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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RODOLFO PISON,
Petitioner,

- versus - C.T.A. CASE NO. 3894

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/14/88

D E C I S I O N

This case is about respondent's decision holding petitioner liable for the amount of P70,456.52 as deficiency income tax for 1974, inclusive of interest and penalties.

It does appear that in an investigation of petitioner's income tax return for the year 1974, it was ascertained that the amount of P98,854.41 representing patronage dividends and interest for crop year 1969-1974, inclusive, was received from the First Farmers Milling and Marketing Cooperative Association, Inc., detailed as follows:

Crop Year	Date Received	Dividend	Interest	Total
1969-1970	April 29, 1974	P 5,783.37	P 302.67	P 4,036.04
1970-1971	May 24, 1974	31,425.58		31,485.58
1971-1972	June 14, 1974	5,842.71		5,842.71
1972-1973	August 7, 1974	15,919.84	252.14	16,171.38
1972-1973	September 7, 1974	21,901.35	132.41	22,085.76
1974-1974	December 20, 1974	15,183.09	4,061.85	19,244.04
		P94,055.34	P4,799.07	P98,854.41

In his 1974 income tax return, petitioner declared the amount of P19,679.49 as income from the total amount of P98,854.41 received as patronage dividends and interest pertaining to five (5) crop years, leaving undeclared the amount of P79,174.92.

Informed and given the opportunity to go over the record of said findings by respondent's Regional Office on January 20, 1978, petitioner through his authorized representative under letter dated February 8, 1978 stated that the unreported income was covered by tax amnesty. Nonetheless, petitioner was assessed in the amount of P70,456.52 as deficiency income tax for 1974, inclusive of interest and penalties under Assessment Notice dated March 28, 1980, computed as follows:

Net Income per return filed		P115,377.23
Add: Additional income-Patronage Dividend received from First Farmers Milling Co.		79,174.92
Net Income per investigation		P194,552.15
Less: Exemptions		3,000.00
Net Income subject to tax		P191,552.15
Tax due thereon		P 96,249.00
Less: Tax paid per return		46,848.00
Deficiency tax		P 49,406.00
Add: 14% annual interest from 4/16/75 to 3/31/80 (42% max.)		20,750.52
Compromise penalties for:		
1. failure to submit schedule of taxes & licenses	P100.00	
2. failure to submit list of income producing prop.	100.00	
3. failure to submit BIR Form 1701 B	100.00	300.00
TOTAL AMOUNT DUE AND COLLECTIBLE		P 70,456.52

Petitioner on April 22, 1980 protested the said assessment which respondent denied in a letter dated July 18, 1984, received by the petitioner on August 30, 1984.

Petitioner sought the reconsideration of respondent's denial in a letter dated September 5, 1984 receipt thereof was acknowledged in the respondent's office on October 14, 1984 but apparently was not given due course. On January 8, 1985 a warrant of levy on real property was served the petitioner for enforcement of collection.

On January 25, 1985 petitioner filed the instant appeal.

Two issues are presented in this proceeding.

First, whether the petition for review is time barred. Respondent urges that the petition filed on January 25, 1985 was more than thirty days from receipt of respondent's denial on August 30, 1984. Under Secti n 11 in relation to Section 7 of R.A. No. 1125 an appeal from the decision of the Commissioner of Internal Revenue on disputed assessment must be filed within thirty days from receipt of such decision. Accordingly, the assessment has become final, incontestable, executory and the Court has no jurisdiction.

Furthermore, petitioner's letter of September 5, 1984 for a reconsideration "was received at the BIR Sector Operations Office on October 14, 1984 or more than 30 days from August 30, 1984. Consequently, since the request for reconsideration, itself, was filed outside the thirty-day period, there was no more period to suspend". Moreover, "petitioner's letter did not advance new grounds for reconsideration of respondent's decision, hence, *pro forma*, therefore, it did not suspend the running of the thirty-day period".

Petitioner apprises Us that his September 5, 1984 letter sent by air mail under Registry No. 8368 to Deputy Commissioner Villa was "delivered to and received by the official messenger of the BIR Office, Mr. Zosimo Jamaisal on September 14, 1984" per certification of the Postmaster of the Bureau of Post, Bacolod City". (Annex Z.) Instead of a reply he was served a warrant of levy on real property on January 8, 1985 which he considered tantamount to a denial, hence, the instant petition filed on January 25, 1985 within the prescribed 30-day period for appeal.

Be that as it may, We are a little struck by the apparent quibble on the receipt of said request for reconsideration of the respondent's denial on the protest as would effect the suspension of the running of the 30-day period for an appeal to this Court. Under the circumstances obtaining the letter-request was duly acknowledged by the respondent's office on October 14, 1984 vis a vis September 14, 1984 as claimed by the petitioner. We think and believe that such a kind of disquieting aspect coupled with the common knowledge that mail service has considerably deteriorated in recent years the delay cannot wholly be attributed to the petitioner who must be accorded the presumption that his letter was received in the regular course of the mail sufficient to arrest the prescribed statutory period. Inexplicably, on January 8, 1985 without having received a reply from the respondent Commissioner a warrant of levy was served the petitioner. While a warrant of distraint and levy may not, strictly speaking, stand for a formal denial of the petition for reconsideration of the decision on the disputed assessment, it is proof of the finality of the assessment because it is the most drastic of all media of enforcing the collection of tax, and is "tantamount to an outright denial" thereof, and makes the said request "deemed rejected". Petitioner's appeal therefore on January 25, 1985 did not fail for lack of timeliness.

The Court takes jurisdiction.

The second issue as to the petitioner's liability for the amount of P70,456.52 as to deficiency income tax for 1974, inclusive of interest and penalties, respondent Commissioner does posit an unvarying assertion that the amount of P98,854.41 representing patronage dividends and interest for crop years 1969-1974, inclusive, payment of which was received by the petitioner in 1974 are reportable income for 1974. The accrual method used by the petitioner as basis in the reporting of income for 1970 to 1974 cannot prevail over the fact that having used the cash method in declaring the 1973-1974 dividend and interest of P19,679.92, the same cash method should have been applied for the remainder of P79,174.92 likewise received in 1974. Consequently, since the amount of P79,174.92 was earned in 1974, it is beyond the coverage of the various tax amnesty decrees availed of by the petitioner which apply to untaxed income or wealth earned or acquired in 1973 or prior years.

Petitioner argues that as a sugar planter he has consistently filed his income tax under the accrual method or crop year basis. The questioned unreported dividend income of P79,174.92 allocated for crop years 1969 to 1973, inclusive, was covered by certificates of indebtedness for the period, to wit:

Patronage Dividends	Certificate No.	Date
1969-70 - P 3,783.37	777	June 30, 1970
1970-71 - 31,425.58	1021	June 30, 1971
1971-72 - 5,843.71	1230	June 30, 1972
1972-73 - 37,820.29	1634	June 30, 1973

The certificates of indebtedness were received from the First Farmers Milling and Marketing Cooperative Association, Inc. on the dates specified but were redeemed and paid only in 1974.

Moreover, the same were reported and covered by four (4) tax amnesty returns, to wit: April 2, 1973 (Exh. A), June 27, 1974 (Exh. B), June 29, 1973 (Exh. C) and February 25, 1975 (Exh. D) availed unc r Presidential Decrees Nos. 23 (October 16, 1972), 67 (November 24, 1974), 370 (January 9, 1974), and 631 (January 6, 1975), which expressly provide that - The confidential nature of the taxpayer's declaration made pursuant to the said decrees and the payment made thereon shall forever be held inviolate and no government official, bureau or office may therefafter require the declarant to disclose any information relative thereto in any form or manner whatsoever.

The case before Us hardly presents a gripping question. The material facts are relatively simple so is the issue under resolve. Going by the records, petitioner realized income upon constructive receipt of the income represented by certificates of indebtedness essentially with an unfettered control thereof. The subject patronage dividends and interest earned and accrued during the period 1969 to 1973, inclusive, cannot be treated as income for 1974 when they were redeemed and paid nor for any later years. As a rule under the accrual method of reporting income, taxable income comes into existence when all the events have occurred which fix the right to receive the income and the amount can be determined with reasonable accuracy. Clearly, the questioned dividends are income of the crop year allocated to and are unreported income for purposes of the Income Tax Amnesty Decrees.

Petitioner's availment of the benefits of the tax amnesty by having voluntarily disclosed such untaxed dividend earned and realized in 1973 and prior years condons the corresponding tax liabilities and penalties thereon. It is no trivial pursuit for petitioner to have invoked the statutory proscription that "the taxpayer shall not be subject to any investigation whether civil, criminal or administrative insofar as such previously untaxed income and/or wealth is concerned x x x and such declaration shall not be examined, inquired or looked into by any person, government official, bureau or office x x x". (PD 23 as amended.) And, "Any revenue official who would inquire, question or attempt to inquire into the tax amnesty return filed by any taxpayer shall be guilty of grave misconduct for which he may summarily dismissed from the service". (Ibid. as further amended.) There is nothing ambiguous in the language of the provision insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar.

It would seem unfortunate for the respondent to have failed to recognize the compelling import and force of the caveat which poses no niggling barrier for him to stampede yet into a precipitate investigation and subsequent deficiency assessment on an income well ensconced by the tax amnesty. Such kind of respondent's action erodes the policy moorings and nullify altogether the manifest presidential intendment.

We therefore find for petitioner as a matter of fact an law.

WHEREFORE, respondent's decision is hereby set aside and the deficiency assessment against petitioner cancelled. No costs.

SO ORDERED.

Quezon City, Metro Manila, September 14, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals