Lib

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OCEANIC WIRELESS NETWORK, INC.,
Petitioner,

-versus -

C.T.A. CASE NO. 4668

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

Promulgated:
SEP 16 1994

D E C I S I O N

This is a petition to review the denial of the protest filed by petitioner against the assessment issued by the respondent covering the total amount of P8,644,998.88 for various internal revenue tax liabilities.

It appears from the records that on March 17, 1988, petitioner received from respondent the following deficiency assessments for taxable year 1984, to wit:

Kind of Tax	Assessment No.	Amount
Deficiency income tax	FAR-4-1984-88-001130	P8,381,354.00
Penalties for late payment of income tax and failure to file quarterly returns	FAR-4-1984-88-001131	3,000.00

Deficiency contractor's tax	FAR-4-1984-88-001132	20,849.06
Deficiency fixed tax	FAR-4-88-001133	12,083.65
Deficiency franchise tax	FAR-4-84-88-001134	227,712.00

In a letter dated April 12, 1988, petitioner through counsel, filed its protest against subject assessments and requested for the reconsideration and/or cancellation thereof. In a letter dated January 24, 1991, the Chief, Accounts Receivables/Billing Division, acting for the Commissioner of Internal Revenue, reiterated the assessments and denied the petitioner's request for reinvestigation. Consequently, on October 10, 1991 and October 17, 1991, warrant of distraint and/levy and warrant of garnishment were served on the petitioner respectively on the said dates to enforce collection. Hence, this appeal by way of petition for review was filed by the petitioner on November 8, 1994.

Petitioner alleges that the right of the respondent to enforce collection has already prescribed considering the failure of the respondent to enforce the same within three (3) years from the issuance of the assessments pursuant to Section 223(c) of the Tax Code. Furthermore, that petitioner could not be held liable to pay said deficiency taxes because of the "in lieu of any and all taxes" provision of the petitioner's franchise under Republic Act No. 2357, as amended by R.A. 4555.

Respondent on the other hand, believes that this court has not acquired jurisdiction over this case because the decision of the respondent denying the protest has long become final and executory even before petitioner filed the instant petition for review. In other words, the assessments became final in view of the failure of the petitioner to institute the appeal within thirty (30) days from receipt of the final decision of the Commissioner of Internal Revenue. Granting for purposes of argument that the assessments are not yet final, the "in lieu of any and all taxes" provision in the franchise of petitioner has already been repealed by Section 2 of Republic Act No. 5431 dated June 27, 1968, by way of amendment to Section 24 of the National Internal Revenue Code. Furthermore, her right to enforce collection has not yet prescribed because the running of the prescriptive period has been suspended when petitioner filed its protest on

April 12, 1988 which was given due course by the respondent.

Based on the foregoing facts, the following issues are presented for resolution by this court:

(1) Whether or not this court has acquired jurisdiction over the disputed assessment;

(2) Whether or not respondent can still validly enforce her assessments;

(3) Whether or not the "in lieu of any and all taxes" provision in the franchise of petitioner has already been repealed by Section 2 of Republic Act No. 5431.

On the first issue, we find for the respondent.

The records will show that respondent denied the protest or request for reinvestigation filed by the petitioner in a letter dated January 24, 1991 signed by the Chief, Accounts Receivable/Billing Division for the Commissioner of Internal Revenue with a particular notation.on the left bottom side of the letter as follows:

> "Note: Your request for reinvestigation has been denied for failure to submit the necessary

> supporting papers as per endorsement letter from the Office of the Special Operation Service dated 12-12-90."

This receipt of denial of petitioner's protest was affirmed by its witness, Ms. Monna Brenda Camins, Finance Manager, during her direct examination (T.S.N., July 24, 1992, pp. 10-11). It was during this direct examination that said denial of protest was marked by petitioner's counsel as Exhibit "F". In the absence of proof of the exact date said denial was received by the petitioner, it is presumed that the same was received within reasonable time from January 24, 1991 in the regular course of mail pursuant to Section 2(v) of Rule 131 of the Rules of Court. The finality of the said denial of the protest is further supported by the fact that subsequently, the respondent served on October 10 and 17, 1991, warrants of distraint and/or levy and warrant of garnishment, respectively, to enforce collection of the deficiency taxes.

Petitioner filed the instant petition for review on November 8, 1991, counting the thirty (30) day period from the receipt of the aforementioned warrants, ignoring totally the denial of the protest which following the regular course of mail should have been received by the petitioner in one or two weeks time. Even if we will double this period, the filing of the petition for review will still be beyond the required thirty (30) day period. While the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as her final decision. In fact, this circumstance is a clearer manifestation of the finality of her decision taking into account the Supreme Court case of Surigao Electric Co., Inc. vs. Court of Tax Appeals, L-25289, June 28, 1974, (57 SCRA 523) wherein a mere demand letter was considered as the final decision of the Commissioner of Internal Revenue.

On the second issue, we find again for the respondent. Petitioner also completely ignored the fact that it filed a letter of protest and reconsideration on April 12, 1988 against subject assessments which was given due course by the respondent. This suspends the running of the statute of limitation as expressly provided under Section 224 of the Tax Code:

> "SEC. 224. *Suspension of running of statute.* - The running of the statute of limitation provided in Section 203 and 223 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 or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation 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 inform the Commissioner of any change of address, the running of the statute of limitations 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.)

Since the protest was finally decided by respondent on January 24, 1991, the issuance of the corresponding warrant of distraint and/or levy and warrant of garnishment on October 10 and 17, 1991, respectively, has not yet prescribed.

In view of the foregoing, the discussion of the third issue is no longer necessary. It becomes moot and academic to discuss the merits of the case considering the finality of the assessments.

WHEREFORE, the petition for review is hereby dismissed for lack of jurisdiction.

SO ORDERED.

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 among 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