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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MERMAC, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5223

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 06 1997 [signature]

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# DECISION

This is an appeal from a final decision of the respondent Commissioner holding petitioner liable for deficiency income tax for the taxable year 1975 in the total amount of P1,283,963.89.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. In 1975, petitioner was the owner of a building occupied and rented by the Hotel Intercontinental Manila, then operated and managed by Enjay, Inc. By virtue of a lease contract, petitioner agreed to rent out the building premises to Enjay, Inc., and in return the latter corporation obligated itself to give a specified percentage of the hotel's gross operating profit to petitioner as consideration for the lease.

In a letter, dated April 10, 1981 (Exhibit "C"), respondent assessed petitioner deficiency income taxes for the taxable year 1975 in the amount of P1,283,963.89. Petitioner disagreed with the findings of the examiners and duly protested the assessment in a letter, dated May 8, 1981 (Exhibit "D").

The 1995 deficiency income tax assessment arose from the examiners' disallowances of the amounts of P2,594,552.40, representing the total expenses incurred in the renovation of the Hotel Intercontinental building and P60,273.99, representing travel and transportation expenses. Petitioner protested the assessment and argued that the amount spent for renovation should not be considered as income because repairs and renovations incurred on the building do not prolong the useful life of the hotel nor add to the value of the hotel building. Furthermore, the disallowance of the amount representing travel and transportation expenses was erroneous as such expenses are a valid and legitimate business expense and should not have been disallowed.

Respondent denied the abovementioned protest in a letter, dated November 29, 1989 (Exhibit "G"), and demanded the payment of the assessed income taxes.

Petitioner moved for the reconsideration of the denial in a letter, dated January 3, 1990. Finally, in a letter, dated December 14, 1994, respondent denied the request for reconsideration and reiterated her demand for the payment of the assessed deficiency income tax for 1975.

Hence this appeal. In the petition for review, petitioner prayed for the cancellation of the subject assessment because it lacks legal and factual bases and that the respondent's right to collect is now barred by prescription.

Respondent took her time to file the answer and when she finally did, the defenses and arguments raised therein did not directly address the issues presented by the petitioner but were mere general statements to the effect that the petitioner's allegations were not satisfactorily substantiated and that the assessment was issued in accordance with applicable laws and regulations.

A review of the records of this case leads us to two issues, namely:

1) whether or not respondent's right to collect petitioner's income tax deficiencies for the taxable year 1975 is now barred by prescription; and

2) whether or not petitioner is liable to pay the assessed deficiency income tax allegedly incurred in the taxable year of 1975.

The question of prescription is deemed a primary issue which must first be resolved before this court can determine whether or not the second issue presented deserves consideration.

Petitioner contends that respondent has slept on her rights to collect the assessment, thus she is now barred by prescription to collect the same. In its memorandum, petitioner elaborated on the issue of prescription by stating that the assessment was issued on April 10, 1981. Based on the law then in force, the assessment was well within the five-year period. The respondent have five years from the issuance of the assessment to collect the deficiency income tax. However, petitioner alleges that before the expiration of the period of limitation, the petitioner executed a waiver of the statute of limitations up to April 15, 1990 (Exhibit "J", p. 109, BIR records), so respondent should have effected the collection of the assessment on or before April 15, 1990, the date when the waiver of the statute of limitations expired.

Respondent did not propose any substantial arguments to refute the allegations of petitioner with respect to the issue of prescription. Neither was there evidence offered by respondent to disarm the stance of the petitioner. Thus, this Court was left to decide this particular issue on the basis of the records and pleadings submitted.

We rule in favor of the petitioner and find that respondent's right to collect petitioner's alleged income tax deficiencies for 1975 is now barred by prescription.

During the taxable year in question (1975), the period of limitation for the assessment and collection of internal revenue taxes was five years as provided by Sections 318 and 319(c) of the 1975 National Internal Revenue Code, quoted hereunder, thus:

> SEC. 318. - *Period of limitation upon assessment and collection.* - Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after expiration of such period. For the 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: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code.
>
> SEC. 319. *Exceptions as to the period of limitation of assessment and collection of taxes.* x x x
>
> (c) Where the assessment of any internal revenue tax has been made within the period of

> limitation above prescribed, such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax; or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Applying the aforequoted provisions to the instant case, respondent had five years within which to assess deficiency income taxes counted from the filing of the adjusted final income tax return and another five years from the assessment to effect collection of the deficiency tax.

The records of this case do not show that respondent exerted any effort sanctioned by the law to collect the assessed income tax deficiency. The period of limitation to collect income tax is counted from the assessment of the tax **(Gutierrez v. Collector of Internal Revenue, 14 SCRA 33)**. The assessment was deemed made on April 10, 1981 as shown by the assessment notice sent to the petitioner and presented to this Court as Exhibit "C". While it is true that petitioner executed a waiver of the statute of limitations, this waiver was only up to April 15, 1990 as clearly seen in the document offered as Exhibit "J" and forming part of the BIR records submitted. No extension of the waiver was again executed to prolong the right to collect. Clearly, respondent should have pursued any of the methods for collection provided by law on or before April 15, 1990. Petitioner is correct when it observed that respondent slept on her rights to collect and it may be added that she continued to be in "deep slumber" during the trial of this case. This Court is well aware that there are exceptions to the period of limitation and collection of taxes. However, a thorough analysis of the facts of this case reveals that the instant case does not fall under any of those exceptions.

The rationale for providing a period of limitation for the collection of taxes was clearly discussed by the Supreme Court in the case entitled **"Republic of the Philippines v. Ablaza", 108 Phil. 1105**, quoted thus:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens, to the government because tax officers would be obliged to act properly in the making of assessments and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability but to take advantage of every opportunity to molest peaceful law abiding citizens. Without such a legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open

for inspection subject to harassment by unscrupulous tax agents.

We find it appropriate to conclude this discussion by quoting the Supreme Court in the case of **Nava v. Commissioner of Internal Revenue, 13 SCRA 104**, where it ruled:

> "Having reached the conclusion that the action to collect said deficiency income tax has already prescribed, it is unnecessary to discuss the other issues raised by the petitioner Nava in the instant appeal."

**WHEREFORE**, in view of the foregoing, the right to collect the income tax deficiency having been barred by prescription, respondent is hereby **ORDERED** to **DESIST** from collecting the assessed income tax deficiency of petitioner for the taxable year 1975.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**AMANCIO Q. SAGA**
Associate Judge

## CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals