

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

C.T.A. EB NO. 509
(C.T.A. CASE NO. 7240)

Present:

-versus-

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

JIMENEZBASIC ADVERTISING
INCORPORATED,

Respondent.

Promulgated:

FEB 09 2010

*Approbatio
2:00 p.m.*

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DECISION

PALANCA-ENRIQUEZ, J.:

The term “relevant supporting documents” should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what

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type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit (*Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, 589 SCRA 253).

THE CASE

This is a "Petition for Review" filed by the Commissioner of Internal Revenue (hereafter "petitioner CIR") under *Section 2(a) of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended*, praying for the reversal and setting aside of the Decision dated February 19, 2009 and Resolution dated June 29, 2009 rendered by the Former First Division of this Court in C.T.A. Case No. 7240 entitled "Jimenezbasic Advertising, Inc. vs. Commissioner of Internal Revenue", the respective dispositive portions of which read, as follows:

"WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Petitioner Jimenezbasic Advertising, Inc. is entitled to claim input VAT credits, covering the third and fourth quarters of 2002, in the reduced amount of P4,437,684.48. Respondent Commissioner of Internal Revenue is ORDERED to DEDUCT from petitioner's basic deficiency VAT assessment the amount of P4,437,684.48. Hence, petitioner is ORDERED TO PAY the deficiency VAT payable after such deduction in the



amount of FOUR HUNDRED ONE THOUSAND THREE HUNDRED THIRTEEN PESOS AND 67/100 (P401,313.67), inclusive of interest. Accordingly, respondent's Final Decision on Disputed Assessment, dated March 31, 2005, is hereby REVERSED and SET ASIDE.

SO ORDERED.”

“WHEREFORE, finding no cogent reason to reverse the previous ruling of this Court, the Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the duty to act on and approve claims for refund or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law, with office address at the Bureau of Internal Revenue National Office Building, BIR Road, Diliman, Quezon City.

Respondent Jimenezbasic Advertising Incorporated (hereafter “respondent”), on the other hand, is a domestic corporation duly organized and existing under Philippine laws, with principal office at 23/F, Pacific Star Building, Makati City.



THE FACTS

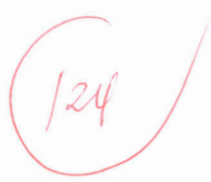
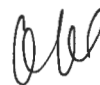
The facts, as stated in the parties' Joint Stipulation of Facts and Issues, are as follows:

On October 17, 2003, respondent, having been merged with Basic Advertising, Inc. and Jimenez D'Arcy, Inc., received Letter Notices Nos. 116-R-02-03-S-01597, 116-R-02-03-P-01762, 116-R-02-03-S-01598 and 116-R-02-03-P-01763 from the BIR informing respondent of alleged under declaration on the Sales and Purchases in its tax returns for the 3rd and 4th quarters of taxable year 2002.

On March 22, 2004, respondent received Reminder Letters corresponding to the aforesaid letter notices.

On March 29, 2004, respondent filed its Reply to the Reminder Letters, explaining the cause of the discrepancy on sales and purchases.

On May 4, 2004, respondent received a Preliminary Assessment Notice (PAN), dated March 29, 2004, from petitioner whereby it was assessed 10% VAT on discrepancies on the Sales for the 3rd and 4th quarters of taxable year 2002, plus interest.



On May 19, 2004, respondent transmitted to the BIR the same letter dated March 29, 2004, requesting for the cancellation of the PAN based on the grounds mentioned in the same letter.

On June 28, 2004, respondent received a Formal Letter of Demand (FAN) from petitioner, dated May 31, 2004, covered by Assessment Number LTS-116-LN-VT-02-04-00015 stating that there is still due and demandable the total amount of P6,118,826.06, representing deficiency VAT covering the 3rd and 4th quarters of taxable year 2002.

On July 27, 2004 respondent, through counsel, filed a Protest Letter with petitioner to allow respondent to claim input VAT on the amounts paid to the media outlets.

On March 31, 2005, respondent received a Final Decision of Disputed Assessments stating that there still remained a deficiency assessment, plus interest amounting to P6,872,273.32.

On May 3, 2005, respondent filed a Petition for Review with the Former First Division of this Court, docketed as C.T.A. Case No. 7240.

On February 19, 2009, the Former First Division rendered the assailed Decision partially granting the Petition for Review.



On March 13, 2009, petitioner filed a Motion for Reconsideration of said decision, which was denied for lack of merit by the Former First Division in a Resolution dated June 29, 2009.

Not satisfied, petitioner CIR filed the instant Petition for Review raising the following:

ISSUES

I

WHETHER OR NOT RESPONDENT IS PRECLUDED BY SECTION 4.102-A OF REVENUE REGULATION NO. 7-95 FROM CLAIMING INPUT VAT IN THE AMOUNT OF P4,437,648.48.

II

WHETHER OR NOT RESPONDENT IS LIABLE FOR DEFICIENCY VAT FOR THE 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2002.

Without necessarily giving due course to the Petition for Review, We ordered respondent to file a comment, not a motion to dismiss, within ten (10) days from notice.

On August 28, 2009, respondent filed a Motion for Extension of Time to file its Comment, which the Court *En Banc* granted.

On September 09, 2009, respondent filed its Comment.



On September 16, 2009, the Court *En Banc* issued a Resolution ordering both parties to submit their simultaneous memoranda, within a non-extendible period of thirty (30) days from notice; after which the petition shall be submitted for decision.

On October 15, 2009, petitioner CIR filed his memorandum.

On October 28, 2009, respondent filed its memorandum. Thus, the instant petition is now deemed submitted for decision.

Principle Issue

The foregoing issues boil down to the principal issue of whether or not the Former First Division erred in holding that respondent is entitled to input VAT credits of P4,437,684.48.

Petitioner CIR's Arguments

Petitioner CIR argues that the assessment against respondent for VAT liability has attained finality. Respondent did not submit to the BIR, within sixty (60) days from filing of its protest, the original invoices/receipts to support its claim that it has creditable input taxes against its output tax liabilities. Respondent is not entitled to claim input tax credits in the amount of P4,437,684.48, representing alleged unutilized input VAT because it failed to submit all necessary and



relevant documents pertaining to the above-mentioned amount with petitioner CIR in its administrative protest on the assessment.

Respondent's Counter Arguments

Respondent Jimenezbasic Advertising, Inc., on the other hand, counter-argues that the assessment did not become final because it did not submit the itemized documents, which petitioner CIR claims should have been submitted. The National Internal Revenue Code of 1997 does not itemize the documents which should be submitted. The said law only requires submission of "relevant supporting documents". Petitioner CIR denied the protest, not because the assessment had become final for failure of respondent Jimenezbasic to present "relevant supporting documents". Petitioner CIR, in fact, considered the relevant supporting documents presented by respondent Jimenezbasic. The position of petitioner CIR that the assessment had become final is in fact belated. Petitioner CIR first mentioned this position only before the CTA.

THE COURT *EN BANC*'s RULING

The petition is without merit.

Section 228 of the NIRC of 1997, as amended, provides:

"SEC. 228. Protesting of Assessment.—



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Within a period prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted, otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable.”

Pursuant to the above provision, the assessment may be protested administratively by filing a request for reconsideration or reinvestigation, within 30 days from receipt of the assessment. Within sixty (60) days from filing of the protest, all relevant supporting documents must be submitted to the BIR; otherwise, the assessment shall become final.



Corollary thereto, *Section 4.104-5 of Revenue Regulations No. 7-95, as amended*, provides for the relevant documents to be submitted as regards claim for input tax credit, to wit:

“SEC. 4.104-5. Substantiation of claims for input tax credit. –(a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code.”

Pursuant to the aforecited provision, a taxpayer must submit invoices or receipts in support for its claim for input tax credit. *Revenue Regulations No. 7-95, as amended*, does not require that the original receipts shall be submitted to the BIR.

A perusal of the evidence on record shows that respondent submitted photocopies of invoices and receipts to substantiate its claim for input tax credit. Said documents were in fact admitted and considered by the BIR in denying respondent’s protest on March 18, 2005. The BIR denied the protest, not because the assessment had become final for failure of respondent to present the original invoices/receipts. Petitioner CIR, in fact, considered the relevant supporting documents presented by

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respondent Jimenezbasic. Pertinent portion of the Final Decision on Disputed Assessment dated 18 March 2005 issued by the BIR reads:

“Please be informed that we have considered your position paper and other documents you have submitted in support of your request. However, despite our consideration there still remains some assessment, which are premised on the following: x x x”

It is clear, therefore, that the assessment did not become final because respondent Jimenezbasic did not submit the original documents, which petitioner CIR claims should have been submitted to the BIR.

Furthermore, this contention of petitioner CIR that respondent failed to present the original invoices/receipts was raised for the first time in this Court. It was never raised at the administrative level. To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court – which is supposed to review administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum (*Commissioner of Internal Revenue vs. Wander Philippines, Inc.*, 160 SCRA 576-577). It is well settled that under the same underlying principle of prior exhaustion of administrative remedies, on the judicial level, issues

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not raised in the lower court cannot be raised for the first time on appeal (*Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue*, 112 SCRA 136; *Pampanga Sugar Dev. Co., Inc. vs. CIR*, 114 SCRA 725; *Garcia vs. Court of Appeals*, 102 SCRA 597; *Matialonzo vs. Servidad*, 107 SCRA 726).

In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc. (supra)*, the Supreme Court ruled that the term “relevant supporting documents” should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

As aptly ruled by the Former First Division of this Court in its Resolution dated June 29, 2009:

“Anent respondent’s second argument, he is wrong in stating that petitioner failed to prove compliance with the prescribed checklist of requirements to be submitted involving claims for input tax credits, pursuant to Revenue Memorandum Order (RMO) No. 53-98, in relation to Section 4.108.1 of RR-7-95.

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RMA 53-98 prescribes the documents required for submission by a taxpayer upon audit of his tax liabilities per type of tax, as well as different mandatory audit reporting requirements to be prepared, submitted and attached to a tax audit docket by a Revenue Officer; while Section 4.108-1 of RR 7-95 refers to invoicing requirements.

RMO 53-98 is intended as a guide to revenue officers in requesting from taxpayers the documents to be submitted during a tax audit. Respondent's Final Decision did not mention any insufficiency of documents presented by petitioner in its position paper. Hence, petitioner complied with RMO 53-98.

Moreover, respondent's statement that petitioner did not comply with the invoicing requirements under RR 7-95 is not correct. Petitioner's compliance of the said RR was confirmed in the Independent Certified Public Accountant's Report; which in turn was verified and found in order by this Court."

Finding no reversible error, We affirm the assailed Decision dated February 19, 2009 and Resolution dated June 29, 2009 of the Former First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

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WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice

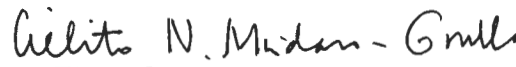

JUANITO C. CASTAÑEDA, JR.
Associate Justice

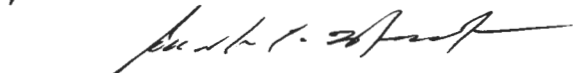

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice

