Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

'93 FEB -8 P12:21

FORMER SPECIAL SIXTH DIVISION

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

DAVAO LIGHT & POWER CO., INC., and the COURT OF TAX APPEALS,
Respondents.

CA-G.R. SP NO. 26920

Members:

MARIGOMEN,
VAILOCES,
GARCIA, JJ.

Promulgated :

FEB 01 1993
Teresita C. Custodio 11:00 A.m

x - x

D E C I S I O N

VAILOCES, J.:

Petitioner seeks the annulment and setting aside by this court of the Resolution of the public respondent, the Court of Tax Appeals (CTA for short hereinafter) dated October 2, 1991 issued as an incident in CTA Case No. 4395 that had been filed by the private respondent, Davao Light and Power Co., Inc. (Davao Light henceforth, for brevity) on October 16, 1989 in the CTA against the petitioner herein, the Commissioner of Internal Revenue (CIR henceforth, for brevity).

The thrust of the private respondent's Petition for Review in the CTA is for the CTA to declare as null and void the assessment by the CIR upon Davao Light of deficiency income tax in the sum of ₱26,859,152.54 (inclusive of interest and penalties) for the year 1987, and of deficiency business (franchise) tax in the sum of ₱965,414.02 (inclusive of interest and penalties) also for the year 1987.

Upon the filing by Davao Light of its petition for review, it applied with the CTA for the issuance of a writ of preliminary injunction as the CIR, on October 13, 1989 (three days before Davao Light filed its petition) had issued a Warrant of Distraint of Personal Property and Warrant of Levy on Real Property, as well as warrants for the garnishment of Davao Light's bank deposits.

The respondent CTA acted favorably upon Davao Light's petition for an injunction in a Resolution dated January 23, 1990: the CIR has been enjoined and restrained "from proceeding with the collection of the deficiency taxes involved herein through the warrants of garnishment, distraint, and levy served on petitioner, pending final adjudication of the merits of this case." For purposes of said injunction Davao Light was required by the CTA to submit a surety bond in the amount of ₱27,000,000.00 posted by a surety company of good standing.

Subsequently, Davao Light, as petitioner, filed a motion for reconsideration on February 6, 1990, praying of the CTA --

> ". . . . that the Resolution of this Honorable Court dated January 23, 1990 be modified by dispensing with the requirement of a surety bond in the amount of ₱27,000,000.00 as a condition for the lifting of the warrants of garnishment, distraint and levy issued by the Respondent against the petitioner for the collection of the deficiency income and franchise tax in the total amount of ₱26,859,152.54."

Eight (8) months later (October 2, 1991) the CTA granted the petitioner's motion for reconsideration, in a RESOLUTION (Petition, Annex "A"), the dispositive portion of which reads as follows:

> "IN VIEW OF THE FOREGOING, the motion for reconsideration of petitioner is GRANTED insofar as it seeks the modification of the resolution of this court dated January 23, 1990 relative to the requirement of the surety bond (in

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the amount of ₱27,000,000.00) as a condition for the issuance of a writ of injunction against the respondent Commissioner to restrain the enforcement of the warrants of garnishment, distraint and levy issued against the petitioner, which surety bond (PISC BOND NO. 65154/G [16]) may be dispensed with and is hereby ordered WITHDRAWN.

"SO ORDERED."

Petitioner CIR is assailing this Resolution upon the ground that the respondent CTA, in dispensing with the injunction bond, has committed grave abuse of discretion.

The taxes involved in CTA Case No. 4395 that this case is an offshoot of are deficiency income and franchise taxes for the year 1987.

Assessment of a deficiency tax is necessarily based on a finding that the returns for the taxable year have been false, incomplete, or erroneous, perhaps, even fraudulent.

Under Section 223 of the National Internal Revenue Code, the deficiency tax may be assessed at any time after the discovery of the falsity, fraud or omission.

Public policy spelled out in Section 219 of the National Internal Revenue Code is that no court shall have authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge (imposed by the National Internal Revenue Code).

Under Section 11 of Republic Act 1125 however, the CTA may suspend the collection of internal revenue taxes in cases of disputed [redacted]. assessments that have been appealed to it,

> "and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the court."

The CTA is given the discretion to suspend or not to suspend, but it does not seem to have been given the discretion to dispense with the bond requirement.

Relying upon its own precedents and upon the decision of the Supreme Court in Collector vs. Reyes, 100 Phil. 822, the CTA, in the RESOLUTION sought to be annulled and set aside dispensed with the surety bond requirement, as it has found that the petitioner exceeded the prescribed period within which he could issue and enforce collection by distraint or levy, as pointed out to it by Davao Light.

> "This untimeliness in the issuance of the warrants could only render them illegal and so their enforcement may be enjoined by the court through a writ of injunction without a surety bond."

The time constraints in the matter of distraint specified in Section 207 of the National Internal Revenue Code (. . . not earlier than three months nor later than six months from receipt of demand . . .), which were inserted by RA 5203 in 1968 have been removed by B.P. 700 in 1984 when an amendment was inserted in Section 319 (Section 223 now) to the effect that

> "(c) Any internal revenue tax which has been assessed within the period of limitation above prescribed [the deficiency taxes subject of CTA Case No. 4395 are in this category], <u>may be collected by distraint or levy</u> or by a proceeding in court <u>within three years</u> following the assessment of the tax." (Underscoring supplied).

If the 6-month period for the issuance of a warrant of distraint under Section 207 of the National Internal Revenue Code is still in force, the running thereof was necessarily interrupted by Davao Light's protest filed with the petitioner on April 4, 1989, eighteen days after receipt by it on March 17, 1989 of the demand to pay. When the protest was denied on September 12, 1989, the six month period for the issuance by the petitioner thereafter of a warrant of distraint that had been interrupted began to run again. The issuance by

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the CIR of said warrant on October 13, 1989 was therefore still very much within the 162 days left of the 6-month period.

The 3-month prohibitive period after receipt by the taxpayer of the demand has been meant to be an allowance for a protest against the assessment that the taxpayer might file. The pendency for more than three months of the protest that the taxpayer has filed will therefore have to be applied to that 3-month preventive period, and so, if the protest has been denied, as in this case, the CIR should not anymore be under further restraint by letting the balance of the 3-month period lapse first before issuance of the warrant of distraint.

The legislative policy, according to our Supreme Court, is to allow the Commissioner of Internal Revenue much latitude in the speedy and prompt collection of taxes. (Dayrit vs. Cruz, 165 SCRA 571). The reason is obvious: taxes are the lifeblood of the nation through which the government operates and with which the State effects its functions for the welfare of its constituents. So, it is of utmost importance that the modes provided for by law to enforce the collection of taxes should be summary and interfered with as little as possible. (Republic vs. Lim Tian Teng, 16 SCRA 590).

Tax assessments made by tax examiners are presumed correct and made in good faith. (Dayrit vs. Cruz, supra).

Needless to say, the appeal that has been elevated by the private respondent to the CTA involves delay, specially since the decision of the CTA can be appealed yet to the Court of Appeals and even to the Supreme Court. It is only fair that the right of the government be protected by a bond, so that, in the event the disputed assessment is upheld, the bond can at once be made to answer for the tax liability in question.

Indeed there is jurisprudence that the bond is not necessary if the mode of collection (distraint) is being carried out not in accordance with law. The case of Reyes, however, in 100 Phil. 822 involves an assessment foisted upon the taxpayer when the government's right to do so had

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already prescribed. Such is not the situation in the case at bar.

Thus we find merit in the petitioner's contention that the respondent CTA's Resolution (by two of its three justices) dated October 2, 1991 modifying its injunction issued on January 23, 1990 holding that the surety bond requirement provided for by Section 11 of RA 1125 may be dispensed with, and which thereby allowed the private respondent to withdraw the surety bond (Pioneer Insurance & Surety Co. Bond No. 65154/G (16) 5406) in the amount of ₱27,000,000.00 that it had posted, was grave abuse of discretion.

WHEREFORE, the petition is hereby **GRANTED**. The RESOLUTION of the respondent CTA in CTA Case No. 4395, dispensing with the posting by respondent Davao Light and Power Company of a surety bond as required by Section 11 of RA 1125 is, as a consequence, hereby **ANNULLED** and **SET ASIDE**.

IT IS SO ORDERED.

FORTUNATO A. VAILOCES
Associate Justice

WE CONCUR:

ALFREDO M. MARIGOMEN
Associate Justice

CANCIO C. GARCIA
Associate Justice

A T T E S T A T I O N

I HEREBY ATTEST THAT THE DECISION WAS REACHED AFTER DUE CONSULTATION AMONG THE MEMBERS OF THIS DIVISION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 13 ARTICLE VIII OF THE CONSTITUTION.

ALFREDO M. MARIGOMEN
Acting Chairman
Former Special 5th Division