REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CORPORATE INFORMATION SOLUTIONS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5919

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 0 1 2003

x - x

DECISION

This case seeks (1) for a temporary restraining order and/or writ of preliminary injunction to enjoin the respondent and his agents from any and all attempts to collect from the petitioner the tax, surcharge, and interest subject of this petition; (2) the declaration of nullity of the Warrant of Distraint and/or Levy No. NCTF 177-95 dated May 5, 1999; (3) the declaration of nullity of the assessment notice involving petitioner's alleged deficiency income, value-added and withholding taxes in the total amount of P10,768,756.16, for being issued beyond the three-year reglementary period and for being bereft of basis.

The antecedent facts as culled from the records are as follows:

Petitioner is a corporation organized and existing under and by virtue of Philippine laws with address at the Computer Services Building, Meralco Center, Ortigas Avenue, Pasig City *(par. 3, Petition for Review)*.

Petitioner filed and paid its income tax return for the taxable year 1994 on April 17, 1995, as evidenced by its Annual Corporate Income Tax Return *[par. 5(a), Petition for Review; Exh. "D")*.

Petitioner likewise filed its value-added tax returns and paid the corresponding value-added tax throughout taxable year 1994, and its last filing of value-added tax return was on January 20, 1995 *[par. 5(b), Petition for Review; Exhibits "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", inclusive of sub-markings]*.

It had filed, withheld and remitted the required withholding taxes throughout the taxable year 1994 and its last remittance was made on January 24, 1995. *[par.5(c), Petition for Review; Exhs. "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", and "P", inclusive of submarkings]*.

On August 18, 1995, respondent issued Letter of Authority No. 96827 *(Exh. "EE")* for the examination of petitioner's income, VAT, withholding and documentary stamp taxes for the period covering January 1, 1994 to December 31, 1994.

On October 8, 1998, respondent issued a Pre-assessment Notice for alleged deficiency income, value-added and withholding taxes for the taxable year 1994, which was received by petitioner on December 3, 1998 *(Exh. "FF")*.

On December 17, 1998, petitioner filed a protest letter with the Chief, Assessment Division, Revenue Region No. 7 of the Bureau of Internal Revenue *(Exh. "GG")*.

Respondent allegedly failed to respond to the aforementioned protest letter.

In the meantime, on July 1, 1999, respondent, without allegedly issuing a final assessment notice, served a Warrant of Distraint and/or Levy No. 177-95 dated May 5, 1999 *(par. 12, Petition for Review; Exhibit HH)*.

Consequently, on July 19, 1999, petitioner filed a letter of even date (*Exhibit "JJ"*) contesting the issuance of the said Warrant of Distraint and/or Levy. The warrant was issued for petitioner's alleged deficiency in income, value-added, and withholding taxes for taxable year 1994, amounting to Ten Million Seven Hundred Sixty Eight Thousand Seven Hundred Fifty Six Pesos and 16/100 (P10,768,756.16).

Petitioner discovered that a Waiver of the Statute of Limitations (*Exhibit "KK"/Exhibit 1*) was executed by Mr. Sergio J. Javellana, petitioner's former president. It was likewise discovered that a final assessment has been issued, but petitioner was allegedly not served a copy thereof. It is the position of the petitioner that the waiver which was purportedly signed by Mr. Javellana was spurious for the signature of Mr. Javellana is a forgery and Mr. Javellana could not have signed the waiver on March 19, 1997 because he had already resigned as president of petitioner way back September 19, 1996. Furthermore, it contended that the BIR's issuance of the warrant was a clear violation of due process. Petitioner was never given an opportunity to dispute any assessment prior to the issuance of said warrant.

Unable to receive any response from the respondent, and considering that almost thirty (30) days had lapsed since petitioner's receipt of the Warrant of Distraint and/or Levy, the instant Petition for Review was filed with this court on July 30, 1999.

In his Answer filed on October 8, 1999, respondent advanced the following Special and Affirmative Defenses:

> "17. That a final Assessment Notice with No. 000181 was issued on December 15, 1998 and mailed to petitioner on December 16, 1998, informing petitioner of its deficiency withholding tax in the amount of P104,765.96 and its deficiency income tax of P10,663,990.20 exclusive of interest. Petitioner never protested the same which Assessment Notices became final, unappealable and executory, hence, this Court has no jurisdiction to try this case;

18. That petitioner submitted a protest letter on the Preliminary Notice on December 17, 1998 but failed to protest the Final Assessment Notices which were issued on December 15, 1998 and mailed to herein petitioner on December 16, 1998 by the BIR herein respondent, hence, the said Assessment Notices became final, unappealable and executory and this Court has no jurisdiction to try this petition.

19. That on March 19, 1997, petitioner submitted a waiver of the Defense of Prescription with a period up to December 31, 1998, signed by the president of the corporation Sergio J. Javellana and on the part of the BIR – Revenue District Officer Aguinaldo L. Miravalles.

    The waiver was filed and submitted by herein petitioner. It was signed by its president when the same was received by the respondent. How can petitioner now claim that the signature appearing therein was forged and an insinuation that it was respondent who did the same. How can it now claim that Mr. Sergio J. Javellana who signed the waiver as the president of the corporation was no longer the president of the said corporation during that period, when the waiver was filed and submitted by the representative of the corporation.

    The respondent has no knowledge as to who was the president at that time it merely relies on the information and documents submitted by the petitioner-corporation.

20. That petitioner failed to protest the Final Assessment which it should have done before filing this petition;

21. The Assessment Notices not having been protested by petitioner became final, unappealable and executory hence, the instant petition should be dismissed as this Honorable Court has no jurisdiction over this case as the period within which to appeal has already lapsed.

Petitioner filed its Reply on November 26, 1999 refuting the allegations of respondent in his Answer, to wit:

> "1.1 Respondent merely makes a sweeping allegation that a Final Assessment Notice was sent to Petitioner without alleging any fact or adducing any proof that the said Final Assessment Notice was ever received by Petitioner.

a. Respondent even failed to attach a copy of the Final Assessment Notice, thereby lending doubt to the veracity of the Respondent's claim that such a Final Assessment Notice was ever issued.

b. Respondent even contradicts himself – in paragraph 1 of the Answer, he states that the Final Assessment Notice was issued, sent and mailed on December **16**, 1998, and yet, in paragraph 18 of the same Answer, he alleges that the Final Assessment Notice was issued on December **15**, 1998.

1.2 Even assuming *arguendo* that a Final Assessment Notice was served on the Petitioner in December 1998, the authority of the Respondent to issue such an assessment had already prescribed, considering that the said assessment covers the taxable period 1994.

1.3 Respondent failed to sufficiently allege the factual or legal basis for his denial of the Petitioner's allegation in paragraph 14(a) of the Petition that the signature appearing in the Waiver of the Statute of Limitations dated March 19, 1997 is a forgery (the "forgery allegation") thereby rendering the Respondent's denial ineffectual and the Petitioner's allegation of forgery deemed admitted.

a. Under Rule 8, Sec. 10 of the Revised Rules of Court, which is supplemental in nature to the Rules of the Court of Tax Appeals, a defendant is required to set forth the substance on which his denial is based.

b. Respondent merely stated that "she [sic] specifically denies the allegations contained in paragraphs 14; a... of the petition" without specifically setting forth the facts on which he denies the allegation of forgery.

c. **A denial is not specific merely because it is so qualified by the defendant.** An answer which merely "denies generally and specifically each and every allegation contained in each and every paragraph of the complaint" is but a general denial[1], thereby rendering the material allegations of the complaint to be deemed admitted[2].

d. Having failed to make a specific denial in accordance with the Revised Rules of Court, the Respondent is deemed to have admitted the said allegation of forgery.

2. Petitioner specifically refutes the allegations contained in paragraph 5 of the Answer, wherein Respondent alleges that he has no knowledge or information regarding the Petitioner's filing of tax returns for the taxable

---

[1] Agton vs. Court of Appeals, 113 SCRA 322, 328; citing El Hogar Filipino vs. Santos, 74 Phil. 70.
[2] *Ibid.*, citing Lichauco vs. Guash, 76 Phil 5.

year 1994. Considering that Respondent is the Commissioner of Internal Revenue, he certainly has the means and ability to determine the veracity of the said allegations. Thus, his denial of these allegations are unavailing:

> xxx the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a believe as to the truth of an averment and giving such an answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be probably untrue.[3]

3. Petitioner specifically refutes the allegations contained in paragraph 7 of the Answer stating that the allegations on the last day for filing of tax returns are conclusions of law. The truth in said allegations are merely lifted from the National Internal Revenue Code and implementing regulations which the Respondent is very much in a position to know or verify. As with his ineffectual denial in paragraph 5 of the Answer, his denial contained in paragraph 7 should be deemed devoid of merit.

4. Petitioner specifically refutes the allegations contained in paragraph 16 of the Answer, wherein the Respondent alleges that "the BIR, Legal Division has notified petitioner to furnish it with documents needed to resolve the issue but petitioner has not complied with it up to this time", the truth being that, as early as September 9, 1999, which was almost a month prior to the date of the Answer (i.e., October 1, 1999), Petitioner, through counsel, had already delivered the documents required by the Legal Division of the Bureau of Internal Revenue. A photocopy of Petitioner's compliance is hereto attached as Annex "A" hereof.

During the hearing held on January 27, 2000, respondent's counsel denied six (6) of the paragraphs/matters proposed for stipulation by petitioner's counsel in his Pre-Trial Brief. Such being the case, the court ruled that "no Joint Stipulation of Facts and Issues would be feasible and thus, ordered for the TERMINATION of Pre-Trial." A Resolution promulgated on February 2, 2000 was issued confirming such order.

However, since the issue on jurisdiction was raised, respondent's counsel was given twenty (20) days from receipt of the resolution within which to file a Motion to Dismiss.

---

[3] Capital Motors Corporations vs. Yabut, 32 SCRA 1

On February 18, 2000, respondent filed a "Motion to Dismiss" on the ground of lack of jurisdiction. Respondent claimed that the instant petition for review was filed before this Honorable Court on July 30, 1999, or several months after the Final Assessment Notices bearing the No. 000181 were issued on December 15, 1998, pertaining to petitioner's deficiency withholding tax in the amount of P104,765.96 and its deficiency income tax of P10,663,990.20, exclusive of interest. (*Annexes"A" and "B", Motion to Dismiss*). He stated further that said assessment notices were mailed to petitioner on December 16, 1998 as evidenced by a photocopy of the certified copy of the transmittal of mailing (*Annex "C", Motion to Dismiss*).

For petitioner's failure to protest the aforesaid final assessment notices within thirty (30) days from receipt thereof, the same became final, unappealable and executory. Thus, respondent maintained the view that this court had no jurisdiction over the instant case.

On March 17, 2000, petitioner filed its "Opposition (To the Motion to Dismiss dated February 15, 2000)" and asserted that said motion is simply unwarranted and baseless since respondent failed to adduce any evidence to show when, if ever the final assessment notices were received by petitioner.

Finding the fact of receipt as relevant and material for the proper disposition of the instant case, the court in a resolution promulgated on June 21, 2000 set the case for hearing and allowed the contending parties to substantiate their respective allegations.

Petitioner contended that the taxes sought to be collected by respondent have already prescribed since the subject assessments were issued beyond respondent's right to assess within the three-year period.

Respondent, on the other hand, alleged that the assessments were valid since a Waiver of the Defense of Prescription Under the Statute of Limitation of the National

Internal Revenue Code (NIRC) was executed by petitioner's former President, Mr. Sergio J. Javellana.

However, petitioner assailed the purported signature of Mr. Javellana as forged. Thus, on November 27, 2000, petitioner filed a motion for the examination of the authenticity of the signature of Mr. Javellana for examination by the National Bureau of Investigation *(Exh. "KK")*. The court denied the motion in a resolution promulgated on December 13, 2000. But, petitioner was given the opportunity to submit other evidence documentary and/or testimonial to disprove the authenticity of the signature of Mr. Sergio Javellana on the waiver.

During the hearing held on May 17, 2001, respondent moved for leave of court to file a "Motion for Demurrer to Evidence". Respondent in said motion sought for the dismissal on the ground that petitioner never protested nor challenged the correctness of the Final Assessment issued by the respondent, hence, the assessment has become final and unappealable. The court denied the motion in its resolution promulgated on August 14, 2001 (*pp. 380-383, CTA Docket*).

During the hearing held on June 13, 2002, respondent was declared to have waived his right to present further evidence due to his several absences. On August 9, 2002, respondent filed a Motion for Reconsideration to allow the presentation of additional evidence. This was denied by the court in a resolution promulgated on October 4, 2002 but respondent was allowed to file his Formal Offer of Evidence. Petitioner filed its memorandum while respondent opted not to file a memorandum. This case was then submitted for decision on May 29, 2003 (*CTA Records, page 468*).

The court is now tasked to resolve the following issues:

1. Whether or not respondent's right to assess petitioner has already prescribed;

2. Whether or not there was a valid waiver of the defense of prescription on the part of petitioner.

Considering that the issues are interrelated, they shall be jointly discussed.

Petitioner contended that respondent's right to assess has already prescribed. Although a pre-assessment notice was sent by respondent, there was, however, no Final Assessment Notice sent to the former pertaining to its deficiency income, withholding and value-added taxes for the taxable year 1994. Respondent, thereafter issued a Warrant of Distraint and/or Levy No. NCTF 177-95 for the collection of petitioner's deficiency income, value-added and withholding taxes for the taxable year 1994 amounting to P10,768,756.16.

Respondent, however, countered that he issued Final Assessment Notices bearing the No. 000181 dated December 15, 1998. These final assessment notices were allegedly sent and mailed to petitioner on December 16, 1998 but were never protested, thus, the same became final, executory and unappealable.

We do not agree.

Where the taxpayer has disputed the fact of receipt of the Final Assessment Notice, the burden of proving that a final assessment notice has in fact been sent to the taxpayer and which was duly received, is shifted upon the Government. In one case, the Supreme Court held that where the taxpayer-addressee makes a direct denial of receipt of a mailed demand letter, such denial shifts the burden to the Government to prove that such letter was indeed received by the taxpayer.[4]

While the respondent asserted that a Final Assessment had been issued and sent to the taxpayer through mail, as evidenced by a photocopy of the certified copy of

[4] Republic vs. Court of Appeals, et. al., L-38540 April 30, 1987

the transmittal of mailing attached to his Motion to Dismiss, such copy was never presented in evidence. Section 34, Rule 132 of the Rules of Court provides, viz:

> "SEC. 34. Offer of evidence.- The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Thus, this court cannot give due course to such document.

The law in point governing prescription of the Government's right to assess taxes is Section 203 of the 1997 Tax Code, which reads as follows:

> *"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 a case where a return is filed 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."*

Certainly, based from the foregoing provision, any assessment for deficiency taxes issued after the lapse of the three-year period is no longer valid and effective. For purposes of determining whether or not the tax was assessed within the three-year period, the determination of the date of filing of the tax return is material. In general, the three-year period to assess is counted from the last day prescribed by law for the filing of the return. However, if the taxpayer filed his return beyond the period provided for by law, the three-year period is reckoned from the actual date the return is filed. On the other hand, if petitioner filed his return before the last day prescribed by law, the three-year period will begin to run on the last day prescribed by law.

In the case at bar, petitioner was assessed for its income, withholding and value-added taxes for the taxable year 1994, based on the pre-assessment notice dated October 8, 1998.

Records show that petitioner's Annual Corporate Income Tax Return for the taxable year 1994 was filed on April 17, 1995 *(Exh. D-2)*, since April 15 fell on a Saturday. Thus, respondent had until April 17, 1998 within which to assess petitioner's income tax return for the taxable year 1994.

As for petitioner's withholding taxes, the following Monthly Remittance Returns for Income Taxes Withheld were filed on the following dates, to wit:

Exhibit	**Month/Year (1994)**	**Date Filed**
E	January	Feb. 10, 1994
F	February	March 10, 1994
G	March	Cannot be read
H	April	May 10, 1994
I	May	June 10, 1994
J	June	July 11, 1994
K	July	Aug. 10, 1994
L	August	Sept. 9, 1994
M	September	Oct. 10, 1994
N	October	Nov. 10, 1994
O	November	Dec. 9, 1994
P	December	Jan. 24, 1995

For each of the expanded withholding tax monthly remittance returns, respondent had three years from the date of filing the respective monthly remittance returns within which to assess petitioner for any deficiency withholding tax. Since the last monthly remittance was made on January 24, 1995, respondent had until January 24, 1998, at the latest within which to assess petitioner for deficiency withholding tax.

Petitioner's quarterly value-added taxes for the taxable year 1994 were filed on the following dates, to wit:

Exhibit	**Quarter for the year 1994**	**Date Filed**
S	1^{ST} quarter	April 20, 1994
V	2^{nd} quarter	July 20, 1994
Y	3^{rd} quarter	Oct. 20, 1994
BB	4^{th} quarter	Jan. 20, 1995

Hence, respondent had until January 20, 1998, at the latest within which to assess petitioner for any deficiency value-added tax.

The Pre-assessment Notice dated December 3, 1998 was issued by respondent way beyond the three-year prescriptive period. Petitioner assailed the pre-assessment in a protest letter filed on December 17, 1998 for having been issued beyond the three year prescriptive period and for not giving petitioner the opportunity to raise its objections in an informal conference.

However, respondent averred that a Waiver of the Defense of Prescription with a period up to December 31, 1998 was executed by petitioner's President, Mr. Sergio J. Javellana and respondent's Revenue District Officer Aguinaldo L. Miravalles. It follows then that respondent's right to issue the subject assessment notices was extended until December 31, 1998.

Petitioner, on the other hand, assailed the said waiver on the ground that the alleged signature of Mr. Sergio Javellana was forged. It further argued that Mr. Javellana could not have signed the waiver on March 19, 1997 because he had already resigned on September 19, 1996 *[par. 14(b)(i) &(ii), Petition for Review].* Thus, he had ceased to be petitioner's President effective the said date. Accordingly, Ms. Aurora S. Santos was appointed as his successor.

To support its averments, petitioner presented in evidence the following documents, to wit:

Exhibit	Document
LL	Minutes of the Regular Meeting of Petitioner of the Board of Directors held on Sept. 19, 1996
MM	Secretary's Certificate dated December 10, 1998
B	Amended Articles of Incorporation, with attached Director's Certificate executed on June 18, 1997
CC, DD	various company checks bearing the signatures of Mr. Javellana
KK	Waiver of the Defense of Prescription executed by Mr. Javellana

	on March 19, 1997
OO	Certified True Copy of 1996 General Information Sheet of Corporate Information Solutions, Inc.
PP	Certified True Copy of 1997 General Information Sheet of Corporate Information Solutions, Inc.
QQ	Secretary's Certificate executed on October 3, 1996
RR	Affidavit of Forgery executed by Ms. Cecille T. Villanueva
SS	Director's Certificate dated November 4, 1988
TT	Petitioner's request to open accounts with BA Savings Bank dated July 29, 1994
XX	Minutes of the Regular Meeting of the Board of Directors held on January 23, 1998
YY	Death Certificate of Mr. Sergio J. Javellana

It is, thus, imperative to determine the validity of the Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code executed by petitioner's former president on March 19, 1997.

> "SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> xxx xxx xxx
>
> *(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."*

While the waiver was executed before the lapse of the three-year period, the validity of such waiver was still assailed by petitioner on the ground that the signature of Mr. Javellana was forged. Furthermore, at the time the waiver was allegedly signed by Mr. Javellana, he was no longer the president of petitioner.

Revenue Memorandum Order No. 20-90 provides that the waiver shall be signed by the taxpayer or his duly authorized representative. In case of a corporation, the waiver must be <u>signed by any of its responsible officials</u>.

A close scrutiny of the documents disclosed that Mr. Javellana resigned from petitioner effective September 19, 1996. This fact was affirmed by the Minutes of the Board of Directors of Computer Information Systems, Inc. held on September 19, 1996 *(Exhs. "LL" & "LL-1")*. Moreover, the Secretary's Certificate executed on December 10, 1998 certified that Mr. Javellana has "retired as President of Corporate Information Solutions, Inc. (formerly "Computer Information Systems, Inc.) effective September 19, 1996 and as such his authority to transact business for and on behalf of the Company has terminated." *(Exhs. "MM" & "MM-1")*.

Therefore, at the time the waiver was executed, Mr. Javellana was no longer considered as an official of petitioner since he had already resigned as president therefrom. Thus, he no longer had the authority to bind petitioner (*see TSN September 19, 2000, p.12; November 22, 2000, pp. 15-23; 29-30; January 11, 2001, pp.29-30*).

The waiver is deemed invalid and of no force and effect because at the time it was purportedly signed by Mr. Javellana, he was no longer petitioner's president as his resignation became effective on September 19, 1996, prior to the execution of the waiver. Indubitably, he did not have any authority to transact business for or on behalf of petitioner at the time he allegedly signed the waiver. Consequently, respondent's period to assess was not extended up to December 31, 1998.

Considering that respondent's right to assess petitioner of deficiency income, withholding and value added taxes for the taxable year 1994 has already prescribed, the collection of the subject taxes, became ineffectual.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments are hereby **CANCELLED** and **SET ASIDE** and the Warrant of Distraint and/or Levy No. NCTF 177-95 is hereby declared **NULL** and **VOID**.

Respondent is likewise enjoined from collecting the amount of P10,768,756.16 allegedly representing deficiency income, value-added and withholding taxes for the year 1994.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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

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 Judge