

THIRD DIVISION

[G.R. No. 175651, September 14, 2016]

**PILMICO-MAURI FOODS CORP., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

RESOLUTION

REYES, J.:

Before the Court is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court pursuant to Republic Act (R.A.) No. 1125,^[2] Section 19,^[3] as amended by R.A. No. 9282,^[4] Section 12.^[5] The petition filed by Pilmico-Mauri Foods Corp. (PMFC) against the Commissioner of Internal Revenue (CIR) assails the Decision^[6] and Resolution^[7] of the Court of Appeals (CTA) *en banc*, dated August 29, 2006 and December 4, 2006, respectively, in C.T.A. EB No. 97.

Antecedents

The CTA aptly summed up the facts of the case as follows:

[PMFC] is a corporation, organized and existing under the laws of the Philippines, with principal place of business at Aboitiz Corporate Center, Banilad, Cebu City.

The books of accounts of [PMFC] pertaining to 1996 were examined by the [CIR] thru Revenue Officer Eugenio D. Maestrado of Revenue District No. 81 (Cebu City North District) for deficiency income, value-added [tax] (VAT) and withholding tax liabilities.

As a result of the investigation, the following assessment notices were issued against [PMFC]:

- (a) Assessment Notice No. 81-WT-13-96-98-11-126, dated November 26, 1998, demanding payment for deficiency withholding taxes for the year 1996 in the sum of P384,925.05 (inclusive of interest and other penalties);
- (b) Assessment Notice No. 81-VAT-13-96-98-11-127, dated November 26, 1998, demanding payment of deficiency value-added tax in the sum of P5,017,778.01 (inclusive of interest and other penalties); [and]
- (c) Assessment Notice No. 81-IT-13-96[-]98-11-128, dated November 26, 1998, demanding payment of deficiency income tax for the year 1996 in the sum

of P4,359,046.96 (inclusive of interest and other penalties).

The foregoing Assessment Notices were all received by [PMFC] on December 1, 1998. On December 29, 1998, [PMFC] filed a protest letter against the aforementioned deficiency tax assessments through the Regional Director, Revenue Region No. 13, Cebu City.

In a final decision of the [CIR] on the disputed assessments dated July 3, 2000, the deficiency tax liabilities of [PMFC] were reduced from P9,761,750.02 to P3,020,259.30, broken down as follows:

- a) Deficiency withholding tax from P384,925.05 to P197,780.67;
- b) Deficiency value-added tax from P5,017,778.01 to P1,642,145.79; and
- c) Deficiency Income Tax from P4,359,046.96 to P1,180,332.84.

x x x x

On the basis of the foregoing facts[, PMFC] filed its Petition for Review on August 9, 2000. In the "Joint Stipulation of Facts" filed on March 7, 2001, the parties have agreed that the following are the issues to be resolved:

I. Whether or not [PMFC] is liable for the payment of deficiency income, value-added, expanded withholding, final withholding and withholding tax (on compensation).

II. On the P1,180,382.84 deficiency income tax

A. Whether or not the P5,895,694.66 purchases of raw materials are unsupported[;]

B. Whether or not the cancelled invoices and expenses for taxes, repairs and freight are unsupported[;]

C. Whether or not commission, storage and trucking charges claimed are deductible[; and]

D. Whether or not the alleged deficiency income tax for the year 1996 was correctly computed.

x x x x

V. Whether or not [CIR's] decision on the 1996 internal revenue tax liabilities of [PMFC] is contrary to law and the facts.

After trial on the merits, the [CTA] in Division rendered the assailed Decision affirming the assessments but in the reduced amount of P2,804,920.36 (inclusive of surcharge and deficiency interest) representing [PMFC's] Income, VAT and Withholding Tax deficiencies for the taxable year 1996 plus 20% delinquency interest per annum until fully paid. The [CTA] in Division ruled as follows:

"However, [PMFC's] contention that the NIRC of 1977 did not impose substantiation requirements on deductions from gross income is bereft of merit. Section 238 of the 1977 Tax Code [now Section 237 of the National Internal Revenue Code of 1997] provides:

SEC. 238. Issuance of receipts or sales or commercial invoices. - All persons, subject to an internal revenue tax shall for each sale or transfer of merchandise or for services rendered valued at P25.00 or more, issue receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, That in the case of sales, receipts or transfers in the amount of P100.00 or more, or, regardless of amount, where the sale or transfer is made by persons subject to value-added tax to other persons, also subject to value-added tax; or, where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client. **The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued,** while the duplicate shall be kept and preserved by the issuer, also in his place of business for a like period. x x x

From the foregoing provision of law, a person who is subject to an internal revenue tax shall issue receipts, sales or commercial invoices, prepared at least in duplicate. *The provision likewise imposed a responsibility upon the purchaser to keep and preserve the original copy of the invoice or receipt for a period of three years from the close of the taxable year in which such invoice or receipt was issued.* The rationale behind the latter requirement is the duty of the taxpayer to keep adequate records of each and every transaction entered into in the conduct of its business. So that when their books of

accounts are subjected to a tax audit examination, all entries therein, could be shown as adequately supported and proven as legitimate business transactions. Hence, [PMFC's] claim that the NIRC of 1977 did not require substantiation requirements is erroneous.

In fact, in its effort to prove the above-mentioned purchases of raw materials, [PMFC] presented the following sales invoices:

Exhibit Number	Invoice No.	Date	Gross Amount	10% VAT	Net Amount
B-3	2072	04/18/96	P2,312,670.00	P210,242.73	P2,102,427.27
B-7,					
B-11	2026	Undated	<u>2,762,099.10</u>	<u>251,099.92</u>	<u>2,510,999.18</u>
			<u>P5,074,769.10</u>	<u>P461,342.65</u>	<u>P4,613,426.45</u>

The mere fact that [PMFC] submitted the foregoing sales invoices belies [its] claim that the NIRC of 1977 did not require that deductions must be substantiated by adequate records.

From the total purchases of P5,893,694.64 which have been disallowed, it seems that a portion thereof amounting to P1,280,268.19 (729,663.64 + 550,604.55) has no supporting sales invoices because of [PMFC's] failure to present said invoices.

A scrutiny of the invoices supporting the remaining balance of P4,613,426.45 (P5,893,694.64 less P1,280,268.19) revealed the following:

- a) In Sales Invoice No. 2072 marked as Exhibit B-3, *the name Pilmico Foods Corporation was erased and on top of it the name [PMFC] was inserted but with a counter signature therein;*
- b) For undated Sales Invoice No. 2026, [PMFC] presented two exhibits marked as Exhibits B-7 and B-11. Exhibit B-11 is the original sales invoice whereas Exhibit B-7 is a photocopy thereof. *Both exhibits contained the word Mauri which was inserted on top and between the words Pilmico and Foods. The only difference is that in the original copy (Exhibit B-11), there was a counter signature although the ink used was different from that used in the rest of the writings in the said invoice; while in the photocopied invoice (Exhibit B-7), no such counter signature appeared. [PMFC] did not explain why the said countersignature did*

not appear in the photocopied invoice considering it was just a mere reproduction of the original copy.

The sales invoices contain alterations particularly in the name of the purchaser giving rise to serious doubts regarding their authenticity and if they were really issued to [PMFC]. Exhibit B-11 does not even have any date indicated therein, which is a clear violation of Section 238 of the NIRC of 1977 which required that the official receipts must show the date of the transaction.

Furthermore, [PMFC] should have presented documentary evidence establishing that Pilmico Foods Corporation did not claim the subject purchases as deduction from its gross income. After all, the records revealed that both [PMFC] and its parent company, Pilmico Foods Corporation, have the same AVP Comptroller in the person of Mr. Eugenio Gozon, who is in-charge of the financial records of both entities x x x.

Similarly, the official receipts presented by [PMFC] x x x, cannot be considered as valid proof of [PMFC's] claimed deduction for raw materials purchases. The said receipts did not conform to the requirements provided for under Section 238 of the NIRC of 1977, as amended. First the official receipts were not in the name of [PMFC] but in the name of Golden Restaurant. And second, these receipts were issued by PFC and not the alleged seller, JTE.

Likewise, [PMFC's] allegations regarding the offsetting of accounts between [PMFC], PFC and JTE is untenable. The following circumstances contradict [PMFC's] proposition: 1) *the Credit Agreement itself does not provide for the offsetting arrangement*; 2) *[PMFC] was not even a party to the credit agreement*; and 3) *the official receipts in question pertained to the year 1996 whereas the Credit Agreement (Exhibit M) and the Real Estate Mortgage Agreement (Exhibit N) submitted by [PMFC] to prove the fact of the offsetting of accounts, were both executed only in 1997.*

Besides, in order to support its claim, [PMFC] should have presented the following vital documents, namely, 1) Written Offsetting Agreement; 2) proof of payment by [PMFC] to Pilmico Foods Corporation; and 3) Financial