REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PACITA SORIANO, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3917

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

8/27/86

D E C I S I O N

Petition to review and set aside the decision dated January 9, 1985 of respondent Commissioner of Internal Revenue denying the protest of petitioner Pacita Soriano, Inc., and requiring it to pay the amounts of ₱540,416.91 and ₱102,470.04, as donor's gift tax and 25% surtax for improper accumulation of profit for fiscal year ended June 30, 1975, computed as follows:

1. GA-4522-75/80:

Fair market value of real properties sold	₱3,382,619.30
Less: Consideration of the sale	2,000,000.00
Insufficient consideration subject to donor's tax	₱1,382,619.30
Donor's tax due	₱ 323,602.94
25% Ad valorem penalty	80,900.74
14% annual interest from 7-25-75 to 7-25-78	135,913.23
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 540,416.91

2. F/Y Year June 30, 1975:

Surplus unreasonably accumulated	₱ 288,646.17
25% surtax	72,162.00
14% annual int. from 10-16-75 to 10-16-78	30,308.04
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 102,470.04

Petitioner is a corporation organized and existing under the laws of the Philippines with principal place of business at La Castellana, Negros Occidental. (par. 1, petition for review; admitted, par. 1, answer.)

The records of the case show that:

1. On June 25, 1975, petitioner sold to Roberto J. Cuenca parcels of land, buildings, improvements, equipment and sugar quota rights for ₱2,000,000.00. (Exh. 10, pp. 41-44, BIR records.)

2. This sale is reflected in petitioner's corporate annual income tax return for fiscal year ended June 30, 1975 with a net gain of ₱294,124.70. (Exhs. 14, 14-a, pp. 45-53, BIR records.)

3. The details of the sales are as follows: (Exh. 14-a, p. 47, BIR records.)

Sale of Land, improvements & equipment		₱2,000,000.00
Book Value of Equipment:		
Tractors	₱135,123.14	
Tools & implements	56,355.50	
Trucks	41,732.50	
Irrigation equipment	39,680.26	

Portable rails	2,571.02	
Miscellaneous equipment	10,125.60	285,588.02
Cost of Land & Improvements:		
Cost of land	₱397,096.00	
Improvements	888,101.71	
Quota Rights	10,089.57	1,295,287.28
Other Expenses:		
Commission paid	₱100,000.00	
Legal Fees	25,000.00	125,000.00
Cost of Sale		₱1,705,875.30
Gain on Sale		₱ 294,124.70

4. As shown in the profit and loss statement of petitioner for the crop year 1974-1975 ending June 30, 1975, attached to the corporate return for the same taxable year, petitioner realized a net profit of ₱336,035.30, details of which are as follows: (pp. 48-49, BIR records.)

PACITA SORIANO, INC.
La Castellana, Neg. Occ.

PROFIT & LOSS STATEMENT
For the Crop Year 1974-75 Ending June 30, 1975

I N C O M E		
Sales of Sugar & Molasses		₱3,256,175.16
Dividend Income		110,914.67
E X P E N S E S :		
Plowing	₱ 33,560.19	
Leveling & harrowing	14,722.93	
Cane points	130,847.44	
Planting	140,133.47	
Animal cultivation	45,585.53	
Hand cultivation	219,731.80	
Drainage & irrigation	91,671.93	
Pest control	42,450.25	

Fertilizers & fertilizing	811,025.54	
Milling expenses	246,860.97	
Fuel & oil	241,050.80	
Maintenance farm equipment	229,383.93	
Maintenance farm houses	63,464.66	
Maintenance roads	10,959.81	
Salaries & wages	248,676.51	
Bonus & amelioration	148,077.40	
Office expenses	28,130.01	
Traveling expenses	7,770.93	
General expenses	85,627.15	
Guards & tenders	32,925.66	
Medical expenses	12,928.79	
SSS premiums	33,668.00	
Interest expenses	241,864.40	
Taxes & licenses	20,630.66	
Donations & charity	2,400.00	
Depreciation	20,265.47	3,204,414.23
Net Profit on Farm Operation		₱ 162,675.60
Add: Gain on sale of property		294,124.70
		₱ 456,800.30
Less: Provision for Income Tax		120,765.00
NET INCOME TO SURPLUS		₱ 336,035.30

5. As reported in the memorandum report dated April 29, 1977 of the revenue examiners who investigated petitioner, no portion of the net profit of ₱336,035.30 was distributed to its stockholders. (Exh. 2, pp. 58-60, BIR records.)

6. Upon investigation of the books and other accounting records of petitioner for internal revenue tax purposes for fiscal year ended June 30, 1975, respondent issued to petitioner, on the basis of the examiner's report, deficiency income tax assessment in the amount of ₱19,275.00 for said taxable year. (Exhs. C, C-1 & C-2, pp. 14 & 15, CTA records; p. 8, BIR records.) It

appears that the deficiency income tax of ₱19,275.00 was paid by petitioner on October 15, 1975 as per Official Receipt No. 4032805-F dated October 15, 1975. (p. 3, CTA records.)

7. The records of the case reveal further that through the verification of the copy of the absolute deed of sale of petitioner to Roberto J. Cuenca which is on file in the Office of the Register of Deeds and the tax declarations of the properties sold which were obtained from the Assessor's Office, and on the basis of the figures in the financial statements attached to the income tax return of petitioner the original and duplicate copies of which are on file in the Bureau of Internal Revenue, respondent's examiners found that the properties sold for ₱2,000,000.00 had an actual value of ₱3,382,619.30, of which the difference of ₱1,382,619.30 was considered a gift; and discovering that petitioner had an earned surplus for the fiscal year ended June 30, 1975 which was not distributed to its stockholders, the revenue examiners recommended the assessment of petitioner of surtax for improper accumulation of surplus under Section 25 of the Revenue Code. (Exh. B, pp. 9-11, CTA records; Exh. 2, pp. 58-60, BIR records.)

8. Consequently, on September 10, 1980, respondent assessed petitioner the amount of ₱102,470.04 as 25% surtax for unreasonable accumulation of surplus for fiscal

year ended June 30, 1975 and the sum of ₱540,416.91 as donor's tax on the difference between the actual value of the properties of ₱3,382,619.30 and the selling price of ₱2,000,000.00. (Exh. 7, p. 109, BIR records; Exh. 6, p. 108, BIR records.)

9. Both assessments were protested by petitioner in its letter dated December 9, 1980, which protest was denied by respondent in his letter of January 9, 1985. (Exh. 8, pp. 113-114, BIR records; Exh. 9, pp. 146-148, BIR records; Exh. B, pp. 9-11, CTA records.)

Hence, the instant appeal.

As posed by the parties, the issues involved in this case are:

a. Whether the assessments for donor's tax and 25% surtax for unreasonable accumulation of surplus in the amounts of ₱540,416.91 and ₱102,470.04, respectively, are legal and justified; and

b. Whether the above tax liabilities were assessed within the period prescribed by law.

Petitioner contends that it had already been investigated for all internal revenue tax purposes for the fiscal year ended June 30, 1975 under Letter of Authority No. 626073 RR dated July 25, 1975, and as a result of which was made to pay the amount of ₱19,275.00 as deficiency income tax for said period. Since the assessments in question were an offshoot of a second investigation, it would be in violation of the then in force Section 337 of the Tax Code.

We find no merit in petitioner's cause.

Section 337 requires that books of accounts and other accounting records must be preserved for at least five years from the date of the last entry, and are subject to examination and inspection at any time by internal revenue officers. However, examination and inspection may be made only once in a taxable year during the five-year period they are required to be preserved, except in cases of fraud, irregularity or mistake, or unless the taxpayer requests otherwise.

It is not disputed that on June 25, 1975, petitioner sold to a certain Roberto J. Cuenca its real properties (parcels of land), together with equipment, improvements and quota rights for a consideration of ₱2,000,000.00. Verification made by revenue examiners of respondent disclosed that the market value per latest tax declarations of the real properties alone amounted to ₱2,198,840.00 and the improvements, equipment and quota rights have a net book value of ₱1,183,770.30, or a total value of ₱3,382,619.30. There is therefore a difference of ₱1,382,619.30 which is undoubtedly subject to donor's tax pursuant to Section 122 of the then in force National Internal Revenue Code which considers transfers of property for less than an adequate and full consideration in money or money's worth as partly a gift to the extent of the difference between the fair market value of the property transferred and the actual consideration paid. The merit of respondent's assessment of petitioner's liability for donor's gift tax is thus clear on the basis of the records and the law applicable.

As stated above, the donor's gift tax liability was ascertained through verification of the copy of the absolute deed of sale which is on file with the Office of the Register of Deeds and the Tax Declarations which were obtained from the Assessor's Office. The additional tax on improper accumulation of surplus was assessed based on the figures appearing in the financial statements attached to petitioner's income tax return the original and duplicate copies of which are on file in the Bureau of Internal Revenue. (Exh. B, pp. 9-11, CTA records.) The subsequent investigation by respondent which led to the issuance of the assessments of 25% surtax for unreasonable accumulation of profit and donor's tax pursuant to Section 122 of the Revenue Code applicable does not therefore contravene the provision of Section 337 of the Tax Code. Verifying a copy of the absolute deed of sale on file with the office of the register of deeds and the tax declarations which were obtained from the assessor's office, and analyzing the figures in the financial statements of the income tax return on file with the Bureau of Internal Revenue, cannot by any stretch of the imagination be considered as an examination and inspection of the books of accounts and other accounting records of taxpayers which are kept in their place of business or residence.

Further, Section 7 of the then in force National Internal Revenue Code specifically empowers the Commissioner of Internal Revenue, or his authorized representatives, to obtain information from government offices or agencies for the purpose of determining the tax liability of any person or for discovery of potential taxpayers. As correctly noted by respondent, what had been examined and terminated in the first investigation was only the regular corporate income tax, and that no mention whatsoever was made of the donor's gift tax and the additional tax on improper accumulation of surplus.

As to petitioner's allegation that it was never informed of the examiners' findings except when the assessments were issued, the Assistant Regional Director, Revenue Region 6B, Bacolod City, as well as the Acting Chief, direct taxes division, National Office, had written letters dated May 6, 1977 and October 26, 1979, respectively, informing petitioner of the findings of the examiners, and inviting its representative to informal conference on the dates stated therein, to enable it to present its side of the case, but petitioner failed to do so. (Exh. B, pp. 9-11, CTA records; Exh. 9, pp. 146-148, BIR records.) As rightly stated by respondent, that would have given petitioner the opportunity to go over the findings of the examiners, present its objections thereto, and submit whatever documentary evidence it may have in its favor. There is therefore no basis in the allegation of petitioner that it was never notified of the reinvestigation conducted in this case, and thus deprived of its right to dispute the findings of the revenue examiners.

Section 25(a) of the National Internal Revenue Code imposes an additional tax upon a corporation formed or availed of for the purpose of preventing the imposition of the tax upon its shareholders or the shareholders of any other corporation through the medium permitting its gains and profits to accumulate instead of being divided or distributed. And Section 25(c) provides that the fact that earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax on shareholders unless the corporation shall prove to the contrary by a clear preponderance of the evidence.

The Court therefore recognizes that while respondent's determination is presumptively correct and casts upon petitioner the burden of offering evidence in opposition thereto, once such evidence is presented, the question thus is whether under all the evidence, petitioner has sustained by clear preponderance of evidence the burden which the statute places upon it to overcome the presumption that it was availed of for the prohibited purpose. Such presumption arises by virtue of a finding that petitioner accumulated profits beyond the reasonable needs of its business. (P.I. Manufacturing, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 2500, December 27, 1985.)

Respondent pointed out that by petitioner's own admission, it realized a net profit of ₱336,035.30 (after income tax profit of ₱120,705.00) for fiscal year ended June 30, 1975. Contrary to the mandate of the law, petitioner did not distribute the profit or surplus of ₱336,035.30 to its members or shareholders. Accordingly, pursuant to Section 25 of the National Internal Revenue Code, respondent assessed petitioner 25% of the ₱336,035.20 or ₱102,470.04 representing surtax for improper accumulation of profits. While petitioner protests the assessment on the ground that in a board of directors' resolution dated August 3, 1975 the profit of ₱336,035.00 was set aside for future expansion of the business, no evidence was presented showing the necessity of the improvement. (p. 81, CTA records.) As a matter of fact, petitioner did not submit or present before this Court proofs of specific, definite and feasible plans for the accumulation in the taxable year in question.

In Manila Wine Merchants, Inc. vs. Commissioner of Internal Revenue, L-26145, February 20, 1984, 127 SCRA 483, the Supreme Court has already established the rule that:

> To determine the "reasonable needs" of the business in order to justify an accumulation of earnings, the Courts of the United States have invented the so-called "Immediacy Test" which construed the words "reasonable needs of the business" to mean the immediate needs of the business, and it was generally held that if the corporation did not prove an immediate need for the accumulation of the earnings and profits, the accumulation was not for the reasonable needs of the business, and the penalty tax would apply.

Such plans as the corporation has for use of accumulated earnings must be in existence at the close of the year in which the accumulation is made. In order to determine whether profits were accumulated for the reasonable needs of the business or to avoid the surtax upon the shareholders, the controlling intention of the taxpayer is that which is manifested at the time of the accumulation, not subsequently declared intentions which are merely the products of afterthought. (Basilan Estates, Inc. vs. Commissioner of Internal Revenue, 21 SCRA 17, citing Jacob Mertens, Jr., The Law of Federal Income Taxation, Vol. 7, Cumulative Supplement, p. 213.) As rightly cited by respondent, the mere intention or consideration of improvements, even though reserves are set aside, will not justify an accumulation where the improvements have not been made and do not appear to be required.

Considering petitioner's failure to sustain the burden which the law applicable places upon it to overcome by clear preponderance of evidence, the determination of respondent that petitioner was availed of for the prohibited purpose in the fiscal year in question, must be sustained.

On the issue of prescription, Section 331 of the National Internal Revenue Code then in force provides that where a return was filed, which is not fraudulent, the tax may be assessed within five years from the date the return was due or was filed. A return filed before the last day fixed by law for the filing thereof shall be considered as filed on such last day. For purposes of the prescriptive periods established by Sections 331 and 332 of the applicable Tax Code, an assessment is deemed made when the notice is released, mailed or sent by the Commissioner of Internal Revenue to the taxpayer. Failure of the taxpayer to receive the assessment within the prescriptive period will not affect the validity of the assessment if it was mailed and released within said period. (Basilan Estates vs. Commissioner of Internal Revenue, L-22492, September 5, 1967, 21 SCRA 17; Nava vs. Collector of Internal Revenue, L-19470, January 30, 1965, 13 SCRA 104; Republic vs. Alano, L-18865, September 28, 1964, 12 SCRA 24.)

In the present case, petitioner filed its corporate income tax return reflecting the sale of the subject properties on September 2, 1975 for the fiscal year ended June 30, 1975. (p. 61 & p. 82, CTA records.) Under the law then in force, the last day for filing the return was October 15, 1975. (Sec. 46, National Internal Revenue Code.) The return was deemed filed therefore on October 15, 1975 and the Bureau of Internal Revenue had up to October 15, 1980 within which to assess petitioner for taxable year 1975. Since the assessment in question for donor's tax was dated and issued on September 10, 1980, the assessment was issued well within the five-year period prescribed by the law applicable. We see no significance therefore in the contention of petitioner that the assessments were issued beyond the five-year prescriptive period because it received the assessments only on November 10, 1980.

At any rate, no return was filed by petitioner for the donor's gift tax since the return filed was for the corporate income tax. To our mind, such return was not a valid return for the donor's gift tax, and its filing cannot be considered to start the running of the prescriptive period for the assessment of the donor's tax.

(See Republic vs. Jalandoni, L-18384, September 20, 1965, 15 SCRA 51; Collector of Internal Revenue vs. Pineda L-14520, May 31, 1961, 2 SCRA 401.) Thus, it has been held that the income tax return cannot be considered as the equivalent of the sales tax return required under Section 183(a) of the then in force Revenue Code for purposes of the statute of limitation provided in Sections 318 and 319 of the same Code. (Butuan Sawmill vs. Court of Tax Appeals, L-20601, February 28, 1966, 16 SCRA 277.) Neither may such return be considered for purposes of the statute of limitation applicable to assessments for the unreasonable accumulation of profits tax. (Basilan Estates vs. Commissioner of Internal Revenue, L-22492, September 5, 1967, resolution on motion for reconsideration, October 25, 1967, 21 SCRA 17; United Equipment vs. Commissioner of Internal Revenue, CTA Case No. 1795, October 30, 1971, certiorari denied in L-35653, October 24, 1972; Commissioner of Internal Revenue vs. Ayala Securities Corp., L-29485, March 31, 1976, 70 SCRA 204.) Consequently, it can be said that it is as if no return was filed for purposes of the donor's tax, and the prescriptive period applicable is ten years from the date of discovery of the omission to file the return. (Sec. 319(a); Republic vs. Lucia Tan, L-25483, May 23, 1969, 28 SCRA 325.)

And anent the assessment for surtax on improper accumulation of profits, the rule is that there is no such time limit on the right of the Commissioner of Internal Revenue to assess the 25% tax on unreasonably accumulated surplus provided in Section 25 of the Tax Code, since there is no express statutory provision limiting such right or providing for its prescription. (Commissioner of Internal Revenue vs. Ayala Securities Corporation, L-29485, 70 SCRA 264, modified by resolution of November 21, 1980, 101 SCRA 231.)

Accordingly, the Court finds petitioner Pacita Soriano, Inc., liable to the payment of the amounts of:

(a) ₱102,470.02 as 25% surtax for improper accumulation of surplus for the fiscal year ending June 30, 1975, plus surcharges and interest incident to delinquency pursuant to the provision of Section 51(e) of the applicable National Internal Revenue Code, as amended;

(b) ₱540,416.91 as donor's gift tax, plus surcharges and interest incident to delinquency pursuant to the provisions of Section 130(b)(1) and (c) of the applicable National Internal Revenue Code.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, August 27, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge