REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI),
Petitioner,

- versus -

C.T.A. Case No. 4615

BUREAU OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

4/13/94

DECISION

This is an appeal from the final decision of respondent Bureau of Internal Revenue assessing Radio Communications of the Philippines, Inc. (RCPI), herein petitioner for deficiency income tax for taxable years 1981 and 1982 in the total amount of P7,474,747.52.

The facts as contained in this Court's Resolution dated April 20, 1992 are as follows:

> "Petitioner filed its appeal on June 5, 1991. Previously, an assessment for deficiency income tax for taxable year 1981, in the amount of P3,250,612.80 was issued against petitioner by respondent on January 31, 1986. Another assessment for the taxable year 1982, in the amount of P4,224,134.72 was issued on April 15, 1986 by respondent against petitioner. On February 22, 1986, petitioner protested the 1981 assessment of January 31, 1986.

Meanwhile, the President of the Philippines on August 22, 1986 issued a "One-Time Tax Amnesty covering unpaid income taxes for the years 1981-1985."

On October 30, 1986, petitioner availed of the provisions of E.O. No. 41 under File No. 30-F-00703-41-B with payment of amnesty tax substantiated by Confirmation Receipt attached as Annex "B" to the Petition for Review.

On June 15, 1987 the Chief of the Receivable Accounts Division sent petitioner an initial tracer requesting petitioner to pay the aforementioned deficiency assessments. Petitioner protested the tracer by apprising the Chief of the Receivable Accounts Division of its availment of the provisions of E.O. No. 41.

On November 23, 1990, respondent sent another tracer demanding settlement from petitioner of its tax liabilities. Through its letter of December 5, 1990, petitioner reiterated its position that the case should be considered closed and terminated by virtue of its availment of E.O. No. 41.

Respondent, through Balbino E. Gatdula, Jr., Head of the Collection Office replied through letter of February 5, 1991 that availment of the amnesty under E.O. No. 41 did not result in the cancellation of the assessments against petitioner since only those assessments issued after August 21, 1986 can be withdrawn as a result of availment of E.O. No. 41. Respondent thus repeated his demand for the payment of the assessments.

Under letter of February 14, 1991 petitioner countered the letter of February 5, 1991 of respondent, posturing that E.O. No. 41 applies even to assessments issued previous to August 22, 1986.

In the meantime, the respondent had already prepared warrants of garnishment on January 31, 1991 and this was served to

> petitioner's depository banks on February 26, 1991.
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> Through letter of March 4, 1991 to the Commissioner of Internal Revenue, petitioner moved for the lifting of the warrants of garnishment. On May 6, 1991 petitioner received the Commissioner's final decision dated April 10, 1991 xxx." (C.T.A. Records, pp. 87-90)

In the same Resolution, this Court ruled that the petition was filed on time on June 5, 1991 or within thirty (30) days from receipt of the respondent's final decision on May 6, 1991.

Respondent for its part claims that the assessments are valid for the following reasons: 1) E.O. No. 41 did not cancel the assessments issued prior to August 22, 1986 since to hold otherwise would result in the retroactive and not prospective application of the statute; 2) Petitioner failed to voluntarily disclose its untaxed income as it did not include the previously untaxed income for 1981 and 1982 in the amount declared in the tax amnesty return; and 3) The amnesty issue cannot adversely affect the assessments because the same have already become final and executory.

The validity of the assessments is hinged mainly on the legal issue of whether or not E.O. No. 41, decreeing a Tax amnesty for unpaid income taxes during the period from 1981 to 1985, can be applied on assessments issued prior to August 26, 1986.

This Court rules in the affirmative.

E.O. No. 41 was issued by the President of the Philippines on August 22, 1986.

The statute declared a "One-Time Tax amnesty covering unpaid income taxes for the years 1981-1985."

Section 4 of E.O. No. 41 provides for the enumeration of those taxpayers who may not avail of the tax amnesty. The exceptions are as follows:

> "a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14;
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> b) Those with income tax cases already filed in Court as of the effectivity hereof;
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> c) Those with criminal cases involving violations of the income tax law already filed in court as of the effectivity hereof;
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> d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;
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> e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;
>
> f) Those with pending cases involving unexplained and unlawfully acquired wealth before the Sandiganbayan;
>
> g) Those liable under Title Seven, Chapter Three (Frauds, Illegal Exactions and Transactions) and Chapter Four (Malversation

of Public Funds and Property) of the Revised Penal Code, as amended."

In the similar case of **Commissioner of Internal Revenue vs. Tikicraft Industries, Inc., et al.** (CA-GR. SP No. 24488 August 26, 1991), the Court of Appeals, in affirming this Court's decision (C.T.A. Case No. 4526, January 31, 1991) ruled:

> "It is well to stress that taxpayers whose tax assessments were issued prior to August 22, 1986 are not among the exceptions. Under the rule of "*expressio unuis est esclusio alterius*," "where a statute enumerates the subjects or things on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned." (Davis Place vs. Liquor Control Commission, 269 N.W., p. 594). Likewise, it is an elementary rule in statutory construction that "an express exception, exemption or saving clause excludes the others." (Lewis Sutherland, Statutory Const. p. 494). Hence, since Section 4 of E.O. 41 specifically mentions the exceptions from the coverage of the tax amnesty, it necessarily follows that others not mentioned, such as taxpayers who were issued assessments prior to August 21, 1986 are not included in the exceptions."

Respondent relied on Revenue Memorandum Order Nos. 42-86 and 4-87 which provide:

> "3.3 *Situational Coverage of the expanded tax amnesty* . Income, donors, estate, business and other internal revenue tax cases where a deficiency tax assessment had been issued beginning January 1 up to August 21, 1986 shall not likewise qualify under the expanded tax amnesty."

> "1.02. A certification by the Tax Amnesty Implementation Office of the fact of

> availment of the said tax amnesty shall be sufficient basis for:
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> xxx xxx xxx
>
> 1.02.3 In appropriate cases, the cancellation/withdrawal of assessment notices and letters of demand issued after August 21, 1986 for the collection of income, business, estate or donors taxes during the same taxable years."

In the previous cases of **R.O.H. Auto Products Philippines, Inc., vs. The Commissioner of Internal Revenue** (C.T.A. Case No. 4318, August 20, 1990) and **Bay Food Specialties, Inc. vs. Commissioner of Internal Revenue** (C.T.A. Case No. 4246, August 7, 1991), this Court had occasion to rule that:

> "The rule in Revenue Memorandum Order No. 4-87 promulgating that only assessments issued after August 21, 1986 shall be abated by the amnesty is beyond the contemplation of Executive Order No. 41, as amended. To paraphrase the cited previous declarations of the Supreme Court which were likewise recalled in the Tayug Rural Bank Case supra, administrative rules and regulations promulgated to implement given legislation should not be contradictory with the statute but conform to the standard which it prescribes (Director of Forestry vs. Muñoz, L-24796, June 28, 1968, 23 SCRA 1183). A rule would be binding on the courts if the scope is within the statute even if the courts are not in agreement with the policy therein or its innate wisdom (Victoria Milling Co., Inc. vs. Social Security Commission, L-16704, March 17, 1962, 4 SCRA 627)."

Moreover, the ruling or circular issued may be given retroactive application if it would be beneficial to the taxpayer as held by the Court of Appeals, thus:

> "Obviously, the title of E.O. 41 itself as amended by E.O. 64 - "Declaring a One-Time Tax Amnesty covering Income Taxes, x x x and the Tax on Business under Chapter II, Title V of the National Internal Revenue Code, as amended, for the years 1981-1986", suggests that the tax amnesty has to be given retroactive effect so to include in its coverage unpaid income and business taxes for the past years specifically mentioned, namely, 1981 to 1985.
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> It is a basic tenet in our jurisprudence that generally all laws must be given prospective application. The same principle applies to rules and regulations promulgated by administrative authorities as held by the Supreme Court in ABS-CBN vs. Court of Tax Appeals 108 SCRA 142,
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> > "A ruling or circular issued by the Commissioner of Internal Revenue has no retroactive effect if to so apply them would adversely affect the taxpayer."
>
> By analogy, the aforecited rule may be applied to rules and regulations promulgated by the Secretary of Finance. Conversely, a rule or regulation may be given retroactive application if the same would be beneficial to the taxpayer, as in the case at bar. **(Commissioner of Internal Revenue vs. Tikicraft Industries, Inc. et al.,** supra)

Respondent further alleged that voluntary disclosure of untaxed income is one of the requirements in order to avail of the benefits of tax amnesty return under E.O. No. 41. Respondent is of the opinion that petitioner failed to voluntarily disclose the untaxed income for taxable years 1981 and 1982 in the tax amnesty return. Citing the case of **Nepomuceno vs. Montecillo** (118 SCRA 254), respondent claimed that "in order to avail of the tax amnesty, it is required that there should be a voluntary disclosure of a previously untaxed income. Ergo, a taxpayer who does not voluntarily disclose his untaxed income cannot avail of the tax amnesty under Executive Order No. 41." (Memorandum, p. 8, C.T.A. Records, p. 179).

Contrary to respondent's view, petitioner complied with the requirement of voluntary declaration of untaxed income for the years 1980 to 1985 as envisioned in the Preamble of E.O. No. 41 which reads:

> "**WHEREAS**, to raise more revenues, certain income tax evaders should be encouraged to declare voluntarily their untaxed income and pay the tax due thereon;"

Petitioner by filing sworn statements declaring its net worth as of December 31, 1980 and December 31, 1985, voluntarily disclosed its untaxed income during the five-year period. The period necessarily includes untaxed income for 1981 and 1982. It cannot be said that petitioner, knowing very well of the assessments issued by the respondent, filed the return out of compulsion to save it (petitioner) from paying the tax assessments. Whether or not to avail of the tax amnesty is solely within the discretion of the herein petitioner. Instead of paying the amnesty tax in the amount of P59,978.00, petitioner may opt to contest the respondent's assessment before this Court.

The Supreme Court denied the dismissal of the criminal case against the petitioners in the case of **Nepomuceno vs. Montecillo** (supra) mainly because the applicable Amnesty Decree, which is Presidential Decree (P.D.) No. 80, specifically excepted "violators with pending criminal, civil and administrative cases."

And lastly, notwithstanding the fact that the assessments have already become final and executory, availment of the tax amnesty under E.O. No. 41 in effect cancelled the said assessments. Section 6 of the statute provides for the immunities and privileges in favor of taxpayers, like relief of any income tax liability on any untaxed income from January 1, 1981 to December 31, 1985. The assessments, assuming that they have already become final and executory, are rendered moot and academic by virtue of petitioner's availment of the tax amnesty. By accepting the payment of amnesty tax, the Government waived its right to further recover the deficiency income tax against the petitioner. (**Republic vs. Intermediate Appellate Court**, 196 SCRA 335).

> A tax amnesty, being a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law, partakes of an absolute forgiveness or waiver by the Government of its right to collect what otherwise would be due it, and in this sense, prejudicial thereto, particularly to give tax evaders, who wish to relent and are willing to reform a chance to do so and thereby become a part of the new society with a clean slate (**Republic vs. Intermediate Appellate Court**, supra; **Commissioner of Internal Revenue vs. Botelho Shipping Corporation**, 20 SCRA 487).

The Court is aware of the ardent task of the respondent to improve the revenue of the Government for the advancement of the common weal; but it cannot exercise its power beyond what the law permits.

WHEREFORE, in view of all the foregoing considerations, the assessments issued by the respondent against the petitioner for alleged deficiency income tax for taxable years 1981 and 1982 are hereby **CANCELLED**.

SO ORDERED.

Quezon City, Metro Manila, April 13, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that the 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