386 Phil. 611

SECOND DIVISION

[G.R. No. 118176, April 12, 2000]

PROTECTOR'S SERVICES, INC., PETITIONER, VS. COURT OF APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

Assailed in this petition for review is the Decision[1] of the Court of Appeals dated November 28, 1994, in CA-G.R. SP No.31825. It affirmed the judgment of the Court of Tax Appeals which had dismissed the petition for review of assessments made by the Commissioner of Internal Revenue imposing deficiency percentage taxes on petitioner for the years 1983, 1984 and 1985. The dispositive portion of the CTA's decision states:

> "WHEREFORE, in all the foregoing, this case is hereby DISMISSED for lack of jurisdiction--the subject assessments having become final and unappealable."[2]

The facts are as follows:

Petitioner Protector's Services, Inc. (PSI) is a contractor engaged in recruiting security guards for clients. After an audit investigation conducted by the Bureau of Internal Revenue (BIR), petitioner was assessed for deficiency percentage taxes including surcharges, penalties and interests thereon, as follows:

YEAR	AMOUNT	DEMAND LETTER NO.
1983	P503,564.59	18-452-83B-87-B2
1984	831,464.30	18-451-84B-87-B2
1985	P1,514,047.86	18-450-85B-87-B2

On December 7, 1987, respondent Commissioner sent by registered mail, demand letters for payment of the aforesaid assessments. However, petitioner alleged that on December 10, 1987, it only received Demand Letter Nos. 18-452-83B-87 -B2 and 18-451-84B-87 -B2 for the years 1983 and 1984, respectively. It denied receiving any notice of deficiency percentage tax for the year 1985.

Petitioner sent a protest letter dated January 02, 1988, to the BIR regarding the 1983 and 1984 assessments. The petitioner claimed that its gross receipts subject to percentage taxes should exclude the salaries of the security guards as well as the corresponding employer's share of Social Security System (SSS), State Insurance Fund (SIP) and Medicare contributions.

Without formally acting on the petitioner's protest, the BIR sent a follow-up letter dated July 12, 1988, ordering the settlement of taxes based on its computation. Additional documentary stamp taxes of two thousand twenty-five (P2,025.00) pesos on petitioner's capitalization for 1983 and 1984, and seven hundred three pesos and forty-one centavos (P703.41) as deficiency expanded withholding tax were included in the amount demanded. The total unsettled tax amounted to two million, eight hundred fifty-one thousand, eight hundred five pesos and sixteen centavos (P2,851,805.16).

On July 21, 1988, petitioner paid the P2,025.00 documentary stamp tax and the P703.41 deficiency expanded withholding tax. On the following day, July 22, 1988, petitioner filed its second protest on the 1983 and 1984 percentage taxes, and included, for the first time, its protest against the 1985 assessment.

On November 9, 1990, BIR Deputy Commissioner Eufracio Santos sent a letter to the petitioner which denied with finality the latter's protests against the subject assessments, stating thus:

> "...[T]hat 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.
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> 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 finds 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."[3]

On December 5, 1990, petitioner filed a petition for review before the CTA contending that:

1) Assessments for documentary stamp tax and expanded withholding tax are without basis since they were paid on July 22, 1988.
2) The period for collection of the 1985 percentage tax had prescribed, because PSI denied having received any assessment letter for the same year.
3) Percentage taxes for the three quarters of 1984 were filed as follows: 1st Qtr. -April 23, 1984; 2nd Qtr. -July 20, 1984,

and; 3rd Qtr. - October 19, 1984. The three-year prescriptive period to collect percentage taxes for the 1st, 2nd and 3rd quarters had prescribed because the BIR sent an assessment letter only on December 10, 1987.

4) The base amount for computing percentage tax was erroneous because the BIR included in the taxable amount, the salaries of the security guards and the employer's corresponding remittances to SSS, SIF, and Medicare, which amounts were earmarked for other persons, and should not form part of PSI's receipts.

The CTA dismissed the petition on the following grounds: (1) The three-year period of limitation for assessment of taxes in 1984 commenced from the date of filing the final return on January 20, 1985, hence assessment made on December 10, 1987, was within said period. (2) Petitioner could not deny receipt of the 1985 assessment on the same date, December 10, 1987, for as supported by testimony of the BIR personnel, all the assessment letters for the years 1983, 1984, and 1985 were included in one envelope and mailed together. (3) Petitioner's protest letter dated January 2, 1988, was filed on January 12, 1988, or thirty-three days from December 10, 1987, hence, the request for reinvestigation was filed out of time.

Petitioner appealed to the Court of Appeals, which affirmed the decision of the CTA. Hence, the present petition, wherein petitioner raises the following issues:

"I. WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION TO ACT ON THE PETITION FOR REVIEW FILED BEFORE IT.

II. WHETHER THE ASSESSMENTS AGAINST THE PETITIONER FOR DEFICIENCY PERCENTAGE TAX FOR TAXABLE YEARS 1983 AND 1984 WERE MADE AFTER THE LAPSE OF THE PRESCRIPTIVE PERIOD.

III. WHETHER THE PERIOD FOR THE COLLECTION OF TAXES FOR TAXABLE YEARS 1983,1984, AND 1985 HAS ALREADY PRESCRIBED.

IV. WHETHER THE ASSESSMENTS ARE CORRECT."[4]

As to the first issue, petitioner maintains that the assessments only became final on November 9, 1990, when the CIR denied the request for reconsideration. Consequently, the CTA had jurisdiction over the appeal filed by the petitioner on December 5, 1990. Furthermore, the CTA resolved that the assessments became final after thirty days from receipt of demand letters by the petitioner, without the latter interposing a reconsideration.

The pertinent provision of the National Internal Revenue Code of 1977 (NIRC 1977), concerning the period within which to file a protest before the CIR, reads:

> "Section 270. *Protesting of assessment.* --When the Commissioner of Internal Revenue or his duly authorized representative finds that 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 the implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final, and unappealable.
>
> 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; otherwise, the decision shall become final, executory and demandable."

We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a reinvestigation. From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the assessments. Hence, in our view, the CTA correctly dismissed the appeal for lack of jurisdiction.

On the second issue, petitioner argues that the government's right to assess and collect the 1983, 1984 and 1985 taxes had already prescribed. Relying on Batas Parnbansa (BP) Blg. 700, which reduced the period of limitation for assessment and collection of internal revenue taxes from five to three years, petitioner asserts that the government was barred from reviewing the 1983 tax starting December 10, 1987, the expiry date of the three-year limit. Petitioner insists that the reckoning period of prescription should start from the date when the quarterly percentage taxes were paid and not when the Final Annual Percentage Tax Return for the year was filed. Moreover, he denies having received the 1985 tax assessment.

Petitioner's contentions lack merit. Sections one and three of BP 700, "An Act Amending Sections 318 and 319 of the National Internal Revenue Code, which reduced the period of limitation for assessment and collection of internal revenue taxes from five to three years," provides:

> "Sec. 1, Section 318 of the National Internal Revenue Code, as amended, is hereby amended to read as follows:
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> 'Sec. 318. *Period of limitation upon assessment and collection.* --Except as provided in the succeeding sections, 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.'

x x x

"Sec. 3. The period of limitation herein prescribed shall apply to assessments of internal revenue taxes beginning taxable year 1984."

B.P. 700 was approved on April 5, 1984. The three-year prescriptive period for assessment and collection of revenue taxes applied to taxes paid beginning 1984. Clearly, the tax assessment made on December 10, 1987, for the year 1983 was still covered by the five-year statutory prescriptive period. This rule was emphasized in Revenue Memorandum Circular (RMC) No. 33-84, published on November 12, 1984, which defined the salient features of the application of BP 700, to wit:

"B. *Effectivity of Prescriptive Periods of Assessment and Collection*

1. Assessment made on or after April 5, 1984 (date, of approval of BP 700) will still be governed by the original five-year period if the taxes assessed thereby cover taxable years prior to January 1, 1984. (emphasis supplied)
   Corollarily, assessments made before April 5, 1984 shall still be governed by the original five-year period.
   However, assessments made on or April 5, 1984 covering taxable years beginning January 1, 1984 shall be under the new three-year period."

Should the three-year limitation be reckoned at the time of the quarterly payment of contractor's tax or at the due date of the final annual tax?

Section 2 of Revenue Regulation No.6-81, states:

"Sec. 2. Percentage tax. --In general, unless otherwise specifically provided in the Tax Code, every person conducting business on which a percentage tax is imposed under Chapter II Title V of the Tax Code must render quarterly declaration on cumulative basis of the amount of his sales, receipts or earnings or gross value of output actually removed from the factory or near warehouse, compute and pay the tax due thereon.

(a) Quarterly Percentage Return.--

> For each of the first three quarters of the taxable year, the tax so computed shall be decreased by the amount of tax previously paid and by the sum of the tax credits allowed under this Title for the preceding current quarters. The tax due shall be paid not later than twenty (20) days following the close of each of the first three quarters of the taxable year.
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> (b) Final Annual Percentage Tax Return --
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> On or before the twentieth day of the second month following the close of the taxable year, a final percentage tax return shall be filed under BIR Form No. __ covering the entire taxable year. If the sum of the total quarterly percentage tax payments made for the first three quarters and total tax credit allowable for the taxable year are not equal to the total tax due on the entire gross sales, receipts or earnings or gross value of the output for that taxable year, the taxpayer shall either:
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> (1) Pay the tax still due; or
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> (2) Credit to the extent allowable under this Title, the amount of excess tax credits shown in the final adjustment return against the quarterly percentage tax liabilities for the succeeding taxable quarters."

Only recently in G.R. No.115712, *Commission of Internal Revenue vs. Court of Appeals*, February 25, 1999, we held, that the three-year prescriptive period of tax assessment of contractor's tax should be computed at the time of the filing of the "final annual percentage tax return,"[5] when it can be finally ascertained if the taxpayer still has an unpaid tax, and not from the tentative quarterly payments.

Turning now to petitioner's denial that he received the 1985 assessment, we agree with the factual findings of the CTA that the assessment letter may be presumed to have been received by petitioner. The CTA found as follows:

> "The 1985 assessment which petitioner denied as having been received was negated when the respondent introduced documentary evidence showing that it was mailed by registered mail. 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 and 1985 assessments were placed in one envelope when it was mailed by registered mail. Presumably, it was received in the regular course of the mail. ... 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. 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."[6]

In reviewing administrative decisions, the reviewing court cannot re-examine the factual basis and sufficiency of the evidence.[7] The findings of fact must be respected, so long as they are supported by substantial evidence.[8]

As a subsidiary defense, petitioner interposes the third issue claiming that since the CIR failed, until now, to commence the collection of the 1983, 1984, and 1985 deficiency tax, the right to collect had, likewise, prescribed. Petitioner urges us to consider that for the government's failure to institute collection remedies either by judicial action or by distraint and levy, the right to collect the same has prescribed pursuant to Section 219 of the NIRC. Note, however, that Section 271 of the 1986 Tax Code provides for the suspension of running of the statute of limitation of tax collection, as follows:

> "Sec. 271. *Suspension of running of statute.* -- The running of the statute of limitations provided in Sections 268 and 269 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 days thereafter**; when the taxpayer request 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 in address, the running of the statute of limitation 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." (Emphasis supplied.)

In the instant case, PSI filed a petition before the CTA to prevent the collection of the assessed deficiency tax. When the CTA dismissed the case, petitioner elevated the case before us, hoping for a review in its favor. The actions taken by the petitioner before the CTA and now before us, suspended the running of the statute of limitation. In the old case of *Republic of the Philippines vs. Ker and Company, Ltd.*,[9] we held:

> "Under Section 333 (renumbered to 271 during the instant case) of the Tax Code the running of the prescriptive period to collect deficiency taxes shall be suspended for the period during which the Commissioner of Internal

> Revenue is prohibited from beginning a distraint and levy or instituting a proceeding in court, and for sixty days thereafter. In the case at bar, the pendency of the taxpayer's appeal in the Court of Tax Appeals and in the Supreme Court had the effect of temporarily staying the hands of the said Commissioner. If the taxpayer's stand that the pendency of the appeal did not stop the running of the period because the Court of Tax Appeals did not have jurisdiction over the case of taxes is upheld, taxpayers would be encouraged to delay the payment of taxes in the hope of ultimately avoiding the same. Under the circumstances, the running of the prescriptive period was suspended."[10]

Finally, petitioner contends that the assessments made by the respondent CIR were erroneous because they included in the gross receipts subject to the contractor's tax the salaries of the security guards and the employer's share in the SSS, SIF and Medicare. Petitioner claims that it did not benefit from those amounts earmarked for other persons or institutions, hence, they must not be taxable.

Contractor's tax on gross receipts imposed on business agents including private detective watchman agencies,[11] was a tax on the sale of services or labor, imposed on the exercise of a privilege.[12] The term "gross receipts" means **all amounts received** by the prime or principal contractor as the total price, undiminished by the amount paid to the subcontractor under a subcontract arrangement.[13] Hence, gross receipts could not be diminished by employer's SSS, SIF and Medicare contributions. [14] Furthermore, it has been consistently ruled by the BIR that the salaries paid to security guards should form part of the gross receipts, subject to tax, to wit:

> "...This Office has consistently ruled that salaries of security guards form part of the taxable gross receipts of a security agency for purposes of the 4% [formerly 3%] contractors tax under Section 205 of the Tax Code, as amended. The reason is that the salaries of the security guards are actually the liability of the agency and that the guards are considered their employees; hence, for percentage tax purposes, the salaries of the security guards are includible in its gross receipts. (BIR Ruling No.271-81 citing BIR Ruling No. 69-002)"[15]

These rulings were made by the CIR in the exercise of his power to "make judgments or opinions in connection with the implementation of the provisions of the internal revenue code." The opinions and rulings of officials of the government called upon to execute or implement administrative laws, command respect and weight.[16] We see no compelling reason in this case to rule otherwise.

WHEREFORE, the assailed decision of the Court of Appeals, in CA- G.R. SP 31825, is **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.,* concur.

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[1] Rollo, pp. 40-47.

[2] *Id.* at 40.

[3] *Id.* at 71.

[4] *Id.* at 499.

[5] See G.R. No. 115712, Advance copy of the Court's decision in *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals, and Carnation Philippines, Inc.* (now merged with Nestle Philips. Inc.) February 25, 1999, p. 5.

[6] Rollo, pp. 109-110.

[7] *Villanueva vs. Court of Appeals,* 205 SCRA 537, 545 (1992)

[8] *Ibid.*, citing Baliwag Transit Inc. vs. Court of Appeals, et al., 147 SCRA 82 (1987)

[9] 124 Phil. 822 (1966)

[10] *Id.* at 824.

[11] Section 191 (renumbered to 205; then further re-numbered to 170 during the time of assessment) of the Tax Code.

[12] Epifanio G. Gonzales, Celestina M. Robledo-Gonzales, National Internal Revenue Code, gross income taxation (BP Blg. 135) new withholding tax tables with annotations and implementing regulations, p. 527 (1984 Edition)

[13] Paragraph 2 of Section 205,1977 Tax Code (emphasis supplied)

[14] Presently, the business tax imposed on contractor's services fees are now subject to the Value-Added Tax. Paragraph 19 of RMC 22-92 specifically states that: An agency which is engaged in the business of selling security guard services is subject to the 10% VAT based on the agency's quarterly gross receipts which, in this case, is composed of the salary and allowance of the guard, employer's share in the SSS, Medicare and State Insurance contributions, and the agency's administrative overhead and profit margin.

[15] BIR Ruling No 049-85 issued by then Acting Commissioner, Ruben B. Ancheta, on March 28, 1985; *Resty Arborn Singh vs. Commissioner,* CTA Case No. 1901, December 5, 1970.

[16] *Regalado vs. Yulo,* 61 Phil. 173, 179 (1935)
