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P. I. MANUFACTURING, INC.,
Petitioner,

- versus -   C.T.A. CASE NO. 2500

5/12/75

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

D E C I S I O N

Petitioner has appealed from the final decision of the Commissioner of Internal Revenue dated October 12, 1970, assessing against and demanding from petitioner payment of P883,191.06, computed as follows:

FY 1964-1965

Net income per return - - - - - - - - - -	P1,087,985.74
Add: Management fee (not necessary) - -	311,804.08
Misc. expenses (personal, non-business and unnecessary)- - - -	11,295.85
Net income per investigation - - - - -	P1,411,085.67
Income tax due thereon - - - - - - - - -	P 415,326.00
Less: Amount already assessed - - - - -	318,396.00
Balance of tax due - - - - - - - - - - - -	P 96,930.00
Add: 1/2% mo. int. from 10-16-65 to 10-16-68 - - - - - - - - - - - - -	17,447.40
Total amount due and collectible	P 114,377.40

FY 1964-1965

Unreasonably accumulated surplus - - -	P2,993,867.25
25% surtax due thereon - - - - - - - - -	P 748,467.00
Add: 1/2% mo. int. from 10-16-65 to 10-16-68 - - - - - - - - - - - -	134,724.06
Total amount due and collectible......	P 883,191.06

Petitioner is a domestic corporation located at 97 Industrial Avenue, Northern Hills, Malabon, Rizal. It is engaged in the manufacture and sale of electrical appliances and plumbing supplies.

On October 14, 1965, petitioner filed its income tax return for the fiscal year ended June 30, 1965. On October 20, 1965, Revenue Examiner Plaridel Pacunayen was authorized to investigate the books of account and other accounting records of petitioner for tax purposes. On June 29, 1966, said examiner recommended to the Regional Director, Quezon City, that a letter of demand be sent to petitioner for the collection of ₱845,396.78 as deficiency income tax, exclusive of interest.

On June 13, 1968, the said Regional Director, following the standard operating procedure in the revenue office, invited petitioner for a conference. On January 27, 1969, Mr. Roberto P. Clemente, Chief, Income Tax Division, invited petitioner for another informal conference to give petitioner the opportunity to present its side of the case. On April 7, 1969, Mr. Juan Corona, then Chief of the Income Tax Division, advised petitioner in writing to make a protest on the proposed assessment. On April 8, 1969, petitioner's counsel protested the proposed assessment and requested for the cancellation thereof.

On July 9, 1969, Regional Director Jose E. Consunji referred the pending income tax case of petitioner to the Revenue District Officer, Malabon, Rizal, for further investigation. On November 25, 1969, the said official returned the case to the Regional Director and recommended, among others, that the proposed assessment involving substantial amount and a controversial legal question be referred to the National Office for final action.

On December 5, 1969, the said Regional Director returned the entire docket of the said case of petitioner to the Assistant Revenue Operations Head (Assessment) conformably with the recommendation contained in the memorandum of the Revenue District Officer of Malabon, Rizal.

On June 9, 1970, the Assistant Revenue Operations Head (Assessment) referred the said case to the Chief, Audit Division, for immediate action because Senior Revenue Examiner Plaridel Pacunayen was assigned thereat. On October 9, 1970, said examiner submitted a memorandum to the Assistant Revenue Operations Head (Assessment), explaining the reason and justification for the proposed assessment.

On October 12, 1970, the Commissioner of Internal Revenue prepared the disputed assessment in question. It was mailed in the Post Office on November 4, 1970 and received by petitioner on November 12, 1970.

On December 11, 1970, petitioner protested the said assessment. On January 15, 1973, respondent denied the said protest but the denial was allegedly received by petitioner on February 19, 1973. On March 15, 1973, petitioner filed with this Court its petition for review.

On August 22, 1973, petitioner filed a "Motion for Summary Judgment" praying that respondent's disputed assessment be declared null and void and of no legal force and effect because it was made beyond the 5-year period prescribed by Section 331 of the National Internal Revenue Code. On December 7, 1973, respondent countered by filing his opposition thereto with a motion to dismiss petitioner's appeal.

The main issue submitted to this Court for resolution is whether or not the deficiency income tax assessment issued by respondent against petitioner has prescribed.

Respondent alleges that his right to assess the deficiency income tax in question has not yet prescribed because petitioner's income tax return for the fiscal year ending June 30, 1965 was filed on October 14, 1965. Consequently, respondent has five years from the last day for the filing of said return within which to assess petitioner under Section 331 of the National Internal Revenue Code. Since the deficiency income tax assessment issued against petitioner was dated October 12, 1970, respondent Commissioner of Internal Revenue maintains that the disputed assessment was made within the five-year period.

Petitioner, however, maintains the opposite view and alleges that respondent's right to assess has prescribed since the assessment in question was not sent or received by petitioner on or before October 15, 1970. The disputed assessment dated October 12, 1970 was actually mailed by respondent or his representative on November 4, 1970 as shown by the original envelope containing the assessment. Petitioner, therefore, argues that respondent's assessment should have been served or mailed to petitioner within five years from October 15, 1965, the last day for the filing of the return as required by Section 331 of the Tax Code, infra. As the disputed assessment was mailed in the Post Office on November 4, 1970, as shown and evidenced by the imprint on respondent's envelope, it is clear that the assessment in question was made beyond the 5-year period prescribed by Section 331 of the National Internal Revenue Code.

We sustain the view of petitioner. Section 331 of the National Internal Revenue Code provides as follows:

> SEC. 331. Period of limitation upon assessment and collection. - Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. 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 petitioner filed its income tax return for the fiscal year ending June 30, 1965 on October 14, 1965, the five-year period fixed by the Revenue Code started on October 15, 1965 and expired on October 15, 1970. Although the disputed assessment was dated October 12, 1970, which is made within the five-year period limit set by Section 331 of the Tax Code, supra, said date should not be considered as the date when the assessment was made.

The tax assessment of respondent, although dated October 12, 1970, did not stop the running of the prescriptive period of assessment under Section 331 of the Tax Code, supra, except on the date the assessment notice is released, mailed, or delivered by the respondent or his representative to the taxpayer concerned. Thus, in the case of Collector of Internal Revenue vs. Pedro R. Bautista, et al., G. R. No. L-12250 and 12259, May 27, 1959, our Supreme Court held:

> x x x section 331 of the Tax Code provides that the deficiency assessment must be made within five (5) years after the return was filed, and the assessment is deemed made when notice to this effect is released, mailed or sent by the Collector of Internal Revenue to the taxpayer, for the purpose of giving effect to said assessment. Said section does not require that the notice be received by the taxpayer within the aforementioned period of five (5) years. x x x x x x x.

It should be noted in this particular case that the letter-assessment, dated October 12, 1970, was still with the Records Division of the Bureau of Internal Revenue as late as October 30, 1970, (pp. 64-65 BIR rec.) and the evelope bearing the letter-assessment was posted on November 4, 1970, which means that it was only on this date that respondent's assessment was mailed. Therefore, from October 15, 1965, the last day for the filing of the return to November 4, 1970, the date when the assessment notice was mailed, more than five (5) years and twenty (20) days have elapsed. In brief, the 5-year period of limitation set by Section 331 of the National Internal Revenue Code has tolled against the respondent.

In the following cases, to wit: Collector of Internal

Revenue vs. De los Angeles, et al., G. R. L-9895, Aug. 13, 1957; Republic of the Philippines vs. Ablaza, G.R. L-14519, July 26, 1960; Ganeayco vs. Collector of Internal Revenue, G. R. L-13325, April 20, 1961; Republic of the Philippines vs. Alano, G. R. L-18865, Sept. 28, 1964 and Republic of the Philippines vs. Rita Lim De Yu, G. R. L-17438, April 30, 1964, our Supreme Court has invariably held that the assessment should be made within five years after the last day for the filing of the return; otherwise, the government is estopped from collecting the tax.

The said ruling and conclusion of the court is amply justified by the purpose for which the statute of limitation was embodied in Sections 331 and 332 of our National Internal Revenue Code. Thus, in the case of Republic of the Philippines vs. Ablaza, supra, our Supreme Court said:

> The law prescribing a limitation of actions for the assessment and collection of taxes is beneficial both to the Government and to its citizens: to the Government because tax officers would be obliged to act promptly in the making of assessments and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the later's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense, taxpayers could furthermore be under obligation to always keep their books and to keep them open for inspection subject to harrassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer.

IN VIEW OF THE FOREGOING, petitioner's Motion for Summary Judgment is granted and respondent's deficiency income tax assessment is hereby cancelled and declared of no force and effect. However, let this case be set for hearing on the merits with respect to the penalty imposed by law on petitioner's alleged unreasonable accumulation of surplus.

SO ORDERED.

Quezon City, May 12, 1975.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge

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