REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OBAYASHI PHILIPPINES CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 6222

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 22 2004

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D E C I S I O N

This petition seeks to cancel and withdraw the deficiency income, expanded withholding tax and value-added tax assessments allegedly issued by the respondent on December 9, 1998 against the petitioner for the taxable year ended 1995, in the total amount of P10,643,221.64.

The following are the facts as uncovered from the records of the case:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, engaged in the general construction business, with office address at the 7th Floor Corinthian Plaza Condominium, 121 Paseo de Roxas, Makati City.

On April 15, 1996 petitioner filed its Annual Income Tax Return *(Exhibit B)* for taxable year ended 1995.

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On February 14, 1996, petitioner's Application for Cancellation of Registration *(Exhibit E)* with RDO No. 34 was approved. On April 16, 1996, petitioner, with office address at 7th Floor Corinthian Plaza Condo, 121 Paseo de Roxas Ave., Makati City, submitted an Application for Registration *(Exhibit F)* and was subsequently issued a Certificate of Registration by RDO No. 47 – East Makati *(Exhibit G)*.

Respondent issued a pre-assessment notice dated November 6, 1998 for deficiency income *(Exhibit 9)*, value-added tax and expanded withholding tax *(Exhibit 11)* in the amounts of P3,898,653.52, P6,610,945.44 and P133,622.68, respectively, for the taxable year 1995.

Thereafter, respondent allegedly issued three formal assessment notices numbered 34-1-000032-95 *(Exhibit 12)* all dated December 9, 1998, demanding from the petitioner payment for the following deficiency internal revenue tax assessments: a) deficiency income tax – P3,898,653.52; b) deficiency expanded withholding tax – P133,622.68; and c) deficiency value-added tax – P6,610,945.44.

The deficiency income tax assessment for taxable year 1995 purportedly arose from unreported revenues in the amount of P7,085,346.52 and over statement of expense in the amount of P775.92, computed as follows:

Total Receipts	P 88,241,314.52
Less: Cost of unfinished contracts	28,195,455.00
Gross Revenue for the period	60,045,859.52
Revenue declared per return	52,960,512.70

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Unreported revenue		7,085,346.52
Overstatement expense		775.92
Net Income per Investigation		
	Subject to tax	7,894,625.44
	Tax Due	2,763.118.95
Less:	Tax Credit	220,463.55
	Basic Tax	2,452,655.40
	Interest	1,355,998.12
Total Tax Deficiency		P 3,898,653.52

As to the deficiency expanded withholding tax (EWT) assessment for taxable year 1995, it was arrived at as follows:

Payment to Subcontractor		(P45,410,536.36x1%)	P494,105.36
Security Services		(P12,606.00x1%)	126.06
Rental Services		(P50,835.00x5%)	2,541.75
Advertising Expense		(P1,200.00x1%)	12.00
EWT Payable			496,785.17
Less:	EWT Paid		413,270.99
	Deficiency EWT		83,514.18
Add:	Interest		50,108.50
Total EWT due			P133,622.68

While the deficiency value- added tax (VAT) assessment for taxable year 1995 was computed as follows:

Gross Receipts per investigation			P88,241,314.52
Output Tax Due			P 8,824,131.45
Less:	Input Tax per Return	P3,760,118.34	
	Input Tax Carry-over	185,329.51	3,945,451.85
VAT Payable			4,878,683.60
Less:	Payments Made		746,842.70
	Deficiency VAT		4,131,840.90
Add:	Interest		2,479,104.54
Total VAT due			P6,610,945.44

Petitioner avers that on March 20, 2000, it received through its Finance Manager Frances Grace B. Mercado, notice of the subject deficiency tax assessments, through a telephone call from Ms. Malou Castro of the Collection Division of the BIR, Revenue Region No. 6, who made a follow up on petitioner's reply to two (2) letters allegedly sent to the latter in relation to the subject deficiency tax assessments.

On March 30, 2000, petitioner, through its Finance Manager Ms. Mercado and Ms. Elsa Pita, secured photocopies of the said assessment notices.

On April 19, 2000, petitioner filed a letter protesting the subject deficiency tax and a supplemental protest letter was filed on June 19, 2000, reiterating its disagreement with the said deficiency tax assessments.

As respondent failed to act on petitioner's protest within 180 days, the latter filed the instant petition on January 15, 2001.

Respondent in his Answer filed on February 21, 2001, forwarded the following Special and Affirmative Defenses:

4. The assessment is valid and correct and the taxpayer has the burden of proof to impugn its validity (Behn Meyer & Co. v. Collector of Internal Revenue 27 Phil. 647). Thus, similarly held, tax assessments by tax examiners are presumed correct made in good faith. The taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue v. Construction Resources of Asia, Inc., 145 SCRA 671), and assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed (Gutierrez v. Villegas 8 SCRA 527);

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5. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right (Tan Guan v. Court of Tax Appeals et al. 19 SCRA 902); otherwise, the presumption in favor of the correctness of the assessments stand (Inter-provincial Bus Co., v. Collector of Internal Revenue, 98 Phil. 290; Collector of Internal Revenue v. Bohol Land Transportation Co., 107 Phil. 967);

6. In accordance with Section 237 of the Tax Code, as amended, a formal notice of change of address is required in order that the running of the statute of limitations to assess will not be suspended and for prescription to get in. An application for cancellation of registration duly approved by the Revenue District Officer concerned is not sufficient compliance with Section 237 of the Tax Code;

7. The assessments have already become final, executory and unappealable (Section 228, Tax Code of 1997), hence, petitioner has no cause of action against respondent.

The parties in their Joint Stipulation of Facts and Issues filed on May 3, 2001, stipulated the following issues to be resolved, to wit:

1. Whether or not the deficiency income, expanded withholding tax and value-added tax assessments for taxable year 1995 issued against the petitioner are void on the ground that the formal assessment notices do not state the law and the facts on which the assessments were made;

2. Whether or not the right of the Bureau of Internal Revenue to issue the deficiency income, expanded withholding tax and value added tax assessments against petitioner for taxable year 1995 has already prescribed;

3. Whether or not petitioner correctly reported in its Annual Corporate Income Tax Return for taxable year 1995 its taxable gross income from long term construction contracts using the completion-of-contract method.;

4. Whether or not the petitioner properly withheld and remitted to the BIR the proper withholding taxes due from expense payments it made for taxable year 1995, which are subject to the expanded withholding tax under Revenue Regulations No. 6-85, as amended;

5. Whether or not the petitioner declared its correct gross receipt subject to value-added tax when it filed its value-added tax returns for the four (4) quarters of taxable year 1995.

This court finds it wise to first resolve the issue of prescription as it is determinative of whether or not this court needs to dispose of the other issues presented.

The petitioner claims that the right of the government to issue the deficiency income, EWT and VAT assessments for the taxable year 1995 has already prescribed. The subject deficiency tax assessments were allegedly sent to its former address although long before the issuance of said assessments on December 9, 1998, petitioner had already served the BIR a notice of its transfer of office address to 7th Floor Corinthian Plaza Condominium, 121 Paseo de Roxas Street, Makati City. Petitioner submitted as evidence thereof an Application for Cancellation of Registration *(Exhibit E)*, Application for Registration *(Exhibit F)* and Certificate of Registration *(Exhibit G)*. Thus, petitioner maintains that it only learned of the said assessments on March 20, 2000, when a certain Ms. Malou Castro of the Collection Division of BIR Region No. 6 Manila, called up its Finance Manager, Ms. Frances Grace Mercado, to make a follow up on its reply to the two letters allegedly sent

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earlier relative thereto. Petitioner, further asserts that it was only on March 30, 2000 that it secured photocopies of the deficiency tax assessments against the petitioner for taxable year 1995 through Ms. Mercado and Ms. Elsa Pita. Accordingly, petitioner concludes that the right of the respondent to issue the said deficiency tax assessments had long prescribed even before petitioner learned of the existence of such deficiency.

Respondent, on the other hand, argues that in accordance with Section 237 of the Tax Code, as amended, a formal notice of change of address is required in order that the running of the statute of limitation to assess will not be suspended and for prescription to set in. An application for the cancellation of registration duly approved by the Revenue District Officer concerned is not sufficient compliance with said Section 237.

We rule for the petitioner.

It cannot be denied that through its Application for Cancellation of Registration two years before the issuance of the questioned assessment notices, respondent had knowledge of petitioner's change of address. Petitioner's Application for Registration with RDO No. 47 as well as the Certification of Registration issued by RDO No. 47 already bore the address "7th Floor Corinthian Plaza Condo., 121 Paseo de Roxas, Legaspi Vil., Makati City". This fact is admitted

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by the respondent when he stipulated in the Joint Stipulation of Facts and Issues, that:

> "1. Petitioner is a domestic corporation duly organized and existing under and by virtue of the Philippines, engaged in the general construction business, with office address at the 7th Floor, Corinthian Plaza Condominium, 121 Paseo de Roxas, Makati City."

Section 223 of the NIRC of 1997 provides in part:

> SEC. 223. *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 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 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 informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended. (Underscoring supplied)

Assuming, for the sake of argument, that respondent was not formally notified of petitioner's change of address, still, the assessment notices cannot be considered as having been validly issued since petitioner denied receipt thereof.

The respondent alleges that the tax assessment notices all numbered 34-1-000032-95 representing deficiency income, expanded withholding and value added-tax in the aggregate amount of P10,643,221.64 for taxable year 1995 were sent through registered mail under Registry Receipt No. 79316 *(Exhibit 18-b)* as testified to by his witness Teresita Maglunog *(TSN, September 1, 2003)*. However, petitioner insists that it only learned of the subject assessments on March 20, 2000, when a certain Ms. Malou Castro of the Collection Division of BIR Region No. 6 Manila,

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called up its Finance Manager, Ms. Frances Grace Mercado, to follow up on its reply to the two letters the Bureau allegedly sent petitioner.

Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The Supreme Court held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption, subject to controversion and a direct denial thereof shifts the burden on the party favored by the presumption to prove that the mailed letter was indeed received by the addressee *(Republic v. Court of Appeals, 149 SCRA 351; CIR v. Arnoldus Woodworks Intl. Inc., CTA Case No. 4269, March 18, 1994).*

We quote Section 3 par. (v) of Rule 131 of the Revised Rules of Court, to wit:

> SEC.3. *Disputable presumptions.* - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail.

In the case at bar, petitioner denied receipt of the assessment notices allegedly mailed by the respondent. And respondent miserably failed to substantiate his claim as he failed to present the documentary evidence that would

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prove that indeed the assessment notices were mailed to the petitioner. This court in a resolution on respondent's formal offer of evidence, promulgated on January 14, 2004, resolved to admit all the exhibits of the respondent except Exhibits 15, 15-A, 18, 18-A and 18-B. The registry receipt *(Exhibit 18-B)* and transmittal records *(Exhibits 18 and 18-A)* were denied admission because of respondent's failure to submit the said document to this court to form part of the records of this case *(CTA Records, page 274)*.

Therefore, before any presumption in law that a letter claimed to be sent by one party to another has been received by the addressee may arise, it must first appear that the letter so sent was properly addressed to the addressee at his post office address, was properly stamped with sufficient postage thereon, and was deposited in some post office or some division of postal department, where mail may properly and legally be deposited for collection *(Remedial Law Vol. VI, 1999 Ed., Herrera, page 102 citing 20 Am. Jur. 198-199: Enriquez v. Sun Life Assurance Co. of Canada, 81 Phil 218; Nava v. Commissioner of Internal Revenue, G.R. No. L-19470, Jan. 30, 1965)*.

Furthermore, under Section 203 of the NIRC of 1997, it is provided that:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, 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: *Provided*, That in case where a return is filed

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> beyond the period prescribed by law, the three (3)-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.

This case involves deficiency assessments for the taxable year 1995. Petitioner filed its Corporate Annual Income Tax Return on April 15, 1996 for the taxable year ended 1995 *(Exhibit B)* so respondent had only until April 15, 1999 within which to assess petitioner for deficiency income taxes for the year 1995. The assessment notices *(Exhibits A, A-1 and A-2)* all dated December 9, 1998 issued by respondent, as revealed by the records in this case, came to the knowledge of petitioner only on March 20, 2000 as it never received the said notices allegedly mailed by the respondent to petitioner's former address. Clearly then, the right of the respondent to issue a deficiency income tax assessment against the petitioner for the year 1995 has already prescribed.

As regards the deficiency expanded withholding taxes, the reckoning date of the three-year period to assess is ten days from the filing of petitioner's monthly remittance return. Based on the evidence submitted by petitioner *(Exhibits GG to RR)*, for respondent to validly issue deficiency withholding tax assessment for all the months of 1995, he had to do so by February 9, 1998. The assessment notice therefor was dated December 9, 1998, so even assuming that the subject assessment notice was received by petitioner as soon as it was issued, nevertheless, the right of the respondent to issue the same for the months of January to November of 1995, would have already prescribed.

Likewise, the right of the respondent to issue the deficiency value-added tax assessment for the year 1995 has already prescribed.

The counting of the three-year period to assess any deficiency VAT begins on the date of filing of each of the quarterly VAT returns which under the applicable law should be made not later than the 25th day of the month following the close of the VAT taxable quarter. In the present case, the three-year periods for the respondent to validly issue the deficiency VAT assessments for the four quarters of 1995 are as follows:

Exhibit Marking	**Period Covered**	**Date of Filing**	**End of 3-year Period**
CC	1ST Quarter	April 20, 1995	April 19, 1998
DD	2nd Quarter	July 1995	July 1998
EE	3rd Quarter	October 20,1995	October 19, 1998
FF	4th Quarter	January 26, 1996	January 25, 1999

In order for the respondent to issue a valid VAT deficiency assessment against petitioner for all the four quarters of 1995, he should have issued the same before April 19, 1998. Thus, assuming *arguendo* that the deficiency VAT assessment was received by the petitioner as soon as it was issued, the assessment for the first three quarters of 1995 would still be void for being issued out of time.

However, as already discussed, respondent failed to prove that petitioner received the assessment notices for deficiency income, expanded withholding and value-added taxes covering the year 1995, and that petitioner only learned of such assessments on March 20, 2000. Undoubtedly, all the assessment notices including the VAT assessment allegedly issued on December 9, 1998, are void for being issued beyond the three-year period allowed by law.

Indeed, the purpose of the limitation of issuance of assessments likened to that of actions for collection of taxes must be highlighted. And to reverberate the words of the Supreme Court in *Republic of the Philippines v. Luis G. Ablaza, 108 Phil. 1105*, thus:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law abiding citizens. Without such a legal defense, taxpayer would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.

In view of the foregoing, it is unnecessary to delve on the other issues presented before us for resolution.

WHEREFORE, the Assessment Notices numbered 34-1-000032-95, all dated December 9, 1998, issued against petitioner for deficiency income, expanded withholding and value-added taxes covering the year 1995 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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