REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

R.O.H. AUTO PRODUCTS
PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4318

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

8/20

D E C I S I O N

On August 13, 1986, respondent issued to petitioner assessment notices for deficiency income and percentage taxes for the year 1982, totalling P1,410,157.71 including increments *(Annex "A", p.7, CTA records)*.

Petitioner protested the assessments and requested for their withdrawal and cancellation on the ground that petitioner availed of the income tax amnesty on October 30, 1986 and the business tax amnesty on November 24, 1986, under Executive Order No. 41 as amended by Executive Order No. 64 which grants amnesty for unpaid like taxes for the years 1981-1985.

The protest was denied with finality as respondent reasoned that availment of the amnesty did not result in the cancellation of the assessments by force of Revenue Memorandum Order No. 4-87 which specifies that only assessments issued on or after August 21, 1986 may be cancelled and withdrawn by the amnesty. Since the assessments were issued on August 13, 1986, the Commissioner concluded they still subsist.

The gist of the controversy clearly refers to the import of Revenue Memorandum Order No. 4-87 in relation to Executive Order No. 41 as amended by Executive Order No. 64.

In argument, petitioner in the main alleges that Revenue Memorandum Order 4-87 cannot amend or modify the explicit provision on the immunities and privileges granted under Executive Order No 41 as amended. It adverts to these pronouncements of the Supreme Court where, citing jurisprudence, the rule-making power of administrative agencies was amplified:

> "There are however, limitations to the rule-making power of administrative agencies. A rule shaped out by jurisprudence is that when Congress authorizes promulgation of administrative rules and regulations to implement given legislation, all that is required is that the regulation be not in contradiction with it, but conform to the standards that the law prescribes *(Director of Forestry v. Munoz, 23 SCRA 1183)*. The rule delineating the extent of the binding force to be given to administrative rules and regulations was explained by the Court in ***Teoxon v. Member of the Board of Administrators*** *(33 SCRA 588)*, thus:" The recognition of the power of administrative officials to promulgate

rules in the implementation of the statute, as necessarily limited to what is provided for in the legislative enactment, may be found as early as 1908 in the case of *United States v. Barrias (11 Phil. 327)*, in 1914 *U.S. v. Tupasi Molina (29 Phil. 119)* in 1936 *People v. Santos (63 Phil. 300)*, in 1951 *Chinese Flour Importers Ass. v. Price Stabilization Board (89 Phil. 439)*, and in 1962 *Victorias Milling Co., Inc. v. Social Security Commission (4 SCRA 627)*. The Court held in the case that "A rule is binding on the courts so long as the procedure fixed for its promulgation is followed and its scope is within the statute granted by the legislature, even if the courts are not in agreement with the policy stated therein, or its innate wisdom x x x."

"In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law *(People v. Lim, 108 Phil. 1091)*. Rules that subvert the statute cannot be sanctioned *(University of Santo Tomas v. Board of Tax Appeals, 93 Phil. 376; Del Mar v. Phil. Veterans Administration, 51 SCRA 340)*. Except for constitutional officials who can trace their competence to act to the fundamental law itself, a public official must locate in the statute relied upon a grant of power before he can exercise it. Department zeal may not be permitted to outrun the authority conferred by statute *(Radio Communications of the Philippines, Inc. v. Santiago, L-29236, August 21, 1974, 58 SCRA 493)*." *(Tayug Rural Bank v. Central Bank of the Philippines G.R. No. L-46158, November 28, 1986, 146 SCRA 120, 129-130)*.

Respondent, for his part, lays emphasis first, on the provision in paragraph 1.02 of Revenue Memorandum Order No. 4-87 to stress that, in the availment of the amnesty, cancellation of assessments results only for assessment notices and letters of demand issued after August 21, 1986.

> "1.02. A certification by the Tax Amnesty Implementation Officer of the fact of availment of the said tax amnesty shall be a sufficient basis for:
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> 1.02.1. x x x
>
> 1.02.2. x x x
>
> 1.02.3. In appropriate cases, the cancellation/withdrawal of assessment notices and letters of demand issued after August 21, 1986 for the collection of income, business, estate or donor's taxes due during the same taxable years."

It is pointed out that Section 6 of Executive Order No. 41, as amended expressly conditions the enjoyment of immunities and privileges enumerated therein to compliance with the rules and regulations to be issued pursuant to said executive order, which is now Revenue Memorandum Order No. 4-87.

Secondly, respondent posits that where there is an assessment against a taxpayer, the burden of proof is on the latter to prove that the assessment is wanting from legal and/or factual basis. Absent proof, the presumption of validity remains. The case of *Sy Po vs. CTA, et. al. (G.R. L-81446, August 18, 1988, 164 SCRA 524)* is advanced in support of this position wherein it was said:

"In the case of ***Collector of Internal Revenue vs. Reyes***, we ruled:

> "Where the taxpayer is appealing to the tax court on the ground that the collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability by a full and fair disclosure of all pertinent data in his possession. Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession."
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> "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. ***(Gutierrez v. Villegas** L-17117, July 31, 1963, 8 SCRA 527)*. All presumptions are in favor of the correctness of tax assessments. ***(Collector of Internal Revenue v. Bohol Land Transportation Co.,** L-13099 & L-13462, April 29, 1960, 58 O.G. 2407)*"

The cited case of ***Tayug Rural Bank vs. Central Bank***, *supra* leaves its mark well in the resolution of the importance of Revenue Memorandum Order No. 4-87 vis-a-vis Executive Order No. 41, as amended.

The intent of the given legislation, as always, is telling. A reading of this executive order giving amnesty shows the period covered - January 1, 1981 to December 31, 1985 *(Section 1, Section 6, Executive Order No. 41, as amended)*. An amnesty affords total pardon or forgiveness *(3 Words and Phrases 480, citing cases)*, as here promised by the order for all unpaid income, estate, donor's taxes and business taxes, and all civil, criminal, administrative liability that have arisen from non-payment of taxes in the above given period. *(Underscoring supplied)* On the other hand, an assessment is a notice of tax due with a demand for payment ***(Alhambra Cigar & Cigarette Mfg. Co. v. Commissioner**, 105 Phil. 1337 unreported)*. An assessment can be abated or compromised on the administrative level *(Section 295, National Internal Revenue Code, now Section 204)* while an amnesty is an act of sovereign grace which obliterates an offense *(Words and Phrases, supra)* or as seen here, an act which relegates into oblivion all unpaid income, estate, donor's taxes and business taxes incurred during a given period. The impression created thus is that considering the nature of a tax assessment, its significance could not be more than that of an amnesty properly availed of. An assessment, even a deficiency assessment as in the instant case, cannot defeat the intended effects of the amnesty because precisely, it is the purpose of the latter to forgive the non-payment of the taxpayer of his tax liabilities. The respondent who seeks to recover taxes due cannot demand something which, although previously due, is now non-existent or has been obliterated as a consequence of sovereign grace.

Is this a case of first impression then, and are there other factors that could tilt the balance on the other side? The case for the respondent shows none.

Respondent failed to present any case or law which proves that an assessment can withstand or negate the force and effects of a tax amnesty. This burden of proof on the petitioner was created by the clear and express terms of the executive order's intention - qualified availers of the amnesty may pay an amnesty tax in lieu of said unpaid taxes which are forgiven *(Section 2, Section 5, Executive Order No. 41, as amended)*. More specifically, the plain provisions in the statute granting tax amnesty for unpaid taxes for the period January 1, 1981 to December 31, 1985 shifted the burden of proof on respondent to show how the issuance of an assessment before the date of the promulgation of the executive order could have a reasonable relation with the objective periods of the amnesty, so as to make petitioner still answerable for a tax liability which, through the statute, should have been erased with a proper availment of the amnesty *(Underscoring ours)*.

Additionally, the exceptions enumerated in Section 4 of Executive Order No. 41, as amended, do not indicate any reference to an assessment or pending investigation aside from one arising from information furnished by an informer.

> "Section 4. Exceptions.- The following taxpayers may not avail themselves of the amnesty herein granted.
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> a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14.
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> b) Those with income tax cases already filed in Court as of the effectivity hereof.
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> c) Those with criminal cases involving violations of the income tax law already filed in court as of the effectivity hereof;
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> d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;
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> e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;

> f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandiganbayan;
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> g) Those liable under Title Seven, Chapter Three (Frauds, Illegal Exactions and Transactions) and Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended.

Thus, we deem that the rule in Revenue Memorandum Order No. 4-87 promulgating that only assessments issued after August 21, 1986 shall be abated by the amnesty is beyond the contemplation of Executive Order No. 41, as amended. To paraphrase the cited previous declarations of the Supreme Court which were likewise recalled in the ***Tayug Rural Bank Case*** *supra*, administrative rules and regulations promulgated to implement given legislation should not be contradictory with the statute but conform to the standards which it prescribes *(**Director of Forestry v. Munoz**, L-24796, June 28, 1968 23 SCRA 1183)*. A rule would be binding on the courts if the scope is within the statute even if the courts are not in agreement with the policy therein or its innate wisdom *(**Victorias Milling Co., Inc. v. Social Security Commission**, L-16704, March 17, 1962, 4 SCRA 627)*.

WHEREFORE, the petition is GRANTED. The respondent Commissioner of Internal Revenue is

ordered to desist from collecting the deficiency taxes it had assessed against petitioner for the same are considered cancelled and withdrawn with the proper availment of petitioner of the amnesty under Executive Order No. 41, as amended.

SO ORDERED.

Quezon City, Metro Manila, August 20, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

CERTIFICATION

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.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals