549 Phil. 886

FIRST DIVISION

[G.R. NO. 134062, April 17, 2007]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

D E C I S I O N

CORONA, J.:

This is a petition for review on certiorari[1] of a decision[2] of the Court of Appeals (CA) dated May 29, 1998 in CA-G.R. SP No. 41025 which reversed and set aside the decision[3] and resolution[4] of the Court of Tax Appeals (CTA) dated November 16, 1995 and May 27, 1996, respectively, in CTA Case No. 4715.

In two notices dated October 28, 1988, petitioner Commissioner of Internal Revenue (CIR) assessed respondent Bank of the Philippine Islands' (BPI's) deficiency percentage and documentary stamp taxes for the year 1986 in the total amount of P129,488,656.63:

1986 — Deficiency Percentage Tax

Deficiency percentage tax	P 7, 270,892.88
Add: 25% surcharge	1,817,723.22
20% interest from 1-21-87 to 10-28-88	3,215,825.03
Compromise penalty	15,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P12,319,441.13

1986 — Deficiency Documentary Stamp Tax

Deficiency percentage tax	P93,723,372.40
Compromise penalty	15,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P12,319,441.13[5]

Both notices of assessment contained the following note:

> Please be informed that your [percentage and documentary stamp taxes have] been assessed as shown above. Said assessment has been based on return — (filed by you) — (as verified) — (made by this Office) — (pending investigation) — (after investigation). You are requested to pay the above amount to this Office or to our Collection Agent in the Office of the City or Deputy Provincial Treasurer of xxx[6]

In a letter dated December 10, 1988, BPI, through counsel, replied as follows:

> 1. Your "deficiency assessments" are no assessments at all. The taxpayer is not informed, even in the vaguest terms, why it is being assessed a deficiency. The very purpose of a deficiency assessment is to inform taxpayer why he has incurred a deficiency so that he can make an intelligent decision on whether to pay or to protest the assessment. This is all the more so when the assessment involves astronomical amounts, as in this case.
>
>   We therefore request that the examiner concerned be required to state, even in the briefest form, why he believes the taxpayer has a deficiency documentary and percentage taxes, and as to the percentage tax, it is important that the taxpayer be informed also as to what particular percentage tax the assessment refers to.
>
> 2. As to the alleged deficiency documentary stamp tax, you are aware of the compromise forged between your office and the Bankers Association of the Philippines [BAP] on this issue and of BPI's submission of its computations under this compromise. There is therefore no basis whatsoever for this assessment, assuming it is on the subject of the BAP compromise. On the other hand, if it relates to documentary stamp tax on some other issue, we should like to be informed about what those issues are.
>
> 3. As to the alleged deficiency percentage tax, we are completely at a loss on how such assessment may be protested since your letter does not even tell the taxpayer what particular percentage tax is involved and how your examiner arrived at the deficiency. As soon as this is explained and clarified in a proper letter of assessment, we shall inform you of the taxpayer's decision on whether to pay or protest the assessment.[7]

On June 27, 1991, BPI received a letter from CIR dated May 8, 1991 stating that:

... although in all respects, your letter failed to qualify as a protest under Revenue Regulations No. 12-85 and therefore not deserving of any rejoinder by this office as no valid issue was raised against the validity of our assessment... still we obliged to explain the basis of the assessments.

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... this constitutes the final decision of this office on the matter.[8]

On July 6, 1991, BPI requested a reconsideration of the assessments stated in the CIR's May 8, 1991 letter.[9] This was denied in a letter dated December 12, 1991, received by BPI on January 21, 1992.[10]

On February 18, 1992, BPI filed a petition for review in the CTA.[11] In a decision dated November 16, 1995, the CTA dismissed the case for lack of jurisdiction since the subject assessments had become final and unappealable. The CTA ruled that BPI failed to protest on time under Section 270 of the National Internal Revenue Code (NIRC) of 1986 and Section 7 in relation to Section 11 of RA 1125.[12] It denied reconsideration in a resolution dated May 27, 1996.[13]

On appeal, the CA reversed the tax court's decision and resolution and remanded the case to the CTA[14] for a decision on the merits.[15] It ruled that the October 28, 1988 notices were not valid assessments because they did not inform the taxpayer of the legal and factual bases therefor. It declared that the proper assessments were those contained in the May 8, 1991 letter which provided the reasons for the claimed deficiencies.[16] Thus, it held that BPI filed the petition for review in the CTA on time.[17] The CIR elevated the case to this Court.

This petition raises the following issues:

1) whether or not the assessments issued to BPI for deficiency percentage and documentary stamp taxes for 1986 had already become final and unappealable and

2) whether or not BPI was liable for the said taxes.

The former Section 270[18] (now renumbered as Section 228) of the NIRC stated:

Sec. 270. Protesting of assessment. — **When the [CIR] 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 [CIR] **shall issue an assessment based on his findings**.
>
> xxx xxx xxx (emphasis supplied)

WERE THE OCTOBER 28, 1988 NOTICES VALID ASSESSMENTS?

The first issue for our resolution is whether or not the October 28, 1988 notices[19] were valid assessments. If they were not, as held by the CA, then the correct assessments were in the May 8, 1991 letter, received by BPI on June 27, 1991. BPI, in its July 6, 1991 letter, seasonably asked for a reconsideration of the findings which the CIR denied in his December 12, 1991 letter, received by BPI on January 21, 1992. Consequently, the petition for review filed by BPI in the CTA on February 18, 1992 would be well within the 30-day period provided by law.[20]

The CIR argues that the CA erred in holding that the October 28, 1988 notices were invalid assessments. He asserts that he used BIR Form No. 17.08 (as revised in November 1964) which was designed for the precise purpose of notifying taxpayers of the assessed amounts due and demanding payment thereof.[21] He contends that there was no law or jurisprudence then that required notices to state the reasons for assessing deficiency tax liabilities.[22]

BPI counters that due process demanded that the facts, data and law upon which the assessments were based be provided to the taxpayer. It insists that the NIRC, as worded now (referring to Section 228), specifically provides that:

> "[t]he taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

According to BPI, this is declaratory of what sound tax procedure is and a confirmation of what due process requires even under the former Section 270.

BPI's contention has no merit. The present Section 228 of the NIRC provides:

> Sec. 228. Protesting of Assessment. — **When the [CIR] or his duly authorized representative finds that proper**vided, however, That a preassessment notice shall not be required in the following cases: **taxes should be assessed, he shall first notify the taxpayer of his findings:** Provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx (emphasis supplied)

Admittedly, the CIR did not inform BPI in writing of the law and facts on which the assessments of the deficiency taxes were made. He merely notified BPI of his findings, consisting only of the computation of the tax liabilities and a demand for payment thereof within 30 days after receipt.

In merely notifying BPI of his findings, the CIR relied on the provisions of the former Section 270 prior to its amendment by RA 8424 (also known as the Tax Reform Act of 1997).[23] In *CIR v. Reyes*,[24] we held that:

> In the present case, Reyes was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. She was merely notified of the findings by the CIR, who had simply relied upon the provisions of former Section 229 prior to its amendment by [RA] 8424, otherwise known as the Tax Reform Act of 1997.
>
> First, RA 8424 has already amended the provision of Section 229 on protesting an assessment. **The old requirement of merely notifying the taxpayer of the CIR's findings was changed in 1998** to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid.
>
> It was on February 12, 1998, that a preliminary assessment notice was issued against the estate. On April 22, 1998, the final estate tax assessment notice, as well as demand letter, was also issued. During those dates, RA 8424 was already in effect. **The notice required under the old law was no longer sufficient under the new law.**[25] (emphasis supplied; italics in the original)

Accordingly, when the assessments were made pursuant to the former Section 270, the only requirement was for the CIR to "notify" or inform the taxpayer of his "findings." Nothing in the old law required a written statement to the taxpayer of the law and facts on which the assessments were based. The Court cannot read into the law what obviously was not intended by Congress. That would be judicial legislation, nothing less.

Jurisprudence, on the other hand, simply required that the assessments contain a

computation of tax liabilities, the amount the taxpayer was to pay and a demand for payment within a prescribed period.[26] Everything considered, there was no doubt the October 28, 1988 notices sufficiently met the requirements of a valid assessment under the old law and jurisprudence.

The sentence

> [t]he taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void

was not in the old Section 270 but was only later on inserted in the renumbered Section 228 in 1997. Evidently, the legislature saw the need to modify the former Section 270 by inserting the aforequoted sentence.[27] The fact that the amendment was necessary showed that, prior to the introduction of the amendment, the statute had an entirely different meaning.[28]

Contrary to the submission of BPI, the inserted sentence in the renumbered Section 228 was not an affirmation of what the law required under the former Section 270. The amendment introduced by RA 8424 was an innovation and could not be reasonably inferred from the old law.[29] *Clearly, the legislature intended to insert a new provision regarding the form and substance of assessments issued by the CIR.*[30]

In ruling that the October 28, 1988 notices were not valid assessments, the CA explained:

> xxx. Elementary concerns of due process of law should have prompted the [CIR] to inform [BPI] of the legal and factual basis of the former's decision to charge the latter for deficiency documentary stamp and gross receipts taxes.[31]

In other words, the CA's theory was that BPI was deprived of due process when the CIR failed to inform it in writing of the factual and legal bases of the assessments — even if these were not called for under the old law.

We disagree.

Indeed, the underlying reason for the law was the basic constitutional requirement that "no person shall be deprived of his property without due process of law."[32] We note, however, what the CTA had to say:

xxx xxx xxx

> From the foregoing testimony, it can be safely adduced that not only was [BPI]

> given the opportunity to discuss with the [CIR] when the latter issued the former a Pre-Assessment Notice (which [BPI] ignored) but that the examiners themselves went to [BPI] and "we talk to them and we try to [thresh] out the issues, present evidences as to what they need." Now, how can [BPI] and/or its counsel honestly tell this Court that they did not know anything about the assessments?
>
> Not only that. To further buttress the fact that [BPI] indeed knew beforehand the assessments[,] contrary to the allegations of its counsel[,] was the testimony of Mr. Jerry Lazaro, Assistant Manager of the Accounting Department of [BPI]. He testified to the fact that he prepared worksheets which contain his analysis regarding the findings of the [CIR's] examiner, Mr. San Pedro and that the same worksheets were presented to Mr. Carlos Tan, Comptroller of [BPI].
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> xxx xxx xxx
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> From all the foregoing discussions, We can now conclude that [BPI] was indeed aware of the nature and basis of the assessments, and was given all the opportunity to contest the same but ignored it despite the notice conspicuously written on the assessments which states that "this ASSESSMENT becomes final and unappealable if not protested within 30 days after receipt." Counsel resorted to dilatory tactics and dangerously played with time. Unfortunately, such strategy proved fatal to the cause of his client.[33]

The CA never disputed these findings of fact by the CTA:

> [T]his Court recognizes that the [CTA], which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the [CTA]. [34]

Under the former Section 270, there were two instances when an assessment became final and unappealable: (1) when it was not protested within 30 days from receipt and (2) when the adverse decision on the protest was not appealed to the CTA within 30 days from receipt of the final decision:[35]

> Sec. 270. Protesting of assessment.
>
> xxx xxx xxx

> 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.
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> 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 [CTA] within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.

IMPLICATIONS OF A VALID ASSESSMENT

Considering that the October 28, 1988 notices were valid assessments, BPI should have protested the same within 30 days from receipt thereof. The December 10, 1988 reply it sent to the CIR did not qualify as a protest since the letter itself stated that "[a]s soon as this is explained and clarified in a proper letter of assessment, **we shall inform you of the taxpayer's decision on whether to pay or protest the assessment**."[36] Hence, by its own declaration, BPI did not regard this letter as a protest against the assessments. As a matter of fact, BPI never deemed this a protest since it did not even consider the October 28, 1988 notices as valid or proper assessments.

The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits.[37] Not only that. There arose a presumption of correctness when BPI failed to protest the assessments:

> 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. All presumptions are in favor of the correctness of tax assessments.[38]

Even if we considered the December 10, 1988 letter as a protest, BPI must nevertheless be deemed to have failed to appeal the CIR's final decision regarding the disputed assessments within the 30-day period provided by law. The CIR, in his May 8, 1991 response, stated that it was his "final decision ... on the matter." BPI therefore had 30 days from the time it

received the decision on June 27, 1991 to appeal but it did not. Instead it filed a request for reconsideration and lodged its appeal in the CTA only on February 18, 1992, way beyond the reglementary period. BPI must now suffer the repercussions of its omission. We have already declared that:

> ... the [CIR] should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of [RA 1125], as amended. **On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.**
>
> **The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration.** On the part of the [CIR], this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the [CIR] from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.[39] (emphasis supplied)

Either way (whether or not a protest was made), we cannot absolve BPI of its liability under the subject tax assessments.

We realize that these assessments (which have been pending for almost 20 years) involve a considerable amount of money. Be that as it may, we cannot legally presume the existence of something which was never there. The state will be deprived of the taxes validly due it and the public will suffer if taxpayers will not be held liable for the proper taxes assessed against them:

> Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general

welfare and well-being of the people.[40]

WHEREFORE, the petition is hereby **GRANTED**. The May 29, 1998 decision of the Court of Appeals in CA-G.R. SP No. 41025 is **REVERSED** and **SET ASIDE**.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and *Garcia, JJ.,* concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Emeterio C. Cui (retired) and concurred in by Associate Justices Ramon U. Mabutas, Jr. (retired) and Hilarion L. Aquino (retired) of the Second Division of the Court of Appeals; *rollo,* pp. 40-46. Under RA 9282, effective April 23, 2004, decisions of the reconstituted CTA are no longer appealable to the CA but directly to the SC.

[3] Penned by Associate Judge Ramon O. De Veyra (retired) and concurred in by Presiding Judge Ernesto D. Acosta and Associate Judge Manuel K. Gruba (deceased) of the old CTA; id., pp. 47-69.

[4] Id., pp. 70-71.

[5] Id., pp. 47-48, 72.

[6] Id., p. 72.

[7] Id., pp. 41, 90.

[8] Id., pp. 12, 48.

[9] Id., p. 41.

[10] Id., p. 49.

[11] Id., p. 41.

[12] Id., pp. 67-68. These sections state:

> Sec. 7. Jurisdiction — The [CTA] shall exercise exclusive appellate jurisdiction to review by appeal as herein provided —
> (1) Decisions of the Collector (now Commissioner) of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the [NIRC] or other law or part of law administered by the Bureau of Internal Revenue; xxx
> Sec. 11. Who may appeal; effect of appeal. — Any person, association or corporation adversely affected by a decision or ruling of the Collector (now Commissioner) of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the [CTA] within thirty days after the receipt of such decision or ruling.

[13] Id., pp. 70-71.

[14] Id., p. 45.

[15] Id.

[16] Id., p. 43.

[17] Id., p. 44.

[18] *People v. Sandiganbayan* (G.R. No. 152532, 16 August 2005) contains a legislative history of this provision in its footnote no. 9:

> "Sec. 229 was originally found in the [National Internal Revenue Code (NIRC)] of 1977, which was codified by and made an integral part of Presidential Decree (PD) No. 1158, otherwise known as 'A Decree to Consolidate and Codify all the Internal Revenue Laws of the Philippines."
>
> When the NIRC of 1977 was amended by PD 1705 on August 1, 1980, Sec. 229 was restated as Sec. 16(d). On January 16, 1981, PD 1773 further amended Sec. 16 by eliminating paragraph (d) and inserting its contents between Secs. 319 and 320 as a new Sec. 319-A. PD 1994 then renumbered Sec. 319-A as Sec. 270 on January 1, 1986; and on January 1, 1988, Sec. 270 was again renumbered as Sec. 229 and rearranged to fall under Chapter 3 of Title VIII of the NIRC by Executive Order (EO) No. 273, otherwise known as "Adopting a Value-Added Tax, Amending for this

Purpose Certain Provisions of the [NIRC], and for other purposes."

At present, Sec. 229 has been amended as Sec. 228 by RA 8424, otherwise known as the 'Tax Reform Act of 1997.'"

[19] FAS-4-86-88-003209 and FAS-5-86-88-003210; id., p. 72.

[20] Id., pp. 43-44.

[21] Id., pp. 163-164.

[22] Id., p. 164.

[23] Sec. 270 was renumbered Sec. 229 before it was amended and became Sec. 228; *supra* note 18.

[24] G.R. No. 159694, 27 January 2006, 480 SCRA 382.

[25] Id., p. 393.

[26] *Tupaz v. Ulep,* G.R. No. 127777, 1 October 1999, 316 SCRA 118, 126.

[27] See *Commissioner v. Court of Tax Appeals,* G.R. Nos. L-48886-88, 21 July 1993, 224 SCRA 665, 671.

[28] *Palanca v. City of Manila and Trinidad,* 41 Phil. 125, 131 (1920); R. AGPALO, STATUTORY CONSTRUCTION 308 (3rd ed., 1995).

[29] *See Pioneer Texturizing Corp. v. NLRC,* 345 Phil. 1057, 1072 (1997).

[30] Id.

[31] *Rollo,* p. 43.

[32] CONSTITUTION, Art. III, Sec. 1.

[33] *Rollo,* pp. 62-65, citations omitted.

[34] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 157064, 7 August 2006, 498 SCRA 126.

[35] *Rollo,* pp. 51-52.

[36] *Supra* note 7.

[37] *Republic v. Court of Appeals,* G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 357, citation omitted.

[38] *Sy Po v. Court of Appeals,* G.R. No. L-81446, 18 August 1988, 164 SCRA 524, 530, citations omitted.

[39] *Oceanic Wireless Network, Inc. v. Commission of Internal Revenue,* G.R. No. 148380, 9 December 2005, 477 SCRA 205, 211-212, citing *Surigao Electric Co., Inc. v. Court of Tax Appeals,* G.R. No. L-25289, 28 June 1974, 57 SCRA 523.

[40] *National Power Corporation v. City of Cabanatuan,* G.R. No. 149110, 9 April 2003, 401 SCRA 259, 269-270, citations omitted.

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