REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WILSON E. LIMPO,
Petitioner,

- versus - C.T.A. CASE NO. 4593

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
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RESOLUTION

Respondent assails the jurisdiction of this Court over the instant case, on the ground that the assessment subject matter thereof has become final and unappealable, by reason of petitioner's failure to protest the same in accordance with the provisions of Section 229 of the Tax Code.

We first put forth an abbreviated presentation of the facts of the case which relate directly to the instant motion to dismiss.

The BIR Records[1] show that on December 19, 1986, respondent issued Assessment/Demand Notice No. 32-4B-05-168838-81 against petitioner and his

[1] See BIR Records, p. 19.

wife for the payment of P2,351,000.00 in alleged deficiency income taxes due, exclusive of interest and surcharge. Respondent alleges that:

> "xxx. Notwithstanding of said demand by the Bureau of Internal Revenue upon petitioner to pay the tax liability, the latter failed and/or neglected to pay the same (sic). Neither petitioner has made effort to request for reconsideration, protest or contest said tax assessment in accordance with Section 229 of the National Internal Revenue Code, as amended (sic).
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> "xxx xxx xxx." (Motion To Dismiss, p. 3; CTA Records, p. 19)

On July 22, 1989, respondent's collection agents served upon petitioner and his wife Warrant of Distraint Of Personal Property No. N-A2205-89 and Warrant Of Levy On Real Property No.N-A2204-89, both dated May 3, 1989. Both warrants were issued to enforce collection of petitioner's and his wife's alleged tax liability under Assessment/ Demand Notice No.32-4B-05-168838-81.

On different dates in February and April 1990, separate warrants of garnishment were issued by respondent against the bank deposits of petitioner and his wife in the United Coconut Planters Bank, Philippine Commercial International Bank, Prudential Bank, and the Bank of the Philippine Islands, respectively.

Petitioner, through counsel, requested for the cancellation and lifting of the May 3, 1989 warrants of distraint and levy through a letter, dated May 7, 1990 (and received by the BIR's Collection Division on May 10, 1990), addressed to respondent through the BIR's Assistant Commissioner for Collection. Said letter reads, in part, thus:

> "xxx xxx xxx
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> "We write on behalf of our abovenamed clients (petitioner herein and his wife) in relation to your aforementioned alleged tax assessment and the warrants of levy on real property and of distraints of personal property which you issued against our clients to enforce the said assessment.
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> "Our clients have not received your assessment, and we have not been able to see one in your files. There could have been some error in this matter, and we request you to lift the warrants while you re-examine your files.
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> "An assessment fixes and determines the tax liability of a taxpayer and as soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded xxx. The assessment notice must be sent to the proper taxpayer, otherwise the assessment produces no effect and does not become final and executory xxx. The tax collector has the duty to show the release, mailing, or sending of the assessment notice by clear and satisfactory proofs. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting proofs, cannot suffice; otherwise, taxpayer would be at the mercy of the revenue offices, without adequate protection or defense. The fact that the

> taxpayer acknowledged receipt of a second final notice is no proof that he received the first notice xxx.
>
> "In view of the foregoing, we request that the warrants of levy on real property and of distraint of personal property you issued against our clients be cancelled and lifted immediately. In this regard, please be advised that your continued restraints upon our clients' property, particularly their bank accounts, have caused them undue and tremendous financial prejudice and social humiliation. We reserve our clients' right to seek redress for their grievances.
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> "xxx xxx xxx"
> (BIR Records, pp. 58-59)

Respondent replied through a letter addressed to petitioner's counsel, dated January 29, 1991[2] and received by petitioner on March 6, 1991[3], denying petitioner's protest/request for cancellation and lifting of warrants, thus:

> "xxx xxx xxx
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> "With reference to your letter dated May 7, 1990, requesting for the lifting of the Warrant of Garnishment issued against your client Mr. Wilson E. Limpo on the ground that the assessment notices have not been received by your client, please be informed that the records of this Office show that the assessment notices were actually issued against your client last December 19, 1986. As there are no compelling legal reasons to warrant the lifting of the Writ of Garnishment, this Office reiterates the

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[2] BIR Records, p. 77.

[3] Annex "D", Petition for Review; CTA Records, p. 10.

> execution of the said Writ against your client.
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> "Further, it is clear that the validity of the assessment remains unassailable considering that your client has deducted the losses or expenses of one line of business against the other line of business by your client, which is a clear violation of Section 30 of the Tax code as amended which provided for the non-deduction of such losses or expenses in one line of business against the other line of business of any taxpayer (sic).
>
> "Accordingly, it is therefore, requested that you urge your client to pay the deficiency income tax of P3,546,718.00 for 1981 within ten (10) days from receipt hereof, otherwise, this Office will reiterate collection thru (sic) summary remedies provided by law.
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> "This constitutes our final decision on the matter.
>
> "xxx xxx xxx"

On April 4, 1991, the present action was instituted by petitioner when he filed his Petition For Review with this Court.

Under Section 229 of the Tax Code, petitioner had thirty days from receipt of the assessment to protest the same administratively. Otherwise, the same would become final and unappealable. Respondent, in the instant motion to dismiss, contends that:

> "As early as July 3, 1986, respondent Commissioner of Internal Revenue by way of pre-assessment notice xxx informed the petitioner about his tax

> liabilities for the year 1983. Petitioner was invited for a conference with the respondent in the morning of July 29, 1986 to make any objection to the proposed assessment. Thereafter, on December 19, 1986 respondent Commissioner of Internal Revenue issued against petitioner Assessment/Demand Notice No. 32-43-05-168838-81 xxx and sent to the petitioner by mail at his address stated in his income tax return for the year 1983 xxx, requiring petitioner to pay the amount of P3,546,718.60 as deficiency income tax for the said year. Notwithstanding of said demand by the Bureau of Internal Revenue, upon petitioner to pay the tax liability, the latter failed and/or neglected to pay the same (sic). Neither petitioner has made effort to request for reconsideration, protest or contest said tax assessment in accordance with Section 229 of the National Internal Revenue Code, as amended (sic).
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> "xxx xxx xxx
>
> "The failure of the petitioner to file a protest as prescribed in the above-mentioned provision of the Tax Code makes the assessment final, executory and demandable and the petitioner is forever barred from disputing the assessment." (Motion To Dismiss, pp. 1-3; CTA Records, pp. 17-19)

Petitioner opposes respondent's motion to dismiss mainly on the strength of the Supreme Court decision in the case of **Nava vs. Commissioner of Internal Revenue**, 13 SCRA 104 (1965), arguing thus:

> "In Nava v. Comm'r of Int. Rev. xxx which involved similar factual setting, the Supreme Court held that:
>
> > xxx, respondent utterly failed to prove by substantial evidence that the assessment

> notice xxx and the other supposed written demand letters or notices subsequent thereto were in fact issued or sent to taxpayer Nava. bar. xxx
>
> xxx. **Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices** (sic), **without adequate protection or defense**. xxx

"Respondent failed to adduce clear and satisfactory evidence to prove the issuance of the assessment notice. More importantly, on 27 December 1988, respondent sent petitioner "Preliminary Notice of Assessment" for 1983 taxable year xxx. The preliminary notice clearly states:

> This is **NOT** a statutory notice of deficiency. However, upon expiration of the 10 day after receipt thereof (sic), xxx the report shall be submitted for approval by higher authorities, and **the statutory notice will then be sent to you as provided by laws**. xxx

"The foregoing xxx clearly negates respondent's claim that he had earlier issued an assessment notice to petitioner for taxable year 1983. Respondent contended further:

> Arguendo, that petitioner has not received the assessment/demand notice issued against him, the service of the warrants indicates that an assessment has become final and

> shall encourage [him] to file a protest, but which he failed to do.

> "The aforecited Nava decision has rejected a similar argument, thus:

>> The fact that in Exhibit "E" Nava acknowledged receipt of the second final notice personally delivered to him is no proof that he received the first notice by mail. There is a difference between receiving a second final notice and receiving a final notice for the second time. xxx

> "Warrants of distraint and levy are administrative measures to enforce tax assessments xxx and the rule is recognized that these warrants are proofs of the finality of the assessment, except when protest has been seasonably filed xxx. Clearly, the said warrants do not, and cannot, substitute for the tax assessments. Indeed, the principle is well settled that tax assessments cannot depend on mere presumption xxx." (Opposition To Motion To Dismiss, pp. 1-3; CTA Records, pp. 26-28)

We find merit in respondent's motion to dismiss.

We find that the portions of the Nava decision quoted by petitioner in his "Opposition To Motion To Dismiss" are not in point in the case at bar. The factual scenario behind the said ruling is different from the facts of the instant case. In Nava, the Supreme Court found that:

> "xxx Petitioner Nava denied having received the original copy of said notice. The Revenue commissioner, on the

other hand, presented a witness (Mr. Pablo Sangil, an employee [clerk] of the B.I.R.) who attempted to establish that the original copy thereof was actually issued or sent on March 30, 1955. This witness, however, disclaimed having personal knowledge of its issuance or release on said date either by mail or personal delivery because, according to him, he was assigned in the income tax section of the Bureau of Internal Revenue in October, 1956 only. <u>Sangil also declared that there is no notation whatsoever in said file copy xxx, nor even a slip of paper attached to the records, to show that the original copy of said exhibit was ever actually issued or sent to the taxpayer</u>. He even admitted that he had no hand in the preparation or sending of written notices or demand letters of the Bureau of Internal Revenue to the taxpayers, his duties being merely to keep the dockets of taxpayers pertaining to income tax, to post and transmit papers to the other branches of the Bureau for action, and to keep letters of taxpayers, memorandum and other official matters. Respondent presented another witness, Mr. Eliseo B. Fernandez, whose duties as record clerk of the Records Control Section of the Bureau of Internal Revenue since 1957 xxx, are to send mail and to keep a record book of letters which are mailed to the taxpayers. Insofar as the testimony of the witness is concerned, he only declared as to the fact that there appears in his record book a note xxx that a letter dated March 15, 1957 was mailed by special delivery with return card to Gonzalo P. Nava. He admitted, however, that he was not the one who prepared such entry in the record book. <u>What was the nature of the letter does not appear; at any rate, it was mailed beyond the 5-year limitation period.</u>" (Underscoring Ours)

Petitioner claims that he never received the assessment/demand notice of respondent covering his alleged 1983 income tax deficiency. However, respondent has presented proof in the form of a "certified xerox copy from the duplicate of transmittal of mailing" signed by the acting Assistant Chief of the Administrative Branch of the BIR's Revenue Region No. 4B in Quezon City,[4] that the said assessment/demand notice was sent to petitioner at the same address indicated in his income tax return dated April 16, 1984.[5]

Unlike in the Nava case, the said uncontroverted[6] transmittal list, which enjoys the presumption of having been executed in the regular performance of official duty, shows that an assessment/demand covering the amounts of P3,546,718.60 and P300.00 was sent to petitioner and his wife at 23 J. Luna St., SLV, Makati, MM, through registered mail with Registry Receipt

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[4] Exhibit "7"; CTA Records, p. 47.

[5] Exhibit "1"; BIR Records, p. 3.

6 In his "Objections To Formal Offer", petitioner admitted "the existence of said document" and merely objected "to the purpose for which it was offered" for the reason that "the face of the said document shows that the assessment allegedly mailed was for the taxable year 1981, therefore irrelevant and immaterial to the pending incident." (CTA Records, pp. 49-50)

No. 8756 on January 19, 1987[7], well within the five-year period within which respondent may assess petitioner under the Tax Code. That, as petitioner points out, the transmittal list indicates that the assessment/demand letter sent to petitioner and his wife on January 19, 1987 covers tax deficiencies for the year 1981, and not 1983, is of no moment, since the transmittal list was offered in evidence to show that the assessment/demand notice found in the BIR Records of this case was actually sent to petitioner and his wife. It was not offered to prove the year covered by said notice. With this prescribed purpose in mind, the Court notes that the entries in the transmittal list corresponding to petitioner (that is, the addressees, the address and, especially, the amount covered by the assessment) are exactly the same as those in the assessment/demand letter which petitioner claims never to have received. This, the Court finds to be clear proof that the transmittal list entry respecting "Wilson E. Limpo & Wife" evidences the registered mailing of the very assessment/demand letter found in the BIR Records of this case. Therefore, unlike in the Nava case, there is, in

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[7] Exhibit "7-b"; CTA Records, p. 47.

the case at bar, in fact, proof submitted to the Court of the sending/transmittal of the allegedly missing notice to the petitioner through registered mail.

Having found, therefore, that respondent's Exhibit "3" was actually sent to petitioner via registered mail on January 19, 1987, then this Court deems petitioner to have received the same way before May 10, 1990 (when respondent received petitioner's counsel's letter protesting the issuance of the warrants of distraint and levy against petitioner and his wife), by virtue of the disputable presumption provided for in Section 1(v), Rule 131 of the Revised Rules of Court:

> "(v) That a letter duly directed and mailed was received in the regular course of the mail."

Consequently, We find that the thirty-day period in which petitioner is allowed under the Tax Code to protest the subject assessment has long elapsed without petitioner filing the said protest. Furthermore, We find that, even if petitioner's May 10, 1990 protest letter against the warrants of distraint and levy, dated May 3, 1989, is to be considered as petitioner's protest to the subject tax assessment, We find that said protest was filed beyond the thirty-day prescriptive period under

Section 229 of the Tax Code. Therefore, We find that the said assessment has become final and unappealable to Us.

WHEREFORE, finding the assessment subject matter of the instant petition for review to have become final and unappealable by reason of petitioner's failure to protest the same within the period prescribed by the Tax Code, the Court hereby resolves to **GRANT** respondent's instant motion to dismiss. The instant petition for review is hereby **DISMISSED.**

SO ORDERED.

Quezon City, Metro Manila, November 26, 1992.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge