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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Oct. 8, 1972

CHUA KI LIN,
Petitioner
- versus - C.T.A. CASE NO. 1802

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

D E C I S I O N

Petitioner has appealed from the decision of respondent, dated August 30, 1966, assessing against and demanding from him payment of ₱106,031.23, representing deficiency income tax for 1963, inclusive of surcharge, interest and compromise penalty, computed as follows:

1963 deficiency income tax per 23-AR-506723-64/63	₱89,713.28
Add: 5% surcharge on basic tax (₱57,055.00)	₱ 2,852.75
1% mo. int. on def. tax from 7-1-65 to 9-30-66. . . .	₱13,415.20
Compromise penalty for late payment	₱ 50.00
TOTAL AMOUNT DUE ON 9-30-66 . . .	₱106,031.23

(Exhs. K & 17, pp. 52-53, BIR rec.)

Petitioner Chua Ki Lin is a naturalized Filipino. Sometime in May, 1962, he and three other persons, namely: CO CAN, WONG BAN KEE, and CHUA YU HIAN formed a partnership which was duly registered in June 1962 with the Securities and Exchange Commission under the name of C & O IMPORT AND EXPORT CO. (hereinafter referred to as the partnership). The articles of partnership show that the capital of the partnership "shall be" ₱40,000.00 to be contributed equally by the petitioner and his partners at ₱10,000.00 each. The articles of partnership reveal that it was to engage in business as:

> Buyers, manufacturers, producers, importers, exporters, and wholesale sellers, in any such case either as principals, agents, factors, indentors, or commission merchants, of goods, wares, merchandise, articles, and products, of every class and description, and to do all things incidental to the said business and pertaining thereto.

(See Exhs. A & 14, pp. 31-34, BIR rec.)

On April 15, 1964, petitioner filed his 1963 income tax return, declaring therein, among others, the income of ₱10,534.76 representing his proportionate share of the profits received from the partnership. (Exhs. D & D-1, pp. 3-4, BIR rec.; pp. 15-17, t.s.n.) Thereafter, on June 30, 1964, petitioner executed a deed of assignment whereby he transferred and conveyed all his shares and undivided interests in the partnership to a co-partner, CHUA YU HIAN. (Exh. E, pp. 26-27, BIR rec.; also pp. 18-19, t.s.n.)

On June 30, 1965, respondent assessed against and demanded from petitioner payment of ₱89,713.28, as deficiency income tax for 1963, inclusive of 50% surcharge and ½% monthly interest, computed as follows:

<u>23-AR-506723-64/63</u>

Net income per return	₱ 12,524.76
Add: Additional income from C & O Import & Export Co. . . .	132,380.12

Net income per investigation . . .	₱144,904.88
Less: Personal & Additional Exemptions	6,000.00
Amount subject to tax	138,904.88
Tax due thereon.	57,499.00
Less: Amount already assessed. . .	444.00
B a l a n c e	57,055.00
Add: 50% surcharge	28,527.50
½% monthly interest from 4-16-64 to 6-30-65	4,130.78
TOTAL AMOUNT DUE & COLLECTIBLE . .	₱ 89,713.28

The bases of the above deficiency income tax assessment as explained by respondent in said letter were as follows:

> I have the honor to inform that upon examination of the books of accounts of C & O Import & Export Company for the year 1963, in connection with the verification of its income tax return for the aforesaid year, there has been found undeclared income in the total amount of ₱529,520.51. Inasmuch as the above entity is a duly registered co-partnership, the said amount of ₱529,520.51 is directly taxable to the partners, in accordance with the pro-rata share held in the partnership. On the basis of your pro-rata share (25%) in the aforesaid additional income, there is due from you deficiency income tax of ₱89,713.28 x x x
>
> x x x x x
>
> The 50% surcharge has been imposed, pursuant to Section 72 of the Tax Code.
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> The ½ monthly interest has likewise been imposed, pursuant to the provisions of Section 51 (d) of the Tax Code, as amended by Republic Act No. 2343 xxx. (Exh. 13, pp 23-24, BIR rec.)

On July 26, 1965, petitioner protested the assessment (Exhs. J & 15, pp. 35-37, BIR rec.), but respondent denied said protest on August 30, 1966, and even increased the amount demanded to P106,031.23 (Exhs. K & 17, supra). Hence, this appeal.

The issue posed for our resolution is whether or not the said deficiency income tax assessment is valid and justified.

The principal controversy involves the amount of P529,520.51 which was treated by respondent as undeclared income of the partnership C & O Import & Export Co. in 1963. If the said income of the partnership is proved by sufficient evidence, then petitioner should be taxable to the extent of 25% thereof or P132,380.12 (see Exh. 13, supra), because his contribution in the partnership represents 25% or ¼ of the partnership capital. (Articles of Partnership, Exh. A, supra.) The law provides that a registered general partnership is exempt from income tax. (Sec. 24, Tax Code.) However, its income, whether distributed or not, is taxable to the individual partners in proportion to their contributions to the partnership capital. (Sec. 26, Id.; Secs. 22-23, Revenue Regulations No. 2; Tan Guan vs. Comm. of Int. Rev., CTA Case No. 853, June 27, 1964; affirmed in G.R. No. L-23676, April 27, 1967; 19 SCRA 903.)

Respondent claims that in 1963, the amount of P529,520.51 represents the total disbursements made by the partnership to several firms. They were allegedly not recorded in the books of accounts of the partnership although they are evidenced by unregistered and unnumbered receipts owned by the partnership. In support of his claim, respondent presented the testimonial evidence of Francisco Rivera Jr., the examiner who investigated this case, and several documents, which include, among others, the following:

(1) Xerox copies of numerous receipts contained in several folders, all of which are separately labelled "MACMULTI-1963", "E.H. - 1963", "D. M. - 1963" and "MANILA BAY - 1963", respectively. (Exhs. 5, 6, 7 & 8, pp. 45-165, CTA rec.) On the face of the receipts contained in the folders, the name of the partnership does not appear as payor but certain code numbers and the initials of the recipients are apparent at the left and right hand bottom thereof. The said receipts bear no official numbers and they appear unregistered with the BIR as required by the Bookkeeping Regulations. A typical example of the receipt is found in the folder "MACMULTI 1963" and marked Exh. 5-A (p. 46, CTA rec.) revealing only the following particulars:

November 14, 1963

Received the sum of ₱11,370.69

M. J. (Sgd) T.M.

Y # 42 - 10727/07 - 53

(2) Working papers on the income tax of the partnership C & G IMPORT AND EXPORT CO. were prepared by Revenue Examiner Francisco Rivera Jr. (Exhs. 1 & 2, pp. 1-2, BIR rec.; pp. 41-42, t.s.n.) The said papers show that, in 1963, the partnership has undeclared cash disbursements to the following firms, namely:

1. (Manila Bay) DK & Company. . . .	₱258,511.40
2. Island Garment Manufacturing . .	177,688.67
3. Mac-Multi Manufacturing Enterprises	60,069.11
4. Dura Wear	32,302.10
5. Narciso Delgado (E.H.)	948.23
T o t a l	₱529,520.51

Because the source or sources of the funds disbursed have not been explained, the same were considered by respondent as undeclared income of the partnership. The individual partners are subject to income tax in the following manner:

CO CAN	25%	-	₱132,380.13
WONG BAN KEE	25%	-	132,380.13
CHUA YU HIAN	25%	-	132,380.13
CHUA KI LIN	25%	-	132,380.12
			₱529,520.51

(3) Memorandum (Report) to the Commissioner of Internal Revenue, dated April 26, 1965, submitted by Revenue Examiners Francisco Rivera Jr., Ladislao Firmacion and Teodorico Baltazar. (Exh. 3, pp. 15-20,

BIR rec.; pp. 43-44, t.s.n.) The said report contains a more detailed account of how the total amount of ₱529,520.51 was discovered and arrived at. It mentions the raid conducted by a team of revenue agents in the offices of the partnership in September, 1964; why and how the raid was conducted; the seizure of several documents, records, and articles, including the receipts in question in five (5) folders; the subsequent investigations conducted by examiner Francisco Rivera and his group on the C & O IMPORT AND EXPORT CO. and the identity of the recipients of the disbursements covered by the receipts.

(4) Receipt For Seized Articles, Papers & Documents signed by Jose S. Seño, Group Supervisor, on September 22, 1964. (Exh. 9, p. 16, BIR rec.) This receipt is marked Annex "A" to the above memorandum of the examiners (Exh. 3, supra) listing 14 items of articles, papers and documents seized from the premises of the partnership during the raid. Item 10 therein consisting of "Five (5) folders containing private notes of receipts of payments of various sums of money" were made the bases of the assessment for the undeclared income of the partnership amounting to ₱529,520.51 (pp.81-82,t.s.n.). Mr. Jose S. Seño, as testified to by examiner Rivera, is the head of the team of revenue examiners who raided the premises of the C & O IMPORT AND EXPORT CO.

Examiner Francisco Rivera Jr. testified, among others, that a team of revenue examiners conducted a raid in the offices of the C & O IMPORT AND EXPORT CO., 707 Pacific Bank Building, Rosario, Manila, in September, 1964; in the course thereof, several documents, papers and articles were seized, including the unnumbered and unregistered receipts contained in five (5) folders; these documents, papers, articles and receipts were receipted for by Mr. Jose Seño, head of the raiding team and, thereafter, brought to their office (Bureau of Internal Revenue Branch, Soriano Building, Claro M. Recto St., Manila); subsequently, on account of the seized documents, papers, receipts, etc., Examiner Francisco Rivera and another examiner, were instructed by the respondent Commissioner of Internal Revenue, per Authority No. 19085, dated October 21, 1964, to conduct a separate investigation of the C & O IMPORT & EXPORT CO.; as a result thereof, they found that the receipts belong to the partnership and the various payments were actually made by it to several embroidery firms, namely: (Manila Bay) DR & Company, Island Garment Mftg., Mac-Multi Manufacturing, Dura Wear, and Narciso Delgado (E.H.); and they investigated also the recipients and their accounting records and the disputed disbursements appear to have been reflected therein. (pp. 38-75, t.s.n.)

Examiner Rivera further testified and informed the Court as to the meaning of the code numbers appearing in the receipts heretofore cited (Exh. 5-A, *supra*,) and found in the folder labelled "MACMULTI-1963" (Exh. 5, p. 45, CTA rec.). He testified that the code numbers reading "Y # 42-10727/07 -53" mean as follows: "Y # 42", represents the number of cases of articles imported by Mac-Multi Enterprises; number "10727/07" - represents the dollar value of the imported goods (rayon) or $10727/07; and number "53"-represents the percentage of the money in terms of peso which was given to Mac Multi Enterprises. He pointed out that the amount of ₱11,370.69 given to Mac Multi Enterprises is 53% of the dollar value mentioned, at the exchange rate of one dollar to two pesos. (See pp. 66-70, t.s.n.)

When questioned as to where the original of the xerox copies of the receipts in question can be found, Examiner Rivera answered that the original receipts were turned over to the Clerk of Court, Branch XXl, Court of First Instance of Manila. In fact, Examiner Rivera testified that the Clerk of

Court, Mr. Aurelio Rivera, whose signature he also identified, issued a receipt on March 21, 1968 for the original of the receipts aforementioned. (Exh. 4, p. 42, CTA rec.; pp. 46-42, t.s.n.).

Petitioner, on the other hand, disputes and assails the assessment of respondent. He testified that his only share in the partnership was P10,524.76 and this was reflected in his 1963 income tax return. (Exhs. D & D-1, pp. 3-4, BIR rec.), and in the income tax return and financial statement of the partnership for the same year. (Exhs. B & C, pp. 7-10 & 28-30, BIR rec.); he had occasion to see the books of accounts of the partnership when he was still a partner therein; and he discovered nothing which would indicate that the distribution of his share was incorrect or fraudulent. In the rebuttal testimony, petitioner bluntly and vehemently denied having seen or come across receipts evidencing payment to any of the recipients mentioned by Examiner Rivera, or that the partnership made disbursements in 1963 amounting to P529,520.51. Petitioner also declared that he and the other partners were not restricted to pursue their separate and individual business and they even used, on certain occasion, the offices and facilities of the partnership for their private and personal business. (pp.128-133, t. s. n.)

At the formal offering of evidence, petitioner's counsel vigorously objected to some of respondent's exhibits, particularly the xerox copies of the receipts (Exhs. 5, 5-A, 6, 7 and 8, supra), because the originals thereof have not been adduced; they have not been authenticated; the alleged recipients of cash have not been cross-examined; and their admission would violate the rule or maxim of res inter alios acta.

Petitioner, however, utterly failed during the hearing of this case to explain the applicability or non-applicability between the entries in the seized receipts with those entered in the books of accounts of the partnership. He even failed to question the intrinsic merit and validity of respondent's assessment because his defense is concentrated on the technical rules of evidence for the exclusion of respondent's exhibits, particularly the xerox copies of the receipts evidencing disbursements of money by the partnership.

From the testimony of respondent's examiner, the transactions pointed out by him pertain to the partnership business for 1963. They are corroborated by the seized receipts belonging to the partnership. The entries in the controversial receipts are the best evidence of their contents and are admissible against the interest of herein petitioner.

> "Entries in books of account do not of themselves create estoppel, but may be regarded as admissions against the interest of the person under whose directions they are made and such admissions may be overcome by the weight of other competent evidence, unless the adverse party has been misled to his prejudice by the entries or admissions." (Aboitiz v. de Silva, 45 Phil. 883.)
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> "Entries on loose leaves or cards used in modern bookkeeping practices are just as truly entries in 'books of account' within the meaning of statute regarding admissibility of b book entries as though leaves were bound into volume." (12 Okl. St. Ann. Sec. 501, Nancy v. Cherry 41 P 2d 82, 83, 170 Okl. 469; Vol. 5, Words and Phrases, p. 689).

If the said controversial receipts evidencing the disbursements of ₱529,520.51 made by the partnership in 1963 are excluded or rejected by the Court as evidence, then respondent's assessment against petitioner will have no solid base to stand on. Under Section 8 of Republic Act No. 1125, however, the Tax Court is not bound strictly by the technical rules of evidence and it feels that the controversial receipts in question (xerox copies) should be admitted and given weight for reasons we are going to recite hereafter. (See Sec. 8, Rep. Act

No. 1125; Purakan Plantation Co. v. Domingo, G. R. No. L-18571, Oct. 29, 1965; Velasco v. Commissioner of Customs, CTA Case No. 2210, May 5, 1971; Cert. denied in G. R. No. L-34060, Oct. 28, 1971.)

Examiner Francisco Rivera testified that the originals of the controversial receipts were seized from the partnership and later on they were turned over by him to Mr. Aurelio Rivera, Clerk of Court, Branch XXI, Court of First Instance of Manila, who in turn issued a receipt therefor on March 21, 1968.

The said receipt (Exh. 4, supra) shows at the right hand bottom thereof the signature of the said Clerk of Court, which was properly identified. The said official acknowledges the receipt from Examiner Francisco Rivera himself of the following documents, namely:

(a) One (1) Folder containing fourteen (14) receipts with markings on the cover, to wit: MAGMULTI- 1963;

(b) One (1) Folder containing three (3) receipts with markings on the cover, to wit: E. H. - 1963;

(c) One (1) Folder containing thirty-six (36) receipts with markings on the cover, to wit: D. W. - 1963;

(d) One (1) Folder containing forty-four (44) receipts with markings on the cover, to wit: ISLAND - 63;

(e) One (1) Folder containing sixty-four (64) receipts with markings on the cover, to wit: MANILA BAY -1963.

Said Exh. 4 even bears the name of the Court (C.F.I.)

and the caption of the case, namely: "The People of the Philippines, Plaintiff, vs. C & O Import and Export Co., Accused. Criminal Case Unnumbered." The Clerk of Court, Mr. Aurelio Rivera, also issued a certificate (Exh. 8-A,p. 167, CTA rec.), which was presented during the trial, acknowledging that the xerox copies of the receipts in question "are the true and correct reproduction of the original" presented to the Court (C.F.I.) in connection with an unnumbered criminal case filed against the C & O Import and Export Co. Moreover, the BIR records further show that in a conference held in the Bureau of Internal Revenue on May 2, 1966, petitioner's counsel was shown and confronted with the various disbursement receipts now in dispute. (Exhs. J & 16, pp. 45-47,id) It is apparent that the disbursement receipts shown to peitioner's counsel are the originals of the xerox copies now in dispute because, on May 2, 1966, Examiner Francisco Rivera has not yet turned over the original disbursement receipts to the Clerk of Court. Under the circumstances, particularly the certificathon issued by the Clerk of Court (Exh. 8-A, supra), we are convinced that the xerox copies presented to the Court in evidence are the true and correct reproduction of the originals.

We give credence to the testimony of Examiner

Francisco Rivera that he conducted an investigation on the transactions of C & O Import and Export Co.; the identity of the recipients of the various disbursements reflected in the controversial receipts; the names and addresses of the firms or persons who received the disbursements or payments from the partnership; the records of said firms or persons were verified by him and cross-checked with the controversial receipts; and the disbursements are actually reflected in their respective books of account and records.

In one of the Folders marked "MANILA BAY -1963", a receipt shows that ₱4,192.78 was received from MR. CHUA "only as 20% Deposit of $10,481.95 per Shipment Ex S/S Pablo - 42 c/s." (p. 164, CTA rec.) Examiner Rivera testified and explained to the Court that the said receipt belong to the partnership because some of the receipts specifically mention the name of one of the partners. (pp. 58-59, t.s.m.) In fact, there is no other partner known as "CHUA" in the partnership other that Chua Yu Hian and Chua Ki Lin, the latter being the petitioner herein. (See Exh. A, supra.)

Respondent's action is predicated on Sections 15 and 38 of the National Internal Revenue Code which we quote hereunder:

"Sec. 15. Power of Commissioner of Internal Revenue to to make assessments.- When a report by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or regulation, or when there is reason to believe that any such report is false, incomplete, or erroneous, the Commissioner of Internal Revenue shall assess the proper tax on the best evidence obtainable."

"Sec. 38. General Rule. - The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as t the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner of Internal Revenue does clearly reflect the income. x x x."

From the entries recorded in the seized receipts, respondent's examiner determined that herein petitioner has an unreported income of ₱132,380.12 in 1963 which does not appear in his individual income tax return. Petitioner failed to adduce any evidence which contradicted or challenged the correctness of the findings of respondent's examiners and, therefore, regularity in the performance of official function is presumed.

As to the imposition of the 50% surcharge as fraud penalty under Section 72 of the Revenue Code, the same is legal and justified because petitioner's gross under-declaration of ₱132,380.12 in his individual income tax return for 1963, in relation to the circumstances attending the failure to record various transactions in the books of accounts of the partnership obviously to evade payment of taxes by the partners, strongly indicate willful intent to commit fraud. (See Jose Avelino v. Collector of Internal Revenue, G.R. No. 17715, July 31, 1963; Tan Guan v. Comm. of Int. Rev., supra.)

The imposition of the deficiency and delinquency interests (1/2% and 1% a month) and the 5% surcharge for late payment is mandatory and self-executing. (See Sec. 51, National Internal Revenue Code, as amended by Rep. Act No. 2343; Commissioner of Internal Revenue v. Limpan Investment Corp., G.R. Nos. L-28578 & L-28644, July 31, 1970; 34 SCRA 148, 151-152.

As to the compromise penalty of ₱50.00, the same is not due and collectible from petitioner. The reason is found in our decision wherein it was held:

> "The collection of the compromise penalty of ₱1,000.00 is not justified because a compromise implies mutual agreement between the parties involved. One party cannot exact from or impose upon another a compromise. If the commissioner of Internal Revenue believes that petitioner has incurred a penal liability for violation of the Revenue Code, he is free to institute criminal proceedings. For respondent to impose a penalty without the conformity of petitioner is illegal and unauthorized." (Smith Bell & Co. (Phil.) Inc. vs. Comm. of Int. Rev., CTA Case No. 2001, Dec. 27, 1971.)

Accordingly, we hold petitioner liable for the payment of ₱124, 862.81, representing 1963 deficiency income tax, inclusive of 50% surcharge and 1/2% monthly interest, plus 5% surcharge and 1% monthly interest from July 1,

DECISION-
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1965 to June 30, 1968, computed as follows:

1963 deficiency income tax due........	₱57,055.00
Add: 50% surcharge	28,527.50
1/2% monthly interest from 4-16-64 to 6-30-65	4,130.78
T O T A L	₱89,713.28
Add: 5% surcharge on basic tax (₱57,055)	₱ 2,852.75
1% mo. int. on def. tax from 7-1-65 to 6-30-68	32,296.78
TOTAL AMOUNT DUE & COLLECTIBLE....	₱124,862.81

WHEREFORE, the decision of the respondent Commissioner of Internal Revenue appealed from is sustained except the compromise penalty of ₱50.00. Petitioner is hereby ordered to pay respondent or his authorized collection agent the total amount of ₱124,862.81 as 1963 deficiency income tax and penalties. With costs against petitioner.

SO ORDERED.

Quezon City, October 8, 1972.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge