Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PRUDENTIALIFE PLANS, INC., Petitioner,	**CTA Case No. 8109**
	Members:
-versus-	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 23 2014 4:30 pm

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RESOLUTION

For resolution is respondent's Demurrer to Evidence, filed on April 15, 2014, with petitioner's Comment/Opposition to Respondent's Demurrer on Evidence Dated 15 April 2014 with Prayer to Admit Formal Offer of Exhibits, filed on May 5, 2014.

This Court will first discuss petitioner's prayer to admit its Formal Offer of Exhibits/ Evidence since the resolution of the same would determine the propriety of resolving respondent's Demurrer to Evidence.

Here, petitioner's counsel, Atty. Darwin Troy J. Padlan (collaborating counsel), asseverates that the failure of petitioner to submit its Formal Offer of Evidence on January 20, 2014, was not deliberate nor by design, but due to the illness of its main counsel, Atty. Jose Leonilo V. Didulo. Thus, Atty. Padlan claims that he stepped up to assist the latter in his cases. He further adds that, **"[T]he sheer amount of the deficiency tax assessment that petitioner is faced - and with voluminous documentary exhibits petitioner has already**

presented thus far- is compelling enough for this Honorable Court to extend one final lenience to petitioner." As such, he asks for the liberal application of procedural rules and prays for the admission of petitioner's Formal Offer of Evidence attached to the aforesaid Comment/Opposition.

The Court, however, is not persuaded.

To begin with, the subject "Comment/Opposition to Respondent's Demurrer on Evidence dated 15 April 2014 with Prayer to Admit Formal Offer of Exhibits", with the appended Formal Offer of Evidence, need not be admitted nor should be passed upon by the Court on the ground that the same was belatedly filed. Records reveal that, in the April 21, 2014 hearing, the Court, upon motion of Atty. Padlan, granted petitioner a period of ten (10) days or until May 1, 2014, to file its Comment on respondent's Demurrer to Evidence. But, without requesting for any extension of time, petitioner's counsel filed the same only on May 5, 2014 or four (4) days late from the period granted by this Court.

Moreover, it should, likewise, be pointed out that from the very start, this Court has been very lenient to petitioner when it still granted its "Motion to Re-Open the Case for Continuation of Presentation of Petitioner's Evidence", filed on September 4, 2013, notwithstanding the numerous postponements for the presentation of petitioner's evidence, detailed as follow:

> Records show that this Court set the initial presentation of petitioner's evidence on January 24, 2011.[1] However, on the said hearing date, petitioner's counsel, Atty. Didulo, requested for the resetting due to the unavailability of petitioner's witness. Thus, the Court reset the hearing to March 2, 2011.[2]
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> On February 28, 2011, Atty. Didulo requested for the postponement of the March 2, 2011 hearing on the ground that he still needs to mark additional exhibits in the commissioner's hearing.[3] Said request was granted in an Order[4] dated February 28, 2011, which resulted to the resetting of the hearing to March 16, 2011.

[1] Minutes of the Hearing dated November 22, 2010, Docket (Vol. I), p. 142.
[2] Minutes of the Hearing dated January 24, 2011, Ibid, p. 153.
[3] Petitioner's Urgent Motion to Postpone And Setting for Commissioner's Hearing Id, pp. 162-164.
[4] Id, p. 166.

However, on March 14, 2011, Atty. Didulo, again, requested[5] for the postponement of the March 16, 2011 hearing on account of the unavailability of petitioner's witness. The Court granted the same and the initial presentation of the evidence for the petitioner was scheduled on June 15, 2011.[6]

Petitioner's counsel failed to appear for the pre-marking of petitioner's exhibits in the following commissioner's hearings: April 25, 2011[7], April 27, 2011[8], May 2, 2011[9] and May 25, 2011[10], respectively.

On July 22, 2011, Atty. Didulo filed another "Motion to Postpone and Setting for Commissioner's Hearing"[11] where he stated that he has additional two hundred sixty eight (268) documents that needed to be marked in the commissioner's hearing, thus, he requested for nine (9) settings of commissioner's hearing and for the postponement of July 27, 2011 hearing. The Court granted the same in an Order[12] promulgated on July 25, 2011 and re-scheduled the initial presentation of the evidence for petitioner on October 19, 2011.

However, petitioner's counsel failed to appear in the scheduled September 7, 2011[13], September 21, 2011[14] and September 28, 2011[15] commissioner's hearings, despite notice.

On October 17, 2011, petitioner requested[16] for the cancellation of the October 19, 2011 hearing on the ground that it still has eighty-four (84) additional documentary exhibits that must be scheduled for marking before the Commissioner. Said request was granted in an Order[17] dated October 18, 2011, which resulted to the resetting of the hearing to December 7, 2011.

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[5] Urgent Motion to Postpone And Setting for Commissioner's Hearing, Id, pp. 171-173.
[6] Minutes of the Hearing dated March 16, 2011, Id, p. 175.
[7] Per Commissioner's Report dated April 25, 2011, Id, p. 179.
[8] Per Commissioner's Report dated April 27, 2011, Id, p. 180.
[9] Per Commissioner's Report dated May 2, 2011, Id, p. 181.
[10] Per Commissioner's Report dated May 25, 2011, Id, p. 206.
[11] Id, pp. 208-210.
[12] Id, p. 212.
[13] Per Commissioner's Report dated September 7, 2011, Id, p. 229.
[14] Per Commissioner's Report dated September 21, 2011, Id, p. 234.
[15] Per Commissioner's Report dated September 28, 2011, Id, p. 235.
[16] Urgent Motion to Postpone and Setting for Additional Commissioner's Hearing, Id, pp. 240-242.
[17] Id, p. 244.

But when the case was called for the pre-marking of petitioner's exhibits on November 23, 2011 commissioner's hearing, only respondent's counsel appeared.[18]

In the December 7, 2011 hearing[19], Atty. Didulo manifested that the intended witness of petitioner was not available, hence, he requested for a resetting which was granted by the Court. Consequently, the initial presentation of the evidence was moved to January 25, 2012.

Then, on April 23, 2012, petitioner filed an "Urgent Motion to Postpone"[20] stating that Mrs. Lourdes B. Dumigpi, the scheduled witness for April 25, 2012, has not yet completed and was not ready to submit her Judicial Affidavit. Hence, the continuation of the presentation of petitioner's evidence was moved in open Court to May 16, 2012.[21]

In the scheduled June 6, 2012 commissioner's hearing for the pre-marking of petitioner's exhibits, only respondent's counsel appeared.[22]

On June 14, 2012, petitioner filed an "Urgent Motion to Postpone"[23] the hearing on June 20, 2012 on the ground that its witness, Mr. Rodolfo U. Cabrera, has not yet completed his Judicial Affidavit, thus, the latter requested for a thirty-day extension for him to testify as witness for petitioner. The same was granted in an Order[24] dated June 15, 2012.

Thereafter, Atty. Didulo filed his "Motion to Postpone and Setting for Commissioner's Hearing"[25] on September 24, 2012, requesting that the scheduled hearing on September 27, 2012[26] be postponed since petitioner just turned over to him fifty-nine (59) pages containing one hundred eighteen (118) certified true copies of receipts on deposits to trust funds issued by Deutsche Bank AG and Metropolitan Bank & Trust Company. In view thereof, he requested for two (2) settings of commissioner's hearing. There being no objection interposed by respondent's counsel, petitioner's foregoing Motion was granted and the continuation of the presentation of the evidence for the petitioner was reset to October 24,

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[18] Per Commissioner's Report dated November 23, 2011, Id, p. 253.
[19] Minutes of the Hearing dated December 7, 2011, Id, p. 255.
[20] Id, pp. 271-273.
[21] Minutes of the Hearing dated April 25, 2012, p. 279.
[22] Per Commissioner's Report dated June 6, 2012, p. 291.
[23] Id, pp. 292-294.
[24] Id, p. 296.
[25] Id, pp. 314-316.
[26] Should be September 26, 2012.

2012 as stated in the Minutes of the Hearing[27] dated September 26, 2012.

On October 18, 2012, petitioner's counsel filed a "Motion to Postpone"[28] the October 24, 2012 hearing and his reason was, he still needs more time to coordinate with the appointed receiver of petitioner. Said Motion was granted[29] in October 24, 2012 hearing which led to the resetting of the same to November 28, 2012.

However, Atty. Didulo manifested in the November 28, 2012 hearing,[30] that his intended witness was not available and, thus, he requested for a resetting. But since respondent interposed no objection, the Court granted said request and the continuation of petitioner's evidence was reset to January 23, 2013.

On February 15, 2013, petitioner filed a "Motion to Postpone" the hearing set on February 20, 2013 on the ground that the judicial affidavits of petitioner's witnesses that should come from the trust officers of the Bank of the Philippines Islands, Banco de Oro, Metropolitan Bank and Trust Company, Deutsche Bank AG, ING Investment Management and Standard Chartered Bank were still not available in time for the court hearing. Thus, in the February 20, 2013 hearing, the Court set the continuation of the presentation of the evidence for petitioner on April 3, 2013.

On March 26, 2013, petitioner's counsel filed an "Urgent Motion to Postpone" the hearing set on April 3, 2013 offering as an excuse the unavailability of the judicial affidavits of petitioner's witnesses. Thus, he requested that the resetting of the hearing on May 22, 2013 which was granted by the Court in an Order dated April 1, 2013.

Despite the grant of the foregoing postponement, petitioner's counsel still filed on May 16, 2013, his "Urgent Motion to Postpone" the hearing set on May 22, 2013 and, he merely reiterated the reason cited in his March 26, 2013 Urgent Motion to Postpone Hearing. He requested that the hearing be moved to June 26, 2013.

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[27] Id, p. 318.
[28] Id, pp. 331-333.
[29] Minutes of the Hearing dated October 24, 2012, Id, p. 335.
[30] Minutes of the Hearing dated November 28, 2012, Id, p. 343.

In the May 22, 2013 hearing, petitioner's counsel failed to appear despite notice, thus, counsel for respondent orally moved that the direct testimony of Ms. Dumigpi, who was set for cross-examination on that day, be stricken off the records, and that petitioner be declared to have waived its right to present further evidence. The Court, however, denied the said motion and granted petitioner's Urgent Motion to Postpone, filed on May 16, 2013. Consequently, the cross-examination of Ms. Dumigpi was reset to June 26, 2013.

However, on June 26, 2013 hearing, petitioner's counsel and its witness failed to appear, despite due notice. Thus, upon motion of respondent's counsel, the direct testimony of Ms. Dumigpi was stricken out of the records and petitioner's right to present further testimonial evidence was deemed waived and petitioner was granted twenty (20) days from notice within which to file its Formal Offer of Evidence while respondent was granted ten (10) days from receipt thereof to file her Comment thereto.

On August 7, 2013, a Records Verification was issued by the Records Officer of the 2nd Division stating that, as of August 7, 2013, counsel for the petitioner failed to file its Formal Offer of Evidence. Thus, the Court, in a Resolution dated August 14, 2013, waived petitioner's right to formally offer its exhibits and rested petitioner's case.

Subsequently, on September 4, 2013, Atty. Didulo filed a "Motion to Re-Open the Case for Continuation of Presentation of Petitioner's Evidence", claiming that he was hospitalized from May 27, 2013 to May 31, 2013 due to severe vertigo, hypertension and type 2 diabetes mellitus and was treated for respiratory tract infection on June 26, 2013. He also claimed that he was rendered incapacitated for two months, thus, he was not able to attend court hearings nor to comply with the orders of the Court. Hence, he appealed to the Court's forbearance and liberality to re-open the case and to allow petitioner to continue with the presentation of its evidence.

On October 21, 2013, the Court promulgated a Resolution granting petitioner's "Motion to Re-open the Case for Continuation of Presentation of Petitioner's Evidence" on the ground that it finds the foregoing reasons of petitioner's counsel meritorious and sufficient to allow the exercise of leniency in the application of procedural rules. In the same

Resolution, the Court denied respondent's Demurrer to Evidence and set the continuation of petitioner's presentation of evidence to November 13, 2013.

However, notwithstanding the great liberality accorded by this Court to petitioner when it granted its "Motion to Re-open the Case for Continuation of Presentation of Petitioner's Evidence," petitioner still filed another "Urgent Motion to Postpone" the hearing set on November 13, 2013 on the ground that its witness, Mr. Rodolfo U. Cabrera, in his capacity as Executive Vice President & Comptroller, was still outside of Metro Manila and has not yet submitted his Judicial Affidavit. Nonetheless, the Court still granted the same as shown in the Minutes of the Hearing dated November 13, 2013. Thus, the hearing was re-scheduled to January 20, 2014 and Atty. Didulo was given twenty (20) days within which to submit the judicial affidavit of petitioner's witness.

But, despite the opportunity given by this Court, petitioner continued to exhibit laxity in prosecuting its case as clearly shown by the following: (i) its failure to submit the aforesaid Judicial Affidavit of its witness;[31](ii) its counsel's failure to appear in the January 20, 2014 scheduled hearing; and, (iii) its failure to file its Formal Offer of Evidence within the period given by the Court.[32] Thus, this Court cannot be faulted for waiving petitioner's right to formally offer its exhibits and in considering petitioner to have rested its case per Resolution dated March 14, 2014.[33]

Given the foregoing findings and the obtaining facts of this case, this Court finds no sufficient and compelling reason to extend one final lenience to petitioner. We cannot tolerate the habitual failure to follow the procedural rules which are indispensable for the orderly and speedy disposition of justice.[34]

Thus, We **DENY** the admission of petitioner's Formal Offer of Evidence attached to its Comment/Opposition to Respondent's Demurrer on Evidence.

We shall now discuss respondent's Demurrer to Evidence.

Demurrer to Evidence is sanctioned by Rule 33 of the Rules of Court, Section 1 of which is reproduced in full below:

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[31] Per Records Verification of the Records Division dated January 13, 2014
[32] Per Records Verification of the Records Division dated March 7, 2014.
[33] Per Resolution dated March 14, 2014.
[34] Polintan v. People, G.R. No. 161827, 21 April 2009

> SECTION 1. Demurrer to evidence. - After the plaintiff has completed the presentation of his evidence, **the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.** If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (Emphasis supplied)

In the case of *Nilo Oropesa vs. Cirilo Oropesa*,[35] the High Tribunal defines demurrer as an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. Likewise, it authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought.

Given the foregoing definition of demurrer to evidence, it is imperative for this Court to determine if petitioner's evidence in chief is sufficient to establish that it is entitled to the relief sought.

To recall, petitioner, in the instant Petition, is of the considered view that the SEC mandated trust fund contribution is not subject to VAT. To bolster its claim, petitioner cited, among others, the cases of *Commissioner of Internal Revenue vs. Manila Jockey Club*[36] *and Commissioner of Internal Revenue vs. Tours Specialists, Inc.*,[37] as its legal bases. And, to prove its contributions to the said trust fund, petitioner presented the testimonies of the following personnel:

Maria Luisa Manzano

Direct Examination:

Ms. Manzano testified that her assigned duties and responsibilities from 2000 up to the present are the following:

In August 1996, she was the Accounts Receivable Clerk of petitioner. Her function then was to monitor the cash collections and

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[35] G.R. No. 184528, April 25, 2012.
[36] G.R. Nos. L-13887 and L-13890 , June 30, 1960
[37] G.R. No. L-66416, March 21, 1990.

deposits of petitioner's various branch offices nationwide. When she got promoted to Commission Clerk in February 1998, her assignment was to monitor the computation of commission income of sales agents as well as the computation of applicable withholding taxes. Then, when she became the Bank Reconciliation Clerk in June 2000, her task was to monitor and reconcile various cash collection deposits, withdrawals, and payments as well as deposits and withdrawals from the trust fund set up for the benefit of policy holders. In January 2003, she became the Bookkeeper on Advances to Affiliated Companies and her job was to monitor the charges and payments to and from affiliated companies as well as the reconciliation of intercompany related accounts. In August 2005, she was designated as General Bookkeeper. Her work then was to personally prepare the monthly, quarterly, and tentative annual financial statements; coordinate with external auditors on manual external audit; to give an analysis of the SEC mandated Trust Fund Investments with Trustee banks; directly assist the Accounting Manager on tax investigation conducted by the BIR; and, to initiate the preparation of the supporting documents. When she became the Financial Supervisor of petitioner in July 2009, she was designated, among others, to analyze the movement of all accounts in the financial statements; to evaluate the job performance and review the work of subordinates; to prepare the monthly and quarterly tax returns and tax payments to BIR; and, to monitor and analyze the trust fund investments with the trustee banks.[38]

In order to establish the corporate personalities of Prudentialife Education Plan, Inc., Prudential Pension Plan, Inc., and Prudential Life Plan, Inc., as parties to the merger, she presented the certified true copies of the said companies' Articles of Incorporation from the SEC.[39]

When she was asked as to what is the distinguishing characteristic of pre-need companies from regular corporations, her answer was:

> "The New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities Regulations Code dated August 16, 2001 issued by the SEC provide assurance to pre-need plan holders of receiving the benefits of their investments and in order to ensure the delivery of the promised goods or services, pre-need companies are required to place part of the proceeds of the sale in banks as trust funds where they earn income.

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[38] Judicial Affidavit of Ms. Maria Luisa Manzano, Id, pp. 258-259.
[39] Judicial Affidavit of Ms. Maria Luisa Manzano, Id, p. 259.

> Under this (sic) new rules, registration and sale of pre-need plans under Section 16 of the Securities and Regulation Code, defines 'trust fund' as fund set up from Plan holder's payments, separate and distinct from the paid-up capital of a registered pre-need company, established with a Trustee under a trust agreement approved by the SEC to pay for the benefits as provided in the Pre-Need Plan. (paragraph 1.9 of Rule 1)
>
> The trust fund, inclusive of earnings is required to be administered and managed by a trust company, bank, or investment house authorized to perform trust functions in the Philippines. No withdrawal shall be made from the trust fund except for: (1) paying the cost of services rendered or property delivered; (2) trust fees, bank charges and investment expenses in the operation of the trust fund; (3) cash surrender/termination value payable to the plan holders; (4) annuities; (5) contributions to the fund of cancelled plans; (6) taxes on trust funds; and (7) reasonable withdrawal for minor repairs and cost of ordinary maintenance of trust fund assets."[40]

When Ms. Manzano was asked as to what was her direct participation in the preparation of petitioner's supporting documents, she answered that she took the lead in gathering all available deposit slips and official receipts on PPI's contributions to the Trust Fund; she initiated the preparation of schedules identifying cash deposits to specific banks and she submitted the source documents and the schedules for Review of Ms. Alvarez.[41]

Cross Examination

Ms. Manzano admitted in her testimony that she does not know the source of petitioner's contribution to trust fund and she is not, likewise, competent to testify on the issuance of petitioner's official receipt. Pertinent portions of her testimony are hereby quoted for ready reference:

"ATTY. VELASCO:

Q: Now Ms. Manzano, in your Affidavit, you mentioned that the VAT assessment was contributed to the trust fund. Is that correct?

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[40] Judicial Affidavit of Ms. Maria Luisa Manzano, Id, pp. 260-261.
[41] Judicial Affidavit of Ms. Maria Luisa Manzano, Id, pp. 261-262.

MS. MANZANO:
A. Yes

ATTY. VELASCO:
Q. Now what is the source of petitioner's contribution to the trust fund?

MS. MANZANO:
A. Source of petitioner?

ATTY. DIDULO:
Your Honors, that question is not within the Judicial Affidavit and the testimony provided by the witness last January 25, your Honors. It will be testified by the other witnesses for the petitioner but it was not mentioned, the source of the trust fund, it was not testified on by the witness last hearing.

JUSTICE CASTAÑEDA:
She did not testify on the trust fund. Answer if you know. If you know, do you or do you not know about the trust fund? Do you know how to answer the question?

MS. MANZANO:
A. No, your Honor.

JUSTICE CASTAÑEDA:
No?

MS. MANZANO:
A. No, your Honor.

JUSTICE CASTAÑEDA:
Incompetent.

ATTY. VELASCO:
Q. Monetary contributions to the trust fund is not part of your duty as Financial Supervisor of the Company?

MS. MANZANO:
A. It's part of my duty.

ATTY. VELASCO:
Q. So, why can you not answer the question?

MS. MANZANO:
A. It's not directly... I am not monitoring the trust fund contribution. I am just checking the contribution which is submitted, your Honor.

ATTY. VELASCO:
Q. Who submits these contributions which you testified a while ago?

MS. MANZANO:
A. The one who submits these is depending on the plan holders payment.[42]

x x x x

ATTY. VELASCO:
Q. How about the issuance of official receipts when they make their monthly, quarterly or annual.... are you competent to testify on that matter?

MS. MANZANO:
A. I am not competent.

ATTY. VELASCO:
Q Issuance of official receipts?

MS. MANZANO:
A No."[43]

Lourdes B. Dumigpi

Direct Examination[44]*:*

Ms. Dumigpi testified that she was employed by Prudential Plans Inc. (PPI) in 1981, and was appointed as Assistant Vice President in charge of General Accounting Department in October 2009. She testified that her participation in this case was that she was given direct instructions by the Company's Senior Vice President and Comptroller Mr. Rodrigo Cabrera to take the lead in gathering all documents that are required to be submitted to the Court to defend the position of petitioner. She said that she personally supervised the gathering of available official receipts and deposit slips made to trustee banks. She

[42] TSN dated March 7, 2012, pp. 5-7.
[43] TSN dated March 7, 2012, p. 9.
[44] Judicial Affidavit of Ms. Lourdes B. Dumigpi, Docket (Vol. I), pp. 281-289.

admitted that they are still exerting all efforts to locate additional copies of receipts in the Company's off site warehouse in Binan, Laguna. She also testified that Ms. Pamela Amores, who is in-charge in securing bank certifications and original and/or certified true copies of official receipts from trustee banks, was able to secure the foregoing documents from the trustee banks.

Cross Examination

Ms. Dumigpi testified that she is presently appointed as Assistant of the Vice President of the General Accounting Department. As head of the said department, her tasks are as follow: (i) she oversees and gives direction to the employees of the said department; (ii) she is in-charge of the preparation and submission of the monthly and quarterly tax returns; and, (iii) she oversees the external audit, the filing of the income tax returns and also the audited finances. But she admitted that her responsibilities with the company do not include the overseeing of the filing of the income tax of the petitioner in this case since she was only transferred in Prudential Life in October 2009.

When she was asked as to what is the source of petitioner's contribution to the trust fund, she answered, "I am not sure of my answer but I know that the amount paid to the trust fund comes from the payment of the plan holders."[45]

In the July 25, 2012 hearing[46], Ms. Dumigpi was recalled at the witness stand where she testified that they already terminated their search for the original copies of official receipts. Thus, she requested the Court to allow petitioner to submit secondary evidence in the absence of the original documents. She also presented the following documents: Securities and Exchange Commission Order dated April 20, 2009 suspending petitioner's license to sell pre-need plans and duly notarized Secretary's Certificate dated July 1, 2009 executed by Atty. Ceferino A. Patino, Jr., approving the immediate implementation of the mandatory retirement of all employees of petitioner.[47]

Lyndon L. Lukban

Direct Examination[48]

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[45] TSN Dated May 16, 2012, pp. 13-16.
[46] Minutes of the Hearing dated July 25, 2012, Docket (Vol. I), pp. 302.
[47] Judicial Affidavit of Ms. Lourdes B. Dumigpi, Docket (Vol. I), pp. 297-301; Minutes of the Hearing dated July 25, 2012.
[48] Judicial Affidavit of Mr. Lyndon L. Lukban, Docket (Vol. I), pp. 307-312.

Mr. Lukban testified that he was employed in Prudential Plans, Inc. in 1993 and is currently the Senior Vice President for Finance since January 2011. He stated that his participation in this case was to coordinate with Ms. Amores in securing certified true copies of official receipts from trustee banks on petitioner's contributions to the Trust Fund to be presented as PPI's documentary exhibits.

He claimed that since petitioner's employees (Ms. Dumigpi, Ms. Manzano and Ms. Amores) had already terminated their search for the original copies of the official receipts, their last recourse was to formally request, through letter, the trustee banks to issue certified true copies of the said official receipts. Unfortunately, he has not yet received the latter's reply. Consequently, their next step is to request the responsible officers of the trustee banks, identified in his letters, to testify before this Court to hear their answer.

In the Minutes of the hearing dated January 23, 2013,[49] Ms. Dumigpi testified on additional direct examination. However, said direct testimony was stricken out of the records, upon motion of respondent's counsel, when Ms. Dumigpi did not appear, together with petitioner's counsel, in the June 26, 2013, hearing.

Thereafter, in a Resolution promulgated on March 14, 2014, the Court waived petitioner's right to formally offer its exhibits and rested its case on account of petitioner's failure to comply with the January 20, 2014 Resolution of this Court.

Hence, this Demurrer to Evidence.

In her Demurrer to Evidence, respondent points out that that the specific claims and assertions of petitioner in assailing the validity of the assessment relied heavily on its assertion that the alleged contributions of its policy holders are considered Trust Fund Contributions, hence, not subject to value-added tax. But respondent insists that the assessment against petitioner originates from the findings that there were premium collections in petitioner's books that were not included in its taxable receipt for fiscal years ending March 31, 2001 and March 31, 2002. And, since petitioner did not separately indicate in its official receipts the amount of the Trust Fund Contributions, the corresponding Value-Added Tax appertaining to these collections were not paid. Consequently, the output tax passed on to its holders as a result of petitioner's failure to comply with invoicing requirement will be based on the total amount shown in their respective official receipt.

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[49] Ibid, p. 433.

She further posits that there is no just evidence, either testimonial or documentary, that proves petitioner's claim that the assessed value-added tax (VAT) assessment is void. Thus, respondent insists that the instant case should be dismissed and the assessment be upheld since petitioner has shown no such right to relief.

This Court finds merit in respondent's Demurrer to Evidence.

To begin with, the testimonial evidence of petitioner were not relevant to overturn the assailed assessments. In fact, the testimonies of petitioner's witnesses mainly focused on their participation in the gathering of all available deposit slips and official receipts to prove petitioner's contribution to the trust fund. Moreover, none of the documentary evidence identified by petitioner's witnesses during trial, such as Certified True Copies of the Articles of Incorporation from the SEC; schedules of official receipts evidencing petitioner's contribution to the trust funds; SEC's Order dated April 20, 2009 (suspending petitioner's license to sell pre-need plans); Board of Directors Resolution dated May 18, 2009 (approving the retrenchment of 100% of all its employees); and various official receipts and certificates of deposits on the trust fund, were able to substantiate petitioner's position that the SEC mandated trust fund contribution is not subject to VAT.

With regard to the cases and rulings cited by petitioner in its Petition for Review, We, likewise, find the same insufficient in point of law, to make out a case.

For one, they are not on all fours with the case at bench. Second, respondent is correct in pointing out that the assessments in this case lie on petitioner's failure to indicate in its VAT official receipt the contributions it made to the trust fund in order for the same to be excluded from gross income subject to VAT and, such requirement is explicitly provided under Revenue Memorandum Circular No. 13-96, which is hereby quoted for ready reference:

"Revenue Memorandum Circular 13-96:

Q-10 What is the nature of the business and the tax liability of pre-need companies?

> A-10 Pre-need companies shall be considered as dealers in securities and shall be subject to VAT based on their gross income.
>
> Gross income shall mean actual receipts on contract price minus contributions to the trust fund to be set up independently as mandated by the Securities and Exchange Commission. The amount of such contribution shall be indicated in the VAT official receipt, otherwise the entire amount shall be subject to VAT." (Underscoring Ours)

Lastly, this Court has, on one occasion, explained the foregoing provision in this wise:

> "Based on the afore-quoted RMC-13-96 A-10, **it is apparent that contributions to trust funds are generally excluded from gross income subject to VAT provided that said contributions be indicated in the VAT official receipts, otherwise, the entire amount shall be subject to VAT.**"[50] (Emphasis supplied)

The Court also categorically ruled therein that, "the requirement provided by RMC No. 13-96 is indispensable. Thus, respondent was correct in assessing petitioner of deficiency VAT for failure to comply with the said RMC".[51]

WHEREFORE, in view of petitioner's failure to provide sufficient testimonial evidence and documentary evidence that may overturn the assailed assessments, respondent's Demurrer to Evidence is hereby **GRANTED**, and the instant case is **DISMISSED** for lack of merit.

Likewise, petitioner's "Prayer to Admit Formal Offer of Exhibits" is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[50] College Assurance Plan Phils., Inc., vs. Commissioner of Internal Revenue, CTA Case No. 7190, August 16, 2013.
[51] Ibid.

CAESAR A. CASANOVA
Associate Justice

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice