REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AUGUSTO L. GUANZON,
Petitioner,

- versus - C.T.A. CASE NO. 2473

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

3/15/77

D E C I S I O N

Petitioner appeals from respondent's decision assessing against and demanding from the former the amount of ₱8,059.40 as deficiency income tax for 1962, inclusive of penalty.

It appears that on April 15, 1963, petitioner filed his income tax return for the calendar year 1962. (Exhs. 1 and A, pp. 23-26, CTA rec.) Sometime on May 12, 1965, Authority No. 000906 was issued to Revenue Examiner Avelino Naguit to examine petitioner's books of accounts and other accounting records for income tax purposes for the taxable year ending December 31, 1962. (Exh. 2, p. 66, BIR rec.) As a result of the investigation, it was recommended that petitioner be assessed for deficiency income tax in the amount of ₱9,459.00. (Pp. 25, 70-73, BIR rec.) Accordingly, on September 30, 1967, respondent issued Notice of Assessment No. 25-435 009-67-62 demanding payment in the amount of ₱9,719.66 as

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deficiency income tax and interest for the year 1962. (Exh. B, p. 27, CTA rec.; p. 31, BIR rec.) This deficiency assessment was admittedly received by petitioner on November 14, 1967. (P. 52, CTA rec.)

In a letter dated November 24, 1967, petitioner, through Frisco N. Evangelista, disputed the said assessment and at the same time requested the recomputation of the tax liability insisting that certain items claimed as deduction should not have been disallowed. (Pp. 35-37, BIR rec.; Exh. C, pp. 28-30, CTA rec.) In another letter dated September 30, 1965, petitioner acknowledged receipt of respondent's demand of September 12, 1968 with respect to the assessment, and referred to respondent a letter dated July 25, 1968, to which its letter of November 24, 1967 was allegedly attached. (P. 38, BIR rec.)

On October 17, 1968, respondent informed petitioner that the latter's request for reinvestigation and/or recomputation has been given due course and the same has been assigned to the Revenue District Office No. 25 of Caloocan City. (P. 43, BIR rec.)

On September 15, 1969, respondent's examiner submitted a report and recommending the assessment of petitioner in a lesser amount of P8,059.40, as deficiency income tax for the year 1962, inclusive of interest. (Exhs. 12, 13 and 14, pp. 85-89, BIR rec.)

Consequently, On December 5, 1969, respondent, through the Regional Director of Quezon City, issued Assessment Notice 25-AR 435 009-69-62 against petitioner in the amount of ₱8,059.40. (Exh. G, p. 93, BIR rec.). This assessment notice was received by petitioner on January 31, 1970. (Exh. H, p. 96, BIR rec.)

On February 24, 1970, petitioner disputed the revised assessment by attaching thereto a copy of his letter of October 23, 1967 which, in effect, reiterated his original protest. (Exh. 8, p. 96, BIR rec.) However, in a letter dated December 5, 1972, respondent informed petitioner that after a careful study of the facts of the case and the law and jurisprudence applicable, he found no justification to revise his stand that petitioner is liable to the aforesaid deficiency income tax. (Exh. 9, pp. 197-199, BIR rec.)

On January 18, 1973, petitioner acknowledged receipt of respondent's letter of December 5, 1972, and at the same time asked for a reconsideration on the ground of prescription. (Exh. 10, pp. 204-207, BIR rec.) On July 12, 1973, respondent denied petitioner's request. (Exh. 11, p. 221-224, BIR rec.) Hence, this appeal.

From the pleadings submitted by the parties, the only issue to be decided in this case is whether or not the right of respondent to assess the deficiency income tax in the amount of P8,059.40, inclusive of penalties, for the year 1962 has already prescribed.

The resolution of the issue turns upon the application of Section 331 of the Tax Code, the pertinent portion of which provides:

> 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: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

It is contended on behalf of petitioner that the right of respondent to assess the deficiency income tax involved herein has already prescribed under said Section 331. It is asserted that respondent could only assess the alleged deficiency income tax within five years from the filing of the return and only an agreement in writing can suspend the running of the statute of limitation. It is urged that since the assessment in this case has been revised, the 5-year period should be counted

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from the date of filing the income tax return to the date the new assessment was made. Respondent however contends otherwise.

There is no doubt that the initial assessment was issued within the statutory period of 5 years, and that the revised assessment was issued beyond said period. Nevertheless, it is to be noted that revision or recomputation of the deficiency income tax assessment was brought about at the instance of the taxpayer. The records show that counsel for petitioner asked for recomputation of the original assessment in his letter dated November 24, 1967, and this request was followed by another letter of petitioner dated September 30, 1968, and these requests for recomputation herein were given due course. These requests for recomputation of the taxpayer of the assessment are of the nature of a request for reconsideration as these seeks to vary the amount of the tax assessed against him. Petitioner himself in his petition for review had labled and considered said request for recomputation dated November 24, 1967 even as a request for reconsideration of the assessment (see p. 1, CTA rec.) By these positive acts, therefore, respondent was induced and motivated to revise the assessment. Petitioner cannot now be allowed to sucessfully invoke the plea of prescription on the right of respondent to assess the deficiency income tax of petitioner. (Talisay-Silay Milling Co. v. Comm. of Int. Rev., CTA Cases Nos. 1399 and 1406, December 29, 1966; Arick v. Comm. of Int. Rev., CTA Case No. 1679, May 30, 1969).

In answer to the pretention that the five year period should be counted from the filing of the return to the date the revised assessment was made, suffice it to state, and it is now settled, that the said period is to be counted from the last revised assessment resulting from a reinvestigation asked by the taxpayer, and the time employed in reinvestigating should be deducted from the total period of limitation. (Querol v. Coll. of Int. Rev., 116 Phil. 615; Republic v. Lopez, No. L-18007, March 30, 1963, 7 SCRA 566, Comm. v. Sison, L-13739, April 30, 1963, 7 SCRA 884.)

In view of the foregoing, we find and so hold that the deficiency income tax assessment involved herein was issued well within the statutory period. And the assessment in the sum of ₱8,059.40 for 1962 not having been assailed, it is presumed to be correct. And the correctness thereof not having been rebutted, petitioner, therefore, is held liable thereof. (Interprovincial Autobus vs. Coll. of Int. Rev. G.R. L-6741, Jan. 31, 1956, 98 Phil. 2907; Coll. of Int. Rev. vs. Bohol Land Transportation Co., G.R. N-13462, August 29, 1960, 107 Phil. 965, 974.)

WHEREFORE, petitioner is hereby ordered to pay the government the sum of ₱8,059.40 representing deficiency income tax for the year 1962. If the said amount is not paid within 30 days from the date

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this decision becomes final and executory, petitioner shall also be liable for the surcharge of 5% and 1% monthly interest provided in Section 51(e) of the National Internal Revenue Code.

With costs against petitioner.

SO ORDERED.

Quezon City, March 15, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge