REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RICARDO Q. MAMUYAC,
Petitioner,

- versus -

C.T.A. CASE NO. 3705

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - x

6/18/87

D E C I S I O N

This is an appeal from the action of the Commissioner of Internal Revenue of summarily collecting by warrants of distraint and levy the protested deficiency income tax assessed against petitioner in the total amount of ₱24,936.62 for the year 1976.

It appears that petitioner, who was an employee of the Atlantic Gulf and Pacific Company, Inc., sometime in 1976, was compulsorily retired for "recurrent attacks of dizziness and chest discomfort secondary to hypertension cardio vascular disease." (Exh. H, p. 39 CTA rec.) As a consequence of his compulsory retirement, he was paid by the Social Security System, of which he was a member, retirement benefits totalling ₱52,993.50, under Republic Act No. 4917, disability benefits of ₱597.20, and total monthly pension of ₱4,020.70.

The Atlantic Gulf and Pacific Company Inc. did not withhold any income taxes on the aforesaid benefits, these being advicedly exempt under the provisions of Republic Act No. 4917 by its tax consultants.

During the same year 1976, petitioner's wife equally received from the Government Service Insurance System (GSIS), retirement benefits totalling ₱2,180.19 which is also exempt under the law.

The aforesaid sums received by petitioner and his wife were reported in petitioner's 1976 income tax returns as tax exempt items and claimed therein as other deductions, taxes and representation expenses, (p. 2, BIR rec., Folder I).

On March 12, 1982, respondent Commissioner of Internal Revenue issued deficiency income tax notice No. 32-3-04 M-150408-76, accompanied by a mimeograped demand signed by Atty. Eufracio D. Santos, Revenue Service Chief, National Assessment Office, requesting payment of said sum ₱24,936.62, inclusive of interest, computed as follows:

Net income per return as audited		₱ 3,243.50
Unallowable deductions and additional income:		
(1) taxes	₱ 300.00	
(2) SSS - disability	587.20	
(3) SSS - mon. pension	4,020.70	
(4) AGP - retirement	52,993.50	
(5) GSIS - disability	2,180.19	60,091.59
Net income per investigation		₱63,335.09
Less: Personal and additional exemption		5,000.00
Amount subject to tax		₱58,335.09
Income tax due thereon		₱17,561.00
Add: Interest 42 mos.		7,375.62
Total Amount Due and Collectible		₱24,936.62

and warning petitioner that the assessment "became final and unappealable if not protested within 30 days after receipt" thereof.

On April 13, 1982, received by respondent on April 14, 1982, petitioner filed his letter of protest.

Without formally acting on the protest of petitioner, respondent, on November 28, 1983, instead issued and served on the representative of petitioner, Priscilla U. Mamuyac, a daughter, warrants of distraint and levy to collect summarily the protested deficiency income tax in the amount of ₱24,936.62. During this time, petitioner Ricardo Q. Mamuyac has been permanently settled in the United States.

Hence, on December 1, 1983, or three days from the date of service of the warrants of distraint and levy to summarily collect the assessed tax (Exhs. C & D, pp. 33-34 CTA rec.) petitioner appealed to this Court asserting that the retirement benefits received by petitioner and his wife are expressly exempt under the provisions of Republic Act No. 4917 which applies to employees of private firm, and under GSIS and SSS laws; and that the taxes paid by petitioner by way of realty tax and motor vehicle registration, driver and firearms licenses are deductible from petitioner's gross income for 1976, and praying the Court to render judgement holding that the disputed deficiency income tax assessment and the warrants of distraint and levy issued to enforce collection are null and void and of no legal force and effect.

Petitioner presented during the trial his evidence in support of his allegations (Exhs. A to N-3) in the petition for review. Respondent did not submit any single evidence, who opted to and in fact submitted his case only based on the records and the pleadings believing that the issue is only legal one. Respondent did not present concrete proof that the letter of respondent dated September 7, 1982, denying petitioner's protest, asserted as the appealable decision in this case, was sent to petitioner or his authorized representative and receive by the latter. In the absence of proof, we cannot consider the alleged letter of respondent as his decision on the protest for lack of material evidence that it was received. This is elementary procedure of substantive due process. And we see no evidence whatsoever that petitioner or his representative, his daughter in this case, had received the same.

Contrary to the assertion of respondent that the issues in this case is one of law, the actual issues which is both questions of fact and law maybe stated clearly and as found in his memorandum are as follows:

> 1. Whether or not this Court has jurisdiction to take cognizance of this case; and
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> 2. Whether or not the amount of ₱52,993.50 received by petitioner in 1976 as retirement benefits from the Atlantic Gulf and Pacific Company is taxable under the provision of Republic Act No. 4917.

Anent the first issue, respondent Commissioner of Internal Revenue contends that this Court has no jurisdiction over this case because the final decision from which an appeal to this Court can be taken is that letter dated September 7, 1982, allegedly denying the protest of petitioner. Respondent concluded that the appeal having been taken on December 1, 1983, it is more than a year from the letter-decision of September 7, 1982.

On the other hand, petitioner contends otherwise insisting that the decision for which appeal should be taken is the respondent's warrants of distraint and levy dated October 13, 1983 and personally issued and served on petitioner's daughter, Purificacion Mamuyac, on November 28, 1983. He asserts that there is no evidence presented by respondent that said letter of September 7, 1982 was ever sent to petitioner or his representative or that the letter was in fact received by them, which alleged letter of denial of the protest, becomes, in effect, a void in the factual setting of this case. In the absence of proof of receipt, we cannot legally consider the alleged letter of respondent as his decision on the protest for lack of that material evidence. This is elementary requirement in substantive due process. Not only that, we see no admission by petitioner, or his daughter representative that they have received the same. And there being no letter-decision or denial of the protest, it follows logically that the appeal shall be taken from the receipt or service of the warrants of distraint and levy.

We are in full agreement with petitioner that the issue in this case of jurisdiction is, factually and legally, not without precedent. In the absence of a letter-decision of respondent, the letter of September 7, 1982 alleged not having been proved by evidence that it was sent to petitioner or his authorized representative and received by the latters, the warrants of distraint and levy personally issued and served by respondent on petitioner's representative, his daughter Priscilla U. Mamuyac, on November, 1983, is tantamount to and serves as an outright denial of the petitioner's request for reconsideration (Vicente Hilado vs. Comm., CTA. 1256, Feb. 24, 1964) and is proof of the finality of the assessment or decision (Algue, Inc., vs. Comm., CTA 1620, June 16, 1968; Phil. Planters Co., Inc. vs. Actg. Comm., CTA 1266, Nov. 11, 1962) because it is the most drastic action among all media of enforcing the collection of the tax

(Hanh vs. Comm., CTA 1987, April 30, 1969). The warrants of distraint and levy having been transformed into and considered as the denial of the request of petitioner for reconsideration of the assessment is, therefore, the decision of the respondent from which appeal should be taken to this Court. (see St. Stephen's Association, etc. vs. Coll., GR L-11238, August 21, 1958.) Consequently, petitioner having filed its appeal on December 1, 1983, counted from the warrants of dsitraint and levy served on November 28, 1983, only 3 days was consumed of the 30-day period of appeal under Section 11 of Republic Act 1125. We have therefore appellate jurisdiction over this case.

In a same factual and legally situated case which we had previously decided, in the case of Liberty Insurance Corporation vs. Commissioner of Internal Revenue, CTA Cases Nos. 3551 and 3599 dated October 15, 1986, we ruled similarly as above and we quote as follows:

> With regard to CTA Case No. 3599, we also agree with petitioner that this case was appealed on time. On September 7, 1981, petitioner received the letter of

assessment dated August 31, 1981. This was protested by petitioner's cheif accountant, Myrna C. Pascua, who requested for a reconsideration of the documentary and science stamp taxes on September 9, 1981. Petitioner did not get any formal denial of its request for reconsideration for the 1976, and 1976 and 1977 premium and documentary and science stamp taxes, respectively, but instead had issued against petitioner a warrant of distraint on personal property against petitioner and which was received by the latter on February 24, 1983. (Annex E, p. 9, CTA rec.) This warrant of distraint on personal property is tantamount to the outright denial of the petitioner's request for reconsideration (Vicente Hilado v. Comm., CTA 1256, Feb. 24, 1964) and is proof of the finality of the assessment or decision (Algue, Inc. vs. Comm. of Int. Rev., CTA 1620, Jan. 16, 1968; Phil. Planters Co. Inc. vs. Actg. Comm. of Int. Rev., CTA 1266, Nov. 11, 1962) because it is the most drastic action among all media of enforcing the collection of the tax. (Hahn v. Comm. of Int. Rev., CTA 1987, April 30, 1969.) This denial of the Commissioner from which appeal should be taken. (St. Stephen's Association, etc. vs. Coll., op. cit.) Petitioner having filed its appeal on March 17, 1983, only 21 days of the 30-day period of appeal was consumed. Hence, we have jurisdiction over CTA Case No. 3599.

Coming now to the issue of whether or not the amount of ₱52,993.50 received by petitioner as retirement benefit arising from his compulsory retirement due to sickness or physical disability is taxable under Section 12 Republic Act No. 4917, it is the position of petitioner that it is exempt.

On the other hand, respondent claims that petitioner is not exempt because there is a failure on his part to show by evidence that Atlantic Gulf and Pacific Company has a Disability Retirement Benefits Plan submitted to the BIR in conformity with Section 6 of Revenue Regulations No. 1-68 dated March 25, 1968, implementing Republic Act No. 4917 and that exemptions are not presumed and exemption laws are construed strictissimi juris against the petitioner-taxpayer.

The evidence of petitioner are clear and convincing and respondent does not dispute the fact that the amount of ₱52,993.50 received by the former was due to his compulsory retirement as a result of his sickness and physical disability, as found by Atlantic Gulf and Pacific Company physician, Dr. Jesus Roxas Clemente (Exh. H, p. 39 CTA rec.), who after examination found petitioner was suffering from "xxx recurrent attacks of dizziness and chest discomfort secondary to Hypertensive Cardiovascular disease" aforesaid and also Dr. Leonardo E. Sicam of the Capitol Medical Center, who found in petitioner a similar final diagnosis of a heart ailment known as "Hypertensive cardiovascular disease" and "Hypertensive encephalopathy" (Exh. I, pp. 40-41 CTA rec.)

The amount of ₱52,993.50 having been received by petitioner as retirement benefits (Exh. F & B, pp. 36-37 & 31, CTA rec., respectively), it is exempt under Section 1 of Republic Act No. 4917, the provisions of which we quote hereunder:

Section 1 of Republic Act No. 4917 provides:

> "SEC. 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, garnishment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action: Provided, that the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: Provided, further, that the benefits granted under this Act shall be availed of by an official or employee only once: Provided, finally, That in case of separation of an official or employee from the service of the

employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee, any amount received by him as a consequence of such separation shall likewise be exempt as herein above provided. (Underscoring ours.)

Under the provision of the aforesaid law, it is clear "That in case of the separation of an official or employee from the service of the employer due to death, sickness or other physical disability or from any cause beyond the control of the said official or employee, any amount received by him or his heirs from the employer as a consequence of such separation shall likewise be exempt as herein above provided." This exemption privilege is available to officials or employees regardless of the existence or non-existence of a private benefit plan maintained by the employer so long as said employer grants a monetary benefit to the official or employees or their heirs by reasons of the occurence (1) of death, (2) sickness or physical disability or (4) for cause beyond the control of said official or employee, like petitioner in the instant case. (BIR Ruling No. 207, Nov. 23, 1983.) Indeed, it would have been different if petitioner had only decided to ordinarily retire, without any attendant disease or physical disability or other causes beyond the control of the official or employee, in which case the proof of a private benefit plan which was submitted to the Bureau of Internal Revenue shall have to be shown to exist prior to the granting of exemption for taxes. But such is not the situation of petitioner in the case at bar.

Finally, while it may be true that tax exemption benefits are generally construed strictly against the payees and in favor of the government; where, however, the law is clear in its intent to grant exemptions to special kinds of taxpayers, such as retiring private employees due to death, sickness or physical disability, or any cause beyond the control of the official or employee, this is then a matter of public policy of the State and not only an act of grace and favor, and should be liberally construed in favor of the said private employees and officials and against the State.

Consequently, we are of the opinion and so hold that the amount of ₱52,993.50 is exempt from income tax under Section 1 of Republic Act No. 4917 and was correctly returned in its 1976 income tax return as exempt.

With respect to the disallowed deduction in the amounts of ₱300.00, ₱597.20, ₱4,020.70 and ₱2,180.19 as taxes paid, disability benefit, SSS monthly pension, and GSIS disability benefit of petitioner's wife, respectively, these items should all be allowed as deductions. The claimed sum of ₱300.00 for taxes is much less than what petitioner had paid as realty, car registration fee, driver's and firearms license fee in the total sum of ₱656.50 (See Exh. L-3, M, N, N-1, N-2, N-3) and, hence, deductible from gross income.

The other claimed deductions, the said ₱597.20 SSS disability benefit, the SSS monthly pension of ₱4,020.70, and petitioner's wife disability benefit from the GSIS in the sum of ₱2,180.19, are all exempt items under various laws covered by Republic Acts Nos. 4917 and 1161 and Commonwealth Act No. 186 (for SSS and GSIS benefits respectively), and under various implementing BIR Rulings and Regulations, BIR Ruling No. 022, January 30, 1984; BIR Ruling No. 037, Feb. 15, 1984; BIR Ruling No. 109, June 21, 1984, BIR Ruling No. 207, Nov. 23, 1983; and BIR Rulings dated March 5 and 14 and April 10, 1973 of respondent. Hence, these items are deductible from gross income for the year 1976.

Consequently, we finally hold that petitioner is not liable for deficiency income tax in the amount of ₱24,936.62 subject to the warrants of distraint and levy-decision appealed to this Court.

For one thing, the Court in this case pauses and sighs with the greatest of ease and relief. For if only respondent had presented a competent witness or employee to testify and to show by corroborative object evidence that the asserted letter-decision of September 7, 1982 was duly signed and sent by mail to petitioner or his representative and that the latter was shown to have received it, but did not do anything positive until the warrant of distraint and levy shall have been served against him, then the clearest privilege of exemption from taxes of the monetary benefits generally received by private workers or employees by reason of the unfortunate occurrence of sickness or physical disabilities due to and arising from their work, such as the petitioner had suffered, would have on account of technicalities and bureaucratic rigmarole, eluded or escaped him at the expense of substantial justice. Truly, God and His real justice and mercy is in favor and on the righteous side of petitioner in this instant case.

WHEREFORE, the warrants of distraint and levy or decision appealed from is hereby reversed, and we hold petitioner Ricardo C. Mamuyac not liable for deficiency income tax of ₱24,936.63 assessed against him for the year 1976.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 18, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge