

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

**SPECIAL FIRST DIVISION**

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**UNITED SALVAGE AND TOWAGE  
(PHILS.), INC.,**

Petitioner,

**C.T.A. CASE NO. 6606**

Members:

- versus -

**ACOSTA, Chairperson  
BAUTISTA, and  
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL  
REVENUE,**

Respondent.

**Promulgated:**

**MAR 12 2010 : 10:25 am**

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**DECISION**

**BAUTISTA, J.:**

This case involves a Petition for Review, seeking the declaration of the assessment for deficiency Withholding Tax on Compensation and deficiency Expanded Withholding Tax for taxable years 1992, 1994, and 1998 as null and void. The Petition for Review originally sought the cancellation of the assessments for alleged deficiency Income Tax, deficiency Value-added Tax, deficiency Documentary Stamp Tax, and deficiency Withholding Tax for taxable years 1992, 1994, 1997, and 1998; but was later reduced to deficiency Withholding Tax on Compensation and deficiency Expanded Withholding Tax after this Court partially granted petitioner's Motion to Withdraw Petition for Review, in view of petitioner's availment of the Tax Amnesty Program under Republic Act No. 9480.



Petitioner United Salvage and Towage (Phils.), Inc. is a duly organized domestic corporation, with principal office address at 2272 President Quirino Avenue, Paco, Manila.<sup>1</sup> On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to issue deficiency tax assessments against taxpayers, and to decide assessment protests. He holds office at the 5<sup>th</sup> Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, through the Chief of the BIR Assessment Division, issued Assessment Notices and the corresponding Demand Letters against petitioner in the amounts of P411,715.79, P1,441,393.18, P50,429.18, and P14,079.45, representing Income Tax, Value-added Tax (VAT), Withholding Tax on Compensation, and Expanded Withholding Tax (EWT) deficiencies, respectively, for taxable year 1992 and covered by Assessment Notice Nos. 25-1-000545-92 and 25-1-00546-92 dated January 9, 1996.<sup>2</sup>

Respondent issued Assessment Notice No. 034-14-000029-94 dated January 19, 1998 and the corresponding Demand Letters, again through the Chief of the BIR Assessment Division, assessing petitioner in the amounts of P3,855,895.01, P3,625,993.74, P48,461.76, and P42,545.62, representing deficiencies in Income Tax, VAT, EWT, and Documentary Stamp Tax (DST) during taxable year 1994.<sup>3</sup>

On January 29, 1998, petitioner filed its administrative protest dated January 23, 1998 to the said Assessment Notices and Demand Letters.<sup>4</sup>

Respondent, through his Regional Director, issued Assessment Notices and the corresponding Demand Letters against petitioner in the amounts of P424,652.49 and

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<sup>1</sup> Exhibit "R"

<sup>2</sup> Exhibits "3", "4", "5", "6", "7", "8", "9", and "10"

<sup>3</sup> Exhibits "19", "20", "21", "22", "23", "24", "25", and "26"

<sup>4</sup> Par. 4, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 147



P2,972,480.06, representing Income Tax and VAT deficiencies for taxable year 1997 and covered by Assessment Notice No. 034-14-000-297-97 dated January 19, 2001. On February 20, 2001, petitioner filed its administrative protest dated February 16, 2001 to the said 1997 Income Tax and VAT Assessment Notices and Demand Letters.<sup>5</sup>

Respondent, through his Regional Director, issued Assessment Notice No. 034-1-000080-98 dated September 21, 2001 and the corresponding Demand Letters against petitioner in the amounts of P4,832,566.66, P1,500,600.61, and P22,437.01, representing purported deficiencies in Income Tax, VAT, and EWT for taxable year 1998. On October 24, 2001, petitioner filed its administrative protest dated October 23, 2001 to the foregoing Assessment Notices and Demand Letters.<sup>6</sup>

On February 21, 2003, petitioner filed the instant Petition for Review before this Court.

In his Answer<sup>7</sup> filed on March 24, 2003, respondent interposed the following Special and Affirmative Defenses:

- "22. An assessment is deemed made for the purpose of giving effect thereto when the notice to that effect is released, mailed or sent to the taxpayer within the prescribed period (Basilan Estate, Inc. vs. CIR, L-22492, September 05, 1967).
23. Petitioner failed to file the required administrative protest against its 1992 deficiency income, VAT, withholding tax and expanded withholding tax (EWT) assessments. Hence, said assessments have become final, executory and demandable.
24. Petitioner failed to submit the required supporting documents within sixty (60) days from the filing of its protest on the tax assessments for taxable years 1994, 1997 and 1998, hence, said assessments have become final (Section 228 of the 1997 Tax Code). During the reinvestigation, petitioner did not present concrete evidence to overcome the presumption of validity and correctness attached to the assessments.

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<sup>5</sup> Pars. 5 and 6, Summary of Admitted Facts, JSFI, docket, pp. 147-148

<sup>6</sup> Pars. 7 and 8, Summary of Admitted Facts, JSFI, docket, p. 148

<sup>7</sup> Docket, pp. 98-105



25. The aforesaid assessments are based on facts, as a result of the investigation conducted by the revenue officers of the respondent, and determined in accordance with law.
26. Under Presidential Decree No. 1354, the gross income of sub-contractors entering into a *contract* with service contractors engaged in petroleum operations in the Philippines are exempt from all taxes (including VAT) except the 8% final income tax. The gross income specified in the said Decree do not include income that are earned from other sources (such as those income earned from petitioner's shipping, towing and tug rental services and leasing of vessels where the petitioner is not a *sub-contractor* to a service contractors engaged in petroleum operations in the Philippines). Such *petitioner's income from other sources* shall be subject to the regular income tax and VAT imposed under the Tax Code.
27. There is no showing that petitioner has entered into any contract with service contractors engaged in petroleum operations in the Philippines as *sub-contractor*. There is likewise no showing that petitioner's gross income for taxable years 1992, 1994, 1997 and 1998 were earned by the petitioner as sub-contractor of service contractors engaged in petroleum operations in the Philippines.
28. In the absence of any contract entered into by the service contractors engaged in petroleum operations in the Philippines which should be duly registered before the Department of Energy (Section 4 of Presidential Decree No. 1354), the petitioner could not validly claim that its business of transporting crude oil to a local destination would already categorize itself as sub-contractor mentioned under PD No. 1354.
29. Petitioner's business of transporting crude oil to local destination is within the scope of its service as a duly registered non-pioneer public utility engaged in inter-island shipping business. Thus, the petitioner's *shipping and/or tug rental income derived from other sources* shall not enjoy preferential tax treatment under PD No. 1354.
30. Petitioner's claim for 8% preferential tax treatment is akin to a claim of tax exemption. It is a basic and well-settled principle in taxation that *exemption is not favored and is never presumed*. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed in *strictissimi juris* (Catholic Church vs. Hastings, 5 Phil 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, October 28, 1966, 18 SCRA 488; Government vs. Monte de Piedad, 35 Phil 42; Asiatic Petroleum Co. vs. Llanes, 49 Phil 466; House vs.



Posadas, 53 Phil 338; Phil. tEl. & Tel. Co. vs. Collector, 58 Phil 639; Greenfield vs. Meer, 77 Phil 394; Collector of Internal Revenue vs. Manila Jockey Club, 98 Phil 670; Philippine Guaranty Co., Inc. vs. Commissioner of Internal Revenue, L-22074, September 8, 1965, 15 SCRA 1; Abad vs. Court of Appeals, L-20834, October 19, 1966, 18 SCRA 374)."

Pre-trial was held on June 20, 2003.<sup>8</sup> Thereafter, the parties filed their Joint Stipulation of Facts and Issues<sup>9</sup> on October 1, 2003.

Trial of the case proceeded, where both parties presented and formally offered their respective documentary and testimonial evidence.

Respondent filed his Memorandum on March 7, 2008; while petitioner filed its Memorandum on March 24, 2008.

However, on May 9, 2008, petitioner filed a Motion to Withdraw Petition for Review, alleging therein that it has availed of the Tax Amnesty Program under Republic Act No. 9480.<sup>10</sup> Petitioner also submitted the original copies of documents in support of the Motion.<sup>11</sup>

After hearing the Motion and petitioner's presentation of documents, this Court issued a Resolution dated March 19, 2009, partially granting petitioner's Motion and declaring the case as regards the issues on Income Tax, VAT, and Documentary Stamp Tax deficiencies closed and terminated, subject to the provisions of Republic Act No. 9480. Consequently, the case was submitted for decision covering the remaining issue on deficiency Expanded Withholding Tax and deficiency Withholding Tax on Compensation for taxable years 1992, 1994, and 1998. Hence this Decision.

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<sup>8</sup> Docket, p. 129

<sup>9</sup> Docket, pp. 146-150

<sup>10</sup> Docket, pp. 766-769

<sup>11</sup> Docket, pp. 797-811 and 814-817



Petitioner was assessed for its alleged deficiencies in Expanded Withholding Tax and Withholding Tax on Compensation, detailed as follows:

| Deficiency Expanded Withholding Tax (1992) <sup>12</sup> |          |                  |
|----------------------------------------------------------|----------|------------------|
| Basic Tax                                                | P        | 7,141.94         |
| 25% Surcharge                                            |          | 1,785.49         |
| 20% Interest to 1-10-96                                  |          | <u>5,152.02</u>  |
| <b>Total amount due</b>                                  | <b>P</b> | <b>14,079.45</b> |

| Deficiency Withholding Tax - Compensation (1992) <sup>13</sup> |          |                   |
|----------------------------------------------------------------|----------|-------------------|
| Total Withholding Tax                                          | P        | 318,807.12        |
| Less: Total amount remitted to BIR                             |          | <u>293,592.53</u> |
| Basic deficiency tax                                           |          | 25,214.59         |
| 25% Surcharge                                                  |          | 6,303.65          |
| 20% Interest to 1-18-96                                        |          | <u>18,910.94</u>  |
| <b>Total Tax Due</b>                                           | <b>P</b> | <b>50,429.18</b>  |

| Deficiency Expanded Withholding Tax (1994) <sup>14</sup> |          |                  |
|----------------------------------------------------------|----------|------------------|
| Deficiency tax due                                       | P        | 21,230.88        |
| Add: 25% Surcharge                                       |          | 5,307.72         |
| 20% Interest to 1-19-98                                  |          | 15,923.16        |
| Compromise                                               |          | <u>6,000.00</u>  |
| <b>Total tax due</b>                                     | <b>P</b> | <b>48,461.76</b> |

| Deficiency Expanded Withholding Tax (1998) <sup>15</sup> |   |                   |                    |
|----------------------------------------------------------|---|-------------------|--------------------|
| Sulu Venture:                                            |   |                   |                    |
| 1. Hired Services                                        | P | 79,162.87         | P 791.63           |
| 2. Rental                                                |   | 122,553.40        | 6,127.67           |
| 3. Class survey                                          |   | <u>374,540.03</u> | <u>3,745.40</u>    |
|                                                          |   |                   | P 10,664.70        |
| Phil. Sea                                                |   |                   |                    |
| 1. Class Survey (P383,208.61 x 1%)                       |   |                   | <u>3,832.09</u>    |
| Expanded withholding tax due                             |   |                   | 14,496.79          |
| Less: Tax paid                                           |   |                   |                    |
| Deficiency EWT                                           |   |                   | 14,496.79          |
| Add: 20% interest to 10-5-01                             |   |                   | <u>7,940.22</u>    |
| <b>Total Amount Due and Collectible</b>                  |   |                   | <b>P 22,437.01</b> |

Anent the issue on the validity of the assessments, this Court holds that the 1992 assessment for Expanded Withholding Tax is valid.

Section 229 of the National Internal Revenue Code (NIRC) of 1977, as amended, merely requires respondent to "first notify the taxpayer of his findings" that proper taxes should be assessed. There is no requirement that the notice should contain "the law and

<sup>12</sup> Exhibits "3" and "4"

<sup>13</sup> Exhibits "5" and "6"

<sup>14</sup> Exhibits "23" and "24"

<sup>15</sup> Exhibits "58" and "59"

the facts on which the assessment is made; otherwise, the assessment shall be void", which is found in Section 228 of the NIRC of 1997.

In **Commissioner of Internal Revenue vs. Bank of the Philippine Islands**<sup>16</sup>, the Supreme Court ruled:

"In merely notifying BPI of his findings, the CIR relied on the provisions of the former Section 270 prior to its amendment by RA 8424 (also known as the Tax Reform Act of 1997). In *CIR v. Reyes*, we held that:

In the present case, Reyes was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. She was merely notified of the findings by the CIR, who had simply relied upon the provisions of former Section 229 prior to its amendment by [RA] 8424, otherwise known as the Tax Reform Act of 1997.

First, RA 8424 has already amended the provision of Section 229 on protesting an assessment. **The old requirement of *merely* notifying the taxpayer of the CIR's findings was changed in 1998 to *informing*** the taxpayer of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid.

It was on February 12, 1998, that a preliminary assessment notice was issued against the estate. On April 22, 1998, the final estate tax assessment notice, as well as demand letter, was also issued. During those dates, RA 8424 was already in effect. **The notice required under the old law was no longer sufficient under the new law.** (emphasis supplied; italics in the original)

Accordingly, when the assessments were made pursuant to the former Section 270, the only requirement was for the CIR to 'notify' or inform the taxpayer of his 'findings.' Nothing in the old law required a written statement to the taxpayer of the law and facts on which the assessments were based. The Court cannot read into the law what obviously was not intended by Congress. That would be judicial legislation, nothing less.

Jurisprudence, on the other hand, simply required that the assessments contain a computation of tax liabilities, the amount the taxpayer was to pay and a demand for payment within a prescribed period. Everything considered, there was no doubt the October 28, 1988 notices sufficiently met the requirements of a valid assessment under the old law and jurisprudence.

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<sup>16</sup> G.R. No. 134062, April 17, 2007, citing Commissioner of Internal Revenue vs. Reyes, G.R. Nos. 159694 and 163581, January 27, 2006



The sentence

[t]he taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void

was not in the old Section 270 but was only later on inserted in the renumbered Section 228 in 1997. Evidently, the legislature saw the need to modify the former Section 270 by inserting the aforequoted sentence. The fact that the amendment was necessary showed that, prior to the introduction of the amendment, the statute had an entirely different meaning.

Contrary to the submission of BPI, the inserted sentence in the renumbered Section 228 was not an affirmation of what the law required under the former Section 270. The amendment introduced by RA 8424 was an innovation and could not be reasonably inferred from the old law. *Clearly, the legislature intended to insert a new provision regarding the form and substance of assessments issued by the CIR."*

As regards the assessments for deficiency Expanded Withholding Tax for 1994 and 1998, this Court notes that at the time when the Preliminary Assessment Notices (PANs) and Final Assessments Notices (FANs) were issued, the NIRC of 1997 was already in effect. Section 228 of the NIRC of 1997 provides:

"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 preassessment notice shall not be required in the following cases:

- (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
- (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
- (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
- (d) When the excise tax due on excisable articles has not been paid; or
- (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital



equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

**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.**

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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 appeal 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." *(Emphasis supplied)*

The above-quoted provision requires that the taxpayer must be informed of the law and the facts on which the assessment is made.

The PANs for deficiency Expanded Withholding Tax for taxable years 1994 and 1998 were not formally offered. Pursuant to Section 34, Rule 132 of the Revised Rules of Court, this Court shall not consider the same as evidence nor rule on their validity.

As regards the FANs for deficiency Expanded Withholding Tax for taxable years 1994 and 1998, the same do not show the law and the facts on which the assessments were based. Said assessments are therefore void for failure to comply with Section 228 of the NIRC of 1997.



As declared by the Highest Tribunal in **Commissioner of Internal Revenue vs. Reyes**<sup>17</sup>, "(u)nder the present provisions of the Tax Code and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void." Further, "(t)he law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence." Moreover, the legal and factual bases of the assessment cannot be presumed.<sup>18</sup>

From the foregoing, the only remaining valid assessment is for taxable year 1992.

On the issue on prescription, Section 203 of the NIRC of 1977 provides that internal revenue taxes shall be assessed within three (3) 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.

No evidence was formally offered to prove when petitioner filed its returns and paid the corresponding Withholding Tax on Compensation and Expanded Withholding Tax.

This Court notes however that the Preliminary Collection Letter<sup>19</sup> for deficiency taxes for taxable year 1992 was dated February 21, 2002. Five (5) years had already lapsed when the Preliminary Collection Letter was issued, counted from January 9, 1996, the date when the FANs for the deficiency Withholding Tax on Compensation and for the deficiency Expanded Withholding Tax were issued. Under Section 203 of the NIRC of 1977, respondent's right to collect the deficiency Withholding Tax on Compensation and the deficiency Expanded Withholding Tax for taxable year 1992 had already lapsed.

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<sup>17</sup> G.R. Nos. 159694 and 163581, January 27, 2006

<sup>18</sup> Commissioner of Internal Revenue vs. Enron Subic Power Corporation, G.R. No. 166387, January 19, 2009

<sup>19</sup> Exhibit "15"



**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. 25-1-00546-92 dated January 9, 1996 for deficiency Expanded Withholding Tax and Assessment Notice No. 25-1-000545-92 dated January 9, 1996 for deficiency Withholding Tax on Compensation are hereby **CANCELLED**.

**SO ORDERED.**



**LOVELL R. BAUTISTA**  
Associate Justice

WE CONCUR:



**ERNESTO D. ACOSTA**  
Presiding Justice



**CAESAR A. CASANOVA**  
Associate Justice

## **CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ERNESTO D. ACOSTA**  
Presiding Justice  
Chairperson, First Division