13,918 pages; as well as ledgers, general journals, cash receipts books, columnar journals and cash disbursement books, which could hardly be contained in one filing cabinet, were all forwarded to this Court and made available to petitioner for its scrutiny and examination. But petitioner would find a convenient issue of alleged missing books, documents and papers supposedly seized by agents of the Department of Finance, the non-production of which would allegedly deprived it of its right to question the legality of the assessment, and for us to throw the case out of court. Carried to its logical conclusion, a taxpayer can therefore handily evade a deficiency tax assessment by the simple expedient of alleging that he is denied of his right to question the validity thereof because his books of accounts or other records have been burned, destroyed, lost or seized by government agents. The assessment should thus be declared of no effect. Existing Rules provide the various means of ascertaining the truth respecting a matter of fact, the machinery and procedure to implement them, precisely in order that rights might be enforced or protected.

The applicable principles of law are clear and in the end the decision in this case must rest upon whether under all the evidence petitioner has sustained the burden placed up it by the law. Petitioner having failed to sustain the burden, the decision of respondent must have to be maintained. Accordingly, petitioner World Wide Progressive Co., Inc. is hereby ordered to pay to respondent Commissioner of Internal Revenue the sum of ₱407,216.88 as deficiency income tax for taxable years 1957 to 1960, inclusive, plus surcharge and interest incident to delinquency, pursuant to the provisions of Section 51(e) of the National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, April 2, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge