REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROQUE C. GONZALEZ, JR.
Petitioner,

- versus -

C.T.A. CASE NO. 4372

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/7/92

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D E C I S I O N

In the case at bar, petitioner prays for the cancellation of Assessment No. 25-3-04A-191301-81, for alleged 1981 deficiency income tax in the amount of P437,289.60.

On July 12, 1986, petitioner, a resident of Quezon City, received a demand letter dated July 3, 1986 from the chief of the Receivable Accounts Division of the Bureau of Internal Revenue (BIR), Eduardo M. Pamittan, covering the amount herein involved (Exhibit "A"; CTA Records, p. 89).

In a letter-protest addressed to respondent, dated July 31, 1986 and received by the BIR on the same day, petitioner, through counsel, prayed that "said assessment (Assessment No. 25-3-04A-191301-81)

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be withdrawn and that in lieu thereof, a post-reporting notice and/or pre-assessment notice be sent to (petitioner), in conformity with Revenue Regulations No. 12-85" (Exhibit "B"; CTA Records, pp. 90-91).

Mr. Pamittan responded in a letter to petitoner's counsel dated August 26, 1986 (Exhibit "C"; CTA Records, p. 92), which states, in part, that:

> "xxx (O)n June 28, 1983 a letter was sent to your client (petitioner herein) requesting the presentation of certain documents to substantiate your claims for deductions in your 1981 income tax returns. A follow-up letter dated June 6, 1984 was also sent you but unfortunately, in spite of these requests, your client (petitioner herein) failed to present the documents required of him.
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> The allegation, therefore, that your client (petitioner herein) was not informed of the proposed assessment is not supported by the records of the case, hence, your request for cancellation of the assessment is hereby denied."

Failing to have the assessment in question withdrawn, petitioner, on September 25, 1986, availed of the income tax amnesty granted under Executive Order No. 41 (dated August 22, 1986) and its implementing Revenue Regulations No. 14-86 (dated August 27, 1986), by filing a Tax Amnesty Return with File No. 25-I (7) 00003-41 (Exhibit "D"; CTA

Records, p. 93), and making a "full payment" of the tax due under the amnesty.[1]

Mr. Pamittan sent another letter (dated January 23, 1986) to petitioner, demanding payment of his tax liability subject matter of Assessment No. 25-3-04A-191301-81, and informing him that if he fails to settle said liability, the BIR "shall be constrained to enforce the collection of the aforestated liability, plus the statutory increments up to the date of payment, thru the issuance of Warrants of Distraint and/or Levy against your personal or real property" (Exhibit "E"; CTA Records, p. 95).

In a letter dated January 30, 1987 and received by the BIR on February 3, 1987, petitioner, through counsel, informed the BIR, through Mr. Pamittan, of his availment of tax amnesty under Executive Order No. 41 (Exhibit "F"; CTA Records, p. 96). On May 24, 1989, petitioner's counsel received a letter dated April 28, 1989 from respondent (signed by Acting Assistant Commissioner [Collection Office] Themistocles Montalban), which states thus:

> "This refers to your letter dated January 31, 1987 requesting that the tax

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[1] Such payment is evidenced by BIR Payment Order No. B-8915302 and BIR Confirmation Receipt No. B-9909243, both dated September 25, 1986 (Exhibits "D-1" and "D-2", respectively; CTA Records, p. 94).

> liability of your client, Mr. ROQUE C. GONZALEZ, JR., involving the amount of P437,289.60 as deficiency income tax for the year 1981, under the letter of demand dated November 8, 1985 be considered closed by virtue of his availment of E.O. 41.
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> In reply thereto, please be informed that E.O. No. 41 only covers tax liabilities assessed or issued after August 22, 1986, the date said Order took effect. Since the assessment of your client was issued on November 8, 1985, the said tax liability subsists notwithstanding his availment of the aforesaid decree.
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> In view thereof, you are requested to urge your client (petitioner herein) to pay to the Chief, Collection Enforcement Division, Rm. 102, BIR Bldg., Diliman, Q.C., the amount of P437,289.60, plus the increments incident to delinquency, within ten (10) days from your receipt hereof in order that his case can be closed. Failing in it, this office much to our regret will enforce the collection of the amount by all means provided for by law without further notice." (Exhibit "G"; CTA Records, p. 97)

The issue which faces the Court in this case is whether, notwithstanding petitioner's availment of tax amnesty under E.O. No. 41, his liability for alleged 1981 deficiency income tax in the amount of P437,289.60 still subsists. In other words, the Court must settle whether or not petitioner's deficiency tax liability falls within the purview of the said E.O., thus allowing him to avail of the tax amnesty offered therein.

A preliminary issue involving the lack of jurisdiction of this Court over the instant petition for review on the ground of the alleged finality of the questioned assessment must, however, first be settled by the Court.

Respondent contends in his Answer (CTA Records, pp. 48-51), among other things, that:

> "4. Records of this case show that letters dated June 28, 1983 and June 6, 1984 were issued by respondent requesting petitioner to present documents to substantiate his claims for deductions in his 1981 income tax returns, but failed to do so;
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> 5. The deficiency tax assessment was issued on November 8, 1985, which was not however protested within thirty (30) days from receipt as required by Section 319-A of the 1977 Tax Code; hence, said assessment had become final and executory. This Honorable Court therefore has no jurisdiction on the Petition for Review;
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> xxx xxx xxx"

By way of rebuttal, petitioner submits in his Memorandum that:

> "The fact is that no such assessment or letter of demand supposedly issued by the Respondent on November 8, 1985 was ever received by Petitioner. As testified to by the Petitioner in open court (t.s.n. of July 18, 1990, pp. 4-5) and which testimony remains uncontroverted, the first time he became aware of an assessment against him for alleged 1981 deficiency income tax was when he received Respondent's other communications to Petitioner dated August 26, 1986 (Exhibit "C", Petitioner) and January 23, 1987 (Exhibit "E", Petitioner), which facts remain undisputed. It is likewise undisputed that it was only upon Petitoner's receipt on May 24, 1989 of Respondent's letter dated April 28, 1989

> (Exhibit "G", Petitioner), denying Petitioner's request for the cancellation of the assessment against him by reason of his availment of the tax amnesty, that any mention was ever made of a supposed assessment and letter of demand dated November 8, 1985." (Memorandum, pp. 2-3; CTA Records, pp. 108-109).

At this juncture, the Court finds it most appropriate to point out the fact that respondent, despite repeated requests for him to submit, through his counsel, the BIR Records of the instant case, has failed and/or refused to transmit the same to Us. This, despite the clear provisions of Section 2, Rule 7 of the Rules of The Court of Tax Appeals, which states that:

> "Sec. 2. The Collector of Internal Revenue, the Commissioner of Customs, and the respondent provincial or city Board of Assessment Appeals, shall certify and forward to the Court within ten (10) days after filing his Answer, all the records of the case in his possession, with the pages duly numbered, and if the records are in separate folders, then the folders will also be numbered. The Court may, on motion, and for good cause shown, grant an extension of time within which to submit the aforesaid records of the case." (Underscoring supplied)

More importantly, respondent failed in his obligation, notwithstanding the fact that on June 27, 1989, when the Bureau of Internal Revenue received the summons[2] issued by Us in this case, respondent's counsel was formally and expressly directed to comply with said Sec. 2, Rule 7 of Our Rules.

Therefore, the Court finds itself constrained to decide the case at bar without benefit of studying its BIR records. We have been more than liberal with respondent's counsels in the past regarding the transmittal of such records, and have in fact been very accommodating to respondent in the present case.[3] This is because the Court realizes and recognizes the importance of taxes to the government, for which reason respondent is treated with more leniency than any ordinary party appearing before Us. However, even the government's good must be

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[2] CTA Records, p. 21. The second paragraph of said summons reads as follows:

> "You are likewise hereby required to comply with Section 2, Rule 7 of the Rules of the Court of Tax Appeals, which provides that the Commissioner of Internal Revenue and the Commissioner of Customs shall certify and forward to the Court within ten (10) days after filing his answer, all the records of the case in his possession, with the pages duly numbered, and if the records are in separate folders, then the folders will also be numbered."

[3] It must be noted that, although the instant case was deemed submitted for decision by the Court on January 8, 1992 (Order dated January 9, 1992; CTA Records, p. 115), the Court has held off deciding the case for six months, awaiting the transmittal of the case's BIR Records.

subjugated to the cause of justice; and in the case at bar, the Court believes that justice will not be served by waiting any longer for respondent's counsel to comply with his obligation and submit the BIR records for this case. More than two-and-a-half years have passed since respondent filed his answer[4] to the instant petition for review with Us; to wait any further for the transmittal of said records would be to sacrifice justice, which the Court is bound to uphold.

The Court cannot rely merely on respondent's unsubstantiated allegation that petitioner had been issued a notice dated November 8, 1985. Respondent, in order to prove his allegations, had merely to present a copy of the said alleged assessment, which is well within his competence to do. His counsel's failure/refusal to make such presentation or to transmit the BIR Records of the case, from which We can ascertain independently the existence of said assessment, must be seen by Us in the light of Section 3(e), Rule 131 of the Revised Rules of Court which states that:

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[4] Said answer was filed with the Court on December 20, 1989.

"Sec. 3. Disputable presumptions. -- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

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(e) That evidence willfully suppressed would be adverse if produced;

xxx xxx xxx."

Furthermore, a review of the transcript of petitioner's testimony in open court shows that while he declared unconditionally that the first assessment notice for 1981 deficiency income tax he received is the one dated July 3,1986,[5] respondent never put such statement in issue during cross-examination,[6] which We hereunder quote in full:

"CROSS EXAMINATION BY ATTY. CAPONONG

Q. Mr. Witness, what is your present address?

A. 56 Scout de Guia, Quezon City.

Q. Is that your address since 1981 until the present?

A. No.

Q. Will you please tell this Honorable Court if, what are your addreses are or is as the case may be?

A. My address was 1922 Dr. M. Carreon St., Sta. Ana, Manila.

Q. And is that the address you placed in your income tax return?

A. Yes.

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[5] See T.S.N., July 18, 1990, pp 3-4.

[6] T.S.N., July 18, 1990, pp. 6-7.

Q. When did you move from that said address in Sta. Ana to another place?

A. 1987. That address, Your Honor, is of my residence and my office.

Q. So you mean to say that your address since 1981 until 1987 have been the same?

A. Yes.

ATTY. CAPONONG

No further questions, Your Honors."

Therefore, in the absence of any evidence presented by respondent regarding the existence of the alleged deficiency tax assessment dated November 8, 1985, and in the face of the uncontradicted testimony of petitioner in open court, We hold that the thirty-day prescription period for protesting the assessment for alleged 1981 deficiency income taxes issued against petitioner must be counted from July 12, 1986, when petitioner received the notice dated July 3, 1986. Since petitioner protested said assessment on July 31, 1986, the same has not yet become final and executory.

Having disposed of the preliminary issue of jurisdiction, We now proceed to discuss the main question in the case at bar.

Respondent submits that "(t)he tax amnesty under Executive Order No. 41 covers only assessments after August 22, 1986, effectivity date of the Executive Order" (Answer, p. 2; CTA Records, p. 49), and, therefore, does not cover the assessment involved in the instant case. This is specifically controverted by petitioner in his memorandum.[7]

The Court has had occasion to rule on the issue of the coverage of Executive Order No. 41 in the case of **Tikicrafts Industries, Inc. vs. Commissioner of Internal Revenue** (CTA Case No. 4266). In Our decision in that case dated January 31, 1991, We aptly stated that:

> "By and large, petitioner posits the proposition this wise:
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> xxx The very nature of a tax amnesty, plus the very title of EO 41 iself, as expanded by EO No. 64 -- 'Declaring a One-Time Tax Amnesty Covering Income Tax, xxx and the Tax on Business Under Chapter II, Title V of the National Internal Revenue Code, as amended, for the years 1981-1986' clearly and obviously imply 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.
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> Moreover, Section 4 of EO No. 41, as expanded by EO No. 64, specifically enumerates those excepted from the coverage of the tax amnesty and clearly, tax assessments issued prior to August 22, 1986 are not among the exceptions. Under the rule of '<u>expressio unius est exclusio alterius</u>', 'where a statute enumerates the subjects or things on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned. xxx Hence, since Section 4 of

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[7] <u>See</u> Petitioner's Memorandum, pp. 4-7; CTA Records, pp. 110-113.

EO 41 expressly mentions the exceptions from the intended converage of the tax amnesty, it follows that others not mentioned such as assessments issued prior to August 21, 1986 are not included.

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Petitioner could not have said it better. We agree."

On appeal to the Court of Appeals, Our above-quoted decision was affirmed, thus:

"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 Amnesty Covering Income Taxes, x x x 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 to include in its coverage unpaid income and business taxes for the past years specifically mentioned, namely, 1981 to 1985.

It is a basic tenet in our jurisprudence that generally all laws must be given prospective application. The same principle applies to rules and regulations promulgated by administrative authorities as held by the Supreme Court in ABS-CBN vs. Court of Tax Appeals 108 SCRA 142.

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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.

Furthermore, Section 1 of Executive Order No. 41 unequivocally enumerates those taxpayers who may not avail themselves of the tax amnesty, and evidently private respondent is not one of them.

The execeptions enumerated in Sec. 4 of E.O. 41 reads as follows:

xxx xxx xxx

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 'expressio unuis est seclusio alterius,' (sic) 'where a statute enumerates the subjects or things on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned.' (Davis Place vs. Liquor Control Commission, 269 N.W., p. 594). Likewise, it is an elementary rule in statutory construction that 'an express exception, exemption or saving clause excludes the others.' (Lewis Sutherland, Statutory Const. p. 494). 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." (Commissioner of Internal Revenue vs. Tikicraft Industries, Inc., CA-G.R. No. SP-24488, August 26, 1991, pp. 5-7)

Therefore, the Court finds that petitioner's alleged 1981 deficiency income tax falls within the purview of Executive Order No. 41, and that, therefore, his availment of the amnesty under the same has settled his liability for said taxes.

WHEREFORE, finding the petition impressed with merit, the Court hereby grants the same and orders the cancellation of Assessment No. 25-3-04A-191301-81, for alleged 1981 deficiency income tax in the amount of P437,289.60.

No costs.

SO ORDERED.

Quezon City, Metro Manila, August 7, 1992.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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