Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

JACINTO IRON AND STEEL SHEETS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6351

Members :

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, *JJ*.

Promulgated:
JUN 2 1 2005

x - x

DECISION

CASTAÑEDA, JR., *J*.:

This is a judicial appeal seeking for the cancellation of the assessments issued by the respondent holding petitioner liable in the aggregate amount of P105,625,000.60 allegedly representing deficiency taxes for the taxable year 1996, namely: income tax, withholding tax on compensation, expanded withholding tax, value-added tax, documentary stamp tax and compromise penalty.

The antecedent facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippines laws, with office address at KM. 21, Quirino Highway, Novaliches, Quezon City, and is principally engaged in the business of manufacturing steel roofing materials. It filed its income tax return for the year 1996 on April 15, 1997 while its VAT returns were filed within the reglementary period on a quarterly basis.[1]

On January 17, 2001, respondent issued various formal assessment notices covering the year 1996,[2] details of which are shown below:

a)	Income Tax	P 99,373,609.86
b)	Withholding tax on compensation	319,795.25
c)	Expanded withholding tax	426,294.99
d)	Value-added tax	5,003,992.11
e)	Documentary stamp tax	476,308.44
f)	Compromise penalty	25,000.00
		P105,625,000.00

On February 15, 2001, within the period prescribed by law, petitioner protested the aforesaid assessments. Eventually, it furnished respondent the corresponding supporting documentary evidence to support its protest on April 6, 2001, also within the period prescribed by law.[3]

For failure on the part of respondent to act with finality on petitioner's protest within the reglementary period of one hundred eighty days (180) from submission of the documentary evidence, petitioner elevated the case through a Petition for Review with this Court on October 30, 2001.[4]

In the hearing of April 29, 2003, counsel for the petitioner requested that the issue of prescription be resolved first and that the parties be given thirty (30) days therefrom to submit their respective memorandum. On May 29, 2003, petitioner filed its Memorandum with Manifestation and Motion to Admit Evidence in support of the sole issue of prescription. The Court, in a Resolution promulgated on October 30,

---

[1] Joint Stipulation of Facts, par. 1
[2] *Ibid*, par. 2
[3] *Id.*, par. 3
[4] *Id.*, par. 4

2003, resolved to withdraw and cancel the assessments for deficiency income and VAT for the reason that both were issued beyond the prescriptive period.

However, with respect to the deficiency withholding tax and documentary stamp tax assessments, petitioner failed to prove that the same were time-barred. Thus, trial commenced limiting the parties to the remaining stipulated issues.

After further presentation of its evidence, petitioner rested its case. On the other hand, respondent submitted the case for decision based on the BIR records.[5]

On February 24, 2005, the case was deemed submitted for decision for failure of both parties to file their respective memorandum within the prescribed period.

Issues

The parties submitted the following stipulation of issues of the case:

1. Whether or not the period for assessment has prescribed.

2. Whether or not the respondent has complied with Sec. 228 of the Internal Revenue Code insofar as the observance of "due process" is concerned.

3. Whether or not the assessments made by respondent are valid.

This Court's Ruling

Anent the first issue, We have discussed earlier that in Our Resolution dated October 30, 2003,[6] We had already ruled to withdraw and cancel the assessments for deficiency income and value-added taxes for having been issued beyond the prescriptive period. But as regards the deficiency withholding tax and documentary stamp tax (DST) assessments, petitioner failed to present the necessary documents to prove that the same were time-barred. Petitioner did not submit its monthly

---

[5] Records, page 293
[6] *Ibid.*, pages 246-250

remittance returns in order for this Court to verify that it paid and remitted the subject withholding taxes on the dates indicated on its 1996 Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes (BIR Form 1743-IR). Furthermore, We observe that there was no clear showing that petitioner actually paid and remitted the DST for 1996.

Nonetheless, after further presentation of evidence by petitioner and a careful perusal of the BIR Records submitted by the respondent, We are convinced that the assessments for expanded withholding tax and withholding tax on compensation were also issued beyond the prescriptive period.

Section 203 of the 1993 National Internal Revenue Code (NIRC) provides that, "[e]xcept as provided in the succeeding section, 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. x x x"

Moreover, Section 51 of the 1993 NIRC in relation to Section 2 (iii) of Revenue Regulations No. 5-85, requires that monthly return and remittance of taxes withheld on compensation income and income payments subject to creditable withholding taxes shall be remitted within ten (10) days after the end of each calendar month.

Based on the records of this case, petitioner filed its 1996 withholding tax returns on the following dates:

Month	Exhibit	Date Filed
January	AAAA	2/13/1996
February	BBBB	3/11/1996
March	CCCC	4/10/1996
April	DDDD	5/10/1996
May	EEEE	6/10/1996
June	FFFF	7/10/1996
July	GGGG	8/12/1996
August	HHHH	9/10/1996
September	IIII	10/10/1996
October	JJJJ	11/12/1996
November	KKKK	12/26/1996
December	LLLL	1/27/1997

Although the admission of the withholding tax return for the month of April 1996 *(Exhibit "DDDD")* was denied by this Court for failure of petitioner to present the original copy thereof for comparison, in violation of the Best Evidence Rule *(CTA Case No. 6351, Resolution, promulgated on July 13, 2004)*, a copy of the said return can be found in the BIR Records used by the respondent in his assessment[7] and submitted as part of his evidence.[8] Thus, the same may be used by this Court in determining whether or not the assessment was issued beyond the prescriptive period.

Applying the aforequoted provisions and considering that the last monthly withholding tax return was in fact filed on January 27, 1997, respondent had only three (3) years from the said date or until January 28, 2000 within which to assess petitioner for any deficiency withholding taxes.

Based on the stipulated facts of the case under consideration, respondent issued the assessments only on January 17, 2001, almost a year from the date his

[7] BIR Records, page 593
[8] Records, page 293

right to assess has prescribed. Clearly, the assessments for deficiency withholding taxes should likewise be cancelled on the ground of prescription.

With respect to the deficiency DST assessment, the same is not time-barred. There is no specific provision under the 1993 NIRC or in any revenue regulations which requires the filing of a documentary stamp tax return. The statute of limitations provided for in Sections 203 and 223 of the 1993 NIRC applies to the assessment of internal revenue taxes wherein the filing of returns is required. Hence, respondent could never be barred by the aforesaid prescriptive periods on the assessment of petitioner's deficiency DST ***(International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004)***.

We now proceed to the second issue. Petitioner's stance on this matter is basically anchored on its proposition that the respondent allegedly failed to observe due process when his letter of demand only made "sweeping computations" without stating the basis thereof. It argues that the non-observance of the pertinent portion provided for under Section 228 of the 1997 NIRC, stating that "[t]he taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void", constitutes violation of the constitutional right to due process.

In interpreting Section 228 of the 1997 NIRC, this Court has maintained its position on the matter, wherein We pronounced that:

> "Further, it is our considered opinion that the phrase 'in writing' under Section 228 does not exclusively mean written words. 'Writings' consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation. <u>Indubitably, figures are also 'writings' and if the numerical presentation is understandable enough, then there is no</u>

> reason why we should automatically reject the same as adequate compliance with the law. It must be stressed that the underlying reason for the law is the basic constitutional requirement that 'no person shall be deprived of his property without due process of law'. Parenthetically, in whatever form and manner, as long as the taxpayer is informed of how the assessment was arrived at, then Section 228 has not been violated. And if petitioner had already been informed during the preliminary stage of the bases for the assessment, then it could not insist that it was not informed of the law and the facts on which the assessment was based ***(Subic Power Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6059, May 8, 2003).*** *(Underscoring Ours)*

After delving into the records of the case, We rule that respondent has substantially notified the petitioner in writing of the law and the facts on which the assessments were made.

From the correspondence made by both parties, it appears that petitioner was informed of the detailed and itemized computation of respondent's assessments covering the taxable year 1996 even before the formal letter of demand dated January 12, 2001, including the details of discrepancies attached therewith was received by petitioner.[9]

In a letter dated May 19, 2000 which was received by petitioner on May 22, 2000,[10] respondent clearly informed the petitioner of the recommendation made by his assigned revenue officers after conducting their investigation on its 1996 tax returns and related documents and even requested petitioner or its representative to appear before the Regional Office, RDO 28 Novaliches, for a conference regarding the matter. Furthermore, said correspondence includes an itemized computation stating the discrepancies found per audit with respect to DST deficiency, among

---

[9] BIR Records, pages 1013-1018
[10] *Ibid.*, page 988

others.[11] Thus, petitioner's contention that the "details of discrepancies" are mere allegations of facts which are inconclusive to substantiate the assessments does not hold water.

Considering therefore that respondent has informed petitioner of the investigation conducted, the laws and factual basis of which the assessments are made as stated in all the correspondence, including the preliminary and final assessment notices, and formal letter of demand plus the details of discrepancies, it is clear that due process has been complied with. As a matter of fact, petitioner was given the opportunity even before the preliminary and final assessment notices and formal letter of demand were sent by respondent, to discuss the matter through a conference scheduled on May 31, 2000.[12]

Thus, this Court further explained that:

> "It must be pointed out that as early as the proposed assessment, petitioner was already informed of the 5% deficiency tax amounting to P3,335,543.00 and that in arriving at the proposed deficiency 5% tax assessment, the examiner proposed to disallow as deductions from petitioner's gross income certain expenses. Besides, it cannot be argued that the very basis for the disallowed expenses were the figures supplied by petitioner to the respondent *(see petitioner's Trial Balance, Balance Sheet, Income Statement, BIR Records, pages 198-219; petitioner's Details of Expenses, BIR Records, pages 187-192).* <u>That is why in its protest to the proposed assessment filed on December 1, 1998, petitioner was able to comprehensively contest the proposed assessment based on factual and legal grounds *(Exhibit 3).* This alone belied petitioner's statement that it was not informed on how the 5% deficiency tax assessment was arrived at. If there was no sufficient basis for said disallowed expenses then it could not have counter-argued in detail why said expenses should be allowed</u> ***(Subic Power Corporation vs. Commissioner of Internal Revenue, supra).*** *(Underscoring Ours)*

[11] *Id.*, pages 983-987
[12] *Id.*, page 988

From the foregoing, it is clear that petitioner was not deprived of its constitutional right to due process as it was undoubtedly able to protest the subject assessments point-by-point[13] and was in fact given its day in court to present evidence and arguments to support its stand.

The second issue having been resolved favorably for the respondent, We shall now tackle third issue raised by the parties. Since only the assessment for deficiency DST is found to have been issued within the prescriptive period, Our discussion will revolve only on whether the said deficiency DST assessment is valid.

Respondent assessed the petitioner for deficiency DST pursuant to Section 180 of the 1993 NIRC on the basis of the following:[14]

Nature of Transactions	**Base/Amount**	**Tax Rate**	**Tax Due**
a) Renewed promissory notes	P 52,400,000.00	P0.30/200.00	P 78,600.00
b) Loans availed for affiliates	137,034,014.66	0.30/200.00	205,551.02
Tax Due			P 284,151.02
Less: payment			0.00
Deficiency tax			P 284,151.02
Add: 25% surcharge			71,037.75
20% interest (4/1/98-1/14/01) (.341)			121,119.37
Amount still due			**P 476,308.14**

In both its letter-protests dated February 12, 2001 and April 5, 2001, petitioner contends that it could not have violated the aforesaid section, as alleged by the respondent's examiners, because it is neither a lender, a bank nor a quasi-bank. Except for this contention, the petitioner did not submit any other evidence to counter respondent's assessment.

The primordial issue to be considered is the correct interpretation of Section 180 of the 1993 NIRC which is hereunder quoted for easy reference, to wit:

> **"SEC. 180. Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued**

---

13 *Id.*, pages 1037-1056; 1078-1131
14 *Id.*, page 1029

> **by the government or any of its instrumentalities, certificates of deposits bearing interest and others not payable on sight or demand.** — *On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note:* **Provided**, *That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax:* **Provided however**, *That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section."*

A reading of the aforequoted provision indubitably shows that a taxpayer need not be a lender, a bank, or a quasi-bank to be subject to DST. The said law does not mention any form of qualification which indicates that only lenders, banks, or quasi-banks are covered by the documentary stamp tax. Without cloud of doubt, the subject provision includes all kinds of instruments dealing in bonds, loan agreements, and promissory notes, among others, which are considered subject to DST.

In the case at bar, respondent is assessing petitioner for non-payment of DST on its renewal of promissory notes and loans it availed for its affiliates. Clearly, these instruments are deemed taxable under Section 180 of the 1993 NIRC. Thus, petitioner's averment that it should not be subject to DST since it is not a lender, bank, or quasi-bank has no merit. Furthermore, after presentation of its evidence, petitioner still failed to adduce substantial evidence to show that it has actually paid and remitted the DST for the said instruments. Hence, the subject assessment on the deficiency DST should be sustained.

As regards the assessed compromise penalty in the amount of P25,000.00 issued by respondent for failure of petitioner to file an inventory list for the year 1996, We rule that the same should be cancelled.

It is a settled matter that compromise penalties are amounts collected by the Bureau of Internal Revenue in lieu of criminal prosecution for violations committed by taxpayers, the payment of which is based on a compromise agreement validly entered into between the taxpayer and the Commissioner of Internal Revenue ***(Collector of Internal Revenue vs. UST, 104 Phil.1062)***. A compromise implies mutual agreement ***(Pilmico-Mauri Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6151, December 15, 2004; Rightfield Property Ventures, Inc. [now known as Universal Rightfield Property Holdings, Inc.], vs. Commissioner of Internal Revenue, CTA Case No. 5972, October 16, 2003)***. Thus, absent any showing that petitioner consented to the compromise penalty, its imposition should not be allowed. As already established, the imposition of the same without the conformity of the taxpayer is illegal and unauthorized ***(Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., G.R. No. 35266, January 21, 1991)***.

Although petitioner, in its letter-protest dated February 12, 2001, initially agreed to comply with the payment of the compromise penalty of P25,000.00 for the reason of its failure to file the required inventory return for the year 1996[15], it

---

[15] *Id.*, page 1050

however appears that petitioner subsequently protested the subject compromise penalty when it submitted a copy of the inventory return[16] contesting its liability as attached in its letter-protest dated April 5, 2001.[17]

Therefore, considering that petitioner protested to the payment of the compromise penalty of P25,000.00, there exists no compromise agreement validly entered into between petitioner and respondent which shall be binding and can be mandatorily enforced.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. This Court **RESOLVES** to **WITHDRAW** and **CANCEL** the deficiency assessments for: (a) income tax; (b) value added tax; (c) withholding tax on compensation and (d) expanded withholding tax on the ground of prescription. The compromise penalty is likewise **CANCELLED** due to lack of mutual consent. However, the assessment issued by respondent against petitioner for deficiency documentary stamp tax in the amount of P476,308.14 is **UPHELD**.

Accordingly, petitioner is hereby **ORDERED** to **PAY** the respondent the assessed deficiency documentary stamp tax for the taxable year 1996 amounting to P476,308.14, plus 20% delinquency interest from February 13, 2001 until the amount is fully paid pursuant to Section 249 (c)(3) of the 1993 NIRC.

SO ORDERED.

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

---

[16] *Id.*, page 1078
[17] Id., page 1127

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Chairman