REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI DATA SYSTEMS CORPORATION
(formerly FILIPINAS MANAGEMENT
and LEASING SERVICES, INC.),
Petitioner,

- versus - C.T.A. CASE NO. 4530

1/12/94

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

DECISION

This is a petition seeking for a refund of creditable taxes withheld from income payments in the calendar year 1988.

Petitioner is a subsidiary of the Bank of Philippine Islands which provides computer services to the bank for a monthly fee. On April 17, 1989, the petitioner filed its annual income tax return (Exh. "A") for the calendar year 1988 reflecting creditable taxes withheld in the amount of P140,020.00. On December 07, 1990, it filed with the respondent a claim for the refund of the said amount and on January 2, 1991, without receiving any response from the respondent, it filed this instant petition. However, pending this petition, an examination for possible tax deficiency was conducted by the respondent's examiner who, during the last hearing of this case testified that an assessment notice for deficiency tax was allegedly sent to the petitioner on April 14, 1992 in the amount of P3,735,381.12. On this sole basis, the respondent seeks to refute the present action claiming that the issuance of the deficiency assessment constituting the greater amount precluded the granting of the refund. However, a cursory perusal of the assessment notice submitted in evidence by the respondent (Exh. "G") would reveal an absence of a registry receipt or any proof of mailing or receipt thereof. On the other hand, in support of its claim, the petitioner submitted in evidence, among others, certificates of tax withheld (Exh "B" to "B-9") duly issued by the respondent.

The only issue in this case, therefore, is whether the assessment for deficiency tax in the amount of P3,735,381.12 will preclude the grant of the petitioner's claim for the refund of creditable taxes in the amount of P140,020.00.

We rule in favor of the petitioner.

An assessment is a written notice that the amount stated therein is due as a tax and containing a demand for payment thereof. In this regard, the law has provided the taxpayer with ample remedies to give him an opportunity to contest or dispute an assessment to which he is being made liable to pay. Section 229 of the National Internal Revenue Code provides:

> SEC. 229. *Protesting of assessment.* - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form or manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
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> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.

Aside from requiring the respondent to send a pre-assessment notice, the law grants the taxpayer a right to file its protest on both the said notice and resulting assessment.

In the case at bar, not only did the respondent fail to give a prior notice to the petitioner of his findings before issuing an assessment, it likewise failed to establish by competent proof that he indeed sent a copy of the assessment to the petitioner. Thus, during the last hearing of the case held on May 22, 1992 the following transpired:

"xxx xxx xxx

Q. Did you also verify whether the taxpayer was sent a pre-assessment notice before this assessment was sent?

A. That I did not verify, Your Honor.

Q. But you are aware that under the Internal Revenue Code before an assessment is sent to a taxpayer there must be a pre-assessment notice giving the taxpayer at least ten days from receipt of the pre-assessment notice to come to the Bureau and examine the findings of the examiner, you are aware of that?

A. But I did not, for me it doesn't matter anymore after I have submitted my report because I believe it is not my authority to do that.

Q. I am not asking you whether, I realize Mr. Zerrudo that it is not your duty to send the pre-assessment notice. It is a duty that devolves upon your superiors. I am aware of that.

A. Yes, Sir.

Q. I am only asking you whether as an experienced examiner you are aware of the procedures in the sending of the assessments?

A. Well, Your Honor, I agree with you. That should have been the case.

Q. Now, this assessment letter is supposed to have been released or mailed April 14, 1992.

I wish to make of record, Your Honor, that it is now May 22, 1992 and the taxpayer has not yet received this.

A. I will ask again the Assessment Branch to certify that. I will do that.

Q. And in the meantime, it is supposed to have mailed, according to this paper you showed me on April 14, 1992 under Registry No. blank. Do you realize that when an assessment is sent it is sent by registered mail. Are you aware of that practice?

A. Yes.

Q. And therefore the mailing clerk attaches, puts down the registry number, Post Office Registry Number. Did you ask why there is no registry?

A. No, Your Honor, I did not ask anymore. I only asked a service copy of this." (Testimony of Revenue Examiner Graciano Zerando, pp. 39-f to 39-i, CTA resords)

Curiously enough, a mere perusal of the assessment notice allegedly sent by the respondent reveals that the respondent has left blank the space provided for the words "REGISTRY NO." stamped across its face.

One of the most basic and fundamental precept of law enshrined in the Constitution is that no person shall be deprived of his property without due process of law (Sec. 1 Art.III, 1987 Constitution). The pervasiveness of the right to due process reaches out to both substantive and procedural rights, regardless of their source, be it the constitution, or only a statute or a rule of court (**Tupas vs. Court of Appeals**, 193 SCRA 597). The procedure granted by law under Sec. 229 of the National Internal Revenue Code is a ***statutory right of the taxpayer*** which cannot be wantonly disregarded without violating the taxpayer's right to due process.

In the observance of procedural due process, this Court is always mindful that a taxpayer being made liable with his property be given an opportunity to be heard which is one of its essential elements (**Banco Español vs. Palanca** 37 Phil.921). With the failure of the respondent to strictly comply with the procedure prescribed by law and for the failure of the petitioner to receive a copy of the alleged assessment, the latter was not afforded its right to be heard for it was denied the opportunity to protest or dispute the alleged assessment. The respondent utterly failed to establish that the assessment it has conducted is a disputed assessment whereby "the taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he believes he is not liable therefor". (Morales vs. Collector of Internal Revenue, 17 SCRA 1018).

Had the taxpayer been given the opportunity to dispute the questioned assessment, then the same may have been given due consideration. In the absence of any showing that administrative remedies granted by law has been properly exhausted or that petitioner has failed to file a protest on the assessment within the prescribed period despite receipt thereof, this Court could not bestow the presumption of correctness on the said assessment. This Court has made a pronouncement, which was duly affirmed by the Supreme Court in the case of Collector of Internal Revenue vs. Benipayo (4 SCRA 182), to wit:

> "To our mind, the appealed decision has no factual basis and must be reversed. an assessment fixes and determines the tax liability of a taxpayer. As soon as it is

> served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical presumptions may be. x x x
>
> In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest or another presumption x x x. In the case under consideration there are no substantial facts to support the assessment in question. x x x" (Underscoring supplied)

In the same vein, with the absence of the service of the corresponding notice of the alleged assessment, there exists no obligation on the part of the petitioner to pay to the respondent any of the amount stated therein, and more importantly, the petitioner has no existing liability to the State from which we could set-off or preclude the granting of the present claim for refund which stands uncontroverted. At most, the assessment should proceed independently of the claim for refund and may be prosecuted by her following the procedure laid down by law bearing in mind that due process is also part and parcel of administrative procedure.

WHEREFORE, judgment is hereby rendered ordering the respondent to refund to the petitioner the amount of P140,020.00 representing creditable taxes withheld for the calendar year 1988.

SO ORDERED.

Quezon City, Metro Manila, January 12, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that the 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