

FIRST DIVISION

[G.R. No. 210238, January 06, 2020]

**IMELDA SZE, SZE KOU FOR, & TERESITA NG, PETITIONERS, VS.
BUREAU OF INTERNAL REVENUE, REPRESENTED BY THE
COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.**

DECISION

REYES, J. JR., J.:

The Facts

The respondent Bureau of Internal Revenue (BIR) issued Revenue Regulation 8-2001 or the Voluntary Assessment Program (VAP), granting tax payers the privilege of last priority in the audit and investigation of all internal revenue taxes for the taxable year December 31, 2000, and all prior years under certain conditions. Chiat Sing Cardboard Corporation (Chiat Corp.) availed of the VAP and was issued a certificate of qualification for 1999 and 2000. The BIR clarified that availment of the VAP should not be construed to cover up any fraud or illegal acts that the taxpayer may commit as it is a mere privilege.^[1]

On March 25, 2003, the BIR issued a Letter of Authority (LOA) for the examination of accounting books and records of Chiat Corp. for all internal revenue taxes for 1999 and 2000. Chiat Corp.'s Master Payroll, Beth Tugade (Tugade) received the LOA, but the required documents were not presented. On May 5, 2003, Tugade received the BIR's second notice and final notice, and still the records were not presented.^[2]

Due to Chiat Corp.'s refusal to present its accounting records, the BIR conducted an investigation and discovered that Chiat Corp.: (1) underdeclared its sales amounting to P160,588,321.63 and P113,578,182.69; (2) underdeclared its income amounting to P10,663,130.96 and P5,678,909.13 for 1999 and 2000, respectively; (3) derived income from undeclared importation of raw materials; (4) the underdeclared sales and income should have been subjected to VAT and income tax; (5) deliberately and wilfully misdeclared its taxable base to evade payment of correct internal revenue liabilities; (6) failed to withhold taxes on labor cost it claimed amounting to P427,010,000.00; (7) failed to rectify its income, value-added and withholding tax returns, which should reflect the actual and correct taxable base; and (8) understated the payment of its correct tax liabilities by more than 30%.^[3]

Thereafter, the BIR issued a Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), and Final Assessment Notice (FAN). Despite these notices, Chiat Corp. failed to interpose any protest; thus, the BIR's assessment for deficiency taxes for 1999 and 2000 amounting to P33,847,574.18 became final, executory and demandable.^[4]

On May 19, 2005, the BIR charged the officers of Chiat Corp., petitioners Imelda T. Sze (Sze), Sze Kou For (For), and Teresita A. Ng (Ng), with tax evasion and/or tax fraud for violation of Sections 27(A), 31, 32, 56(A)(I), 79(A)(B), 80(A), 81, 106, 114(A)(B), in relation to Sections 251, 253(d), 254, 255, and 256 of the National Internal Revenue Code of 1997 (NIRC).^[5]

Petitioners Sze, For, and Ng denied the accusations against them and claimed, among other allegations, that: (1) there was no factual and legal basis for the charges; (2) the filing was premature and violated their rights to due process; (3) they did not receive the notices; (4) they were not responsible for any underdeclaration, misdeclaration or importation; (5) they were not responsible for the preparation and filing of tax returns; (6) Chiat Corp. has no assets to satisfy the assessed taxes; (7) Chiat Corp. notified the BIR of the termination of business as of December 2004; and (8) the BIR presumed that Chiat Corp. manufactured the raw materials into final products and sold them.^[6]

The State Prosecutor dismissed the complaint on July 12, 2006. The BIR moved for reconsideration, which was denied on November 29, 2006. The BIR filed a petition for review before the Department of Justice (DOJ), which denied the same in a resolution dated April 27, 2007. The DOJ also denied the BIR's motion for reconsideration on June 17, 2010. The BIR elevated the case before the Court of Appeals (CA) through a petition for *certiorari*.^[7]

The CA Decision

In its May 31, 2012 Decision,^[8] the CA gave due course to the petition after finding that the records showed sufficient evidence of probable cause for tax evasion and violation of the NIRC. Chiat Corp. failed to present countervailing evidence to refute the documents and other importation records from different government agencies.^[9]

The CA held that the DOJ abused its discretion when it failed to consider various documents from the Department of Trade and Industry's Bureau of Import Services, the BIR's Audit Information Tax Exemption Incentive Division, and the Bureau of Customs' Management Information System Technology Group.^[10]

The CA observed that Chiat Corp. filed an application for retirement of business after applying for YAP. the CA found this move as suspicious, if not an indication of bad faith.^[11]

The CA resolved that probable cause was sufficiently established, and ordered the DOJ to file the corresponding Information with the proper court.^[12]

Chiat Corp. moved for reconsideration, which the CA denied in its November 26, 2013 Resolution.^[13] Undeterred, petitioners Sze, For, and Ng filed this petition for review on *certiorari* before the Court.

The Issue Presented

Whether or not the CA erred in finding probable cause for violation of the NIRC.