REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BOGO-MEDELLIN MILLING CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5337

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 25 1998

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DECISION

This case involves a deficiency income tax assessment for the taxable year ended September 30, 1990 in the amount of P13,163,487.38, inclusive of increments.

The factual backdrop of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws. It is principally engaged in the business of milling and trading of raw sugar, refined sugar and molasses.

Pursuant to Letters of Authority Nos. 0006910 and 0006911, both dated February 1, 1993, an investigation of the income, business and withholding tax liability of petitioner was conducted by a group of revenue examiners belonging to the Special Operations Service of the Commissioner's National Office. As a result of said investigation, a pre-assessment notice, dated October 31, 1993, and received by petitioner on December 10, 1993 was issued, assessing the latter for alleged deficiency value-added tax (VAT), income tax and withholding tax in the respective amounts of P5,003,253.52, P16,057,369.23 and P645,940.08, or a total amount of P21,706,562.83, including increments, for its fiscal year ended September 30, 1990. Petitioner questioned said pre-assessment notice through a letter dated and received by respondent on December 15, 1993 (Exh. E, p. 1093, BIR Records)

On December 23, 1993, Petitioner received respondent's Demand Letter and Assessment Notices issued on November 29, 1993, requesting payment of the aforesaid amounts (Exhs. F, F-1 to F-4, p. 1095, BIR Records). Petitioner protested these assessments on January 13, 1994 and moved for a reinvestigation (Exh. G, p. 1137, BIR Records)

Subsequently, on June, 1994, in view of the devolution of examination functions from respondent's national office to the local district offices where the taxpayers are located, the assessments were indorsed to respondent's Revenue District No. 80 (Mandaue City) for reinvestigation (Exhs. H and I).

Through a letter dated September 29, 1994, petitioner filed a supplemental protest which was received by respondent on October 3, 1994. (Exh. K). This was followed by another letter dated November 26, 1994 (Exh. L) where petitioner submitted additional documents in support of its claim.

On February 8, 1995, petitioner and respondent's representatives met for a conference and as agreed upon in said meeting, petitioner, on February 14, 1995, submitted a letter reiterating its stand on the subject assessments (Exh M).

In her memorandum dated March 6, 1995, (Exh. N, pp. 1198-1205, BIR Records) Revenue Officer Adine Paulo recommended a reduced assessment totalling P17,025,423.99, broken down as follows:

Deficiency income tax	P12,380,005.63
Deficiency VAT	4,636,723.32
Deficiency withholding tax	8,695.04
	P17,025,423.99

On September 20, 1995, however, the Assessment Division of Revenue Region No. 13 (Cebu City) decided to adopt only Revenue Officer Paulo's recommendation with respect to the alleged deficiency income tax of petitioner in view of the fact that the assessment on VAT had already prescribed and the deficiency withholding tax was based on payments made to general professional partnership which are exempt from income tax and therefore not subject to withholding tax.

On October 9, 1995, another pre-assessment notice was sent by respondent to petitioner, this time for the lower amount of P13,163,487.38, with basic deficiency income tax computed at P5,391,284.87 arising from alleged undeclared income in the total amount of P15,403,671.05, consisting of purported sugar and molasses sales in the amounts of P15,392,360.90 and P11,310.15, respectively, to San Carlos Milling Co., Inc. (Exh. P, P-1, pp. 1212-1215, BIR Records)

Through a letter dated October 30, 1995 and received by respondent the following day, petitioner protested this assessment and requested for another reinvestigation (Exh. Q, pp. 1216-1217, BIR Records). This request was denied by respondent through a letter dated February 26, 1996 and received by petitioner on March 15, 1996. Respondent, in said letter, reiterated its demand for the payment of the P13,163,487.38. (Exh. S, p. 1280, BIR Records). Through a letter dated March 12, 1996 and received by respondent on March 18, 1996, petitioner again requested for a conference for purposes of presenting its side on the matter (Exh. R, pp. 1232-1234, BIR Records).

On March 20, 1996, respondent issued the corresponding Demand Letter and Assessment Notice to petitioner. This was received by petitioner the following day, March 21, 1996 (p. 1223, BIR Records).

148

On March 25, 1996, the instant petition for review was filed.

In her Answer, respondent raised the following Special and Affirmative Defenses:

> 6. Considering that there is a pending protest dated March 12, 1996 against the pre-assessment notice dated October 9, 1995, there is no final decision yet by the respondent on the assessment, hence, this Court did not acquire jurisdiction over the case.
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> Decisions of either the Commissioner of Internal Revenue or the Commissioner of Customs is of the essence in appeals of cases to the Court of Tax Appeals for it is axiomatic in taxation that mere assessments of the Commissioner of Internal Revenue are not appealable to the CTA. It is settled that assessments are not decisions of the BIR. According to the Supreme Court in the leading case of Commissioner vs. Leonardo Villa, L-23988, January 20, 1968, the word "decisions' in Sec. 7 of R.A. 1125 has been interpreted to mean decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. "Definitely", according to the Court, "the said word does not signify the assessment itself." (p. 223, Law of Basic Taxation in the Philippines by Benjamin Aban, 1994.)
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> 7. Assuming that there is jurisdiction, petitioner was assessed in its private capacity for its failure to declare income in the total amount of ₱15,403,671.05 which represented sugar sales to San Carlos Milling Co., Inc. and of molasses sales to the same company. Thus, the imposition of the 25% surcharge and interest computed from January 16, 1991 to October 16, 1995 and the compromise penalty;
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> 8. Petitioner is liable for 25% surcharge because it did not declare the income it realized thereby depriving the government of the benefit of ascertaining the tax

149

consequences of its dealings with other entities;

9. The assessment in question was issued in accordance with law and pertinent regulations;

10. Moreover, the correctness of the tax assessment is presumed and the taxpayer has the burden of proving its invalidity. (Inter-provincial Autobus Co., Inc. vs. Commissioner of Internal Revenue, 98 Phil. 290 (1956); Tan vs. Court of Tax Appeals, 19 SCRA 903 (1967).

11. It is an elementary rule that tax assessments are presumed to be correct unless the contrary is shown, and the burden of proof rests upon the taxpayer to overcome this presumption. The burden of the taxpayer contesting the validity or correctness of an assessment is to prove not only that the Commissioner of Internal Revenue is wrong but he (taxpayer) is right. (Lino Gutierrez vs. Commissioner of Internal Revenue, C.T.A. Case No. 504, January 28, 1962; Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines) vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 1862, 1879, 1888, 1893 & 1896, May 30, 1980; Augusto L. Guanzon vs. Efren I. Plana, Commissioner of Internal Revenue, C.T.A. Case No. 2821, August 27, 1980).

The issues brought before Us are:

1. Whether or not the instant petition was filed prematurely; and

2. Whether or not petitioner is liable to pay the amount of P13,163,487.38 as deficiency income tax considering that the sales of sugar and molasses were allegedly made in behalf of San Carlos Milling Co., Inc.

Respondent contends that this Court has no jurisdiction over the instant appeal of petitioner as it was taken from the denial of a request for

150

reinvestigation of a pre-assessment notice and not from the decision on a disputed assessment which would confer jurisdiction to the Court.

We do not agree. The February 26, 1996 letter, which is hereby reproduced for easy reference, constitutes a sufficient basis to elevate the instant case before Us, thus:

> "This refers to your letter dated October 30, 1995 requesting for a reinvestigation of your 1990 deficiency income tax assessment in the amount of P13,163,487.38 on the grounds stated therein.
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> In reply thereto, please be informed that after a careful review of the facts of the case and the laws applicable thereto, this office finds no justifiable reason to grant your request.
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> Accordingly, your request is hereby denied and the demand for its payment of the amount of P13,163,487.38 inclusive of increments, is hereby reiterated." (Exh.S, p. 1280, BIR Records)

It bears emphasis that from the time when the first pre-assessment notice was sent to petitioner, the latter had already made several protests and requests for reinvestigation. While the VAT and withholding tax liabilities of petitioner were eventually cancelled, the income tax liability of petitioner remained, the reason why another pre-assessment notice was issued. It is not correct to state that the appeal is premature considering that there is a pending protest dated March 12, 1996

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against the pre-assessment notice dated Oct. 9, 1995. A formal assessment notice which includes the assessment now questioned before Us has already been issued way back November 29, 1993 and received by petitioner on December 23, 1993 which the latter timely protested on January 13, 1994.

From the tenor of the Febuary 26, 1996 letter of respondent, hereinbefore quoted, petitioner is left with no recourse but to appeal its case before Us since its request for reinvestigation was finally denied. What more is expected of petitioner when he has filed several protests and requests for reinvestigation covering the subject income tax deficiency assessment which up to the time when the February 26, 1996 letter was issued, respondent stood pat on its stand that the sugar and molasses sales totalling ₱15,403,671.05 are sales of BOMEDCO and not of San Carlos Milling Co. Inc. as alleged by petitioner?

Respondent, in this case, issued a second pre-assessment notice and a second assessment notice after reducing the assessed amount. There seems to be a deviation from the normal procedure when after a protest from the assessment notice is denied in whole or in part, the individual, association corporation adversely affected by the decision goes to Us by way of a petition

152

for review. In this case, respondent, after a protest/request for reinvestigation was filed by petitioner on the first assessment notice, issued a second pre-assessment notice and subsequently, a second assessment notice. If this is allowed everytime an assessment is reduced, there would be no end to the issuance of pre-assessment and assessment notices and petitioner would, therefore, be in a predicament as to what stage it could appeal.

We dwell on the second issue. Respondent averred that petitioner had undeclared income amounting to P15,392,360.90 (sugar sales) and P11,310.15 (molasses sales).

Petitioner, however, insisted that these sales are those of San Carlos Milling Co., Inc. under a swapping agreement with said company.

After a careful scrutiny of the records and evidence submitted by the parties, We find for the petitioner. That the questioned sales are covered by swapping arrangements duly approved by the Sugar Regulatory Administration (SRA) are evidenced by various Certificates of Exchange Authority issued by the said office (Exhibits W-1 to W-8). Petitioner has likewise shown the journal entries recognizing liability to San Carlos Milling Co., Inc. for sugar and molasses sales made in its behalf (Exhibits U-1 to U-7). The cash vouchers showing payments made to San Carlos Milling Co., Inc. with their corresponding check numbers were also submitted (Exhibits V-1 to V-7). And to show receipt by the latter of the payments made by petitioner, the official receipts issued by San Carlos Milling Co., Inc. were presented in evidence (Exhibits V-1-a to V-7-a). Petitioner's liability to San Carlos Milling Co., Inc. zeroed out by the end of the taxable year by the payments made by petitioner to the latter totalling P15,403,671.05.

Respondent, on her part, showed no proof to contradict petitioner's claim that the questioned sales are not its sales but of another taxpayer. Her empty allegations, therefore, cannot stand against petitioner's position that the subject assessment is not in order.

WHEREFORE, in view of all the foregoing, the Court finds the instant petition meritorious. **ACCORDINGLY**, respondent's deficiency income tax assessment in the amount of P 13,163,487.38 is hereby cancelled.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with 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

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