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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

CHEMFIELDS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4836

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
APR 28 1995

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D E C I S I O N

This is an assessment case for alleged deficiency income tax and expanded withholding tax in the amount of ₱385,301.21 for the fiscal year 1987.

Petitioner is a domestic corporation organized in accordance with Philippine laws, with principal office at Rudgen Bldg., Shaw Boulevard, Pasig, Metro Manila.

On April 14, 1988, petitioner filed its Annual Income Tax Return for the fiscal year ending December 31, 1987.

Petitioner received on December 8, 1988 a copy of the letter of authority from the BIR dated November 28, 1988 in its old office at Mandaluyong, Metro Manila. In a letter dated December 13, 1988, petitioner informed the BIR particularly the Revenue District Officer of Rev. Dist. No. 31, Region 4-B of its change of address from Mandaluyong to Pasig (Exh. "H", p. 27, CTA Records).

Unknown to the petitioner on April 18, 1990, it was assessed for alleged deficiency income tax and expanded withholding tax for the year 1987 in the amount of ₱385,301.21. The final assessment covering deficiency income tax assessment no. FAN 01-87-90 for ₱118,047.05 and deficiency expanded withholding tax no. FAN-01-87-90 were either issued on April 26, 1990 and May 11, 1990, as the documents bear two dates. Afterwhich a warrant of garnishment dated September 23, 1991 was issued against petitioners bank account with Bank of Philippine Islands. Finally on July 9, 1992, petitioner was informed by the Bank of Philippine Islands, its depository bank that a Warrant of Garnishment was issued by the BIR to enforce collection of deficiency income tax and expanded withholding tax under Assessment No. FAN-1-87-90 in the amount of ₱385,301.21. Then, on July 31, 1992 petitioner wrote a letter to the respondent, requesting for a reconsideration of the assessment and the lifting of the warrant of garnishment (Exh. "F").

Again, in a letter dated July 31, 1992 petitioner reiterated its request for the cancellation of the assessment and the lifting of the writ of garnishment.

However, per investigation conducted by the Bureau of Internal Revenue, petitioners income tax return for 1987 reveals deficiency income and expanded withholding taxes in the sum of ₱385,301.21 which is computed as follows:

DEFICIENCY INCOME TAX

Net Income per investigation	₱ 44,056,944.58
Add: Disallowed Salaries - w/o w/holding tax	192,581.08
Net taxable income	₱ 44,249,525.66
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Tax due thereon	₱ 15,487,333.98
Less: Tax Paid	15,419,931.00
Deficiency income tax	₱ 67,402.98
Add: 25% surcharge	16,850.75
20% interest fr. 4-16-88 to 4-18-90	33,793.32
Total Amount Due & Collectible	**₱ 118,047.05**
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DEFICIENCY EXPANDED WITHHOLDING TAX

Mgt. & Prof. fees	(₱2,638,040.18 x 10%)	₱ 263,804.02
Security Services	(₱582,608.59 x 1%)	5,826.09
Advertising	(₱127,581.08 x 1%)	1,275.81
Rent	(₱209,255.67 x 5%)	10,462.78
Repairs & Maintenance	(₱2,005,383.00 x 1%)	20,053.83
Director's fees	(₱134,000.00 x 10%)	13,400.00
Total EWT due		₱ 314,822.53
Less: Payment		167,816.02
Deficiency EWT		₱ 147,006.51
Add: 25% surcharge		36,751.63
20% interest fr. 1-10-88 to 4-18-90		83,496.02
Total Amount Due & Collectible		**₱ 267,254.16**
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The sole issue to be resolved in this case is whether or not petitioner was properly assessed for deficiency income tax and expanded withholding tax.

Considering the fact that prescription to assess within the period had already set-in, discussion of the other issues had already become moot and academic.

It can be deduced from the turn of events that no assessment was received by the petitioner as it was sent to the wrong address. Summarily, there is no assessment to speak of in this case. Considering the fact that petitioner failed to receive the assessment notice and the failure on the part of the respondent to conduct the re-investigation, evidently prescription had already set in. The tax liability involved was for the year 1987 and the three year prescriptive period commence to run on April 15, 1988 the last day when petitioner is required to file a return. Exactly on April 15, 1991, such action prescribes for failure to assess within the period allowed by law. It was only on July 9, 1992 that petitioner came to know of the assessment through its bank.

Under the National Internal Revenue Code the prescriptive period for assessment if a return was filed is three years from the date the return was due (last day for filing) or was filed. In Section 268, NIRC, it is stated that the 3-year period for purposes of assessment shall be "after the last day prescribed by law for the filing of the return". Where the return is filed beyond the period prescribed by law, the 3-year period shall be counted from the day the return was filed. A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Insofar as pertinent Sections 268 and 271 of the National Internal Revenue Code is herein quoted for reference:

> **Sec. 268 (now 203).** ***Period of limitation upon assessment and collection.*** - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: **Provided,** That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. 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 amended by B.P. Blg. 700)*
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> **Section 271 (now 224).** ***Suspension of running of statute.*** - The running of the statute of limitations provided in Sections 268 and 269 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment of beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a re-investigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: **Provided,** That if the taxpayer informs the Commissioner of any change in address, the statute will not be suspended; when the warrant of distraint

> and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. (*Underscoring supplied*)

From this provision, it specifically provides that when the taxpayer informs the Commissioner of any change in address, the statute of limitation will not be suspended. In the case at bar, petitioner was able to inform the Revenue District Officer, Dist. 31, Region 4-b of its change of address, so that when the assessment was issued to the wrong address, there is yet no assessment to speak of. In effect the statute of limitation continues to run, it is not deemed suspended, mainly because respondent had been properly notified of petitioner's change of address. Thus, resulting in prescription for failure to assess within the period set by law.

Moreover, it is also noteworthy to state that petitioner's right to due process was wantonly disregarded in this case. Citing the case of *Banco Espanol vs. Palanca, 37 Phil,. 921,* it was held that in the observance of procedural due process, this Court is always mindful that a taxpayer being made liable with his property be given an opportunity to be heard which is one of its essential elements. In view of the failure of the respondent to strictly comply with the procedure prescribed by law and for failure of the petitioner to receive a copy of the alleged assessment, the latter was not afforded its right to be heard for it was denied the opportunity to dispute the assessment. *(BFI Data Systems Corporation [formerly Filipinas Management and Leasing Services, Inc]. vs. CIR, CTA Case No. 4530, January 12, 1994).*

WHEREFORE, in view of the foregoing premises, petitioners assessment for deficiency income tax and expanded withholding tax in the amount of ₱385,301.21 for the year 1987 is hereby cancelled. Respondent is likewise ordered to lift the warrant of garnishment on petitioners bank accounts.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

MANUEL K. GRUBA
Associate Judge
Court of Tax Appeals