REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

OCEANIC WIRELESS NETWORK, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6111

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 03 2004

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DECISION

Appealed before us for review are the assessments for deficiency income tax and quarterly income taxes issued against petitioner in the amounts of P7,311,036.18 and P1,834,399.78, respectively, for the calendar year ended December 31, 1995.

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines, with principal office located at 3/F Electra House, 115-117 Esteban St., Legaspi Village, Makati, Metro Manila.

On April 15, 1996, petitioner filed its 1995 Corporation Annual Income Tax Return *(Exhibit 5).*

On December 12, 1996, petitioner received Letter of Authority No. 137427 issued by Revenue District Officer Hernani S. Arboleda of RDO No. 47, Revenue Region 8, Makati authorizing Revenue Officers Josephine Gaerlan and Julita Batoon to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January to December 1995 *(Exhibit 1).*

On March 17, 1999, petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code extending the period

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within which respondent may assess petitioner of deficiency taxes up to July 31, 1999 *(Exhibit A;9)*.

A preliminary report of tax assessment was issued on May 18, 1999 informing petitioner of the result of the investigation of all its internal revenue tax liabilities for the calendar year 1995 *(page 428, BIR records)*. Petitioner was also requested to attend an informal conference to discuss the result of the revenue officer's investigation.

On July 19, 1999, petitioner received another pre-assessment notice (this time) with Details of Discrepancies. Petitioner was also advised to file its written protest or at its option, to request for an office conference to discuss the proposed assessments for deficiency income and quarterly income taxes in the amounts of P7,277,249.49 and P1,834,399.78, respectively *(pages 473 to 476, BIR records)*.

Consequently, petitioner on July 28, 1999, filed its request for an office conference with the Bureau of Internal Revenue (BIR) at the time and place convenient to the respondent's examiners *(page 481, BIR records)*. However, inasmuch as the authority of respondent to assess was about to prescribe on July 31, 1999, respondent issued final assessment notices, demand letters and details discrepancies on July 30, 1999, which were received by petitioner on the same date, covering the following deficiency income tax and penalties for late payment of quarterly income taxes, to wit: *(pages 482 to 491, BIR records)*

DEFICIENCY INCOME TAX:		
Taxable Income per FS		P 17,001,348.00
Add: Disallowed Expenses (RR 6-85)		
Rent	P 2,199,151.00	
Security	575,595.00	
Allowance	456,000.00	
Service Fee	6,464,790.57	9,695,536.57
Taxable Income per Investigation		P 26,696,884.57
Tax Due		P 9,343,909.60
Less: Allowable Tax Credit		
Tax Credit Per ITR	P 465,162.00	
Unsupported Tax Credit		

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	122,777.00	
	P 342,385.00	
Tax Paid	5,485,310.00	5,827,695.00
Basic Deficiency		P 3,516,214.60
Surcharge		879,053.65
Interest		2,890,767.93
Compromise penalty		25,000.00
Deficiency Income Tax		P 7,311,036.18

DEFICIENCY QUARTERLY INCOME TAX

Returns	Surcharge	Interest	Compromise	Total
1st Quarter	P 327,050.86	P 285,351.88	P 25,000.00	P 637,402.74
2nd Quarter	308,849.75	192,258.97	25,000.00	526,108.72
3rd Quarter	470,592.58	175,295.74	25,000.00	670,888.32
Total	P 1,106,493.19	P 652,906.59	P 75,000.00	P 1,834,399.78

On August 16, 1999, petitioner filed its protest requesting for the reconsideration of the aforementioned final assessments *(pages 524 to 526, BIR records)*. Petitioner also filed a supplemental protest on April 7, 2000 to further buttress its position that the assessments against it should be cancelled *(pages 527-534, BIR records)*.

On May 12, 2000, petitioner filed the instant Petition for Review.

On September 12, 2000, the Joint Stipulation of Facts and Issues submitted by the parties was approved by the court. However, on March 22, 2002, respondent's new counsel filed a Manifestation and Motion to Amend Joint Stipulation of Facts and Issues which this court resolved to grant *(pages 146-153, CTA records)*. Thus, the jointly stipulated issues are the following:

> 1. Whether or not the right of the Bureau of Internal Revenue (BIR) to assess Petitioner for alleged deficiency income and quarterly income tax for taxable year 1995 had already prescribed.
>
> 2. Whether or not the deficiency income and quarterly income tax assessments issued against Petitioner for taxable year 1995 are void for failure to state the law and the facts on which the assessments were made.
>
> 3. Whether or not Petitioner is liable for deficiency income tax.

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4. Whether or not the imposition of 25% surcharge on deficiency income and quarterly income tax is valid.

5. Whether or not Petitioner is liable for the amount of P1,834,399.78 as deficiency quarterly income tax for taxable year 1995.

Petitioner averred that the subject assessment notices covering its deficiency income and quarterly income tax assessments for taxable year 1995 are void for having been issued beyond the three-year prescriptive period provided under Section 203 of the 1997 Tax Code [should be Section 203 of the old Tax Code] which provides:

> SEC. 203. *Period of limitation Upon Assessment and Collection.* — Except as provided in Section 222, <u>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</u>: *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 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. *(Underlining supplied).*

It is undisputed that petitioner filed its 1995 Corporation Annual Income Tax Return on April 15, 1996. Thus, pursuant to the above provision of law, respondent has three (3) years from April 15, 1996 within which to assess petitioner of its 1995 internal revenue taxes. Since the assessment notices were issued only on July 30, 1999, petitioner opined that the same were issued beyond the three-year period allowed by law.

Respondent, on the other hand, argued that the assessment notices were timely issued considering that petitioner on March 17, 1999 executed a "Waiver of Statute of Limitations" extending the period for respondent to assess its 1995 internal revenue tax liabilities up to July 31, 1999 *(Exhibit A;9).* This is pursuant to Section 222(b) of the 1997 Tax Code [should be Section 223(b) of the 1993 Tax Code, as amended] which provides:

> Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

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(a) xxx

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

From the aforecited law, the assessment notices issued by respondent on July 30, 1999 for 1995 internal revenue taxes liabilities of petitioner were not time-barred.

However, petitioner questioned the validity of the aforementioned waiver on the ground that it failed to state the kind of tax and the amount of tax due as required under Revenue Memorandum Order No. 20-90. There being no valid waiver, the subject assessment notices issued to petitioner are void for having been issued beyond the three-year prescriptive period.

After meticulous scrutiny of the evidence, we rule in favor of the validity of the subject assessment notices.

While it is true that the waiver executed by petitioner does not specify the kind of tax and the amount of tax due as required under Revenue Memorandum Order No. 20-90[1], petitioner cannot invoke the same in present case. This is because we have noted that as of the time of the execution of the waiver on March 17, 1999, there was no preliminary assessment issued yet against petitioner wherein the kind and amount of tax due could be referred to. Hence, such details cannot be specified in the waiver because the amount and the kind of tax were still unascertainable.

The first report of preliminary assessment was issued on May 18, 1999 and this was received by petitioner on the same date. But since petitioner had already executed a waiver

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[1] Pfizer, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003; and Solid Cement Corporation vs. Liwayway Vinzons-Chato in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999.

on March 17, 1999, it is justified that the amount and the kind of tax are not reflected therein. The waiver therefore is valid.

Following the rule that the period of respondent to assess was extended up to July 31, 1999 in view of the waiver, the deficiency assessments issued against petitioner on July 30, 1999 are within the period allowed by law.

Anent the second issue, petitioner in its memorandum assailed the validity of the assessment notices, demand letters and details of discrepancies covering the deficiency quarterly income tax for failure to state the law and the facts upon which the assessments were based. Petitioner cited as legal bases Section 228 of the 1997 Tax Code and Section 3.1.4 of Revenue Regulations No. 12-99, to wit:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xxx
>
> Section 3.1.4. *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.

While petitioner admitted that the Demand Letter *(Exhibit E)* accompanying the Assessment Notice shows the computation of the alleged deficiency quarterly income tax and the Details of Discrepancy *(page 489, BIR records)* contained the explanation –

> Penalties were imposed since based on the company's trial balance, it resulted to quarterly taxable income and since an annual payment was effected April 15, 1996, the imposition of penalties for non-payment,

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still it maintained that the foregoing computation and explanation failed to satisfy the requirement "that the taxpayers shall be notified in writing of the facts and the law upon which the assessment is based".

We do not agree.

As correctly pointed out by the respondent there was substantial compliance with Section 228 because petitioner was able to protest the assessments intelligently, thereby implying that it had actual knowledge of the factual and legal bases of the assessments.

The fact that petitioner was furnished the computation and brief explanation of the how the assessment for deficiency quarterly income tax was arrived at, the requirement under Section 228 of the 1997 Tax Code is deemed complied with. Petitioner was notified of the specific provision of law on which the assessment was based. This is evident in the Details of Discrepancies wherein Sections 75 and 76 (of the 1997 Tax Code) were written. Likewise, petitioner's witness Ms. Sombilon admitted that the basis of the assessment was due to disallowed sum of the years digit method of depreciation used in computing its quarterly income tax as against the straight line method of depreciation used in its financial statement *(pages 20-22, TSN, May 26, 2003).* And even if petitioner was not furnished of the detailed computation of the deficiency quarterly income tax, the same was discussed with petitioner during the informal conference. The testimony of respondent's witness, Ms. Gaerlan, during the cross-examination conducted by petitioner's counsel supports this finding, *viz*:

ATTY CASTRO

Q. During the course of the hearing, you have narrated to the Court the factual basis for the assessment?

MS. GAERLAN

A. Yes.

ATTY. CASTRO

Q. In the Assessment Notice issued to Oceanic Wireless Network, Inc., covering the taxable year 1995, as well as the Demand Letter, did you cite therein the factual as well as the legal basis you have just mentioned in this Court?

MS. GAERLAN

A. Yes, sir, because by (sic) Narrative Report is actually more concise because attached in the docket is my **Preliminary Report which was discussed to the taxpayer**. *(Underlining supplied; page 32, TSN, November 14, 2001).*

The allegation that petitioner failed to receive copy of the detailed computation of the penalties for the quarterly income tax assessment *(Exhibit 8)* carries little consideration by the court. It is sufficient that petitioner was informed of the reason why the said assessment was issued. Clearly, petitioner was informed of the factual and legal bases on which the assessment for deficiency quarterly income tax was based. It bears stressing that the purpose of Section 228 of the National Internal Revenue Code of 1997 in requiring that "(t)he taxpayer be informed of the law and facts on which assessment is made" is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s) ***(Belle Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5930, April 4, 2002)***. The purpose of the said law having been served in the instant case, Section 228 of the National Internal Revenue Code of 1997 is deemed to have been complied with. Therefore, the assessment for deficiency quarterly income tax is not null and void.

At this point, this court finds it judicious to no longer proceed to the merits of the disputed assessments. For we have noted that the assessments issued against the petitioner were already final, executory and demandable based on Section 228 of the 1997 Tax Code.

Under paragraph 5 of the Joint Stipulation of Facts, the following fact was stipulated:

> 5. Respondent, as of April 12, 2000, which is the one hundredth and eightieth (180th) day from the date the Petitioner had filed its supporting documents, had not yet arrived at a final decision on the protest filed by Petitioner against the validity of the alleged deficiency tax assessment, as stated in Section 228 of the NIRC, as amended. *(Underlining supplied).*

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But nowhere in the entire records of the case do we find the supporting documents allegedly submitted by petitioner. On the contrary Ms. Gaerlan, the revenue examiner who conducted the investigation, reported that petitioner did not present documentary evidence *(psge 523, BIR records)*. To quote:

December 13, 1999

MEMORANDUM TO:

The Collection Unit
Revenue District No. 47
East Makati, Makati City

Returned to the Collection Unit of this District, Revenue District Office No. 47-East Makati the herein docket relative to the request for reinvestigation of OCEANIC WIRELESS NETWORK, INC. of 3rd Floor Electra Hourse Bld., Esteban St., Legaspi Village, Makati City for the year 1995 with deficiency taxes in the total amount of P9,145,345.96 for the enforcement or collection since subject taxpayer failed to present documentary evidences to protest the said tax deficiencies. *(Underlining supplied).*

(Signed)
JOSEPHINE M. GAERLAN
Revenue Officer II

NOTED BY:

(Signed)
EMILIA C. COMBES
Group Supervisor

The above report contradicts the facts stipulated by petitioner and (then) respondent's counsels. To reiterate, we do not find any evidence or letter that will prove said submission of supporting documents by the petitioner. A formal judicial stipulation as to the facts is conclusive between the parties as long as it stands and such facts are not subject to contradiction by showing the facts to be otherwise than as agreed upon. However, the binding effect of the facts applies only to the parties in agreement; it is no more binding on the court than any other evidence in the case *(Ireland vs. Stalaum, 162 Neb. 630, 77 N.W. 2d 155 [1956] cited in Ricardo J. Francisco, Evidence Rules of Court in the Philippines, 3rd Edition [1996], page 35)*. Admissions made by the parties during a pre-

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trial conference and incorporated in the pre-trial order are binding. This rule, however, is not without exceptions. If, in order to prevent manifest injustice, the admissions made by the parties during the pre-trial may be disregarded by the court ***(Sese vs. Intermediate Appellate Court, G.R. 66186, July 31, 1987).***

Let it be stressed once again that taxes are the lifeblood of the government. Petitioner having failed to comply with the requirement of the law in disputing an assessment, the same became final, executory and demandable. The law is quite clear on this matter:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeals to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Undoubtedly, a taxpayer has sixty (60) days from the filing of the protest to submit the relevant documents to support its protest, otherwise, the assessment becomes final. Within one hundred eighty (180) days from the submission of the relevant documents, the respondent should act on the protest. If the respondent rendered his decision within the period or failed to act on it, the remedy of the taxpayer is to file within thirty (30) days from the receipt of the decision or from the lapse of one hundred eighty (180) days, an appeal to this court, otherwise, the assessment will become final, executory and demandable.

In the case at bar, petitioner failed to submit supporting documents contrary to what was jointly stipulated by the parties. Hence, the reckoning of the one hundred eighty (180)-day period would be the day the protest was filed, *i.e.*, on August 16, 1999. However, respondent failed to render his decision within the one hundred eighty (180) days or until February 12, 2000. As already discussed, the remedy of petitioner was to file within thirty (30) days therefrom an appeal with this court which would be until March 14, 2000. But since the Petition for Review was filed only on May 12, 2000, the same was definitely filed beyond the date prescribed by law.

IN VIEW OF THE FOREGOING, the Petition for Review is hereby **DISMISSED** for being filed out of time.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

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