REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus -

C.T.A. CASE NO. 4393

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 23 1995

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D E C I S I O N

This is a petition for review seeking the nullification of two Warrants of Distraint of Personal Property and Levy on Real Property issued by respondent Commissioner of Internal Revenue against petitioner for enforcement of alleged deficiency gross receipts tax for the year 1981 in the amount of ₱363,543.99.

In its petition dated 12 October 1989 and filed with the Court on October 13, 1989, petitioner alleges that: (i) it is a banking corporation organized under Philippine laws; (ii) on January 21, 1982, it filed its gross receipts tax return for the year 1981 and paid a total of ₱18,554,103.00 in gross receipts tax; (iii) after its financial statements were audited in 1982, it paid an additional amount of ₱683,277.45 as adjusted gross receipts tax; (iv) sometime in 1984, it received a pre-assessment notice dated May 15, 1984 informing it of the findings of the Bureau of Internal Revenue assessing deficiency gross receipts taxes amounting to ₱363,543.99 for the year 1981; (v) upon receipt of said pre-assessment notice, it sent a letter dated October 16, 1984 to respondent Commissioner informing the latter that the proposed assessment for deficiency gross receipts tax had already been paid; (vi) more than 5 years later, or on June 13, 1989, petitioner received a letter dated May 29, 1989 from respondent informing it that its tax liability of ₱363,543.99 representing deficiency gross receipts tax for the year 1981 was still outstanding, and demanding payment of said amount within 10 days from petitioner's receipt of said letter; (vii) while said letter of respondent made reference to a supposed notice of assessment dated June 15, 1985, petitioner never received a copy of the same; (viii) on June 22, 1989 petitioner wrote to respondent informing the latter that petitioner never received the supposed assessment letter, and that in any event, it had already paid the alleged deficiency gross receipts tax in 1982; (ix) notwithstanding the foregoing, on September 14, 1989, petitioner received separate warrants of distraint and levy issued by respondent to enforce the collection of its supposed tax liability, prompting petitioner to file a formal protest dated October 10, 1989 against the action of respondent

Commissioner; and (x) until the filing of the instant petition, respondent Commissioner had failed to take action on petitioner's protest.

In her Answer dated March 22, 1990 and filed with the Court on April 25, 1990, respondent interposed the following defenses: (i) that on July 17, 1984 it sent petitioner its Deficiency Tax Assessment No. SARD 81-BT-83-1165 under Postal Registry Receipt No. 1268, assessing against petitioner the amount of ₱363,543.99 as deficiency gross receipts tax for the year 1981; (ii) that said assessment notice had not been returned unclaimed to it; (iii) that the deficiency tax assessment was issued within the reglementary 5-year period counting from the filing by petitioner of its gross receipts tax return ; (iv) that the issuance of the warrants of distraint and levy on September 14, 1989 should be deemed a denial of petitioner's protest against said assessment; and (v) that the questioned assessment enjoys the legal presumption of correctness and validity which petitioner must successfully overcome.

After issues were joined, trial was conducted and petitioner presented one witness who corroborated the factual allegations of the petition. On the other hand, respondent failed to present any witness and merely relied on certain documentary exhibits to substantiate her defenses.

Petitioner's primary contention is that respondent's right to collect the alleged deficiency gross receipts tax has already prescribed considering that (i) it never received a copy of the supposed assessment notice dated June 15, 1984 sent by respondent, (ii) more than three years had already elapsed from the filing of its gross receipts tax return for the year 1981 until its receipt of respondent's letter dated June 13, 1989 informing it of its supposed outstanding tax liability, and (iii) more than 5 years had already elapsed from the actual filing of its gross receipts tax return for 1981 and the issuance on September 12, 1989 of the questioned warrants of distraint and levy. Alternatively, petitioner contends that, even assuming that the assessment and the warrants of distraint and levy had been properly issued, it had already fully paid the supposed deficiency gross receipts tax as early as 1982.

After a careful perusal of the testimonial and documentary evidence presented by both parties in this case, We conclude the petitioner's contentions are meritorious. Accordingly, We vote to grant the petition.

Firstly, the uncontroverted evidence on record is that, on October 16, 1984, petitioner wrote respondent a letter requesting the reconsideration of the supposed impending assessment against it for deficiency gross receipts tax. According to petitioner's lone witness Augusto Ong, said letter was prompted by petitioner's receipt of the pre-assessment notice dated May 15, 1984, informing it of the results of the investigation conducted by the Bureau of Internal Revenue to the effect that petitioner was liable for the payment of deficiency gross receipts tax for the year 1981. In its said letter, petitioner informed respondent that the supposed deficiency tax had already been paid in 1982 following certain adjustments determined by its auditors in its financial statements for the year 1981. Subsequently, on June 22, 1989, following its receipt of respondent's letter dated May 29, 1989 informing it that its supposed deficiency tax liability was still unpaid, petitioner wrote respondent a letter reiterating its contention that it had already fully paid the supposed deficiency tax liability and further pointing out that respondent's right to collect the said deficiency tax, if any, had already prescribed.

The records clearly indicate that petitioner filed its gross receipts tax returns for 1981 as early as January 21, 1982 (Exhibits H to K). On the other hand, the warrants of distraint and levy were issued by respondent only on September 12, 1989 (Exhibits D and

E), after the lapse of more than seven (7) years from the date of filing of petitioner's gross receipts tax returns.

Respondent's insistence that petitioner had been duly served a copy of the assessment notice dated June 15, 1984 is not supported by the evidence on record. As correctly pointed out by petitioner, respondent in its Answer insisted that said assessment notice was sent to petitioner by registered mail on July 17, 1984 under Registry Receipt No. 1268. Yet, a careful perusal of the BIR records submitted to this Court fails to disclose the existence of the supposed Registry Receipt No. 1268. For that matter, there is no indication that the tracer letters supposedly issued by respondent (Exhibits 4, 5 and 6) subsequent to the issuance of the assessment notice were ever sent to and duly received by petitioner. Neither has respondent proffered any explanation why, after strenuously asserting as a fact the alleged due delivery to petitioner of the assessment letter which is an essential pre-requisite to the validity of its claim, respondent failed to present to this Court competent and credible proof of such supposed delivery.

But even assuming, for the sake of argument, that the alleged assessment notice had indeed been duly delivered to and received by respondent, the fact is that respondent still failed to take any action to enforce said assessment until the lapse of more than 5 years from issuance of the assessment notice. Under Sections 318 and 319 of the National Internal Revenue Code, the prescriptive period for the assessment of taxes is five (5) years from the date of filing of the return, while the prescriptive period for the collection of such taxes is five (5) years from the date of the assessment. In the instant case, even assuming that the assessment had been duly made within the five (5) year period prescribed under Section 318 of the Tax Code, still the right of respondent to enforce said assessment had already prescribed considering the lapse of more than five (5) years from the date of the supposed assessment on July 17, 1984 until the date of the issuance of the warrants of distraint and levy on September 14, 1989.

Prescinding from the foregoing, there is an even more compelling reason why the petition should be granted. This is the fact, duly alleged and proved by petitioner and glaringly uncontroverted by respondent, that petitioner had duly paid the supposed deficiency gross receipts taxes as early as 1982, when it made an overpayment in its gross receipts tax for said year in the amount of ₱683,277.45. This payment was made by petitioner voluntarily upon the suggestion of its auditors after the latter had made certain adjustments in its financial statements for the year 1981. In this regard, we find the following testimony of petitioner's witness Augusto Ong to be relevant:

> "Q: So when SGV informed you that you have an additionals taxes (sic) to pay for the year 1981, what did you do?
>
> A: We paid that in the 3rd quarter of 1982.
>
> Q: How did you compute these taxes which have to be paid for the year 1981, the additional taxes which have to be paid for the year 1981?
>
> A: It was included in the return of 1982, for the third quarter.
>
> Q: How did you compute it?
>
> A: SGV have already the amount which we should pay to the BIR.
>
> Q: Do you know how SGV computed this?
>
> A: Because it was in their audited figures, they included additional income for the year 1981 which before the audit were not yet taken up. So after the audited figures, they add up additional income taken up on the audited FS and they multiply it by 5%." (TSN, August 12, 1991, pp. 10-11).

Significantly, respondent failed to present any evidence to controvert the testimony of petitioner's witness. In fact, respondent did not present any witness at all to support its defenses. Instead, respondent chose to rely merely on certain documentary evidence which have little or no probative value considering that they were not even properly identified and authenticated.

In case of doubt, a statute levying a tax should be interpreted in favor of the taxpayer (Commissioner of Internal Revenue vs. Firemen's Fund Insurance Company 148, SCRA 315.)

In case of doubt, tax statutes are to be construed strictly against the government for tax, being burdens, are to be presumed beyond what the applicable statute expressly and clearly declares. (Republic vs. Intermediate Appellate Court 196 SCRA 335)

WHEREFORE, judgment is hereby rendered GRANTING the petition and setting aside and nullifying the questioned assessment in the amount of ₱363,543.99 for alleged 1981 deficiency gross receipts tax as well as the warrants of distraint and levy for the gross receipt tax assessment dated September 14, 1989 which was issued by respondent against the petitioner.

No pronouncement as to costs.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals