

**THOMSON SHIRTS FACTORY (AARON GO & CO.), PETITIONER,
VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.***G.R. No. L-22447. September 12, 1975*

Ponente: CASTRO, J.

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Sometime in July 1955 the Bureau of Internal Revenue (hereinafter referred to as the BIR) received information that the Aaron Go and Co. (hereinafter referred to as the petitioner), a partnership engaged in the manufacture of shirts under the business name "Thomson Shirts Factory," kept unregistered records and books of accounts for purposes of tax evasion. Consequently, BIR agents, armed with a search warrant secured from the Court of First Instance of Manila, conducted a search of the petitioner's premises at 488 Juan Luna St. Binondo, Manila. In the locked drawers of two wooden cabinet in the petitioner's premises, the BIR agents found several notebooks and loose sheets of paper with entries in Chinese characters, checkbooks, sales invoices, and other miscellaneous documents. All these records, papers and documents the BIR agents seized after issuing the corresponding confiscation receipts therefor.

The functionaries of the BIR referred these notebooks and papers with entries in Chinese characters Ong Seng Hoon, a Chinese national and citizen employed as translator of Chinese documents in the said bureau, for rendering into English. Ong's translation worksheets served as the basis of an assessment against the petitioner for the amount of P20,775.03, representing its deficiency sales tax for the period from January 1, 1954 to June 30, 1955.

Thereafter, the Commissioner of Internal Revenue¹ (hereinafter referred to as the respondent) demanded from the petitioner payment of P20,775.03 plus P1,200 and P5,000 in penalties for failure to pay the tax on time and for knowingly making false entries in its books of accounts. The petitioner's manager then requested for an opportunity to explain the entries in Chinese characters in the notebooks and papers found in the petitioner's premises. This request the respondent granted. However, the petitioner's manager failed to appear or to send any authorized representative to explain the said entries.

Subsequently, the respondent received a letter from the petitioner wherein the latter denied ownership of the notebooks and papers, and offered to pay, in compromise, P1,385.85 as deficiency sales tax.

In the Interim, the notebooks and papers, while in the custody of the Chief of the Assessment Department of the BIR, were lost.

The respondent reiterated his previous assessment against the petitioner and demanded payment of P26,975.03 as deficiency sales tax plus penalties. The petitioner then requested a reinvestigation of its deficiency tax liability; this request the respondent denied.

On May 14, 1957 the petitioner appealed to the Court of Tax Appeals. The Tax Court rendered judgment on August 27, 1963, holding the petitioner liable in the sum of P20,775.03 as deficiency sales tax, but absolving it

from the penalties. The petitioner's subsequent motion for reconsideration was denied.

Hence, the present recourse.

In the main, the petitioner questions the use by the respondent of the translations prepared by Ong Seng Hoon of the entries in Chinese characters in the notebooks and papers found in the petitioner's premises as basis for the assessment of the deficiency sales tax demanded from it. Specifically, the petitioner (1) denies ownership of the said notebooks and papers, (2) challenges the reliability of the translations made by Ong, and (3) questions the admissibility of the said translations as secondary evidence to prove the contents of the lost original notebooks and papers.

1. The petitioner argues that the respondent failed to establish the former's ownership of the notebooks and papers in question. It points to the absence of any distinguishing mark of ownership on the notebooks and papers and suggests that they belong to another shirt factory allegedly with offices in the same building housing its own.

That the BIR agents found the notebooks and papers (in the locked drawers of two wooden cabinets) in the premises of the petitioner is not open to doubt. Indeed, the petitioner's manager, in his letter dated December 12, 1955 requesting for an opportunity to explain the entries in Chinese characters in the said notebooks and papers, referred to them as "books and papers .. seized from the premises of the Thomson Shirt Factory." [2] Possession by the petitioner of the notebooks and papers gives rise to (he presumption that it is the owner thereof. [3] And this presumption prevails unless overcome by clear and convincing evidence to the contrary.

The petitioner makes a mere general disavowal of ownership of the notebooks and papers. And rather inconsistently, the petitioner suggests that they belong to the Kingsman Shirt Factory, another shirt manufacturing establishment allegedly with offices in the same building housing its own, and claims that the entries in Chinese characters in the said notebooks and papers refer to household expenses. However, on record indubitably appears the difference in situs between the establishment of the Kingsman Shirt Factory and that of the petitioner - the former is located; at 1015 O'Donnell St., Sta. Cruz, Manila/the latter at 488 Juan Luna St., Binondo, Manila. Then also, as found by the Tax Court, the entries in Chinese characters in the notebooks and papers, as translated, refer to names of Chinese textile dealers, with whom the petitioner had business transactions, as well as type-names of textile materials, with corresponding data as to quantity and cost.

The onus rested on the petitioner to overthrow by competent evidence the presumption that it is the owner of the notebooks and papers. In the absence of competent contradictory evidence — and the petitioner has not presented any — the presumption applies in full force. The bare, unfounded and inconsistent assertions of the petitioner that the notebooks and papers belong to another business concern and that the entries therein in Chinese characters refer to the household expenses of its manager fall far short of the quantum of proof necessary to overthrow the presumption.

2. The petitioner assails as unreliable the translations made by Ong Seng Hoon of the entries in Chinese characters in the notebooks and papers. The unreliability of the translations, the petitioner asserts, stems from the circumstance that Ong, a Chinese national and citizen could not have validly held office in the BIR and, consequently, could not have regularly performed any official duty. On the other hand, the respondent states that the BIR employed Ong on a contract basis for, as a Chinese national and citizen, he could not be employed on permanent tenure in any Philippine Government office. Ong, the respondent adds, undertook the special assignment of translating into English entries in Chinese characters in books of accounts and records, papers and other documents seized from taxpayers; and Ong's translations have helped considerable in the determination of the correct liabilities of these taxpayers.

We cannot accord any force to the petitioner's reliance on mere conjecture that Ong could not have validly held office in the BIR and thus could not have regularly performed any official duty. Absent any competent evidence to the contrary, the presumption of regularity with respect to Ong's designation[4] as well as his performance of his official, albeit special, duties,[5] stands with full force.

The petitioner also impugns the correctness of the translations made by Ong of the entries in Chinese characters in the disputed notebooks and papers.

The record reveals the availability of the translations as early as October 15, 1955.[6] The record also shows that the petitioner's manager, in his letter dated December 12, 1955, requested for an opportunity to explain the entries in Chinese characters in the notebooks and papers. This request was granted, and the petitioner's manager was invited to a conference. However, he failed to appear or to send any authorized representative to attend the conference. The functionaries of the BIR also repeatedly summoned him, but he never appeared. Instead, he sent representatives who proffered noncommittal statements. The petitioner was also apprised, by letter dated March 21, 1957 of the use by the BIR of the translations as the basis of the assessment against it for deficiency sales tax. Yet, in its reply dated April 15, 1957, the petitioner merely asked for a reinvestigation of its deficiency tax liability, without making any reference whatsoever to the translations. Even in the proceedings before the Tax Court, the petitioner objected to the admission of the translations solely as "being hearsay and for being not properly identified." [7] Notwithstanding all the opportunities afforded it to explain the entries in Chinese characters in the notebooks and papers vis-a-vis the translations prepared by Ong, or to confront the said Ong before grave illness incapacitated the latter to testify or to render a deposition,[8] the petitioner made no attempt to do either. This omission of the petitioner, in the absence of any satisfactory explanation, strongly indicates the lack of merit of its claim impugning the correctness of the translations of the entries in Chinese characters in the notebooks and papers.

3. The petitioner takes exception to the admission of the translations as secondary evidence to prove the contents of the lost notebooks and papers. It alleges that the Tax Court, although the predicate for the admission of the translations had not been properly established as required by section 51 of Rule 123 of the old Rules of Court,[9] nonetheless admitted the same as substitutionary evidence. The Tax Court, the petitioner states, allowed the resort by the respondent to the translations without proof of the execution of the original notebooks and papers.

Section 51 of Rule 123 of the old Rules of Court[10] requires proof of execution and of loss or destruction of an original writing before secondary evidence of its contents by a recital in some authentic document may be admissible.

As heretofore stated, the petitioner's manager asked the then Collector of Internal Revenue, by letter, for an opportunity (which he never availed of) to explain the entries in Chinese characters in the notebooks and papers seized from the petitioner's premises. Notwithstanding the circumstance that he never saw the records, papers and documents seized by BIR agents from the petitioner's establishment, being absent therefrom at the time of the search and seizure, the manager professed knowledge of the particular notebooks and papers seized as well the specific nature of the entries in Chinese characters therein. Then, too, in the proceedings before the Tax Court, the said manager, in response to questions relating to the entries in Chinese characters in the notebooks and papers, slated that the said entries "written in Chinese are only intended for my family because I do not know how to write in Tagalog." [11] The admitted knowledge by the petitioner's manager of the particular notebooks and papers seized and, more importantly, of the specific nature of the entries in Chinese characters therein, taken together with the revealing statement the said manager made in relation to the same entries, suffice to establish the execution of the original notebooks and papers.

The loss of the original notebooks and papers taken from its premises the petitioner admitted. No bar then existed to the admission of the translations prepared by Ong to prove the contents of the lost originals. As records of the results of Ong's rendering into English of the entries in Chinese characters in the said notebooks and papers, made in the discharge of his duties, the translations constitute official documents admissible as substitutionary evidence in the nature of recitals of the contents of the lost original notebooks and papers.

In sum, the Court of Tax Appeals acted correctly and conformably to law when, in its judgment dated August 27, 1963, it (1) declared the petitioner the owner of the notebooks and papers in question, (2) upheld the reliability of the translations thereof prepared by Ong, and (3) held the said translations admissible as secondary evidence to prove the contents of the lost original notebooks and papers.

ACCORDINGLY, the judgment of the Court of Tax Appeals dated August 27, 1963 is affirmed, at petitioner's cost.

Teehankee, Makasiar, Muñoz Palma, and Martin, JJ., concur.

Esguerra, J, is on official leave.

[1] Then Collector of Internal Revenue.

[2] Exhibit 2, BIR Record, p. 33.

[3] Paragraph (j). section 69 of Rule 123 of the old Rules of Court, now paragraph (j) section 5 of Rule 131 of the Revised Rules of Court.

[4] Paragraph (I), section 69 of Rule 123 of the old Rules of Court, now paragraph (1). section 5 of Rule 131 of the Revised Rules of Court.

[5] Paragraph (in), section 69 of Rule 123 of the old Rules of Court, now paragraph (m), section 6 of Rule 131 of the Revised Rules of Court.

[6] Vide Exhibit 14, BIR Record, p. 22.

[7] T.s.n., October 9. 1962. p. 273.

[8] Ong died on July 15, 1958 (CTA Record, p. 197).

[9] The provisions of the Revised Rules of Court govern all cases brought after they took effect on January 1, 1964. The Court of Tax Appeals decided the case at bar on August 27, 1963.

[10] Now section 4 of Rule 130 of the Revised Rules of Court.

[11] T.s.n., January 24, 1963, pp. 303-304.

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