REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MELCON DEVELOPMENT CORPORATION and EMMANUEL G. VIRATA,
Petitioners,

- versus -

C.T.A. CASE NO. 6192

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 24 2004

x - x

DECISION

This case seeks for the cancellation of Formal Letter of Demand dated March 15, 2000 with Assessment Notices all numbered 000082, assessing herein petitioners for deficiency income, expanded withholding and value-added taxes and compromise penalties in the aggregate amount of **SEVEN HUNDRED SEVENTY-FOUR THOUSAND NINE HUNDRED FORTY SIX PESOS AND 26/100 (P774,946.26)** for the taxable year 1994.

The undisputed facts are as follows:

Petitioners Melcon Development Corporation, a duly organized Philippine corporation, and Mr. Emmanuel G. Virata, of legal age, and Filipino, both have their office at 500 Northwestern Street, Mandaluyong City (*par 1, Petition for Review*).

On March 22, 2000, petitioners received through registered mail respondent's Formal Letter of Demand dated March 15, 2000, with attached Assessment Notices and Details of Discrepancies, thereby assessing petitioners of deficiency taxes for the taxable year 1994 in the aggregate amount of **SEVEN HUNDRED SEVENTY-FOUR THOUSAND NINE HUNDRED FORTY SIX PESOS AND 26/100 PESOS (P774,946.26)** *(Exhibit "A-1")*, with breakdown as follows:

DEFICIENCY INCOME TAX

Net Income per return		P 120,642.86
Add: Discrepances/disallowance per audit		
Donation	P 40,030,74	
Repair & Maintenance	314,094.15	354,124.89
Taxable Income per audit		474,767.75
Tax Due Thereon		P 166,169.00
Less: Tax credits/payments		
Paid per return	39,228.42	
Creditable tax withheld	42,905.75	
Total tax credit	82,134.17	
Less: Applied as tax credit to next year	39,909.17	42,225.00
Deficiency Tax		P 123,944.00
Add: 50% Surcharge		61,972.00
20% Interest per annum from 4-16-95 to 3-15-00 (9817)		121,675.82
Total Amount Due		**P 307,591.82**

DEFICIENCY EXPANDED WITHHOLDING TAX

Withholding tax due per ledger		P 45,047.70
Less: Tax paid/remitted		26,264.00
Deficiency Tax		P 18,683.70
Add: 50% Surcharge		9,341.85
20% Interest per annum from 1-26-95 to 3-15-00 (10262)		19,173.21
Total Amount Due		**P 47,198.76**

DEFICIENCY VALUE-ADDED TAX

Taxable sales/receipts per returns		P 0.00
Add: Adjustments		
Income as contractor		P1,424,159.30
Total per Investigation		P1,424,159.30
Output tax due thereon		P 142,415.93

Less: Tax Credits/Payments (no returns)		0
Deficiency Tax		P 142,415.93
Add: 50% surcharge		71,208.00
20% interest per annum from 1-21-95 to 3-15-00 (10280)		146,531.75
Total Amount Due		**P 360,155.68**

COMPROMISE PENALTY

Books of accounts - not registered		P 50,000.00
Official receipts - not registered		10,000.00
Total Amount Due		**P 60,000.00**

Petitioners formally protested the said Formal Letter of Demand and Assessment Notices through a protest-letter dated April 13, 2000 which was received by the respondent on April 14, 2000 (*Exhibit "A"*).

In protesting the subject tax assessments, petitioners relied on Section 228 of the Tax Code, which provides:

> **Section 228. Protesting an Assessment –**
>
> **xxx xxx xxx**
>
> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Since the tax protest was filed on April 14, 2000, respondent's one hundred eighty (180) days to act upon the protest ended on October 11, 2000. By his failure to act on the protest-letter, petitioners then had the period of thirty (30) days from October 11, 2000, or until November 10, 2000, to file their appeal to this court. This petition then, as it is not disputed by the parties, was filed well within the prescribed time allowed by law.

In his Answer filed on December 13, 2000, respondent raised the following Special and Affirmative Defenses:

> 4. Taxes are the lifeblood of the government. Thus, the same should be collected without unnecessary hindrance or delay. It is the means by which the government is able to defray the expenses necessary for its existence. Concomitantly, tax laws should be strictly construed against the taxpayer.
>
> 5. Petitioner failed to submit all relevant documents in support of its protest.
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> 6. The assessment was issued in accordance with laws and revenue regulations.
>
> 7. All presumptions are in favor of the correctness of tax assessments. (Commissioner of Internal Revenue vs. Avelino; 8 SCRA 572)

Petitioners submitted evidence to support their case. However, respondent failed to formally offer his already marked documentary evidence. This case was then submitted for decision on June 3, 2004 without respondent having filed his memorandum.

The only issue to be resolved in this case is whether or not the right of the respondent to assess the petitioners for deficiency income, expanded withholding and value-added taxes for the taxable year 1994 has already prescribed.

It is the contention of petitioner that the government's right to assess the subject deficiency taxes has already prescribed citing the applicable law as its fulcrum:

> **Section 203. Period of Limitation Upon Assessment and Collection.** - Except as provided in Section 222, 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. For 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 (National Internal Revenue Code).

Petitioners aver that their Annual Income Tax Return for the taxable year 1994 was filed on April 7, 1995, as evidenced by the official stamp of receipt of the receiving bank, Pilipinas Bank, on their ITR form. Accordingly, petitioners argue, respondent had only until April 7, 1998 within which to assess herein petitioners for their deficiency taxes for the year 1994. Consequently, beyond April 7, 1998, any assessment for deficiency taxes in calendar year 1994 would, and should, have prescribed already in the ordinary course of prescription as provided for under Section 203 of the Tax Code.

We find for the petitioners.

Respondent's Formal Letter of Demand, together with the Details of Discrepancies and Assessment Notices, was dated March 15, 2000. Respondent has no quarrel with the fact the said demand letter was dated and received by the petitioners on March 15, 2000 and March 22, 2000, respectively. In fact, in his Answer, respondent admitted this specific allegation of the Petition for Review.

Verily, pursuant to Section 203 of the Tax Code, which provides that the period to assess internal revenue taxes is within three years after the last day for filing of the return as prescribed by law, respondent had really slept on his right to assess petitioners for any deficiency taxes for the taxable year 1994. Though respondent may have denied petitioners' allegation that they filed their annual income tax return for the taxable year 1994 in 1995, respondent, however, failed to establish facts and evidence which are contrary to petitioners' allegation.

If petitioners have actually failed to file their returns, then respondent is authorized to assess within ten (10) years from the discovery of the omission to file the return. Yet, respondent failed to show proof that petitioners indeed failed to file and submit their income tax return for the year 1994. Nowhere in the records would show that respondent was able to satisfactorily substantiate his claim that petitioners' allegation on the correct date of filing of their income tax return was merely "based on conclusions bereft of merit in fact and in law". In fact, respondent did not even allege in his Answer that petitioners failed to file their income tax return for the year 1994 so as to be able to correctly apply the ten (10)-year prescriptive period. On the contrary, it is clearly shown in respondent's Formal Letter of Demand with Details of Discrepancies that the assessments made were based on the information declared in the returns filed by the petitioners. Clearly then, respondent cannot argue that petitioners did not file their income tax return for the year 1994. Moreso, even the 50% surcharge imposed was based, not for the reason of failure to file their 1994 income tax return, but rather, for alleged violation of registration rules and regulations by the petitioners.

Respondent further assessed petitioners of deficiency value-added tax for their income allegedly received as contractors plus a 50% surcharge for failure to file their corresponding value-added tax returns.

After a close scrutiny of the records presented, it is but obvious that respondent failed to satisfactorily support his contentions. Nor was he able to contest petitioners' legal and factual averments. This court cannot but find lapses in the allegations and documents of the respondent that are too obvious to ignore. One of the disputable presumptions provided for by law, specifically in Section 3(ff) of Rule 131 of the Revised Rules of Court is that "the law has been obeyed", therefore, the burden of proving that the petitioners fraudulently or failed to file their returns on the date prescribed by law lies upon the respondent. Unfortunately, this respondent failed to destroy.

In a Memorandum submitted by the Bureau of Internal Revenue's Chief of the Legal Division, Mr. Orlando R. Resurreccion, addressed to the Bureau's Chief of the Assessment Division, Ms. Ruth Vivian G. Gadia *(Exhibit "G")*, it was concluded by the former that the government's right to assess herein petitioners of deficiency taxes for the taxable year 1994 had already prescribed. Pertinent portions of the said Memorandum are quoted below:

> Having these pertinent Sections of the Tax Code in mind, this Office is of the opinion that the **right of the government to assess MELCON DEVELOPMENT CORPORATION has already prescribed.** Indeed, above-mentioned taxpayer executed a WAIVER OF THE STATUTE OF LIMITATION UNDER THE TAX REFORM ACT. However, it bears

stressing that said waiver extended the right of the government to assess the taxpayer for any of its tax liabilities only until December 15, 2000 ***(December 15, 1999 in par. 3 of the Petition for Review; see also pages 5 & 15 of the protest-Exhibit "A").*** No evidence on record show that another waiver was executed/signed by the duly authorized representatives of MELCON.

Discussing further the issue of prescription, MELCON, likewise can not be considered as having filed a false or fraudulent. The allegation of fraud against the taxpayer must be duly substantiated/supported by sufficient proof. The intent of the taxpayer to evade tax must be shown.

In the instant case, there was merely a clerical error in the typing of the amounts under Schedule 3 of the 1994 Corporate Income Tax Return filed by MELCON. The error was obviously the failure on the part of the clerk to erase the mistyped figure of P1,294,690. x x x

Moreover, the taxpayer can neither be said to have filed a fraudulent return that would consequently warrant the extension of the three (3) years (sic) period to assess to ten (10) years. Taxpayer alleges that it derives income purely from the lease of two of its properties. **Nothing of record shows that MELCON DEVELOPMENT CORPORATION is indeed a contractor as erroneously alleged by LOCTI (one of the taxpayer's lessee [sic]) in the Certificate of Creditable Tax Withheld at Source**. The **Bureau cannot merely rely on the assumption of LOCTI, that MELCON is a contractor. The Bureau of Internal Revenue must take into consideration the fact that it is MELCON's lessees who filed these Certificates of Creditable Tax Withheld with the Bureau and it is only upon receipt of MELCON's copy that it may discover error, if any, in the Certificate of Tax Withheld filed by LOCTI.** If there were errors committed, the imposition of penalties on MELCON is still unjust as MELCON should not suffer the consequences of other's mistake. xxx
(Emphasis supplied.)

As pointed out in the above-quoted Memorandum, petitioners cannot be considered as having filed a fraudulent return. A "fraudulent return" is always an attempt to evade a tax. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right **(Aznar vs. Court of Tax Appeals, 58 SCRA 519**). It must amount to an intentional wrong-doing with the sole object of which is to avoid the tax. A mere mistake cannot be considered as fraudulent intent. Fraud is never imputed and the courts never sustain findings of fraud upon circumstances which, at most, create only suspicion **(Commissioner of Internal Revenue vs. Javier, Jr., 199 SCRA 824).**

Additionally, during one of the hearings of the case, more particularly on September 14, 2001, the counsel for respondent had manifested that when the case of the petitioners' alleged deficiency taxes was assigned to him, he had recommended for its dismissal on the ground of prescription. Excerpts from the said hearing are quoted below for easy reference:

> Judge Acosta:
>
> Petitioner, what are you saying a while ago?
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> Atty. Paguia:
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> Your Honors, before this case was called before this Honorable Court, the counsel for the government, Atty. Mayo, informed me that he has already recommended for a cancellation of the subject assessments.
>
> Judge Acosta:

Why, Atty. Mayo?

Atty. Mayo:

Your Honors, as per investigation of the docket, which I was tasked to handle, it appears that the **assessment was issued beyond the reglementary period.**

Judge Acosta:

Be more specific.

Atty. Mayo:

On the ground of prescription, your Honors.

Judge Acosta:

Yes, be specific? What are the dates involved?

Atty. Mayo:

Your Honors, I can not recall at this moment because at that time when I was just handling the case, it was merely for rendering of a legal opinion, whether the Assessment was issued within the reglementary period and without me knowing that subsequently a case for disputed assessment will be filed before this Honorable Court and the same will be assigned to me.
(Transcript of Stenographic Notes, pages 5-7, September 14, 2001)
(Emphasis supplied)

Moreover, this court received on October 21, 2003, a copy of the Memorandum for the Chief of the Legal Division of the Bureau of Internal Revenue Region No. 7, signed by the witness for the respondent, the Technical Assistant to the Office of the Deputy Commissioner, Mr. Carlos S. Salazar, manifesting therein his stand to formally refrain from further acting as a witness due to the reasons, mainly, on existence of documents and evidence leading to the indubitable conclusion that the government's right to assess petitioners for deficiency taxes for the taxable year 1994 has already prescribed *(CTA Records, pages 194-195)*.

It is worth emphasizing that the allegation of the petitioners on the issue of prescription was never categorically rebutted by the respondent. Likewise, respondent did not even submit documentary evidence to counter the evidence already presented by the petitioners.

Finally, the prescriptive periods provided in the Tax Code are clear and the principle behind the fixing of such periods is explained by the Supreme Court in the case of **Republic vs. Ablaza (108 Phil 1105)**, thus:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its taxpayers; 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."

IN VIEW OF THE FOREGOING, this court hereby **RESOLVES TO GRANT** petitioners' Petition for Review. Accordingly, the Formal Letter of Demand dated March 15, 2000 and the Assessment Notices assessing petitioners of deficiency income, expanded withholding, value-added taxes and compromise penalties for the taxable year 1994 are hereby **CANCELLED AND WITHDRAWN.**

SO ORDERED.

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

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

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