REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIBERTY INSURANCE CORPORATION,
Petitioner,

- versus - C.T.A. CASES NOS. 3551 and 3599

THE HON. COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

~~9/27/86~~ 10/15/86

D E C I S I O N

These are two (2) consolidated cases (CTA Cases Nos. 3551 and 3599), concerning appeals from decisions of respondent Commissioner of Internal Revenue, assessing against and demanding from petitioner Liberty Insurance Corporation alleged unpaid premium tax, inclusive of surcharge, and documentary stamp taxes and insurance policies issued for the year 1975 (CTA Case No. 3551), and years 1976 and 1977 (CTA Case No. 3599), in the sum of ₱2,122.05 premium tax and surcharge, and ₱131,135.87 documentary and science stamp taxes for 1975, and ₱526.51 premium tax and surcharge, and ₱118,542.75 documentary and science stamp taxes for 1976 and 1977, exclusive of the compromise penalties of ₱400 and ₱650, respectively.

In the hearing of these two (2) cases, petitioner has complied with the burden of proof by presenting documentary and testimonial evidence. On the other hand, respondent, after the burden of proof is shifted to him, his counsel had failed in presenting countervailing evidence in defense of its above assessments.

CTA CASE NO. 3551

It appears that in a letter dated August 31, 1981, received by petitioner on September 7, 1981 (Admitted, par. 2 of Answer), respondent assessed against petitioner and demanded payment from it allegedly unpaid premium and documentary and science stamp taxes in the sums of ₽2,122.05 and ₽131,135.87, exclusive of ₽400 as compromise penalty. (Annex "A", Petition for Review, CTA Case No. 3551, pp. 3-4, CTA rec.)

On September 9, 1981, petitioner, thru its Chief Accountant Myrna C. Pascua, sent a letter protesting the above assessment for premium and documentary and science stamp taxes for the year 1975 (Annex "B", ibid, p. 5, CTA rec.), stating therein that petitioner is willing to pay the premium tax of ₽2,122.03 but requested for reconsideration of the payment of ₽131,135.87 documentary and science stamp taxes since the documentary and science stamp taxes in question were properly affixed on the insurance policies in that year. This protest was followed up by another letter of counsel June 30, 1982 to respondent reiterating petitioner's protest or request for reconsideration (Annex "C", ibid, p. 6, CTA rec.) asserting that the documentary stamp taxes were properly affixed and the assessment is not correct.

On November 15, 1982, petitioner's counsel received a letter from respondent dated October 5, 1982, denying petitioner's request for reconsideration. Hence, petitioner appealed to this Court on November 29, 1982 and the case herein was docketed as CTA Case No. 3551.

CTA CASE NO. 3599

In the companion case, CTA Case No. 3599, herein petitioner was assessed by respondent Commissioner of Internal Revenue the payment of premium tax and documentary and science stamp taxes in the sums of ₱526.51 and ₱118,542.75, exclusive of compromise penalty of ₱650.00 for the years 1976, 1976 and 1977, respectively. (Annex A, CTA Case No. 3599, pp. 4-5, CTA rec.)

On September 9, 1981, petitioner's Chief Accountant, Myrna C. Pascua, sent a letter to respondent Commissioner of Internal Revenue expressing its willingness to pay premium tax and surcharge of ₱526.51, but requested for reconsideration of the assessment for the documentary and science stamp taxes because it had affixed the required stamps on the insurance policies it issued for the years 1976 and 1977 in question (Annex "B", CTA Case No. 3599, p. 6, CTA rec.)

On June 30, 1982, petitioner's counsel followed up the above request for reconsideration insisting that the documentary stamp taxes were properly affixed and, hence, the assessment was not correct and asserting that the assessment had already prescribed. (Annex C, ibid, p. 7, CTA rec.)

On October 5, 1982, respondent Commissioner denied the petitioner's request for reconsideration but only of the 1975 assessment for premium and documentary and science stamp taxes, which was received by petitioner on November 15, 1982, but which denial did not touch on the 1976 and 1977 assessments for documentary and science stamp taxes. In other words, no action was taken by respondent on the request for reconsideration of petitioner on the 1976 and 1977 assessments for premium and documentary and science stamp taxes.

On February 24, 1983, petitioner received respondent's warrant of distraint on personal property dated August 13, 1982, relative to the assessments of premium and documentary and science stamp taxes for 1976, 1976 and 1977, respectively. (Annex E, ibid, p. 9, CTA rec.)

Hence, petitioner filed its appeal on March 17, 1983 and docketed as CTA Case No. 3599.

During the administrative exchanges of communications, petitioner offered and expressed with definiteness its willingness to pay the assessed premium tax and surcharge of ₱2,122.05 for 1975 (CTA Case No. 3551) and premium tax and surcharge of ₱526.51 for 1976. However, it appears that payment thereof had never been made by petitioner and had remained unsettled. But petitioner never also, during the hearing in this case, seriously disputed its apparent liability for these said deficiency premium taxes for 1975 and 1976.

The issues in these two (2) cases are as follows:

1. Whether or not this Court has jurisdiction over the two (2) cases;

2. Whether or not petitioner is liable for deficiency premium taxes, inclusive of 25% surcharge, in the amounts of ₱2,122.05, and ₱526.51, for the years

1975 and 1976, respectively;

3. Whether or not petitioner is liable for deficiency documentary and science stamp taxes on the insurance policies it issued in the amounts of ₱131,135.87 and ₱118,542.75 for the years 1975, 1976 and 1977, respectively; and

4. Whether or not petitioner is liable for extra judicial or compromise penalties in the sums of ₱400.00 and ₱650.00, for CTA Cases Nos. 3551 and 3599, respectively.

Coming to the first issue of jurisdiction, we agree with petitioner that this Court has jurisdiction over these cases. In CTA 3551, petitioner had protested the assessment on September 9, 1981, and it was only on November 15, 1982, when petitioner's counsel received the denial of the request for reconsideration on the disputed assessment which denial is the final decision of respondent Commissioner of Internal Revenue to be appealed to this Court. (St. Stephen's Association, etc. vs. Coll. G.R. L-11238, Aug. 21, 1958.) From the receipt of the decision on November 15, 1982 to the filing of appeal or the petition for review on November 29, 1982, only 14 days had elapsed; hence, we have appellate jurisdiction over the said CTA Case No. 3551.

With regard to CTA Case No. 3599, we also agree with petitioner that this case was appealed on time. On September 7, 1981, petitioner received the letter of assessment dated August 31, 1981. This was protested by petitioner's chief accountant, Myrna C. Pascua, who requested for a reconsideration of the documentary and science stamp taxes on September 9, 1981. Petitioner did not get any formal denial of its request for reconsideration for the 1976, and 1976 and 1977 premium and documentary and science stamp taxes, respectively, but instead had issued against petitioner a warrant of distrant on personal property against petitioner and which was received by the latter on February 24, 1983. (Annex E, p. 9, CTA rec.) This warrant of distraint on personal property is tantamount to the outright denial of the petitioner's request for reconsideration (Vicente Hilado v. Comm., CTA 1256, Feb. 24, 1964) and is proof of the finality of the assessment or decision (Algue, Inc. vs. Comm. of

Int. Rev., CTA 1620, Jan. 16, 1968; Phil. Planters Co. Inc. vs. Actg. Comm. of Int. Rev., CTA 1266, Nov. 11, 1962) because it is the most drastic action among all media of enforcing the collection of the tax. (Hahn v. Comm. of Int. Rev., CTA 1987, April 30, 1969.) This denial of the request for reconsideration is, therefore, the decision of the Commissioner from which appeal should be taken. (St. Stephen's Association, etc. vs. Coll., op. cit.) Petitioner having filed its appeal on March 17, 1983, only 21 days of the 30-day period of appeal was consumed. Hence, we have jurisdiction over CTA Case No. 3599.

Anent the second issue of whether or not petitioner is liable for deficiency premium taxes in the amounts of ₱2,122.05 and ₱526.51 for the years 1975 and 1976, respectively, the rule is that it is incumbent upon petitioner or it is duty bound to prove that it is not liable, therefore. Not only did it not come forward and produce its evidence that it has paid the same, it nevertheless had, through its chief accountant, Myrna C. Pascua, in fact, asserted its "willing(ness) to pay the premium tax of ₱2,122.03"(Annex B, CTA 3551 rec.,

p. 5) for 1975, which liability it impliedly admitted and, hence, petitioner is consequently liable and for which we so hold. In the same vein, petitioner equally did not introduce evidence to assail the legality of this portion of the assessment, but had again asserted, thru its said chief accountant, its "willing(ness) to pay the premium tax of ₱526.51" (Annex B, CTA 3599 rec., p. 6), which it had impliedly admitted and,hence, is consequently liable, therefore, and which we do hereby equally so hold.

With respect to the third issue, petitioner had satisfied us with overwhelming proofs, which are not only convincing but satisfactory, and which renders the assessment against it without force and effect in so far as the documentary and science stamp taxes for the years 1975, 1976 and 1977 in the amounts of ₱131,135.87 and ₱118,547.75, respectively, are concerned. The original of all the insurance policies issued by petitioner for 1975, and 1976 and 1977 in question were presented, together with the corresponding documentary and science stamps affixed thereon (Exhibits A to SS-90-a; Exh. E) were duly identified and testified to by Myrna Pascua, chief accountant of petitioner. (pp. 7-8, t.s.n., June 3, 1985) Documentary stamp taxes are deemed paid by the affixture of documentary stamp to the document or instrument taxed. (Fireman's Fund Insurance v. Comm. of Int. Rev., CTA 1629, May 24, 1969.) With these abundant evidence on hand, the burden of proof during the hearing of these cases had shifted to respondent Commissioner of Internal Revenue. It was thereafter the turn of respondent to present his evidence but these documentary and testimonial evidence presented by petitioner were never rebutted by him. No iota of evidence was ever shown by respondent. He did not even formally present the reports of Editha L. Peña, Senior Revenue Examiner, dated July 6, 1981 (p. 41, BIR rec. in CTA Case No. 3551; p. 51, BIR rec. in CTA Case No. 3599), or called the latter to personally testify on the veracity and truth of the contents of such reports and also on the other supporting documents.

These cases having been submitted for our decision based only on the records and the pleadings by counsel for respondent Commissioner of Internal Revenue, the latter had not complied with his burden of adequately and legally sustaining or supporting his assessment by actual facts thru the media of compelling and satisfactory evidence, with respect to the documentary and science stamp taxes demanded to be paid by petitioner for the years 1975, and 1976 and 1977, in the respective amounts of ₱131,135.87 and ₱118,547.75.

This Court cannot presume a taxpayer's liability simply because of the existence of an assessment against it without more, since an assessment which is not based on actual facts established by evidence presented by respondent cannot stand the searching test of judicial inquiry and scrutiny. (Benipayo vs. Coll. of Int. Revenue, G.R. L-13656, Jan. 31, 1962.)

In respondent's assessment against petitioner for 1975 (Exh. A), it appears that the premiums collected on the insurance policies issued in that year is ₱3,347,917.56 and documentary and science stamp taxes due amounted to ₱100,437.52. In petitioner's summary of documentary and science stamp taxes for 1975 and 1976 and 1977 affixed on the insurance policies (Exh. E, p. 53, CTA 3551 rec.), it issued insurance policies on which the premium tax collected in the amount of ₱3,347,917.56 and the corresponding documentary and science stamp taxes affixed thereon amounted to ₱100,437.52 (p. 6, t.s.n., June 3, 1985) and is exactly in the amount as assessed by petitioner. With regard to that portion of the assessment of ₱90,698.35, documentary and science stamp tax alleged to be "payable (on) Jan. 1, 1975", this obviously refer, as correctly observed by petitioner's counsel, to year 1974 and prior years which is therefore not in issue in this case, since the issues in these cases refer to liabilities for documentary and science stamp taxes for 1975, 1976 and 1977, and there is no basis of that assessment as in fact respondent has not presented any evidence to sustain the same. It has no factual foundation therefore upon which it can stand.

In respondent's assessment for 1976 and 1977 (Exh. A-1), the premiums collected per investigation by respondent for insurance policies issued in 1976 is ₱3,646,409.38 and the documentary and science stamp taxes due is ₱109,392.29, while for 1977, the taxable amount due per investigation is ₱3,620,798.53 and documentary and science stamps due is ₱108,623.96.

On the insurance policies actually issued by petitioner in 1976 (Exh. E) on which premiums collected amounted to ₱3,612,237.95 and documentary and science stamp taxes affixed amounted to ₱108,367.17 (p. 6, t.s.n., June 3, 1985) there is a discrepancy of ₱1,016.12, against the assessed liability of documentary and science stamp taxes of ₱109,392.28 for 1976. However, not only is this amount of discrepancy negligible, from the evidence presented, the amount paid by petitioner as documentary and science stamp taxes for 1976 stands as correct, there being no contrary evidence of respondent to sustain his finding of ₱109,392.28. Hence, the documentary and science stamp taxes for 1976 is deemed paid.

On the issued insurance policies for 1977, on which the premiums actually collected amounted to ₱3,620,798.53 and the documentary and science stamps actually affixed thereon amounted to ₱108,623.96, the insurance policies actually issued by petitioner for 1977, on which the corresponding documentary and science stamp taxes due and affixed thereon amounted to ₱108,623.96 (p. 7, tsn, June 3, 1985), is exactly the same figure appearing in the assessment for the year 1977. This assessed documentary and science stamp taxes for 1977 is accordingly deemed paid in full.

In all these taxable years 1975, 1976 and 1977 in question, we are fully satisfied with the overwhelming and satisfactory evidence as aforesaid showing the proper issuance of the insurance policies and the collections from and payments made by petitioner, among others, of the documentary and science stamp taxes thereon and, hence, said assessments in question, insofar as the documentary and stamp taxes are concerned, are hereby modified accordingly.

The defense asserted by respondent in his "Manifestation", filed with this Court on September 18, 1986, after the issues have been joined by his filing of his answer, to the effect that petitioner has not affixed the required documentary and science stamp taxes in the policies petitioner issued during the years 1975, 1976 and 1977 and that the documentary and science stamps in denominations of ₱10 and above, used by petitioner, were withdrawn from circulation and are without value under P.D. No. 1045 as implemented by Rev. Reg. No. 9-76, is without merit. This defense must have been only an afterthought inasmuch as it was never pleaded in the Answer to the herein petitions for review or even in a motion to dismiss.

It is to be borne in mind that defenses such as the above which is not pleaded in the pleadings are deemed waived. (Sec. 2, Rule 9, Revised Rules of Court.) And the "Manifestation" of petitioner is not one of those "Pleadings" allowed and contemplated under the Rules of Court. (Sec. 2, Rule 6, Revised Rules of Court.) This defense not having been properly pleaded, therefore, it is deemed waived. At any rate, no evidence was ever presented by respondent's counsel in the hearing of the cases before this Court to establish this belabored defense which raises an issue of fact. As stated heretofore, this Court has once pronounced that documentary stamp taxes are deemed paid when affixed to the document and instrument taxed. (Fireman's Fund Insurance vs. Comm. of Int. Rev., op. cit.)

Finally, with respect to the compromise penalties demanded from petitioner in the sums of ₱400 and ₱650 in CTA Cases Nos. 3551 and 3599, respectively, by respondent Commissioner of Internal Revenue, it has been judicially held that compromise penalties being an imposition based upon mutual agreement or consent by petitioner, and not having agreed to this impositions, petitioner is not liable to pay these compromise penalties of ₱400 and ₱650 or a total sum of ₱1,050. (Phil. Int. Fair Inc. vs. Coll. of Int. Rev., 4 SCRA 774, 781-782; Coll. of Int. Rev. vs. UST, G.R. L-11274, Nov. 28, 1958; Rizal Motors Inc. vs. Comm. of Int. Rev., CTA 1985, Dec. 27, 1972.)

WHEREFORE, in view of the foregoing findings, the assessments arrived at in the decisions of respondent Commissioner of Internal Revenue appealed from are hereby modified.

Petitioner is hereby ordered to pay only the sums of ₱2,122.05 and ₱526.51 as deficiency premium taxes, inclusive of the 25% penalty thereon for late payment, for the years 1975 and 1976, to the respondent Commissioner of Internal Revenue within 30 days from the date this decision becomes final and executory.

No costs.

SO ORDERED.

Quezon City, October 15, 1986.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

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