REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JULIETA ARIETE,
Petitioner,

- versus -

C.T.A. CASE NO. 5880

THE COMMISSIONER, BUREAU OF INTERNAL REVENUE, TEODORICA R. ARCEGA, in her capacity as Regional Director of the BIR Region 19, Davao City, and ERLINDA AMOGUIS in her capacity as Chief, Assessment Division BIR Region 19, Davao City,
Respondents.

Promulgated:

JAN 15 2002

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DECISION

Petitioner seeks for the reversal of the decision of the Commissioner of Internal Revenue assessing her of deficiency income taxes for the years 1993, 1994, 1995 and 1996, in the aggregate amount of P191,463.04.

Petitioner is of legal age, a single mother and with address at Barangay Pag-asa, Kapalong, Davao del Norte.

On May 21, 1997, a Mr. George P. Mercado filed with the Special Investigation Division, Revenue Region No. 19, Davao City, an Affidavit stating that Petitioner earned substantial income in 1994, 1995 and 1996 but did not pay income tax (Exhibit 1, pp. 34 and 35, BIR records).

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Acting on said Affidavit, the Chief of the Special Investigation Division concerned, Mr. Vivencio M. Vidallo, issued Mission Order No. 118-97 dated May 23, 1997, directing Revenue Officer Eustaquia M. Valdez to conduct a preliminary verification of the denunciation so made and to submit progress report on the matter (Exhibits 2 and 3, pp. 36 and 39, BIR records). Chief Vidallo also sent an Access to BIR Records to Revenue District No. 112, Tagum, Davao del Norte to inquire if income tax returns of Petitioner for the years 1993 to 1996 were available for examination (p. 43, BIR records). In reply thereto, a Certification was issued that Ms. Julieta N. Ariete has no records of income tax returns for the period involved (p. 46, BIR records).

Subsequently, Revenue Officer Valdez submitted a report on October 15, 1997 that herein Petitioner admitted, among others, her non-filing of income tax returns (Exhibit 4, p. 61, BIR records).

On December 2, 1997, Petitioner filed her income tax returns for the years 1993, 1994, 1995 and 1996 under Revenue Memorandum Order Nos. 59-97 and 63-97, otherwise known as the Voluntary Assessment Program (VAP) (pp. 204, 211, 235, 258, BIR records).

On July 28, 1998, a Letter of Authority was issued by the Regional Director to investigate Petitioner for tax purposes covering the years 1993 to 1996 (Exhibit 5, p. 170, BIR records).

On October 14, 1998, Revenue Officer Valdez executed a memorandum for the Chief, Special Investigation Division, recommending that Petitioner be assessed

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deficiency income taxes for the years 1993 to 1996 (Exhibit 7, pp. 272 to 274, BIR records).

Consequently, four (4) assessment notices were issued on January 22, 1999 against herein Petitioner with total deficiency income taxes, inclusive of interests and surcharges, of P191,463.04 (Annexes A to D, Petition and pp. 330 to 333, BIR records), broken down as follows:

1993	P 6,462.18
1994	47,187.39
1995	27,729.64
1996	113,083.83
	P191,463.04

Petitioner then filed an Assessment Protest with Prayer for Re-investigation on February 22, 1999 (Annex E, Petition). The same was denied in a letter dated March 30, 1999 (Annex F, Petition).

On April 16, 1999, Petitioner offered a Compromise Settlement (Annex G, Petition) but was denied (Annex H, Petition).

Hence, this judicial appeal.

The issues to be resolved can be summarized, thus:

(1) Whether or not Petitioner's availment of the Voluntary Assessment Program (VAP) is valid; and

(2) Whether or not Petitioner is liable to pay the amount of P191,463.04 assessed as her deficiency income taxes for the years 1993 to 1996.

[illegible]

The availment by the Petitioner of the VAT was disapproved by the Regional Voluntary Assessment Committee on December 5, 1997 as concurred by the Assistant Commissioner for Legal Service on March 6, 1998.

It is the contention of the Respondent that Petitioner is not entitled to the benefits of the VAP under RMO No. 59-97, as expanded by RMO Nos. 60-97 and 63-97, because at the time of her availment thereof on December 2, 1997, she was under investigation by the Special Investigation Division of Revenue Region No. 19, Davao City. Said investigation emanated from a denunciation made by an informer under Section 281 of the Tax Code.

For easy reference, We quote the pertinent provision aforementioned:

> "3. Persons/cases not covered
> The following shall be excluded from the coverage of the VAP under this Order:
>
> x x x x x x x x x
>
> 3.4 Persons under investigation by the Tax Fraud Division and/or the Regional Investigation Divisions as a result of verified information filed by an informer under Section 281 of the NIRC, as amended, and duly recorded in the Official Registry Book of the Bureau before the date of the availment under VAP."

However, Petitioner argues that the disapproval of her availment of the VAP is not valid and without basis inasmuch as RMO Nos. 59-97 and 63-97 are quite clear in providing that "Any person liable to pay any of the above-cited internal revenue taxes for the above specified periods, who due to inadvertence or otherwise, has under-declared his internal revenue tax liabilities or has not filed the required tax return may avail of the

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benefits under VAP." Furthermore, although at the time of her availment of the VAP there was already a denunciation made by an informer, still, she was not yet under investigation either by the Fraud Division and/or Special Investigation Division of the region concerned. And even granting for the sake of argument, that she was under investigation at the time she filed her income tax returns under VAP on December 2, 1997, nevertheless, she was not among those persons not covered since her case was not yet duly recorded in Official Registry Book of the Bureau.

Respondent counters that although the information filed by the informer was not duly recorded in the Official Registry Book of the Bureau, the same was verified and subscribed under oath before Notary Public Felix B. Pepito, Jr. a Legal Officer of the Bureau of Internal Revenue. Besides, said information was filed with the Office of the Special Investigation of Revenue Region No. 19 and not in the Records Division of the National Office. Hence, the reason for no record in the Official Registry Book of the Bureau.

After a careful deliberation of the arguments of the parties, documents available on record, applicable law, order and jurisprudence, We rule in favor of the Petitioner.

Revenue Memorandum Order Nos. 59-97, 60-97 and 63-97 are quite categorical on who are covered or not covered by the VAP. Petitioner is to Our mind qualified to avail thereof. It is worthy to note that when Petitioner filed her income tax returns on December 2, 1997, she was not yet under investigation by the Bureau or the Special Investigation Division of Revenue Region No. 19. The Letter of Authority to investigate Petitioner for tax purposes was issued only on July 28, 1998 (Exhibit 5). Moreover, as pointed out by the Petitioner, her case was not duly recorded in the Official Registry Book of the Bureau before her availment of the VAP.

It bears emphasis also that RMO Nos. 59-97, 60-97 and 63-97 all contain the same requirements before a person may be excluded from the coverage of the VAP, namely:

(a) The person(s) must be under investigation by the Tax Fraud Division and/or the regional Special Investigation Division;

(b) The investigation must be as a result of a verified information filed by an informer under Section 281 of the NIRC, as amended; and

(c) The investigation must be duly registered in the Official Registry Book of the Bureau before the date of availment under the VAP.

The conjunctive 'and' is being used and all the above requisites must be present before a person may be excluded from the coverage of the VAP. "And" is a conjunctive, used to denote a joinder, a union (Words and Phrases, Vol. 3, p. 570). The word "and" is a conjunction used to connect words, phrases or sentences, accepted as binding together and as relating the one to the other (*ibid*, p. 571). "And" is a conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first. It is said to be equivalent to "as well as" (Bouvier's Law Dictionary, Vol. 1, p. 194).

The rationale behind the VAP is to give taxpayers a final opportunity to come up with a clean slate before they will be dealt with strictly for not paying their correct taxes. Therefore, it was enacted to encourage taxpayers to pay their taxes or pay the correct taxes. Note that under the said Revenue Memorandum Orders, among the benefits that can be availed by the taxpayer-applicant are:

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1) A bona fide rectification of filing errors and assessment of tax liabilities under the VAP shall relieve the taxpayer-applicant from any criminal or civil liability incident to the misdeclarations of incomes, purchases, deductions, etc., and non-filing of a return.

2) The taxpayer who shall avail of the VAP shall be liable only for the payment of the basic tax due. (Underscoring supplied).

Granting that at the outset there was a violation of the Internal Revenue Code (non-filing of income tax returns), yet, by virtue of the VAP, Petitioner was given the chance to rectify her fault and be absolved of any criminal or civil liabilities incident to her non-filing of income tax returns.

Finally, so holding that Petitioner's availment of the VAP is appropriate, the assessments issued against her for deficiency income taxes are therefore not valid nor binding.

Respondent claims that for the reason that no evidence was presented by the Petitioner, the presumption of validity of the assessment stands.

We are not convinced.

In the resolution of this Court dated November 9, 2000, We considered Petitioner to have waived the right to present evidence. For failure of the Respondent to object, Petitioner's counsel was able to present and mark some documents, specifically, income tax returns and bank's official receipts, during his cross-examination of Respondent's witness in the hearing of January 9, 2001. In fact, Respondents' counsel admitted the existence of said documents. In addition, Respondent utilized Petitioner's annexes in his memorandum.

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CERTIFICATION

I hereby certify that the above 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

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In other words, although We resolved to declare Petitioner to have waived the presentation of her evidence, the documents so marked and admitted on January 9, 2001 as well as the annexes attached to the petition formed part of the records in this case. Not to mention the BIR records which contain some of the communications between the Petitioner and the Respondent, the income tax returns and other relevant data. Indubitably, We take all these documents into consideration in the determination of this case. And We firmly believe that Petitioner is not disqualified to avail of the VAP. It follows that Petitioner has no more liabilities after paying the corresponding taxes due.

WHEREFORE, finding the assessments issued against herein Petitioner to be erroneous, the same are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

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

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