REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BAY FOOD SPECIALITIES, INC.,
Petitioner,

-versus -   C.T.A. CASE NO. 4246

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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8/7/91

D E C I S I O N

This is a petition for review of the February 10, 1988 decision of respondent denying with finality petitioner's protest of the July 16, 1986 deficiency income, sales and expanded withholding tax assessments totalling to P1,665,934.97 covering the periods of 1981 and 1982.

The relevant material facts are not disputed.

Petitioner was a corporation duly organized under Philippine laws with principal office at Cabuyao, Laguna. Its corporate existence was shortened to October 31, 1985 by virtue of an amendment of its Articles of Incorporation duly approved by the Securities and Exchange Commission on November 5, 1985. (See Annex "A", p. 9, CTA rec.) That even though already dissolved petitioner still filed the instant petition for review pursuant to Section 122 of the Corporation Code which provides that the life of the corporation is extended for three years after the time when it would have been so dissolved for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs. (In re Voluntary Dissolution of Union Guaranty Co., C.A., 37 O.G. 545, March 2, 1939.)

On July 24, 1986, petitioner received a demand letter and assessment notices both dated July 16, 1986 issued by respondent allegedly for deficiency income, percentage (sales tax) and withholding taxes for 1981 and 1982 in the total amount of P1,665,934.97, summarized below:

1981	
Deficiency Income Tax ....P	467,951.52
Deficiency Expanded Withholding Tax	2,817.99
Deficiency Sales Tax	307,224.74
1982	
Deficiency Income Tax	519,857.76
Deficiency Sales Tax	368,082.96
T o t a l	P1,665,934.97

On August 1, 1986, petitioner protested the assessment and sought for its reconsideration. In two instances, petitioner sent two supplemental letters of protest, one dated August 6, 1986 and another October 14, 1986 to respondent in support of the original protest.

On May 14, 1987, petitioner received from respondent a letter dated April 8, 1987 reiterating his demand for the payment of the alleged deficiency sales taxes in the amounts of P307,224.74 for 1981 and P368,082.96 for 1982. However, with respect to the income and withholding tax aspect of the assessment petitioner was requested to submit to the Bureau of Internal Revenue additional documentary evidence inorder to fully evaluate the issues involved in this case.

On May 26, 1987, petitioner filed with the National Audit Review Division of the BIR a letter dated May 20, 1987 informing the Bureau of its availment of the tax amnesty under Executive Order No. 41, as amended by Executive Order Nos. 54 and 64 covering its income and business taxes for the years 1981 to 1985 (See Certificate of Availment, Annex "K", p. 29, CTA rec.) and the cancellation of the assessments issued on July 16, 1986 was requested. This was denied in the letter of Assistant Commissioner Imelda L. Reyes dated

October 9, 1987 stating that since the assessment was issued on July 16, 1986 or prior to August 21, 1986 the availment of the tax amnesty does not cancel the assessment issued prior to August 21, 1986.

On November 25, 1987, petitioner again wrote the Bureau thru Assistant Commissioner Imelda L. Reyes questioning the interpretation placed upon Executive Order No. 41, as amended, alleging that the Executive Order made no reference to the exclusion of tax assessments issued prior to August 21, 1986. No mention was made in the exception as provided under Section 4 of said Executive Order. Since it has complied with the legal requisites of the amnesty grant, the July 16, 1986 assessments should be cancelled.

Finally on March 7, 1988, petitioner received respondent's final decision dated February 10, 1988 reiterating his demand for the payment of the total amount of P1,665,934.97 as deficiency income, sales and expanded withholding taxes for 1981 and 1982.

Petitioner now appeals to this Court.

On the basis of the pleadings, petitioner submits this case for decision.

The only issues presented to Us for resolution are as follows:

1. Whether or not the immunities resulting from availment of the tax amnesty under E.O. No. 41, as amended, applies only to taxes assessed after August 21, 1986; and

2. Whether or not the deficiency assessments have factual and/or legal basis.

In the decision under review, respondent is of the impression as stated in Revenue Memorandum Order No. 4-87 that petitioner's availment of the tax amnesty under Executive Order No. 41, as amended, did not result in the cancellation of the assessments issued on July 16, 1986 since only those assessments issued after August 21, 1986 can be cancelled. To hold otherwise, would result in the retroactive, instead of prospective, application of the law (Annex "J", p. 28, CTA rec.).

Petitioner counters that respondent's ruling and interpretation of Executive Order No. 41, as amended, is erroneous. By the very nature of the tax amnesty and by the title of Executive Order No. 41, as amended by Executive Order No. 64, to wit:

> "DECLARING A ONE-TIME TAX AMNESTY COVERING INCOME TAXES, ESTATE AND DONOR'S TAXES UNDER TITLE III, AND THE TAX ON BUSINESS UNDER CHAPTER II, TITLE V, OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, FOR THE YEARS 1981-1985"

it only shows that the tax amnesty grant should be given retroactive application as the tax amnesty covers unpaid income and business taxes for the years 1981-1985. Also, nothing was mentioned in the excepting provision under Section 4 of Executive Order No. 41, as amended, that assessments issued prior to August 21, 1986 shall be excepted from the coverage of the tax amnesty decree. Following the rule "expressio unius est exclusio alterius", an express exception, exemption, or saving clause excludes others, assessment notices issued prior to August 21, 1986 being not one of those included in the exception under Section 4 of Executive Order No. 41, as amended, the reasonable conclusion reached is that this is not an exception to the coverage of the tax amnesty privilege.

This is not a case of first impression. In the recent case of R.O.H. AUTO PRODUCTS PHILIPPINES, INC. v. THE COMMISSIONER OF INTERNAL REVENUE, C.T.A. Case No. 4318, August 20, 1990, this Court has occasion to decide and rule that the provision under paragraph 1.02 and 1.02.3 of Revenue Memorandum Order 4-87, which states that a certificate of availment of the tax amnesty is a sufficient basis for the cancellation of assessment notices and letters of demand issued after August 21, 1986 for the collection of income, business, estate or donor's taxes due during the same taxable years, is beyond the scope of the statute granting the tax amnesty, pertinent portions of which reads as follows:

> "The intent of the given legislation, as always, is telling. A reading of this executive order giving amnesty shows the period covered - January 1, 1981 to December 31, 1985 (Section 1, Section 6, Executive Order No. 41, as amended). An amnesty affords total pardon or forgiveness (3 Words and Phrases 480, citing cases), as here promised by the order for all unpaid income, estate, donor's taxes and business taxes, and all civil, criminal, administrative liability that have arisen from non-payment of taxes in the above given period. (Underscoring supplied) On the other hand, an assessment is a notice of tax due with a demand for payment (Alhambra Cigar & Cigarette Mfg. Co. v. Commissioner, 105 Phil. 1337 unreported). An assessment can be abated or compromised on the administrative level (Section 295, National Internal Revenue Code, now Section 204) while an amnesty is an act of sovereign grace which obliterates an offense (Words and Phrases, supra) or as seen here, an act which relegates into oblivion all unpaid income, estate, donor's taxes and business taxes incurred during a given period. The impression created thus is that considering the nature of a tax assessment, its significance could not be more than that of an amnesty properly availed of. An assessment, even a deficiency assessment as in the instant case, cannot defeat the intended effects

of the amnesty because precisely, it is the purpose of the latter to forgive the non-payment of the taxpayer of his tax liabilities. The respondent who seeks to recover taxes due cannot demand something which, although previously due, is now non-existent or has been obliterated as a consequence of sovereign grace.

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Respondent failed to present any case or law which proves that an assessment can withstand or negate the force and effects of a tax amnesty. This burden of proof on the petitioner was created by the clear and express terms of the executive order's intention - qualified availers of the amnesty may pay an amnesty tax in lieu of said unpaid taxes which are forgiven (Section 2, Section 5, Executive Order No. 41, as amended). More specifically, the plain provisions in the statute granting tax amnesty for unpaid taxes for the period January 1, 1981 to December 31, 1985 shifted the burden of proof on respondent to show how the issuance of an assessment before the date of the promulgation of the executive order could have a reasonable relation with the objective periods of the amnesty, so as to make petitioner still answerable for a tax liability which, through the statute, should have been erased with a proper availment of the amnesty (Underscoring ours). (R.O.H Auto Products Phils., Inc. v. Commissioner of Internal Revenue, C.T.A. Case No 4318, August 20, 1990)

Citation

Additionally, the exceptions enumerated in Section 4 of Executive Order No. 41, as amended, do not indicate any reference to an assessment or pending investigation aside from one arising from information furnished by an informer.

"Section 4. Exceptions.- The following taxpayers may not avail themselves of the amnesty herein granted:

a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14;

> b) Those with income tax cases already filed in Court as of the effectivity hereof;
>
> c) Those with criminal cases involving violations of the income tax law already filed in court as of the effectivity hereof;
>
> d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;
>
> e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;
>
> f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandiganbayan;
>
> g) Those liable under Title Seven, Chapter Three (Frauds, Illegal Exactions and Transactions) and Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended.

Thus, we deem that the rule in Revenue Memorandum Order No. 4-87 promulgating that only assessments issued after August 21, 1986 shall be abated by the amnesty is beyond the contemplation of Executive Order No. 41, as amended. To paraphrase the cited previous declarations of the Supreme Court which were likewise recalled in the Tayug Rural Bank Case supra, administrative rules and regulations promulgated to implement

> given legislation should not be contraditory with the statute but conform to the standards which it prescribes (**Director of Forestry v. Munoz**, L-24796, June 28, 1968, 23 SCRA 1183). A rule would be binding on the courts if the scope is within the statute even if the courts are not in agreement with the policy therein or its innate wisdom (**Victorias Milling Co., Inc. v. Social Security Commission**, L-16704, March 17, 1962, 4 SCRA 627).

It appearing that the case at bar is likened under similar facts and circumstances obtaining to the case of **R.O.H. Auto Products Philippines, Inc.**, with the same principal question to contend with, We therefore adopt the aforesaid ruling.

In recognizing the validity of the tax amnesty privilege applicable to petitioner in this case, the second issue becomes moot insofar as the 1981 and 1982 deficiency income and sales tax assessments are concerned. Undeniably, the relative assessment notices issued to petitioner has no more leg to stand on after full compliance with the conditions set forth in Executive Order No. 41.

The Certificate of Availment dated November 27, 1987 (p. 29, CTA record) issued to petitioner showed full payment of the amnesty tax evidenced by: RTR/PO No. 9581587 and CR No. 10692780 dated

December 15, 1986. With this on hand petitioner is already relieved from any income and business tax liability on any untaxed income from January 1, 1981 to December 31, 1985, including increments thereto and penalties on account of the non-payment of the said tax.

The tax amnesty paid by petitioner does not however cover its 1981 deficiency expanded withholding tax assessment amounting to P2,817.99. The expanded withholding tax is one of those excepted from the coverage of the tax amnesty decree pursuant to Section 4(d) of Executive Order No. 41, as amended.

Although petitioner alleged payment on March 22, 1982 of its withholding tax on its rental income nowhere in the records show proof of payment. Failure on its part to present or attach the confirmation receipt is fatal to its claim that such was paid. It is incumbent upon petitioner to show proof of payment.

WHEREFORE, in view of the foregoing, the decision of respondent Commissioner of Internal Revenue dated February 10, 1988 is hereby MODIFIED.

Respondent is enjoined from enforcing the collection of P1,663,116.98 as deficiency income and business taxes for the years 1981 and 1982 by virtue of petitioner's availment of the tax amnesty under Executive Order No. 41, as amended.

Petitioner Bay Food Specialties, Inc. is ordered to pay respondent the sum of P2,817.99 as 1981 deficiency expanded withholding tax, inclusive of surcharge and interest, plus 20% annual interest pursuant to Section 40 of Presidential Decree No. 1994 which amended Section 283(c) [now Section 249(c)] of the National Internal Revenue Code.

Cost against petitioner.

SO ORDERED.

Quezon City, Metro Manila, August 7, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
Associate Judge

C E R T I F I C A T I O N

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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals