

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

CLASSIC
PHILIPPINES,
(FORMERLY
PHILS., INC.),

FINE

FOODS
INC.
ANGLISS

Petitioner,

-versus-

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

C.T.A. CASE NO. 7363

Members:

CASTAÑEDA, JR., Chairperson,
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 09 2010

✓ 4:07 p.m.

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

Acceptance of payment by the Bureau of Internal Revenue of the basic assessed amount does not constitute the Termination Letter contemplated by *Revenue Regulations No. 15-2006*, which is meant to evidence approval of the taxpayer's application to avail of the abatement program.

cc

THE CASE

This a Petition for Review filed by Classic Fine Foods Philippines, Inc. (hereafter “petitioner”) praying for the cancellation of assessments and Formal Letter of Demand for payment of deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) for taxable year 2001 issued against petitioner.

THE PARTIES

Petitioner Classic Fine Foods Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 26th Floor, Yuchengco Tower, RCBC Plaza, Ayala Avenue, corner Sen. Gil Puyat Avenue, 1226 Makati City. Petitioner’s main business is the importation and sale of frozen meat and meat products, although it also imports/trades dairy products and other processed food products (*Exhibits “B”, “B-1”, “B-3”, and “E-1”*).

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the official authorized under *Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended*, to assess and collect internal revenue taxes, as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court, with office address at the 5th



Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

On January 19, 2005, petitioner received Assessment Notices (*Exhibits "O" to "R"*) and Formal Letter of Demand No. 45306 (*Exhibit "S"*), all dated January 14, 2005, assessing it for various deficiency taxes, summarized as follows:

	ASSESSMENT NOTICE			
	Income Tax	VAT	EWT	Failure to keep books
Tax Due	P43,585,814.96	P40,111,143.14	P148,272.39	
Add: 50% Surcharge	21,792,907.48	20,055,571.57		P25,000
Interest	<u>24,625,985.45</u>	<u>24,467,797.31</u>	<u>91,187.52</u>	
Subtotal	P90,004,707.89	P84,634,512.02	P239,459.91	<u>25,000</u>
Total Amount Payable				P174,903,679.82

On February 18, 2005, petitioner administratively protested said Assessment Notices by submitting its Protest Letter, dated February 17, 2005 (*Exhibit "V"*).

On November 7, 2005, petitioner, having failed to receive respondent's decision on its administrative protest, instituted the instant Petition for Review in order to protect its right and prevent said Assessment Notices from becoming final, executory, and demandable.

In his Answer filed on January 4, 2006, respondent by way of Special and Affirmative Defenses, raised the following:



- “6. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency tax assessments;
7. The disallowance of the various business expenses claimed by the Petitioner is attributable to Petitioner’s failure to submit supporting documents to completely support or rebut the assessment issued against the herein Petitioner and for Petitioner’s failure to show the direct connection or relation of the expense claimed to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer. In this regard, the Respondent was constrained to use the Best Evidence Obtainable Rule pursuant to Revenue Memorandum Circular No. 23-2000, under such the 50% of the claimed deductions of the Petitioner was disallowed. Petitioner failed to show proof that it had timely submitted the documents required of the corporation;
8. The Petitioner is now precluded from submitting the supporting documents which were required of it since it has defied the mandate of the subpoena *duces tecum* which Respondent validly issued. The assessment had become final in view of the failure of the Petitioner to submit all the required supporting documents, pursuant to Section 228 of the National Internal Revenue Code of 1997;
9. Petitioner did not subject to withholding tax the claimed expenses, hence, the said expenses were disallowed as items of deduction from gross income pursuant to *Revenue Regulations No. 2-98*;



10. Petitioner failed to show the breakdown of its VATable and VAT-exempt sales, a condition necessary in the computation of Petitioner's VAT liability. Petitioner failed to show proof that the transactions that it entered into are actually VAT-exempt transactions;"

At the scheduled hearing on July 9, 2007, petitioner manifested that it availed of the One-Time Administrative Abatement under *Revenue Regulations No. 15-2006 (Exhibit "QQQ")* on June 28, 2007, by paying the basic deficiency expanded withholding tax assessment in the amount of P148,272.39 (*Exhibits "RRR" and "SSS"*).

On November 20, 2007, in addition to its availment of the abatement program, petitioner availed of the benefits of the tax amnesty under *RA 9480* and paid with the BIR the amount of P250,000.00. Petitioner submitted the following documentary evidence: (1) Notice of Availment of Tax Amnesty; (2) Tax Amnesty Return (BIR Form No. 2116); (3) Statement of Assets, Liabilities and Networth (SALN); (4) Tax Amnesty Payment Form (BIR Form No. 0617); and (5) BIR Tax Payment Deposit Slip (*Exhibits "TTT" to "WWW"*).

Petitioner presented Brenda M. Ramos, the General Manager of petitioner, Pacifico R. Cruz, the Court-Commissioned Independent CPA, and Luzviminda Ruaro, the Finance and Accounting Manager of petitioner, as witnesses, and documentary evidence, marked as *Exhibits*

One

"A" to "XXX", inclusive of their submarkings, which were admitted by the Court in a Resolution dated January 9, 2009, except for *Exhibits* "W-2", "BBB-1" to "BBB-2", "CCC-1" to "CCC-2", "SSS-4417", "SSS-4451", "SSS-4467", "SSS-4566", "SSS-4609", "SSS-4786", "SSS-4933" to "SSS-4945", "SSS-4949", "SSS-4977" to "SSS-4979", "SSS-4984", "SSS-5001" to "SSS-5600", "SSS-5658", "SSS-5794", "SSS-5831", "SSS-5855", "SSS-6070", "SSS-6078", "SSS-6094" to "SSS-6100", "SSS-6198" to "SSS-6200", "SSS-6237", "SSS-6246" to "SSS-6247", "SSS-6270", "SSS-6379", "SSS-6432", "SSS-6485", "SSS-6489", "SSS-6530", "SSS-6562", "SSS-6567", "SSS-6598", "SSS-6660" to "SSS-6661", "SSS-6668", "SSS-6730", "SSS-6740", "SSS-6750", "SSS-6880", "SSS-6922", "SSS-6959", "SSS-6975", "SSS-6979", "SSS-7007" to "SSS-7008", "SSS-7033", "SSS-7036", "SSS-7039", "SSS-7091", "SSS-7096", "SSS-7120", "SSS-7125", "SSS-7158", "SSS-7247", "SSS-7376", "SSS-7413", "SSS-7576", "SSS-7643", "SSS-7745", "SSS-7787", "SSS-7806", "SSS-7830", "SSS-7846", "SSS-7876", "SSS-7886", "SSS-7913", "SSS-8002", "SSS-8015", "SSS-8023", "SSS-8057", "SSS-8195", "KKKK-1030", "KKKK-1032" to "KKKK-2024", "LLLL-1004", "LLLL-1010", "LLLL-1015", and "LLLL-1032", which were denied admission for petitioner's failure to submit the duly marked documents.

On the other hand, for respondent CIR counsel's repeated failure to appear despite notice for the initial presentation of evidence for the respondent, upon motion of counsel for petitioner, respondent was deemed to have waived his right to present evidence. Thereafter, petitioner was granted thirty (30) days from May 20, 2009, within which to file its memorandum, while respondent was granted twenty (20) days from notice, within which to file his memorandum.

On April 8, 2009, petitioner filed a "Motion to Partially Withdraw Petition for Review" praying for the withdrawal of the petition insofar as the assessments against petitioner for deficiency income tax and VAT, inclusive of surcharge and interests are concerned, solely on the ground of its availment of the tax amnesty, which the Court granted in a Resolution dated May 20, 2009.

Due to the pendency of petitioner's application for availment of the tax abatement program, the other assessments, namely: expanded withholding tax and penalty for failure to keep/preserve books or records remain for this Court's consideration.

Petitioner having filed its "Memorandum" on July 8, 2009, without respondent's Memorandum, the case was deemed submitted for decision on July 14, 2009.

Hence, this decision.



ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE RIGHT OF THE GOVERNMENT TO ASSESS VAT LIABILITY HAD ALREADY PRESCRIBED.

II

WHETHER OR NOT THE ASSESSMENT HAS BECOME FINAL ON THE GROUND THAT PETITIONER FAILED TO SUBMIT ALL DOCUMENTS IN SUPPORT OF ITS PROTEST.

III

WHETHER OR NOT PETITIONER WAS ABLE TO TIMELY SUBSTANTIATE BY DOCUMENTARY EVIDENCE THE EXPENSES CLAIMED AS DEDUCTION.

IV

WHETHER OR NOT PETITIONER IS LIABLE FOR THE ASSESSED DEFICIENCY INCOME TAX AND RELATED SURCHARGE AND INTEREST THEREON, IN THE AGGREGATE AMOUNT OF PHP90,004,707.89.

V

WHETHER OR NOT PETITIONER INCLUDED IN ITS GROSS SALES/RECEIPTS FOR TAXABLE YEAR 2001 THE SALES IT MADE TO INTERNATIONAL FAMILY SERVICES, INC.



VI

WHETHER OR NOT PETITIONER IS LIABLE FOR THE ASSESSED DEFICIENCY VAT AND RELATED SURCHARGE AND INTEREST THEREON, IN THE AGGREGATE AMOUNT OF PHP84,634,512.02.

VII

WHETHER OR NOT THE EXPENSES CLAIMED BY PETITIONER IS SUBJECT TO THE IMPOSITION OF WITHHOLDING TAX PURSUANT TO REVENUE REGULATIONS NO. 2-98.

VIII

WHETHER OR NOT PETITIONER SHOULD BE ASSESSED WITH SURCHARGE OF 50% WHICH IS APPLICABLE IN CASES OF FRAUD.

THE COURT'S RULING

The petition is partly meritorious.

Being procedural, we will first resolve the second issue.

Respondent contends that the assessments have become final for failure of petitioner to submit all the required supporting documents, pursuant to *Section 228 of the NIRC of 1997, as amended*.

We do not agree.

In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, 589 SCRA 275 (“First Express Pawnshop case”), the Supreme Court ruled that “the term ‘relevant supporting



documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

Records show that as early as March 4, 2004, petitioner already submitted the following documents: Quarterly Income Tax Returns/Payments, Monthly and Quarterly VAT Returns, Annual Income Tax Returns, Articles of Incorporation, Audited Financial Statement-2001, photocopies of contracts entered into by petitioner – Lease Contract with JM Cold Storage, Schedule of Input Taxes Claimed, and Alpha List of Employees (Withholding Tax on Wages) and Alpha List of Income Payments subject to Withholding Tax (*Exhibit "H-1"*).

Thereafter, on April 23, 2004, petitioner submitted the following documents to respondent CIR: BIR Form 1905, Annual Fee for 2003, BIR Form No. 2303 Angliss Phils., Inc., SEC Registration – Classic Fine Foods, Phils., Inc., BIR Memorandum – recommending approval for our request of change of business name from Angliss Philippines, Inc., to Classic Fine Foods, Phils., Inc., BIR Forms 1702, BIR Forms 2550M and

2550Q for the months of October and November 2000 and Fourth Quarter of 2000, and Summary of Importation for 2001 (*Annex "E", Petition for Review*).

Also, in a Letter dated July 28, 2004, petitioner reiterated that it already submitted and made available for respondent's review documents demanded in the Subpoena *Duces Tecum* issued by respondent (*Exhibits "K" and "K-1"*).

Finally, in reply to respondent's Final Opportunity to submit documents, petitioner, in a Letter dated July 23, 2004, attached various letter-transmittal to respondent in compliance with respondent's request for submission of pieces of documentary evidence to show that there is no basis in respondent's claim that petitioner continuously failed to comply with respondent's request (*Exhibit "M"*).

Considering that petitioner submitted the foregoing documentary evidence, which it considered necessary to support the legal basis in disputing the assessment, then petitioner has complied with the requirement of submitting documentary evidence prescribed in *Section 228 of the NIRC of 1997, as amended*, pursuant to *First Express Pawnshop case*. Hence, the assessments issued against petitioner have not become final.



First, Third, Fourth, Fifth,
Sixth and Eight Issues:

As regards the first, third, fourth, fifth, sixth and eight issues, considering that petitioner availed of the tax amnesty under *RA 9480*, complied with the prescribed requisites thereof, and filed a “Motion to Partially Withdraw Petition for Review”, praying for the withdrawal of the petition, insofar as the assessments against petitioner for deficiency income tax and VAT, inclusive of surcharge and interests, are concerned, which the Court granted in its Resolution dated May 20, 2009, then the resolution of said issues is now rendered moot.

Seventh Issue:

Deficiency Expanded Withholding Tax

Petitioner avers that it is no longer liable for the remaining assessments on expanded withholding tax and penalty for failure to keep/preserve books for the following reasons: (1) said assessments have no basis in fact and in law; and (2) it paid the assessed basic EWT amounting to P148,272.39, pursuant to its availment of the One-Time Administrative Abatement Program under *Revenue Regulations No. 15-2006*.

It has been consistently held by this Court that before an abatement is recognized before this Court, petitioner must comply with the



requirements of the abatement program provided in *Section 4 of Revenue Regulations No. 15-2006*, which states:

“SEC. 4. Who May Avail. – Any person/taxpayer, natural or juridical, may settle thru this abatement program any delinquent account or assessment which has been released as of June 30, 2006, by paying an amount equal to One Hundred Percent (100%) of the Basic Tax assessed with the Accredited Agent Bank (AAB) of the Revenue District Office (RDO)/Large Taxpayers Service (LTS) Large Taxpayers District Office (LTDO) that has jurisdiction over the taxpayer. In the absence of an AAB, payment may be made with the Revenue Collection Officer/Deputized Treasurer of the RDO that has jurisdiction over the taxpayer. **After payment of the basic tax, the assessment for penalties/surcharge and interest shall be cancelled by the concerned BIR Office** following existing rules and procedures. **Thereafter, the docket of the case shall be forwarded to the Office of the Commissioner**, thru the Deputy Commissioner for Operations Group, **for issuance of Termination Letter.**” (*Emphasis supplied*)

In the instant case, there is no termination letter issued by respondent CIR. As admitted by petitioner, its application for abatement is still under evaluation by the BIR National Office (*TSN, February 4, 2008, p. 3*), which explains the lack of Termination Letter issued to petitioner. While it may be argued that petitioner paid the BIR the amount of P148,272.39, which represents the basic assessed EWT, the acceptance of said amount by the BIR is not the same as the Termination Letter contemplated by law. Hence, this Court cannot consider the same as basis to cancel the assessment for EWT issued against petitioner. In fact,



for petitioner's failure to pay the assessed deficiency EWT within the time prescribed for its payment, petitioner is also liable of the 25% surcharge under *Section 248(3) of the NIRC of 1997, as amended*.

However, since petitioner already paid the basic tax in the amount of P148,272.39 on June 28, 2007, as evidenced by machine validated Payment Form (*Exhibit "RRR"*), and PNB BTR-BIR Payment Slip (*Exhibit "SSS"*), the amount of P148,272.39 shall be deducted from the assessed deficiency EWT, computed as follows:

Basic Tax		P148,272.39
Surcharge: 25%	P37,068.10	
Deficiency Interest (from 01-16-02 to 02-14-05)	P91,187.52	
(from 02-15-05 to 06-28-07)	<u>70,195.81</u>	
Sub-total surcharge and interest	<u>P198,451.43</u>	<u>198,451.43</u>
Total EWT Due		P346,723.82
Less: Payment made on June 28, 2007		<u>148,272.39</u>
Amount Payable		P198,451.43

Accordingly, petitioner is still liable for surcharge and interest of deficiency EWT in the total amount of P198,451.43.

As regards the assessment for compromise penalty, this Court cannot sustain the same. Said compromise penalty incident to failure to register books of accounts, failure to keep/preserve records, and failure to make/file returns or supply information may be imposed only in lieu of criminal prosecution. This is clearly provided under *Revenue Memorandum Order (RMO) No. 1-90, Section III(5)*, which reads:



“III. Guidelines and Instructions:

xxx xxx

- (5) Since compromise penalties are only amounts suggested in the settlement of criminal liability and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty, the violation shall be referred for criminal action as heretofore mentioned.”

It is well-settled that compromise penalties are amounts collected by the Bureau of Internal Revenue in lieu of criminal prosecution for violations committed by taxpayers, the payment of which is based on a compromise agreement validly entered into between the taxpayer and Commissioner of Internal Revenue (*Collector of Internal Revenue vs. UST*, 104 Phil. 1062).

A compromise implies mutual agreement. Absent any showing that petitioner consented to the compromise penalty, its imposition should not be allowed. As already established, the imposition of the same without the conformity of the taxpayer is illegal and unauthorized (*Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.*, 193 SCRA 92-93).

Since conviction for failure to register books of accounts, failure to keep/preserve records, and failure to make/file returns or supply information are wanting in the instant case, and since there is no showing



that petitioner voluntarily entered into a compromise agreement with respondent, the compromise penalty of P25,000.00 is hereby ordered cancelled.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED**. Accordingly:

1) the deficiency income tax and value-added tax assessments are hereby ordered **CANCELLED**, solely in view of petitioner's availment of the tax amnesty under *R.A. 9480*;

2) petitioner Classic Fine Foods Philippines, Inc. is liable for surcharge and interest of deficiency expanded withholding tax assessment, pursuant to *Sections 248(3) and 249(B) of the NIRC of 1997, as amended*. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of **ONE HUNDRED NINETY EIGHT THOUSAND FOUR HUNDRED FIFTY ONE AND 43/100 PESOS (P198,451.43)**, representing surcharge and interest of deficiency expanded withholding tax for taxable year 2001;

3) In addition, petitioner is hereby ordered to pay delinquency interest:

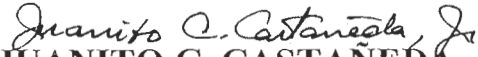


- 1) On the basic expanded withholding tax of P148,272.39 from February 14, 2005 up to June 28, 2007, pursuant to *Section 249 (C) of the NIRC of 1997, as amended*; and
- 2) On the surcharge and interest of P198,451.43 from February 14, 2005 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended*.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

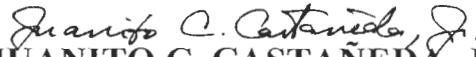
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

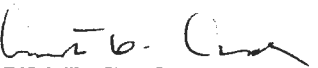
ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice