REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROTECTORS SERVICES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4514

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

7/21/93

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D E C I S I O N

This case involves assessments case for deficiency percentage taxes in the amounts of P503,564.59, P831,464.30 and P1,514,047.86 for the years 1983, 1984 and 1985, respectively.

Petitioner, a corporation duly organized and existing under the laws of the Philippines is "engaged in, among other things, recruiting security guards for its customers." (Petition for Review, p. 1)

Petitioner was investigated for income and business taxes for the years 1983, 1984 and 1985. On the basis of the findings of the investigation, assessments for deficiency percentage tax including surcharges, penalties and interests thereon were issued to petitioner as follows:

	Amount	Demand No.
1983	P 503,564.59	18-452-83B-87-B2 (Exh.2, p. 510, BIR Recs.)
1984	P 831,464.30	18-451-84B-87-B2 (Exh.3, p. 509, ibid.)
1985	P1,514,047.86	18-450-85B-87-B2 (Exh.4, p. 508, id.)

The assessment letters, all dated December 2, 1987 were simultaneously sent by registered mail to petitioner on December 7, 1987 (see Exhs. I, I-A and I-B; T.S.N. Hearing of Feb. 11, 1992).

Petitioner alleged that it only received on December 10, 1987 Demand Letter No. 18-452-83B-87-B2 (Annex A) for taxable year 1983 and Demand Letter No. 18-451-84B-87-B2 (Annex B) for taxable year 1984. Petitioner denied receiving any notice of demand or assessment for the alleged deficiency percentage taxes for 1985.

On January 12, 1988 respondent received a letter dated January 2, 1988 from the petitioner protesting against the 1983 and 1984 assessments but without reference to the 1985 assessment (see Exh. C).

Without acting formally on the petitioner's protests of the 1983 and 1984 assessments, respondent sent a tracer letter dated July 12, 1988 which demanded payment for the total amount of P2,851,805.16 for deficiency business taxes including P2,025.00 for the documentary stamp tax on capitalization for the years 1983 and 1984 and P703.41 for the deficiency expanded withholding tax (see Annex D).

On July 21, 1988, petitioner paid the documentary stamp tax and the deficiency expanded withholding tax demanded by respondent in its tracer letter (see Confirmation Receipts, Annex H and I).

In a letter dated July 22, 1988 (Annex E), petitioner protested again respondent's assessment of deficiency taxes for 1983 and 1984 and for the first time, included taxable year 1985.

On November 9, 1990, petitioner received the letter of Deputy Commissioner Eufracio Santos denying with finality petitioner's protests against the subject assessments saying:

> "That the salaries paid to the security guards form part of your taxable gross receipts in the determination of the 3% and 4% contractor's tax imposed under Section 191 of the Tax Code prior to its amendment by the provision of Executive Order No. 273.
>
> Considering that the security guards are actually your employees and not that of your clients, the salaries corresponding to the services rendered by your employees form part of your taxable receipts. This contention find support in the case of Avecilla Building Corporation versus Commissioner, et al., G.R. L-42395, 17 January 1985 and Resty Arbon Singh versus Commissioner, CTA Case No. 1901, 5 December 1970". (See Exh. G)

Petitioner's contention on the other hand, was that subject assessments are without legal basis, in fact or in law, on the following grounds:

> a) The assessments for documentary stamp tax on capitalization and surcharge in the sum of P2,025.00 and the deficiency expanded withholding tax in the amount of P703.41 are without basis since said taxes, interest, surcharges and penalties were duly paid by PSI on July 21, 1988, as evidenced by Confirmation Receipt No. B15521909, dated July 22, 1988, for the sum of P2,025.00 (a copy of which is attached hereto as Annex "H") and Confirmation Receipt No. B13628228, dated March 25, 1988 (a copy of which is attached hereto as Annex "I") for the sum of P703.41.
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> b) The period for collection of the percentage taxes for the year 1985 had prescribed since PSI never received any notice of assessment or demand of said taxes within the prescription period of three (3) years from the date of filing of the percentage tax returns on April 22, July 22, and October 21, 1985 and January 27, 1986. A copy of each of the percentage tax returns for taxable year 1985, duly received by the BIR, are attached hereto as Annexes "J", "K", "L", and "M".
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> c) The period for collection of percentage taxes for the first, second and third quarters of 1984 had prescribed when PSI received the Demand Letter No. 18-452-846-87-62 [Section 68 in re Section 203, National Internal Revenue Code]. The percentage tax returns for the first, second and third quarters of 1984 were filed on April 23, July 20, and October 19, 1984. A copy of each of the percentage tax returns filed for the first, second and third quarters of 1984, duly received by the BIR, are attached hereto as Annexes "N", "O", and "P", respectively.

d) The assessment for the deficiency percentage taxes for 1983, 1984 and 1985 are patently erroneous since the Respondent included in the determination of gross receipts (as the basis for the 3% and 4% contractor's taxes) the salaries and remittances to Social Security System, the State Insurance Fund, and Medicare for security guards furnished by PSI to its customers, which are all amounts earmarked by laws, rules or regulations for some person other than PSI. The Supreme Court held in Commissioner of Internal Revenue v. Manila Jockey Club, Inc. (108 phil. 821) that 'gross receipts' should not include any money which has been especially earmarked by law or regulation for some person other than the proprietor.

The salaries for security guards recruited by PSI are clearly earmarked for persons other than PSI since PSI receives from its customers said salaries under an implied trust to pay the security guards their wages. The Supreme Court held in Nicolas v. Dacara (106 Phil 934) that 'all the right and interest that the detective agency had to salaries earned by the [the security guards] was to receive the same for and on behalf of the [security guards], in trust for the latter, subject to the agency's right to deduct from said salaries what corresponds to its services in securing the work for [the security guards] ... an implied trust would arise to pay [the security guards] said sums as the latter's wages, in accordance with the provisions of Article 1453 of the Civil Code of the Philippines."

Furthermore, Section 1, Rule XII of the Rules implementing Republic Act No. 5487, as amended provides as follows:

> 'Compensation.- No watchman, security guard or private detective shall be paid a salary or compensation less than that prescribed by existing laws, rules and regulations including

> those that may be promulgated relative thereto. The amount prescribed therein shall be earmarked and set aside for the purpose aforestated; thus the same shall hereafter be segregated from the monies received by the agency from its clients as an amount reserved for the remuneration of the guard or detective.' (amended portion underlined). (Petition for Review, pp. 4-6)

With the finality of the respondent's denial of the petitioner's protest on November 9, 1990, the latter filed this Petition for Review before this Court on December 5, 1990.

The issues brought forth for resolution are the following:

1) Whether or not the assessments issued for taxable years 1983, 1984 and 1985 have already prescribed;

2) Whether or not this Court has jurisdiction to act on the petition considering that, according to the respondent, the assessments are already final and unappealable;

3) Whether or not salaries and remittances to the Social Security System, the State Insurance Fund and Medicare for security guards furnished by the petitioner to its customers formed part of the petitioner's taxable gross receipts for purposes of the 3% or 4% contractor's tax.

As to the first issue, petitioner contended that "the period for collection of percentage tax for 1983 and 1984 had prescribed when PSI received on 10 December 1987 the Demand Letter No. 18-452-83B-87-B (should be B2) and the Letter No. 18-452 (should be 451)-84B-87-B-2. The last days for the filing of the return for the said years were 20 April, 20 July, 20 October 1983, 20 January, 20 April, 20 July and 20 October 1984. All the periods between the said dates and 10 December 1987 are more than three (3) years. Because, no assessment was made before the expiration of the three (3) year period, the present action, therefore, has prescribed. (Sec. 268 in relation to Sec. 162, Revenue Code prior to 25 July 1987)." (See Petitioner's Memorandum, pp. 140-141, CTA recs.; correction/underscoring ours)

We disagree with the contention of the petitioner since under taxable year 1983 the period of limitation for assessment of taxes was five (5) years after the date of the return was due or was filed, whichever is later (see Sec. 318 of the 1983 Tax Code). Thus, the prescriptive period for assessment will still be up to 1988. Accordingly, the assessment received by the petitioner on December 10, 1987 was well within the prescriptive period.

This is also true insofar as taxable year 1984 is concerned although, the period of limitation for assessment or collection of taxes has been reduced by Batas Pambansa Blg. 700 from five (5) years to three (3) years, yet the assessments made on or before April 5, 1984 (date of approval) covering taxable years beginning January 1, 1984 was still within the new three-year period. Accordingly, the assessment received by the petitioner on December 10, 1987 for taxable year 1984 has not yet prescribed since presumably it was filed on January 20, 1985. Hence, it was well within the prescriptive period. It is a settled rule that the counting of the prescriptive period of assessment commences from the day of the filing of final return (Section 318, 1984 Tax Code; Central Azucarera de Tarlac v. Collector, L-11761, July 31, 1958; Commissioner of Internal Revenue v. Ayala Securities Corporation and The Court of Tax Appeals, L-229485, March 31, 1976).

But whether the subject assessments had prescribed or not, petitioner, still could not escape liability since said assessment <u>had already become final and unappealable.</u>

Section 270 of the 1986 Tax Code provides:

> Sec. 270. Protesting of assessment.- When the Commissioner of Internal Revenue or his duly authorized representative finds the proper taxes should be assessed, he shall first notify the taxpayer of his

> findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings. Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations <u>within thirty (30) days from receipt of the assessment; otherwise the assessment shall become final and unappealable</u>. (Underscoring supplied)
>
> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals <u>within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable</u>. (Underscoring supplied)

Under the aforequoted provision, the law clearly defined two instances when an assessment becomes final, namely:

> 1) When it is not protested within thirty (30) days from receipt thereof from the Commissioner; and
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> 2) When the adverse decision on the protest is not appealed to the Court of Tax Appeals within thirty (30) days from receipt of the said decision

which must be complied with, otherwise, no other recourse is had to the taxpayer since it had already become final and unappealable. We do not attempt to make an interpretation on what is already clearly laid down by law. Thus, when petitioner protested the assessment of the respondent only on January 12, 1988 through a letter dated January 2, 1988 (Exhibit C), thirty-three days had already lapsed from the time it admittedly received the assessments on December 10, 1987. Clearly, the assessments had already become final and unappealable.

In a related case of Commissioner of Internal Revenue v. Western Pacific Corporation, L-18804, May 27, 1965, the High Court ruled, thus:

> It will be noted that the assessment was received by the respondent corporation on March 2, 1959. It was only on June 29, 1959, when said corporation formally assailed the assessment on the ground of prescription in making the assessment and the impropriety of the disallowance of the listed deductions. From March 3, to June 29, 1959, manifestly more than thirty (30) days had lapsed and the assessment became final, executory and demandable. (See also related case of Republic v. Albert, 3 SCRA 717)

The 1985 assessment which petitioner denied as having been received was negated when the respondent introduced documentary evidence (Exh. I) showing that it was mailed by registered mail (Exh. I-B) on December 7, 1987 (Exh. I-A). It was further buttressed by the testimony of witness Mr. Arnold C. Larroza, Chief Administrative Branch Mailing Section, Rev. Region No. 4B-1, Quezon City that the 1983, 1984 nd 1985 assessments were placed in one envelop (T.S.N. Hearing of Feb. 11, 1992, pp. 10-11) when it was mailed by registered mail (Registry Receipt No. 6970). Presumably, it was received in the regular course of the mail (Sec. 5(v), Rule 131, Rules of Court; Perez v. Ysip, 81 Phil. 218; Enriquez v. Sun Life Assurance Co. of Canada, 41 Phil. 270). The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails (Moran, Comments on the Rules of Court, Vol. 6, 1971, p. 55). Such being the case, this Court cannot be made to believe that the 1985 assessment which incidentally has a substantially greater amount involved, was not received by the petitioner. Hence, the same assessment is also considered final and unappealable for failure of the petitioner to protest the same within the reglementary period provided by law. This settles the second issue.

Since the issue of prescription has already been resolved against the petitioner and all the assessments have already become final and unappealable, the discussion on the third issue will just be purely academic.

WHEREFORE, in all the foregoing, this case is hereby DISMISSED for lack of jurisdiction -- the subject assessments having become final and unappealable.

SO ORDERED.

Quezon City, Metro Manila, July 21, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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