REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOEBON MARKETING CORPORATION,
Petitioner,

- versus -

C.T.A CASE NO. 5001

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

4/26/94

x - - - - - - - - - - - - - - - - - - x

DECISION

This is an assessment case involving the amount of P65,991.69 as alleged deficiency Value Added Tax (VAT) for taxable year 1991.

Petitioner is a domestic corporation organized and existing in accordance with law and engaged in the business of buying and selling copra.

Upon inquiry by the Petitioner on whether or not its copra transactions were liable for VAT (Annex "A", p. 8 CTA Records), the Bureau of Internal Revenue (BIR) through its then Regional Director Beethoven L. Rualo, advised (see BIR Ruling No. RR-6B-01, Series of 1988, Annex "B", p. 9. CTA Records) that they were not subject to VAT and thereby was issued Non-VAT Registration Certificate No. NV-6B-58000072 (Annex "C", p. 10 CTA Records). Thus, Petitioner did not file any VAT returns on its copra transactions.

However in letter dated December 3, 1992, the BIR assessed Petitioner a deficiency tax of P59,903.[25] which was followed up with a final assessment letter dated March 1, 1993 which assessed the company for a deficiency tax of P65,991.[69] inclusive of interest and penalties for non-payment of VAT on its copra transactions for the year 1991 computed as follows:

DEFICIENCY VALUE-ADDED TAX

Deficiency VAT due	P42,838.[70]
Add: 25% Surcharge	10,709.[70]
20% Annual interest from 1/20/92 2/15/93 (.2137)	11,443.[29]
Compromise penalty	1,000.[00]
TOTAL AMOUNT DUE AND COLLECTIVE	P65,991.[69]
(p. 15, CTA Records)	

The foregoing deficiency tax assessment was based on VAT Ruling No. 190-90 issued on August 17, 1990 wherein the BIR ruled that copra is an agricultural non-food product and thus, exempt from VAT only if the sale is made by the primary producer pursuant to Sec. 103(a) of the Tax Code which provides, thus:

> **Section 103.** *Exempt Transactions.* - The following shall be exempt from the value-added tax:
>
> (a) Sale of non-food agricultural, marine, and forest products in their original state by the primary producer or the owner of the land where the same are produced. (Underscoring supplied)

Consequently, a trading company, like herein Petitioner, which acquires its copra from the primary producer must pay "value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor" (Sec. 100, NIRC).

On March 15, 1993, Petitioner protested the aforesaid assessment arguing that the sale of copra by a trading company, like herein Petitioner, should be VAT-exempt as they are considered food products (see Certification, Bureau of Food and Drugs [BFAD], Annex "D" p. 12, CTA Records) in their original state pursuant to Section 103(b) of the Tax Code which provides, thus:

> **Sec. 103.** *Exempt Transactions.* - The following shall be exempt from the value-added tax:
>
> (a) x x x
>
> (b) Sale or importation in their original state of agricultural and marine *food* products; x x x (Underscoring Supplied)

On May 6, 1993, Petitioner received a letter from the BIR denying with finality its request for reconsideration for lack of legal basis (Annex "F", p. 16, CTA Records)

Hence, this petition for review

The narrated facts appear to be undisputed. In fact, the parties have decided to submit this case immediately for decision as the issues involved herein are purely questions of law (see Remarks, December 10, 1993 Hearing p. 33, CTA Records).

The fundamental issue involved here in order to determine whether Petitioner is liable for the assessed deficiency tax is: whether or not copra in its original state is considered agricultural food product or not. The corollary question that should be answered is: whether the BIR or the BFAD is the proper agency to determine the classification of copra as an agricultural food product or otherwise.

We resolve the issues in favor of the Petitioner.

Undoubtedly, the BFAD and NOT the BIR is the proper agency of the government empowered to determine the correct classification of agricultural products as food or otherwise. It is the agency tasked exclusively to rule on the matter. This is so, since the matter of classifying an agricultural product as food or otherwise involves scientific skills and thorough know-how patently lacking in the BIR. To rule otherwise will render the BFAD, a technical agency of the government inutile. Needless to emphasize that the power and duties conferred upon the BIR under Section 3 of the NIRC are anchored, if not limited, only to areas of assessment, collection, enforcement of all forfeitures as well as administering the supervisory powers conferred upon the Bureau. In fine, its function is limited to raising taxes and similar revenues for the government. Since when, then, was the BIR empowered to classify an agricultural product as food or otherwise?

If the government, then, desires to confer the BIR of such authority, the Legislature can easily do so in the form of an amendment to the law. To do otherwise, is rather arbitrary, if not beyond the scope of the BIR's powers and authority.

In the similar case of **Lim Hoa Ting vs. Central Bank of the Philippines,** (104 Phil 574) of which this case should be decided in the same light, the High Court thus, said:

> With no disrespect to the scientific opinions cited by the defendant Bank, we prefer to accept the opinion of our local Institute of Science and Technology, which holds that mono-sodium glutamate is a flavor or flavoring extract, and that it even includes condiments. Furthermore, according to the record, mono-sodium glutamate has in the past been consistently classified and considered as a flavor and flavoring extract, not only by the Import Control Commission, but also by its successor, the defendant Bank itself, to say nothing of the fact that the law itself seems to have favored this interpretation. This

contemporaneous construction is highly persuasive:

"The practice and interpretive regulations by officers, administrative agencies, departmental heads and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute." (2 Sutherland, Statutory Construction, p. 516)

"In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who are called upon to act under the law, and were appointed to carry its provision into effect, is entitled to very great respect." (**Edwards Lessee vs. Darby**, 12 Wheat. 206, 210).

Finding that the BFAD is the proper agency to classify an agricultural product as food or otherwise and having said agency classified copra as an "agricultural food product, since copra is produced from coconut meat which is food and based on available information, more than 80% of products derived from copra are edible products" (Annex "D", *ibid*) nothing is left for Us to do but to resolve this case in favor of the Petitioner pursuant to Section 103(b) exempting from VAT the "sale or importation in their original state of agricultural and marine *food* products". (Emphasis supplied) Although "as a rule, any claim for exemption from tax statute is strictly construed against the taxpayer, however, where the law is clear and unambiguous, the law must be taken as it is devoid of judicial additional or subtraction" (**Acting Commissioner of Customs vs. Manila Electric**

Company, 77 SCRA 469). The applicable law above-cited is too plain to be missed and too categorical to be misunderstood. Moreover, "tax statutes are to be construed strictly against the government for tax, being burdens, are to be presumed beyond what the applicable statute expressly and clearly declares" (**Republic vs. Intermediate Appellate Court,** 196 SCRA 335) Indeed taxes are burdens which if not properly applied will work an injustice against if not profusely bleed an already ailing and anemic copra industry. Let not the government cut open the abdomen of the goose that lays the golden eggs.

WHEREFORE, in all the foregoing, the decision of the Respondent Commissioner of Internal Revenue appealed from is hereby **REVERSED** and **SET ASIDE** and the assessment issued against the Petitioner is hereby declared **NULL AND VOID** for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, April 26, 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above 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
Presiding Judge
Court of Tax Appeals