REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PASEO INSURANCE AGENCY, INC.,
Petitioner,

- versus -

C.T.A. Case No. 4651

12/21/93

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- -x

D E C I S I O N

This is an assessment case for alleged deficiency income and business taxes for the years 1985 and 1986 in the total amount of P51,175.92.

Petitioner is an insurance agency corporation duly organized and existing as a corporation under and by virtue of the laws of the Republic of the Philippines.

On August 23, 1991, a Warrant of Distraint and/or Levy (Exh. C) dated June 21, 1991 was served by the Respondent upon herein Petitioner to secure the payment of the sum of P51,175.92 for alleged deficiency income and business taxes for the years 1985 and 1986, to wit:

Assessment/Demand No.	Date Issued	Kind of Tax	Year	Amount
001654-85	01-16-89	def.income tax	1985	P17,834.60
06-460-85B/86B-89-B2	-do-	def.business tax	1985	5,287.13
-do-	-do-	def.income tax	1986	4,507.88
001654-96	-do-	def.business tax	1986	23,546.31
T O T A L				P51,175.92

Surprised by the issuance of the Warrant, Petitioner, in a letter dated August 27, 1991 informed the BIR that it had never received and had no knowledge of the assessments until the warrant was served and thus requested and secured copies of the same only on the same date August 27, 1991. (see Exh. D)

Thus, having secured the copies of the said assessment, Petitioner, in a letter dated September 6, 1991 (Exh. H) immediately protested the said assessment stating among others that the warrant was void since the three-year prescriptive period provided for under Section 223 of the National Internal Revenue Code had already lapsed when the Petitioner was given a copy of the assessment only on August 27, 1991.

The key issue in the case at bar is whether or not the assessment has already prescribed.

Pertinent provisions of the 1986 Tax Code applicable to the case are hereby reproduced, as follows:

> **Sec. 80.** (a) xxx xxx xxx
>
> (b) **Time of filing the income tax return.** - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be (Emphasis supplied)

(c) xxx xxx xxx

and

> **Sec.268. Period of limitation upon assessment and collection.** - Except as provided in the succeeding section, internal revenue taxes shall be assessed <u>within three years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.: **PROVIDED,** That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (As amended by BP 700) (Emphasis supplied)

Applying the foregoing sections to the instant petition, it can be gleaned that the prescriptive period for the assessment for the alleged deficiency income and business taxes for FY 1985 and 1986 commenced on January 15, 1986 and January 15, 1987 respectively. The law speaks that the three-year period for assessment commences to run "after the last day prescribed by law for the filing of the return" <u>which means that if the return is filed before such due date, the prescriptive period begins only after said due date</u>. Hence, contrary to the belief of the Petitioner that "the deadline for the prescriptive period to lapse were on 13 November 1988 and 17

December 1989 respectively," the correct prescriptive period ended on January 15, 1989 and January 15, 1990. This should be the case, since, although the income tax returns were filed on November 13, 1985 and December 17, 1986 respectively, (see Exhs.A, A-1, B & B-1) and the point of reference in the commencement of the three-year period should be January 15, 1986 and January 15, 1987 respectively which is the "15th day of the 4th month following the close of the fiscal year" which in this case was on September 30, 1986 and 1987 respectively. Therefore, when the assessment was allegedly mailed on January 19, 1989, the assessment for FY 1985 has already lapsed. But the assessment for FY 1986 was well within the prescriptive period. The problem is, it cannot be proven by evidence that the Respondent really mailed the assessments on January 19, 1989. The alleged mailing was supposed to be registered, yet the registry number was left blank, neither was there a registry return card which would prove service of assessment nor the Respondent's docket revealed that the Petitioner received the subject assessments. In fact on two occasions granted by this Court the Respondent failed to present evidence to support her case. This only shows that there was really failure of service, of the assessments in questions; hence, even the 1986 assessment has been sent out of time and this Court has no other recourse but to consider the actual receipt of both assessments by the Petitioner only on August 27, 1991 as the point of reference in the computation of the prescriptive period which is already well beyond the three-year prescriptive period under the Tax Code.

WHEREFORE, the assessments issued against the Petitioner for alleged deficiency income and business taxes for FY 1986 and 1987 in the total amount of P51,175.92 is hereby DECLARED null and void since they were already issued beyond the prescriptive period. Accordingly, the Warrant of Distraint and/or Levy and the Warrant of Garnishment issued against Petitioner is hereby LIFTED permanently.

SO ORDERED.

Quezon City, Metro Manila, December 21, 1993

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

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