REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CAL HOLDINGS PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6882

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAY 2 6 2006

x---x

DECISION

UY, J.:

This is a Petition for Review filed by petitioner, CAL Holdings Philippines, Inc., seeking the cancellation and withdrawal of the deficiency income, final, expanded withholding, withholding and documentary stamp tax assessments for taxable year ending March 31, 1999 in the amount of **ONE MILLION SEVEN HUNDRED NINE THOUSAND THREE HUNDRED NINETY EIGHT AND 86/100 PESOS (Php1,709,398.86),** inclusive of penalties; and the quashing of the Warrant of Distraint and Levy issued by the respondent Commissioner of Internal Revenue on January 28, 2004 for the collection of the aforesaid taxes.

The pertinent facts as culled from the records of this case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal place of business at the 2nd Floor SBC Building, Ortigas Avenue, Greenhills, San Juan, Metro Manila.[1]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997 as well as related tax statutes and their implementing rules and regulations, including, inter alia, the power to issue deficiency tax assessments and evaluate and decide upon merits of the protest against said deficiency tax assessments, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.

As stipulated by the parties in their Joint Stipulation of Facts and Issues, petitioner used to hold office at No. 409 Shaw Boulevard, Mandaluyong City, Metro Manila which is under the jurisdiction of the Revenue District Office No. 41, Revenue Region No. 7 of the Bureau of Internal Revenue (BIR);[2] that on March 8, 2000, petitioner formally

---

1 Joint Stipulation of Facts, par. 1.1; Records, p.64.
2 Joint Stipulation of Facts, par. 1.3; Records, p. 65.

informed respondent that it was transferring its office to the 2nd Floor, 228 Ortigas Avenue, Greenhills, San Juan, Metro Manila; [3] that petitioner filed with the BIR-Mandaluyong, also on March 8, 2000, an Application for Registration Information Update (Form No. 1905) stating therein its new address at Greenhills, San Juan, Metro Manila.[4]

On July 15, 1999, petitioner filed its annual income tax return for taxable year ending March 31, 1999 on July 15, 1999.[5] Subsequently, pursuant to Letter of Authority No. 00015395 dated October 13, 1999,[6] Revenue Officer III Miriam Jalandoni of BIR Revenue District Office No. 41, conducted an audit of the books of account of petitioner in its new address in San Juan for taxable year ending March 31, 1999.

A Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC was executed on May 10, 2002 by petitioner's representative, Luzvilla R. Viray, which extended respondent's period to assess petitioner's income tax liabilities for the taxable year ending March 31, 1999 to December 31, 2002.[7]

On May 6, 2003, a Preliminary Collection Letter was issued by respondent requesting petitioner to settle its deficiency income, final, expanded withholding, withholding and documentary stamp tax liabilities in the aggregate amount of Php1,709,398.86, inclusive of the

---

[3] Exhibit "O", Records, p.165; Joint Stipulation of Facts, par. 1.4; Records, p.65.
[4] Exhibit "P", Records, p. 166; Joint Stipulation of Facts, par. 1.5; Records, p.65.
[5] Exhibit "B", Records, pp.93-94.
[6] Exhibit "R", Records, p.168.
[7] Exhibits "S, S-1 and S-2", Records, p.169.

compromise penalty, within ten (10) days from its receipt, computed as follows:[8]

Kind of Tax	Tax Due	Surcharge	Interest	Compromise	Total Amount Due
Income	641,784.59		427,499.84		1,069,284.43
Final Tax	87,754.18		63,085.50		150,893.68
EWT	5,575.27		4,007.99		9,583.26
WT	130,088.71		93,519.32		223,608.03
DST	119,653.00	29,913.25	86,017.21		235,583.46
Comp. Penalty	20,500.00				20,500.00
					P1,709,398.86

After several meetings with the officials of the respondent for the possible withdrawal of the notice of collection based on the defense that no formal assessment notice was ever received, petitioner filed a written protest dated July 4, 2003, which was received by respondent on July 10, 2003.[9]

On February 4, 2004, respondent issued the assailed Warrant of Distraint and/or Levy dated January 28, 2004, for the collection of the alleged deficiency income tax, final tax, expanded withholding tax, withholding tax and documentary stamp tax in the aggregate amount of Php1,709,398.86, inclusive of penalties, for the taxable year ending March 31, 1999,[10] broken down as follows:

---

8 Exhibit "T", Records, p.170.
9 Exhibit "U"; Records, p.171.
10 Warrant of Distraint and/or Levy; Records, p.11.

Kind of Tax	Amount
Income	1,069,284.43
Final Tax	150,893.68
EWT	9,583.26
WT	223,608.03
DST	235,583.46
Comp. Penalty	20,500.00
	P1,709,398.86

Thus, petitioner filed the instant Petition for Review on March 4, 2004 praying for the cancellation and withdrawal of the deficiency income tax, final tax, expanded withholding tax, withholding tax and documentary stamp tax assessments for taxable year ending March 31, 1999 in the aggregate amount of Php1,709,398.86, inclusive of penalties; and to quash the Warrant of Distraint the Levy dated January 28, 2004 issued by respondent Commissioner of Internal Revenue for the collection of the aforesaid taxes.

By way of Special and Affirmative Defenses, respondent avers in his Answer, that:

> "4. All presumptions are in favor of the correctness of the assessment;
>
> 5. The herein petitioner was fully appraised of the facts and the law on which the Final Assessment Notice was issued. The Final Assessment Notice, Demand Letter and the Details of Discrepancies which were all together sent at the same time to the petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provision of law used in arriving at such deficiency assessment;

> 6. Supporting documents were not submitted to completely support or rebut the assessment issued against the herein petitioner;
>
> 7. The right of the government to assess has not yet prescribed as the case of the petitioner falls under the exceptions to the period of limitation provided for under Section 222 of the National Internal Revenue Code of 1997.[11]"

During trial, petitioner's lone witness, Anabelle G. Laygo, its Senior Accountant, testified in support of petitioner's claim and identified numerous documentary evidence. Respondent, on the other hand, was declared to have waived his right to present evidence due to absence of respondent's counsel during the hearing set for the presentation of his evidence despite due notice.

In a Resolution dated September 12, 2005, both parties were allowed to file their respective memorandum but only petitioner filed its Memorandum on October 19, 2005. Hence, this decision.

The following issues were jointly stipulated by the parties for the determination of this Court:

> (1) Whether or not there was valid service of the Preliminary Assessment Notice and Final Assessment Notice;
>
> (2) Whether or not the right of the government to assess has prescribed; and
>
> (3) Whether or not the assessment has become final on the ground that the petitioner failed to file a timely protest to the Final Assessment Notice.

---

[11] Answer; Records, pp.36-38.

Petitioner asserts that there was no valid service of the Preliminary Assessment Notice nor the Final Assessment Notice as the aforesaid Final Assessment Notice was allegedly sent erroneously to its previous address, despite appropriate notice of change of address to respondent. It vehemently denies receipt of the questioned Final Assessment Notice allegedly issued by the respondent on October 15, 2002. Knowledge of petitioner's new address is bolstered by the fact that the accounts examination conducted by Revenue District Office III, Miriam Jalandoni, was held at its new office, and thereafter, the Memorandum issued on June 18, 2002 by Jalandoni to the Revenue District Officer, already showed the new address of petitioner. Petitioner therefore submits that for all legal intents and purposes, no effective final assessment notice was sent and received by it.

Moreover, petitioner contends that the government's right to assess the taxes demanded in the preliminary collection letter and the Warrant of Distraint and Levy have long prescribed. Based on the evidence it presented, it filed its Annual Income Tax Return for the taxable period ending 31 March 1999; paid the taxes thereon on July 15, 1999 and executed a waiver of prescription on income tax liability until 31 December 2002. It also allegedly filed its Monthly Remittance Returns for Withholding, Expanded Withholding, Documentary Stamp and Final Taxes and paid the taxes thereon for said year with the last return for said year for March 1999 on 12 April 1999. And pursuant to Section 203 of the National Internal Revenue Code, respondent had only three years from 12 April 1999 or until 12 April 2002 to assess withholding, expanded withholding, documentary stamp and final deficiency taxes; and until 31 December 2002 to assess income tax deficiencies. In the instant case, no assessment was allegedly given by respondent to petitioner within the said prescriptive periods.

Respondent counters and maintains that the Final Assessment Notice, Demand Letter and the Details of Discrepancies were all sent at the same time to the petitioner, and these contained, in detail, the manner of computation, the facts on which the assessment was based and the provision of law used in arriving at such deficiency assessment.

After careful and thorough consideration of the respective arguments of the parties, this Court rules in favor of the petitioner.

As in other fields of law, the constitutional requirement on procedural due process also finds application in the field of taxation, especially in the matter of issuance of a deficiency tax assessment. It is a basic rule in taxation that whenever the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings, unless the exceptions stated under Section 228 of the National Internal Revenue Code (NIRC) of 1997 are applicable. As explicitly required under said section, "the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

Due process requirements in the issuance of a deficiency tax assessment are further discussed in Section 3 of Revenue Regulations No. 12-99, the pertinent provisions of which read:

> ***"SEC. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.-***
>
> (3.1) Mode of procedures in the issuance of a deficiency tax assessment:
>
> > (3.1.1) Notice for informal conference.- The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report on investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the cause may be (in the case of the Revenue Regional Offices) or by the Chief of Division concerned (in the case of BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

(3.1.2) Preliminary Assessment Notice (PAN).- If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

(3.1.3) Exceptions to Prior Notice of the Assessment.- The notice for the informal conference and preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

(3.1.4) Formal Letter of Demand and Assessment Notice.- The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for in behalf of the taxpayer, if acknowledged received by a person other than taxpayer himself; and (d) date of receipt thereof."

Based on the foregoing regulation, the requirements of due process for the validity of a letter of demand and an assessment notice are the issuance of: **(1)** a notice for informal conference; **(2)** a preliminary assessment notice sent to taxpayer at least by registered mail; **(3)** formal letter of demand and assessment notice sent to the taxpayer only by registered mail or by personal delivery.

The informal conference is set by the authorized Revenue Officer of the Bureau of Internal Revenue to afford the assessed taxpayer an opportunity to present his side regarding the former's findings that the latter is liable for deficiency tax or taxes. In the event that the taxpayer fails to respond within the period of fifteen (15) days from the date of receipt of the notice of informal conference, he shall be considered to be in default, and the case shall be endorsed to the Assessment Division of the Revenue Regional Office or to the respondent Commissioner or his duly authorized representative, as the case may be for appropriate review and issuance of a deficiency tax assessment, if warranted.

Subsequently, a Preliminary Assessment Notice is a letter sent by the respondent to the taxpayer asking him to explain within a period of fifteen (15) days from receipt thereof why he should not be the subject of an assessment notice. Its purpose is to give the taxpayer the opportunity to refute the findings of the examiner and give a more detailed and accurate explanation regarding the assessment. Subsequently, in case respondent disagrees with petitioner's explanations, a Final Assessment Notice is issued.

Generally, a final assessment is a finding by the respondent that the taxpayer has not paid his correct taxes. The purpose of this assessment is to enable the taxpayer to know the law and the facts on which the assessment is made, and to afford him his right to due process once it is served and received. Its ultimate purpose is to ascertain the amount that a taxpayer should pay. In cases where the taxpayer finds the assessment incorrect, he may file a protest within thirty (30) days from his receipt thereof, to prevent the assessment from becoming final.

In this regard, an assessment to be valid must be issued, served and received within the three (3)-year prescriptive period allowed by law pursuant to Section 203 of the NIRC of 1997. It is also of great importance that the formal requisites for the validity of a formal letter of demand and assessment notice be complied with.

Service of the assessment notice to the taxpayer may be by registered mail or by personal delivery. If the same is sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the demand letter showing his name, address, designation and date of receipt. If the assessment is served by registered mail, and the original was not returned to the respondent, the presumption is that the taxpayer received the said assessment. However, this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. In the instant case, considering that petitioner denies having received the final assessment notice, respondent must prove that the alleged mailed letter was received by the petitioner.

The Court notes that respondent's counsel was not cooperative during the scheduled hearings of this case. In fact, even after several notices issued by this Court, he was still remiss in the submission of the BIR records pertinent to this case. As the burden of proof has shifted to his side, it was incumbent upon him to have presented evidence in support of his claims and defenses.

Respondent's averment that he was not informed of petitioner's change of address finds no support as it has clearly been admitted by respondent's counsel under paragraph 1.5 of the Joint Stipulation of Facts and Issues that petitioner had filed an Application for Registration Information Update informing him of the change of address. And considering his failure to present controverting evidence to petitioner's assertion that no Final Assessment Notice was sent to its new address despite appropriate notice to respondent about its change of address, this Court cannot rule in his favor.

Assuming arguendo however, that there was a valid service of the Final Assessment Notice to the petitioner, the same is still without legal effect for having been issued beyond the prescriptive period allowed by law, pursuant to Section 203 of the NIRC of 1997, to wit:

> **"Section 203. Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, internal revenue taxes shall be assessed **within three (3) 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 (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (Emphasis supplied)

In the present case, petitioner filed its annual income tax return for taxable year ending March 31, 1999 on July 15, 1999.[12] This fact is not disputed by the respondent.[13] Although a Waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code was executed by petitioner's accounting manager, Luzvilla Viray, this pertains only to the disputed assessment for income tax liability. Verily, respondent had until **July 15, 2002**[14] within which to issue the Final Assessment Notice for the alleged deficiencies for final, expanded withholding, withholding and documentary stamp taxes, for the taxable year ending March 31, 1999.

The Court notes that respondent in both the Preliminary

---

[12] Annual Income Tax Return for fiscal year ended 03/1999; Exhibits "B" and "B-1"; Records, pp.93-94.

[13] Joint Stipulation of Facts, par. 1.6; Records, p.65.

[14] The last day to file was supposedly July 14, 2002, the year 2000 being a leap year. However, July 14, 2002 was a Sunday.

Collection Letter dated May 6, 2003[15] and the Warrant of Distraint and/or Levy,[16] admitted that the assessment notice was issued only on **October 15, 2002**, which definitely was way beyond the three (3)-year prescriptive period.

However, respondent argues that the right of the government to assess has not yet prescribed as the case of the petitioner falls under the exceptions to the period of limitation provided for under Section 222 of the NIRC, i.e., by virtue of the Waiver executed by the parties.[17]

As mentioned earlier, it was only the investigation of petitioner's income tax liabilities, which was extended by the subject Waiver up to December 31, 2002.[18] Therefore, respondent's right to issue the assessments on deficiency final, expanded withholding, withholding and documentary stamp taxes, already lapsed. And it is only the validity of the deficiency income tax assessment issued against petitioner, which remains to be resolved.

In the case of ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*** the Supreme Court discussed the nature and laid down the requisites of a valid Waiver of the Statute of Limitations, to wit:

> "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The

---

15 Exhibit "T", Records, p.170.
16 Exhibit A, Records, p. 92.
17 Exhibit "S", Records, p.169.
18 Exhibit "S-1", Records, p.169.

> waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. Xxx"[19]

Furthermore, Section 1 of Revenue Memorandum Order (RMO) No. 20-90 requires that a waiver must be in the form identified therein and that there should be no deviation from such form. Section 2 thereof requires that soon after the taxpayer signs the waiver, the Commissioner of Internal Revenue or the revenue official authorized by him, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription, and that the waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting

---

[19] 447 SCRA 214, 227 (2004).

the waiver. Likewise, the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.[20]

A close scrutiny of the Waiver executed by the parties reveals that the date of acceptance by the respondent was not indicated and the respondent Commissioner should have signed the same. It must be pointed out that the waiver is not a unilateral act by the taxpayer or the Bureau of Internal Revenue (BIR), but a bilateral agreement between the two parties to extend the period to a date certain. Necessarily, the date the waiver is signed and accepted is very material. Furthermore, the conformity of the BIR must be made by the Commissioner, considering that this case involves taxes amounting to more than One Million (Php1,000,000.00) Pesos. Failing in this regard, respondent's right to assess the subject taxes has prescribed. Consequently, the subject Warrant of Distraint and/or Levy must correspondingly be dissolved and resolution of the third issue as to whether or not the assessment has become final on the ground that the petitioner failed to file a timely protest to the Final Assessment Notice becomes unnecessary.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED.** Accordingly, the assessments for deficiency income, final, expanded withholding, withholding and documentary stamp taxes are hereby **CANCELLED and SET ASIDE.** The Warrant

---

[20] Section 4 of RMO No. 20-90.

of Distraint and/or Levy dated January 28, 2004 issued by the respondent for the collection of said taxes, is likewise hereby **CANCELLED and SET ASIDE.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice