Court of Tax Appeals
Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

HONEST SERVICE PROVIDERS, INC. represented by its Accountant MELINDA BEJASA,
Petitioner,

-versus-

CITY OF MAKATI and CITY TREASURER NELIA A. BARLIS,
Respondents.

C.T.A. AC NO. 40

Members:

ACOSTA, *P.J.*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

MAY 29 2008 ; 3:10pm

x -- x

DECISION

ACOSTA, P.J.:

This is an appeal by Petition for Review from the Decision of the Regional Trial Court (RTC) of Makati City, Branch 57, dismissing for lack of merit, petitioner's appeal of the assessment for deficiency business taxes, fees and charges issued by respondents; and the Order denying petitioner's Motion for Reconsideration

The facts of the case, culled from the records, follow:

Honest Service Providers, Inc. (petitioner) is a domestic corporation duly created and existing under the laws of the Republic of the Philippines with principal office at 7/F Vernida Condominium, 120 Amorsolo Street, Legazpi Village, 1229

Makati City. Petitioner is engaged in providing janitorial and messengerial services to clients within Metro Manila and nationwide.

Petitioner has been faithfully securing its yearly business permit and paying its local taxes due to respondent City of Makati. In January of 2005, when petitioner applied for a renewal of their business permit, the amount due was P817,248.48 which was far different from the previous years' business tax of around P50,000.00. Hence, petitioner was not able to renew its business permit.

Due to the above assessment, petitioner's Accountant and Vice President visited the office of respondent City Treasurer, and they were informed that an examiner will be sent to petitioner's office for the verification of the records. Thereafter, a Letter of Authority No. LA-2006-001 was issued, authorizing Revenue Examiner Felito A. Manrique to verify the records of petitioner. But instead of conducting an actual examination or verification of records, the Revenue Examiner requested copies of petitioner's Audited Financial Statements for years 2002 up to 2005.

On February 27, 2006, petitioner received a copy of the Notice of Assessment dated February 22, 2006 demanding payment of P2,415,509.42 representing deficiency city business taxes, fees and charges for taxable period 2003-2005.

On April 11, 2006, petitioner responded with a written protest requesting for a reconsideration of the assessment, and raising the following arguments:

> "a. The assessment is oppressive/confiscatory and, therefore, violative of the right to due process of the taxpayer;
>
> b. The assessment is null and void because the basis of the assessment was not stated in the assessment;

> c. The assessment of the City of Makati failed to consider the taxes paid by the taxpayer; and
>
> d. The assessment failed to consider the direct costs representing reimbursements of salaries and contributions to the Government Agencies and taxes paid."

On April 12, 2006, respondents denied petitioner's request for reconsideration, and the latter was given thirty (30) days from receipt thereof to pay the deficiency taxes, charges and fees or to elevate or appeal the Notice of Assessment to a court of competent jurisdiction. Petitioner received respondents' denial on April 18, 2006.

Consequently, petitioner appealed and filed its complaint before the Makati City Regional Trial Court (RTC) on May 18, 2006. Its complaint was docketed as Civil Case No. 06-410. On November 3, 2006, the RTC rendered its Decision dismissing petitioner's Appeal for lack of merit. The Decision partly reads:

> "And as can be obviously inferred from the very definition of the term 'gross sales or receipts', the same includes compensation or service fee, plus the amount charged or materials supplied with the services. Thus, clearly, the contention of plaintiff that the 'salaries and wages of the janitors and messengers' and costs of 'cleaning material used for the clients' should not be included in the computation of gross receipts is misplaced.
>
> xxx xxx xxx
>
> The Court, therefore, finds the subject assessments to be valid. The assailed assessments against plaintiff were the results of the examinations undertaken by the Makati City Revenue Examiners under Letters of Authority issued by the City Treasurer. Contrary to the erroneous allegations of the plaintiff, the said assessments are true and correct based on the secured financial documents of the former.
>
> xxx xxx xxx
>
> Likewise, it must be emphasized that defendant City of Makati has never deviated from its mandate by law which may cause oppression and violation of the rights of any taxpayer, as the plaintiff

> so claims. The demand for deficiency taxes was just simply that plaintiff was found to have understated its gross sales or receipts as reflected in the Official Receipts of the Mayor's business permits for the taxable years covered; hence, the subject assessment."

Petitioner filed a Motion for Reconsideration of the Decision but was denied in an Order dated July 10, 2007.

Hence, the instant Petition for Review filed on August 30, 2007, with the following supporting grounds, to quote:

I. The Trial Court erred in holding that the salaries and wages of janitors and messengers and the janitorial cleaning materials used and charged to the clients at cost without any element of profit to petitioner, being direct expenses, are part of gross receipts;

II. The Trial Court erred in holding that payments from clients outside the City should be taxed by the City considering that it did not perform services to the petitioner, its employees and clients who were assigned/located outside its jurisdiction;

III. The Trial Court erred in not holding that the Notice of Assessment was null and void for failure to state the basis of the assessment and for lack of actual examination of the petitioner's books/records;

IV. The Trial Court erred in not holding that the assessment was arbitrary, unreasonable, unfair, baseless, hastily made resulting to its being oppressive or confiscatory and, therefore, violative of plaintiffs substantive rights and to due process under the present pro-God and pro-people constitution.

In a Resolution dated September 20, 2007, respondents were required to file a Comment. In compliance thereto, respondents filed their Comment on October 15, 2007, which was posted on October 5, 2007.

On January 7, 2008, the instant case was submitted for decision after considering the parties' Memoranda.

On the first ground relied upon by petitioner; a review of the Notice of Assessment sent to petitioner as well as its attached worksheet shows that petitioner is being assessed of tax as a service contractor.

The applicable provisions herein are Section 143(e) of the Local Government Code (LGC) of 1991 in relation to its Section 151, and Sec. 3A.02(f) of the Makati Revenue Code, covering contractor's tax. The pertinent portions of the provisions are quoted hereunder:

> SECTION 143. **Tax on Business**. – The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (e) On contractors and other independent contractors, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
xxx	xxx	xxx

ARTICLE III
CITIES

> SECTION 151. **Scope of Taxing Powers.** – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

> SEC. 3A.02 *Imposition of Tax.* – There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> xxx xxx xxx
>
> (f) On Contractors and other independent contractors defined in SEC. 3A-01 (q) of Chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; xxx janitorial services…
>
> xxx xxx xxx
>
> *With gross sales or receipts for the preceding* calendar year in the amount of: *Amount of Tax* Per Annum
>
> xxx xxx xxx

Apparently, contractors are subject to business tax and the amount thereof is based on the business' gross sales or receipts of the preceding calendar year.

Conractor is referred in the Local Government Code of 1991 as to include *persons, natural or juridical, not subject to professional tax under Section 139 of this Code whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees*[1]. The definition includes any person whether natural or juridical as long as the activity of such person consists essentially of the sale of services for a fee.

Since petitioner is engaged in the business of providing janitorial and messengerial services to its clients in consideration of a service fee; therefore, it is engaged in rendering services for a fee, which is well within the scope of the above definition. Accordingly, petitioner is subject to a contractor's tax based on its gross sales or receipts.

---

[1] Section 131(h)

Being relevant, this Court has to touch on the definition of gross sales or receipts to determine its exact meaning. The Local Government Code of 1991 defines gross receipts or sales as follows:

> "Gross Sales or Receipts include the **total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials with the services and deposits or advance payments actually or constructively received during the taxable year for the services performed or to be performed** for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT) paid by the taxpayer." [2] *(Emphasis supplied)*

The definition is clear and unambiguous. Gross Sales or Receipts include the **total** amount of money representing the service fee, undiminished by costs or expenses and excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT). In other words, "gross receipts" refer to the **total**, as opposed to the **net**. These are, therefore, the total receipts before any deduction for the expenses of management[3].

In fact, in *China Banking Corporation v. Court of Appeals*[4], the Court defined the term in this wise:

> "As commonly understood, **the term 'gross receipts' means the entire receipts without any deduction. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception.** As explained by the Supreme Court of Pennsylvania in *Commonwealth of Pennsylvania v. Koppers Company,*

---

[2] Section 131(n)
[3] CIR vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003
[4] 403 SCRA 647-649

> *Inc.*, highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation. However, this in no way should affect or control the normal usage of words in the construction of our statutes; and we see nothing that would require us not to include the proceeds here in question in the gross receipts allocation unless statutorily such inclusion is prohibited. **Under the ordinary basic methods of handling accounts, the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions,** x x x." *(Emphasis supplied)*

However, petitioner posits that the payment for salaries and wages of the janitors and messengers employed by petitioner and the cleaning materials used in the client's premises should not be included in the computation of gross receipts being direct costs without a single centavo forming as income of petitioner. Petitioner detailed that out of the amount it bills to its clients, it receives a minimal amount of supervision and services fees equivalent to not more than seven percent (7%) mark up which in turn goes to the salaries and wages of its administrative officers and employees. More than ninety-three percent (93%) of the amount goes to the salaries and wages of the janitors and messengers and the cleaning materials used.

This Court disagrees. It suffices to answer the above contention by referring to the explicit definition of the law. As earlier noted, gross sales or receipts include the total receipts without deductions. The sample contracts[5] attached to the instant Petition shows that the contract price/service fee billed by petitioner to its clients is the total amount it receives although such amount includes the cleaning materials, and the salaries and wages of the janitors and messengers assigned to a specific client. In corroboration hereto, a portion of one of the contracts entered into by petitioner is quoted as follows:

---

[5] Annex "K", "L", and "M"

> **For and in consideration of the janitorial services to be rendered by the SERVICE AGENCY to the client, the latter shall pay the SERVICE AGENCY the sum of TEN THOUSAND SEVEN HUNDRED SIXTEEN AND 59/100 (P10,716.58) PESOS, per month** for each janitor on the basis of six (6) working days a week including legal and holidays specified in the Labor Code of the Philippines which amount will cover the daily wage, 13th month pay, five (5) days incentive leave, employer's contribution for SSS, Medicare, employees' compensation and Pag-Ibig as provided by the said labor Code. xxx*(Emphasis supplied)*

Logically, petitioner's gross sales or receipts is the contract price/service fee received from clients despite the fact that such amount includes the salaries and wages of the janitors and messengers as well as the amount of cleaning materials used or that petitioner derived no income therefrom.

Long established is the rule that if a statute is clear, plain and free from ambiguity, it must be given literal meaning and applied without attempted interpretation[6]. Hence, court may not engraft into the law qualifications not contemplated, and a meaning that does not appear nor is intended or reflected in the very language of the statute, cannot be placed therein by construction[7].

With respect to the second ground, petitioner contends that its business operations are not only in respondents' jurisdiction. Its clients are mostly scattered within Metro Manila and some are even scattered nationwide and it would not be fair for respondents to collect tax on payments received from clients outside of Makati. In order to show that only 197 of its employed personnel are working or assigned to clients located in the City of Makati and all others are scattered and assigned to clients holding office outside the said city, petitioner attached its list of personnel and three contracts of petitioner with clients outside of Makati.

---

[6] De Jesus vs. COA; G.R. No. 149154, June 10, 2003
[7] Statutory Construction by Ruben Agpalo; Fifth Edition, 2003, pages 62 and 63

Respondents, however, disagrees to petitioner's contentions and argues that such claim is absurd since petitioner cannot at least show that it paid taxes in favor of a Local Government Unit outside Makati City for said services rendered for a fee.

Again, petitioner's theory is unacceptable. Pertinent hereto is Section 150 of the Local Government Code of 1991 which clearly provides for the *situs* of the contractor's tax and is set forth below:

> "**SEC. 150. Situs of the Tax**. – (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor xxx **contractors**, banks and other financial institutions, and other business, maintaining or operating branch or sales outlet elsewhere shall records the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. **In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality**."*(Emphasis supplied)*

It was clear from the records that petitioner has no sales outlet or branch in any city or municipality other than Makati. For that reason, the last paragraph of the above-quoted provision is applicable, *that is*, taxes due on petitioner's transactions in cities or municipalities where it has no branches or sales outlet shall be recorded in its **principal place of business** and all taxes due thereon shall be paid to the city or municipality where its principal place of business is located. Considering that petitioner's principal place of business is in Makati, then, the taxes due on transactions with clients outside of Makati, still, has to be paid in Makati.

On the ground that the issuance of the Notice of Assessment was a patent violation of its right to due process of law, petitioner maintains that due process and equity demand that assessments for alleged deficiencies should be duly supported by legal bases. Mere statement of the figures is not sufficient. The legal provisions applied should be clearly stated for the validity of the assessment. Petitioner claims that it was not given the chance to controvert the findings of the examiner prior to the issuance of the table assessment without legal and factual bases. Hence the assessment should be considered null and void for failure to state the factual and legal basis.

Contrarily, a careful scrutiny of the Notice of Assessment and the worksheet attached thereto shows that due process was satisfied. For easy reference, the Notice of Assessment and the attached worksheet is reproduced below:

"NOTICE OF ASSESSMENT

Sir/Madam:

The result of the examination under Letter of Authority LA-2006 Nos. 001 conducted pursuant to Section 171 of the Local Government Code of 1991, reveals that you are liable to pay the correct city business taxes, fees and charges, reassessed or computed as follows:

Deficiency Taxes, Fees and Charges - =P= 2,415,509.42
(Covering Taxable Period : 2003-2005)

which you may further verify from the attached assessment worksheet prepared and reassessed by FELITO A. MANRIQUE Revenue Examiner/Deputy who conducted the examination.

The above mentioned assessment shall become final and executory within sixty (60) days from receipt hereof, unless a tax protest is filed assailing its validity or propriety as the case maybe, we remain

Very truly yours,

Nelia A. Barlis
OIC, City Treasurer"

Year	PARTICULARS	INCOME		TAX			25% Surrcharge	2% MONTHLY INTEREST		TOTAL TAX DUE (CREDIT)
		Per AUDITED F/S	DECLARED	DUE	PAID	DEFICIENCY (Overpayment)		RATE	AMOUNT	
2003	SERVICE CONTRATOR	57,218,486.00	5,000,000.00	353,638.65	29,500.00	324,138.65	81,034.66	72%	233,379.83	638,553.14
	Mayor' Permit			4,000.00	4,000.00					
2004	SERVICE CONTRACTOR	82,901,488.00	5,000,000.00	546,261.16	29,500.00	516,761.16	129,190.29	52%	268,715.80	914,667.25
	Mayor's Permit			4,000.00	4,000.00					
2005	SERVICE CONTRACTOR	90,715,412.00	5,000,000.00	604,865.59	41,277.99	563,587.60	140,896.90	28%	157,804.53	862,289.03
	Mayor's Permit			4,000.00	4,000.00					
						1,404,487.41	351,121.85		659,900.16	2,415,509.42
NOTE: F/S ending January 31										

Section 195 of the Local Government Code of 1991 mandates that when the local treasurer or his duly authorized representative finds that correct taxes, fee, or charges have not been paid, he shall issue a *notice of assessment stating the nature of tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties*. This section is akin to Section 228 of the 1997 National Internal Revenue Code in as much that the underlying reason for both provisions is the basic constitutional mandate that *no person shall be deprived of his property without due process of law*.

The essence of due process is the *opportunity to be heard* or as applied in this case, the opportunity to argue one's claim and one's defenses. Due process does not require that the Notice of Assessment is fully detailed. What matters most is for the taxpayer to be informed of the assessment in such a way that it can present his case.

Respondents' Notice of Assessment is not a mere statement of figures. Rather it informed petitioner that the assessment was for business tax, and the amount thereof. Actually, the attached worksheet contains a more detailed information on the assessment showing specifics, such as; the nature of the tax being collected, tax base, tax due, deficiency or overpayment, surcharges, interests due, and the total tax due. Clearly, there was *prima facie* compliance with the requirements of Section 195 of the Local Government Code of 1991. Petitioner was not left in confusion as to the legal and factual basis of the assessment.

Further, petitioner's statement that the Notice of Assessment is invalid for failure to state the applicable legal provisions is misplaced. Well worth noting at this point is the pronouncement of the Supreme Court in the case of *Yamane vs. BA Lepanto Condominium Corporation*[8], to wit:

> "Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be **sufficiently informative** to apprise the taxpayer the **legal basis of the tax**. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment **specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties.**" *(Emphasis supplied)*

From the clear language of the ruling above, Section 195 does not expressly require that the Notice must specifically cite the provision of the ordinance; but requires that it state, among others, the nature of the tax. As already discussed, although the Notice itself merely states that the assessment was for business tax, the same was sufficiently explained by the attached worksheet when it supplemented under the heading *Particulars* that petitioner is being taxed as Service Contractor. Hence, petitioner is substantially informed of the legal basis of the assessment, that it is being taxed in accordance with **SEC. 3A.02 of the Makati Revenue Code**. Plausibly, there was no denial of due process.

---

[8] G.R. No. 154993, October 25, 2005

Finally, petitioner asserts that the taxing and other revenue-raising powers of local government should be governed by the following principle, among others: Taxes, fees, charges and other impositions shall (a) be equitable and based as far as practicable on the taxpayer's ability to pay; (b) be levied and collected only for public purpose; (c) not be unjust, excessive, oppressive or confiscatory; and (d) not be contrary to law, public policy, national economic policy, or in restraint of trade. The taxes, charges and fees, which may be imposed by respondents should be guided by these principles and must not be unjust, excessive, oppressive or confiscatory and not in restraint of trade. More importantly, it should be based on the taxpayer's ability to pay. In view thereof, the assessment which was not supported by legal and factual bases should be cancelled and withdrawn

Respondents counters that the subject assessments are not oppressive and confiscatory. It never deviated from its mandate by law. The demand for deficiency taxes was simply that petitioner was found to have understated its gross sales or receipts as reflected in the Official Receipts of the Mayor's/business permits for the taxable years covered and as also supported by the figures found in its own Financial Statements; hence, the subject assessment.

It appears that petitioner is challenging the assessment as excessive and confiscatory for being without factual and legal basis. This brings to fore the presumption in favor of the correctness of assessments. In the same wise, it is said that *even an assessment based on estimate is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment*[9].

[9] Marcos II vs. Court of Appeals, G.R. No. 120880, June 5, 1997

The amount being assessed against petitioner is the result of the differences of its gross sales or receipts per financial statements compared to what it declared in the Mayor's Permit. In the absence of contradicting evidence, such assessment is presumed correct. The burden to prove, otherwise, lies upon petitioner which in this case, petitioner failed to discharge. The records lay bare of any evidence that would prove that the assessment of respondents is indeed excessive and confiscatory except from the allegations of petitioner.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on November 3, 2006 and the Order dated July 10, 2007, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Court of Tax Appeals
Library

ERNESTO D. ACOSTA
Presiding Justice