Republic of the Philippine
COURT OF TAX APPEALS
Quezon City

EDWARD T. MARCELO,
Petitioner,

- versus - C.T.A. CASE NO. 4340

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/10/93

D E C I S I O N

This petition for review prays for the rendition of judgment "declaring that petitioner is not liable for any deficiency income taxes for the years 1982 to 1985 and ordering the respondent to withdraw his assessments against petitioner."

Petitioner, Edward T. Marcelo, is a former Director of the Philippine Amusement and Gaming Corporation (PAGCOR), a government-owned-and-controlled corporation. He is also a former President and Director of the Philippine Casino Operators Corporation (PCOC) and the Provident International Resources Corporation (PIRC). PCOC is the grantee of a concession to manage, administer and supervise the operations of PAGCOR, while PIRC is the owner of several buildings and equipment leased by PAGCOR and used by it in the conduct of its operations.

On July 1, 1986, a confidential report was received by the Bureau of Internal Revenue (BIR) from an unidentified informant, to the effect that petitioner and the corporations which he headed, i.e., PCOC and PIRC, had not been paying the correct amount of income taxes. Upon receipt of said report, the BIR conducted an investigation of the financial records of PCOC, PIRC and petitioner. The results of said investigation were summarized in a report dated March 10, 1987 prepared by Supervising Revenue Enforcement Officer Aureleano G. Sison Jr. The pertinent portions of said report are quoted below as follows:

> Mr. Marcelo's copies of the income tax returns he allegedly filed showed compensation income received from the PAGCOR and from the PCOC. It also showed interest income received.
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> He is the majority stockholder of PIRC. (Encl. XIII) He owns directly or indirectly more than fifty (50%) percent of its shares of stock.
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> The PIRC made clean loans from certain local banks amounting to thirty million and ninety million pesos in 1983 and in 1984, respectively. (See financial statements of PIRC)

Mr. Marcelo owns two pieces of real properties. A house and lot at 22 Coolidge St., Greenhills Subdivision, San Juan, and another house and lot at 10 Madrigal Circle, Corinthian Garden, Quezon City. (Encl. XIII)

There were eight vans and cars at the latter place of residence, including one Mercedes Benz 450 SL. Ownership could not be verified at the LTC since registration index are (sic) based on plate numbers.

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The interest income reported by Mr. Marcelo between the years 1983 and 1985 amounted from more than 2 million to more than three million. With interest rate ranging from a high of nine percent (9%) on savings account to eighteen percent (18%) on time deposits, the conservative rate of ten percent (10%) will reflect an investment of twenty million pesos.

The PIRC obtained clean loans from local banks amounting to thirty million pesos in 1983 and ninety million pesos in 1984, these could only have been obtained with bank deposits as guarantee or collateral on a one to one basis or even higher. On a one to one basis, the bank deposits would reach a total of not less than one hundred twenty million pesos (₱120,000,000.00). Since, as mentioned heretofore, Mr. Marcelo directly or indirectly owned more than fifty percent (50%) of the shares of stock of the PIRC, (Encls. XIII) which obtained the loan, the deposits used as 'clean collateral' are considered, for tax purposes, as belonging to him.

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The house and lot owned by Mr. Marcelo located at No. 22 Coolidge St., San Juan are covered by Real Property Tax Declarations Numbered B-021-02860 and B-021-02861 (Encls. XIII, pp. 4 & 5). Said tax declarations show that the building was declared with a fair market value of ₱466,000.00, while the lot was declared with a fair market value of ₱633,000.00, or a total of about ₱1,000,000.00. While this property is located within the Greenhills area which is considered a first-class neighborhood, we had granted the taxpayer a conservative valuation of 36% above declared market value, of about ₱1,500,000.00.

We were informed that Mr. Marcelo vacated his residence at Greenhills, San Juan sometime in 1982 and moved to No. 10 Madrigal Circle, Corinthian Gardens, Quezon City, a high class residential-commercial complex along E. de los Santos Avenue near Camp Aguinaldo.

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In our visual inspection of the said address, we noticed the concrete perimeter fence and building improvements occupying not less than sixty percent of the lot areas, or approximately about 1,400 sq. m. In 1982, the contractor's construction price for high cost materials was about ₱3,000.00 per square meter, making the improvement cost not less than ₱4,000,000.00. It is generally known in construction business that interior paneling, decorations and fixtures cost a lot more than the superstructures upon which these are attached; because of this, the total cost of the lot, improvements, interior fixtures as well as furnishings and appliances would easily cost a total of not less than ten million pesos (₱10,000,000.00) a very conservative valuation.

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> In our visit to the address at No. 10 Madrigal Circle upon the service of a Letter of Authority for Mr. Marcelo, it was just before noon time and there was apparently no social activity going on nor any visitors around. We observed about eight vehicles parked inside the compound consisting of vans and cars, including a Mercedes Benz 450 SL. It is well known that brand new vehicles cost from more than two hundred thousand to almost a half a million each, especially that of the Mercedes Benz. The eight vehicles would have cost Mr. Marcelo not less than two million pesos (₱2,000,000.00).
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On October 29, 1986, petitioner filed his Tax Amnesty Return on his "accumulated increase in net worth from 1981 to 1985, inclusive, under the provisions of Executive Order No. 41 dated August 22, 1986 and its implementing regulations." On October 30, 1986, petitioner paid the amount of ₱508,536.00 to the BIR as amnesty tax under the return, as evidenced by Confirmation Receipt No. B-10126835 and BIR Payment Order No. B-865057. Petitioner was not included in the Presidential Commission on Good Government's (PCGG's) "Freeze Order Compiled List As of August 18, 1986", which was the list in effect in October, 1986 when petitioner filed his amnesty Tax Return.

Tax assessment notices were issued by the BIR against petitioner on March 15, 1987, demanding payment of deficiency income taxes for the years 1982 to 1985, inclusive, in the following amounts:

1982 --	P 2,751,449.40
1983 --	44,304,260.00
1984 --	60,839,869.00
1985 --	212,688.27
TOTAL --	P108,109,267.37

Petitioner, through his counsel, filed on May 8, 1987 a formal protest from the March 15, 1987 assessments contending that: (1) he had already availed of tax amnesty for the period 1981 to 1985 under the provisions of Executive Order No. 41; (2) under Presidential Decree No. 1399, the compensation and/or other renumeration he received as Director of PAGCOR, PCOC and PIRC were tax-exempt; and (3) the assessment had no legal and/or factual basis.

On March 2, 1988, Warrants of Distraint and Levy were issued against petitioner. Simultaneously, tax liens issued against petitioner's properties were also sent by the BIR to the Register of Deeds of Caloocan City and Malabon.

On January 3, 1989, respondent Commissioner of Internal Revenue rendered a decision modifying the questioned assessments by reducing the assessed amount from P108,109,267.37, to P9,320,383.70.

On September 1, 1989, a Warrant of Garnishment was issued against petitioner, followed by notices of tax lien sent to the Register of Deeds of San Juan, Metro Manila and Quezon City, and Cebu City, and Warrants of Distraint and Levy, dated September 18, 1989.

On February 7, 1989, petitioner requested reconsideration of the decision of respondent Commissioner, dated January 3, 1989. He reiterated his contention that he was absolved of any liability for deficiency income taxes by virtue of his availment of tax amnesty under the provisions of E.O. 41, and further claimed that respondent Commissioner had used the wrong method in computing his income tax liability.

The instant petition was filed on February 25, 1989. Two issues are raised by petitioner for Us to resolve: whether his availment of tax amnesty under E.O. 41 was valid and absolved him from liability for any income tax deficiencies for 1981 to 1985; and, in case of a negative resolution on the first issue, whether respondent Commissioner erred in computing petitioner's net worth used as basis for determining the questioned deficiency income tax assessments against him.

We shall first discuss the first issue.

Petitioner contends that his availment of amnesty under E.O. 41 was valid for two reasons, namely, that: he complied with all the conditions of amnesty under said law, and paid the corresponding amnesty tax; and he was not ineligible for amnesty. Further to the second reason, petitioner claims that:

> "xxx (a) he was not covered by the disqualification provision of Section 4(a) of E.O. No. 41, as amended, in relation to Executive Order Nos. 1, 2 and 14; (b) he was not among the supposedly tainted persons listed by the Presidential Commission on Good Government ('PCGG') in its Freeze Order list dated 18 August 1986 and which was the current list at the time the petitioner filed his tax amnesty; and (c) when the petitioner filed his tax amnesty return and paid the amnesty tax on 30 October 1986, the BIR readily accepted his application without any question about his eligibility. In fact, the Commissioner of Internal Revenue, issued a Certification of Availment of the tax amnesty dated January 20, 1987 xxx." (Memorandum For The Petitioner, p. 5; Rollo, p. 214) (Underscoring supplied)

On the other hand, respondent Commissioner contends that:

> "As previously explained in respondent's letter-decision cited earlier, petitioner's name appears among those in the updated PCGG Freeze Order list as of May 31, 1987. It is of no moment that at the time petitioner availed of the tax amnesty under E.O. # 41 on October 31, 1986 his name was not in the PCGG Freeze Order list. Neither can it be considered error on the part of the implementors of E.O # 41 in respondent's Bureau that the petitioner's eligibility to avail of the benefits thereof was not first verified by them considering the urgency to raise as well as the need for more revenues of the government at that time whose coffers the previous administration virtually depleted and the enormity of its foreign debts which it had to address and settle."

We find for petitioner.

It is not disputed that when petitioner filed his Tax Amnesty Return under E.O. No. 41 and paid his amnesty tax thereon, on October 29 and 30, 1986, respectively, he had no disqualification inasmuch as his alleged disqualification occurred seven months later when his name was among those listed in the PCGG's freeze order dated May 31, 1987. Petitioner has thus validly availed of the E.O. No. 41 amnesty and the same could no longer be adversely affected by his subsequent disqualification.

Having found that petitioner validly availed of tax amnesty under E.O. No. 41, We find no need to discuss the issue regarding the correctness of the amount of tax deficiency assessed against petitioner.

Accordingly, the instant petition is **GRANTED.** Respondent Commissioner is hereby ordered to withdraw the deficiency income tax assessments, dated March 16, 1987, filed against petitioner covering the years 1982 to 1985, inclusive.

SO ORDERED.

Quezon City, Metro Manila, September 10, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals