REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**PROTECTORS OF ASSETS AND PERSONNEL SERVICES, INC.**
Petitioner,

- versus -

**C.T.A. CASE NO. 5259**

**THE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**Promulgated:**
APR 21 1998

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# D E C I S I O N

This is a petition seeking for the withdrawal and cancellation of the following deficiency tax assessments for 1988 issued by the respondent against the petitioner:

1. Deficiency Income Tax in the amount of P206,523.99, inclusive of surcharges and interests; and

2. Deficiency Value-Added Tax in the amount of P3,311,103.82, inclusive of surcharges and interests.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in the business of providing protection and security to its clients, through its security guards.

On April 23, 1992, petitioner allegedly received the following assessment notices and demand letters, all dated April 13, 1992, issued by the respondent:

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| 1. | Income Tax Assessment Notice No. 000773-88-4881 for deficiency income tax for year 1988 (Exh. "A") | P 10,864,120.80 |
| 2. | Income Tax Assessment Notice No. 000773-88-4881 for deficiency expanded withholding tax for the year 1988 (Exh. "B") | 1,174.67 |
| 3. | Demand Letter No. 15-124-88B-92-B2-4881 for deficiency value-added tax for the year 1988 (Exh. "D") | 3,570,088.49 |

Barely a year after the alleged receipt of the assessment notices, petitioner received on April 14, 1993, a Warrant of Distraint and/or Levy (Annex "C", Petition) issued by the respondent. This prompted the petitioner to file a protest letter addressed to the respondent on April 20, 1993 (Annex "D", Petition).

In its letter protest, petitioner claims that the assessment was invalid and improper for being actually received by the petitioner after the lapse of the three-year period of limitation. It also pointed out that under the provisions of the Supplemental Rule and Regulation issued on January 25, 1986, pursuant to Section 17 of R.A. 5487, as amended, issued by the Ministry of National Defense, security agencies, like the petitioner, are required to earmark and segregate from the moneys received by the agency from its clients, an amount reserved for the remuneration of the guard or detective. The said amount therefore, should be excluded in the computation of petitioner's gross income.

On July 26, 1993, petitioner received a letter (Exh. "E") from the respondent calling for a conference-hearing on the protested tax case. And as a result of the hearing, respondent issued her final letter-decision, dated February 8, 1995 (Exh. "F"), and received by the petitioner on May 5, 1995, which revised the income and value-added tax assessments to be paid by the petitioner due to an error in the computation of the 25% imposable surcharge. The new assessments amount to the following:

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| 1. | 1988 Deficiency Income Tax | P 206,523.99 |
| 2. | 1988 Deficiency Value-Added Tax | 3,311,103.82 |
| 3. | 1988 Deficiency Expanded Withholding Tax | 1,174.67 |

Dissatisfied with the decision of the respondent, petitioner filed the instant petition on June 5, 1995.

In her answer (CTA Recs. pp. 32-33) to the petition, respondent asserted the following special and affirmative defenses:

x x x

"5. The petition was filed beyond the thirty-day period provided in Section 11 of R.A. 1125, thus resulting in the finality and incontestability of the assessments in question;

"6. All the assessments in question were issued within the three (3) year reglementary period provided in Section 203 of the National Internal Revenue Code;

"7. The disallowance of the fringe benefits is proper as the same does not fall within the context of Section 29(a) of the National Internal Revenue Code to be allowable; the burden is on the petitioner to prove the validity of the claimed deduction;

"8. The assessment of the value-added tax was made in accordance with Section 102 of the National Internal Revenue Code as added to the Code by Executive Order No. 273 which took effect on January 1, 1988, covering all sellers of goods and services

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whose aggregate gross annual sale of articles and/or services exceed P200,000.00, unless such sales are specifically exempt, and which in effect repealed, amended or modified accordingly the provisions of any law, whether general or special, rules and regulations and other issuances or parts thereof which are inconsistent with the said order; and

"9. Moreover, the Supplemental Rule and Regulation Governing the Organization of Private Detective, Watchman and Security Guard Agencies throughout the Philippines, being a mere regulation cannot prevail over the law in case of conflict."

During the course of the trial, petitioner withdrew its petition concerning the deficiency expanded withholding tax assessment amounting to P1,174.67 and agreed to pay the same in order to expedite the proceedings in so far as the said amount is involved.

This Court is now tasked to resolve the following remaining issues raised by the parties in this case:

1. Whether or not the protests were filed beyond the thirty-day period provided in Section 11 of R.A. 1125;

2. Whether or not the assessments were made beyond the three year reglementary period and therefore had prescribed;

3. Whether or not the salaries, compensation and other benefits of petitioner's personnel are part of petitioner's gross receipts; and

4. Whether or not employee's fringe benefits are allowed as deductible expense from income under the Tax Code.

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After a thorough examination of the BIR records, evidence and pleadings of the parties, this Court is of the opinion that a discussion of each of the arguments raised by both parties would be useless until the questions on prescription are first settled. Determination of the case on merits would be futile if this Court finds that:

1. The petitioner filed its appeal to the Court of Tax Appeals beyond the thirty-day reglementary period to appeal, thereby depriving this Court of its jurisdiction to entertain the instant petition, or that

2. The subject assessments were made beyond the three-year period of limitation to assess and collect from the petitioner, thus rendering the said assessments to be invalid and without force and effect.

As regards the first issue, the pertinent provision of law is Section 11 of R.A. 1125 which states that:

> "**Sec. 11.** ***Who may appeal; effect of appeal***. - Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city or Board of Assessment Appeals <u>may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling</u>. x x x" (underscoring supplied)

In addition, Section 229 of the Tax Code provides that:

> "**Sec. 229.** ***Protesting of assessment***. - x x x
>
> x x x
>
> 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 within thirty (30) days from receipt of the said decision; <u>otherwise, the decision shall become final, executory and demandable</u>." (underscoring supplied)

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Records show that petitioner received the final letter decision of the respondent on May 5, 1995 (Exh. "F" and "F-1") while the instant petition was filed by petitioner on June 5, 1995 or 31 days after receipt of the letter decision of the respondent. It would appear that petitioner filed its petition before this Court beyond the thirty-day period mandated by law.

However, a close scrutiny of the facts of this case has led this Court to rule otherwise. Respondents must have overlooked the fact that June 4, 1995, the last day to file said petition, was a Sunday. And as ruled by the Supreme Court in the case of ***Galang v. The Workmen's Compensation Commission, 44 SCRA 221,*** when the last day for filing a petition for review falls on a Sunday, the petition is timely filed if done on the next working day. In this case, the petition was filed on the next working day, that is, Monday, June 5, 1995, therefore, it was filed within the thirty-day period provided by law. Consequently, contrary to the claim of the respondent, the decision of the respondent has not achieved finality.

On the issue of prescription of the assessments, Section 203 of the Tax Code provides that:

> "Sec. 203. ***Period of limitation upon assessment and collection.*** - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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 year period shall be counted from the day the return was filed. For the 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." (underscoring supplied)

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Petitioner filed its income tax return and paid the income tax due thereon for taxable year 1988 on the last day of filing required by law, that is, on April 15, 1989 and counting the three year period therefrom, respondent's right to assess and collect from the petitioner extends up to April 15, 1992 only. But since the year 1992 was a leap year, the three year period expired on April 14, 1992.

Likewise, petitioner filed its VAT return for the last quarter of 1988 on the last day of filing required by law, February 20, 1989, hence the right of the respondent to assess from the petitioner expired on February 19, 1992.

Petitioner received the subject assessment notices and demand letters issued by the respondent on April 23, 1992. Even at a glance, the right of the respondent to assess and collect from the petitioner had prescribed thus rendering the assessments as invalid and without force and effect.

However, respondent alleges that the assessment notices and demand letters were mailed to the petitioner on April 14, 1992, and as the Supreme Court in one case held, so long as the release thereof is effected before the prescription sets in, the assessment is deemed made on time even though the same is actually received by the taxpayer after the expiration of the prescriptive period ***(Basilan Estates, Inc. v. Commissioner, 21 SCRA 17, September 5, 1967).***

It is worthwhile to note, however, that in the case of ***Republic v. Court of Appeals and Nielson & Co., 149 SCRA 351, April 30, 1987***, the Supreme Court held that where the taxpayer makes a direct denial of the receipt of a mailed

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demand letter by the taxpayer-addressee, as in the case at bar, such denial shifts the burden to the Government to prove that such letter was indeed received by the taxpayer.

In the instant case, respondent has failed to substantiate by convincing proof and/or documentary evidence that it actually mailed the subject assessment notices on April 14, 1992. She merely presented in Court a certified true copy of the record of its mailing with an unreadable post office stamp marking, dated April 14, 1992. No return card nor an alleged registry receipt no. 14918 duly received by the petitioner was offered as evidence by the respondent to show proof of actual mailing on April 14, 1992. Mere notations on the records of the tax collector of the mailing of a notice of a deficiency tax assessment to a taxpayer, made without the taxpayer's intervention, notice or control, and without adequate supporting evidence, cannot suffice to prove that such notice was sent and received; otherwise, the taxpayer would be at the mercy of the revenue officers, without adequate protection and defense ***(Nava v. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965).***

And lastly, the record of mailing of respondent does not even indicate the address of the petitioner where the assessment notices were allegedly sent. Such being an important requisite of law that assessments should be sent to the exact address of the taxpayer counts against the respondent.

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In the absence therefore of adequate proof of mailing of the assessment notices much less proof of service within the three-year period of limitation as provided by law, this Court is inclined to rule in favor of the petitioner and find that the subject deficiency tax assessments had prescribed and therefore cannot be enforced against the petitioner.

Finding that the assessments had prescribed, a discussion on the other issues involved in this case would be purely academic.

**WHEREFORE,** in view of all the foregoing, this Court hereby **WITHDRAWS** and **CANCELS** the deficiency tax assessments issued by the respondent against the petitioner on the ground of prescription.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**AMANCIO Q. SAGA**
Associate Judge

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## 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.

**ERNESTO D. ACOSTA**
Presiding Judge
Court of Tax Appeals

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