REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

SUCAT LAND CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6138

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 21 2005

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

Before us is a Petition For Review filed by Sucat Land Corporation (hereafter "petitioner") seeking to set aside the Assessment Notices issued by the Commissioner of Internal Revenue (hereafter "respondent) against petitioner for deficiency income tax and documentary stamp tax in the aggregate amount of P14,461,576.58 for the calendar year ended December 31, 1995.

THE FACTS

In their Joint Stipulation of Facts, the parties submitted a summary of stipulated facts:

> 1. Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal address at Suite 3-A Vernida Condominium 120 Amorsolo Street Legaspi Village, Makati, Metro Manila.
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> 2. Respondent is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the provisions of the National Internal Revenue Code as well as related tax statutes and their implementing rules and regulations, including inter alia, the power to issue deficiency tax assessments and to evaluate and decide upon the merits of the protest against said deficiency tax assessments, with office address at the BIR National Office Building in Diliman, Quezon City, where he may be served summons and other court processes;
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> 3. Petitioner is principally engaged in the business of a holding corporation, one of the activities of which is the leasing of real property.
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> 4. The respondent BIR in its letter dated September 17, 1999, herein included as Annex "A" issued by the Chief of the Assessment Division Revenue Region No. 8, treated the formal assessments as final and executory and thus collectible by the Revenue District Office No. 47, East Makati.
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> 5. In the aforesaid letter, the Respondents alleged that they had already mailed the Formal Assessment

Notices No. 0000051-95-99-498 and 02-354-95B-99-B2-498 together with the demand letters dated April 13, 1999, last April 14, 1999 at 3rd floor Alegria Bldg., 2229 Pasong Tamo, Makati City. However, the said final notices and demand letters were returned to the BIR due to the change of address of the Petitioner-addressee.

6. Respondent BIR claimed that the Petitioner failed to notify the BIR of its transfer before the issuance of such notices and demand letters. Thus, only photocopies of said notices and demand letters were provided to the new address at Suite 3-A Vernida Bldg., 120 Amorsolo Street, Legaspi Village, Makati City as per information given by Group Supervisor Nelia Castillo of RDO No. 48 West Makati.

7. Income Tax: Taxes and Licenses: P5,887,627.23.

The following is a breakdown of the assessment with regard to the taxes and licenses:

Total taxes & licenses per financial statement	P 10,068,595.00
Total taxes & licenses duly supported with receipt	4,180,967.67
Total unsupported taxes & licenses expense	P 5,887,627.23

8. Income Tax: Interest and Administrative Expense: P19,310,910.00

The following is a breakdown of the assessment with regards to interest and administrative expenses:

Interest and bank charges	P 18,912,911.00
Administrative	457,411.00
Total per financial statement	19,370,322.00
Total expenses duly supported with receipt	81,027.00
Total unsupported expense	19,289,245.00

9. Documentary Stamp Tax on Promissory Notes: P337,500.00

The following is a breakdown of the assessment with regards to the documentary stamp tax on promissory notes.

Documentary Stamp Tax on Promissory Notes	
Taxable base	P 180,000,000.00
Documentary stamp tax due	270,000.00
25% surcharge	67,000.00
Total	P 337,500.00

10. The formal assessment notices against Petitioner for alleged deficiency income tax (FAN No. 0000051-95-99-489) and documentary stamp tax assessments (FAN No. 02-354-95B-99-B2-498) for the year ended December 31, 1995 in the amounts of P 14,124,076.58 and P337,500.00 respectively, inclusive of increments, were computed by the Respondent as follows:

Income Tax
(Assessment Notice No. 0000051-95-99-489

Net income per return		P 5,561,803
Add: Disallowances		
Interest/Administrative Expenses	19,298,295	

Taxes and Licenses	5,887,627.33	
Net income per investigation		30,738,005.33
Tax rate		35%
Income tax due thereon		10,758,301.86
Less: tax due per return		1,946,379.00
Deficiency income tax		8,811,922.86
25% surcharge		5,287,153.72
Compromise Penalty		25,000.00
Total		14,124,076.58

Documentary Stamp Tax on Promissory Note
(Assessment Notice No. 02-354-95B-99-B2-498)

Taxable Base	P 180,000,000
Documentary stamp tax due	270,000
25% Surcharge	67,000
Total	337,500

11. On October 21, 1999 Petitioner filed with the BIR Legal Division of Revenue Region No. 8, a letter protest against the said deficiency tax assessments and requesting that the same be withdrawn and cancelled for the reasons states therein and after investigation.

12. On July 13, 2000 Petitioner appealed by way of Petitioner for Review to the Honorable Court of Tax Appeals the formal assessment notices against Petitioner for alleged deficiency income tax (FAN No. 0000051-95-99-489) and documentary stamp tax assessments (FAN No. 02-354-95B-99-B2-498) for the year ended December 31, 1995 in the amounts of P 14,124,076.58 and P337,500.00 respectively, inclusive of increments.

13. Per the amended 1995 Income Tax Return and audited financial statements of Petitioner the total interest and bank charges expenses was in the amount of P18,912,911.00.

14. Per the amended 1995 Income Tax Return and audited financial statements of Petitioner the total taxes and licenses was in the amount of P10,068,595.00.

15. Per the amended 1995 Income Tax Return and audited financial statements of Petitioner the total administrative expenses was in the amount of P479,026.00.

16. Petitioner received from Respondent a letter dated February 22, 1999, requesting the submission of Petitioner's documents relative to the examination of its books of accounts for all internal revenue tax purposes for the year ended December 31, 1995.

17. The Petitioner, in a letter dated February 23, 1999 answered the Respondent's letter dated February 22, 1999.

In his Answer, respondent alleged by way of special and affirmative defenses:

"5. The assessments in question were made and issued in accordance with existing laws, rules and regulations.

6. The assessments, subject of the instant case, were issued in accordance with the requirements as provided for under Section 228 of the 1997 Tax Code. The details of discrepancies containing facts and the law upon which

assessments were based were duly stated in the adverted assessments and demand letters issued to petitioner.

7. The assessments have become final, executory and demandable for failure of the petitioner to inform the respondent of its change of address. Section 11 of Revenue Regulations No. 12-85 provides, thus:

> 'SECTION 11. Change of Address. – In case of change of address, the taxpayer must give written notice thereof to the Revenue District Office or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR National Office, Quezon City, and <u>in case of failure to do, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply. (Underscoring ours)</u>

8. Prescription being a matter of defense, the burden is on the taxpayer to prove that the full period of limitation has expired (**Quero vs. Coll., L-16705, Oct. 30, 1962**).

9. All presumptions are in favor of the correctness of the tax assessment (**Interprovincial Autobus, Inc. vs. Collector of Internal Revenue, 98 Phil. 290**)."

Petitioner presented Atty. Zosimo Orille, Renato Leveriza, Jr., and Antonio Veloria, as witnesses, and submitted its Formal Offer of

Evidence and Supplemental Formal Offer of Evidence, which were admitted by the Court except Exhibits "AA". "AA-1" and "O", subject to a final evaluation as regards their probative value.

On the other hand, respondent presented Nelia Castillo, as witness, but in the Resolution dated December 14, 2004, respondent was deemed to have waived the right to formally offer his evidence for failure to file the same within the prescribed period.

Thereafter, the parties were ordered to file their respective memoranda within thirty (30) days from notice. On February 8, 2005, petitioner filed its "Memorandum For the Petitioner", and for failure of the respondent to file his memorandum within the prescribed period, the case was deemed submitted for decision without respondent's memorandum.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

> Whether or not petitioner duly informed the respondent of its change of address;

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II

Whether or not the subject assessments have already become final, executory and demandable for failure of the petitioner to inform the respondent of its change of address;

III

Whether or not the petitioner has a total unsupported taxes and licenses expense in the amount of P5,887,627.23 for calendar year ending December 31, 1995;

IV

Whether or not the petitioner has a total unsupported interest and administrative expense in the amount of P19,289,245.00 for the calendar year ending December 31,1995;

V

Whether or not petitioner failed to pay the documentary stamp tax due in the amount of P337,500.00 for calendar year ending December 31, 1995; and

VI

Whether or not petitioner is liable for the amount of P14,124,076.58 and P337,500.00 for calendar year ending December 31, 1995.

THE COURT'S RULING

The Petition is meritorious.

The pivotal issue to be resolved by the Court is whether the assessments were issued beyond the three-year period provided under *Section 203 of the National Internal Revenue Code* (hereafter "NIRC") *of 1997*, a favorable resolution of which will render the deficiency income and documentary stamp taxes assessments without force and effect for being barred by the statute of limitations, pursuant to *Section 223 of the same Code*.

We answer in the affirmative.

There is nothing novel in this case as the principal issue raised herein had, in a number or so of cases, been previously ruled upon by this Court wherein We cancelled several assessments for failure of respondent to issue the same within the time prescribed by law despite proper notification of taxpayer's change of address.

Petitioner contends that the assessments for income and documentary stamp taxes have prescribed and are invalid in form and substance, and thus violative of the law and petitioner's right to due process. It argues that the assessments should be cancelled for being issued beyond the three-year period provided under *Section 203 of the NIRC of 1997.*

Petitioner points out that it filed its 1995 amended annual income tax return on June 17, 1996 with respondent's authorized agent bank, the Philippine National Bank. Therefore, respondent had up to June 17, 1999 to issue an assessment for deficiency income tax. Since the assessment was issued only on September 17, 1999, the assessment for deficiency income tax is time barred. Likewise, petitioner stresses that the documentary stamp tax arising from Syndicated Loan Agreement (*Exhibit "L"*) and Joint Mortgage Trust Indenture (*Exhibit "CC"*) both dated February 9, 1995, was paid on May 30, 1995, as evidenced by a Certification issued by the Revenue Accounting Division of the Bureau of Internal Revenue (*Exhibit "QQ"*). In addition, the documentary stamp tax due on dollar loan was paid on December 29, 1995. Consequently, respondent had up to May 30, 1998 and December 29, 1998, respectively, within which to issue deficiency documentary stamp tax assessments. Hence, the 1995 deficiency assessment for documentary stamp tax issued on September 17, 1999 is also barred by prescription.

On the other hand, respondent counterargues that the assessments were timely issued. The assessment notices, demand letters and details of discrepancies were mailed on April 14, 1999 to petitioner's former address reflected in its 1995 income tax return. The reason why the said documents were not received by petitioner is because it has moved out of its new address without notice to the respondent of its new address. Thus, the running of the statute of limitations provided under *Section 203 of the NIRC of 1997* is suspended for the failure of petitioner to inform respondent of its change of address, pursuant to *Section 223 of the same Code*. To quote:

> "SEC. 223. *Suspension of Running of Statute of Limitations.* — The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided,* That, if the taxpayer informs the Commissioner of any change of address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household

> with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines." *(Underlining supplied).*

Petitioner rebuts the position of the respondent by offering in evidence three letters of notification of its change of business address. The first is a letter dated September 14, 1998 advising respondent that effective October 1, 1998, petitioner will hold office at its new address at 3-A Vernida I Condominium, 120 Amorsolo Street, Legaspi Village, Makati City (*Exhibits "F", "F-1" and "F-2"*). The second notification is petitioner's application for cancellation of BIR Registration with RDO No. 48 for the reason that the company has transferred to its new office, as presented in its letter dated October 19, 1998 (*Exhibits "G", "G-1" and "G-2"*). The third advice is the letter dated November 18, 1998 which reiterated the request made in the second correspondence (*Exhibits "H", H-1" and H-2"*). These three notifications were all duly stamped received by the Revenue Region No. 8, Revenue District No. 48, Bureau of Internal Revenue on September 15, 1998, October 20, 1998 and November 20, 1998, respectively.

For his part, respondent maintains that on page 262 of the BIR records, the Assistant Revenue District Officer, Mr. Manuel R. San

Pedro, issued a certification that no document purporting petitioner's change of address was recorded in the office log book of said revenue office. This shows that no notification was ever made by petitioner.

Given the above conflicting positions of the parties, the Court is tasked to resolve a corollary issue of whether petitioner has duly notified the respondent of its change of address. If there was a sufficient notification of change of address, then the assessments were time barred and therefore should be cancelled pursuant to *Section 223* in relation to *Section 203 of the NIRC of 1997.*

We agree with petitioner's contention.

A perusal of the two (2) subject formal assessment notices dated April 13, 1999 shows that said notices dated April 13, 1999 were sent to petitioner's old address at 3rd Floor, Alegria Bldg., Pasong Tamo, Makati City (*Exhibits "B" and "C"*).

Records would show, however, that on September 15, 1998, petitioner filed with the Revenue District Officer, Revenue District Office No. 048, West Makati, Atrium Bldg., Makati Cinema, Makati City, a notice of change of office address of Sucat Land Corporation from Unit 301 Alegria Bldg., 2229 Pasong Tamo, Makati City, to Unit 3-A Vernida

I Condominium, 120 Amorsolo St., Legaspi Village, Makati City, attaching thereto the following required documents: (1) original copy of Form 1556, Certificate of Registration dated 1996; and (2) copies of Annual Registration Fee Return for the years 1995, 1996, 1997 and 1998 (*C.T.A Docket, Page 49*). Said notice of change of address was received on September 15, 1998 by Revenue District Office No. 48, West Makati (*Exhibit "E"*).

Records further show that on October 20, 1998, petitioner filed an Application for Cancellation of BIR Registration of Sucat Land Corporation with RDO No. 48, West Makati, Atrium Bldg., Makati Cinema, Makati City for the reason that the company has transferred its offices from Unit 301, Alegria Bldg., 2229 Pasong Tamo, Makati City, to Unit 3-A Vernida I Condominium, 120 Amorsolo St., Legaspi Village, Makati City, with telephone number 818-8668 and attaching thereto the required documents for cancellation of registration (*Exhibit "F"*). Said Application for Cancellation of Registration was received by Revenue District Office No. 48, West Makati on October 20, 1998 (*Exhibit "F"*).

On November 20, 1998, petitioner filed another Application For Cancellation of BIR Registration of Sucat Land Corporation with RDO

No. 48 for the reason that the company has transferred its offices from Unit 301, Alegria Bldg., 2229 Pasong Tamo, Makati City, to Unit 3-A, Vernida I Condominium, 120 Amorsolo St., Legaspi Village, Makati City, with telephone number 818-8668, and attaching thereto the required documents for cancellation of registration (*Exhibit "G"*). Said application was received by Revenue District Office No. 48, West Makati, on November 20, 1998 (*Exhibit "G"*).

On April 13, 1999, notwithstanding petitioner's notice of change of address dated September 15, 1998 (*Exhibit "E"*) and two (2) applications for cancellation of registration filed with the Revenue District Office No. 48, West Makati (*Exhibits "F" and "G"*), respondent through the Chief of the Assessment Division of Revenue Region No. 8 still issued and sent the subject Formal Assessment Notices for deficiency income tax and documentary stamp tax, to petitioner at its old address at 3rd floor, Alegria Bldg., Pasong Tamo, Makati City (*Exhibits "A" and "B"*).

Petitioner maintains that it received said assessment notices for deficiency income tax and DST for calendar year 1995 only on September 24, 1999 when it received the BIR Letter dated September 17, 1999 addressed to the President of Sucat Land Corporation and signed by

Ma. Nieva A. Guerrero, Chief BIR Assessment Division, Revenue Region No. 8, Makati City (*Exhibit "A"*).

Said BIR Letter reads as follows:

> "The President
> SUCAT LAND CORPORATION
> Suite 3-A Vernida I Bldg.,
> 120 Amorsolo St., Legaspi Vill., Makati City
>
> Sir:
>
> This has reference to your 1995 internal revenue tax case involving the amount of P14,124,076.58 and P337,500.00 representing your deficiency income tax and deficiency documentary stamp tax.
>
> We would like to inform you that we had already mailed the final assessment notices together with the demand letters dated April 13, 1999 last April 14, 1999 but same were returned to our office for the reason that your company has moved out. Since you failed to notify the BIR of your transfer before the issuance of such notices and demand letters, we are sending you the photocopies of said notices to your new address as per information given by Group Supervisor Nelia Castillo of RDO 48, West Makati.
>
> We are now forwarding this case to RDO 47 East Makati for collection since the assessments have become final and executory.
>
> Very truly yours,
>
> MA. NIEVA A. GUERRERO (SGD.)
> MA. NIEVA A. GUERRERO
> Chief, Assessment Division" (*Exhibit "A"*)

Therefore, respondent cannot deny that he was notified of petitioner's change of address.

In fact, petitioner's new address was known to the Chief, Assessment Division, Ma. Nieva A. Guerrero, BIR, Revenue Region No. 8, Assessment Division, Makati City, who issued the deficiency assessments and collection letter on September 17, 1999 (*Exhibit "A"*). Had respondent's Revenue Region No. 8, Assessment Division, not been informed of petitioner's current address, then Ms. Guerrero could not have sent the subject assessment notices to petitioner's new address.

The failure of Revenue Region No. 8, Revenue District Office No. 48, West Makati to record the change of address and the 2 applications for cancellation of BIR registration should not be taken against petitioner. It is clear that the said revenue office duly received the said notice of change of address and applications for cancellation of BIR registration. The Court finds that the assessment notices sent on April 13, 1999 at the old address of respondent are null and void. Thus, when the deficiency assessments were sent to the old address despite proper notification of petitioner's new address, the running of the three-year period to assess was not suspended. The present deficiency tax assessments were therefore issued only on September 17, 1999, way beyond the period prescribed by law. As such, respondent has lost his right to assess petitioner for deficiency income tax and deficiency DST, since at this point, it is now beyond the three-year prescriptive period. In effect the statute of limitation continues to run, it is not deemed suspended, mainly because respondent had been properly notified of petitioner's change of address and applications for cancellation of BIR registration. Thus, resulting in prescription for failure to assess within the period set by law.

The purpose of the limitation of issuance of assessments is likened to that of actions for collection of taxes. Thus, in the case of *Republic of the Philippines v. Luis G. Ablaza, 108 Phil. 1105*, reiterated in *Republic vs. Alano, 12 SCRA 26-27*, the Supreme Court held:

> "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, taxpayer 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 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."

The foregoing conclusion makes it unnecessary for Us to pass upon the other issues raised in this case by petitioner.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the deficiency assessments for income tax and documentary stamp tax for the calendar year 1995 are hereby **CANCELLED** and **SET ASIDE** on ground of prescription.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division 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
Chairman, Second Division