REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EDUARDO M. LIMCANGCO,
Petitioner,

- versus - **C.T.A. CASE NO. 4827**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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3/4/93

D E C I S I O N

Acting on petitioner's "Motion for Judgment on the Pleadings" filed on November 10, 1992 (CTA Records, pp. 33-35) which was again manifested in open court on January 12, 1993 (TSN, Id., pp. 38-48), and having resolved in the said hearing the material objection or opposition thereto on the part of the respondent (Ibid.), the motion prayed for is *GRANTED.*

It is provided in Section 1, Rule 19 of the Rules of Court that:

> "Judgment on the pleading. - Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleadings, the court may, on motion of that party, direct judgment on such pleading. But in actions for annulment of marriage or for legal separation the material facts

alleged in the complaint shall always be proved."

This rule authorizes rendering of judgment on the pleadings when proper. In the case at bar, the opposition or objection of respondent to petitioner's motion has already been resolved and respondent's answer admitted the material allegations in petitioner's pleadings.

In ruling upon a motion for judgment on the pleadings the court should consider the whole record and give judgment for the party who, on the whole, appears to be entitled to judgment. The judgment on the pleadings may be based upon the pleadings and exhibits attached thereto and subsequently introduced in evidence (1 Martin, Rules of Court, p. 555).

The only legal issue presented to Us in this petition for review is whether or not availment by petitioner of the tax amnesty under Executive Order No. 41 dated August 22, 1986 bar an action for recovery of deficiency income tax assessed on or before August 21, 1986.

There is no dispute as to the relevant material facts.

Petitioner is a Filipino citizen with residence and postal address at 214 Venice Street, BF International Village, Las Pinas, Metro Manila. An Assessment Notice dated November 8, 1985 was issued by respondent against petitioner for its 1981 alleged deficiency income tax in the total amount of P177,512.00 (BIR Records, p. 12). Receipt of said assessment notice was denied by petitioner in the Petition for Review (CTA Records, p. 2) but subsequently admitted in hearing of this case (January 12, 1993, TSN, p. 10, CTA Records, p. 47).

Pursuant to Executive Order No. 41 (Declaring A One-Time Tax Amnesty Covering Unpaid Income Taxes For the Years 1981 to 1985), petitioner filed on November 3, 1986[1] a Tax Amnesty Return with the BIR Revenue District No. 32A West Makati (CTA Records, p. 10).

Warrant of Distraint of Personal Property and Warrant of Levy on Real Property both dated November 19, 1987 were received by petitioner on January 10, 1991 (BIR Records, p. 45 and p. 43 respectively). An offer to settle the assessment of P177,512.00 by way of compromise payment of 30% of the basic tax or P33,283.30 was made to the Commissioner of Internal Revenue in a letter dated

[1]Last Day of Availment - October 31, 1986 (Friday) but was declared a non-working special public holiday by Proclamation No. 39 dated October 27, 1986.

February 14, 1991 (BIR Records, p. 63). This was denied by the Assistant Commissioner - Collection Service in a letter dated July 11, 1991 (BIR Records, p. 79). Petitioner, through counsel wrote the Chief, Collection Enforcement Division on September 3, 1991 setting forth the contention that inasmuch as he has already availed of the Tax Amnesty under E.O. No. 41, the 1981 deficiency income tax assessment should no longer have been pursued but should have been cancelled as a matter of course (BIR Records, pp. 84-87). In a reply dated April 10, 1991 (BIR Records, pp. 95-97), the Commissioner of Internal Revenue ruled that the availment by petitioner of the Tax Amnesty under Executive Order No. 41 did not result in the cancellation of the assessment issued on November 8, 1985 since only those assessments issued after August 21, 1986 can be cancelled as a result of the availment of the Tax Amnesty pursuant to Revenue Memorandum Order No. 4-87. The reason for the cut-off date of August 21, 1986 is that the following day, August 22, 1986, Executive Order No. 41 took effect. Respondent contends that to hold that said tax amnesty includes those assessed on or before August 21, 1986 would result in the retroactive, instead of prospective application of the law. Since the tax liability exists only upon issuance of an assessment, availment of Executive Order No. 41 relieves a taxpayer only with respect to income tax liabilities assessed on or after August 22, 1986. From this final decision of the Commissioner of Internal Revenue, which was received by petitioner's counsel on June 8, 1992, petitioner appealed to this Court on July 3, 1992 (Petition for Review, CTA Records, pp. 1-6).

The dispute was clearly due to respondent's impression as stated in Revenue Memorandum Order No. 4-87 that petitioner's availment of the tax amnesty under Executive Order No. 41, did not result in the cancellation of the assessments issued on November 8, 1985 since only those assessments issued after August 21, 1986 can be cancelled.

This is not a case of first impression. The Court had occasion to rule on this controversy in the cases of *R.O.H. AUTO PRODUCTS PHILIPPINES, INC. v. THE COMMISSIONER OF INTERNAL REVENUE*, C.T.A. Case No. 4318, August 20, 1990[2] and *BAY FOODS SPECIALTIES, INC. v. THE COMMISSIONER OF INTERNAL*

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[2]Affirmed by the Court of Appeals in Commissioner of Internal Revenue, Petitioner vs. ROH Auto Products Phils. Inc. and C.T.A., CA-G.R. S.P. No. 22923, Dec. 11, 1992.

REVENUE, C.T.A. Case No. 4246, August 7, 1991[3]. The pertinent portions of the decision in said cases read as follows:

> "The intent of the given legislation, as always, is telling. A reading of this executive order giving amnesty shows the period covered - January 1, 1981 to December 31, 1985 (Section 1, Section 6, Executive Order No. 41, as Amended). An amnesty affords <u>total pardon or forgiveness</u> (3 Words and Phrases 480, citing cases), as here promised by the order for <u>all unpaid income, estate, donor's taxes and business taxes, and all civil, criminal, administrative liability</u> that have arisen from non-payment of taxes in the above given period. (Underscoring supplied) On the other hand, an assessment is a notice of tax due with a demand for payment (**Alhambra Cigar & Cigarette Mfg. Co. v. Commissioner**, 105 Phil. 1337 unreported). An assessment can be abated or compromised on the administrative level (Section 295, National Internal Revenue Code, now Section 204) while an amnesty is an act of sovereign grace which obliterates an offense (Words and Phrases, *supra*) or as seen here, an act which relegates into oblivion all unpaid income, estate, donor's taxes and business taxes incurred during a given period. The impression created thus is that considering the nature of a tax assessment, its significance could not be more than that of an amnesty properly availed of. An assessment, even a deficiency assessment as in the instant case, cannot defeat the intended effects of the amnesty because precisely, it is the purpose of the latter to forgive the non-payment of the taxpayer of his tax liabilities. The respondent who seeks to recover taxes due cannot demand something

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[3]Commissioner of Internal Revenue vs. Bay Foods Specialties, Inc. and C.T.A., CA-G.R. No. S.P. No. 26424.

which, although previously done, is now non-existent or has been obliterated as a consequence of sovereign grace.

"xxx xxx xxx

"Respondent failed to present any case or law which proves that an assessment can withstand or negate the force and effects of a tax amnesty. This burden of proof on the petitioner was created by the clear and express terms of the executive order's intention - qualified availers of the amnesty may pay an amnesty tax in lieu of said unpaid taxes which are forgiven (Section 2, Section 5, Executive Order No. 41, as amended). More specifically, the plain provisions in the statute granting tax amnesty for unpaid taxes for the period January 1, 1981 to December 31, 1985 shifted the burden of proof on respondent to show <u>how the issuance of an assessment before the date of the promulgation of the executive order could have a reasonable relation with the objective periods of the amnesty, so as to make petitioner still answerable for a tax liability which, through the statute, should have been erased with a proper availment of the amnesty</u> (Underscoring supplied).

"Additionally, the exceptions enumerated in Section 4 of Executive No. 41, as amended, do not indicate any reference to an assessment or pending investigation aside from one arising from information furnished by an informer.

> 'Section 4. Exceptions - The following taxpayers may not avail themselves of the amnesty herein granted:
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> a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14;

> b) Those with income tax cases already filed in the Court as of the effectivity hereof;
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> c) Those with criminal cases involving violations of the income tax law already filed in court as of the effectivity hereof;
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> d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;
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> e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;
>
> f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandiganbayan;
>
> g) Those liable under Title Seven, Chapter Three (Frands, Illegal Exactions and Transactions) and Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended.'

"Thus, we deem that the rule in Revenue Memorandum No. 4-87 promulgating that only assessments issued after August 21, 1986 shall be abated by the amnesty is beyond the contemplation of Executive Order No. 41, as amended. To paraphrase the cited previous declarations of the Supreme Court which were likewise recalled in the Tayug Rural Bank Case *supra*, administrative rules and regulations promulgated to implement given legislation should not be contradictory with the statute but conform to the standards which it prescribes (**Director of Forestry v. Munoz**, L-24796, June 28, 1967, 23 SCRA

> 1183). A rule would be binding on the Courts if the scope is within the statute even if the courts are not in agreement with the policy therein or its innate wisdom (**Victorias Milling Co., Inc. v. Social Security Commission**, L-16704, March 17, 1962, 4 SCRA 627)."

Likewise, in the case of *Tikicrafts Industries, Inc., v. Commissioner of Internal Revenue*, C.T.A. Case No. 4233[4] it has been ruled, to wit:

> "Moreover, Section 4 of EO No. 41 as expanded by EO No. 64, specifically enumerates those excepted from the coverage of the tax amnesty and clearly, tax assessments issued prior to August 22, 1986 are not among the exceptions. Under the rule of '*expressio unius est exclusio alterius*', 'where a statute enumerates the subjects or things on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned'. (**Dave's Place v. Liquor Control Commission**, 269 N.W. p. 594). Hence, since Section 4 of EO 41 expressly mentions the exceptions from the intended coverage of the tax amnesty, it follows that others not mentioned such as assessments issued prior to August 21, 1986 are not included."

The Supreme Court in the case of *Republic of the Philippines v. Intermediate Appellate Court and Spouses Antonio and Clara Pastor*, G.R. No. 69344, April 26, 1991, 196 SCRA 335 on the issue of

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[4]Affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Tikicrafts Industries, Inc, et al., CA-G.R. No. S.P. 24488, August 26, 1991.

whether or not tax amnesty payments bar an action for recovery of deficiency income taxes said:

> "Even assuming that the deficiency tax assessment xxx were correct, since the latter have already paid almost the equivalent amount to the Government by way of amnesty taxes xxx, and were granted not merely an exemption, but an amnesty, for their past failings, the Government is estopped from collecting the difference between the deficiency tax assessment and the amount already paid by them as amnesty tax.
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> "A tax amnesty, being a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law, partakes of an absolute forgiveness or waiver by the Government of its right to collect what otherwise, would be due it, and in this sense, prejudicial thereto, particularly to give tax evaders, who wish to relent and are willing to reform a chance to do so and hereby become a part of the new society with a clean state (**Commissioner of Internal Revenue v. Botelho Corp. and Shipping Co., Inc.**, 20 SCRA 487)."

It appearing that the case at bar is likened under similar facts and circumstances obtaining to the cases of R.O.H. Auto Products Philippines, Inc. and Bay Food Specialties, Inc., with the same principal question to contend with, We therefore adopt the aforesaid ruling.

WHEREFORE, the respondent Commissioner of Internal Revenue is ordered to desist from collecting the 1981 deficiency income taxes of

P177,512.00 it had assessed against petitioner for the same are considered cancelled and withdrawn with the proper availment of petitioner of the amnesty under Executive Order No. 41, as amended.

SO ORDERED

Quezon City, Metro Manila, March 4, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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