587 Phil. 234

THIRD DIVISION

[G.R. No. 167560, September 17, 2008]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. DOMINADOR MENGUITO, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the March 31, 2005 Decision[1] of the Court of Appeals (CA) which reversed and set aside the Court of Tax Appeals (CTA) April 2, 2002 Decision[2] and October 10, 2002 Resolution[3] ordering Dominador Menguito (respondent) to pay the Commissioner of Internal Revenue (petitioner) deficiency income and percentage taxes and delinquency interest.

Based on the Joint Stipulation of Facts and Admissions[4] of the parties, the CTA summarized the factual and procedural antecedents of the case, the relevant portions of which read:

> Petitioner Dominador Menguito [herein respondent] is a Filipino citizen, of legal age, married to Jeanne Menguito and is engaged in the restaurant and/or cafeteria business. For the years 1991, 1992 and 1993, its principal place of business was at Gloriamaris, CCP Complex, Pasay City and later transferred to Kalayaan Bar (Copper Kettle Cafeteria Specialist or CKCS), Departure Area, Ninoy Aquino International Airport, Pasay City. During the same years, he also operated a branch at Club John Hay, Baguio City carrying the business name of Copper Kettle Cafeteria Specialist (Joint Stipulation of Facts and Admissions, p. 133, CTA records).
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> ***Subsequently, BIR Baguio received information that Petitioner [herein respondent] has undeclared income from Texas Instruments and Club John Hay, prompting the BIR to conduct another investigation. Through a letter dated July 28, 1997, Spouses Dominador Menguito and Jeanne Menguito (Spouses Menguito) were informed by the Assessment Division of the said office that they have underdeclared sales totaling P48,721,555.96 (Exhibit 11, p. 83, BIR records). This was followed by a Preliminary Ten (10) Day Letter dated August 11, 1997, informing Petitioner [herein respondent] that in the investigation of his 1991, 1992 and 1993 income, business and withholding tax case, it was found out that there is still due from him the total sum of P34,193,041.55 as deficiency income and percentage tax.***

On September 2, 1997, the assessment notices subject of the instant petition were issued. These were protested by Ms. Jeanne Menguito, through a letter dated September 28, 1997 (Exhibit 14, p. 112, BIR Records), on the ground that the 40% deduction allowed on their computed gross revenue, is unrealistic. Ms. Jeanne Menguito requested for a period of thirty (30) days within which to coordinate with the BIR regarding the contested assessment.

On October 10, 1997, BIR Baguio replied, informing the Spouses Menguito that the source of assessment was not through the disallowance of claimed expenses but on data received from Club John Hay and Texas Instruments Phils., Inc. Said letter gave the spouses ten (10) days to present evidence (Exhibit 15, p. 110, BIR Records).

In an effort to clear an alleged confusion regarding Copper Kettle Cafeteria Specialist (CKCS) being a sole proprietorship owned by the Spouses, and Copper Kettle Catering Services, Inc. (CKCS, Inc.) being a corporation with whom Texas Instruments and Club John Hay entered into a contract, Petitioner [respondent] submitted to BIR Baguio a photocopy of the SEC Registration of Copper Kettle Catering Services, Inc. on March 23, 1999 (pp. 134-141, BIR Records).

On April 12, 1999, BIR Baguio wrote a letter to Spouses Menguito, informing the latter that a reinvestigation or reconsideration cannot be given due course by the mere submission of an uncertified photocopy of the Certificate of Incorporation. Thus, it avers that the amendment issued is still valid and enforceable.

On May 26, 1999, Petitioner [respondent] filed the present case, praying for the cancellation and withdrawal of the deficiency income tax and percentage tax assessments on account of prescription, whimsical factual findings, violation of procedural due process on the issuance of assessment notices, erroneous address of notices and multiple credit/ investigation by the Respondent [petitioner] of Petitioner's [respondent's] books of accounts and other related records for the same tax year.

Instead of filing an Answer, Respondent [herein petitioner] moved to dismiss the instant petition on July 1, 1999, on the ground of lack of jurisdiction. According to Respondent [petitioner], the assessment had long become final and executory when Petitioner [respondent] failed to comply with the letter dated October 10, 1997.

Petitioner opposed said motion on July 21, 1999, claiming that the final decision on Petitioner's [respondent's] protest is the April 12, 1999 letter of the Baguio Regional Office; therefore, the filing of the action within thirty (30) days from receipt of the said letter was seasonably filed. Moreover, Petitioner [respondent] asserted that granting that the April 12, 1999 letter in question could not be construed to mean as a denial or final decision of the protest, still Petitioner's [respondent's] appeal was

timely filed since Respondent [petitioner] issued a Warrant of Distraint and/or Levy against the Petitioner [respondent] on May 3, 1999, which warrant constituted a final decision of the Respondent [petitioner] on the protest of the taxpayer.

> On September 3, 1999, this Court denied Respondent's [petitioner's] 'Motion to Dismiss' for lack of merit.
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> Respondent [petitioner] filed his Answer on September 24, 1999, raising the following Special and Affirmative Defenses:
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> 5. Investigation disclosed that for taxable years 1991, 1992 and 1993, petitioner [respondent] filed false or fraudulent income and percentage tax returns with intent to evade tax by under declaring his sales.
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> 6. The alleged duplication of investigation of petitioner [respondent] by the BIR Regional Office in Baguio City and by the Revenue District Office in Pasay City is justified by the finding of fraud on the part of the petitioner [respondent], which is an exception to the provision in the Tax Code that the examination and inspection of books and records shall be made only once in a taxable year (Section 235, Tax Code). At any rate, petitioner [respondent], in a letter dated July 18, 1994, waived his right to the consolidation of said investigation.
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> 7. ***The aforementioned falsity or fraud was discovered on August 5, 1997. The assessments were issued on September 2, 1997, or within ten (10) years from the discovery of such falsity or fraud (Section 223, Tax Code). Hence, the assessments have not prescribed.***
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> 8. ***Petitioner's [respondent's] allegation that the assessments were not properly addressed is rendered moot and academic by his acknowledgment in his protest letter dated September 28, 1997 that he received the assessments.***
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> 9. ***Respondent [petitioner] complied with the provisions of Revenue Regulations No. 12-85 by informing petitioner [respondent] of the findings of the investigation in letters dated July 28, 1997 and August 11, 1997 prior to the issuance of the assessments.***

10. ***Petitioner [respondent] did not allege in his administrative protest that there was a duplication of investigation, that the assessments have prescribed, that they were not properly addressed, or that the provisions of Revenue Regulations No. 12-85 were not observed. Not having raised them in the administrative level, petitioner [respondent] cannot raise the same for the first time on appeal (Aguinaldo Industries Corp. vs. Commissioner of Internal Revenue, 112 SCRA 136).***

11. The assessments were issued in accordance with law and regulations.

12. All presumptions are in favor of the correctness of tax assessments (CIR vs. Construction Resources of Asia, Inc., 145 SCRA 67), and the burden to prove otherwise is upon petitioner [respondent].[5] (Emphasis supplied)

On April 2, 2002, the CTA rendered a Decision, the dispositive portion of which reads:

> Accordingly, Petitioner [herein respondent] is **ORDERED** to **PAY** the Respondent [herein petitioner] the amount of P11,333,233.94 and P2,573,655.82 as deficiency income and percentage tax liabilities, respectively for taxable years 1991, 1992 and 1993 plus 20% delinquency interest from October 2, 1997 until full payment thereof.
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> SO ORDERED.[6]

Respondent filed a motion for reconsideration but the CTA denied the same in its Resolution of October 10, 2002.[7]

Through a Petition for Review[8] filed with the CA, respondent questioned the CTA Decision and Resolution mainly on the ground that Copper Kettle Catering Services, Inc. (CKCS, Inc.) was a separate and distinct entity from Copper Kettle Cafeteria Specialist (CKCS); the sales and revenues of CKCS, Inc. could not be ascribed to CKCS; neither may the taxes due from one, charged to the other; nor the notices to be served on the former, coursed through the latter.[9] Respondent cited the Joint Stipulation in which petitioner acknowledged that its (respondent's) business was called Copper Kettle Cafeteria Specialist, not Copper Kettle Catering Services, Inc. [10]

Based on the unrefuted[11] CTA summary, the CA rendered the Decision assailed herein, the dispositive portion of which reads:

> WHEREFORE, the instant petition is GRANTED. Reversing the assailed Decision dated April 2, 2002 and Resolution dated October 10, 2002, the deficiency income tax and percentage income tax assessments against petitioner in the amounts of P11,333,233.94 and P2,573,655.82 for taxable years 1991, 1992 and 1993 plus the 20% delinquency interest thereon are annulled.

SO ORDERED.[12]

Petitioner filed a motion for reconsideration but the CA denied the same in its October 10, 2002 Resolution.[13]

Hence, herein recourse to the Court for the reversal of the CA decision and resolution on the following grounds:

I

> The Court of Appeals erred in reversing the decision of the Court of Tax Appeals and in holding that Copper Kettle Cafeteria Specialist owned by respondent and Copper Kettle Catering Services, Inc. owned and managed by respondent's wife are not one and the same.

II

> The Court of Appeals erred in holding that respondent was denied due process for failure of petitioner to validly serve respondent with the post-reporting and pre-assessment notices as required by law.

On the first issue, the CTA has ruled that CKCS, Inc. and CKCS are one and the same corporation because "[t]he contract between Texas Instruments and Copper Kettle was signed by petitioner's [respondent's] wife, Jeanne Menguito as proprietress."[14]

However, the CA reversed the CTA on these grounds:

> Respondent's [herein petitioner's] allegation that Copper Kettle Catering Services, Inc. and Copper Kettle Cafeteria Specialists are not distinct entities and that the under-declared sales/revenues of Copper Kettle Catering Services, Inc. pertain to Copper Kettle Cafeteria Specialist are belied by the evidence on record. In the Joint Stipulation of Facts submitted before the tax court, respondent [petitioner] admitted "that petitioner's [herein respondent's] business name is Copper Kettle Cafeteria Specialist."
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> Also, the Certification of Club John Hay and Letter dated July 9, 1997 of Texas Instruments both addressed to respondent indicate that these companies transacted with Copper Kettle Catering Services, Inc., owned and managed by JEANNE G. MENGUITO, NOT petitioner Dominador Menguito. The alleged under-declared sales income subject of the present assessments were shown to have been earned by Copper Kettle Catering Services, Inc. in its commercial transaction with Texas Instruments and Camp John Hay; NOT by petitioner's dealing with these companies. In fact, there is nothing on record which shows that Texas Instruments and Camp John Hay conducted business relations with Copper Kettle Cafeteria Specialist, owned by herein petitioner Dominador Menguito. In the absence, therefore, of clear and convincing evidence showing that Copper Kettle Cafeteria Specialist and Copper Kettle Catering Services, Inc. are one and the same, respondent can NOT validly impute alleged