REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GREGORIO VILLAMAR ARAÑO,
Respondent.

C.T.A. EB NO. 594
(C.T.A. Case No. 7491)

Members:

ACOSTA, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 08 2011 Apolinario 10:00 a.m.

x- x

DECISION

Fabon-Victorino, J.:

In this Petition for Review, the Court *En Banc is called to* reverse and set aside the Decision dated August 28, 2009[1] rendered by the Court in Division in CTA Case No. 7491, directing petitioner Commissioner of Internal Revenue to cancel

[1] Penned by Associate Justice Juanito C. Castañeda Jr., pp. 21-34 of the En Banc Record.

and withdraw the Assessment Notice Nos. IT-0004-03-05-0423 and VT-0004-03-05-0423 for deficiency income tax and value-added tax issued against respondent Gregorio Villamar Araño in the amount of Php14,017,868.16 and Php4,488,889.77, respectively.

The Facts

It is not disputed that respondent is an individual taxpayer with Tax Identification Number (TIN) 110-572-659 issued by the Bureau of Internal Revenue (BIR) and may be located at 141-B Naga Road, Pulang Lupa, Las Piñas City. In 2003, he was the President of Discovery Drug-Las Piñas, Inc. (DDLPI) and as such received income for the services he rendered. DDLPI was then into the drugstore business as shown in its Certificate of Incorporation and TIN 219-611-059-003.

On November 29, 2005, petitioner, as a duly appointed Commissioner of Internal Revenue, issued a Formal Assessment Notice (FAN) Nos. IT-0004-03-05-0423 and VT-0004-03-05-0423 against respondent for the latter's alleged deficiency income and value-added taxes for the year 2003, in the amounts of P14,017,868.16 and P4,488,889.77, respectively.

On December 19, 2005, respondent protested the said assessment for being illegal and unfounded as he was assessed for deficiency taxes of another taxpayer, namely, Discovery Drug. This protest was however denied on May 2, 2006 prompting respondent to file a Petition for Review with the Court in Division on June 15, 2006.

On October 5, 2006, the Court in Division admitted petitioner's belatedly filed Answer mailed on August 10, 2006, with the following Special and Affirmative Defenses:

> "4. He reiterates and re-pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 5. Petitioner was assessed of the deficiency income tax and value-added tax not as president of a corporation but as the sole proprietor of Discovery Drug and not Discovery Drug-Las Piñas Inc. based on petitioner's registration with the respondent's Bureau with the TIN No. 110-572-659-000 per Certificate of Registration No. OCN 9R0000051179, including the registration of three (3) branches of Discovery Drug with TIN 110-572-659-001 to 003, aside from being also the registered owner of the Discovery Drug Wholesaler;
>
> 6. The assessments were the result of the computerized matching conducted by the respondent's Bureau on the sales of the suppliers of Discovery Drug where a discrepancy was discovered against the purchases declared in the petitioner's

> returns, which amount was deemed undeclared sales and accordingly, treated as undeclared income pursuant to Section 2 of the National Internal Revenue Code (NIRC);
>
> 7. Petitioner was also assessed of deficiency VAT on his/its undeclared income pursuant to Sections 105, 106 and 108 of the NIRC;
>
> 8. The said assessments were based on actual facts, as the same were determined from the Annual Reports on Third Party Information on Sales Per Taxpayer, which were actually reports of sellers/suppliers of their sales to certain purchasers;
>
> 9. Assessments are presumed correct and official functions are presumed to be done regularly;
>
> 10. The burden of proof to prove that the assessments are not correct rests on the petitioner."

On July 22, 2008, the Court in Division admitted respondent's exhibits, except Exhibits "A" to "A-3", "A-4" to "A-5", "B" to "B-3", "B-4" to "B-7", "E", "F", "G", "H", "H-1", "H-2", "H-3", "H-4", "FF", and "GG," for failure to present the originals of the purported documents.

On September 1, 2008, petitioner, at the instance of respondent, was declared to have waived the right to present evidence in view of the continuous non-appearance of his counsel during the scheduled hearings despite due notice.

On November 27, 2008, the Petition for Review was submitted for Decision with only respondent's Memorandum filed through registered mail on November 3, 2008. Despite the opportunity granted, petitioner failed to file his own.

On August 28, 2009, the assailed Decision was promulgated in favor of respondent, which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, Assessment Notice Nos. IT-0004-03-05-0423 and VT-0004-03-05-0423 for deficiency income tax and value-added tax issued against petitioner is hereby CANCELLED and WITHDRAWN.
>
> **SO ORDERED**.

Petitioner filed a Motion for Reconsideration on September 24, 2009, to which respondent registered an opposition on October 21, 2001.

On January 18, 2010, the Court in Division denied petitioner's Motion for Reconsideration for lack of merit. The Court in Division stressed that all the arguments stated therein had been substantially addressed in the assailed Decision of August 28, 2009.

Hence, the instant Petition for Review before the Court *En Banc,* raising the following issues lifted verbatim from the Joint Stipulations of Facts and Issues submitted by the parties for the consideration of the Court in Division, to wit:

1. Whether or not respondent is liable for deficiency income tax and Value-added tax under Formal Assessment Notice No. IT-0004-03-05-0423 and VT-0004-03-050423 issued on November 29, 2005 in the amount of P14,017,868.00 and P4,488,889.77, respectively;

2. Whether or not the assessment of the petitioner is correct;

3. Whether or not respondent is a registered taxpayer in the BIR under the trade name Discovery Drug, as sole proprietor;

4. Whether or not respondent is personally liable for tax liabilities of a corporation, if any.

The Ruling of the Court

As earlier intimated, the foregoing issues have been fully discussed in the assailed Decision of August 28, 2009 and Resolution of January 18, 2010. But if only to put petitioner's mind to rest, the Court *En Banc* will elucidate on the issues anew to the extent of being repetitive.

In her Petition for Review, petitioner CIR argues that respondent was assessed of deficiency income and value-added tax as sole proprietor of Discovery Drug and not as officer or stockholder of Discovery Drug Las Pinas, Inc or DDLPI. Allegedly, Discovery Drug was registered with the BIR under Certificate of Registration No. OCN 9R000051179 as well as its three branches which had been issued TIN: 110-572-659-001 to 003. Discovery Drug was a sole proprietorship while DDLPI was a family corporation owned by the Araños.

All pertinent documents in support of the foregoing averments are part of the BIR record submitted to the Court in Division on January 22, 2007. That being the case, there is no preventing the Court in Division from examining *moto proprio* the said BIR record if only to verify the correctness of petitioner's allegations in her Answer and to thresh out the issues raised by the parties in their Joint Stipulation of Facts and Issues. And since respondent did not categorically deny the facts proposed for stipulation, they should be deemed admitted rendering formal offer of the relevant documents unnecessary.

Respondent, on the other hand, contends that the assessment issued against him by petitioner in his personal capacity as president of DDLPI is invalid. He was a mere employee of DDLPI, the one that was engaged in drug store business. DDLPI had a separate juridical personality distinct from the persons composing it, such as him. Thus, it is not proper and legal for petitioner to assess him for the alleged tax liabilities of DDLPI. Moreover, for sending the notices to him, the latter was in effect deprived of notice about the alleged tax liabilities. Moreover, he was no longer an officer of DDLPI when the assailed assessment was made.

Further, there was no showing that he, as president of DDLPI, acted with malice or bad faith to justify utter disregard of corporate fiction. There being no clear and convincing evidence to show that the corporate personalities were used to perpetuate fraud, or circumvent the law, DDLPI should be treated as separate and distinct from its officers.

Besides, petitioner made a "naked assessment" against him or one hinged on mere assumptions. While petitioner enjoys the presumption of correctness of her assessment, the same must not be based on another presumption, in particular, the alleged purchases were those of respondent and not DDLPI; the sales mark-up was 100%; and no input VAT on the alleged purchases. The presumption of correctness must be based on evidence. In this case however, petitioner did not only fail to present evidence, she as well was unable to file the required Memorandum, despite proper notice. Neither was petitioner able to file a pre-trial brief nor appear or made any representation during the scheduled pre-trial conference, despite clear instruction from the Court in Division resulting in respondent's presentation of evidence *ex parte.*

Petitioner cannot also insist that respondent was assessed as sole proprietor of Discovery Drug as no evidence was presented in support thereof.

Finally, no evidentiary value can be accorded to the alleged BIR record submitted to the Court in Division as they were not presented and formally offered in evidence.

In finding for respondent, the Court in Division gave premium to the sworn statement of respondent's witness Zenaida Araño, corroborated as it was by Lorenza A. Abamonga through her own Judicial Affidavit. Their testimonies proved that DDLPI came into legal existence on April 30, 2002 when the SEC issued its Certificate of Incorporation with Registration No.

A200206469. Both Zenaida Araño and Lorenza A. Abamonga were among its incorporators and stockholders who were eventually elected Treasurer and Manager of the Company, respectively. Ditto with respondent, who served as its President in 2003, as shown in the Company's Articles of Incorporation and By-Laws. DDLPI was also registered with the BIR for taxation purposes for which it was issued Certificate of Registration dated January 20, 2003 and TIN No. 219-611-059-002.

While the documents identified by the two witnesses to prove that DDLPI had separate legal personality, viz., Certificate of Incorporation, Articles of Incorporation, By-Laws, and BIR Certificate, respectively marked as Exhibits "E", "F", "G" and "H" were not admitted in evidence as their originals were not presented for comparison, nonetheless they formed part of the testimonies of respondent's witnesses which were orally offered and admitted in open court. These testimonies to date remain uncontroverted hence, must be accorded weight and credence.

Further, it was admitted that respondent was an individual taxpayer with TIN 110-572-659 and may be located at 141 B Naga Road, Pulang Lupa, Las Piñas City.

The fact as established by the foregoing gave flesh to respondent's allegations that he was a mere employee of DDLPI who earned his keeps by serving as its president in 2003 as indicated in his ITR. Note that the said ITR was among the documents used by petitioner as bases of the assailed assessment. While it may be admitted that respondent was a part owner of DDLPI, yet in the eyes of the law, the latter had a separate personality distinct from its owners or shareholders. Much more, never did petitioner invoke the principle of corporate legal fiction in justification of her present position.

Indeed, petitioner failed to present any evidence to controvert respondent's evidence despite repeated cancellation of hearing if only to give her the chance to prove her case. Otherwise stated, petitioner failed to substantiate her defense before the Court in Division. More, she failed to file the required pleadings subsequent to her belatedly filed Answer. She did not even bother to file a pre-trial brief and *sans* any explanation, she failed to appear or make representation during the pre-trial conference. In other words, petitioner did not participate in the proceedings. And with the proclivity to trivialize if not ignore the clear instructions from the Court, petitioner has no reason or right to cry foul this late in a day.

Petitioner cannot also insists that the BIR Records she submitted to the Court pursuant to Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals be considered evidence in support of the allegations in her belatedly filed Answer. Note that the provision merely requires the transmittal of records from the government agencies concerned to the Court with proper pagination and in folders, if necessary. Nowhere does it state that the submission of these records to the Court is tantamount to presentation of evidence.

Even granting it to be so, the documents in the BIR Records need to be authenticated by a competent witness, duly marked and formally offered in evidence to give the other party the opportunity to comment thereon or interpose objection thereto. To admit the documents in the BIR Records without following the clear mandate of the rules is to deprive respondent of his day in court. And only after the admission of these documents that the Court may consider any of them in the resolution of the case. Indubitably, no evidentiary value can be given to the BIR Records submitted to the Court in Division, as the rules on documentary evidence require that these documents must be formally offered before the CTA.[2] Section 34, Rule 132 of the Rules of Court is unequivocal on the matter, thus:

> SEC. 34. *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose of which the evidence is offered must be specified.

The offer of evidence is imperative because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Otherwise, document not offered is merely a scrap of paper bereft of probative weight. Mere identification of documents and the markings thereof as exhibits do not confer any evidentiary weight unless formally offered.[3] Anything short of the foregoing procedure is certainly repugnant to the rules on evidence followed in all courts and in all trials and hearings, except only when the contrary is provided by law or the Rules of Court itself, which is obviously not obtaining in the case at bar. [4]

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[2] Commissioner of Internal Revenue v. Manila Mining Corporation, G.R. No. 153204, August 31, 2005, 468 SCRA 571, 588-589.
[3] Heirs of the Deceased Carmen Cruz-Zamora vs. Multiwood International, Inc., G.R. No. 146428, January 19, 2009.
[4] Section 2, Rule 128 of the Rules of Court.

The Supreme Court could not be more specific when it ruled in *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*,[5] that:

> First, it is well-settled that the **courts cannot consider evidence which has not been formally offered**. Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. **Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified**. Needless to say, the **failure of petitioner to make a formal offer of evidence was detrimental to its cause**. (*Emphasis supplied*)

In fine, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed Decision and Resolution of August 28, 2009 and January 18, 2010, respectively.

WHEREFORE, the instant Petition filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit. The Decision and the Resolution of the Court in Division

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[5] G.R. No. 149589, September 15, 2006.

promulgated on August 28, 2009 and January 18, 2010, respectively, are hereby AFFIRMED *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice