REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MATLING INDUSTRIAL AND
COMMERCIAL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4206

3/30/92

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

D E C I S I O N

Petitioner appeals the decision of respondent assessing it deficiency income taxes covering the year 1975 in the total amount of P491,626.72, inclusive of interest.

Petitioner is a domestic corporation engaged in the production of cassava starch and copra. It is registered with the Board of Investments (hereinafter referred to as BOI) and entitled to avail of incentives as a pioneer enterprise provided for under Republic Act (R.A.) No. 5186, as amended, particularly the deduction for reinvestment allowance in Section 7 (h) thereof. It applied for expansion reinvestment and the application was approved by the BOI on October 28, 1975 (Exh. "E", p. 54 C.T.A. Record). Thus, when petitioner filed on April 13, 1976 its Corporate Income Tax Return for calendar year ended December 31, 1975, it claimed as a deduction from its taxable income the amount of P1,143,000.00 reinvested for expansion.

The decision of respondent relies chiefly on the points upon which the BOI had earlier decided the controversy on the availment of petitioner of incentives under R.A. 5186, to wit:

> "a) Availment of incentives by BOI-registered firms are not covered by the Statute of limitations provided in Section 318 of the Tax Code; and
>
> b) Even assuming without admitting that availments of incentives by BOI-registered firms are covered by the Statute of limitations provided in Section 318 of the Tax Code, the period of limitations upon assessment and collection of the abovementioned deficiency tax for 1975 from Matling Industrial Corporation has not prescribed yet because the five (5) year period was suspended and started to run on January 23, 1981 only, when the firm submitted its notice of the date of ordering of the machinery and equipment subject of the application for expansion reinvestment allowance for 1975."

Petitioner, on the other hand, contends that the assessment of respondent having been received only on October 22, 1985, or more than five (5) years from date of filing of taxpayer's return on April 13, 1976 cannot be enforced as it violates the five-year period of limitation provided for in Section 318 of the National Internal Revenue Code (NIRC).

Section 318 provides:

> "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 purpose of this section, a return filed before the last day prescribed by law shall be considered as filed on such day; Provided that this limitation shall not apply to cases already investigated prior to the approval of this Code."

Further, petitioner alternatively contends that respondent erred in assessing it of the aforesaid amount on the hypothetical ground that the five (5) year period started to run only on January 21, 1981, the date it submitted notice of ordering of the machinery and equipment subject of the application for expansion reinvestment allowance for 1975. This contention is grounded on petitioner's reading of Section 7 (h) of R.A. No. 5186 which allegedly neither indicates nor insinuates that the reckoning period, assuming that the five year period of limitation is suspended, is the date of the notice of ordering of equipment.

Section 7 (h) of R.A. No. 5186 provides:

> "h) Deduction for Expansion Reinvestment. - When a registered enterprise reinvests its undistributed profit or surplus, whether from registered operations or not, by actual transfer thereof to the capital stock of the corporation for procurement of machinery, equipment and spare parts previously approved by the Board under subsections "d" and "e" hereof or for expansion of machinery and equipment used in production or for the construction of the buildings, improvements or other facilities for the installation of the said machinery and equipment, the amount so reinvested, to the extent of 25%, 37 1/2, 50% in case of non-pioneer projects, and to the extent of 50%, 75%, 100% in the case of pioneer projects, the appropriate percentage to be determined by the Board for each industry taking into account the relative risk, technology transfer and fall-out, export potential, incremental labor, use of locally manufactured machinery and equipment and domestic raw materials, shall be allowed as a deduction from its taxable income in the year in which such reinvestment was made; Provided, (1) That prior approval of the Board of such reinvestment was obtained by the registered enterprise planning such

> reinvestment, and (2) That the registered enterprise does not reduce its capital stock represented by the reinvestment within seven (7) years from the date such reinvestment was made. In the event the registered enterprise does not order the machinery and equipment within two (2) years from the date the reivestment was made or reduces its capital stock represented by the reinvestment within a period of seven (7) years from the date of reinvestment, a recomputation of the income tax liability therefore shall be made for the period when the deduction was made, and the proper taxes shall be assessed and paid with interest.

The answer to the question of prescription of the assessment lies on the relative effect that may be discovered Section 7 (h) of R.A. No. 5186 may have upon Section 318 of the NIRC.

As this is a matter of interpretation, Section 25 (c) of R.A. No. 5186 will serve our purpose as it provides:

> "Sec. 25. Applicability and Interpretation. - In interpreting and applying the provisions of this Act, the following shall be observed:
>
> (c) Resolving Doubts. - All doubts concerning the benefits and incentives granted enterprises and

> investors by this Act shall be resolved in favor of investors and registered investors.

On the manner of the application of the law prescribing a period of limitation for collection of internal revenue taxes, the case (Republic v. Ablaza, 108 Phil. 1105, 1108, [1960]) cited by petitioner is noteworthy as the Supreme Court guides us in this wise:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conclusive to bringing about the beneficient purpose of affording protection to the taxpayer within

> the contemplation of the Commission which recommended the approval of the law." (Underscoring supplied).

We do not see any statement in Section 7 (h) which will lead us to agree with the position of the Commissioner that the availment of incentives under R.A. No. 5186 is not covered by the period of limitation in Section 318 of the NIRC, nor that the five (5) year period in Section 318 as applied to said availment of incentives is counted or starts to run only from the date the registered enterprise submits notice of order of equipment. The significant phrase in Section 7 (h) reads - "In the event the registered enterprise does not order the machinery and equipment within two (2) years from the date the reinvestment was made xxx, a recomputation of the income tax liability therefore shall be made for the period when the deduction was made, and the proper taxes shall be assessed and paid with interest." This presupposes a case where the tax incentive through a deduction for expansion reinvestment is availed, which incentive works in this manner:

> "When a registered enterprise reinvests its undistributed profit or surplus, xxx by actual transfer thereof to the capital stock of the corporation for procurement of machinery, equipment and spare parts xxx or for expansion of

> machinery and equipment xxx the amount so reinvested, xxx to the extent of 50%, 75%, 100% in case of pioneer projects xxx shall be allowed as a deduction from its taxable income in the year in which such reinvestment was made: xxx"

Simply put therefore, when a deduction for expansion reinvestment is claimed and allowed, the registered enterprise in the case of procurement or expansion of machinery and equipment is given a maximum of two (2) years within which to order the machinery and equipment. Failing in this requirement, a recomputation of the income tax liability for such period that the deduction was made shall be done and proper taxes shall be assessed. Section 7 (h) speaks of assessment, negating the first theory of respondent on the non-applicability of Section 318 of the NIRC. Section 318 is the basic law on the period of limitation for assessment of internal revenue taxes and there is no provision in R.A. No. 5186 made to substitute this rule. We see, however, an intention in R.A. No. 5186 to suspend the application of the rule on limitation of actions for collection provided in Section 318 of the NIRC. That is, the five (5) year period of limitation is suspended and is not applied for the two (2) years that the registered enterprise is given to order the machinery and equipment and only after said period will recomputation and assessment of proper taxes be made. The suspension of the application of Section 318 of the NIRC for two years is but conducive to the intention of R.A. No. 5186 of providing benefits and incentives to pioneer and non-pioneer enterprises under its scope.

We cannot discern any contemplation of R.A. No. 5186, after a perusal of its pertinent provisions, to suspend the application of Section 318 of the NIRC for as long as the registered enterprise has not submitted notice of order of the machinery and equipment. <u>The law is clear in bringing out in the provisions of Section 7 (h) of R.A. No. 5186 the task of the Commissioner, as is his duty, to assess after two (2) years "from the date the reinvestment was made" if the registered</u> enterprise does not order the machinery and equipment.

Respondent, in futility, has gone as far as arguing that the duty belongs to the petitioner to recompute its tax liability (p. 5 Respondent's Memorandum, p. 81 CTA, Record). The Commissioner cannot pass on this duty for as held by the Supreme

Court in a case (**British Traders' Insurance Co., Ltd. v. Commissioner of Internal Revenue,** 13 SCRA 719, 726 [1965]) - "xxx the examination, verification and audit of petitioner's income tax returns after this filing (which) lawfully belongs to the Commissioner of Internal Revenue who has the necessary facilities and personnel to conduct the same". Moreover, respondent in so arguing for this duty on petitioner has raised for the first time the issue of fraud or falsity, a defense not pleaded previously in his Answer. This defense is not among the exceptions recognized in Section 2, Rule 9 of the Rules of Court, thus should be deemed to have been waived by respondent. This change in position by respondent also goes against the principle enunciated in the case of **Aguinaldo Industries Corporation v. Commissioner of Internal Revenue** (112 Scra 136,140 [1982]), that on appeal a party may not be permitted to assume a different posture than that he had assumed on the administrative level, for then the court would not review, but determine and decide for the first time a question not raised in the administrative forum.

In this case, petitioner reflected the deduction of P1,143,000.00 reinvested for expansion in its Income Tax Return for the calendar year 1975 filed on April 13, 1976. (Exh. "A"). Respondent, therefore, reckoning the two (2) - year suspension period and the five (5) - year period of limitation, had until April 15, 1983 to make the assessment. Since the assessment was made only on October 15, 1985 (Exh. "B"), it is barred by the period of limitation imposed under Section 318 of the NIRC.

WHEREFORE, judgment is rendered in favor of petitioner.

The Commissioner of Internal Revenue is hereby ordered

a) To WITHDRAW and CANCEL his assessment noted as SARD-IT 75/85 1928 issued against petitioner for being barred by the period of limitation provided in Section 318 of the National Internal Revenue Code of 1977.

b) To cease and desist from enforcing the aforesaid assessment and collection the tax for the reason above stated.

SO ORDERED.

Quezon City, Metro Manila, March 30, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

DECISION
CTA CASE NO. 4206

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between 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