REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PAROLE AND PROBATION ADMINISTRATION - NCR,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7153

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUL 02 2008 11:20am

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DECISION

BAUTISTA, *J.*:

This case involves a "Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion to Quash the Warrant of Distraint and Levy" for the Warrant of Distraint and/or Levy issued by the Commissioner of Internal Revenue against petitioner for its late remittance of withholding tax on compensation for calendar year 1999.

Parole and Probation Administration-National Capital Region (Petitioner) is a government agency, existing and operating under Philippine Laws. Its office is at the G/F DOJ Agencies Bldg., NIA Road corner East Avenue, Diliman, Quezon City, Metro Manila.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested by law to decide disputed assessments and to enforce the provisions of the

National Internal Revenue Code (NIRC), and other tax laws. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

On August 30, 2002, petitioner received from respondent a Preliminary Assessment Notice (PAN) representing surcharges, compromise penalties, and interest for late remittance of withholding tax on compensation in the amount of P389,455.74 for calendar year 1999.[1]

In a letter dated September 19, 2002, petitioner requested re-audit and reconsideration of the PAN, stating that the late remittances were due to insufficient cash allocation issued by the Department of Budget and Management (DBM) starting mid-part of 1999; lack of support staff to do the tasks of posting, reconciling and remittances of monthly deductions; and defective computers and printers wherein all remittances were computerized.[2]

On December 20, 2002, petitioner received two Letters of Demand[3] for late remittance of withholding tax and compromise penalty for the amounts of P351,253.36 and P58,000.00, respectively; and the corresponding Assessment Notices[4]. In turn, petitioner reiterated its request for reconsideration in a letter dated February 10, 2003.[5]

Respondent then informed petitioner on March 3, 2003 that she is forwarding the case to the BIR Withholding Tax Division.[6] This was followed by letters from the Assistant Commissioner, Collection Service dated June 25, 2003[7] and August 14, 2003[8], denying the request of petitioner to be absolved from liability and suggesting to petitioner to avail of

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[1] Exhibit "A"
[2] Exhibit "D"
[3] Exhibits "E" and "F"
[4] Exhibits "G" and "H"
[5] Exhibit "I"
[6] Exhibit "J"
[7] Annex I", Petition for Review
[8] Exhibit "K"

abatement/cancellation of said assessment; and the First and Second Notice before Issuance of Warrant of Distraint and Levy on March 2 and 11, 2004, respectively.[9]

On March 29, 2004, petitioner repeated its request for reconsideration, alleging that during the mid-part of 1999 the DBM started releasing insufficient cash allocation; consequently, payment of regular obligations for a particular month, including remittances, were being paid out of the succeeding month cash allocation.[10]

In a letter dated September 21, 2004, respondent again declined the request of petitioner for exemption from payment of tax liability and gave petitioner ten (10) days to pay from receipt.[11]

Petitioner, on September 27, 2004, requested respondent to be excused from payment of surcharges and compromise penalty, but stated that it is willing to pay the twenty percent (20%) interest from January 26, 2000 up to the present, on an installment basis.[12]

On January 20, 2005, the Warrant of Distraint and/or Levy[13] was served on petitioner.

Petitioner, on February 14, 2005, wrote the Secretary of the Department of Budget and Management to request the release of the allotment to cover the demand for payment of tax liability in the amount of P409,253.36, and to report about its predicament and the refusal of respondent to accede to petitioner's request for exemption from payment of the said tax liability.[14]

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[9] Exhibits "L" and "M"
[10] Exhibit "N"
[11] Exhibit "S"
[12] Exhibit "T"
[13] Exhibit "U"
[14] Exhibit "V"

Hence, this "Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion to Quash the Warrant of Distraint and Levy" filed on February 21, 2005.

In her Answer[15], respondent averred the following Special and Affirmative Defenses:

"4) All presumptions are in favor of the correctness of the Assessment;

5) The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment;

6) The assessment issued was based on the failure of the Petitioner to remit the withholding tax due;

7) Consequently, under Sections 248 and 249 of the National Internal Revenue Code of 1997, herein Petitioner is liable for civil penalties for its failure to pay the withholding tax within the time prescribed for its payment, and for interest for late payment of the tax;

8) Moreover, the undersigned humbly cites the provisions of Section 218 of the National Internal Revenue Code of 1997, which states that 'No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by this Code."

In a Resolution[16] dated July 14, 2005, respondent was declared as in default for failure to appear during the pre-trial period on May 27, 2005 and July 1, 2005, despite the warning issued by this Court. Thus, petitioner was allowed to present its evidence *ex-parte*.

On February 7, 2006, petitioner filed a "Motion to Lift and/or Recall Warrant of Distrant and/or Levy issued by the Bureau of Internal Revenue". However, this Court denied the said Motion on March 23, 2006.[17]

[15] Docket, pages 41-42
[16] Docket, page 51
[17] Docket, page 91

Petitioner filed its Formal Offer of Evidence[18] on June 8, 2006, which was resolved in a Resolution[19] dated July 4, 2006.

On July 23, 2007, the case was submitted for decision taking into consideration the Memorandum filed by petitioner on June 19, 2006.[20]

Petitioner argues that it is not liable for the surcharges, compromise penalties, and interest for the late remittance of withholding tax on compensation for calendar year 1999, since the delay was due to the insufficiency of cash allocation issued by the Department of Budget and Management for the said year. The delay was allegedly beyond its control; and that the records show that except for the months of June, October, and December 1999, it remitted its withholding taxes on time.

On the other hand, respondent asserts that for failure of petitioner to remit the withholding tax due within the time prescribed, the imposition of the corresponding increments pursuant to the provisions of Sections 248 and 249 of the NIRC of 1997, and the compromise penalties provided on the same Code is justified[21].

Petitioner proposed the following issues for this Court's resolution:[22]

1. Whether or not petitioner could be held liable to pay respondent the subject obligation representing surcharges, interest, and penalties; and

2. Whether or not petitioner should be granted a Temporary Restraining Order and/or Writ of Preliminary Injunction and later a Permanent Writ of Injunction against respondent and the quashal of the Warrant of Distraint and Levy.

Considering that this Court on March 23, 2006 already denied petitioner's "Motion to Lift and/or Recall Warrant of Distraint and/or Levy issued by the Bureau of Internal

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[18] Docket, pages 97-101
[19] Docket, pages 108-109
[20] Docket, page 198
[21] Answer, page 41
[22] Petitioner's Pre-trial Brief, Docket, pages 44-45

Revenue", the only issue to be resolved is as follows: "Whether or not petitioner could be held liable to pay for surcharges, compromise penalties, and interests for late remittances of withholding tax on compensation for calendar year 1999.

Nature of the Withholding Tax System

In the operation of the withholding tax system, the withholding agent is the *payor*, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the *payer* is the taxpayer — he is the person subject to tax impose by law; and the *payee* is the taxing authority.[23]

The agent-payor becomes a payee by fiction of law. His liability is direct and independent from the taxpayer,[24] because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguish from its duty to pay tax since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, *compliance with which is imposed on the withholding agent and not upon the taxpayer.*[25]

Further, in the case of **Philippine Guaranty Company, Inc. vs. Commissioner of Internal Revenue**[26], the Supreme Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent, thus:

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[23] Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and A. Soriano Corp., G.R. No. 108576, January 20, 1999
[24] Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corp. and Court of Tax Appeals, G.R. No. 66838, December 2, 1991
[25] Commissioner of Internal Revenue vs. Malayan Insurance, G.R. No. L-21913, November 18, 1967, citing Jai Alai vs. Republic, L-17462, May 29, 1967
[26] G.R. No. L-22074, September 6, 1965

> "The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. **The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold;** whereas the Commissioner and his deputies are not made liable by law." (*Emphasis supplied*)

Thus, provisions on withholding tax are mandatory and must be complied with by the withholding agent.

Petitioner PPA-NCR as a Withholding Agent

Petitioner, as a withholding agent, is burdened by law with a public duty to collect the tax for the government.

In paying its obligations to respondent, petitioner used the Advice to Debit Account (ADA) procedure of the DBM. Under the ADA system, the remittances are charged against the cash allocations issued by the DBM to the agency.

On January 3, 2000, however, pursuant to DOF-DBM-COA Joint Circular No. 1-2000, as amended by DOF-DBM-COA JC 1-2000A, the mode of remittance of government agencies of their withholding taxes had been changed, particularly, by requiring that the Tax Remittance Advice (TRA) system shall be used in remitting to BIR all taxes withheld by national government agencies, in lieu of the ADA system.

The TRA system, which is a non-cash transaction, was adopted to improve the BIR's efficiency in the collection and recording of income and expenditure of the concerned national government agencies and to address the problem of late remittances by government agencies of their withheld taxes.

Records of the case disclose that petitioner's late remittance of the tax withheld is uncontroverted.[27] However, petitioner attributes such to the delay in the release of the DBM of its cash allotment. Petitioner posits that it was beyond its control as it always requested the DBM for the release of the amount needed.

In a Letter[28] issued by the DBM to respondent, this Court notes the following:

> "3.2 **Also, as provided under said JC, NGAs shall use the TRA in the remittance of all current and prior years' taxes withheld to BIR.**
>
> 3.2.1 **During the initial months of implementation of the TRA system in FY 2000, the amounts of TRA requests (processed then by DBM) from other national government agencies included prior years' unremitted withholding taxes** (i.e., FY 1999 withholding taxes). The requests were based on amounts recorded under the account code 8-84-120 i.e. Trust Liabilities – NGA, Taxes Withheld Covered by TRA. These exclude penalties (interests, surcharges and compromises).
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> 3.2.2 **However, the PPA-NCR opted to remit subject FY 1999 withholding taxes thru ADA versus its NCAs issued (for accounts payable) in FY 2000 instead of using the TRA system.**" (*Emphasis supplied*)

Clearly from the foregoing, despite the favored available option of the TRA system which according to the DBM can address the problem on late remittances, and for reasons unexplained to this Court, petitioner still opted to utilize the ADA as against the TRA method. Albeit it requested the DBM in a Letter dated February 14, 2005 to finally avail of the TRA procedure to cover the settlement of the tax liability,[29] still delay had set in. The time required by the law to remit the subject tax had already lapsed. Accordingly, petitioner is not relieved from the penalties, surcharges, and interest incident to the delay.

[27] September 1, 2005, TSN, page 10
[28] Exhibit "W"
[29] Exhibit "V"

Petitioner PPA-NCR's Liability on Late Remittances

Since there is delay in the payment of the withholding taxes, it follows that petitioner is liable to pay the consequent penalties, interests, and surcharges.

Anent the twenty-five percent (25%) surcharge, Section 248 of the NIRC of 1997 provides:

> "**SECTION 248. Civil Penalties. —**
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> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
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> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
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> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
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> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment;
>
> xxx xxx xxx"

With respect to the twenty percent (20%) interest, Section 249 of the same Code states:

> "**SECTION. 249. Interest. —**
>
> (A) *In general.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) Delinquency Interest. – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency interest.* — In case of failure to pay:
>
> (1) The amount of the tax due on any return required to be filed, or
>
> (2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

xxx xxx xxx"

And for the compromise penalty, Section 255 of the Tax Code sets forth:

"**SECTION 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less that Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

xxx xxx xxx"

The law on the matter makes no distinction, whether private persons or corporations, or public or quasi-public agencies. It is sufficient that the person or entity concerned is subject to and violated revenue laws. Basic is the legal principle that where the law does not distinguish, none must be made. *Ubi lex non distinguit nec nos distinguere debemos.*

Tax laws imposing penalties for delinquencies, so have long held, are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.[30]

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[30] Jamora, *et al.* vs. Meer, etc., *et al.*, No. 48129, November 11, 1942

The penalty and interest is not penal but compensatory in nature. They are compensation to the State for the delay in payment or for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government.[31]

Petitioner PPA-NCR as a Government Agency

Nevertheless, the Warrant of Distraint and/or Levy cannot be enforced against petitioner since it is an agency of the national government; necessarily, its properties are owned by the government itself.

Petitioner is an attached agency of the Department of Justice which provides a less costly alternative to imprisonment of offenders who are likely to respond to individualized community-based treatment programs.

Under the Probation Law of 1976[32], petitioner is mandated to promote the correction and rehabilitation of an offender by providing him with individualized treatment; provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and prevent the commission of offenses. It is a model component of the Philippine Correctional System to enhance the quality of life of its clients through multi-disciplinary programs and resources, an efficient organization, and a highly professional and committed workforce in order to promote social justice and development.

Undeniably, petitioner performs an essential public service that every modern State must provide its citizens. Thus, respondent cannot be allowed to levy on the properties of petitioner.

It bears stressing that properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any

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[31] Republic vs. Philippine Bank of Commerce, L-20951, July 31, 1970
[32] Presidential Decree No. 968, as amended

encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale.[33]

In summary, petitioner is liable to pay the penalties, surcharges, and interest for its delay in the remittance of withholding taxes on compensation, inasmuch as no government can exist if all litigants are permitted to delay the collection of taxes.[34] However, respondent cannot enforce the assessed penalties, surcharges and interest via Warrant of Distraint and/or Levy.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the Warrant of Distraint and/or Levy is hereby **CANCELLED.** However, petitioner is hereby **ORDERED TO PAY** to respondent the penalties, surcharges and interest incident to its late remittance of withholding tax on compensation for calendar year 1999 in the amount of P409,253.36.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

[33] Manila International Airport Authority vs. Court of Appeals, *et al.*, G.R. No. 155650, July 20, 2006
[34] Republic vs. Lim Tian Teng Sons and Co., Inc., G.R. No. L-21731, March 31, 1966

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division