REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARNATION PHILIPPINES, INC.,
(Now NESTLE PHILIPPINES, INC),
Petitioner,

- versus -

C.T.A. CASE NO. 4834

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
JAN 16 1996

x - x

D E C I S I O N

This is a petition for review seeking the reversal of a final decision of respondent Commissioner of Internal Revenue dated April 6, 1992, denying petitioner's protest of an assessment for deficiency income and business taxes for the fiscal year ending September 30, 1982 amounting to ₱555,747.20 and ₱17,520,684.52, respectively.

The facts are as follows:

Prior to 1985 petitioner, then known as Carnation Philippines, Inc., was a domestic corporation duly organized under Philippine law, with principal office located at the Araza Building, Paseo de Roxas, Makati, Metro Manila. On October 1, 1985, Carnation Philippines, Inc. was merged with Filipro, Inc. pursuant to a merger approved by the Securities and Exchange Commission, with Filipro, Inc. as the surviving corporation. (On

November 28, 1985, the articles of incorporation of Filipro, Inc. was amended, changing its corporate name to Nestle Philippines, Inc.)

It appears that on October 11, 1985, the SEC sent respondent a letter informing respondent of the approval of the merger between Carnation Philippines and Filipro, Inc., as a consequence of which all the assets and liabilities of Carnation Philippines, Inc. were transferred to and absorbed by Filipro, Inc. In that same letter, the SEC also informed respondent that the new principal office of the merged corporation was located at Reliance cor. Pines Sts., Mandaluyong Metro Manila (BIR Records, p. 283). Similarly, on December 2, 1985, Carnation Philippines, Inc. sent a letter to respondent informing the latter that it had ceased its operations effective on September 30, 1985 as a result of its merger with Filipro, Inc. (BIR Records, p. 284).

Meanwhile, on October 25, 1984, respondent issued Letter of Authority No. 3643 directing Revenue Examiner Arturo C. Caoile to examine the books of account of petitioner to determine petitioner's income and business tax liabilities for the fiscal year ending September 30, 1982 (Exhibit 3). Pursuant to this letter, an investigation of petitioner's books of account was conducted by Revenue Examiners Caoile and Rodolfo Mendoza (BIR Records, p. 218).

On June 15, 1987, Revenue Examiners Caoile and Mendoza submitted to respondent a joint memorandum detailing the findings of their investigation of petitioner's books of account, and recommending that petitioner be assessed for deficiency income tax of ₱555,474.00 and deficiency business tax of ₱17,104,591.64 for the fiscal year ending September 30, 1982. This recommendation was based on the disallowance of petitioner's deduction from its taxable income of the amount of ₱555,474.00 representing bad debts that it had written of in its books during the taxable year in question, as well as petitioner's application of its tax credits on its purchase of raw materials for the manufacture of its milk products to its tax liabilities arising from its manufacture and sale of tin cans (Exhibit 4; BIR Records, pp. 235-240).

Pursuant to the findings of Revenue Examiners Caoile and Mendoza, respondent Commissioner issued a notice of assessment dated October 15, 1987, informing petitioner that it was being assessed for deficiency income and business taxes amounting to ₱555,747.20 and ₱17,520,684.32, respectively, and demanding payment of said assessment within 30 days from petitioner's receipt of said notice of assessment (Exhibits 5, 5-A and 5-B; BIR Records, pp. 267-270). It appears, however, that this notice of assessment was sent by respondent to petitioner's old address at Araza Building, Paseo de Roxas, Makati, Metro Manila. Consequently, petitioner never received a copy of said notice of assessment.

Sometime in February 1988, petitioner received a First Tracer dated February 12, 1988 from respondent Commissioner, following up petitioner's payment of the assessed deficiency income and business taxes pursuant to the notice of assessment dated October 15, 1987. In a letter dated March 8, 1988 addressed to respondent Commissioner, petitioner contested the assessment and informed respondent that it had never received the alleged notice of assessment issued by respondent. Petitioner pointed out that said notice of assessment was erroneously sent to petitioner's old address prior to its merger with Filipro, Inc. despite the fact that petitioner had duly informed respondent of said merger (BIR Records, pp. 285-286). Subsequently, in a letter to respondent dated August 16, 1988 petitioner supplemented its earlier protest, setting forth the specific factual and legal grounds for its protest (BIR Records, pp. 300-325).

In a letter dated April 6, 1992, respondent denied with finality petitioner's protest and upheld the validity of the disputed assessment, and reiterated his previous demand for the payment of said assessment. A copy of the decision was received by petitioner on July 17, 1992, and on July 29, 1992 petitioner filed the instant petition.

Meanwhile, on July 13, 1992, respondent issued warrants of distraint and levy against petitioner to enforce the payment of the disputed assessment. Said warrants were served on petitioner on July 23, 1992. On August 13, 1992, upon application by petitioner, We issued a resolution granting petitioner's petition for the issuance of a writ of injunction enjoining respondent from enforcing the warrants of distraint and levy, upon the filing by petitioner of a surety bond amounting to ₱18,076,431.72.

The petition raises three principal issues, namely: (a) whether or not the disputed assessment for deficiency income and business taxes was made within the five-year prescriptive period for the assessment of taxes as provided under then Section 318 of the National Internal Revenue Code; (b) if the answer to the first issue is in the affirmative, whether or not the bad debts claimed by petitioner as deductions from its taxable income were properly ascertained to be worthless and therefore deductible; and (c) again, if the first issue is resolved in the affirmative in favor of respondent (i.e., that the disputed assessment has not yet prescribed), whether or not petitioner was entitled to apply its excess tax credits on its milk products to its tax liabilities on its other products.

As may be gleaned from the foregoing, the threshold issue that must be resolved in this case is whether or not respondent's right to assess the alleged deficiency income and business taxes against petitioner has been barred by prescription. Under then Section 318 (now Section 203) of the Tax Code that was in force at the time, respondent had a period of 5 years from the filing by petitioner of its income tax return for the fiscal year ending September 30, 1982. The records of this case clearly show that petitioner's income tax return for the taxable year in question was filed on January 17, 1983 (BIR Records, p. 214). At the latest, therefore, respondent had until January 16, 1988 within which to assess petitioner for any deficiency taxes for the taxable year in question.

Petitioner argues that the notice of assessment dated October 15, 1987 that was purported issued by respondent and sent to petitioner's old address at Araza Building, Paseo de Roxas, Makati, Metro Manila did not produce any binding legal effect because petitioner never received the same. According to petitioner, the first time it came to know about the disputed assessment was when it received a copy of the First Tracer dated February 12, 1988 issued by respondent. Thus, the said

First Tracer should be deemed to be the "assessment" referred to under then Section 318 (now Section 203) of the Tax Code for purposes of determining whether or not respondent's right to make the disputed assessment has prescribed. Accordingly, since the "assessment" was effectively made only sometime in February, 1988 -- after the lapse of the five-year prescriptive period on January 16, 1988 -- respondent's right to issue the disputed assessment had already prescribed.

On the other hand, respondent contends that the disputed assessment was timely made because it was issued and released to petitioner's address as appearing in the income tax return filed by petitioner sometime in October, 1987, well within the five-year reglementary period provided under the old Section 318 of the Tax Code. According to respondent, under then Section 320 (now Section 224) of the Tax Code, the running of the prescriptive period for the issuance of an assessment is suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed. If the taxpayer informs the Commissioner of Internal Revenue of any change in address, the running of the statute of limitations shall not be suspended. However, the information required under Section 320 must be contained in a formal letter duly filed with the Commissioner of Internal Revenue informing the latter of the change in address. In the case at bar, respondent argues, the notification made by petitioner of its merger with Filipro, Inc. was not legally sufficient since petitioner's December 2, 1985 letter to respondent did not indicate the address of the surviving corporation where the assessment notice could be sent. Thus, it is as if there was no "formal letter" sent by petitioner to respondent within the meaning of then Section 320 of the Tax Code.

After a careful review of the records available to the Court, We are of the opinion that respondent's position is legally untenable. It is not denied that as early as October 1985, respondent already had actual knowledge of petitioner's change of address when, in a letter dated October 11, 1985, no less than the Securities and Exchange Commission informed respondent of the merger between Carnation Philippines, Inc. and Filipro, Inc. and, more importantly, of the change in the address of Carnation Philippines from Araza Building, Paseo de Roxas, Makati, Metro Manila to Reliance cor. Pines St., Mandaluyong, Metro Manila (BIR Records, p. 283). In fact, the examination of petitioner's books of account conducted by revenue examiners Arturo Caoile, Rodolfo Mendoza and Benjamin Arriola sometime in May 1986 was not conducted at petitioner's old address but at the administrative offices of Nestle Philippines (the new name of Filipro, Inc.) at No. 335 Sen. Gil J. Puyat Avenue, Makati, Metro Manila (BIR Records, p. 223). Likewise, the letter dated June 19, 1987 of Beethoven Rualo, Chief of the Manufacturing Division of the Bureau of Internal Revenue, inviting petitioner for a pre-assessment conference was sent to and received at the address of Nestle Philippines, Inc. as mentioned above and not at petitioner's old address (BIR Records, p. 241). As a matter of fact, even the First Tracer dated February 12, 1988 issued by respondent Commissioner to petitioner was delivered to and received by petitioner at the corporate offices of Nestle Philippines, Inc. stated above.

By any reckoning, it cannot be denied that respondent had actual knowledge of the change in petitioner's address even before the disputed assessments were issued. Its feeble protestations that it had sufficiently complied with the requirements of the law and applicable jurisprudence (c. f. Republic v. Ricarte, G. R. No. L - 46893, November 12, 1985) regarding the sending of assessment notices by sending the disputed assessment to petitioner's address as appearing in its 1982 income tax return is, at best, frivolous and flies in the face of the undisputed evidence showing its actual knowledge of petitioner's new address. Besides, it should be noted that petitioner could not have stated in its 1982 income tax return its new address for the simple reason that the change in petitioner's address came much later - in 1985 - as a result of its merger with Filipro, Inc. In any event, respondent's very own records clearly indicate that petitioner had duly informed respondent of its change of address, and petitioner's actual knowledge of this fact appears to be clearly documented.

In view of the foregoing, We hold that the running of the five-year prescriptive period provided under the old Section 318 (now three years under Section 203) for the making of the assessment was not interrupted by the sending of the assessment notice to petitioner's old address. Even if We were to consider the First Tracer dated February 12, 1988 as the disputed assessment, such assessment did not produce any legal effect since it was made after the lapse of the five-year statute of limitations. In other words, respondent Commissioner's right to make the assessment had already prescribed when the First Tracer was issued or sent to petitioner.

Having ruled that respondent's right to make the disputed assessment has already prescribed, We find it unnecessary to delve into the other issues raised by petitioner.

WHEREFORE, premises considered, the petition is hereby GRANTED and the disputed assessment against petitioner for deficiency income and business taxes for the taxable year ending September 30, 1982 are hereby set aside.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby cerrtify 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
Court of Tax Appeals