Supreme Court E-Library

SECOND DIVISION

[G.R. No. 81446. August 18, 1988]

BONIFACIA SY PO, *petitioner, vs.* **HONORABLE COURT OF TAX APPEALS AND HONORABLE COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FINDINGS OF FACTS OF THE COURT OF TAX APPEALS; ENTITLED TO THE HIGHEST RESPECT.**— Settled is the rule that the factual findings of the Court of Tax Appeals are binding upon this Honorable Court and can only be disturbed on appeal if not supported by substantial evidence. The existence of fraud as found by the respondents can not be lightly set aside absent substantial evidence presented by the petitioner to counteract such finding. The findings of fact of the respondent Court of Tax Appeals are entitled to the highest respect. We do not find anything in the questioned decision that should disturb this long-established doctrine.

2. **TAXATION; TAX ASSESSMENTS; PRESUMED CORRECT AND MADE IN GOOD FAITH.**— Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

APPEARANCES OF COUNSEL

Basilio E. Duaban for petitioner.

Supreme Court E-Library

DECISION

SARMIENTO, *J.*:

This is an appeal from the decision[1] of the respondent Court of Tax Appeals, dated September 30, 1987, which affirmed an earlier decision of the correspondent Commissioner of Internal Revenue in assessment letters dated August 16, 1972 and September 26, 1972, which ordered the payment by the petitioner of deficiency income tax for 1966 to 1970 in the amount of ₱7,154,685.16 and deficiency specific tax for January 2, 1964 January 19, 1972, in the amount of ₱5,595,003.68.

We adopt the respondent court's finding of facts, to wit:

Petitioner is the widow of the late Mr. Po Bien Sing who died on September 7, 1980. In the taxable years 1964 to 1972, the deceased Po Bien Sing was the sole proprietor of Silver Cup Wine Factory (Silver Cup for brevity), Talisay, Cebu. He was engaged in the business of manufacture and sale of compounded liquors, using alcohol and other ingredients as raw materials.

On the basis of a denunciation against Silver Cup allegedly "for tax evasion amounting to millions of pesos" the then Secretary of Finance Cesar Virata directed the Finance-BIR-NBI team constituted under Finance Department Order No. 13-70 dated February 19, 1971 (Exh. 3, pp. 532-533, Folder II, BIR rec.) to conduct the corresponding investigation in a memorandum dated April 2, 1971 (p. 528, Folder II, BIR rec.). Accordingly, a letter and a subpoena duces tecum dated April 13, 1971 and May 3, 1971, respectively, were issued against Silver Cup requesting production of the accounting records and other related documents for the examination of the team. (Exh. 11, pp. 525-526, Folder II, BIR rec.). Mr. Po Bien Sing did not produce his books of accounts as requested (Affidavit dated December 24, 1971 of Mr. Generoso Quinain of the team, p. 525, Folder II, BIR rec.). This prompted the team with the assistance of the PC Company, Cebu City, to enter the factory bodega of Silver Cup and seized different brands, consisting of 1,555 cases of alcohol products. (Exh. 22,

---

[1] Penned by Associate Judge Alex Z. Reyes and concurred in by Presiding Judge Amante Filler; Associate Judge Constante C. Roaquin was on leave.

Supreme Court E-Library

Memorandum Report of the Team dated June 5, 1971, pp. 491-492, Folder II, BIR rec.). The inventory lists of the seized alcohol products are contained in Volumes I, II, III, IV and V (Exhibits 14, 15, 16, 17 and 18, respectively, BIR rec.). On the basis of the team's report of investigation, the respondent Commissioner of Internal Revenue assessed Mr. Po Bien Sing deficiency income tax for 1966 to 1970 in the amount of ₱7,154, 685.16 (Exh. 6 pp. 17-19, Folder I, BIR rec.) and for deficiency specific tax for January 2, 1964 to January 19, 1972 in the amount of ₱5,595,003.68 (Exh. 8, p. 107, Folder I, BIR rec.).

Petitioner protested the deficiency assessments through letters dated October 9 and October 30, 1972 (Exhs. 7 and 9, pp. 27-28; pp. 152-159, respectively, BIR rec.) which protests were referred for reinvestigation. The corresponding report dated August 13, 1981 (Exh. 10, pp. 355, Folder I, BIR rec.). recommended the reiterating of the assessments in view of the taxpayer's persistent failure to present the books of accounts for examination (Exh. 8, p. 107, Folder I, BIR, rec.), compelling respondent to issue warrants of distraint and levy on September 10, 1981 (Exh. 11, p. 361, Folder I, BIR rec.).

The warrants were admittedly received by petitioner on October 14, 1981 (Par. IX, Petition; admitted par. 2, Answer), which petitioner deemed respondent's decision denying her protest on the subject assessments. Hence, petitioner's appeal on October 29, 1981.[2]

The petitioner assigns the following errors:

I

RESPONDENT INTENTIONALLY ERRED IN HOLDING THAT PETITIONER HAS NOT PRESENTED ANY EVIDENCE OF RELEVANCE AND COMPETENCE REQUIRED TO BASH THE TROUBLING DISCREPANCIES AND SQUARE THE ISSUE ILLEGALITY POSITED ON THE SUBJECT ASSESSMENTS.

II

RESPONDENT COURT OF TAX APPEALS PALPABLY ERRED IN DECIDING THE CASE IN A WAY CONTRARY TO THE DOCTRINES ALREADY LAID DOWN BY THIS HONORABLE COURT.

---

[2] *Rollo*, Decision, 10-13.

Supreme Court E-Library

III

RESPONDENT COURT OF TAX APPEALS GRAVELY ERRED IN FINDING PO BIEN SING TO HAVE INCURRED THE ALLEGED DEFICIENCY TAXES IN QUESTION.[3]

We affirm.

Settled is the rule that the factual findings of the Court of Tax Appeals are binding upon this Honorable Court and can only be disturbed on appeal if not supported by substantial evidence.[4]

The assignments of errors boils down to a single issue previously raised before the respondent Court, *i.e.*, whether or no the assessments have valid and legal bases.

The applicable legal provision is Section 16(b) of the National Internal Revenue Code of 1977 as amended. It reads:

Sec. 16. Power of the Commissioner of Internal Revenue to make assessments. —

x x x x x x x x x

(b) Failure to submit required returns, statements, reports and other documents. — When a report required 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.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise, files a false or fraudulent return or other documents, the Commissioner shall make or amended the return from his own knowledge and from his own

---

[3] *Id.*, Petition, 3; *Rollo*, 4.

[4] *Aznar vs. CTA*, L-20569, August 23, 1974, 58 SCRA 519; *Manila Wine Merchants vs. Commissioner of Internal Revenue*, L-26145, February 20, 1984, 127 SCRA 483; *La Suerte Cigar and Cigarette Factory vs. Court of Tax Appeals*, L-36130 and *Alhambra Industries vs. Court of Tax Appeals*, L-36131, January 17, 1985, 134 SCRA 29.

Supreme Court E-Library

knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes.

The law is specific and clear. The rule on the "best evidence obtainable" applies when a tax report required by law for the purpose of assessment is not available or when the tax report is incomplete or fraudulent.

In the instant case, the persistent failure of the late Po Bien Sing and the herein petitioner to present their books of accounts for examination for the taxable years involved left the Commissioner of Internal Revenue no other legal option except to report to the power conferred upon him under Section 16 of the Tax Code.

The tax figures arrived at by the Commissioner of Internal Revenue are by no means arbitrary. We reproduce the respondent court's findings, to wit:

As thus shown, on the basis of the quantity of bottles of wines seized during the raid and the sworn statements of former employees Messrs. Nelson S. Po and Alfonso Po taken on May 26, and 27, 1971, respectively, by the investigating team in Cebu City (Exhs. 4 and 5, pp. 514-517, pp. 511-513, Folder II, BIR rec.), it was ascertained that the Silver Cup for the years 1964 to 1970, inclusive, utilized and consumed in the manufacture of compounded liquours and other products 20,105 drums of alcohol as raw materials 81,288,787 proof liters of alcohol. As determined, the total specific tax liability of the taxpayer for 1964 to 1971 amounted to ₱5,593,003.68 ((Exh. E, petition, p. 10, CTA rec.)

Likewise, the team found due from Silver Cup deficiency income taxes for the years 1966 to 1970 inclusive in the aggregate sum of ₱7,154,685.16, as follows:

1966	—	₱ 207,636.24
1967	—	645,335.04
1968	—	1,683,588.48
1969	—	1,589,622.48
1970	—	3,028,502.92
Total amount due and collectible		₱ 7,154,685.16

Supreme Court E-Library

The 50% surcharge has been imposed, pursuant to Section 72* of the Tax Code and tax ½% monthly interest has likewise been imposed pursuant to the provisions of Section 51(d)** of the Tax Code (Exh. O, petition).[5]

---

* Old rule, Section 72 of the National Internal Revenue Code otherwise known as Commonwealth Act No. 466:

> *Surcharges for failure to render returns and for rendering false and fraudulent returns.* — The Commissioner of Internal Revenue shall assess all income taxes. In case of willful neglect to file the return of list within the time prescribed by law, or in case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, a surcharge of fifty *per centum* of the amount of such tax or deficiency tax. x x x
>
> Now Section 248(b) of the National Internal Revenue Code of 1977 as amended:
>
> In case of willful neglect to file the return within the period prescribed by this Code or regulations, or in case a false or fraudulent return is wilfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud.

** Old Rule, Section 51(d) of the National Internal Revenue Code otherwise known as Commonwealth Act No. 466:

> Interest on deficiency. — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six *per centum per annum* from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date of the deficiency is assessed: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.
>
> Now Section 249(a) of the National Revenue Code of 1977 as amended:
>
> In general — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per *annum*, or such higher rate as may be prescribed for payment until the amount is fully paid.

[5] *Rollo*, 14-15.

Supreme Court E-Library

The petitioner assails these assessments as wrong.

In the case of *Collector of Internal Revenue vs. Reyes*,[6] we ruled:

> Where the taxpayer is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability by a full and fair disclosure of all pertinent data in his possession. Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession.

Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise.[7] In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed.[8] All presumptions are in favor of the correctness of tax assessments.[9]

On the whole, we find that the fraudulent acts detailed in the decision under review had not been satisfactorily rebutted by the petitioner. There are indeed clear indications on the part of the taxpayer to deprive the Government of the taxes due. The Assistant Factory Superintendent of Silver Cup, Nelson Po gave the following testimony:

> Annexes "A", "A-1" to "A-17" show that from January to December 1970, Silver Cup has used in production 189 drums of untaxed distilled alcohol and 3,722 drums of untaxed distilled alcohol.

---

[6] 104 Phil. 1061 (1958) Unrep., Nos. L-11534 and L-11558, November 25, 1958.

[7] *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.*, 68230, November 25, 1986, 145 SCRA 671.

[8] *Gutierrez vs. Villegas*, L-17117, July 31, 1963, 8 SCRA 527.

[9] *Collector of Internal Revenue vs. Bohol Land Transportation Co.*, L-13099 and L-13462, April 29, 1960, 58 O.G. 2407.

Supreme Court E-Library

Can you tell us how could this be possible with the presence of a revenue inspector in the premises of Silver Cup during working hours?

> Actually, the revenue inspector or storekeeper comes around once a week on the average. Sometimes, when the storekeeper is around in the morning and Po Bien Sing wants to operate with untaxed alcohol as raw materials, Po Bien Sing tells the storekeeper to go home because the factory is not going to operate for the day. After the storekeeper leaves, the illegal operation then begins. Untaxed alcohol is brought in from Cebu Alcohol Plant into the compound of Silver Cup sometimes at about 6:00 A.M. or at 12:00 noon or in the evening or even at mid-night when the storekeeper is not around. When the storekeeper comes, he sees nothing because untaxed alcohol is brought directly to, and stored at, a secret tunnel within the bodega itself inside the compound of Silver Cup.

In the same vein, the factory personnel manager testified that false entries were entered in the official register book: thus,

> A — As factory personnel manager and all-around handy man of Po Bien Sing, owner of Silver Cup, these labels were entrusted to me *to make the false entries in the official register book of Silver Cup, which I did under the direction of Po Bien Sing*. (Sworn statement, p. 512, Folder II, BIR rec.) [10] (Italics ours)

The existence of fraud as found by the respondents can not be lightly set aside absent substantial evidence presented by the petitioner to counteract such finding. The findings of fact of the respondent Court of Tax Appeals are entitled to the highest respect.[11] We do not find anything in the questioned decision that should disturb this long-established doctrine.

WHEREFORE, the Petition is DENIED. The Decision of the respondent Court of Tax Appeals is hereby AFFIRMED. Costs against the petitioner.

---

[10] *Rollo*, Decision, 15-16.

[11] *Raymundo vs. Joya*, L-27733, December 3, 1980, 101 SCRA 495; *Sanchez vs. Commissioner*, 102 Phil. 37 (1957); *Commissioner vs. Priscilla Estate*, 120 Phil. 125 (1964); *Commissioner of Internal Revenue vs. Ayala Securities Corporation*, L-29485, March 31, 1976, 70 SCRA 204.

Supreme Court E-Library

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, and *Padilla, JJ.*, concur.

SECOND DIVISION

[G.R. No. 81785. August 18, 1988]

PHILIPPINE GEOTHERMAL, INC., *petitioner, vs.* **UNDERSECRETARY OF LABOR CARMELO NORIEL AND FEDERATION OF FREE WORKERS, PGI CHAPTER,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; VOLUNTARY ARBITRATORS; FINDING OF FACTS THEREOF ENTITLED TO GREAT RESPECT.— The issue boils down to the determination of whether or not the ₱200.00 salary increase, granted during the pendency of the negotiations for a new CBA between the Company and the Union, already forms part of the ₱800.00 wage increase mandated by the new CBA. The question is basically factual for it involves a review of the evidence presented by the parties, including the existence and relevance of specific surrounding circumstances, to determine the truth or falsity of alleged facts. There is, for instance, the oft-repeated allegation in the Company's petition, that there was a *clear, admitted, and undisputed* agreement reached between the parties during the meeting held on November 7, 1986 that the ₱200.00 salary increase was to be credited to any future increase under the new CBA; but the veracity of this allegation appears to be very doubtful. It is a settled rule that the decisions of voluntary arbitrators, based on their findings of fact and application of the law, are entitled to the highest respect. Corollarily, where only questions of fact are raised in a petition assailing the decision of a voluntary arbitrator such petition must be dismissed.