REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GUANZON LIME DEVELOPMENT
CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2649

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of respondent assessing against and collecting from petitioner the sums of ₱4,068.54, ₱4,186.64 and ₱1,930.06 as deficiency income tax, plus interest, for the years 1962, 1963 and 1965.

It appears that petitioner is a domestic corporation engaged in the business of processing and/or manufacturing lime into limestone products, such as quicklime, hydrated lime and slacklime. (pp. 33-49 & 104-107, BIR rec.) It filed income tax returns for the years 1962, 1963 and 1965, within the period required by law, specifically on April 15, 1963, April 15, 1964 and April 15, 1966, respectively. (Exh. "1", "2" & "3"; Exhs. "A", "B" & "C"; pp. 41, 26 & 14, respectively, BIR rec.)

On August 30, 1967, respondent, thru one of of his Revenue Examiners, by virtue of Letter of Authority No. 317464 RR, conducted an investigation on the aforesaid income tax returns. (p. 27, BIR rec.) Consequently, it was determined that petitioner was liable to pay the following deficiency income taxes:

Assessment No.	Amount
25-ACR-401097-67-62	₱4,068.54
25-ACR-401214-67-63	4,186.64
25-ACR-280033-67-65	1,930.06

(pp. 17, 18, 31, 32, 45, 46, 49, 50 & 52, BIR rec.) based on the disallowance of the following deductions claimed by petitioner, to wit:

1 9 6 2

a.	representation expenses (unsupported)	. . . ₱ 6,000.00
b.	travelling expenses	. . . 10,130.49
c.	purchases (unsupported)	. . . 1,281.79

1 9 6 3

a.	representation expenses	. . . 6,000.00
b.	travelling & miscellaneous expenses	. . . 10,130.49

1 9 6 5

a.	representation expenses	. . . 7,868.22

On March 29, 1968, respondent issued against petitioner the corresponding assessment notices mentioned above which were received by petitioner about the first week of April, 1968. (pp. 24 & 25, CTA rec.; p. 59, BIR rec.)

In a letter dated December 5, 1968, received by respondent on January 8, 1969, petitioner, thru counsel, disputed the said assessments stating in justification for allowance of its claimed deductions, that the explanations contained in petitioner's letters to its counsel dated July 22, & 23, 1968, regarding the disallowance of the monthly representation expenses in the amount of ₱500.00 and the travelling expenses appear to be sufficient, and therefore, the same were forwarded to respondent for his consideration. (pp. 54-59, BIR rec.)

Accordingly, respondent thru the Regional Director of Quezon City, issued Letter of Authority No. 491797 RR to reinvestigate dated March 4, 1971, addressed to the petitioner which was duly received on March 5, 1971, by petitioner's accountant, Mr. Abelardo G. Espiritu. (p. 87, BIR rec.) On May 10, 1971, petitioner submitted and filed a waiver of the Statute of Limitation. (pp. 171-172, BIR rec.)

Subsequently, respondent's examiner submitted the report of reinvestigation on November 3, 1971, confirming the findings of the original investigation which was the basis of the assessments in question. It was discovered that petitioner herein had still been availing of the 10% exemption under Republic Act No. 901, which had by that time, already been amended by Republic Act. No. 2351, (effective June

20, 1959). Pursuant to Republic Act 233, as implemented by General Circular No. V-297, dated July 27, 1959, petitioner shall be subject to the full income tax. Consequently, the examiner recommended the issuance of revised assessment notices or letters of demand for the sum of ₱6,771.44 for the year 1962; ₱5,903.16 for the year 1963; and ₱2,723.21 for the year 1965 or a total of ₱15,397.81 (pp. 104-107, BIR rec.)

In a memorandum dated August 24, 1972, the Assistant Regional Director of Quezon City reiterated the immediate collection of the said amount of ₱15,397.81, with the information that there was no need to issue new assessment notices as the old assessments were already listed in the IBM delinquent accounts, and that the issuance of new assessments would only result in double assessment. (p. 128, BIR rec.)

In a letter dated July 16, 1973, received on July 18, 1973, petitioner, thru counsel, wrote the respondent Commissioner of Internal Revenue, regarding the former's claim for refund and made mention also of the deficiency income tax involved invoking the defense of prescription on the right of the government to collect the same pursuant to Section 332(c) of the Revenue Code, in view of the latter's alleged failure to collect the said assessments within the period of five years from date of assessment. (p. 143, BIR rec.)

On August 15, 1973, respondent, thru the Regional Director of Revenue Region No. 6, Quezon City, issued a Warrant of Levy on Real Property against the petitioner, which was served on August 30, 1973, but the same was returned by petitioner the next day, for the reason that they had already filed with the Tax Accounts Division in the National Office, a letter asking for the cancellation of the assessments covered by the Warrant due to prescription. (pp. 144-145, BIR rec.) On October 22, 1973, in compliance with the request of the Head of the Legal Department in her letter of September 24, 1973, the Regional Director of Quezon City forwarded the entire docket of the case to the Chief of the Appellate Division for appropriate action in petitioner's protest on the ground of prescription. (p. 158-162, BIR rec.)

On December 3, 1974, respondent rendered his final decision stating that the defense of prescription is without merit and denied petitioner's request for the cancellation and withdrawal of the said assessments (pp. 174-175, BIR rec.), which decision was allegedly received by petitioner on December 23, 1974, hence this appeal.

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ISSUES:

1. Whether or not the right of the respondent to collect the deficiency assessments has already prescribed, and

2. Whether or not the items of deductions disallowed by respondent in petitioner's income tax returns for the years 1962, 1963 and 1965, respectively, are allowable under Section 30 (a)(1) of the Tax Code.

The law involved are Sections 331 and 332 of the National Internal Revenue Code which are quoted hereunder for ready reference, to wit:

> "Sec. 331. Period of limitation upon assessment and collection. -Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the 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: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

> "Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes. -(c) Where the assessment of any internal revenue tax has been made within the period of limitation above-prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner of Internal Revenue and the taxpayer before the

> expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

Petitioner maintains that the right of the respondent to collect the tax in this case has already prescribed while respondent maintains the opposite view.

We find the view of petitioner well taken. A perusal of the records of this case will show that although the right of the government to assess made on March 29, 1968, for the years 1962, 1963 and 1965 was made within five (5) years from the date the returns were filed on April 15, 1963, April 15, 1964 and April 15, 1966, respectively, the right of the government to collect the same has already prescribed.

Under Section 331 of the Tax Code, the government has the right to assess income tax against petitioner; or institute an action in Court without assessment within five (5) years after April 15, 1963, April 15, 1964 and April 15, 1966 or up to April 15, 1968, April 15, 1969 and April 15, 1971, respectively.

And under Section 332(c) of the Tax Code which provides an exception as to the period of assessment and collection, it is provided that where the assessment of any internal revenue tax has been made within the period of limitation (five years) such tax may be collected by distraint or levy or a proceeding in Court but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of the period agreed upon in writing by the Commissioner of Internal Revenue, and the taxpayer before the expiration of the five year period, and the period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In the case at bar, the assessments were issued by respondent on March 29, 1968, so that the right of the government to collect commences from that date to March 29, 1973. When the warrant of levy on real property was issued on August 15, 1973, five (5) years four (4) months and sixteen (16) days have already elapsed, which is actually beyond the five (5) year period within which the Commissioner of Internal Revenue may collect the tax.

While it is noted that on May 10, 1971, petitioner filed a signed waiver of the statute of limitation within a period of six months, it does not however appear on record that respondent accepted or agreed to this waiver, which acceptance or agreement is required under Section 332(c) of the National Internal Revenue Code in order to effect the suspension of the running of the period to collect the tax assessed. The filed waiver did not, therefore, suspend the running of the period of limitation to collect the tax assessed against petitioner for the years 1962, 1963 and 1965.

We cannot adhere to the position of respondent that the right of the government to collect the tax has not yet prescribed on account of the vigorous protests and requests for reinvestigation lodged by petitioner against the deficiency assessment. The records will show that petitioner merely disputed or questioned the legality of the assessment which pertains to the disallowances of its claim for deductions by giving reasons why the deductions should be allowed and why it should not pay said deficiency tax. (Limjoco, Jr. vs. Domingo, CTA Case No. 1191, May 29, 1964; Coll. of Int. Rev., vs. Pineda, G.R. No. L-14522, May 31, 1961; Coll. of Int. Rev. vs. Solano, G.R. No. L-11475, July 31, 1958.)

And, although petitioner filed a signed waiver of the statute of limitation for a period of six months, which as aforesaid has not been agreed upon by respondent, petitioner herein has not been found to have, by his positive acts, induced respondent to suspend the collection of the tax assessed against it after the expiration of the six months period, or from November 11, 1971. Respondent should have been vigilant in the collection of the assessment after the expiration of the waiver but did no such thing. It was only on August 15, 1973 that respondent thought of serving petitioner the warrant of distraint and levy, which was as aforesaid beyond the five (5) year period within which to collect.

With respect to the second issue, we deem it unnecessary to decide the same, it having become moot and academic.

WHEREFORE, the decision appealed from is hereby reversed and respondent Commissioner of Internal Revenue is hereby enjoined from collecting the deficiency income taxes for the years 1962, 1963 and 1965 assessed against petitioner. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 28, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge

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