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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRIVATE DEVELOPMENT CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 5150

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 17 1997

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D E C I S I O N

This is a petition seeking for the declaration of nullity of a deficiency income tax assessment for 1986 issued by the respondent against the petitioner in the total amount of P24,067,666.00.

The antecedent facts of the case are as follows.

Petitioner is domestic corporation duly organized and existing under and by virtue of the laws of the Philippines.

On May 2, 1990, petitioner received a 1986 deficiency income tax assessment notice and a demand letter both dated April 11, 1990 (Exhs "A" and "A-1"), in the amount of P24,067,666.00, computed as follows:

Net Income per investigation			P13,258,260.00
Add:	Disallowances		
	Bad debts written off	P24,000,000.00	
	Salaries, wages & bonus - no w/holding tax	10,254,380.00	
	Director's bonus & per diem	128,000.00	34,382,380.00
Net Income per review			P47,740,640.00

Tax due thereon	P16,709,224.00
Less: Tax paid per return	4,675.391.00
Deficiency income tax	P12,033,833.00
Add: 25 % surcharge	3,008,458.25
20% interest from 4-16-87 to 4-11-90	9,025,374,75
TOTAL AMOUNT DUE AND COLLECTIBLE	P24,067,666.00

On May 17, 1990, petitioner filed through its tax consultant (V.M. Gonzales and Associates) a protest letter (Exhs. "B" and "B-1") against the deficiency income tax assessment with the respondent. Thereafter, petitioner, through another tax consultant (SGV & Company) filed on March 25, 1992, a supplemental protest letter reiterating its request for reinvestigation and that the case be referred to the Appellate Division of the Bureau of Internal Revenue (BIR) (Exhs. "C" and "C-1").

On August 22, 1994, petitioner received respondent's decision upholding the legality and validity of the deficiency income tax assessment issued against the petitioner.

Hence, this petition for review filed on September 20, 1994.

Petitioner questions the validity and legality of the assessment on two grounds, namely:

1. That the Assessment Notice (FAN-1-86-90-001542) was signed by a person other than the Assistant Commissioner of the Collection Service of the BIR; and

2. Assuming that the assessment is valid, the disallowance of bad debts written off, salaries, wages and bonuses (without the proper withholding tax being collected and withheld) and director's bonus and per diem are devoid

of any legal bases, the same being a valid deductible expense under Section 29 of the National Internal Revenue Code (NIRC).

Respondent denied the grounds relied upon by the petitioner in her answer. On the allegation that the signature was a forgery, respondent merely stated among others in her special and affirmative defenses that the assessment was properly issued because the Assistant Commissioner for Collection has the authority to issue and sign assessment notices and demand letters as part of his official functions and duties.

With respect to the disallowances, respondent claims that the salaries, wages and bonuses were properly disallowed because these payments were not subjected to any withholding tax pursuant to Section 29(j) of the same Code. The disallowance of director's bonus and per diem are proper considering that these expenses were extraordinary and unusual. The payments thereof cannot be measured by their actual services rendered. The bad debts written off cannot also be allowed as a deduction for failure of the petitioner to show proof that the bad debts have become worthless during the taxable year.

The issues presented for resolution are interrelated, they are as follows:

1. Whether or not the assessment issued to petitioner is void for being signed by a person other than the Assistant Commissioner of the Collection Service of the BIR; and
2. If the first issue is answered in the afirmative, whether or not the disallowances resulting to the issuance of the subject assessment are valid.

We need to tackle the first issue first inorder to determine whether there is a need to proceed with the merits of the case regarding the validity of the disallowances made by the respondent. The determination of the case on the merits would be futile if this Court finds the assessment notice to be devoid of merit and without force and effect.

Petitioner claims that the signature over the printed name of Pedro C. Aguillon, Asst. Commissioner for Collection, appearing on the Income Tax Assessment Notice (FAN-1-86-90-001542) as well as on the demand letter, dated April 11, 1990, is a forgery. To prove its allegation, petitioner presented Exhs. II to LL-3, inclusive. These are documents showing the customary signature of Mr. Pedro C. Aguillon, as identified by petitioner's witness, Ms. Estrella C. Dahingo, Human Resources Management Officer II, Personnel Division of the BIR. Ms. Dahingo positively identified and declared that the signatures on these documents, namely:

1. Letter, dated September 3, 1990, signed by Pedro C. Aguillon addressed to the Commissioner of Internal Revenue (Exhs. "II" and II-1");

2. Panunumpa sa Katungkulan, dated February 28, 1988, signed by Pedro C. Aguillon (Exhs. "JJ" and "JJ-1");

3. The designation of Asst. Commissioner Pedro C. Aguillon, dated August 13, 1990, as member of the Information Technology Policy Coordinating Committee (ITPCC), signed and acknowledged receipt by Pedro C. Aguillon (Exhs. "KK" and "KK-1"); and

4. Personal Data Sheet of Mr. Pedro C. Aguillon, bearing his signatures (Exhs. "LL", "LL-1", "LL-2", and "LL-3"),

are the genuine signatures of Mr. Pedro C. Aguillon.

Respondent did not object nor commented on these very vital evidence for the petitioner at the time they were formally offerred in evidence. Instead, respondent alleged in her memorandum that the signatures of Mr. Pedro C. Aguillon appearing in the assessment notice and demand letter sent to petitioner are genuine. She invokes the rule on disputable presumptions that official duty has been regularly performed under Section 3(m) of Rule 131 of the Rules of Court. Respondent further stressed that the witness presented by petitioner should not be conclusive since said witness is not even an expert witness. Thus, respondent cited and quoted from the Book of Evidence of Justice Ricardo J. Francisco, 1994, 2nd Ed., p. 358, that "when the writing is proven to be a true specimen of the person's handwriting, the expert should be permitted to compare this true specimen with the disputed writing, and to give his opinion whether the same person wrote both writings. No one but a handwriting expert may give this opinion, and the testimony of the expert is limited to his opinion as to whether the two writings before the court were written by the same person" (Underscoring supplied). Neither the witness nor the counsel for the petitioner is an expert witness regarding handwriting and nowhere from the proceedings of the case did petitioner present an expert witness to determine the authenticity of Mr. Aguillon's signature.

This Court finds the contention of the respondent unmeritorious.

As a general rule, the opinion of experts is not received if all the facts can be ascertained and made intelligible to the court, or if it is such as men in general are capable of comprehending. Expert witnesses are not allowed to give opinion evidence if from the other evidence available, the judge can be put in possession of the facts ***(Evidence by Francisco, 1994 2nd Ed., p. 351)***. And where the question of similarity and dissimilarity can be clearly determined by a mere comparison of the existing signatures, the opinion of a handwriting expert is not necessary for the correct resolution by the court ***(People vs. Agamata, (CA), 64 O.G. 2735).***

Our own scrutiny and comparison of the existing signatures showed a glaring disparity between the signatures appearing on the documents introduced by the petitioner as a standard or customary signature of Mr. Pedro C. Aguillon from that of the signature appearing on the Assessment Notice and Demand Letter issued to petitioner. This findings led this Court to conclude, without a need for an opinion of a handwriting expert, that indeed the disputed signature is a forgery. Consequently, the instant assessment is considered to be a "mere scrap of paper" which is devoid of merit and without force and effect.

WHEREFORE, in view of all the foregoing, the assessment issued by the respondent against the petitioner for alleged deficiency income tax for taxable year 1986 is hereby **CANCELLED** and set aside. No pronouncements as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Prisideng Judge
Court of Tax Appeals