Supreme Court E-Library

petition is *AFFIRMED* and *REINSTATED*. This ruling is without prejudice to such action the Bureau of Immigration and Deportation may undertake for the commencement of the proper proceedings against respondent Jung Keun Park for his re-entry into the Philippines on October 28, 2000, subsequent to his deportation.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 164152. January 21, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **JULIETA ARIETE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE ORDERS; REVENUE MEMORANDUM ORDER (RMO) NO. 59-97, AS AMENDED BY RMO NOS. 60-97 AND 63-97, CONSTRUED; RECORDING OF THE VERIFIED INFORMATION IN THE OFFICIAL REGISTRY BOOK OF THE BIR IS A MANDATORY REQUIREMENT BEFORE A TAXPAYER MAY BE EXCLUDED FROM THE VOLUNTARY ASSESSMENT PROGRAM COVERAGE.— It is evident from these RMOs that the CIR was consistent in using the word "and" and has even underscored the word in RMO No. 63-97. This denotes that in addition to the filing of the verified information, the same should also be duly recorded in the Official Registry Book of the BIR. The conjunctive word "and" is not without legal significance. It means "in addition to." The word "and," whether it is used to connect words, phrases or full sentences, must be accepted as binding together and as relating to one another.

Supreme Court E-Library

"And" in statutory construction implies conjunction or union. It is sufficiently clear that for a person to be excluded from the coverage of the VAP, the verified information must not only be filed under Section 281 of the Tax Code, it must also be duly recorded in the Official Registry Book of the BIR before the date of availment under the VAP. This interpretation of Item 3.4 of RMO Nos. 59-97, 60-97, and 63-97 is further bolstered by the fact that on 12 October 2005, the BIR issued Revenue Regulations (RR) No. 18-2005 and reiterated the same provision in the implementation of the Enhanced Voluntary Assessment Program (EVAP). RR No. 18-2005 x x x When a tax provision speaks unequivocally, it is not the province of a Court to scan its wisdom or its policy. The more correct course of dealing with a question of construction is to take the words to mean exactly what they say. Where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation.

2. ID.; ID.; ID.; ID.; ID.; EFFECT OF FAILURE TO COMPLY WITH THE RECORDING REQUIREMENT.— Petitioner's failure to effect compliance with the requirement of recording the verified information or investigation in the Official Registry Book of the BIR means that respondent, even if under investigation, can avail of the benefits of the VAP. Consequently, respondent is relieved from any criminal or civil liability incident to the non-filing of a return.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
S.B. Britanico Lisaca & Associates Law Office for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

The Commissioner of Internal Revenue (petitioner) filed this Petition for Review[1] to reverse the Court of Appeals' (CA)

[1] Under Rule 45 of the Rules of Court.

Supreme Court E-Library

Decision[2] dated 14 June 2004 in CA-G.R. SP No. 70693. In the assailed decision, the CA affirmed the Court of Tax Appeals' (CTA) Decision[3] and Resolution dated 15 January 2002 and 3 May 2002, respectively. The CTA cancelled the assessments issued against Julieta Ariete (respondent) for deficiency income taxes of ₱191,463.04 for the years 1993, 1994, 1995, and 1996.

The Facts

On 21 May 1997, George P. Mercado filed an Affidavit with the Special Investigation Division, Revenue Region No. 19, Davao City. The affidavit attested that respondent earned substantial income in 1994, 1995, and 1996 without paying income tax.[4]

The Chief of the Special Investigation Division (SID Chief) issued Mission Order No. 118-97 dated 23 May 1997, directing a Revenue Officer to conduct preliminary verification of the denunciation made and submit a progress report. The SID Chief also sent a request to access the BIR records of Revenue District No. 112, Tagum, Davao del Norte (RDO), inquiring if the income tax returns of respondent for the years 1993 to 1996 are available for examination. The RDO replied that respondent had no records of income tax returns for the years 1993 to 1996.[5]

On 15 October 1997, the Revenue Officer submitted a report stating that respondent admitted her non-filing of income tax returns.[6]

On 2 December 1997, respondent filed her income tax returns for the years 1993, 1994, 1995, and 1996 under Revenue Memorandum Order (RMO) No. 59-97 as amended by RMO No. 60-97 and RMO No. 63-97, otherwise known as the Voluntary Assessment Program (VAP).[7]

---

[2] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Arturo G. Tayag, and Edgardo A. Camello, concurring.

[3] Penned by Presiding Justice Ernesto D. Acosta with Associate Justices Amancio Q. Saga and Juanito C. Castañeda, Jr., concurring.

[4] *Rollo*, pp. 42-43.

[5] *Id.* at 12.

[6] *Id.*

[7] *Id.* at 12-13.

Supreme Court E-Library

On 28 July 1998, the Regional Director issued a Letter of Authority to investigate respondent for tax purposes covering the years 1993 to 1996.

On 14 October 1998, the Revenue Officer submitted a Memorandum to the SID Chief recommending that respondent be assessed with deficiency income taxes for the years 1993 to 1996. On 22 January 1999, four assessment notices were issued against respondent. The total deficiency income taxes, inclusive of interests and surcharges amounted to ₱191,463.04:

1993	₱	6,462.18[8]
1994		47,187.39[9]
1995		24,729.64[10]
1996		113,083.83[11]
	₱	191,463.04

On 22 February 1999, respondent filed an Assessment Protest with Prayer for Reinvestigation. On 30 March 1999, the assessment protest was denied.

On 16 April 1999, respondent offered a compromise settlement but the same was denied.

Respondent filed a petition for review with the CTA assailing the Bureau of Internal Revenue's (BIR) decision denying with finality the request for reinvestigation and disapproving her availment of the VAP. Respondent also contested the issuance of the four assessment notices.

On 15 January 2002, the CTA rendered a decision cancelling the deficiency assessments. Petitioner filed a motion for reconsideration but the CTA denied the same in a Resolution dated 3 May 2002.

---

[8] *Id.* at 56.

[9] *Id.* at 57.

[10] *Id.* at 58.

[11] *Id.* at 59.

Supreme Court E-Library

Petitioner appealed the CTA's decision to the CA. In a decision dated 14 June 2004, the CA affirmed the CTA's decision.

Aggrieved by the CA's decision affirming the cancellation of the tax deficiency assessments, petitioner elevated the case before this Court.

Ruling of the Court of Tax Appeals

The CTA stated that when respondent filed her income tax returns on 2 December 1997, she was not yet under investigation by the Special Investigation Division. The Letter of Authority to investigate respondent for tax purposes was issued only on 28 July 1998. Further, respondent's case was not duly recorded in the Official Registry Book of the BIR before she availed of the VAP.

The CTA, quoting RMO Nos. 59-97, 60-97, and 63-97, ruled that the requirements before a person may be excluded from the coverage of the VAP are:

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.[12]

The CTA ruled that the conjunctive word "and" is used; therefore, all of the above requisites must be present before a person may be excluded from the coverage of the VAP. The CTA explained that the word "and" is a conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first.[13]

The CTA also stated that the rationale behind the VAP is to give taxpayers a final opportunity to come up with a clean

[12] *Id.* at 93.

[13] *Id*.

Supreme Court E-Library

slate before they will be dealt with strictly for not paying their correct taxes. The CTA noted that under the RMOs, among the benefits that can be availed by the taxpayer-applicant are:

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 misdeclaration 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.[14]

The CTA ruled that even if respondent violated the National Internal Revenue Code (Tax Code), she was given the chance to rectify her fault and be absolved of criminal and civil liabilities incident to her non-filing of income tax by virtue of the VAP. The CTA held that respondent is not disqualified to avail of the VAP. Hence, respondent has no more liabilities after paying the corresponding taxes due.[15]

The CTA found the four assessments issued against respondent to be erroneous and ordered that the same be cancelled.[16]

Ruling of the Court of Appeals

The CA explained that the persons who may avail of the VAP are those who are "liable to pay any of the above-cited internal revenue taxes for the above specified period who due to inadvertence or otherwise, has underdeclared his internal revenue tax liabilities or has not filed the required tax returns." The CA rationalized that the BIR used a broad language to define the persons qualified to avail of the VAP because the BIR intended to reach as many taxpayers as possible subject only to the exclusion of those cases specially enumerated.

---

[14] *Id.* at 93-94.

[15] *Id.* at 95.

[16] *Id*.

Supreme Court E-Library

The CA ruled that in applying the rules of statutory construction, the exceptions enumerated in paragraph 3[17] of RMO No. 59-97, as well as those added in RMO No. 63-97, should be strictly construed and all doubts should be resolved in favor of the general provision stated under paragraph 2[18] rather than the said exceptions.

The CA affirmed the CTA's findings of facts and ruled that neither the verified information nor the investigation was recorded in the Official Registry Book of the BIR. The CA disagreed with petitioner's contention that the recording in the Official Registry Book of the BIR is merely a procedural requirement which can be dispensed with for the purpose of determining who are excluded from the coverage of RMO No. 59-97.

The CA explained that it is clear from the wordings of RMO No. 59-97 that the recording in the Official Registry Book of the BIR is a mandatory requirement before a taxpayer-applicant under the VAP may be excluded from its coverage as this requirement was preceded by the word "and." The use of the conjunction "and" in subparagraph 3.4 of RMO No. 59-97 must

---

[17] 3. Persons/Cases not covered

The following shall be excluded from the coverage of the VAP under this Order:

3.1. Dealers of petroleum products and purchasers of goods and services from petroleum companies who have availed of the VAP under RMO No. 39-96, as amended by RMO No. 10-97;

3.2. Withholding Agents with respect to their withholding tax liabilities;

3.3. Persons to whom a validly issued Letter of Authority has been served;

3.4. Persons under investigation 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 availment under VAP; and

3.5. Tax cases filed in Court.

[18] 2. Who May Avail

Any person liable to pay any of the above-cited internal revenue taxes for the above specified period; 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 benefits under VAP.

Supreme Court E-Library

be understood in its usual and common meaning for the purpose of determining who are disqualified from availing of the benefits under the VAP. This interpretation is more in faithful compliance with the mandate of the RMOs.

Aggrieved by the CA decision, petitioner elevated the case to this Court.

Issue

Petitioner submits this sole issue for our consideration: whether the CA erred in holding that the recording in the Official Registry Book of the BIR of the information filed by the informer under Section 281[19] of the Tax Code is a mandatory requirement before a taxpayer-applicant may be excluded from the coverage of the VAP.

Ruling of the Court

Petitioner contends that the VAP, being in the nature of a tax amnesty, must be strictly construed against the taxpayer-applicant such that petitioner's failure to record the information in the Official Registry Book of the BIR does not affect respondent's disqualification from availment of the benefits under the VAP. Petitioner argues that taxpayers who are under investigation for non-filing of income tax returns before their availment of the VAP are not covered by the program and are not entitled to its benefits. Petitioner alleges that the underlying reason for the disqualification is that availment of the VAP by such taxpayer is no longer voluntary. Petitioner asserts that voluntariness is the very essence of the Voluntary Assessment Program.[20]

Respondent claims that where the terms of a statute are clear and unambiguous, no interpretation is called for, and the law is applied as written, for application is the first duty of the court, and interpretation, only where literal application is impossible or inadequate.

---

[19] Now Section 282 of the NIRC, as amended.

[20] *Id.* at 156-163.

Supreme Court E-Library

Verba Legis

It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation.[21] The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[22] A careful reading of the RMOs pertaining to the VAP shows that the recording of the information in the Official Registry Book of the BIR is a mandatory requirement before a taxpayer may be excluded from the coverage of the VAP.

On 27 October 1997, the CIR, in implementing the VAP, issued RMO No. 59-97 to give erring taxpayers a final opportunity to come up with a clean slate. Any person liable to pay income tax on business and compensation income, value-added tax and other percentage taxes under Titles II, IV and V, respectively, of the Tax Code for the taxable years 1993 to 1996, who due to inadvertence or otherwise, has not filed the required tax return may avail of the benefits under the VAP.[23] RMO No. 59-97 also enumerates the persons or cases that are excluded from the coverage of the VAP.

> 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 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 availment under the VAP; x x x (Boldfacing supplied)

---

[21] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 159610, 12 June 2008, 554 SCRA 398, 409.

[22] *CIR v. Court of Appeals*, 338 Phil. 322, 330 (1997).

[23] Items 1 & 2, RMO No. 59-97.

Supreme Court E-Library

On 30 October 1997, the CIR issued RMO No. 60-97 which supplements RMO No. 59-97 and amended Item No. 3.4 to read as:

> 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 Special 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 availment under VAP; (Boldfacing supplied)

On 27 November 1997, the CIR issued RMO No. 63-97 and clarified issues related to the implementation of the VAP. RMO No. 63-97 provides:

> 3. Persons/cases not covered:
>
> x x x x x x x x x
>
> 3.4 Persons under investigation by the Tax Fraud Division and/or the Regional Special 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 availment under the VAP; (Underscoring in the original, boldfacing supplied)

It is evident from these RMOs that the CIR was consistent in using the word "and" and has even underscored the word in RMO No. 63-97. This denotes that in addition to the filing of the verified information, the same should also be duly recorded in the Official Registry Book of the BIR. The conjunctive word "and" is not without legal significance. It means "in addition to." The word "and," whether it is used to connect words, phrases or full sentences, must be accepted as binding together

Supreme Court E-Library

and as relating to one another.[24] "And" in statutory construction implies conjunction or union.[25]

It is sufficiently clear that for a person to be excluded from the coverage of the VAP, the verified information must not only be filed under Section 281[26] of the Tax Code, it must also be duly recorded in the Official Registry Book of the BIR before the date of availment under the VAP. This interpretation of Item 3.4 of RMO Nos. 59-97, 60-97, and 63-97 is further bolstered by the fact that on 12 October 2005, the BIR issued Revenue Regulations (RR) No. 18-2005 and reiterated the same provision in the implementation of the Enhanced Voluntary Assessment Program (EVAP). RR No. 18-2005 reads:

> SECTION 1. COVERAGE. – x x x
>
> Any person, natural or juridical, including estates and trusts, liable to pay any of the above-cited internal revenue taxes for the above specified period/s who, due to inadvertence or otherwise, erroneously paid his/its internal revenue tax liabilities or failed to file tax returns/ pay taxes, may avail of the EVAP, except those falling under any of the following instances:
>
> x x x x x x x x x
>
> b. Persons under investigation as a result of verified information filed by a Tax Informer under Section 282 of the NIRC, duly processed **and recorded in the BIR Official Registry Book** on or before the effectivity of these regulations. (Boldfacing supplied)

When a tax provision speaks unequivocally, it is not the province of a Court to scan its wisdom or its policy.[27] The more correct course of dealing with a question of construction

---

[24] LAUREL, JOSE JESUS, *STATUTORY CONSTRUCTION CASES & MATERIALS*, 1999 Revised Edition, p. 139.

[25] *LICOMCEN, Incorporated v. Foundation Specialists, Inc.*, G.R. No. 167022, 31 August 2007, 531 SCRA 705, 722.

[26] Now Section 282 of the NIRC, as amended.

[27] *Commissioner of Customs v. Manila Star Ferry, Inc.*, G.R. Nos. 31776-78, 21 October 1993, 227 SCRA 317, 322.

Supreme Court E-Library

is to take the words to mean exactly what they say. Where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation.[28]

Findings of Fact

Generally, the findings of fact of the CTA, a court exercising expertise on the subject of tax, are regarded as final, binding, and conclusive upon this Court, especially if these are similar to the findings of the Court of Appeals which is normally the final arbiter of questions of fact.[29]

In this case, the CA affirmed the CTA's findings of fact which states:

> We will start with the question as to whether or not the respondent was already under investigation for violation of the Tax Code provisions at the time she applied under VAP on December 2, 1997. The records show that she was indeed under investigation. Albeit, the Letter of Authority was issued only on 28 July 1998, there is no question that on 23 May 1997, a Mission Order No. 118-97 had already been issued by the Chief of Special Investigation Division of the BIR, Revenue Region No. 19 to Intelligence Officer Eustaquio M. Valdez authorizing the conduct of monitoring and surveillance activities on the respondent. This investigation was preceded by the filing of a verified information by a certain George Mercado alleging respondent's failure to pay her income taxes for the years 1994 to 1996.
>
> x x x x x x x x x
>
> We now proceed to the question as to whether or not the requirement of recording in the Official Registry Book of the BIR is present in the respondent's case. **At this juncture, we affirm CTA's finding that neither the verified information nor the investigation was recorded in the Official Registry Book of the BIR**. Petitioner

---

[28] *Canet v. Decena*, 465 Phil. 325, 333 (2004).

[29] *Philippine Long Distance Telephone Company v. Commissioner of Internal Revenue*, G.R. No. 157264, 31 January 2008, 543 SCRA 329, 338 citing *Far East Bank and Trust Company v. Court of Appeals*, G.R. No. 129130, 9 December 2005, 477 SCRA 49, 54.

Supreme Court E-Library

claims that this was merely a procedural omission which does not affect respondent's exclusion from the coverage of the VAP.[30] (Boldfacing supplied)

Petitioner's failure to effect compliance with the requirement of recording the verified information or investigation in the Official Registry Book of the BIR means that respondent, even if under investigation, can avail of the benefits of the VAP. Consequently, respondent is relieved from any criminal or civil liability incident to the non-filing of a return.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Court of Appeals' Decision dated 14 June 2004 in CA-G.R. SP No. 70693.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 167464. January 21, 2010]

RONNIE SUMBILLO, FRANCISCO SERICON, JOSELITO SERICON, and FELIX GAYUSO, JR., *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— The Court of Appeals was correct in affirming the trial court's ruling that attempted murder was clearly established by the prosecution witnesses. The assessment

---

[30] *Rollo,* p. 38.