**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

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**FIRST DIVISION**

**GUOTRADE PHILIPPINES, INC.,**
Petitioner,

- versus -

**C.T.A. CASE NO. 6119**

**COMMISSIONER OF INTERNAL, REVENUE,**
Respondent.

Promulgated:
OCT 2 0 2004
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# DECISION

This case is an appeal for the cancellation and withdrawal of the deficiency income tax assessment issued by the respondent against petitioner in the amount of P19,795,136.05 (inclusive of increments) for the fiscal year ending June 30, 1996.

Petitioner is a domestic corporation duly organized and existing under Philippine laws. It was registered with the Securities and Exchange Commission (SEC) on August 11, 1993 for the primary purpose of engaging in the business of buying, selling, distributing, marketing at wholesale all kinds of goods, commodities, wares and merchandise of every kind and description. It was originally named First Lepanto Trading, Inc. but was changed to Guoco Marketing, Inc. and later renamed to Guotrade Philippines, Inc. (*pars. 1 & 10, Stipulation on Facts; Item 1, Notes to FY 1994 Financial Statements, p. 420, CTA Records*).

On February 20, 1997, petitioner received from the Revenue District Office (RDO) No. 56 of the Bureau of Internal Revenue (BIR), Letter of Authority No. 115095

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dated February 17, 1997, authorizing Revenue Officer Rufo B. Gauna to examine petitioner's books of accounts and other accounting records relative to the latter's income and business tax liabilities for fiscal year (FY) ending June 30, 1996 (*Exhibit 1, page 277, BIR Records*).

As a result of the examination, petitioner received on August 23, 1999, Assessment Notice No. 56-14-000032-95 dated July 30, 1999 from the Assessment Division of Revenue Region No. 9 of the BIR, assessing petitioner for deficiency income tax in the amount of P19,795,136.04, inclusive of surcharge, interest and compromise penalty (*par. 11, Stipulation on Facts*), computed as follows:

| | | |
|---|---|---|
| Net Income Per Return | | P 2,576,924.00 |
| Add: Additional Income | | |
| Understatement of sales | P 100,470.14 | |
| Commission income declared per | | |
| VAT returns but not per ITR - GCI/FLTW | 28,991,175.39 | |
| PICOP | 1,103,620.00 | |
| Total Additional Income | | 30,195,265.53 |
| Net Income After Investigation | | P 32,772,189.53 |
| Tax Due Thereon | | P 11,470,266.00 |
| Less: Withholding Tax | | 1,374,876.95 |
| Balance of Tax Due/Deficiency | | P 10,095,389.05 |
| Add: Surcharge | | 2,523,847.00 |
| Interest from 10/15/96 to 8/15/99 | | 7,150,900.00 |
| Total | | P 19,770,136.05 |
| Compromise for | | 25,000.00 |
| TOTAL AMOUNT DUE | | P 19,795,136.05 |

The alleged deficiency income tax assessment arose from: (a) understatement of income derived from sales in the amount of P100,470.14; (b) non-declaration of commission income of P30,04,795.39 for income tax purposes, consisting of commission income from FLTW/FLCI/GCI in the amount of P28,991,175.39 and from PICOP in the amount of P1,103,620.00; and (c) deficiency in creditable withholding tax in the amount of P2,463.05 (*par. 12, Stipulation on Facts*).

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On September 17, 1999, petitioner filed with the Assessment Division of Revenue Region No. 9 of the BIR an administrative protest (*par. 13, Stipulation on Facts*).

On October 5, 1999, Revenue District Officer Zenaida Garcia requested petitioner to submit a Waiver of Prescription under the Statute of Limitations and the following documents to support petitioner's protest:

(a) Journal Vouchers showing the entries for sales, returns/discounts, price adjustment, cancellation or double recording of sales and unrecorded sales as mentioned in petitioner's protest letter;

(b) Documents and basis of recording of P31,7686,109.93 (sic) and P1,103,620.00 Commission income from FLCI and FLTW and PICOP respectively during the fiscal year ending on June 30, 1995;

(c) Schedule showing the name of withholding agents, gross payment and amount of tax withheld corresponding to tax credit claimed of P1,377,340.00 since the withholding tax certificates previously submitted do not show such amount.

Said letter of Revenue District Officer Zenaida Garcia was received by petitioner on October 11, 1999 (*par. 14, Stipulation on Facts*).

Petitioner submitted a Waiver of Prescription and the relevant documents supporting its protest on October 25, 1999 and November 12, 1999, respectively (*par. 15, Stipulation on Facts*).

On February 9, 2000, petitioner received a letter dated January 31, 2000 from Revenue District Officer Teodolfo D. Yerro, Jr., commenting on the documents submitted and requesting petitioner to submit the following documents:

a. General ledger, sales book and journal book for fiscal year ended June 30, 1996;

b. Sales invoice and/or official receipts for the following:

    a. Replacement of goods returned per JV-20

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b. Commission from FLCI/FLTW (Php 28,991,175.39) and PICOP (Php 1,103,620.00)

c. Written explanation on the difference between the amount of sales in November 1995 per sales book previously submitted and per sales book [newly submitted and marked Annex "K-1: (sic)]

On March 24, 2000, petitioner submitted the documents requested by respondent in its letter dated January 31, 2000 (*par. 17, Stipulation on Facts*).

Respondent failed to act on the protest filed by petitioner within the period of one hundred eighty (180) days from petitioner's submission of the supporting documents. Hence, petitioner appealed before this court on June 7, 2000 or within thirty (30) days from the last day of the aforesaid 180-day period pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997.

In his Answer to the Petition for Review, respondent raised the following Special and Affirmative Defenses:

> 4. Considering the failure of petitioner to submit all relevant supporting documents within sixty (60) days from filing its protest, under Section 228 of the National Internal Revenue Code of 1997, the assessment issued against it for deficiency income tax for the fiscal year ending June 30, 1996 has already become final by operation of law;
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> Thus, Section 228 of the Tax Code, partly provides:
>
>> Sec. 228. Protesting of Assessment.-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.*" **(Emphasis supplied).**

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5. Since the assessment has become final, this Honorable Court has no jurisdiction to act on the instant petition;

6. Petitioner was informed of the law and the facts on which the assessment is made, in compliance with Section 228 of the Tax Code;

7. There was an understatement of sales "Per Journal" of petitioner in the amount of P100,470.14 for fiscal year ending June 30, 1996. Some of the journal vouchers are undated and bear no signature. Replacement of goods returned was booked through JV0-20 which should have been recorded in the sales book based on sales invoice issue;

8. Petitioner failed to substantiate the discrepancy of the amount of sales for the month of November 1995 "per sales book" amounting to P876,809.18;

9. Although petitioner has declared per VAT Return the commission it derived from FLCI/FLTW in the amount of P28,991,175.39, however, it failed to declare said commission as income for income tax purposes for the fiscal year ending June 30, 1996;

10. Although petitioner has declared per VAT Return the commission it derived from PICOP in the amount of P1,103,620.00, however, it failed to declare said commission as income for income tax purposes for the fiscal year ending June 30, 1996;

11. Petitioner failed to substantiate by sufficient evidence that the commissions it derived from FLCI/FLTW and PICOP was declared for income tax purposes either for Fiscal Year ending June 30, 1995, nor for Fiscal Year ending June 30, 1996;

12. The assessment issued against petitioner for deficiency income tax in the amount of P19,795,136.05 pertains to Fiscal Year ending June 30, 1996;

13. The total amount of tax withheld at source from petitioner for fiscal year ending June 30, 1996 was only P1,374,876.95;

14. Petitioner failed to substantiate by sufficient evidence that the total amount of tax withheld at source by its withholding agent for Fiscal Year ending June 30, 1996 amounts to P1,377,344.00;

15. The assessment issued against petitioner for deficiency income tax for the fiscal year ending June 30, 1996 was made in accordance with law and regulations;

16. All presumptions are in favor of the correctness of tax assessments.

As jointly stipulated by the parties, the issues to be resolved by this court are:

1. Whether or not petitioner understated its sales for fiscal year ending June 30, 1996 by P100,470.14;

2. Whether or not petitioner should declare commission income derived from FLCI/FLTW in the amount of P28,991,175.39 and from PICOP in the amount of P1,103,620.00 for income tax purposes for fiscal year ending June 30, 1996; and

3. Whether or not petitioner has a deficiency creditable withholding tax in the amount of P2,463.05.

Anent the first issue, the respondent imputed against petitioner an understatement of sales for FY 1996 in the amount of P100,470.14 which was derived from a comparison of the sales figures reflected in the worksheet and those found in the sales journal of petitioner, to wit:

| | Year | Per Worksheet | Per Journal | Difference |
|---|---|---|---|---|
| July | 1995 | P 1,555,792.15 | P 1,608,819.91 | P (53,027.76) |
| August | 1995 | 1,067,368.27 | 1,058,540.01 | 8,828.26 |
| September | 1995 | 1,300,825.77 | 1,300,825.77 | - |
| October | 1995 | 1,162,892.25 | 1,162,892.25 | - |
| November | 1995 | 872,809.18 | 876,809.18 | (4,000.00) |
| December | 1995 | 902,002.24 | 902,002.24 | - |
| January | 1996 | 863,889.17 | 866,762.47 | (2,873.30) |
| February | 1996 | 485,677.64 | 485,677.64 | - |
| March | 1996 | 899,482.00 | 914,372.00 | (14,890.00) |
| April | 1996 | 873,916.03 | 881,282.46 | (7,366.43) |
| May | 1996 | 408,931.86 | 415,681.86 | (6,750.00) |
| June | 1996 | 1,419,314.01 | 1,439,704.92 | (20,390.91) |
| | | P 11,812,900.57 | P 11,913,370.71 | P (100,470.14) |

Petitioner, on the other hand, countered that the sales "Per Worksheet", being the sales per Audited Statement of Income and Retained Earnings, is the adjusted sales. The

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sales "Per Journal" having been lifted from the sales book represent unadjusted sales. Thus, there were adjustments to sales which were not reflected in the sales book but recorded in the journal vouchers and taken up in the sales "Per Worksheet", namely, sales returns, sales discounts, price adjustment/correction, reversing entries due to cancellation or double recording of sales, and unrecorded sales. Petitioner also claimed that the examiner's sales "Per Journal" of P876,809.18 for the month of November 1995 is erroneous since the amount per sales book is only P872,809.18. According to petitioner, these adjustments and the erroneous sales figure for the month of November 1999 constitute the P100,470.14 discrepancy which, had it been considered by the examiner would not result to any understatement of sales. Petitioner presented a detailed summary of the discrepancy of P100,470.14 as follows (*p. 242, CTA Records*):

| MONTH | REF | AMOUNT | REMARKS | |
|---|---|---|---|---|
| JULY | JV -9 | (289.09) | Sales adjustment | |
| | JV-10 | (36,784.44) | Sales return | |
| | JV-12 | (6,195.27) | Sales return | |
| | JV-18 | (155,466.29) | Sales return | |
| | JV-20 | 164,990.13 | Sales return | |
| | JV-24 | (10,454.55) | Replacement of goods returned | |
| | JV-29 | (8,828.26) | Sales return | |
| | | (53,027.76) | | |
| AUGUST | JV-30 | 8,828.26 | To correct double recording of sales return | |
| NOVEMBER | SALES BOOK | (4,000.00) | Erroneous take-up of sales figure | |
| | | | Per sales book | 872,809.18 |
| | | | Per BIR Examiner | 876,809.18 |
| | | | | ( 4,000.00) |
| JANUARY | JV-313 | (2,873.30) | Sales adjustment | |
| MARCH | JV-378 | (14,390.00) | Sales return | |
| | JV-398 | (500.00) | Sales discount | |
| | | (14,890.00) | | |

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| | | | |
|---|---|---|---|
| APRIL | JV-443 | (500.00) | Sales discount |
| | JV-458 | (6,866.43) | Cancelled sales |
| | | (7,366.43) | |
| MAY | JV-509 | (6,750.00) | Sales adjustment |
| JUNE | JV-568 | (32,727.27) | To correct double recording of sales |
| | CAJE-18 | 12,336.36 | To book unrecorded sales |
| | | (20,390.91) | |

This court rules in favor of petitioner.

A scrutiny of the supporting documents submitted by petitioner such as the Journal Vouchers, AR Adjustment Advices, Sales Invoices, Delivery Receipts, Credit Memos, Receiving Report, Official Receipt, summary of "All Adjusting Journal Entries" for FY 1996 and Sales Book (*Exhibits C to MM; RRR*) reveals that the amount of P100,470.14 actually represents sales discounts granted, sales returns and other adjustments which do not constitute taxable income on the part of petitioner.

As to the second issue, the respondent noted that the commissions derived by petitioner from First Lepanto Ceramics, Inc./First Lepanto Tileworks, Inc. (FLCI/FLTW) and PICOP Resources, Inc. (PICOP) in the respective amounts of P28,991,175.39 and P1,103,620.00 totalling P30,094,795.39 were declared by petitioner in its VAT returns for FY 1996 but not in its income tax return for the same year. Accordingly, respondent charged petitioner of an undeclared commission income in the amount of P30,094,795.39 for FY 1996.

Petitioner, however, argued that the commission income of P30,094,795.39 though declared for VAT purposes for the FY ending June 30, 1996 was already declared for income tax purposes in the year 1995 because petitioner has adopted the accrual

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method of accounting for income tax purposes and cash method for value-added tax purposes.

We agree with petitioner.

For revenues derived from sale of services such as commissions earned by herein petitioner for marketing services rendered to FLCI/FLTW and PICOP, the same is accounted for VAT purposes using the cash method of accounting, *i.e.*, the consideration is taxable only upon actual or constructive receipt, irrespective of whether or not the service has been performed as provided under Section 102 [now 108] of the NIRC prior to its amendment under the Tax Reform Act of 1997. Petitioner's adoption of the accrual method of accounting for income tax purposes, (*i.e.*, the income is reported in the period it is earned regardless of whether it has been received or not) and the cash method of accounting for VAT purposes, results to a timing difference in the recognition of its commission income.

Evidence forwarded to this court disclosed that while the total commission of P30,094,795.39 from FLCI/FLTW and PICOP was collected and reported for VAT purposes in FY 1996, the same however, was actually earned and reported by petitioner in its income tax return for FY 1995. Hence, it was erroneous on the part of the respondent to charge petitioner of an undeclared commission income of P30,094,795.39 for FY 1996.

In its audited Statement of Income and Retained Earnings *(p. 246, CTA Records)* and Annual Income Tax Return for FY 1995 (*Exhibit NN-1*), petitioner's reported commission income amounted to P32,513,785.00. As can be seen in petitioner's Schedule of Income/Revenue for FY 1995 (*Exhibit VVVVVVV*), out of the total

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commission income of P32,513,785.00, the amount of P31,786,119.91 pertains to commissions earned from FLCI (or GCI) and FLTW while the amount of P1,103,620.00 corresponds to commissions earned from PICOP. Of the total commission income from FLCI/FLTW of P31,786,119.91 for FY 1995, only the amount of P2,794,366.00 was collected during the same year for which petitioner paid an output VAT of P279,436.60. The remaining FY 1995 commission income from FLCI/FLTWI of P28,991,753.91 was only collected in FY 1996, specifically in July 1995, for which petitioner paid the corresponding output VAT of P2,899,175.39 (*Exhibits JJJJJJJ-1 & OO-1*).

The same holds true with regard to petitioner's FY 1995 commission income from PICOP amounting to P1,103,620.00. Petitioner reported this amount and paid the related output VAT of P110,362.00 only in FY 1996, particularly in August, 1995 since the commission of P1,103,620.00 was only collected during that period (*Exhibits KKKKKKK-1 & PP*).

With reference to the third issue, this court answers in the negative.

As stipulated by the parties and shown by the various Certificates of Creditable Tax Withheld at Source (*par. 9, Stipulation on Facts; Exhibits FFFF to AAAAA*), petitioner's total creditable withholding taxes for the FY 1996 amounted to P1,377,887.63 and not P1,374,876.95 as found by the respondent's examiner.

In fine, this court finds the deficiency income tax assessment of P19,795,136.05 issued by the respondent against petitioner for FY 1996 erroneous and without basis.

**WHEREFORE**, in view of all the foregoing, the court finds the instant petition meritorious. Accordingly, Assessment Notice No. 56-14-000032-95 for deficiency

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income tax in the amount of P19,795,136.05 dated July 30, 1999 is hereby **CANCELLED** and **SET ASIDE**.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Justice

**I CONCUR:**

**LOVELL R. BAUTISTA**
Associate Justice

## C E R T I F I C A T I O N

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

**ERNESTO D. ACOSTA**
Presiding Justice
Chairman, First Division

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