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Admin

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ESTATE OF JUAN M. POSADAS III
Represented by AIDA M. POSADAS,
Special Administratrix,

Petitioner,

- versus -

C.T.A. CASE NO. 5038

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:

DEC 12 1997

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DECISION

This is a petition seeking for the cancellation and withdrawal of the alleged deficiency estate tax assessment issued by the BIR Assistant Commissioner against the petitioner for P132,661,451.97 on January 16, 1989.

The antecedent facts of the case are as follows.

The decedent Juan M. Posadas III died intestate on February 9, 1982, leaving various personal properties and parcels of land located in Sucat, Parañaque and in three towns of Zambales.

On January 13, 1983, the Estate of Juan M. Posadas III, through its original administratrix, Mrs. Estela Marfori Posadas, filed its Estate Tax Return (Exhibit "C" of the petitioner) declaring therein a gross estate of P7,685,325.28 and the tax due thereon amounting to P188,814.00. No payment was made at the time of filing.

Thereafter, in an investigation conducted by BIR examiners, it was ascertained that the actual value of the gross estate of the decedent is P12,854,970.41 (Exhibit "I" of the petitioner) and that the estate tax due thereon should be P3,025,861.00. The examiners based their findings on the fair market value appearing in the tax declarations of decedent's real properties under Presidential Decree No. 464 in view of the absence of any comparative sales of properties near or within the vicinity of the realty subject matter of their investigation (Exhibit "I-4" of the petitioner).

Consequently, on June 27, 1983, a demand letter (Exhibit "3" of the respondent) and Assessment Notice No. EA-3841880-82/83 (Exhibit. "3-a" of the respondent) were issued against the Estate of Juan M. Posadas III, requesting payment of the amount of P3,205,861.00 as deficiency estate tax.

In a letter dated March 17, 1987, the then Chief of the Collection Enforcement Division of the Bureau of Internal Revenue advised the petitioner to avail of a compromise settlement of the abovementioned assessment under Executive Order No. 44 (Exhibit "4" of the respondent) which provides that tax liabilities of delinquent taxpayers will be extinguished upon payment of 30% of the amount of delinquency. In response, the petitioner in a letter dated March 30, 1987 applied for a compromise settlement and subsequently, on May 20, 1988, it paid the amount of P961,758.09 representing 30% of P3,205,861.00 as evidenced by Confirmation Receipt No. B-1513648 (Exhibit "4-B of the respondent).

On June 10, 1988, then Commissioner Bienvenido A. Tan, Jr., issued a letter certification to the Estate of Juan M. Posadas III stating that in view of the availment of the benefits provided for under Executive Order No. 44 by the petitioner and the subsequent payment of the amount of P961,758.09, "the estate case of Juan Posadas III is now considered closed and terminated, as far as the aforementioned assessment is concerned" (Exhibit "K" of the petitioner).

In the meantime, through a memorandum dated March 7, 1988, the then Manila Regional Director Felicidad L. Viray directed a few revenue examiners to conduct a reinvestigation of the estate tax case of the late Juan Posadas III and to submit a recommendation as soon as practicable (Exhibit "5" of the respondent). Thereafter, on July 6, 1988, the revenue examiners submitted their report (Exhibit "6" of the respondent) to the respondent recommending the issuance of another assessment.

Expectedly, as soon as the petitioner was informed about the results of the reinvestigation, the Estate protested the proposed assessment emphasizing on the previous tax investigation conducted by the BIR, the availment by the petitioner of the tax amnesty benefits under Executive Order No. 44 and the consequent letter certification issued by Commissioner Bienvenido Tan considering the said estate tax case as already closed and terminated.

On January 16, 1989, the Assistant Commissioner for Collection, Pedro C. Aguillon, issued a demand letter and an assessment notice addressed to the petitioner indicating the deficiency estate tax and increments due from the petitioner based on the reinvestigation in the total amount of P132,661,451.97 (Exhibit "AA" and "BB" of the petitioner) computed as follows:

Deficiency Estate Tax

Real Properties		P117,011,322.00
Personal Properties		1,430,514.41
Gross Estate		P118,441,836.41
Less: Deductions		
Funeral Expense	P 50,000.00	
Claims against the Estate	7,084,284.76	7,134,284.76
Net Taxable Estate		P111,307,551.65
Estate Tax Due		P 66,377,980.99
Less: Estate tax already assessed and paid under E.O. No. 44		3,205,861.00
Deficiency Estate Tax		P 63,172,119.99
Add: 50% Surcharge		31,586,059.99
20% Interest from 11.09.83 to 11.09.86		37,903,271.99
Total Amount Due and Collectible		P132,661,451.97

Substantially, the increase in the gross estate of the decedent per reinvestigation conducted by the BIR examiners, was brought about by their alleged findings that the actual and true market value of the properties of the estate in Sucat, Muntinlupa, prevailing in 1982 was P325.00 and not P60.00 per square meter as declared by the petitioner.

Petitioner's protest against the aforestated deficiency estate tax assessment was denied by the respondent through a letter decision dated June 4, 1993 and received through the mail by the petitioner on September 20, 1993. Hence, this petition was filed on October 20, 1993.

We are tasked to resolve the following pertinent issues raised by the parties to this case:

1. Whether or not the deficiency estate tax assessment notice dated June 16, 1989 is valid and enforceable;

2. Whether or not the availment of the compromise settlement made by the Estate of Juan Posadas III under the provisions of Executive Order No. 44 with respect to the original deficiency estate tax assessment of P3,205,861.00 precludes the respondent Commissioner of Internal Revenue from conducting a reinvestigation involving the same estate tax liability;

3. Whether or not there was a misdeclaration or undervaluation of the true and correct value of the properties of the Estate of Juan M. Posadas III amounting to fraud with intent to evade payment of the correct estate tax due on the transmission of the said estate.

This Court believes that a discussion of each of the arguments raised by both parties would be useless until the question of validity of the disputed assessment is foremost settled. Determination of the case on the merits would be futile if this Court finds that the assessment is devoid of merit and without force and effect.

Anent this primordial issue, petitioner in its memorandum maintains that: (1) there was no proof that the reinvestigation of the Estate was with the approval of the then BIR Commissioner Bienvenido A. Tan; (2) that there exists no evidence of fraud which would justify the reinvestigation of the estate tax case of the petitioner; (3) that the assessment was issued beyond the five-year reglementary period provided under Section 318 of the Tax Code; and lastly, (4) that the assessment notice was signed by the Assistant Commissioner for Collection Pedro C. Aguillon, an official who is not authorized by law to sign deficiency tax assessments.

A meticulous scrutiny of all the records of this case convinced this Court to rule in favor of the petitioner.

The reinvestigation was actually initiated by one Rodrigo Juanir, a real estate salesman who informed the Commissioner of Internal Revenue through a letter dated May 2, 1986 (p. 11, Volume I, BIR Records), that the lots owned by the late Juan Posadas III in Sucat, Parañaque had a market value of P325.00 per square meter and not P60.00 as declared by the Estate in its tax return, attaching therewith a 1982 price list (pp. 7-8, Volume I, BIR Records) of lots in the said area. In a follow-up letter dated August 11, 1986 (p. 10, Volume I, BIR Records), Mr. Juanir submitted a copy of a Contract to Sell (Exhibit "6-C-1" of the respondent) involving a lot which formed part of the estate of the deceased.

On March 7, 1988, Regional Director Felicidad L. Viray issued a memorandum (p. 46, Volume I, BIR Records) addressed to four (4) revenue examiners of the Special Investigation Team (SIT), directing them to conduct an immediate reinvestigation of the estate tax case of Juan Posadas III pursuant to an alleged directive from the Commissioner of Internal Revenue. Subsequently, on July 6, 1988, the SIT examiners issued a memorandum report (pp. 121-123, Volume I, BIR Records) on their reinvestigation which merely reiterated the information and documentary evidence they received from the informant, Mr. Rodrigo Juanir, thus, resulting to the disputed deficiency estate tax assessment.

Pertinent to the resolution of this case are the provisions of Paragraph 5.2 in relation to Paragraph 8.1 of Revenue Memorandum No. 39-86 (Guidelines for implementation of Executive Order No. 44 re compromise settlement of (1) delinquent tax accounts; or (2) disputed tax assessments, as of December 31, 1985), to quote:

> "**5.2 - Approving authority.** - Except for compromise settlement involving a compromise settlement rate of thirty percent (30%) prescribed under paragraph 5.1 above, all applications for compromise settlement under Executive Order No. 44 shall be subject to approval by the Commissioner of Internal Revenue.
>
> Cases where the compromise settlement rate applied is equal to thirty percent (30%) of the basic tax assessed shall be considered closed on the day the compromise amount is paid. This case needs no evaluation or approval by any revenue office other than the revenue office which had processed the application in accordance with the guidelines herein prescribed and the implementing regulations of Executive Order No. 44."

> **8.1 - 30% compromise settlement rate.** - If the compromise settlement rate is equivalent to 30% of the basic tax assessed, immediate action shall be taken on the taxpayer-applicant's application. <u>After payment of the compromise amount, the revenue office which passed upon the application as referred to in paragraph 5.2 hereof, shall issue to the taxpayer a letter, signed by the chief of the said revenue office, confirming the payment and advising that the case is already closed</u>.

Based on the foregoing guidelines, two requirements must be present before a case shall be considered closed, namely:

1) That the 30% compromise amount has been paid; and

2) That a letter was issued by the chief of the revenue office which passed upon the application confirming the payment and advising that the case is already closed.

Considering that the petitioner already paid the amount of P961,758.09 representing 30% of the deficiency estate tax pursuant to Executive Order No. 44 as evidenced by Revenue Tax Receipt No. 2913612 and Confirmation Receipt No. B-15153648 on May 20, 1988 and a letter certification to the Estate of Juan M. Posadas III stating that in view of the availment of the benefits provided for under Executive Order No. 44 by the petitioner and the subsequent payment of the amount of P961,758.09, "the estate tax case of the estate of Juan Posadas III is now considered closed and terminated, as far as the aforementioned assessment is concerned" (Exhibit "K" of the petitioner), was issued by then Commissioner Bienvenido A. Tan, Jr. on June 10, 1988, the protest filed by the petitioner against the reassessment is clearly meritorious.

Moreover, under the provisions of Section 324 of the 1982 Tax Code, any reinvestigation of the tax case must be with the authority of the Commissioner, thus:

> "Section 324. ***Preservation of books of accounts, and other accounting records.*** - All the books of accounts including the subsidiary books, and other accounting records, of corporations, partnerships, or persons shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 318 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection once only in a taxable year by internal revenue officers, except in the following cases:
>
> (a) Fraud, irregularity or mistakes as determined by the Commissioner;
>
> x x x"

Nowhere in the records of this case can be found any proof that the reinvestigation of the estate tax case of the petitioner was authorized by the then Commissioner Bienvenido A. Tan. In fact, petitioner was even advised by the Chief of Collection Enforcement Division, Herminia D. De Guzman, through a letter dated March 17, 1987 (p. 53, Volume I, BIR Records), to avail of the benefits of Executive Order No. 44, despite previous information, as early as March 2, 1986, through informant Rodrigo Juanir, that a possible undervaluation of the subject gross estate might have taken place. In addition, the BIR counsel of record appearing for the respondent in the Special Proceedings No. 82-6658 lodged before the Regional Trial Court, Branch 48, manifested no objection to the

Motion to Pay Estate Tax filed by the petitioner on May 11, 1988 (pp. 422-423, Volume II, BIR Records). Consequently, an Order was rendered by Judge Demetrio M. Batario, Jr., dated May 16, 1988 (p. 421, Volume II, BIR Records), directing the petitioner to pay the estate tax imposed by the BIR. Thereafter, on May 20, 1988, the administratrix paid the amount of P961,758.09 representing 30% of the deficiency estate tax pursuant to Executive Order No. 44 as evidenced by Revenue Tax Receipt No. 2913612 and Confirmation Receipt No. B-15153648.

Furthermore, we agree with the petitioner that there exists no evidence of fraud which would justify the reinvestigation of the estate tax case of the petitioner. Fraud in order to justify an assessment based on the ten-year prescriptive period must be the product of a deliberate intent to evade taxes. Hence, a mere underdeclaration through undervaluation from tax returns of property subject to estate tax will not necessarily imply fraud. Be it noted that in the case at bar, petitioner paid its estate tax liability based on the findings of the revenue examiners who conducted the original investigation of the petitioner's estate tax case. The original revenue examiners found that the lots owned by the decedent located in Sucat, Muntinlupa, should be valued at P120.00 per square meter as declared under P.D. No. 464 and not at P60.00 per square meter based on the Estate Tax Return filed by the petitioner, eventually, an assessment was issued by then Commissioner Ruben B. Ancheta based on such findings. The fact that the

Commissioner did not include the fraud penalty in his deficiency assessment which was issued after the filing of the taxpayer's returns is an indication that the Commissioner himself does not believe that there was fraud ***(Gomez v. Domingo, CTA Case No. 1168, February 15, 1964).***

Absent any actual fraud committed by the petitioner, the applicable prescriptive period to assess should be five years (now three years) in accordance with the provision of Section 318 (now Section 203) of the National Internal Revenue Code, to wit:

> "Sec. 318. ***Period of limitations upon assessment and collection.*** - Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purpose of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

Corollary thereto, the time for filing of estate tax return is clearly provided under Section 105 (b) of the Tax Code, thus:

> "Section 105 (b). ***Time for filing.*** - For the purpose of determining the estate tax provided for in Section 99 of this Code, the estate tax return required under the preceding subsection (a) shall be filed within nine months after the decedent's death; but if judicial testamentary or intestate proceedings, shall be instituted for the settlement of the decedent's estate prior to the expiration of said period, the return shall be filed within twenty-one months after the decedent's death."

Considering that a special proceeding was instituted before the Regional Trial Court, Branch 48, the assessment should be made from November 9, 1983, or twenty-one months after the decedent's death, and not later than November 9, 1988. Since the disputed assessment was issued on January 16, 1989, the same had already prescribed.

With regard to the contention of the petitioner that the assessment notice is invalid for having been signed by the Assistant Commissioner for Collection Pedro C. Aguillon which according to them is a BIR officer not authorized by law to sign deficiency tax assessments, We vehemently disagree. The authority to assess taxes may be validly delegated. An assessment signed by an employee for and in behalf of the Commissioner of Internal Revenue is valid. Furthermore, the subsequent issuance by the respondent Commissioner of Internal Revenue, Liwayway Vinzons-Chato of her final decision on the matter, constituting her final assessment on the estate tax case, effectively affirms the authority of the Assistant Commissioner for Collection to sign the questioned assessment notice.

However, our determination that the Assistant Commissioner had the authority to sign the assessment notice does not negate the fact that the assailed assessment notice remains void and without force and effect for having been issued beyond the reglementary prescriptive period of five years. Hence, We find no need to delve into the other issues involved in this case.

WHEREFORE, in the light of all the foregoing, the deficiency estate tax assessment issued by the respondent against the petitioner on January 16, 1989 in the amount of P132,661,451.97 is hereby **CANCELED**. No pronouncements as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above 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