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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRODUCERS BANK OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 4809

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 03 1997

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DECISION

This is a petition for review filed by the petitioner, **PRODUCERS BANK OF THE PHILIPPINES**, against the respondent **COMMISSIONER OF INTERNAL REVENUE**, for the latter's decision to assess the former the total amount of P2,704,319.84, allegedly representing the petitioner's deficiency withholding tax on interest on savings and time deposits for the year 1986.

The antecedent facts of the case are as follows:

Petitioner is a commercial banking corporation duly registered and operating under the laws of the Republic of the Philippines.

On January 18, 1990, petitioner received from respondent a letter enclosing Assessment Notice No. FAS-1-86-89-000072 for alleged deficiency withholding tax on interest on savings and time deposits in the total amount of P2,704,319.84, inclusive of surcharge, interest and compromise penalty.

Petitioner protested the aforesaid assessment thru a letter addressed to the respondent, dated February 11, 1990, which was received by the latter on February 13, 1990.

On April 27, 1992, petitioner was served, by the respondent, a Warrant of Distraint and/or Levy on its properties. Hence, on May 27, 1992, petitioner filed with this Court this instant petition for review, which raised the following issues:

> I. WHETHER THE INTERESTS PAID IN ADVANCE AND WITHHELD BY THE PETITIONER ON SOME OF THE DEPOSITS IT RECEIVED SHOULD BE DEDUCTED FROM THE COMPUTATION OF THE TAX DUE ON INTEREST PAID ON SUCH DEPOSITS; AND
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> II. WHETHER THE RIGHT TO ASSESS AND COLLECT THE ALLEGED DEFICIENCY TAX ON SUCH INTEREST PAID ON DEPOSITS HAVE ALREADY PRESCRIBED.

In discussing the issues, petitioner pointed out, that in computing the amount of tax withheld and paid by petitioner on interest on savings and time deposits which became the basis for this disputed assessment, the amount of tax already paid on advance interest was not taken into account, resulting in a double assessment of tax on such interest, and that since more than three (3) years have elapsed since the filing and payment of the returns on such interest, the right to assess and collect taxes on these interests, therefore, have already prescribed.

Instead of filing an answer to the petition for review, respondent filed with this Court a Motion to Dismiss. She contends therein that the appeal in this case is premature since there is as yet no decision reviewable by this Court as contemplated under the provisions of Sections 7 and 11 of RA No. 1125.

Petitioner on the other hand, in its opposition to the motion to dismiss, reiterated that in computing the amount of tax withheld and paid by petitioner for 1986, which became the basis of the disputed assessment, the amount of tax withheld and paid on advance interest payments were not taken into consideration, thus, resulting to said deficiency assessment. Petitioner further expounded that granting arguendo that the prescriptive period for assessment for the alleged deficiency withholding taxes on deposits for the last quarter of 1986 would be on January 25, 1990, then the assessment should only be for the last quarter of 1986, and not for the entire year of 1986, since it is the belief of the petitioner that the statute of limitations starts to run from the last day for the filing of each quarterly return, thus, the respondent's right to assess deficiency tax on the first three (3) quarters had long prescribed. Petitioner further contends that the Warrant of Distraint and/or Levy itself is the decision of respondent which is reviewable by this Court, as the circumstances of the case show that respondent intended the said warrant to serve as his final decision denying petitioner's protest. Petitioner also avers that, since said warrant of distraint and/or levy was issued by respondent in violation of Section 207 of the Tax Code, such question is cognizable by this Court.

The Court denied the respondent's motion to dismiss and ruled that under the circumstances, the issuance of the warrant of distraint and/or levy constitutes the final decision of the respondent on the petitioners protest with respect to the aforesaid assessment. Further, the Court said that the warrant of distraint and levy, is to all intendments, a final decision on the protest, as it foreclosed all avenues to further reconsideration and necessarily falls under the accepted doctrine enunciated by the Supreme Court in the case of **Commissioner of Internal Revenue** vs. Algue, Inc. 158 SCRA 9, which held:

> "It is true that as a rule the warrant of distraint and levy is a proof of the finality of the assessment and renders hopeless a request for reconsideration, being tantamount to an outright denial thereof and makes the said request deemed rejected."

As a result of said denial, respondent was required to file her answer. Respondent then alleged that, for the year 1986, petitioner, as a commercial bank received savings and time deposits from its various clients the total amount of P27,888,983.52 and P66,631,588.70 respectively, or a total of P94,520,572.22, thus, the total withholding tax due thereon is P17,706,508.07.

Since petitioner withheld and paid only P16,347,693.84, respondent concluded that there was an unpaid and unremitted balance of withholding tax on interest payments in the amount of P1,358,814.23, and that, for failure of petitioner to pay the aforesaid balance of withholding tax, the latter was assessed by the former on January 9, 1990, the amount of P2,704,319.84, representing deficiency withholding tax on interest on savings and time deposits for 1986, inclusive of interest, surcharge and compromise penalty.

Further, respondent noted that petitioner filed its quarterly return for final taxes withheld at source for the year 1986 within twenty five (25) days from the close of each calendar quarter. However, respondent stressed that the three (3) year prescriptive period for assessment, under the Tax Code, should commence to run only from the last day prescribed by law for filing of the return, which in the instant case should not be later than January 25, 1987. Thus, respondent contends that his right to assess will prescribe only after January 25, 1990, and since the subject assessment was issued on January 9, 1990 and was received by the petitioner on January 18, 1990, his right to assess has not yet prescribed, since it is well within the three (3) year prescriptive period required under the Tax Code.

Pertinent provisions of the Tax Code applicable to the case at bar are hereby reproduced in toto, to wit:

> SEC. 268 (now Sec. 203). *Period of limitation upon assessment and collection.* - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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-year period shall be counted from the day the return was filed. 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. (As amended by B.P. Blg. 700)
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> SEC. 52 (now Sec. 51). *Returns and payment of taxes withheld at source. - (a) Quarterly returns and payment of taxes withheld.* - Taxes deducted and withheld under Section fifty-three (now 51) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

After a thorough study of the ratiocinations of both parties, the Court finds the petitioner's contentions tenable. Sections 203 and 51(a) of the Tax Code are very vivid that generally internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return and that the last day prescribed by law for the filing of return and payment of taxes withheld at source should be made within 25 days from the close of each calendar quarter, unless it falls under the exceptions provided for in Sec. 269 (now Sec. 223) of the Tax Code, to wit:

> SEC. 269. *Exceptions as to period of limitation of assessment and collection of taxes.* -(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
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> (b) If before the expiration of the time prescribed in the preceding section 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.
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> (c) Any internal revenue tax which has been assessed within the period of

> collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.
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> (d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed up in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
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> (e) *Provided, however,* That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree. (As amended by BP Blg. 700)

In other words, the law speaks that the three (3) year period for assessment commences to run "after the last day prescribed by law for the filing of the return" which means that if the return is filed before such due date, the prescriptive period begins to run only after said due date.

Thus, an assessment on final withholding taxes made after the lapse of three (3) years from the 25th day from the close of each calendar quarter becomes null and void, for the right to assess has been barred by prescription. This is in conformity with the ruling of the Supreme Court that under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or verba legis derived from the maxim index animi sermo est (speech is in the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the Court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute, Verba legis non est recedendum, or from the words of a statute there should be no departure (**Globe-Mackay Cable and Radio Corporation vs. NLRC, G.R. No. 82511, March 3, 1992, 206 SCRA 701.**)

In the case at bar, it is undisputed that returns for the withholding tax were quarterly filed by the petitioner for the year 1986 on time, as prescribed by law.

The details of filing of each quarterly returns are specified hereunder, thus:

Quarter	Date Filed	Exhibit
1st quarter	April 9, 1986	C
2nd quarter	July 15, 1986	F
3rd quarter	October 10, 1986	I
4th quarter	January 8, 1987	L

The assessment letter was dated January 9, 1990 and received by the petitioner on January 18, 1990. Hence, applying the aforementioned provisions of law (Sec. 203 and 51(a) of the Tax Code), we conclude that the right to assess and collect the claimed tax assessment with regard to the first three (3) quarters had already prescribed. The right should have been exercised within three (3) years from the filing of each quarterly return in 1986. However, with regard to the last quarter, the Court finds that the right to assess and collect has not yet prescribed, as the records show that the subject assessment was issued and was received by the petitioner within the prescribed period mentioned in Section 51(a) of the Tax Code.

Having resolved the issue of prescription, we now come to the factual issues of the case.

Petitioner alleges that the amount of tax withheld and paid on advance interests were not taken into consideration by the respondent in the computation of the 1986 withholding tax liability on interest on savings and time deposits of the petitioner, thus, giving rise to this disputed assessment.

In support of the aforementioned allegation, petitioner presented exhibits A, B, C, D, E, F, G, H, I, J, K, and L, to show and prove that petitioner has indeed paid to the BIR the amount of P397,121.96 representing withholding tax on interest paid on savings and time deposits and to prove that payments of said withholding taxes were made in advance, hence, rendering without basis the assessment being claimed by the respondent. The latter did not object to the petitioner's exhibits but takes exception to the purposes for which said exhibits were offered. Neither, did respondent present any evidence that will tend to show that these alleged payments were already taken into consideration by the BIR in the computation of the subject assessment, thus, respondent is thereby considered to have vouched the authenticity of these exhibits and the purpose for which they were offered. As such, the said amount should be deducted from the petitioner's alleged deficiency tax liability for the last quarter of 1986. However, respondent failed to show to this Court that there is indeed a deficiency assessment for the last quarter of 1986. Records of the BIR and the Court show the alleged petitioner's deficiency withholding tax liability on interest on savings and time deposits for 1986 was computed in its totality. Respondent was not able to establish the amount of petitioner's deficiency withholding tax liability for the year 1986, thus, this Court has no other recourse but to find in favor of the petitioner.

Very apt to the instant case is the ruling of the Supreme Court in the case of Collector of Internal Revenue vs. Benipayo, 4 SCRA 182, which we quote hereunder.

> "x x x. An assessment fixes and determines the tax liability of the taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. x x x
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> In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption, x x x."

In the case under consideration, the Court cannot compute the deficiency withholding tax liability for the last quarter of 1986 since this was not clearly established by the records of the case which were transmitted to this office by the BIR, thus, the Court should not be presumptuous that there was indeed a deficiency withholding tax for the last quarter of 1986.

WHEREFORE, premises considered, judgment is hereby rendered **GRANTING** the herein petition. Respondent is hereby **ORDERED** to **CANCEL** the deficiency assessment in the amount of ₱2,704,319.84 which she issued against the petitioner on the latter's alleged deficiency withholding tax liability on interest on savings and time deposits for the year 1986. No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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