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SECOND DIVISION

[G.R. No. 177982. October 17, 2008]

FITNESS BY DESIGN, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED.— Grave abuse of discretion implies such capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction or, in other words, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal of duty enjoined or to act at all in contemplation of law.

2. TAXATION; BUREAU OF INTERNAL REVENUE; ALLOWED ACCESS TO ALL RELEVANT RECORDS AND DATA IN THE PERSON OF THE TAXPAYER AND CAN ACCEPT DOCUMENTS WHICH CANNOT BE ADMITTED IN A JUDICIAL PROCEEDING WHERE THE RULES OF COURT ARE STRICTLY OBSERVED. — The law x x x allows the BIR access to all relevant or material records and data in the person of the taxpayer, and the BIR can accept documents which cannot be admitted in a judicial proceeding where the Rules of Court are strictly observed. To require the consent of the taxpayer would defeat the intent of the law to help the BIR assess and collect the correct amount of taxes.

APPEARANCES OF COUNSEL

Balmeo & Go Law Offices for petitioner.
Wilmer Dekit for respondent.

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D E C I S I O N

CARPIO MORALES, *J.*:

On March 17, 2004, the Commissioner of Internal Revenue (respondent) assessed Fitness by Design, Inc. (petitioner) for deficiency income taxes for the tax year 1995 in the total amount of ₱10,647,529.69.[1] Petitioner protested the assessment on the ground that it was issued beyond the three-year prescriptive period under Section 203 of the Tax Code.[2] Additionally, petitioner claimed that since it was incorporated only on May 30, 1995, there was no basis to assume that it had already earned income for the tax year 1995.[3]

On February 1, 2005, respondent issued a warrant of distraint and/or levy against petitioner,[4] drawing petitioner to file on March 1, 2005 a Petition for Review (with Motion to Suspend Collection of Income Tax, Value Added Tax, Documentary Stamp Tax and Surcharges and Interests subject of this Petition)[5] before the Court of Tax Appeals (CTA) before which it reiterated its defense of prescription. The petition was docketed as CTA Case No. 7160.

In his Answer,[6] respondent alleged:

> The right of the respondent to assess petitioner for deficiency income tax, VAT and Documentary Stamp Tax for the year 1995 has not prescribed pursuant to Section 222(a) of the 1997 Tax Code. Petitioner's 1995 Income Tax Return (ITR) filed on April 11, 1996 was false and fraudulent for its deliberate failure to declare its true sales. Petitioner declared in its 1995 Income Tax Return that it was on its pre-operation stage and has not declared its income. Investigation by the revenue officers of the respondent, however, disclosed that it has been operating/doing business and had sales operations for the year 1995 in the total amount of ₱7,156,336.08

[1] CTA records, pp. 96-101.

[2] *Id.* at 30.

[3] *Ibid.*

[4] *Id.* at 29.

[5] *Id.* at 1-11.

[6] *Id.* at 44-46.

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which it failed to report in its 1995 ITR. Thus, for the year 1995, petitioner filed a fraudulent annual income return with **intent to evade tax**. Likewise, petitioner failed to file Value-Added Tax (VAT) Return and reported the amount of ₱7,156,336.08 as its gross sales for the year 1995. Hence, for **failure to file a VAT return and for filing a fraudulent income tax return for the year 1995, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such omission or fraud** pursuant to Section 222(a) of the 1997 Tax Code.

The subject deficiency tax assessments have already become final, executory and demandable for failure of the petitioner to file a protest within the reglementary period provided for by law. The "alleged protest" allegedly filed on June 25, 2004 at the Legal Division, Revenue Region No. 8, Makati City is nowhere to be found in the BIR Records nor reflected in the Record Book of the Legal Division as normally done by our receiving clerk when she receive[s] any document. The respondent, therefore, has legal basis to collect the tax liability either by distraint and levy or civil action.[7] (Emphasis and underscoring supplied)

The aforecited Section 222(a)[8] of the 1997 Tax Code provides:

In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Underscoring supplied)

The Bureau of Internal Revenue (BIR) in fact filed on March 10, 2005 a criminal complaint before the Department of Justice against the officers and accountant of petitioner for violation of the provisions of "The National Internal Revenue Code of 1977, as amended,[9] covering the taxable year 1995." The criminal complaint was docketed as I.S. No. 2005-203.

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[7] *Id.* at 44-45.

[8] Formerly Section 223 of the 1977 Tax Code.

[9] *Rollo*, pp. 40-64.

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On motion of petitioner in CTA Case No. 7160, a preliminary hearing on the issue of prescription[10] was conducted during which petitioner's former bookkeeper attested that a former colleague – certified public accountant Leonardo Sablan (Sablan) – illegally took custody of petitioner's accounting records, invoices, and official receipts and turned them over to the BIR.[11]

On petitioner's request, a subpoena *ad testificandum* was issued to Sablan for the hearing before the CTA scheduled on September 4, 2006 but he failed to appear.[12]

Petitioner thus requested for the issuance of another subpoena *ad testificandum* to Sablan for the hearing scheduled on October 23, 2006,[13] and of subpoena *duces tecum* to the chief of the National Investigation Division of the BIR for the production of the Affidavit of the Informer bearing on the assessment in question.[14] Petitioner's requests were granted.[15]

During the scheduled hearing of the case on October 23, 2006, on respondent's counsel's manifestation that he was not furnished a copy of petitioner's motion for the issuance of subpoenaes, the CTA ordered petitioner to file a motion for the issuance of subpoenas and to furnish respondent's counsel a copy thereof.[16] Petitioner complied with the CTA order.[17]

In a related move, petitioner submitted written interrogatories addressed to Sablan and to Henry Sarmiento and Marinella German, revenue officers of the National Investigation Division of the BIR.[18]

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[10] CTA records, pp. 83-85.

[11] *Id.* at 133-134; TSN, August 9, 2005, pp. 4-7.

[12] *Id.* at 139-140.

[13] *Id.* at 141-142.

[14] *Id.* at 144-145.

[15] *Id.* at 147-151.

[16] *Id.* at 152-158.

[17] *Id.* at 152.

[18] *Id.* at 159-163.

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By **Resolution**[19] **of January 15, 2007**, the CTA denied petitioner's Motion for Issuance of Subpoenas and disallowed the submission by petitioner of written interrogatories to Sablan, who is not a party to the case, and the revenue officers,[20] it finding that the testimony, documents, and admissions sought are not relevant.[21] Besides, the CTA found that to require Sablan to testify would violate Section 2 of Republic Act No. 2338, as implemented by Section 12 of Finance Department Order No. 46-66, proscribing the revelation of identities of informers of violations of internal revenue laws, except when the information is proven to be malicious or false.[22]

In any event, the CTA held that there was no need to issue a subpoena *duces tecum* to obtain the Affidavit of the Informer as the same formed part of the BIR records of the case, the production of which had been ordered by it.[23]

Petitioner's Motion for Reconsideration[24] of the CTA Resolution of January 15, 2007 was denied,[25] hence, the present Petition for *Certiorari*[26] which imputes grave abuse of discretion to the CTA

I.

x x x in holding that the legality of the mode of acquiring the documents which are the bases of the above discussed deficiency tax assessments, the subject matter of the Petition for Review now pending in the Honorable Second Division, is not material and relevant to the issue of prescription.

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[19] Penned by CTA Associate Justice Juanito C. Castañeda, Jr. with the concurrence of Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez. *Id.* at 177-183.

[20] *Id.* at 182.

[21] *Id.* at 180.

[22] *Id.* at 181.

[23] *Id.* at 180-181.

[24] *Id.* at 185-194.

[25] *Id.* at 219-223.

[26] *Rollo*, pp. 3-27.

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II.

x x x in holding that Mr. Leonardo Sablan's testimony, if allowed, would violate RA 2338 which prohibits the BIR to reveal the identity of the informer since 1) the purpose of the subpoena is to elicit from him the whereabouts of the original accounting records, documents and receipts owned by the Petitioner and not to discover if he is the informer since the identity of the informer is not relevant to the issues raised; 2) RA 2338 cannot legally justify violation of the Petitioner's property rights by a person, whether he is an informer or not, since such RA cannot allow such invasion of property rights otherwise RA 2338 would run counter to the constitutional mandate that "no person shall be deprive[d] of life, liberty or property without due process of law."

III.

x x x in holding that the issuance of subpoena *ad testificandum* would constitute a violation of the prohibition to reveal the identity of the informer because compliance with such prohibition has been rendered moot and academic by the voluntary admissions of the Respondent himself.

IV.

x x x in holding that the constitutional right of an accused to examine the witness against him does not exist in this case. The Petitioner's liability for tax deficiency assessment which is the main issue in the Petition for Review is currently pending at the Honorable Second Division. Therefore, it is a prejudicial question raised in the criminal case filed by the herein Respondent against the officers of the Petitioner with the Department of Justice.

V.

x x x in dismissing the request for subpoena *ad testificandum* because the Opposition thereto submitted by the Respondent was not promptly filed as provided by the Rules of Court thus, it is respectfully submitted that, Respondent has waived his right to object thereto.

VI.

x x x when the Honorable Court of Tax Appeals ruled that the purpose of the Petitioner in requesting for written interrogatories is to annoy, embarrass, or oppress the witness because such ruling has no factual

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basis since Respondent never alleged nor proved that the witnesses to whom the interrogatories are addressed will be annoyed, embarrassed or oppressed; besides the only obvious purpose of the Petitioner is to know the whereabouts of accounting records and documents which are in the possession of the witnesses to whom the interrogatories are directed and to ultimately get possession thereof. Granting without admitting that there is annoyance, embarrassment or oppression; the same is not unreasonable.

VII.

x x x when it failed to rule that the BIR officers and employees are not covered by the prohibition under RA 2338 and do not have the authority to withhold from the taxpayer documents owned by such taxpayer.

VIII.

x x x when it required the "clear and unequivocal proof" of relevance of the documents as a condition precedent for the issuance of subpoena *duces tecum.*

IX.

x x x when it quashed the subpoena *duces tecum* as the Honorable Court had issued an outstanding order to the Respondent to certify and forward to the CTA all the records of the case because up to the date of this Petition the BIR records have not been submitted yet to the CTA.[27]

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction or, in other words, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal of duty enjoined or to act at all in contemplation of law.[28]

The Court finds that the issuance by the CTA of the questioned resolutions was not tainted by arbitrariness.

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[27] *Id.* at 8-10.

[28] Vide *246 Corporation v. Judge Daway,* 461 Phil. 830, 842 (2003).

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The fact that Sablan was not a party to the case aside, the testimonies, documents, and admissions sought by petitioner are not indeed relevant to the issue before the CTA. For in requesting the issuance of the subpoenas and the submission of written interrogatories, petitioner sought to establish that its accounting records and related documents, invoices, and receipts which were the bases of the assessment against it were illegally obtained. The only issues, however, which surfaced during the preliminary hearing before the CTA, were whether respondent's issuance of assessment against petitioner had prescribed and whether petitioner's tax return was false or fraudulent.

Besides, as the CTA held, the subpoenas and answers to the written interrogatories would violate Section 2 of Republic Act No. 2338 as implemented by Section 12 of Finance Department Order No. 46-66.

Petitioner claims, however, that it only intended to elicit information on the whereabouts of the documents it needs in order to refute the assessment, and not to disclose the identity of the informer.[29] Petitioner's position does not persuade. The interrogatories addressed to Sablan and the revenue officers show that they were intended to confirm petitioner's belief that Sablan was the informer. Thus the questions for Sablan read:

1. Under what circumstances do you know petitioner corporation? Please state in what capacity, the date or period you obtained said knowledge.
2. Do you know a Ms. Elnora Carpio, who from 1995 to the early part of 1996 was the book keeper of petitioner? Please state how you came to know of Ms. Carpio.
3. At the time that Ms. Carpio was book keeper of petitioner did she consult you or show any accounting documents and records of petitioner?
4. What documents, if any, did you obtain from petitioner?
5. Were these documents that you obtained from petitioner submitted to the Bureau of Internal Revenue (BIR)? Please describe said documents and under what circumstances the same were submitted.

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[29] *Rollo*, pp. 12-15.

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6. Was the consent of the petitioner, its officers or employees obtained when the documents that you obtained were submitted to the BIR? Please state when and from whom the consent was obtained.

7. Did you execute an affidavit as an informer in the assessment which was issued by the BIR against petitioner for the tax year 1995 and other years?[30] (Underscoring supplied)

while the questions for the revenue officers read:

1. Where did you obtain the documents, particularly the invoices and official receipts, which [were] used by your office as evidence and as basis of the assessment for deficiency income tax and value added tax for the tax year 1995 issued against petitioner?

2. Do you know Mr. Leonardo Sablan? Please state under what circumstance you came to know Mr. Sablan?[31] (Underscoring supplied)

Petitioner impugns the manner in which the documents in question reached the BIR, Sablan having allegedly submitted them to the BIR without its (petitioner's) consent. Petitioner's lack of consent does not, however, imply that the BIR obtained them illegally or that the information received is false or malicious. Nor does the lack of consent preclude the BIR from assessing deficiency taxes on petitioner based on the documents. Thus Section 5 of the Tax Code provides:

In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record or other data which may be relevant or material to such query;

(B) To obtain on a regular basis **from any person other than the person whose internal revenue tax liability is subject to audit or investigation,** or from any office or officer of the national and local governments, government agencies and instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned

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[30] CTA records, pp. 159-160.

[31] *Id.* at 160.

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and –controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships and their members;

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or **any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person,** to appear before the Commissioner or his duly authorized representatives at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and

(E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.

x x x (Emphasis and underscoring supplied)

The law thus allows the BIR access to all relevant or material records and data in the person of the taxpayer,[32] and the BIR can accept documents which cannot be admitted in a judicial proceeding where the Rules of Court are strictly observed.[33] To require the consent of the taxpayer would defeat the intent of the law to help the BIR assess and collect the correct amount of taxes.

Petitioner's invocation of the rights of an accused in a criminal prosecution to cross examine the witness against him and to

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[32] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005, 454 SCRA 301, 326.

[33] *Id.* at 327.

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have compulsory process issued to secure the attendance of witnesses and the production of other evidence in his behalf does not lie. CTA Case No. 7160 is not a criminal prosecution, and even granting that it is related to I.S. No. 2005-203, the respondents in the latter proceeding are the officers and accountant of petitioner-corporation, not petitioner. From the complaint and supporting affidavits in I.S. No. 2005-203, Sablan does not even appear to be a witness against the respondents therein.[34]

AT ALL EVENTS, issuance of subpoena *duces tecum* for the production of the documents requested by the petitioner – which documents petitioner claims to be crucial to its defense[35] – is unnecessary in view of the CTA order for respondent to certify and forward to it all the records of the case.[36] If the order has not been complied with, the CTA can enforce it by citing respondent for indirect contempt.[37]

WHEREFORE, in light of the foregoing disquisition, the petition is DISMISSED.

Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

EN BANC

[G.R. No. 178024. October 17, 2008]

LAWRENCE B. WACNANG, *petitioner, vs.* **COMMISSION ON ELECTIONS and FLOYDELIA R. DIASEN,** *respondents.*

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[34] *Rollo,* pp. 40-64.

[35] *Id.* at 23.

[36] *Vide* CTA records, pp. 36, 180-181, 377.

[37] *Vide* Revised Rules of the Court of Tax Appeals, Rule 6, Section 5(b).