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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISABELA CULTURAL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5211

Promulgated:
DEC 15 1997

x - x

DECISION

This is an assessment case involving the amounts of P333,196.86 and P4,879.79 as deficiency income tax and expanded withholding tax, inclusive of surcharge and interest, respectively, for the taxable period from January 1, 1986 to December 31, 1986.

Petitioner is a duly registered corporation with office address at Xavier House, 2307 Pedro Gil St., Sta. Ana, Manila. Pursuant to its Amended Articles of Incorporation, paragraph 8, page 3 thereof (p. 8, BIR rec.), it is a corporation sole, "organized, exclusively for the properties, real and personal, belonging to the Society of Jesus in the Philippines, collecting income therefrom and turning over the entire amount thereof, less expenses, to colleges, schools, house of studies, churches, parsonages, leprosaria, hospitals, cemeteries and religious missions including community development, scientific and sociological projects xxx."

In an investigation conducted on the 1986 books of account of petitioner, respondent had the preliminary findings that petitioner incurred a total income tax deficiency of P9,985,392.15, inclusive of increments. Upon protest by petitioner's counsel, the said preliminary assessment was reduced to the amount of P325,869.44, a breakdown of which follows:

Deficiency Income Tax	P321,022.68
Deficiency Expanded Withholding Tax	4,846.76
Total	P325,869.44

(pp. 187-189, BIR records)

On February 23, 1990, petitioner received from respondent an assessment letter, dated February 9, 1990, demanding payment of the amounts of P333,196.86 and P4,897.79 as deficiency income tax and expanded withholding tax inclusive of surcharge and interest, respectively, for the taxable period from January 1, 1986 to December 31, 1986. (pp. 204 and 205, BIR rec.)

In a letter, dated March 22, 1990, filed with the respondent's office on March 23, 1990 (pp. 296-311, BIR rec.), petitioner requested for a reconsideration of the subject assessment.

Supplemental to its protest was a letter, dated April 2, 1990, filed with the respondent's office on April 18, 1990 (pp. 224 & 225, BIR rec.), to which letter were attached certain documents supportive of its protest, as well as a Waiver of Statute of Limitation, dated April 17, 1990, where it was indicated that respondent would only have until April 5, 1991 within which to assess and collect the taxes that may be found due from petitioner after the re-investigation.

On February 9, 1995, petitioner received from respondent a Final Notice Before Seizure, dated December 22, 1994 (p. 340, BIR rec.). In said letter, respondent demanded payment of the subject assessment within ten (10) days from receipt thereof. Otherwise, failure on its part would constrain respondent to collect the subject assessment through summary remedies.

Petitioner considered said final notice of seizure as respondent's final decision. Hence, the instant petition for review filed with this Court on March 9, 1995.

Respondent's Answer (pp. 32-36, CTA rec.) was filed on April 16, 1995. It alleged as Special and Affirmative Defenses, the following:

> "7. The assessment is valid and correct and the taxpayer has the burden of proof to impugn its validity (Behn Meyer & Co. v. Collector of Internal Revenue, 27 Phil. 647). Petitioner miserably failed to present concrete evidence to overcome the presumption of validity and correctness attached to the assessment;

8. The assessment was made in accordance with law based on facts, as a result of the investigation conducted against petitioner by the revenue officers of respondent;

9. The petition is premature and without basis as there is no final decision yet on the protest of petitioner, the notice sent to petitioner being just a demand-letter caused by the Revenue Officer to whom the case was devolved in view of the devolution of cases/functions from the National Office to the Regional Offices;

10. The Waiver of the Statute of Limitations presented and signed by petitioner was not accepted by respondent, hence, of no legal force and effect whatsoever and will not, in any way, bind the respondent (Section 223(b), Tax Code; Boise Cascade Phils., Inc. v. CIR, Case No. 1858 [1987]);

11. The case against petitioner has not prescribed as the running of the statute of limitations for collection was suspended when petitioner requested for a reinvestigation in a letter dated 22 March 1990 x x x;

12. Assuming that the notice constitutes the final decision of respondent on the protest as treated by petitioner, definitely and clearly the government's right to collect has not as yet prescribed."

The issues raised by the parties in this case are:

1. Whether or not the "final notice before seizure" received by petitioner on February 9, 1995 constitutes the final decision of respondent which is appealable to this Court; and

2. Whether or not respondent's right to collect the subject assessment has already prescribed.

Petitioner holds the view that the "final notice before seizure" is the final decision of respondent relative to its request for reconsideration and/or reinvestigation. To support its view, petitioner cited the Supreme Court decision in the case of Commissioner of Internal Revenue v. Ayala Securities Corporation (31 March 1976, 70 SCRA 204), which held that:

> "The letter of February 18, 1963 is tantamount to a denial of the reconsideration or protest of the respondent corporation on the assessment made by the petitioner, considering that the said letter is in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment of the sum of P758,687.04 inspite of the vehement protest of the respondent corporation on April 21, 1961. This certainly is a clear indication of the firm stand of petitioner against the reconsideration of the disputed assessment, in view of the continued refusal of the respondent corporation to execute the waiver of the period of limitation upon the assessment in question. This being so, the said letter amounts to a decision on a disputed or protested assessment."

The Court cannot uphold petitioner's view. The facts of the above-quoted case are not in all fours with the facts of the instant case. The taxpayer in the aforequoted case did not execute a waiver of the period of limitation as it believed that the assessment in question had already prescribed. In the instant case, petitioner/taxpayer executed a waiver of the statute of limitation where it was provided that respondent Commissioner of Internal Revenue would have until April 15, 1991 within which to collect the disputed assessment.

This Court understands the logic why taxpayer in the above-cited case continuously refused to execute a waiver of the statute of limitations. Obviously and true enough, as the decision stated, the right to collect of the Commissioner of Internal Revenue had already prescribed. The pertinent portion of said decision is quoted hereunder, to wit:

> "Under Section 46(d) of the National Internal Revenue Code, the Ayala Securities Corporation designated September 30, 1955, as the last day of the closing of its fiscal year, and under Section 46(b) the income tax returns for the said corporation shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the close of its fiscal year. The Ayala Securities Corporation could, therefore, file its income tax returns on or before <u>January 15, 1956</u>. The assessment by the Commissioner of Internal Revenue shall be made within five (5) years from January 15, 1956, or not later than <u>January 15, 1961,</u> in accordance with Section 331 of the National Internal Revenue Code herein above-quoted. As the assessment issued on February 21, 1961, which was received by the Ayala Securities Corporation on March 22, 1961, was made beyond the five-year period prescribed under Section 331 of said Code, the same was made after the prescriptive period had expired and, therefore, was no longer binding on the Ayala Securities Corporation." (Underscoring supplied; **Commissioner of Internal Revenue v. Ayala Securities Corp., 70 SCRA 204, p. 210)**)

Thus, in another portion of same decision, it was narrated that:

> "On May 30, 1961, petitioner wrote respondent corporation's auditing and accounting firm with the "advise that your request for reconsideration will be the subject matter of further reinvestigation and a thorough analysis of the issue involved conditioned, however, upon the execution of your client of the enclosed form for waiver of the defense of prescription". (Exh. F) However, respondent corporation did not execute the requested waiver of the statute of limitations, considering its claim that the assessment in question had already prescribed." (Ibid., p. 206)

Evidently, from all the foregoing, it has been shown that the facts of the aforequoted case are not identical to the instant case. Therefore, it is highly improper for petitioner to apply to the case at bar the ruling laid down in the cited case.

The Court believes that what should properly apply to the instant case is the decision of the Supreme Court in the case of **"Commissioner of Internal Revenue v. Union Shipping Corporation and the Court Tax Appeals," G.R. No. 66160, May 21, 1990**, which held that:

> "x x x the reviewable decision of the Bureau of Internal Revenue is that contained in the letter of its Commissioner that such constitutes the final decision on the matter which may be appealed to the Court of Tax Appeals x x x." (Underscoring supplied)

From the above quotation in the Union Shipping Corp. case, it can be gleaned that the final decision appealable to this Court is a letter of the Commissioner of Internal Revenue clearly stating that it is her final decision. Therefore, as the "final notice before seizure" was merely signed by the Assistant Chief of the Accounts Receivable Division of the Bureau of Internal Revenue, and the same did not state that it is the final decision appealable to Us, this Court concurs with the respondent's stance that the instant case was prematurely filed. It would have been different however, if respondent upon issuance of said final notice, subsequently issued the warrant of seizure which pursuant to the Supreme Court decision entitled CIR vs. Algue, **Inc., L-28896, February 17, 1988**, was considered as final decision appealable to this Court. As it is, no final decision has as yet been rendered by the Commissioner of Internal Revenue.

And there being no final decision, this Court has no jurisdiction to tackle or resolve the other issue on the merits.

WHEREFORE, in view of the foregoing, the instant petition is hereby **DISMISSED**, without prejudice to the filing of another petition upon receipt by petitioner of the final decision of respondent on the former's protest.

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
Court of Tax Appeals