May 29, 1970

CORPORACION DE PP.
AGUSTINOS,
Petitioner,

versus

CTA CASE NO. 1735

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

Petitioner appealed from the decision of respondent holding it liable for the sums of ₱2,500.42 and ₱3,785.46 as deficiency income taxes with interest for the years 1958 and 1959, respectively.

Petitioner is a duly organized religious corporation sole. For the years 1958 and 1959, it filed with respondent its income tax returns on February 23, 1959 and on March 18, 1960, respectively, and paid to respondent its 1958 income tax on November 17, 1960 in the amount of ₱75.00 and its 1959 income tax on October 31, 1960 in the amount of ₱1,474.48, and on November 11, 1960, by way of additional income tax, in the amount of ₱664.47.

In April, 1965, petitioner received from respondent two (2) letters, both dated April 13, 1965, assessing it the amount of ₱2,500.42 as deficiency income tax with interest for 1958, and ₱3,785.46 as deficiency income tax with interest for 1959. Said assessments were disputed by petitioner in its letter to respondent dated April 23, 1965 and received by the latter on April 28, 1965.

On January 25, 1966, herein petitioner received summons together with a copy of a complaint for collection of taxes in Civil Case No. 144726 of the City Court of Manila, entitled "Republic of the Philippines v. Corporacion de PP. Agustinos." Thereafter, petitioner on February 16, 1966, filed the present petition for review. The aforesaid civil case was dismissed by said City Court in an order dated March 1, 1967.

The issues submitted for resolution of this Court are the following:

1. Whether or not this Court has jurisdiction to entertain the present appeal;

2. Whether or not respondent is barred from assessing and collecting

the deficiency income taxes by reason of prescription;

3. Whether or not petitioner is still liable for the deficiency income taxes for the years 1958 and 1959.

First Issue -

Respondent contends that petitioner cannot now dispute the assessments made against it on the ground that the former's decision dated November 15, 1965 has already become final, executory and unappealable by virtue of the latter's failure to appeal the same to this Court within thirty (30) days from receipt thereof. On the other hand, petitioner denies having received said letter-decision of respondent and asserts that the only decision of respondent which it ever received was the judicial summons for collection on January 25, 1966, hence the 30-day period for appeal should start from abovestated date.

It is uncontroverted that on April 23, 1965, petitioner protested against respondent's assessment of April 13, 1965. Said protest was received by respondent on April 28, 1965. Respondent alleges that subsequent thereto, it sent letters-decisions dated September 23, 1965 and November 15, 1965 to petitioner. Petitioner, however, denies receipt of these letters.

(A perusal of the records shows that respondent submitted proof consisting of the testimony in open court of the mailing clerk that the above-mentioned letter-decision of November 15, 1965 was sent by registered mail to petitioner. In the cross examination, however, it appeared that the mailing clerk based his testimony on the entry and notations in the mailing book of the Bureau of Internal Revenue. No proof was presented by respondent that petitioner did in fact receive said letter-decision. The usual return card of registered mail was not presented in evidence and there is no proof that the postmaster actually received the mail and sent notice thereof to petitioner and that the latter failed to claim the same, which are the best evidence of service in registered mail. (Section 10, Rule 13, Rules of Court.))

(In the case of Gonzalo P. Nava v. Comm. of Int. Rev. (G.R. No. L-18470, Jan. 30, 1965), the Supreme Court refused to give probative value to a similar record of mails of the Bureau of Internal Revenue, although the clerk, whose duty it was to send the office mail and keep the record book of letters to taxpayers, took the stand but however admitted that all he could say was that there appeared in his record book a note that a letter to a taxpayer was mailed by special delivery on a specified date. We followed this rule in the case of Margarita Soriano de S. de Vicuña, et al., v. Commissioner of Internal Revenue, C.T.A. Case No. 1517, and naturally, we will apply the said rule to this case by refusing to give persuasive weight to the testimony of the mailing clerk.) Said the Supreme Court in the aforesaid Nava case:

> While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. v. Bautista, L-12250 and 12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue officers, without adequate protection or defense.

The decision on a protest is not less vital to the taxpayer than an assessment for it marks the commencement of the period for appeal to the courts. The taxpayer should not be deprived of his day in court by a lax rule with respect to notice of the decision.

As the Court is not persuaded that the letter-decision of respondent dated November 15, 1965 was actually received by petitioner, it can not consider the said letter-decision as the final and appealable decision that starts the running of the 30-day period for appeal to this Court. This 30-day period should be counted from petitioner's receipt of the summons in Civil Case No. 144726 of the City Court of Manila for collection. As held in Republic v. Lim Tian Teng, G.R. No. L-21731, March 31, 1966, the filing of such action at the instance of the Commissioner is equivalent to a denial of the taxpayer's request for reconsideration, and the taxpayer's remedy is to appeal to the Court of Tax Appeals within 30 days from the date that he is notified of such action. From January 25, 1966, the date of receipt by petitioner of the judicial summons, to February 16, 1966, the date of the filing of the present petition for review, less than thirty (30) days had elapsed. Such being the case, we rule that this Court has jurisdiction to entertain the present appeal.

Second Issue -

Petitioner claims that respondent's right to issue the aforesaid assessments and to collect the alleged deficiency income taxes for 1958 and 1959 had lapsed and prescribed.

(The undisputed facts in the case at bar are: (1) that petitioner filed its income tax returns for 1958 on February 23, 1959, and for 1959, on March 18, 1960; and (2) that petitioner received the two letters of assessment made by respondent, both dated April 13, 1965, on April 19, 1965. Needless to say, from February 23, 1959, the date petitioner filed its income tax return for the year 1958, to April 13, 1965, the date of the assessment, more than five (5) years had elapsed. Hence, respondent's right to assess the deficiency income tax for said year had already prescribed when the assessment was made.)

Anent the year 1959, petitioner controverts respondent's assessment dated April 13, 1965 claiming that said assessment must have been antedated considering that for the year 1965, the calendar shows that Holy Week of said year corresponded to April 12 (Holy Monday) to April 18 (Easter Sunday) and said letter appears to have been made on Holy Tuesday (April 13), barely two days from the last day of the five-year period for assessment of the 1959 income tax of petitioner.

(This Court takes judicial notice of the fact that the only working days during every Holy Week are Holy Monday, Holy Tuesday and Holy Wednesday.

Holy Monday of 1965 was April 12, and Holy Wednesday was April 14. Since the assessment was dated April 13, it must have been mailed on or before April 14, 1965, the last working day during the Holy Week of said year considering that petitioner received it during the first working day of the following week.

Petitioner maintains that it had already paid the corresponding deficiency income tax for 1959 as per assessment issued by respondent, hence further collection of additional deficiency income tax is improper and illegal. We find this pretension to be without merit. In the case of [illegible] v. Commissioner of Internal Revenue, C.T.A. Case No. 676, Oct. 25, 1961, this Court said:

> On the question whether or not respondent is permitted to make a reassessment of the income tax due from a taxpayer, the rule is well established that he has such power. This power proceeds from the general authority conferred upon him by law to collect all national internal revenue taxes and to enforce all laws in relation thereto. (Sec. 3, et. seq., National Internal Revenue Code.) If the Commissioner of Internal Revenue is precluded from making an assessment except the one made on the basis of the taxpayer's return, the Government would be at the mercy of the taxpayer who can determine what income to report and how much to pay. x x x

In Collector v. Batangas Transportation Company, G.R. No. L-9692, January 6, 1958, the Supreme Court said:

> . . . that the tax laws provide for a prescriptive period within which the tax collectors may make assessments and reassessments in order to collect all the taxes due to the Government, and that if the Collector of Internal Revenue is not allowed to amend his assessment before the Court of Tax Appeals, and since he may make a subsequent reassessment to collect additional sums within the same subject of his original assessment, provided it is done within the prescriptive period,
> . . .

Third Issue -

Having upheld respondent's right to reassess and collect the deficiency income tax from petitioner, we will now deal with the last issue raised by petitioner, that is, whether petitioner is liable for the deficiency income tax for 1959.

(The record shows that during the trial of this case, petitioner limited its evidence to its defense of prescription. It adduced no evidence on the correctness of the assessments, subject of this case. Since there is no evidence to show that the assessment for 1959 is unjustified, we have no alternative but to uphold respondent's said assessment) which is itemized as follows:

1959

Net income disclosed by the return as per original investigation	₱ 16,273.00
Unallowable deductions and additional income	14,382.15
Net income per reinvestigation	₱ 30,655.15
Amount subject to tax	₱ 30,655.15
Income tax due thereon	6,788.00
Less Amount already assessed	3,580.00
Balance	₱ 3,208.00
½% mo. int. fr. 4/16/60 to 4/13/65	577.46
TOTAL INCOME TAX DUE AND COLLECTIBLE	₱ 3,785.46

It is a well-settled rule that it is incumbent upon the taxpayer to show clearly that the tax assessment is erroneous in order to be relieved from it. (Collector of Int. Rev. v. Bohol Land Transportation Co. & Bohol Land Transportation v. Collector of Int. Rev., G.R. Nos. L-13099 and L-13462, April 29, 1960.) This is based on the consistent doctrine in taxation that the assessment of respondent Commissioner of Internal Revenue is *prima facie* correct and the burden of proof is upon the taxpayer to overcome the presumption of correctness thereof. (Manila Railroad Co. v. Coll. of Customs, 52 Phil. 950; Jose Espino v. Comm. of Int. Rev., CTA Case No. 1532, Jan. 21, 1969; Congregacion de la Mission de San Vicente de Paul v. Comm. of Int. Rev., CTA Case No. 1468, May 19, 1969.) Since the petitioner has not complied with its burden of proof we have to abide by the presumption of correctness of the respondent's assessment.

WHEREFORE, the decision appealed from with respect to the: (1) 1958 deficiency income tax is reversed; (2) 1959 deficiency income tax is affirmed and petitioner is hereby ordered to pay the sum of ₱3,785.46, together with the corresponding interest and surcharge incident to the delinquency as provided for under Section 51(e) of the Tax Code, as amended by Republic Act 2343.

SO ORDERED.

Quezon City, May 29, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge