REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ARNOLDUS WOODWORKS INTERNATIONAL, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4269

THE COMMISSIONER OF INTERNAL REVENUE BIENVENIDO TAN, DEPUTY COMMISSIONER OF INTERNAL REVENUE VICTOR A. DEOFERIO, JR., ASST. COMMISSIONER FOR COLLECTION PEDRO C. AGUILLON,
Respondents.

3/18/94

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DECISION

The petitioner herein seeks to set aside the assessments issued by the respondent finding the petitioner liable for deficiency income and percentage taxes for the year 1981.

Petitioner is a domestic corporation principally engaged in the business of manufacturing and exporting wooden products with its business address located at Doña Magdalena Hemady St., Quezon City. Petitioner is also engaged in the business as service contractor for repairs and mechanical devices. (Exh. 8, p. 101, Folder 1, BIR record.) Petitioner's Articles of Incorporation was duly registered with the Securities and Exchange Commission on January 10, 1980. The principal place of business is located at Christ The King Compound, E. Rodriguez Ave., Quezon City. (Exhs. J, J-1 and J-2.)

On July 31, 1986, the respondent sent Assessment Notices FAN-1-81-86-008482 (Exh. 3-a) and FAN-1-81-86-008483 (Exh. 3-b), dated July 28, 1986, at the petitioner's plant in Marilao, Bulacan assessing it for deficiency income and percentage taxes for the year 1981 in the total amount of P709,140.60, computed as follows: (Exh. 3. pp. 124-127, Folder 1, BIR record.)

Deficiency Income Tax

Net income per investigation	P 95,006.00
Add: Disallowances	
Donations to educational institutions - lack of merit	944,686.00
Net income per review	P1,039,692.00 *
Tax due thereon	P 457,861.40
Less: Tax paid per return	33,252.00 *
Deficiency income tax	P 424,609.40
20% interest from 4-16-82 to 4-15-85 (max.)	254,765.64
Total amount due and collectible	P 679,375.04

* As corrected.

Deficiency Percentage Tax

Gross receipt per investigation	P 300,343.00
Tax due thereon	P 9,010.29
75% surcharge	6,757.71
20% interest from 2-21-82 to 7-28-86	13,997.57
Total amount due and collectible	P 29,765.57

On October 27, 1986, petitioner filed it's Tax Amnesty Return (Exh. G), dated October 24, 1986, pursuant to the provisions of Executive Order No. 41, dated August 22, 1986, for the years 1981-1985. The Tax Amnesty Return showed petitioner's address as "Christ the King Seminary Compound, E. Rodriguez Sr. Blvd., Quezon City, M.M." (Exh. G-1). The amnesty tax amounting to P39,612.00 was paid under BIR Payment Order No. B 9133997, dated October 27, 1986 (Exh. G-2) and CB Confirmation Receipt No. B 9978125, dated October 27, 1986 (Exh. G-3).

The petitioner filed a request for reconsideration of the said deficiency assessments on September 4, 1987, alleging that it received a copy thereof only on August 31, 1987. (Exh. 9, p. 139, Folder 1, BIR record.)

On May 12, 1988, the petitioner received a letter, dated April 11, 1988, from the respondent denying its request for reconsideration on the ground that it was filed beyond the thirty (30) day reglementary period provided for under Section 270 of the Tax Code (1986), and hence, had already attained the status of finality. (Exh. 10, p. 154, Folder 1, BIR record.)

Warrants of Distraint of Personal Property (Exh. D) and Levy on Real Property (Exh. C), both dated April 4, 1988, were issued and served against the properties of petitioner on May 19, 1988. Copies of said warrants was received by Mr. Purito F. Mopas, Manager of petitioner in its office in Lambakin, Marilao, Bulacan (Exhs. D-2 and C-2). Likewise, Notice of Tax Lien was served to the Registered of Deeds and Provincial Assessor of Malolos, Bulacan on May 30, 1988 (p. 176, Folder 1, BIR record).

On May 23, 1988, petitioner filed a petition for review with a prayer for the issuance of a writ of preliminary injunction. Petitioner questions the finality of the assessments, the correctness and validity of the income tax assessment and that the deficiency percentage (contractor's) assessment in the amount of P29,765.57 has already been paid evidenced by BIR Revenue Tax Receipt No. A 92960088 and CB Confirmation Receipt No. A 10177723, dated April 16, 1982.

However, contrary to the allegations of petitioner, the BIR Revenue Tax Receipt (No. A 92960088) and CB Confirmation Receipt (No. A 10177723) refers to the payment of withholding taxes of P12,500.00 for Director's Fee and P3,000.00 for Special Bonus or a total of P15,500.00, instead of what it alleged to be payment of the alleged deficiency contractor's tax in the sum of P29,765.57 including increments thereto. (See Check Voucher No. 1465, dated April 15, 1982; pp. 75-76, Folder 1, BIR record.)

Petitioner alleged that the deficiency assessments were received only on August 31, 1987. Respondent contended that petitioner could not have possibly received the subject assessments on August 31, 1987 or more than one (1) year from the time they were sent by registered mail, considering that the same were presumably received in the "regular course of mail" under Section 5(v), Rule 131 of the Revised Rules of Court.

To fresher buttress its claim that it is not liable for the payment of the assessment issued by the respondent, the petitioner alleged that it has applied for and was granted tax amnesty by the government for the years 1981 to 1985 under Executive Order No. 41 (EO 41) which took effect on August 22, 1986. The respondent, on the other hand, refutes this claim of petitioner, stating that under Revenue Memorandum Order No. 4-87 (RMO 4-87) dated February 9, 1987, implementing EO 41, only those assessments issued after August 22, 1986 can be covered by the tax amnesty.

The issues to be resolved in this case are:

1. Whether or not the assessments issued by the respondent assessing the petitioner for deficiency income and percentage taxes in the sum of P709,140.60 has already become final and unappealable; and

2. Whether or not the availment by the petitioner of the tax amnesty under EO 41 cancelled the said assessments and liability thereunder.

Anent the first issue, Section 319-A (now Section 229) of the Tax Code (which was then the prevailing provision of law during the period in question) or Section 270 of the 1986 Tax Code provides for the period within which a taxpayer may file a request for reconsideration of an assessment issued by the Commissioner of Internal Revenue, to wit:

> "**Sec. 319-A. Protesting of assessment.** - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing

> regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
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> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final executory and demandable. (As inserted by PD 1773.)"

Thus, if petitioner's allegation that it received the assessments only on August 31, 1987 is to be sustained, the filing of it's request for reconsideration of the respondent's assessments on September 4, 1987 may be considered as having been timely filed within the thirty (30) day period provided for by law.

Although the evidence pertaining to the case at bar reveals that the assessment notices were sent by registered mail on July 31, 1986, in the plant of petitioner in Marilao, Bulacan there is a complete absence of proof to establish that the petitioner actually received them. The respondent clings to the presumption of law that "a letter duly directed and mailed was received in the regular course of the mail". [Sec. 3(v), Rule 131 of the Revised Rules of Court].

While it may be true that a letter would unlikely be received after more than one year from the time it was duly mailed, the respondent failed to realize that such contention is merely a disputable presumption. It is put on inference provided for by law to be conveniently used in appreciation of evidence. As such, it is subject to rebuttal which will shift the burden of proof to the party alleging the same. Petitioner herein denies that it had received any assessment notices prior to August 31, 1987. Neither did it received any assessment notices in its plant in Marilao, Bulacan. The Letter of Authority sent by respondent was not received in Marilao, Bulacan but in the principal place of business of petitioner. From the time of incorporation up to the present petitioner maintains its office at Christ the King Seminary Compound, Doña Magdalena Hemady Street, Quezon City as testified by petitioner's witnesses; Fr. Anthony J. Ranada, Finance Manager, and Mr. Rogelio Tampinco, Accountant-Bookkeeper. (TSN dated November 29, 1989 and May 14, 1990.) This was in fact stipulated by both parties. (p. 8, TSN dated May 14, 1990.) In fact on rebuttal evidence, petitioner's witness Mr. Rogelio P. Tampinco testified that the Letter of Authority (No. 0034335 RR dated September 14, 1984) addressed to petitioner in its plant in Marilao, Bulacan, was actually received by him on October 22, 1984 in the Quezon City office of petitioner. (pp. 5-6, TSN dated November 16, 1992.)

In this connection, the Supreme Court had adopted this particular ruling:

> "Appellee contends that per Exhibit A, the notice was released and mailed to the appellant by the BIR on Aug. 4, 1955 under the signature of the Chief, Records Section, Office; that since the original thereof was not returned to the appellee, the presumption is that the appellant received the mailed notice. This is correct, but this being merely a mere disputable presumption, the same is 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 received by the addressee. The appellee, however, argues that since notice was released and mailed and the fact of its release was admitted by the appellant the admission is proof that

> he received the mailed notice of assessment. We do not think so. It is true the Court *a quo* made such a finding of fact, but as pointed out by the appellant in its brief, and as borne out by the records, no such admission was ever made by the appellant in the answer or in any other pleading, or in any declaration, oral or documentary before the trial court. We note that the appellee has not met this challenge, and after a review of the records, we find appellant's assertion well-taken."
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> "Since petitioner has not adduced proof that private respondent had in fact received the demand letter of 16 July 1955, it can not be assumed that private respondent received said letter. x x x." **(Republic of the Philippines v. The Court of Appeals, and Nielson & Company Inc., 146 SCRA 355, 356.)**

The records reveal that the petitioner firmly stood pat on its claim that it received the "Order of Payment", which is actually an assessment, only on August 31, 1987. In other words, it did not receive it in the due course of mail. It likewise denied having received the other assessment notices sent to its plant site in Marilao, Bulacan.

It was therefore incumbent upon the respondent to prove by contrary evidence that the petitioner indeed received the assessment in the due course of mail for Us to consider the present action as having been filed out of time. The *onus probandi* was shifted to respondent. Having failed to establish her claim by preponderance of evidence, We cannot consider that the present action of the petitioner has prescribed. This is especially true in the instant case where the Corporate Income Tax Return under review by the respondent clearly indicates that the taxpayer's principal place of business is Christ the King Mission Seminary, E. Rodriquez Sr., Quezon City and not Marilao, Bulacan.

On the second issue of whether or not the availment by the petitioner of the tax amnesty under EO 41 cancelled the said assessments and liability thereunder, the answer is in the affirmative.

In the case of **Commissioner of Internal Revenue v. ROH Auto Products Phils., Inc. and the Court of Tax Appeals, CA-G.R. S.P. No. 22923, December 11, 1992,** the Court of Appeals held:

> "In the instant case, examining carefully the words used in Executive Order N. 41, as amended, we find nothing which justifies petitioner Commissioner's ground for denying respondent taxpayer's claim to the benefits of the amnesty law. Section 4 of the subject law enumerates, in no uncertain terms, taxpayers who may not avail of the amnesty granted, namely:
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> > 'a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14;
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> > b) Those with income tax cases already filed in Court as of the effectivity hereof;
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> > c) Those with criminal cases involving violations of the income tax law already filed in court as of the effectivity hereof;
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> > d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;

> e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;
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> f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandiganbayan; and,
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> g) Those liable under Title Seven, Chapter Three (Frauds, Illegal Exactions and Transactions) an Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended."

Admittedly, respondent taxpayer does not fall under any of the above exceptions. The added exception urged by petitioner Commissioner based on Revenue Memorandum Order No. 4-87, further restricting the scope of the amnesty clearly amounts to an act of administrative legislation quite contrary to the mandate of the law which the regulation ought to implement.

In Commissioner of Internal Revenue vs. Tikicraft Industries, Inc. and Court of Tax Appeals, CA-G.R. SP No. 24488, 26 August 1991, this Court had the occasion to rule on the nullity of the questioned administrative directive in this wise:

> 'In fine, the power of the Secretary of Finance to promulgate rules and regulations, upon the recommendation of the Commissioner of Internal Revenue, for the effective enforcement of internal revenue laws, is subject to the limitation that said rules and regulations should not be in conflict with the terms and provisions of a pre-existing law.

'The interpretation forced upon us by the petitioner with respect to the coverage of those who can avail of the tax amnesty under the provisions of E.O. 41 as amended is erroneous. Petitioner also insists that E.O. 41 as amended must be given only prospective application.

'Obviously the title of E.O. 41 itself as amended by E.O. 64 - 'Declaring a One-Time Tax Amnesty covering Income Taxes, xxx and the Tax on Business under Chapter II, Title V of the National Internal Revenue Code, as amended, for the years 1981-1986' suggests that the tax amnesty has to be given retroactive effect so (as) to include in its coverage unpaid income and business taxes for the past years specifically mentioned, namely, 1981 to 1985.

'xxx As held by the Supreme Court in ABS-CBN vs. Court of Tax Appeals 108 SCRA 142,

> 'A ruling or circular issued by the Commissioner of Internal Revenue has no retroactive effect if to so apply them would adversely affect the taxpayer.'

'By analogy, the aforecited rule may be applied to rules and regulations promulgated by the Secretary of Finance. Conversely, a rule or regulation, may be given retroactive application if the same would be beneficial to the taxpayer, as in the case at bar'.

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'It is well to stress that taxpayers whose tax assessments were issued prior

> to August 22, 1986 are not among the exceptions. Under the rule of '<u>expressio unius est esclusio alterius</u>,' 'where a statute enumerates the subjects or thins on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned.' x x x Hence, since Section 4 of E.O. 41 specifically mentions the exceptions from the coverage of the tax amnesty, it necessarily follows that others not mentioned, such as taxpayers who were issued assessments prior to August 21, 1986, are not included in the exceptions.
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> 'For the reasons aforecited, We find that the questioned Revenue Memorandum Orders promulgated by the Secretary of Finance have the effect of expanding the provisions of Sec. 4 of E.O. 41 by including therein exceptions not contemplated by said law, hence, the same are held to be null and void.'

We sense no cogent reason to depart from the above pronouncements.

Lastly, by its very nature, "a tax amnesty, being a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law, partakes of an absolute forgiveness or waiver by the Government of its right to collect what otherwise would be due it, and in this sense, prejudicial thereto, particularly to give tax evaders, who wish to relent and are willing to reform a chance to do so and thereby become a part of the new society with a clean slate." (Republic v. Intermediate Appellate Court, 196 SCRA 335, 340 [1990] citing Commissioner of Internal Revenue vs. Botelho Shipping Corp., 20 SCRA 487) To follow the restrictive application of Revenue Memorandum Order No. 4-87 pressed by petitioner Commissioner would be to work against the raison d'être of E.O. 41, as amended, i.e., to raise government revenue by encouraging taxpayers to declare their untaxed income and pay the tax due thereon. (E.O. 41, first paragraph)"

The above-mentioned ruling together with **Bay Foods Specialties, Inc. v. The Commissioner of Internal Revenue, CTA Case No. 4246, August 7, 1991**, were also cited in the recent case of **Eduardo M. Limcangco v. The Commissioner of Internal Revenue, CTA Case No. 4827, March 4, 1993.**

WHEREFORE, premises considered, judgment is hereby rendered **GRANTING** the instant petition for review. The Deficiency Income Tax and Percentage Tax Assessments for the year 1981 in the sum of P709,140.60 is hereby cancelled and set aside in view of petitioner's availment of the tax amnesty pursuant to Executive Order No. 41, as amended. The writ of preliminary injunction is hereby made permanent. Respondent is hereby ordered to desist from collecting the Deficiency Income and Percentage Tax Assessments issued against petitioner for the year 1981 in the sum of P709,140.60.

No pronouncement as to costs of suit.

SO ORDERED.

Quezon City, Metro Manila, March 18, 1994.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among 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