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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRODUCERS BANK OF THE PHILIPPINES
Petitioner,

- versus -

C.T.A. CASE NO. 4819

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 14 1997

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DECISION

This is a petition seeking to annul the alleged deficiency expanded withholding tax assessments for 1982 issued by the respondent against the petitioner for P387,726.87 (FAS-5-82-87-005030) and/or P412,992.42 (FAS-1-4-82-90-003637) and to discharge the surety bond posted by the petitioner for the lifting and cancellation of the warrant of distraint and levy on petitioner's deposits with the Bangko Sentral ng Pilipinas.

The antecedent facts of the case are as follows.

Petitioner is a commercial banking corporation duly organized and existing under and by virtue of the laws of the Philippines.

On August 7, 1987, petitioner received an assessment letter, dated July 30, 1987 (Annex "A", Petition for Review), enclosing therewith, among others, Assessment Notice No. FAS-5-82-87-005030 (Annex "A-1", Petition for Review) for alleged deficiency expanded withholding tax for 1982 amounting to P387,726.87.

Petitioner protested said assessment through a letter, dated August 28, 1987 (Annex "B", Petition for Review), stating that said assessment was erroneous for including taxes assessed on rental income and professional fees paid to general professional partnerships which are exempt from expanded withholding tax.

On January 8, 1991, petitioner again received an undated assessment letter (Annex "C", Petition for Review) with Assessment Notice No. FAS-1-4-82-90-003637 (Annex "C-1", Petition for Review) for alleged deficiency expanded withholding tax for 1982, this time in the amount of P412,992.42.

In reply, petitioner sent a letter, dated January 28, 1991 (Annex "D"), informing the respondent that it reiterates its position in its protest letter filed on August 31, 1987 with respect to respondent's earlier assessment.

On July 23, 1991, petitioner received a letter, dated July 8, 1991 (Annex "E", Petition for Review) from respondent, offering a compromise settlement of the said alleged tax liability.

Petitioner through a letter, dated September 6, 1991 (Annex "F", Petition for Review), offered to pay only 30% of the claimed basic tax of P144,909.62 on the ground of petitioner's distressed financial condition and clear incapacity to pay in full the claimed deficiency tax. Respondent through a letter, dated October 23, 1991 (Annex "G", Petition for Review), denied the aforesaid offer.

In a letter dated, October 28, 1991 (Annex "H", Petition for Review), petitioner requested for a reconsideration of the said denial and absent any reply from the respondent, another letter, dated December 24, 1991 (Annex "I", Petition for Review), was sent by the petitioner to the respondent increasing the offer of compromise from 30% to 50% of the basic tax. This was followed by another letter, dated January 8, 1992 (Annex "J", Petition for Review), detailing the distressed financial condition of the petitioner which forced it to remain under conservatorship.

Subsequently, on May 18, 1992, petitioner, through its then counsel, was informed of the denial of the increased offer of compromise and was furnished a copy of BIR Form 2309, dated February 4, 1992 (Annex "K", Petition for Review), wherein it was reiterated that the denial was based on the ground that there is no clear showing of petitioner's incapacity to pay.

Thereafter, petitioner learned through the Central Bank of the Philippines that a warrant of distraint and/or levy had been issued by the Bureau of Internal Revenue against its deposit with the Central Bank for the enforcement of the collection of the 1982 expanded withholding tax deficiency. Hence, on June 10, 1992, petitioner filed a Petition for Review with this Court questioning the legality of the assessment and the right of the respondent to issue the aforesaid warrant on the ground that it was untimely.

On July 16, 1992, petitioner filed a motion to suspend the collection of the tax or lift the warrant of distraint and/or levy already issued by the respondent. The Court resolved to grant this motion on November 4, 1992 (pp. 45-48, CTA recs.) on the ground that:

> "x x x the petitioner has been under conservatorship since January 24, 1992 up to the present and therefore being rehabilitated. The distraint served on its deposit with the Central Bank, will definitely disrupt the effort of the government to rehabilitate the bank. Furthermore, during the hearing of said motion respondent posed no objection thereto, provided petitioner post a bond that will guarantee the payment of the alleged deficiency expanded withholding tax."

In her answer, respondent sets forth the following Special and Affirmative Defenses, to wit:

> 5. The Honorable Court has no jurisdiction to take cognizance of the instant case as there is yet no final decision of the respondent that is appealable to it;
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> 6. Per investigation conducted by the Revenue Enforcement Officer of the respondent of petitioner's 1982 return, it was ascertained that there were discrepancies on the rental payments made in the amount of P2,604,806.05; Management and other Professional fees of P276,554.34; and, Director/Committee member fees of P224,423.40. These rental payments, professional and management fees and director and committee member fees are subject to expanded withholding tax pursuant to Section 53 of the Tax Code, as amended;
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> 7. On the aforestated rental payments, petitioner failed to withhold under the expanded withholding tax system the 5% withholding tax due thereon of P130,240.31, and on the fees above-mentioned petitioner failed to withhold 10% withholding tax due

thereon in the total amount of P40,097.77. Hence, petitioner was assessed of P412,992.42 inclusive of interest and surcharges increments incident to delinquency;

8. Subject deficiency expanded withholding tax assessment No. FAS-5-82-87-005030 dated July 30, 1987 and FAS-1-4-87-90-003637 were issued in accordance with law and pertinent BIR implementing rules and regulations;

9. The issuance of Warrants of Distraint and Levy and service therefore to the Central Bank was made in accordance with Section 302 (now 205) in relation to Section 304 and 305 (now 207) of the 1977 Tax Code, as amended;

10. Subject expanded withholding tax assessment for taxable year 1982 has not yet prescribed;

11. Section 318 of the Tax Code, provides:

> "Section 318. Period of limitation upon assessment and collection. - Except as provided in the succeeding section, <u>internal revenue taxes shall be assessed within five years after the return was filed</u> and no proceeding in Court without assessment for the collection of such taxes shall begin after the expiration of such period. For the purposes of this Section, a return filed before the last day prescribed 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." (Underscoring supplied);

12. Pursuant to Section 54(d) of the 1977 Tax Code the law applicable in the instant case, petitioner was required to file an annual return for creditable withholding tax not later than March 1, of the year following the year for which annual report is submitted, which is on March 1, 1983. The subject expanded withholding tax assessment was issued on July 30, 1987 for taxable year 1982. Accordingly, the subject deficiency expanded withholding tax assessment was well within the five-year prescriptive period to assess as provided for under Section 318 as aforecited;

13. Section 268 of the Tax Code, as amended is not applicable in the instant case. The cited section 268 is applicable and/or effective commencing from taxable year 1984 and not the period covered under review;

14. All presumptions are in favor of the correctness of the tax assessment (Provincial Autobus Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. L-1775, July 31, 1963, 8 SCRA 527), and the burden of proof to prove otherwise is upon petitioner.

From the following defenses, the following issues are raised before Us:

1. Whether or not this Court has jurisdiction to take cognizance of the instant case as there is yet no final decision of the respondent that is appealable to it;

2. Whether or not the assessment of respondent is valid;

3. Whether or not the right of respondent to assess and collect the alleged deficiency tax has prescribed; and

4. Whether or not the petitioner has the obligation to withhold taxes on machinery rentals;

5. Whether or not the petitioner has the obligation to withhold taxes on professional fees paid to general professional partnership;

6. Whether or not respondent can issue a warrant of distraint and/or levy pending resolution on the protest filed by petitioner.

After a thorough examination of the BIR records, evidence and pleadings of the parties, this Court found that a discussion of each of the arguments raised by both parties would be useless until the question of jurisdiction is foremost settled. Determination of the case on the merits would be futile if this Court finds that We lack the jurisdiction to entertain and take cognizance of the instant case.

We find it erroneous for the respondent to assert that this Court lacks jurisdiction on the ground that there is as yet no final decision appealable to Us. In the case of ***Commissioner of Internal Revenue vs. Algue, Inc., 158 SCRA 9, February 17, 1988***, the Supreme Court held that:

> "It is true that as a rule, the warrant of distraint and levy is `proof of the finality of the assessment' and `renders hopeless a request for reconsideration', being `tantamount to an outright denial thereof and makes the said request deemed rejected'." (underscoring supplied)

In the case at bar, when the Commissioner of Internal Revenue, without categorically deciding the request for an increased offer of compromise settlement, proceeded with the issuance of a Warrant of Garnishment (as admitted by the respondent in her letter addressed to the Bangko Sentral ng Pilipinas - p. 586, BIR records), such action may be deemed an implied denial, or the equivalent thereof, and the taxpayer's remedy is to appeal to the Court of Tax Appeals within 30 days from the date that he is notified thereof.

However, a close scrutiny of the Warrant of Garnishment issued by the respondent on December 26, 1990 (BIR Recs., p. 463) revealed that it was received by the petitioner on August 28, 1991 and counting 30 days from that date, petitioner had until September 27, 1991 to appeal to this Court. Apparently, the instant petition for review was belatedly filed before Us on June 10, 1992 or more than the 30-day reglementary period to appeal.

The pertinent provision of the Tax Code relevant to the issue at hand is Section 229 which is quoted hereunder:

> "Sec. 229. ***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."(underscoring supplied)

And implementing the last paragraph of the foregoing provisions, Revenue Regulations No. 12-85, November 27, 1985, provides:

> "Sec. 10. ***Appeals of decision of Commissioner or Regional Director to the Court of Tax Appeals*** - Final decision issued by the Commissioner or Regional Director may be appealed to the Court of Tax Appeals within thirty (30) days from receipt thereof, otherwise the same shall become final and executory." (underscoring supplied)

The aforementioned law and regulations clearly mandates that the petitioner had thirty (30) days from receipt of the final decision (Warrant of

Garnishment, in this case) of the respondent to appeal to this Court, otherwise, the decision shall become final and executory.

In the case of ***Surigao Electric Co., Inc. vs. Court of Tax Appeals, 57 SCRA 523***, the Honorable Supreme Court, held:

> "The thirty-day period prescribed by Section 11 of Republic Act 1125, as amended, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the tax court, is a jurisdictional requirement, and the failure of a taxpayer to lodge his appeal within the prescribed period bars his appeal and renders the questioned decision final and executory.
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> Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero ***motu (Commissioner of Internal Revenue vs. Villa, 22 SCRA 3)***."

In the case of ***Sembrano vs. Ramirez, 166 SCRA 30,*** the Supreme Court ruled:

> "The perfection of an appeal within the statutory or reglementary period is mandatory and jurisdictional and the failure thereof renders final and executory the questioned decision and deprives the appellate court of jurisdiction to entertain the appeal."

The decision of the Commissioner of Internal Revenue having become final, executory and demandable due to the failure of the petitioner to appeal before this Court within the 30-day period required by law, this Court has no jurisdiction to entertain the petition for review.

WHEREFORE, in view of all the foregoing, the petition of Producers Bank of the Philippines is hereby DISMISSED for lack of jurisdiction. No pronouncements as to costs.

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 the above 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