REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUNNYVALE DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5730

Promulgated:
JAN 04 2001

x - x

DECISION

This case involves assessments of deficiency income, donor's and withholding taxes in the amounts of P465,042.78, P320,623.09 and P8,179.12, respectively or in a total amount of P793,844.99 for the fiscal year ended June 30, 1994.

Petitioner is a domestic corporation organized to promote, form, acquire, develop, or establish businesses and all forms of industrial, commercial, manufacturing, construction and agricultural enterprises, domestic or foreign, that have growth and development potential.

On April 16, 1998, Petitioner received three formal assessment notices and demand letters, all dated April 7, 1998, from the Bureau of Internal Revenue for deficiency income, donor's and withholding taxes for the fiscal year ended June 30, 1994 in the aggregate amount of P793,844.99, excluding increments, broken down as follows: (*paragraph 3, Joint Stipulation of Facts*)

		Exhibits
Income Tax	P465,042.78	A, B
Donor's Tax	320,623.09	A-1, B-1
Withholding Tax	8,179.12	A-2, B-2

The alleged deficiency income tax assessment of P465,042.78 for the fiscal year ending June 30, 1994 arose from the disallowance of the following expenses:

a) Real property taxes and motor vehicle registration fees - P1,081,333.14;

b) Depreciation - P84,148.96;

c) Association Dues - P253,286.46;

d) Miscellaneous expenses such as management service fees, dues and subscription - P289,620.11 (*par. 4, Joint Stipulation of Facts*).

The deficiency donor's tax assessment of P320,623.09 arose when Petitioner allegedly waived its right to collect interest on interest-free loans to its affiliated company, the Alabang Supermarket Corporation (*par. 6, Joint Stipulation of Facts*).

The deficiency withholding tax assessment of P8,179.12 for fiscal year ending June 30, 1994 arose from the alleged failure of the Petitioner to withhold a 1% contractor's tax on transportation equipment in the amount of P617,912.00 (*par. 5, Joint Stipulation of Facts*).

On May 15, 1998, Petitioner, through its external auditor, SyCip, Gorres Velayo and Company, filed with the Bureau of Internal Revenue (BIR) an administrative protest against the above deficiency income, donor's and withholding tax assessments for fiscal year ending June 30, 1994 (*par. 7, Joint Stipulation of Facts*).

On July 14, 1998, Petitioner, through its external auditor, filed with the BIR a supplemental protest reiterating its disagreement to the subject deficiency tax assessments and transmitting therewith the following documents to support its position against the merit of the subject tax assessments: (*par. 8, Joint Stipulation of Facts*)

a. Copies of the official receipts evidencing the payment of real property (Exhs. F to F-20) and motor vehicle registration fees;

b. Copies of the Certificate of Registration and official receipts for the renewal of registration of motor vehicles owned by the Petitioner and used by its officers;

c. Copies of the official receipts evidencing the payment of association dues (Exhs. H to H-18);

d. Copies of the official receipts evidencing payment of management fees, subscriptions and other miscellaneous expenses (Exhs. I to I-10);

e. A copy of the Deed of Assignment executed by the Petitioner and Alabang Supermarket Corporation on February 16, 1995 wherein the cash advances secured by the latter from the Petitioner were converted into equity per Resolution of Petitioner's Board of Directors (Exh. K-1).

Alleging inaction on the part of the Respondent on the said administrative protest filed by herein Petitioner, the latter appealed to this Court on February 5, 1999 pursuant to Section 228 of the Tax Code, as amended, wherein it is provided that:

> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from the lapse of the one eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

No evidence was submitted by the Respondent in refutation of Petitioner's asseverations. In fact, on July 18, 2000, Respondent was declared to have waived his right to present evidence due to his failure to appear on said hearing date (p. 221, CTA rec.)

The parties in this case stipulated that the following issues are to be determined by this Court, to wit:

1. Whether or not the right of the BIR to assess Petitioner for alleged deficiency income, withholding and donor's taxes for

fiscal year ended June 30, 1994 has already prescribed;

2. Whether or not the deficiency income, donor's and withholding tax assessments issued against Petitioner for fiscal year ending June 30, 1994 are void for failure to state the law and the facts on which the assessments were made;

3. Whether or not the following expenses are sufficiently supported as valid deductions from Petitioner's gross income for fiscal year ended June 30, 1994:

   a. Real property taxes and motor vehicle registration fees - P1,081,333.14;

   b. Depreciation - P84,148.96;

   c. Association Dues - P253,286.46;

   d. Miscellaneous expenses representing management service fees, dues and subscriptions - P289,620.11;

4. Whether or not interest in the amount of P3,206,220.87 allegedly waived by Petitioner on interest-free cash advances granted to its affiliated company should be considered a donation in favor of the latter and hence, subject to donor's tax; and

5. Whether or not Petitioner is liable to a 1% withholding tax on transportation equipment amounting to P817,912.00 for the fiscal year ended June 30, 1994.

In resolving the first issue, We quote the pertinent provision of the law, *viz*:

SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in the succeeding section, <u>internal revenue</u>

> taxes shall be assessed within three years after the last day prescribed 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 prescribed by law for the filing thereof shall be considered filed on such last day. (Underscoring supplied).

Thus, it is quite clear from the above proviso that Respondent had three years to assess Petitioner commencing from the day Petitioner filed its tax return. Relative thereto, Article 13 of the New Civil Code provides that a year shall be understood to consist of 365 days.

As disclosed by the records in this case, Petitioner filed its annual income tax return for the fiscal year ended June 30, 1994 on October 17, 1994 (Exh. E-2). Respondent therefore had until October 16, 1997 (1996 being a leap year) within which to assess Petitioner for deficiency income tax. However, Respondent issued the assessment notice (Exhibit A) and demand letter (Exh. B) only on April 7, 1998 which Petitioner allegedly received on April 16, 1998. It is then obvious that the assessment for deficiency income tax against herein Petitioner was issued beyond the period allowed by law.

As regards the withholding tax, the last day for the filing of the monthly remittance return is on the 10th day of the following month of withholding or on July 10, 1994. Petitioner filed its monthly remittance return for June 1994 on July 11, 1994 (Exh. L-5). Based on Section 203 above-cited, Respondent had three years therefrom within which to assess Petitioner of deficiency withholding taxes or until July 10, 1997 (1996 being a leap year). But records will reveal that the assessment for deficiency withholding tax was issued only on April 7, 1998 and allegedly received by Petitioner on April 16, 1998. Like the assessment for deficiency income tax, it was issued out of time.

Finally, for the donor's tax, there was no return filed by Petitioner for the reason that Petitioner vehemently denies that a donation was ever made. Granting for the sake of argument, that there was a donation but no return was filed by the donor the law allows Respondent ten years from the discovery of such omission within which to assess Petitioner. But it is required that "the taxpayers shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void" (Sec. 228).

It is evident from the records in this case, that the assessment notice issued by the Respondent against Petitioner for deficiency donor's tax did not indicate how the tax base of P3,206,230.87 was arrived at and why it was being subjected to donor's tax (see Exhibit "A-1"). The accompanying demand letter also failed to state the law and the facts on which the assessment was based (see Exhibit "B-1"). Hence, the same is void in accordance with Section 228 of the Tax Code, as amended.

It bears stressing that not only the assessment for deficiency donor's tax is found to be void but the assessments for deficiency income and withholding taxes as well. For the income tax assessment, the assessment notice did not indicate the reasons for disallowing the amounts of deductions pertaining to taxes and licenses, depreciation, association dues and miscellaneous expense. For the withholding tax assessment, the assessment notice did not indicate how the tax base of P817,912.00 was computed. The concomitant demand letters of said assessment notices did not state the law and the facts on which the assessments were based. As We have discussed earlier, no evidence was presented by the Respondent to controvert Petitioner's allegations because he was declared to have waived his right to present evidence. In other words, aside from the assessments issued beyond the prescriptive period, they were also void pursuant to Section 228 of the Tax Code, as amended.

Verily, finding that the questioned assessments were void and issued beyond the three-year period allowed by law to assess Petitioner, We find it no longer necessary to resolve the remaining issues.

WHEREFORE, in view of the foregoing, the instant petition is hereby **GRANTED**. Accordingly, the assessments issued by the Respondent against the Petitioner for the fiscal year ended June 30, 1994, particularly Assessment Notice No. 85326 for deficiency income tax of P465,042.78, Assessment Notice No. 85326 for deficiency donor's tax in the amount of P320,623.09 and Assessment Notice No. 85326 for deficiency withholding tax in the amount of P8,179.12, are **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge