REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAERSK-TABACALERA SHIPPING AGENCY (FILIPINAS), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5006

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 20 1996

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DECISION

Presented before this Court is a petition for the review of respondent's decision denying petitioner's protest and upholding the assessment issued for deficiency income taxes for the taxable year 1986 in the total amount of P798,252.00.

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines and is engaged in business as a shipping agent.

It is alleged in the petition that on April 19, 1990, their corporation received an assessment letter issued by respondent demanding the payment of deficiency income tax in the amount of P798,252.00 covering the taxable period of 1986 (see Annex "A", p. 7, CTA records).

The records of this case as well as the admissions made by respondent in her answer show that a protest letter was subsequently filed by the petitioner on May 7, 1990 supplemented thereafter by a more detailed protest dated August 9, 1990 (Annexes "B" and "C"). Respondent denied the protest in a letter dated December 7, 1992 and received by the petitioner on June 22, 1993. This prompted petitioner to elevate its case to this Court in a petition for review filed on July 9, 1993, well-within the thirty (30) day prescriptive period provided by law.

The averments made by the petitioner in its supplemental protest were merely reiterated in the present petition, foremost among which is the issue of prescription. It is petitioner's contention that the assessment issued by respondent is barred by prescription for having been mailed beyond the three-year prescriptive period provided by law thus no longer binding and must be cancelled. As a back-up argument in the event that the issue of prescription be resolved in favor of respondent, petitioner firmly asserts that the assessment lacks legal and factual bases as the EDP expenses were deducted from its income in accordance with law, being categorized as ordinary and necessary business expenses.

Respondent squarely addressed the foregoing arguments by first directing its defense on the issue of prescription. Respondent asserts that the right of the government to assess petitioner has not prescribed because the running of the statute of limitations is suspended for the period when the taxpayer requests for a reinvestigation and the same is granted by the Commissioner in accordance with Section 224 of the Tax Code. Respondent goes further to state that as early as May 7, 1988, petitioner was already questioning the deficiency assessment under consideration and on April 10, 1990, petitioner, through its accountant, questioned the non-deductibility of the EDP expense. This, according to the respondent, amounts to a request for reinvestigation which had the effect of suspending the running of the prescriptive period. Respondent cited the Supreme Court decision entitled **Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc.**, 202 SCRA 125, to support its argument. On the merits of the assessment issued, respondent justifies the disallowance of the EDP expense on the ground that these expenses were not substantiated by the appropriate proof citing as its authority the Supreme Court case entitled Esso Standard **Eastern, Inc. vs. Commissioner of Internal Revenue,** 175 SCRA 149.

From the foregoing, the issues presented are clear, thus:

1. Whether or not the respondent's right to assess the petitioner on its 1986 income tax deficiency has already prescribed;

2. If the answer to the foregoing is in the negative, whether or not the EDP expenses deducted by the petitioner from its income rests on firm legal and factual bases.

This Court finds it wise to first resolve the issue of prescription as it presents a prejudicial question determinative of whether or not we are in a position to dispose of the other issues presented.

Petitioner derived its theory on prescription on Revenue Memorandum Circular No. 48-90 signed by the then Commissioner of Internal Revenue, Jose U. Ong, informing all concerned that the three (3) year prescriptive period for the issuance of assessments as well as warrants of Distraint, Levy and Garnishment, shall have an aggregate number of 1,095 days corresponding to 365 days multiplied by 3 years regardless of the fact that within such period, there is a leap year which is 366 days. Petitioner then applied this principle by computing the period from April 15, 1987, the last day for the filing of the final corporate income tax return for 1986 up to April 16, 1990, the date when the assessment letter was mailed by respondent as evidenced by the registered mail stamp of the Bureau of Post shown as Exhibit "A-1". Petitioner further avers that an aggregate period of 1,097 days between the 2 dates had already lapsed making the assessment 2 days late, hence prescription had set in. To clarify its point, petitioner in its protest letter, presented its computation in detail, thus:

	Months	No. of Days
1987	April 16 - 30	15
	May	31
	June	30
	July	31
	August	31
	September	30
	October	31
	November	30
	December	31
		260
1988	January - December	366
1989	January - December	365
1990	January	31
	February	28
	March	31
	April 16	16
		1,097 days

Following the tenor of RMC No. 48-90, the assessment should have been mailed on April 14, 1990 which is the 1,095th day from April 15,

> 1987. As it was, the assessment was issued and mailed on April 16, 1990, the 1,907th day from April 15, 1987. Hence, the assessment was two (2) days late. It is incontestable that subject assessment has already prescribed.

Respondent, in an effort to avoid clashing with the details of the computation of the prescriptive period, evaded it altogether and proceeded to center her discourse on the assertion that continued requests made by petitioner for reinvestigation of the assessment stopped the running of the prescriptive period. Thus, without going into the particulars of the length of time the aspect of reinvestigation suspended the period of prescription, respondent categorically declared that the right of the government to assess petitioner's 1986 tax deficiencies, has not yet prescribed.

We rule in favor of the petitioner and so hold that respondent's right to asses had already prescribed for having been made beyond the three-year period provided by law.

The applicable provision of the law is found in Section 203 of the Tax Code, thus:

> Section 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. (As amended by BP 700)

The abovecited law is explicit as it declares in no uncertain terms that the prescriptive period for the assessment of taxes is three-years counted from the time the return is filed or the last day prescribed by law for the filing thereof, whichever is later.

To erase all doubts as to the number of days constituting the three-year period, the then Commissioner of Internal Revenue, Jose U. Ong, issued RMC No. 48-90 declaring that the period shall have an aggregate number of 1,095 days (365 days x 3 years = 1,095 days), thus:

> Accordingly, in order to have a correct understanding of the procedure in determining the period of limitation upon assessment and collection when the period covers a leap year, it shall be understood that years are of 365 days each as provided in Article 13 of the New Civil Code. Consequently, a 3-year prescriptive period for assessment or collection purposes prescribed under Sections 203 and 223(c) of the Tax Code shall have an aggregate number of 1,095 days (365 days x 3 years = 1,095 days), reckoned from the date of filing of the return or, from the issuance of the assessment, as the case may be. In other words, the 3-year prescriptive period expires on the 1,095th day, notwithstanding the fact that within the period, there is a leap year which is 366 days.

Records show that petitioner filed its final corporate income tax return for 1986 on April 14, 1987 (Exhibit "B") which makes the last day for filing on April 15, 1987, the date when the period starts to run. It is a well-settled rule that an assessment is deemed made when notice to this effect is released, mailed or sent (**Basilan Estates, Inc. vs. CIR**, 21 SCRA 17; **Collector of Internal Revenue vs. Bautista**, L-12250 and L-12259, May 27, 1959). From the evidence gathered, it was shown that the assessment letter was mailed only on April 16, 1990 (Exhibit "A-1") or 1,097 days from April 15, 1987 making the issuance of such assessment two days late from the last day prescribed by law for making an assessment. A review of the calendars of the years covered, disclose that the computation presented by the petitioner as to the number of days contained in each year covering the period 1987 to 1990 is correct. The fact that the last day for the issuance of the assessment which is on April 14, 1986 fell on a Saturday does not change the conclusion of this Court as the Supreme Court in several cases considers Saturday as an ordinary business day. In the case of Bank of America NT and SA vs. Gerochi, Jr. 230 SCRA 9, the Supreme Court ruled, thus:

> "The prevailing rule even then was that if the last day to appeal fell on a Saturday, the act was still due on that day and not the next succeeding business day."

In Lucero vs. NLRC, 203 SCRA 218, it was similarly ruled, thus:

> "However we noted in these cases the fact that Saturday unless declared a holiday, is considered a business day and therefore, if the last day to appeal falls on a Saturday, the act is due on that day and not on the next succeeding business day."

In Olacao vs. NLRC, 177 SCRA 38, the Supreme Court again declared, thus:

> "It may be that private respondent's appeal was filed on the 12th day contrary to Article 223 of the Labor Code prescribing ten (10) calendar days as the reglamentary period of appeal. Private respondent's claim that this 10th day fell on a Saturday when the offices of the NLRC were allegedly closed so that their last day to appeal falls on a Saturday, the act is still due on that day."

Respondent presents the defense that the requests of petitioner for reinvestigation of the assessment suspended the running of the prescriptive period pursuant to Section 224 of the Tax Code. Thus, without going into the particulars of the length of time the aspect of reinvestigation suspended the running of the period, respondent categorically declared that the assessment issued by the government was made on time.

We find the argument of respondent misleading on several points. First, respondent asserts that requests for reinvestigation of the assessment were made by petitioner as early as May 7, 1988. This statement presupposes that there was an assessment issued earlier than that issued in a letter dated April 6, 1990 presented as exhibit "A" and mailed on April 16, 1990. Records of this case prove this to be untrue. Letters and other documents that were issued by the respondent prior to the final assessment letter (Exhibit "A") were were notices informing the petitioner of the results of the investigation of the BIR examiners which included an invitation to the petitioner for a conference (see Exhibit "3", p. 284, BIR records). Moreover, Exhibit "4" shows the memorandum dated December 7, 1988 and issued by Deputy Commissioner Victor Deoferio, requesting petitioner to explain its nonpayment of withholding taxes on EDP, janitorial, security and office rents, all of which cannot be considered as the final assessment because they do not set a definite amount as to the tax deficiencies of petitioner for 1986 as compared to that which is contained in the letter dated April 6, 1990

(Exhibit "A"). Furthermore, how can respondent imply that as early as 1988 there was already an assessment which petitioner was allegedly contesting, when the pre-assessment notice was issued only on March 27, 1990 (p. 367, BIR records)?

Contrary to the view of the respondent, Section 224 of the Tax Code does not apply to the instant case as there was no assessment made at the time the petitioner was allegedly asking for a reinvestigation. For purposes of discussion, Section 224 of the Tax Code is quoted hereunder, thus:

> **Section 224.** ***Suspension of running of statute.*** — The running of the statute of limitations provided in Section 203 and 223 on the making of assessment and the beginning of distraint or levy or 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 days thereafter; when the taxpayer requests for a re-investigation 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 in address, the statute 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.

As interpreted by the Supreme Court in several cases, requests for reinvestigation which had the effect of suspending the period of limitation refers to reinvestigation of a prior assessment paving the way for a new or revised assessment. Such period spent reinvestigating is deducted from the total period prescribed by law. In the case of **Commissioner of Internal Revenue vs. Sison**, 7 SCRA 884, the Supreme Court declared:

> The five-year period of prescription fixed by Section 332(c) of the NIRC is to be counted from the <u>last revised assessment</u> resulting from a reinvestigation asked for by the taxpayer. The time employed in reinvestigating should be deducted from the total period of limitation. (Underscoring supplied)

Similarly,. in the case entitled **Querol vs. Collector of Internal Revenue**, 6 SCRA 304, the Supreme Court ruled, thus:

> It is true that the Collector revised the original assessment on February 9, 1955; and Appellant avers that this revision was invalid in that it was not made within the five-year prescriptive period fixed by law ... xxx. But the fact is that the revised assessment was merely a result of petitioner Querol's <u>requests for reconsideration of the original assessment,</u> contained in his letters of December 14, 1951 and May 25, 1953. xxxx.
>
> xxxx Consequently, the period between the petition for reconsideration and the revised assessment should be subtracted from the total prescriptive period (**Republic vs. Ablaza**, L-14519, 26 July 1960).

Reliance of respondent on the case entitled **Commissioner of Internal Revenue vs. Wyeth-Suaco Laboratories, Inc.**, 202 SCRA 125, is misdirected as the foregoing is not similar to the issue being presented in the instant case. In the Wyeth-Suaco case, the Supreme Court ruled that requests for reinvestigation of the assessment had the effect of suspending the period for the collection of taxes which is also covered by Section 224 of the Tax Code, hence not applicable to the instant case where the issue is concerned with the prescriptive period for the issuance of the assessment.

At this point, it might be well to emphasize the purpose behind the limitation of actions for collection of taxes enunciated by the Supreme Court in **Republic of the Philippines vs. Luis G. Ablaza**, 108 Phil. 1105, which could very well apply to the actions for the issuance of assessments, thus:

> 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,

> taxpayers 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 right of the government to assess petitioner's tax deficiencies for 1986 having prescribed, we deem it unnecessary to delve on the other issues presented in this case.

WHEREFORE, in view of the foregoing, judgment is rendered in favor of petitioner.

ACCORDINGLY, the Commissioner of Internal Revenue is hereby **ORDERED** to **WITHDRAW** and **CANCEL** the assessment issued against petitioner for its 1986 tax deficiencies, for having been barred by prescription.

SO ORDERED.

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