

FIRST DIVISION

[G.R. No. 192023, November 21, 2018]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. JERRY OCIER, RESPONDENT.

DECISION

BERSAMIN, J.:

The claimant's failure to formally offer his evidence renders his evidence incompetent for consideration by the trial court. But the claimant's cause is not necessarily lost if other evidence on record as well as the adverse party's own admissions can support the former's claim. Every court has the positive duty to consider and give due regard to everything on record that is relevant and competent to its resolution of the ultimate issue presented for its adjudication.

The taxpayer is liable to pay capital gains taxes for the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except if the sale or disposition is through the stock exchange. For this purpose, the term *disposition* includes any act of disposing, transferring or parting with, or alienation of, or giving up of property to another.

The Case

Before the Court is the appeal by the Commissioner of Internal Revenue from the February 2, 2010 decision promulgated in C.T.A. E.B. No. 491,^[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) unanimously affirmed the cancellation of the final assessment notices for the deficiency capital gains taxes (CGT) and documentary stamp taxes (DST) amounting to P17,862,848.21 and P71,703.76, respectively, issued by the Bureau of Internal Revenue (BIR) against the respondent.

Antecedents

On January 31, 2001, the respondent received an assessment notice from the BIR to the effect that he had incurred deficiencies in the CGT and DST for the year 1999.^[2] The deficiency assessments arose from the gains that he had realized from the sale of shares of stock of Best World Resources Corporation (BW Resources) through over-the-counter transactions. It appears that based on the BIR's investigation the sale/exchange of shares was related to the stock manipulation and insider trading scandal orchestrated by Dante Tan and his associates involving BW Resources shares that affected the Philippine Stock Exchange in 1999.^[3]

On April 19, 2001, the respondent sent his letter-reply to the BIR alleging that the BIR had erroneously considered as a sale the transfer of a total of 4.9 million BW Resources shares from his account to Tan when it was actually a loan.^[4]

On September 26, 2001, the respondent received from the BIR Assessment Notice No. BW-99-DST-0041-01 and Assessment Notice No. BW-99-CGT-0040-01 dated September 10, 2001 assessing him the deficiency DST and CGT, inclusive of increments, in the respective amounts of P71,703.76 and P17,862,848.21.^[5] He protested the assessments on October 12, 2001,^[6] but the BIR denied his protest on March 10, 2003.^[7]

On June 16, 2003, the respondent received the notice of preliminary collection of the deficiency assessments,^[8] and filed his reply on July 30, 2003.^[9]

On December 5, 2003, the respondent filed a petition for review in the CTA to seek the cancellation of the deficiency assessments.^[10] The case, docketed as C.T.A. Case No. 6831, was assigned to and heard by the Second Division of the CTA (CTA in Division).

On February 2, 2009, after trial, the CTA in Division rendered its decision,^[11] disposing thusly:

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's Decision dated March 10, 2003, is **REVERSED AND SET ASIDE**. The Final Assessment Notice Nos. BW-99-CGT-0040-01 and BW-99-DST-0041-01, both dated September 10, 2001, assessing petitioner for deficiency CGT and DST in the amounts of P17,862,848.21 and P71,703.76, respectively, inclusive of interest, surcharge and compromise penalty for taxable year 1999 is hereby ordered **CANCELLED**.

SO ORDERED.^[12]

The petitioner moved for reconsideration of the decision,^[13] but the CTA in Division denied the motion for reconsideration on April 21, 2009.^[14]

The petitioner elevated the adverse decision to the CTA *En Banc* by petition for review (CTA EB No. 491).^[15]

On February 2, 2010, the CTA *En Banc* rendered the assailed decision in CTA EB No. 491, disposing:

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the February 2, 2009 Decision and April 21, 2009 Resolution of the CTA *Second Division* in CTA Case No. 6831 entitled, "*Jerry Ocier vs. Commissioner of Internal Revenue*" are hereby **AFFIRMED in toto**.

SO ORDERED.^[16]

The CTA *En Banc* denied the petitioner's motion for reconsideration on April 20, 2010.^[17]

Hence, this appeal by the petitioner.

Issues

The petitioner submits that the CTA *En Banc* erred as follows:

I

THE APPELLATE COURT ERRED WHEN IT HELD THAT PETITIONER'S FAILURE TO FORMALLY OFFER HIS EVIDENCE IS FATAL TO HIS CAUSE.

II

THE APPELLATE COURT ERRED WHEN IT HELD THAT THE PIECES OF EVIDENCE PRESENTED BY PETITIONER AND ATTACHED TO THE RECORDS ARE STILL INSUFFICIENT TO ESTABLISH RESPONDENT'S TAX LIABILITY

III

THE APPELLATE COURT ERRED WHEN IT AFFIRMED *IN TOTO* THE DECISION OF THE CTA SECOND DIVISION WHICH 1) GRANTED RESPONDENT'S PETITION FOR REVIEW, 2) REVERSED AND SET ASIDE PETITIONER'S DECISION DATED MARCH 10, 2003, and; 3) CANCELLED FINAL ASSESSMENT NOTICE NOS. BW-99-CGT-0040-01 AND BW-99-DST-0041-01, BOTH DATED SEPTEMBER 10, 2001^[18]

Otherwise stated, the issue is whether the cancellation of Assessment Notice No. BW-99-CGT-0040-01 and Assessment Notice No. BW-99-DST-0041-01 for failure on the part of the petitioner to prove the respondent's liability for the CGT and DST arising from the gains he had allegedly realized from the sale of BW Resources shares was proper.

Ruling of the Court

The appeal is meritorious.

The petitioner does not deny the failure to formally offer BIR's evidence against the respondent, but insists that such failure was not fatal considering that the respondent's liability for the CGT and DST for the transfer of the BW Resources shares had still been established by the evidence on record. Even so, the petitioner contends that the CTA *En Banc* should still have relied also on BIR's pieces of evidence, even if not formally offered, because said pieces of evidence had been duly identified by Josephine D. Madera, Revenue Officer of the National Investigation Division of the BIR, and incorporated in the records of the case.

The petitioner's contention cannot be sustained.

The CTA *En Banc* ruled on the matter as follows:

x x x [Respondent failed to comply with the directives of this Court, despite having been given more than three (3) opportunities to file is required Formal Offer of Evidence. It must be remembered that it was respondent's counsel, upon termination of the presentation of evidence, who moved to be given thirty (30) days to file his Formal Offer of Evidence, x x x:

x x x x

The foregoing circumstances evidently manifest leniency accorded to respondent's counsel, and it is readily apparent that he allowed almost a year to pass without filing his Formal Offer of Evidence. As can be gleaned from the discussions in Our assailed Decision, despite respondent's failure to formally offer his evidence, and very much contrary to his assertion in the instant Motion for Reconsideration, this Court not only relaxed the application of our procedural rules, specially that pertaining to the formal offer of evidence, but in fact, took into consideration and carefully examined the pieces of evidence duly marked and identified in the testimony of respondent's witness, Josephine D. Madera. Sadly for respondent however, the Court found the pieces of evidence presented by respondent and attached to the records of this case, still insufficient to establish petitioner's supposed tax liability. Our assailed Decision provides:

'Thus, We look into the evidence presented by respondent, the oral testimony of Josephine D. Madera, Revenue Officer-National Investigation Division of the BIR, who testified by way of Judicial Affidavits dated October 5 and March 5, 2006, and specific documents which she identified therein that are attached to the docket of this case.

In her affidavits, she identified the following attached documents, to wit: Memorandum for the Commissioner dated November 21, 2000, Memorandum for the Deputy Commissioner dated November 15, 2001, various In and Out Receipts, Security Movement Report, and Letter of Instruction signed by a certain Jerry Go.

A perusal of the identified 'In and Out Receipts' shows that these were issued to a certain Jerry with the surnames of Ong, Ng, Go, with the exception of 'Out' Receipt No. 0060154 issued by Eastern Securities Development Corporation showing delivery of BW Resources Corporation shares to Jerry Ocier on September 3, 1999. Nevertheless, the latter receipt is a mere photocopy and therefore without evidentiary value.

In the Memorandum for the Commissioner dated November 21, 2000 and Memorandum for the Deputy Commissioner of the Legal and Inspection Group of the Bureau of Internal Revenue dated November 15, 2001, it was mentioned therein that the subject over-the-counter transfers involve Jerry Ocier, Jerry O. Ng and Jerry Go, who are allegedly one and the same

as evidenced by the attached client's information form and an officer (Vice-President) of Eastern Securities. Notably however, this client information was never presented and the Court cannot make a proper determination of the veracity of such conclusion.

x x x x

Although in the Memorandum dated November 15, 2001, it was stated therein that the requisites under Section 228 of Republic Act No. 8424 as implemented by Revenue Regulations No. 12-99, that assessment state the factual and legal bases were fully satisfied with, whereby annexes and details of discrepancies attached to the assessment received furnished all the necessary information in compliance with the said regulations, presenting the important points of the taxable over-the-counter transactions, the said annexes were never presented nor formally offered in evidence by respondent.

Thus, We cannot determine with reasonable certainty the legal and factual basis of respondent's assessment, as there was neither a clear showing of an actual sale of shares of stock, nor evidence to support its basis for computing the subject assessment.

x x x x

On another point, respondent relies on the exception to the Rules on Formal Offer of Evidence set forth in **Vda. De Oñate** case in seeking a reconsideration of Our assailed Decision. To put respondent's mind at rest, the Court looked into the possibility of applying the Oñate ruling in this case.

It must be pointed out, however, that respondent failed to meet the two (2) requirements set forth therein which would have allowed application of the invoked exception, namely, *first*, the same (evidence) must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.

In the instant case, although the BIR records were duly incorporated as part of the records of this case by virtue of the mandatory transmittal of the BIR records to this Court, the documents contained in the BIR Records were not marked or identified by respondent's lone witness, Josephine D. Madera.

With regard to respondent's 'In' and 'Out' documents, respondent's allegation that the same are admissible since they were impliedly admitted by petitioner is erroneous. Records bear that the request for admission by respondent, though not opposed by petitioner, was not favorably resolved by this Court. Consequently, the 'In' and 'Out'