21B.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEONARDO ZITA,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A CASE NO. 5171

Promulgated :
JUL 11 1996

x - x

DECISION

This petition seeks for the review and reversal of the decision of Revenue Commissioner Vinzons-Chato declaring a memorandum for the collection of deficiency advance sales tax of some twenty-two animal feed meal importers to be without force and effect.

The facts of the case as stated in the joint stipulation submitted by both parties and borne out of the records of the Bureau of Internal Revenue (BIR) are as follows:

1. Petitioner is the informer who submitted to the BIR a confidential denunciation for tax evasion (Annex 'B' against 22 importers of animal feed meals, as said taxpayers, paid advance sales tax on their respective importations for the years 1980-1983 at the rate of 5% only instead of 10% which petitioner believes is prescribed under Sec. 199 in relation to Sec. 193 (b) of then revenue code;

2. Respondent caused the investigation of this denunciation on the said importers and there was a proposed assessment of deficiency taxes for the said years (Annex 'C');

3. However, then Bureau's Law Division saw some alleged conflict in earlier BIR rulings and so apparently, upon the protest of one of these importers - Simon Enterprises Inc., respondent cancelled the latters's proposed deficiency assessments as per Memorandum dated December 8, 1986 (Annex 'D');

4. Consequently, the proposed deficiency assessments of the remaining 21 importers were likewise cancelled or discontinued in view of respondent's resolution in the afore-memorandum;

5. Petitioner never received nor was furnished a copy of this memorandum until May 18, 1993 and immediately thereafter, he sought for its reconsideration (Annex 'F') with the Office of the respondent on June 9, 1993;

6. On January 27, 1994, the Bureau's Legal Service sent Simon Enterprises Inc. the corresponding letter of demand (Annex 'I' for the payment of P736,667.00 reinstating its deficiency advance sales tax covered by Assessment Notice No. FAN-4-80-81-82-83086-009345;

7. On March 3, 1994, Simon Enterprises Inc., thru its counsel, Atty. Ma. Theresa Trinidad of Villaroza and Cruz Law Offices, submitted its reply stating that the period within which the taxes may be collected had prescribed;

8. On two, occasions, petitioner requested respondent to effect similar action against the other 21 importers;

9. On October 11, 1994, petitioner was surprised to receive from respondent her letter dated September 16, 1994 (Annex 'A') withdrawing the assessment of the amount of P736,667.00 due from Simon Enterprises, Inc. as well as from the other 21 animal feed importers which is now being assailed by petitioner before this Honorable Court.

The issues to be resolved are:

1. Whether or not the petitioner has the personality to institute this petition.

2. Whether or not the Court of Tax Appeals has jurisdiction over the present petition.

3. Whether or not prescription has set in to constitute a bar for the assessment or collection of any tax liability from the taxpayer.

Under the Rules of Court, every action must be prosecuted and defended in the name of the real property in interest. (Sec. 2 Rule 3). By "real party in interest" means that a party has real interest in the subject matter of the action. He is the party who would be benefited or injured by the judgment or is the party entitled to the avails of the suit (**Locsin vs. Climaco, 26 SCRA 816, 833; Filipinas Industrial Corp. vs. San Diego, 23 SCRA 706**).

In the case at bar, petitioner, being the informer of the subject tax evasion case, stands injured by the letter-decision of respondent, dated September 16, 1994, revoking its previous memorandum of December 7, 1993 wherein the enforcement and collection of subject deficiency taxes was previously ordered. Furthermore, under Sec. 11 of R.A. 1125, it state that "<u>any person, association or corporation adversely affected by a decision or ruling of the commissioner of internal</u>

revenue ... may file on appeal in the Court of Tax Appeals xxx ." Without any qualification, thus, herein petitioner has the locus standi to institute the present position. (Underscored supplied).

With respect to the question of jurisdiction, the determination of the correctness or incorrectness of a tax assessment to which the taxpayer is not agreeable, falls within the jurisdiction of the Court of Tax Appeals. For, under the provision of Sec. 7 of R.A. 1125, the Court of Tax Appeals has exclusive appellate jurisdiction to review, on appeal, any decision of the Commissioner of Internal Revenue on cases involving disputed assessments and other matters arising under the NIRC or other law or part of law administered by the BIR (**Blaquero vs. Rodriguez**, 103 Phil, 511), certainly the question whether of not to impose a deficiency tax assessment comes within the purview of the words "disputed under the NIRC x x x ." (**Meralco Securities Corporation vs. Savellano**, 117 SCRA 804).

The decision being assailed in the case at bar refers to a withdrawal of a deficiency tax assessment by the respondent. Petitioner ask the same to be reviewed, alleging among others, that respondent has no legal basis to support such cancellation. Petitioner even pointed out that there were badges of irregularity in the performance of the function of the administrative body concerned, amounting to grave abuse of discretion by respondent in arriving at the above-mentioned decision.

We commend the zealous efforts of herein petitioner in trying to guard the interest of the State with respect to the revenues the latter need to sustain its existence. However, We are of the opinion that the decision of the Commissioner of Internal Revenue should not be disturbed, absent of the fact that grave abuse of discretion was committed.

When the Commissioner of Internal Revenue decided with finality the issue of whether of not to withdraw deficiency taxes to Simon Enterprises, Inc. and twenty-one other importers, the same was made in accordance with her authority under the law. The Commissioner of Internal Revenue has the discretionary power to act or not to act upon the information made by the petitioner. That is a privilege of respondent to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of the law, and the exercise is reviewable only for an abuse thereof. (see **Manekos vs. Allied Discount Co.**, 6 Misc. 2 d 1079, 166 N.V.S. 2d 366, 369). And this is manifested by the fact that when the Commissioner approved the recommendation of the Law

Division, it was based on BIR Ruling Nos. 238-81, 010-83 and 050-85, wherein it was ruled that the importation of meat and animal bone meal, fish meal, etc., to be sold directly to poultry, swine and cattle raisers, are subject to the 5% advance sales tax under then Section 201(f) in relation to Section 193(b) (now both repealed) of the Tax Code, as amended by Executive Order No. 883.

And to clarify further that the importation and sale of meat and animal bone meal and fish meal were subject to 5% advance sales tax pursuant to Sec. 201(f), We relate the same to R.A. 1556 (An Act to Regulate and Control the Manufacture, Importation, Labelling, Advertising, Distribution, and Sale of Livestock and Poultry Feed).

Under the said law, "feeds" or "feeding stuff" shall embrace all such articles to be used as feeds purporting to supply proteins, carbohydrates, fats, minerals, vitamins, antibiotics, growth promoting factors whether identified or unidentified, and/or correcting nutritional disorders. Such articles may be locally produced or imported, mixed or in the form of simple ingredients; Provided, however, that the following are excluded:

a) Whole seeds or grains, unmixed.

b) Fresh green roughage, and unprocessed liquid milk in all its forms.

c) Dried and ground hays, and straws, dried and ground corn stalks or other parts of the corn plant not included in the grain, rice hulls, cane sugar baggasse, dried beetpulp, oat hulls, barley hulls, clipped oat by-products, sorghum plant by-products and flax plant by-products, cotton seed hulls, mongo bean hulls, buckwheat hulls, cocoa shells, or other materials of a similar character. [Sec. 3(d), R.A. 1556, as amended by S.B. No. 627]

Hence, based on the above definition, We can conclude that animal and bone fish meal are within the ambit of Sec. 201(f), being "feeds" of the simple form and not covered within the exclusions.

Furthermore, respondent has in her favor the presumption of regularity in the performance of official duties. Allegations of partiality, malice and bad faith and other improprieties should be proved in a clear and convincing manner. This, petitioner has failed to do.

And finally, with respect to the issue of prescription, We rule in favor of the respondent. The BIR had three years from the issuance of the assessment notice on October 10, 1986 to enforce collection of the aforesaid assessment pursuant to Section 268 of the Tax Code. Since the BIR failed to do so within the period of limitation, prescription had set in and the BIR could no longer revive its right of action against the taxpayers.

Section 230 of the Tax Code is very clear on the matter that, internal revenue taxes shall be assessed within three years after the return was filed, and no proceeding in Court without assessment for collection of such taxes shall commence after the expiration of such period.

In the case of **Republic of the Phils. vs. Ablaza**, **G.R. No. L-14519, July 26, 1960, 108 Phils. 1105,** the Supreme Court has ruled that:

> "The provision of law on prescription was adopted in our statute books upon recommendation of the tax commissioner of the Philippines which declares:
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> > "Under the former law, the right of the Government to collect the tax does not prescribe. However, in fairness to the taxpayer, the Government should be estopped from collecting the tax where it failed to make the necessary investigation and assessment within 5 years after the filing of the return and where it failed to collect the tax within 5 years from the date of ssessment thereof. Just as the government is interested in the stability of its collections, so also are the taxpayers entitled to an assurance that they will not be subjected to further investigation for tax purposes after the expiration of a reasonable period of time." (Vol. II, Report of the Tax Commission of the Philippines, pp. 321-322)
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> "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 the assessment, and to citizens because after the lapse of the period of prescripition 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 uncrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law."

WHEREFORE, the petition for review is hereby DISMISSED with no pronouncement as to cost.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals