REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WOODWORKS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4472

COMMISSIONER OF INTERNAL REVENUE.
Respondent.
x - - - - - - - - - - - - - - x

4/27/98

D E C I S I O N

In the instant case, petitioner prays for the Court to declare as null and void respondent's assessment for 1983 deficiency income and expanded withholding taxes in the total amount of P52,187.92, and the Letter of Demand for 1983 business tax due in the amount of P551,881.47. Petitioner also prays for the Court to "declare and/or consider as withdrawn, suspended and cancelled" the Warrants of Levy and Distraints covering said assessment and demand letter, and to "enjoin or restrain the respondent from enforcing" such warrants.

A reading of the case records reveals the following background facts:

1. Petitioner, a duly organized and existing Philippine corporation, filed its corporate income

tax return for the taxable year 1983 on April 16, 1984. In said return, petitioner declared a net loss from its business operations in the amount of P240,522.94 (Corporate/Partnership Annual Income Tax Return filed April 16, 1984; CTA Records, pp. 8-11);

2. Upon investigation, the BIR assessed petitioner the amount of P614,552.91 as deficiency income, expanded, and business taxes for the year 1983, this amount broken down as follows (BIR Records, pp. 3-7):

Deficiency Income Tax		
Deficiency Tax Due	P28,703.00	
Interest	17,221.80	
Compromise	500.00	P 46,424.80
Deficiency Expanded Withholding Tax		
Deficiency Tax Due	0.00	
Surcharge	3,914.45	
Interest	2,348.67	
Compromise	2,000.00	8,263.12
Deficiency Business Tax		
Deficiency Tax Due	212,142.89	
Surcharge	53,035.72	
Interest	281,593.98	
Compromise	8,000.00	559,864.99
		P614,552.91

3. The assessment notice (Assessment No. 006554-83) and demand letter (Letter of Demand No. 05-983-83B-89-B2), both dated January 16, 1989, were sent to petitioner by registered mail (with

Registry Receipt No. 02441) on January 20, 1989 (BIR Records, p.2). Both were addressed to petitioner at 3rd Flr., Equitable Bank Bldg., Paseo de Roxas, Makati, MM;

4. Petitioner allegedly never received the said assessment notice and demand letter. Respondent, on the other hand, claims that these were returned to it by the post office bacause of petitioner's refusal to receive them;

5. Pursuant to Sections 205 and 213-217 of the Tax Code, as amended, respondent issued a Warrant of Levy on Real Property and a Warrant of Distraint of Personal Property (both numbered N-B-369-90), both dated March 21, 1990 against petitioner's properties. Both warrants were served on petitioner by agents of respondent on June 14, 1990 (Annexes "A" and "B", Petition For Review; CTA Records, pp. 9-10);

6. On June 25, 1990, respondent received petitioner's general protest of the same date (Annex "B", Petition For Review; CTA Records, pp. 7-8), therein disputing "in toto" Assessment No. 006554-83 and Demand No. 05-983-83B-89-B2 covered by the March 21, 1990 warrants of distraint and levy. In said protest, petitioner prayed for additional time of at least thirty (30) days to

file responsive supplementary memoranda after it is given sufficient time to go over relevant details of BIR docket and related records. Said protest letter reads, in part, as follows:

> "This general protest is being filed basically due to serious reasons which, among others, include the following:
>
> 1. Taxpayer's records do not even show subject assessments/demands having been received or ever existed before this point of time;
>
> 2. Taxpayer first came to know of alleged assessments/demands only upon production of warrants supposedly emanating therefrom; thus the assessments/demands being devoid of validity, warrants based thereon are, consequently, invalid and of no force and effect;
>
> 3. Applicable rules/regulations prescribed under Revenue Regulations No. 12-85 on proper issuance of assessments appear to have been disregarded/violated;
>
> 4. Taxpayer fully supports BIR's eagerness to collect taxes, but taxpayer cannot, in conscience, accept baseless warrants emanating from dubious assessments/demands not properly issued, or where none lawfully existed;
>
> 5. Assessments/demands, whereon the warrants were based, appear more factitious than factual, and are proper subjects of consideration and investigation warranted in the premises;
>
> xxx xxx xxx"
>
> (Annex "B", Petition For Review; CTA Records, pp. 7-8);

7. On July 10, 1990, respondent, through his Collection Enforcement Division, received petitioner's supplemental protest dated July 6, 1990, therein stating, among others, that:

> "In addition to, and in supplement of, said General Protest (dated June 25, 1990), taxpayer submits its Supplementary Protest, to wit:
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> 1. Taxpayer-corporation timely filed its 1983 return, together with the requisite attachments thereto;
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> 2. Taxpayer sumbits, with due respect, that the controverted assessment/demand, which taxpayer did not receive, are "jeopardy assessments" hastily issued just to beat the prescriptive period, without proper bases whatsoever;
>
> 3. Assuming, but not admitting, that subject assessment/demand were released as alleged, taxpayer failed to respond one way or the other, due to causes beyond its control, i.e. taxpayer did not receive the assessment/demand being contoverted; and taxpayer do not have records of same;
>
> 4. Taxpayer, still in process of compiling/collating relevant records, has reason to believe that subject cases could have been covered by tax amnesty availed of;
>
> 5. Taxpayer is hereby putting up the defense of prescription considering that collection at this late date is now time-barred, so that, the BIR, without meaning it to be, collection proceedings in these cases may be tantamount to harrassment and injustice to taxpayer;
>
> 6. Taxpayer reserves the right to file additional protest-memoranda pending

> the Honorable Commissioner's final and/or definite determination/decision on the captioned cases;
>
> In the light of the foregoing, taxpayer requests that subject assessment/demand be considered null and void and of no force and effect; and that subject Warrants of Distraint and Levy be soonest suspended, withdrawn and cancelled, to meet the pressing need for fair play, regularity and orderliness in such administrative actions as in the instant case." (Annex "C", Petition For Review; CTA Records, pp. 9-10);

8. On July 18, 1990, as respondent had not yet responded to either of petitioner's protest letters, petitioner filed the instant petition for review with this Court.

Two basic issues face the Court in the instant case, namely:

1. Whether or not respondent's assessment issued against petitioner for the total amount of P614,552.91 has become final and unappealable, and if not whether respondent's disallowance of certain deductions claimed by petitioner is correct; and

2. Whether or not respondents right to collect the assessed amount by the March 21, 1990 warrants of levy and distraint is already time-barred.

Anent the first issue, petitioner contends that it received neither Assessment Notice No. 006554-83 nor Demand Letter No. 05-983-83B-89B2, which it "came to know of xxx only upon production of warrants supposedly emanating therefrom." (Exhibit "B", Petition For Review; CTA Records, p. 7). Yet, it is not disputed that, as evidenced by Registry Receipt No. 02441 (BIR Records, p. 2), respondent sent both the assessment notice and the demand letter to petitioner, through registered mail; and that these were returned to respondent, as shown by the words "RTS, Repause to Received (sic), 1-23-89" written across the face of the envelope containing the registered mail, presumably by the postal authorities (BIR Records, p. 2).

In the Court's opinion, therefore, petitioner must be deemed to have received the assessment notice and the demand letter on January 23, 1989, when it refused to receive the same. For, as the Supreme Court stated in the case of **Co Keng Kian v. Intermediate Appellate Court** (189 SCRA 112, August 29, 1990):

> "Indeed, notice by registered mail is considered an effective service on the person concerned. It cannot be avoided by the mere expediency of declining to accept delivery after notification thereof. The service is deemed complete regardless of such refusal to accept if the addressee fails to claim his mail from the post office after the lapse of five (5) days from the date of the first notice of the postmaster."

This is so even if the assessment notice and demand letter were both sent by respondent to petitioner at the 3rd floor of the Equitable Bank building in Paseo de Roxas, Makati, instead of at its office address at the 4th floor of the same building, for the reason that petitioner itself, in its income tax return in question (Corporation/Partnership Annual Income Tax Return for Calendar/Fiscal Year Ending December 31, 1983, p. 1; BIR Records, p. 11) stated its address as the one to which the assessment notice and demand letter were sent.

Thus, according to Section 229 of the Tax Code, as amended, which provides, as follows:

> "Sec. 229. Protesting of assessment -- When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on the findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
>
> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision of the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and unappealable." (Underscoring supplied.)

the assessment against petitioner for the amount of P614,552.91, has already prescribed. For, in the case at bar, there is clearly more than a thirty-day interval between the time that respondent's assessment against petitioner was refused acceptance by petitioner on January 23, 1989, and the time that petitioner filed its protest letter with the respondent on June 25, 1990.

The Court now comes to the second issue, that is, whether respondent's right to collect the assessed amount by distraint and levy has already prescribed, as petitioner contends.

The Tax Code, prior to its amendment by Batas Pambansa No. 700, entitled "An Act Amending Sections 318 And 319 Of The National Internal Revenue Code, As Amended, So As To Reduce The Period Of Limitation For Assessment Of Internal Revenue Taxes From Five To Three (3) Years" (dated April 5, 1984), provided in its Sections 318 and 319, respectfully, that:

> "Sec. 318. Period of limitation upon assessment and cellection of taxes. -- Except as provided in the succeeding section, <u>internal revenue tax shall be assessed within five years after the return was filed</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day:

> Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code." (Underscoring Ours)

and;

> "Sec. 319. Exceptions as to period of limitation of assessment and collection of taxes. --
>
> xxx xxx xxx
>
> (c) When the assessment of any internal revenue tax has been made within the period of limitation above-prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon." (Underscoring supplied)

Subsequent to BP 700, the same Tax Code provisions, this time renumbered to Sections 268 and 269, read, as follows:

> Section 268. Period of limitation upon assessment and collection. -- Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day proscribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day proscribed by law for

> the filing thereof shall be considered as filed on such last day. (Underscoring Ours)

and;

> "Section 269. Exceptions as to period of limitation of assessment and collection of taxes. --
>
> xxx xxx xxx
>
> (c) Any internal assessment revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax." (Underscoring supplied)

In the case at bar, the income tax return in question was filed by petitioner on April 16, 1984, while the assessment was issued by respondent four years and eight months later, on January 16, 1989. Thus, the Court must determine whether the provisions of the Tax Code prior to or those subsequent to BP 700 are applicable to the case at bar. For, if the latter provisions apply, then respondent's right to collect the assessed amount (and, in fact, its right to make the assessment against the petitioner, in the first instance) has already prescribed.

Section 3 of B.P. 700 provides the Court with the solution. It states as follows:

> "Sec. 3. The period of limitation herein prescribed shall apply to assessments of internal revenue taxes beginning taxable year 1984." (Underscoring supplied)

Clearly, since the income taxes which are the subject of the assessment notice, demand letter, and the warrants of distraint of levy, are petitioner's corporate taxes for the year 1983, then B.P. 700 and the amendments it introduced to the Tax Code do not apply. In other words, the provisions of Sections 318 and 319 above-quoted apply to the instant case; and, consequently, respondent's right to collect the assessed amount has not yet prescribed.

In view of the foregoing, this Court so holds that the assessment made against petitioner's for deficiency corporate income tax return for 1983, in the total amount of P614,552.91, is valid; and that respondent's issuance of the warrants of levy and distraint to collect the said amount, is likewise valid and effective.

WHEREFORE, finding the instant petition for review without merit, the same is hereby DISMISSED. Petitioner's prayer for the declaration of the nullity of Assessment Notice No. 006554-83, Demand Letter No. 05-983-83B-89B2, and the Warrants of Levy on Real Property and Distraint of Personal Property both numbered N-B-369-90, is hereby DENIED.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, April 27, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-FARRALES
Associate Judge

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

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge