

Haystacks

Taxation Law II

Michael Vernon Guerrero Mendiola
2005

Shared under Creative Commons Attribution-
NonCommercial-ShareAlike 3.0 Philippines license.



Some Rights Reserved.

Table of Contents

Commissioner of Internal Revenue vs. Ayala Securities Corp. (GR L-29485, 21 November 1980)	1
Collector of Internal Revenue vs. Benipayo (GR L-13656, 31 January 1962)	3
Butuan Sawmill vs. Court of Tax Appeals (GR L-20601, 28 February 1966)	4
CIR vs. Phoenix Assurance [GR L-19727, 20 May 1965.]	5
Nava vs. Commissioner of Internal Revenue (GR L-19470, 30 January 1965)	9
Tuason & Legarda Ltd. vs. Commissioner of Internal Revenue (GR L-18552, 30 September 1965)	10
Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue (GR L-16683, 31 January 1962)	11
Filipinas Investment & Finance Corporation vs. Commissioner of Internal Revenue (GR L-23501, 16, May 1967)	13
Commissioner of Internal Revenue vs. Isabela Cultural Corporation (GR 135210, 11 July 2001)	14
Commissioner of Internal Revenue vs. Union Shipping Corporation (GR 66160, 21 May 1990)	16
Commissioner of Internal Revenue vs. Philippine American Life Insurance Co. (GR 105208, 29 May 1995)	18
ACCRA Investments Corporation vs. Court of Appeals (GR 96322, 20 December 1991)	21
Koppel (Phils.) Inc. vs. Collector of Internal Revenue (GR L-10550, 19 September 1961)	23
Commissioner of Internal Revenue vs. Victorias Milling Co. (GR L-24108, 3 January 1968)	26
Commissioner of Internal Revenue vs. Concepcion (GR L-23912, 15 March 1968)	27
Philippine Bank of Communications vs. Commissioner of Internal Revenue (GR 112024, 28 January 1999)	28
Ungab vs. Cusi Jr. (GR L-41919-25, 30 May 1980)	31
Commissioner of Internal Revenue vs. Court of Appeals (GR 119322, 4 June 1996)	32

This collection contains eighteen (18) of twenty five (25) cases summarized in this format by
Michael Vernon M. Guerrero (as a junior law student)
during the Second Semester, school year 2004-2005
in the Taxation Law II class
under Atty. Rommel Quebengco (+)
at the Arellano University School of Law (AUSL).
Compiled as PDF, July 2011.

Berne Guerrero entered AUSL in June 2002
and eventually graduated from AUSL in 2006.
He passed the Philippine bar examinations immediately after (April 2007).

Haystacks (Berne Guerrero)

[1]

Commissioner of Internal Revenue vs. Ayala Securities Corp. (GR L-29485, 21 November 1980)

First Division, Teehankee (J): 4 concur, 1 took no part.

Facts: An assessment made on 21 February 1961 by the Commissioner of Internal Revenue against the Ayala Securities Corporation (and received by the latter on 22 March 1961) in the sum of P758,687.04 on its surplus of P2,758,442.37 for its fiscal year ending 30 September 1955. Raised before the Court of Tax Appeals, the tax court reversed the assessment of the 25% surtax and interest in the amount of P758,687.04, and thereby cancelled and declared of no force and effect the assessment of the Commissioner for 1955.

On 8 April 1976, the Supreme Court affirmed the decision of the Court of Tax Appeals and ruled that the assessment fell under the 5-year prescriptive period provided in section 331 of the National Internal Revenue Code (NIRC) and that the assessment had, therefore, been made after the expiration of the said 5-year prescriptive period and was of no binding force and effect. The Commissioner moved for reconsideration.

The Supreme Court set aside its decision of 8 April 1976, and rendered in lieu thereof another judgment ordering the corporation to pay the assessment in the sum of P758,687.04 as 25% surtax on its unreasonably accumulated surplus, plus the 5% surcharge and 1% monthly interest thereon, pursuant to section 51 (e) of the NIRC, as amended by RA 2343; with costs.

1. United Equipment & Supply Co. vs. CIR (CTA 1795, 30 October 1971)

The provisions of sections 331 and 332 of the National Internal Revenue Code for prescriptive periods of 5 and 10 years after the filing of the return do not apply to the tax on the taxpayer's unreasonably accumulated surplus under section 25 of the Tax Code since no return is required to be filed by law or by regulation on such unduly accumulated surplus on earnings. The 25% surtax is not subject to any statutory prescriptive period.

2. Section 331 NIRC; Period of limitation upon assessment and collection

Section 331 of the Revenue Code provides that "Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purpose 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; Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

3. Section 331 applies to National Internal Revenue Taxes which requires the filing of returns

Section 331 applies to assessment of National Internal Revenue Taxes which requires the filing of returns. A return the filing of which is necessary to start the running of the five-year period for making an assessment, must be one which is required for the particular tax. Consequently, it has been held that the filing of an income tax return does not start the running of the statute of limitation for assessment of the sales tax. (Butuan Sawmill, Inc. v. Court of Tax Appeals, G.R. No. L-20601, Feb. 28, 1966, 16 SCRA 277).

4. No return required for improperly accumulated surplus profits; Tax thereon imposed as a penalty

No return could have been filed, and the law could not possibly require, for obvious reasons, the filing of a return covering unreasonable accumulation of corporate surplus profits. A tax imposed upon unreasonable accumulation of surplus is in the nature of a penalty. (Helvering v. National Grocery Co., 304 U.S. 282). It would not be proper for the law to compel a corporation to report improper accumulation of surplus.

Haystacks (Berne Guerrero)

5. Section 332 NIRC; Exceptions as to period of limitation of assessment and collection of taxes

Section 332 provides that (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission. (b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner of Internal Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (c) Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

6. Section 332 applies to National Internal Revenue Taxes which requires the filing of returns

Section 332 has reference to national internal revenue taxes which require the filing of returns. This is implied from the provision that the ten-year period for assessment specified therein treats of the filing of a false or fraudulent return or of a failure to file a return. There can be no failure or omission to file a return where no return is required to be filed by law or by regulations.

7. Right of government to assess is imprescriptible, in the absence of express statutory provision; Doctrine's applicability to Section 25 NIRC

It is well settled limitations upon the right of the government to assess and collect taxes will not be presumed in the absence of clear legislation to the contrary. The existence of a time limit beyond which the government may recover unpaid taxes is purely dependent upon some express statutory provision, (51 Am. Jur. 867; 10 Mertens Law on Federal Income Taxation, par. 57. 02.). It follows that in the absence of express statutory provision, the right of the government to assess unpaid taxes is imprescriptible. Since there is no express statutory provision limiting the right of the Commissioner of Internal Revenue to assess the tax on unreasonable accumulation of surplus provided in Section 25 of the Revenue Code, said tax may be assessed at any time. In fine, limitations upon the right of the government to assess and collect taxes will not be presumed in the absence of clear legislation to the contrary and that where the government has not by express statutory provision provided a limitation upon its right to assess unpaid taxes, such right is imprescriptible.

8. Purpose of additional tax for a corporation's improperly accumulated profits or surplus

The underlying purpose of the additional tax in question on a corporation's improperly accumulated profits or surplus is as set forth in the text of section 25 of the Tax Code itself to avoid the situation where a corporation unduly retains its surplus earnings instead of declaring and paying dividends to its shareholders or members who would then have to pay the income tax due on such dividends received by them.

9. Corporation is a mere holding company through its mother company, a registered co-partnership consisting of family members

Ayala Securities Corporation is a mere holding company of its shareholders through its mother company, a registered co-partnership then set up by the individual shareholders belonging to the same family. Said prima facie evidence and presumption set up by the Tax Code is applied without having been adequately rebutted by the corporation.

10. Ayala Securities Corp. fall under Revenue Regulations 2

The Corporation falls under Revenue Regulation 2, implementing the provisions of the income tax law which provides on holding and investment companies that "A corporation having practically no activities except holding property, and collecting the income therefrom or investing therein shall be considered a

Haystacks (Berne Guerrero)

holding company within the meaning of section 25.” (Section 20)

[2]

Collector of Internal Revenue vs. Benipayo (GR L-13656, 31 January 1962)

En Banc, Dizon (J): 8 concur, 1 took no part

Facts: Alberto D. Benipayo is the owner and operator of the Lucena Theater located in the municipality of Lucena, Quezon. On 3 October 1953 Internal Revenue Agent Romeo de Guia investigated Benipayo’s amusement tax liability in connection with the operation of said theater during the period from August 1952 to September 1953. On 15 October 1953 De Guia submitted his report to the Provincial Revenue Agent to the effect that Benipayo had disproportionately issued tax-free 20-centavo children’s tickets. His finding was that during the years 1949 to 1951 the average ratio of adults and children patronizing the Lucena Theater was 3 to 1, i.e., for every 3 adults entering the theater, 1 child was also admitted, while during the period in question, the proportion was reversed — 3 children to 1 adult. From this he concluded that Benipayo must have fraudulently sold 2 tax-free 20-centavo tickets, in order to avoid payment of the amusement tax prescribe in Section 260 of the National Internal Revenue Code (NIRC). Based on the average ratio between adult and children attendance in the past years, Examiner de Guia recommended a deficiency amusement tax assessment against Benipayo in the sum of P11,193.45, inclusive of 25% surcharge, plus a suggested compromise penalty of P900.00 for violation of section 260 of the NIRC, or a total sum of P12,093.45 covering the period from August 1952 to September 1953, inclusive. On 14 July 1954, the Collector issued a deficiency amusement tax assessment against Benipayo demanding from the latter the payment of the total sum of P12,152.93 within thirty days from receipt thereof. On 16 August 1954, Benipayo filed the corresponding protest with the Conference Staff of the BIR. After due hearing, the Conference Staff submitted to the Collector its finding to the effect that the “meager reports of these fieldmen are mere presumptions and conclusions, devoid of findings of fact of the alleged fraudulent practices of the herein taxpayer”. In view thereof, and as recommended by the Conference Staff, the Collector referred the case back to the Provincial Revenue Agent of Quezon for further investigation. The report submitted by Provincial Revenue Officer H. I. Bernardo after this last investigation supported agent De Guia’s assessment. After considering said report, the Conference Staff recommended to the Collector the issuance of the deficiency amusement tax assessment in question.

The issue being raised in the Court of Tax Appeals, said court, on 23 January 1948, reversed the decision of the Collector, relieving Benipayo from the payment of the deficiency amusement tax assessed against him in the total amount of P12,093.45. The Collector appealed to the Supreme Court.

The Supreme Court affirmed the appealed judgment, with costs.

1. Nature of an assessment; Basis

An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.

2. Presumption of correctness of assessment cannot rest upon another presumption

The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption that the circumstances in 1952 and 1953 are presumed to be the same as those existing in 1949 to 1951 and July 1955. Assuming arguendo that the average ratio of adults and children patronizing the Lucena Theater from 1949 to 1951 was 3 to 1, the same does not give rise to the inference that the same conditions existed during the years in question (1952 and 1953). The fact that almost that same ratio existed

Haystacks (Berne Guerrero)

during the month of July, 1955 does not provide a sufficient inference on the conditions in 1952 and 1953.

3. Fraud is a serious charge and must be supported by clear and convincing proof

To sustain the deficiency tax assessed against Benipayo would amount, in effect, to a finding that he had, for a considerable period of time, cheated and defrauded the government by selling to each adult patron 2 children's tax-free tickets instead of 1 ticket subject to the amusement tax provided for in Section 260 of the NIRC. Fraud is a serious charge and, to be sustained, it must be supported by clear and convincing proof which, in the present case, is lacking.

4. Rebate system discontinued; Context of Benipayo's admission

The claim that Benipayo admitted having resorted to the anomalous practice already mentioned is not entirely correct. What Benipayo appears to have admitted was that during a certain limited period he had adopted a sort of rebate system applicable to cases where adults and children came in groups and were all charged 20 centavos admission tickets. This practice was, however, discontinued when he was informed by the BIR that it was not in accordance with law.

[3]

Butuan Sawmill vs. Court of Tax Appeals (GR L-20601, 28 February 1966)

En Banc, Reyes JBL (J): 10 concur

Facts: During the period from 31 January 1951 to 8 June 1953, the Butuan Sawmill Inc. sold logs to Japanese firms at prices FOB Vessel Magallanes, Agusan (in some cases FOB Vessel, Nasipit also in Agusan). The FOB prices included costs of loading wharfage stevedoring and other costs in the Philippines. The quality, quantity and measurement specifications of the logs were certified by the Bureau of Forestry. That the freight was paid by the Japanese buyers, and the payments of the logs were effected by means of irrevocable letters of credit in favor of Butuan Sawmill and payable through the Philippine National Bank (PNB) or any other bank named by it. Upon investigation by the Bureau of Internal Revenue (BIR), it was ascertained that no sales tax return was filed by Butuan Sawmill and neither did it pay the corresponding tax on the sales. On the basis of agent Antonio Mole's report dated 17 September 1957, the Commissioner of Internal Revenue on 27 August 1958, determined against Butuan Sawmill the sum of P40,004.01 representing sales tax, surcharge and compromise penalty of its sales [tax, surcharge and compromise penalty of its sales] of logs from January 1951 to June 1953 pursuant to section 183, 186 and 209 of the National Internal Revenue Code (NIRC). In consequence of a reinvestigation, the Commissioner, on 6 November 1958, amended the amount of the previous assessment to P38,917.74.

Subsequent requests for reconsideration of the amended assessment having been denied, Butuan Sawmill filed a petition for review on 7 November 1960. The Court of Tax Appeals upheld the upheld the legality and correctness of the amended assessment of the sales tax and surcharge. The imposition of the compromise penalty was, however, eliminated therefrom for want of agreement between the taxpayer and the Collector (now Commissioner) of Internal Revenue. A motion to reconsider said decision having been denied, Butuan Sawmill interposed an appeal before the Supreme Court.

The Supreme Court affirmed the decision appealed from, with costs against Butuan Sawmill.

1. Export sales had been consummated in the Philippines and were subject to sales tax therein; Taligaman Lumber Co. vs. Collector of Internal Revenue

Similar to the case of Taligaman Lumbe Co. vs. Collector of Internal Revenue where "it was admitted that the agreed price was 'F.O.B. Agusan', thus indicating, although prima facie, that the parties intended the title to pass to the buyer upon delivery of the log in Agusan, on board the vessels that took the goods to Japan. Moreover, said prima facie proof was bolstered up by the following circumstances, namely: (1) Irrevocable

Haystacks (Berne Guerrero)

letters of credit were opened by the Japanese buyers in favor of the petitioners. (2) Payment of freight charges of every shipment by the Japanese buyers. (3) The Japanese buyers chartered the ships that carried the logs they purchased from the Philippines to Japan. (4) The Japanese buyers insured the shipment of logs and collected the insurance coverage in case of loss in transit. (5) The petitioner collected the purchase price of every shipment of logs by surrendering the covering letter of credit, bill of lading, which was indorsed in blank, tally sheet, invoice and export entry, to the corresponding bank in Manila of the Japanese agent bank with whom the Japanese buyers opened letters of credit. (6) In case of natural defects in logs shipped to the buyers discovered in Japan instead of returning such defective logs, accepted them, but were granted a corresponding credit based on the contract price. (7) The logs purchased by the Japanese buyers were measured by a representative of the Director of Forestry and such measurement was final, thereby making the Government of the Philippines a sort of agent of the Japanese buyers,” and upon the authority of *Bislig Bay Lumber Co., Inc. vs. Collector Internal Revenue*, (G.R. No. L-13186 January 28, 1961) *Misamis Lumber Co., Inc. vs. Collector of Internal Revenue* (56 Off. Gaz. 517) and *Western Mindanao Lumber Development Co., Inc. vs. Court of Tax Appeals, et al.* (G.R. No. L-11710, June 30, 1958), it is clear that said export sales had been consummated in the Philippines and were accordingly, subject to sales tax therein.”

2. Paragraph 2, Article 1503 of the Civil Code of the Philippines

That the specification in the bill of lading to the effect that the goods are deliverable to the order of the seller or his agent does not necessarily negate the passing of title to the goods upon delivery to the carrier is clear from the second part of paragraph 2 of article 1503 of the Civil Code of the Philippines. Said provision provides that “Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the sellers’ property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligation under the contract.”

3. Only questions of law may be raised in petitions to review decisions of the CTA

It has been “a settled rule that in petitions to review decisions of the Court of Tax Appeals, only questions of law may be raised and may be passed upon by this Court.”

4. Income tax return cannot be considered as return for compensating tax for purpose of computing prescription under Section 331 of the Tax Code

An income tax return cannot be considered as a return for compensating tax for purposes of computing the period of prescription under Section 331 of the Tax Code, and that the taxpayer must file a return for the particular tax required by law in order to avail himself of the benefits of Section 331 of the Tax Code; otherwise, if he does not file a return, an assessment may be made within the time stated in Section 332(a) of the same Code (*Bisaya Land Transportation Co., Inc. vs. Collector of Internal Revenue & Collector of Internal Revenue vs. Bisaya Land Transportation Co., Inc.* G.R. Nos. L-12100 & L-11812. May 29, 1959).

5. 10 year prescription for failure to file return for disputed sales

As Butuan Sawmill failed to file a return for the disputed sales corresponding to the year 1951, 1952 and 1953, and this omission was discovered only on September 17, 1957, and that under Section 332(a) of the Tax Code assessment thereof may be made within ten (10) years from and after the discovery of the omission to file the return, the assessment and collection of the sales tax in question has not yet prescribed.

[4]

CIR vs. Phoenix Assurance [GR L-19727. 20 May 1965.]

Phoenix Assurance vs. CIR [GR L-19903]

En Banc, Bengzon JP (J): 10 concurring

Haystacks (Berne Guerrero)

Facts: Phoenix Assurance Co. Ltd., a foreign insurance corporation organized under the laws of Great Britain, is licensed to do business in the Philippines with head office in London. Through its head office it entered, in London, into worldwide reinsurance treaties with various foreign insurance companies. It agreed to cede a portion of premiums received on original insurances underwritten by its head office, subsidiaries, and branch offices throughout the world, in consideration for assumption by the foreign insurance companies of an equivalent portion of the liability from such original insurances. Pursuant to such reinsurance treaties, Phoenix Assurance Co., Ltd. ceded portions of the premiums it earned from its underwriting business in the Philippines (1952, P316,526.75; 1953, P246,082.04; 1954, P203,384.69) upon which the Commissioner of Internal Revenue, by letter of 6 May 1958, assessed withholding tax totaling P183,838.42 (1952, P75,966.42; 1953, 59,059.68; 1954, 48,812.32). On 1 April 1951, Phoenix Assurance filed its Philippine income tax return for 1950, claiming therein, among others, a deduction of P37,147.04 as net addition to marine insurance reserve equivalent to 40% of the gross marine insurance premiums received during the year. The Commissioner disallowed P11,772.57 of such claim for deduction and subsequently assessed against Phoenix Assurance the sum of P1,884.00 as deficiency income tax. The disallowance resulted from the fixing by the Commissioner of the net addition to the marine insurance reserve at 100% of the marine insurance premiums received during the last three months of the year. The Commissioner assumed that “ninety and thirty days are approximately the length of time required before shipments reach their destination or before claims are received by the insurance companies.” On 1 April 1953 Phoenix Assurance filed its Philippine income tax return for 1952, declaring therein a deduction from gross income of P35,912.25 as part of the head office expenses incurred for its Philippine business, computed at 5% on its gross Philippine income. On 30 August 1955 it amended its income tax return for 1952 by excluding from its gross income the amount of P316,526.75 representing reinsurance premiums ceded to foreign reinsurers and further eliminating deductions corresponding to the ceded premiums. The amended return showed an income tax due in the amount of P2,502.00. The Commissioner disallowed P15,826.35 of the claimed deduction for head office expenses and assessed a deficiency tax of P5,667.00 on 24 July 1958. On 30 April 1954 Phoenix Assurance filed its Philippine income tax return for 1953 and claimed therein a deduction from gross income of P33,070.88 as head office expenses allocable to its Philippine business, equivalent to 5% of its gross Philippine income. On 30 August 1955 it amended its 1953 income tax return to exclude from its gross income the amount of P246,082.04 representing reinsurance premiums ceded to foreign reinsurers. At the same time it requested the refund of P23,409.00 as overpaid income tax for 1953. To avoid the prescriptive period provided for in Section 306 of the Tax Code, it filed a petition for review on 11 August 1956 in the Court of Tax Appeals praying for such refund. After verification of the amended income tax return the Commissioner disallowed P12,304.10 of the deduction representing head office expenses allocable to Philippine business thereby reducing the refundable amount to P20,180.00. On 29 April 1955 Phoenix Assurance filed its Philippine income tax return for 1954 claiming therein, among others, a deduction from gross income of P29,624.75 as head office expenses allocable to its Philippine business, computed at 5% of its gross Philippine income. It also excluded from its gross income the amount of P203,384.69 representing reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines. On 1 August 1958 the Bureau of Internal Revenue released an assessment for deficiency income tax for the years 1952 and 1954 against Phoenix Assurance amounting to P2,847. The assessment resulted from the disallowance of a portion of the deduction claimed by Phoenix Assurance as head office expenses allocable to its business in the Philippines fixed by the Commissioner at 5% of the net Philippine income instead of 5% of the gross Philippine income as claimed in the returns. Phoenix Assurance protested against the assessments for withholding tax and deficiency income tax. However, the Commissioner denied such protest.

Subsequently, Phoenix Assurance appealed to the Court of Tax Appeals (CTA Cases 305 and 543). In a decision dated 14 February 1962, the Court of Tax Appeals allowed in full the deduction claimed by Phoenix Assurance for 1950 as net addition to marine insurance reserve; determined the allowable head office expenses allocable to Philippine business to be 5% of the net income in the Philippines; declared the right of the Commissioner to assess deficiency income tax for 1952 to have prescribed; absolved Phoenix Assurance from payment of the statutory penalties for non-filing of withholding tax return. Thus, the court ordered

Haystacks (Berne Guerrero)

Phoenix Assurance to pay the Commissioner the respective amounts of P75,966.42, P59,059.68 and P48,812.32, as withholding tax for the years 1952, 1953 and 1954, and P2,847.00 as income tax for 1954, or the total sum of P186,685.42 within 30 days from the date the decision becomes final. Upon the other hand, the Commissioner was ordered to refund to Phoenix Assurance the sum of P20,180.00 as overpaid income tax for 1953, which sum is to be deducted from the total sum of P186,685.42 due as taxes; and ordered further that if any amount of the tax is not paid within the time prescribed, there shall be collected a surcharge of 5% of the tax unpaid, plus interest at the rate of 1% a month from the date of delinquency to the date of payment, provided that the maximum amount that may be collected as interest shall not exceed the amount corresponding to a period of 3 years; without pronouncement as to costs. Both parties appealed to the Supreme Court.

The Supreme Court modified the decision appealed from, and ordered Phoenix Assurance to pay the Commissioner the amount of P75,966.42, P59,059.68 and P48,812.32 as withholding tax for the years 1952, 1953 and 1954, respectively, and the sums of P5,667.00 and P2,847.00 as income tax for 1952 and 1954 or a total of P192,352.42; and ordered the Commissioner to refund to Phoenix Assurance the amount of P20,180.00 as overpaid income tax for 1953, which should be deducted from the amount of P192,352.42; and ordered further that if the amount of P192,352.42 or a portion thereof is not paid within 30 days from the date the judgment becomes final, there shall be collected a surcharge and interest as provided for in Section 51 (e) (2) of the Tax Code. No costs.

1. British Traders' Insurance vs. CIR; Reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines pursuant to contracts executed abroad are income from sources within the Philippines subject to withholding tax

The question of whether reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines pursuant to contracts executed abroad are income from sources within the Philippines subject to withholding tax under Section 53 and 54 of the Tax Code has already been resolved in the affirmative in *British Traders' Insurance Co. Ltd. vs. Commissioner of Internal Revenue*, L-20501, 30 April 1965.

2. Section 331 of the Tax Code; Period of limitation upon assessment and collection

Section 331 of the Tax Code, which limits the right of the Commissioner of Internal Revenue to assess income tax within five years from the filing of the income tax return, states: "Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. 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: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

3. Running of the prescriptive period commence from filing of original return

The Court of Tax Appeals ruled that the original return was a complete return containing "information on various items of income and deduction from which respondent may intelligently compute and determine the tax liability of petitioner", hence, the prescriptive period should be counted from the filing of said original return; the view which the Supreme Court sustains. The object of the Tax Code is to impose taxes for the needs of the Government, not to enhance tax avoidance to its prejudice. To hold otherwise would pave the way for taxpayers to evade the payment of taxes by simply reporting in their original return heavy losses and amending the same more than five years later when the Commissioner of Internal Revenue has lost his authority to assess the proper tax thereunder.

4. Right of Commissioner to assess the deficiency tax has not prescribed

Considering that the deficiency assessment was based on the amended return which, as aforesaid, is substantially different from the original return, the period of limitation of the right to issue the same should be counted from the filing of the amended income tax return. From August 30, 1955, when the amended return

Haystacks (Berne Guerrero)

was filed, to July 24, 1958, when the deficiency assessment was issued, less than five years elapsed. The right of the Commissioner to assess the deficiency tax on such amended return has not prescribed.

5. Section 32, paragraph (a) of the Tax Code Special provisions regarding income and deductions of insurance companies, whether domestic or foreign, Special deductions allowed to insurance companies

Paragraph (a) of Section 32 of the Tax Code states “In the case of insurance companies, except domestic life insurance companies and foreign life insurance companies doing business in the Philippines, the net additions, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts may be deducted from their gross income: Provided, however, That the released reserve be treated as income for the year of release.”

6. Section 186 of the Insurance Law

Section 186 of the Insurance Law requires the setting up of reserves for liability on marine insurance, thus “. . . Provided, That for marine risks the insuring company shall be required to charge as the liability for reinsurance fifty per centum of the premiums written in the policies upon yearly risks, and the full premiums written in the policies upon all other marine risks not terminated.”

7. Determination of the required reserve for marine insurance

The reserve required for marine insurance is determined on two bases: 50% of premiums under policies on yearly risks and 100% of premiums under policies of marine risks not terminated during the year. Section 32 (a) of the Tax Code allows the full amount of such reserve to be deducted from gross income. In the present case, the formulas for determining the marine reserve employed by Phoenix Assurance and the Commissioner (40% of premiums received during the year and 100% of premiums received during the last three months of the year, respectively) do not comply with Section 186. Said determinations run short of the requirement. For purposes of the Insurance Law, the Court therefore cannot countenance the same. Phoenix Assurance’s claim for deduction of P37,147.04 being less than the amount required in Section 186 of the Insurance Law, the same cannot be and is not excessive, and should therefore be fully allowed.

8. Purpose of the reserve; What is prohibited by income tax law

The reserve called for in Section 186 is a safeguard to the general public and should be strictly followed not only because it is an express provision but also as a matter of public policy. However, for income tax purposes a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. *

9. Items of income not belonging to the company’s Philippine business excluded from head office expenses allocable to Philippine Branch; Paragraph 2, subsection (a), Section 30 of the Tax Code

The gross income of Phoenix Assurance consists of income from its Philippine business as well as reinsurance premiums received for its head office in London and reinsurance premiums ceded to foreign reinsurers. Since the items of income not belonging to its Philippine business are not taxable to its Philippine branch, they should be excluded in determining the head office expenses allocable to said Philippine branch. This conclusion finds support in paragraph 2, subsection (a), Section 30 of the Tax Code, which provides that “Expenses allowable to non-resident alien individuals and foreign corporations. — In the case of a non-resident alien individual or a foreign corporation, the expenses deductible are the necessary expenses paid or incurred in carrying on any business or trade conducted within the Philippines exclusively.” Consequently, the deficiency assessments for 1952, 1953 and 1954, resulting from partial disallowance of deduction representing head office expenses, are sustained.

10. Interest on tax payment; Absolution based on equitable ground

The imposition of interest on unpaid taxes is one of the statutory penalties for tax delinquency, from

Haystacks (Berne Guerrero)

the payments of which the Court of Tax Appeals absolved the Phoenix Assurance on the equitable ground that the latter's failure to pay the withholding tax was due to the Commissioner's opinion that no withholding tax was due. Consequently, the taxpayer could be liable for the payment of statutory penalties only upon its failure to comply with the Tax Court's judgment rendered on 14 February 1962, after Republic Act 2343 took effect. This part of the ruling of the court ought not to be disturbed.

[5]

Nava vs. Commissioner of Internal Revenue (GR L-19470, 30 January 1965)

En Banc, Reyes JBL (J): 9 concur, 1 took no part.

Facts: On 15 May 1951, Nava filed his income tax return for the year 1950, and, on the same date, he was assessed by the Commissioner (formerly Collector) of Internal Revenue in the sum of P4,952.00, based solely on said return. Nava paid one-half of the tax due, leaving a balance of P2,491.00. Subsequently, Nava offered his backpay certificate to pay said balance, but the Commissioner refused the offer. On 28 July 1953, he requested the Commissioner to hold in abeyance the collection of said balance until the question of whether or not he was entitled to pay the same out of his backpay shall have been decided, but this was also rejected by the latter in a reply letter dated 5 January 1954. This rejection was followed by two more letters or notices demanding payment of the balance thereof, the last of which was dated 22 February 1955. On 30 March 1955, after investigation of Nava's 1950 income tax return, the Collector issued a deficiency income tax assessment notice requiring Nava to pay not later than 30 April 1955 the sum of P9,124.50, that included the balance of P2,491.00, still unpaid under the original assessment, plus a 50% surcharge. Several notices of this revised assessment are alleged to have been issued to the taxpayer, but Nava claims to have learned of it for the first time on 19 December 1956, more than five years since the original tax return was filed. In a letter of 10 January 1957, Nava called attention to the fact that more than 6 years had elapsed, protested the assessment, and contended that it was a closed issue. The Director insisted upon his demand that the new assessment be paid. Nava asked for reconsideration, and on 16 June 1958 was informed that reinvestigation would be granted provided the taxpayer waived the statute of limitations, a condition that was rejected. Thereupon, the reconsideration of the assessment was denied by the Collector's letter of 22 July 1958.

On 8 August 1958, Nava filed a petition for review with the Court of Tax Appeals. On 25 September 1961, the latter reduced the deficiency to P3,052.00, and cancelled the 50% surcharge. Nava's motion for reconsideration was denied 10 February 1962. Nava appealed to the Supreme Court.

The Supreme Court reversed the decision of the Court of Tax Appeals under review, without costs.

1. Presumption that letter duly directed and mailed cannot be applied; No substantial evidence from Commissioner

Reliance was made mainly on the duplicate copy of the deficiency income tax notice found in the Bureau of Internal Revenue file of Nava. The Revenue Commissioner presented a witness (Mr. Pablo Sangil, an employee [clerk] of the B.I.R.) who attempted to establish that the original copy thereof was actually issued on 30 March 1955, but said witness disclaimed having personal knowledge of its issuance or release on said date either by mail or personal delivery because, according to him, he was assigned in the income tax section of the BIR in October 1956 only. The witness also declared that there is no notation whatsoever in said file copy, nor even a slip of paper attached to the records, to show that the original copy of said exhibit was ever actually issued or sent to the taxpayer. There was also reliance on the supposed notices, as well as on the supposed "call-up" or demand letters referred to in a memorandum of an agent (Mrs. Canlas) of the BIR. No witness for the Commissioner testified to the issuance or sending of any of these supposed written demand letters or notices, nor was there any duplicate or even a simple copy thereof found in Nava's BIR file. Thus, the Commissioner utterly failed to prove by substantial evidence that the assessment notice dated 30 March 1955 and the other supposed written demand letters or notices subsequent thereto were in fact issued or sent

Haystacks (Berne Guerrero)

to taxpayer Nava. The presumption that a letter duly directed and mailed was received in the regular course of mail cannot be applied to the present case.

2. Requisites for the presumption, that letter was duly directed and mailed in regular course of mail, to arise

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. But if one of the said facts fails to appear, the presumption does not lie.” (VI Moran, Comments on the Rules of Court, 1963 Ed., 56-57; citing *Enriquez vs. Sun Life Assurance of Canada*, 41 Phil. 269)

3. Distinction between receiving a second final notice and receiving a final notice for second time

The fact that Nava acknowledged receipt of the second final notice personally delivered to him is no proof that he received the first notice by mail. There is a difference between receiving a second final notice and receiving a final notice for the second time.

4. Judicial action to collect deficiency tax for 1950 income tax has prescribed

As the original assessment of Nava’s 1950 income tax return was made on 15 May 1951, and no valid and effective notice of the re-assessment having been made against Nava after that date, it is evident that the period under Section 331 of the Tax Code within which to make a re-assessment expired on 15 May 1956. Since the notice of said deficiency income tax was effectively made on 19 December 1956 at the earliest, the judicial action to collect any deficiency tax on Nava’s 1950 income tax return has already prescribed under Section 332 (c) of the Tax Code, it having been found by the Tax Appeals court that said return was not false or fraudulent.

5. Mere notations on notice without taxpayer’s intervention, without adequate supporting evidence, cannot suffice

While an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (*Coll. of Int. Rev. vs. Bautista*, L-12250 and L-12259, May 27, 1959), it is imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer’s intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.

[6]

Tuason & Legarda Ltd. vs. Commissioner of Internal Revenue (GR L-18552, 30 September 1965)

En Banc, Dizon (J): 6 concur

Facts: Tuason & Legarda Ltd., a duly organized domestic corporation, is the owner of the “La Rosario” distillery, operating since 1910 where it had in store, for many years, a stock of distilled spirits and compounded liquors. On 16 December 1958 the Commissioner of Internal Revenue served on the company an assessment for specific tax in the amount of P3,525.40 and P300.00 as penalty on the stock of distilled spirits aforesaid. In reply thereto the Company informed the Commissioner on 16 January 1959 that the stock had already oxidized and was unfit for human consumption, and asked for authority to destroy it in the presence of and under the supervision of a government representative. On February 13 and 16, 1959, Restituto Magcase and Herminigildo Velasquez, the company’s distillery supervisor and Chief, Specific Tax Branch, respectively, recommended the destruction of said alcohol and compounded liquors, having found them to be unfit for human consumption. However, on April 29 of the same year, Inocencio Gonzales, Jr., Chief, Laboratory Section, after an analysis of the same substances, made a report to the contrary. As a result, the Commissioner denied the company’s request for authority to destroy the stock, but in his letter of 3 July 1959 the Commissioner reduced the original assessment to P2,814.95, plus P300.00 as a penalty, copy of

Haystacks (Berne Guerrero)

which amended assessment was received by the Company on 12 August 1959. The Commissioner, in his letter dated 30 September 1959 and received by the company about the middle of October of the same year denied the second written request to destroy the stock made by the Company on 15 August 1959, and demanded payment of the assessment and compromise penalty. In its reply letter dated 25 November 1959 the Company reiterated its stand that the stock of distilled spirits and compounded liquors in question was damaged and unfit for human consumption and asked for the withdrawal of the assessment served on it pursuant to Section 131 of the National Internal Revenue Code (NIRC). The Commissioner, instead of replying to this last request, served on petitioner on 20 January 1960 a warrant of distraint and levy for P3,525.40, (the original assessment) plus P300.00 as a penalty, and the latter, in turn, on 23 January 1960 tendered to the former all the stock of grain alcohol and compounded liquors in question in payment of the specific tax and penalty demanded provided that the warrant of distraint and levy be withdrawn and a full release and discharge be issued to it. The Commissioner never replied to this offer.

On 11 February 1960, the Company filed its petition for review with the Court of Tax Appeals. After trial on the merits, the Court of Tax Appeals dismissed the petition for review on the ground that the same was not filed on time. A motion for reconsideration and new trial on the ground of accident, mistake and excusable negligence dated 7 April 1961, was denied by the same Court on 14 June 1961 for lack of merit. The Company appealed.

The Supreme Court affirmed the decision appealed from, with costs.

1. Assessment final when petition for review filed with CTA; Last written request of company did not suspend running of prescriptive period

The letter of the Commissioner dated 3 July 1959 was, in legal contemplation, the ruling or decision from which the Company should have appealed to the Court of Tax Appeals; that from 12 August 1959 — when the Company received said letter — to the 15th of the same month and year — the date when the Company, by way of a motion for reconsideration, reiterated its written request for authority to destroy the distilled spirits and compounded liquors in its possession — the Company consumed three (3) days of the period of appeal that from 15 October 1959 — the date when the Company received the Commissioner's letter of 30 September 1959 denying his second request for authority to destroy the merchandise taxed — to 11 February 1960 when the petition for review was filed, more than 3 months elapsed. In computing the period of appeal, the company's last written request for authority to destroy the distilled spirits and compounded liquors in question did not suspend the running of said period, because it was a mere reiteration of two previous petitions already denied by the Commissioner. Consequently, the conclusion is inevitable that when the Company filed its petition for review with the Court of Tax Appeals, the questioned assessment had already become final, executory and incontrovertible.

2. Motion for reconsideration or new trial on ground of accident, mistake and excusable negligence properly denied

The Company's motion for reconsideration or new trial on the ground of accident, mistake and excusable negligence was correctly denied. Even assuming in this connection that the Commissioner's letter dated 30 September 1959 was actually received by the Company on 20 November 1959 and not "in the middle of October" 1959 as admitted by one of the Company's witnesses, the conclusion would still be that the petition for review was filed out of time because from 20 November 1959 to 11 February 1960 when said petition for review was filed, more than 60 days had elapsed.

[7]

Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue (GR L-16683, 31 January 1962)
En Banc, Reyes JBL (J): 8 concur, 1 took no part

Haystacks (Berne Guerrero)

Facts: On 21 February 1956, the Roman Catholic Archbishop of Cebu, in behalf of the Roman Catholic Church of Cebu, filed an income tax return for 1955, reporting a gross income of P10,356.90 from sales or exchanges of capital assets, from rentals and royalties, and from dividends received. The Archbishop claimed deductions from depreciation of the Archbishop's Palace Building, Major Seminary, Minor Seminary, and Furniture and Fixture in the total value of P19,898.09. On 18 February 1957, the Archbishop, in behalf of the Roman Catholic Church in Cebu, filed an income tax return for 1956, showing a gross income of P18,856.42. The Archbishop claimed deductions from depreciation in the total value of P20,226.15. On the theory that the gross incomes in 1955 and 1956 were realized independently of the use of the building, furniture and fixtures, the Collector of Internal Revenue totally disallowed the deductions for depreciation, thereby determining against the Archbishop, on 15 July 1956 and 30 March 1957, income tax liabilities for 1955 and 1956 in the respective amounts of P1,825.00 and P2,493.00. On May 10 and 14, 1957, the Archbishop requested for the reconsideration of the determinations, which requests were denied by the Collector in a letter dated 13 July 1957, wherein he demanded the payment of P1,825.00 and P2,493.00, including 5% surcharge and 1% legal interest on the latter amount. On 28 August 1957, the Archbishop requested for the reconsideration of the denial and the cancellation of the assessments. On 5 November 1957, the Collector denied this request for reconsideration and demanded the payment of P4,318.00, plus delinquency penalties incident to late payment. Again, on 23 November 1957, the Archbishop requested for the reconsideration and cancellation of the assessments, which request was denied on 20 January 1958, with a demand "for the last time to pay the total sum of P4,318.00 plus delinquency penalties incident to late payment immediately upon receipt hereof in order that no drastic action may be taken by this office on the matter." Meanwhile, on 4 December 4, 1957, the Collector issued a warrant of distraint and levy against the properties of the Roman Catholic Church of D. Jakosalem St., Cebu City, to satisfy the sums of P1,916.25 and P2,617.65 as deficiency income tax and surcharge due for 1955 and 1956. On 7 February 1958, the Archbishop paid under protest the total amount of P5,201.52 as income tax for the years 1955 and 1956, including surcharge and interests.

On 1 February 1958, the Archbishop filed before the Court of Tax Appeals his petition for review. The Tax Court, convinced that the lack of a claim for refund was fatal to the Archbishop's appeal, dismissed the same for lack of jurisdiction to take cognizance thereof. From this ruling, the Archbishop appealed to the Supreme Court.

The Supreme Court affirmed the dismissal of the Archbishop's appeal by the Court of Tax Appeals, with costs against the Archbishop.

1. Section 7 of Republic Act 1125

Section 7 of Republic Act 1125, provides in part that "(1) Decisions of the Collector 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 National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue;"

2. RA 1125 allows appeal from decision of Collector in cases involving "disputed assessments" as distinguished from cases involving "refunds of internal revenue taxes, fees or other charges"

Section 7 of Republic Act No. 1125, creating the Court of Tax Appeals, allows an appeal from a decision of the Collector in cases involving "disputed assessments" as distinguished from cases involving "refunds of internal revenue taxes, fees or other charges." To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law should not be interpreted as to result in absurdities.

Haystacks (Berne Guerrero)

3. Dismissal of appeal correct for being filed out of time

The dismissal of the Archbishop's appeal is substantially correct, for the reason that said appeal was not taken within the 30 day period prescribed by section 11 of Republic Act 1125. The Archbishop has submitted not less than 3 motions or requests for the reconsideration of his Tax Assessments. All motions for reconsideration were premised on the same grounds, deduction of the depreciation of the buildings in question. The appeal to the Tax Court was filed only on 19 February 1958. By these successive motions for reconsideration, the Archbishop managed to delay the review of his case by the Tax Court for nearly two years. Such delays are plainly inimical to the general interest, ascertainment and collection of taxes being essential to the maintenance of the State. The decision by the Collector dated 5 November 1957, denying the second request for reconsideration of the assessment, was certainly reviewable by the Court of Tax Appeals. Hence, the 30-day appeal period should be counted from 21 November 1957, when the taxpayer received copy of the Collector's ruling. The running of the period was not interrupted by the filing of the third request for reconsideration, because the latter did not advance new grounds not previously alleged, and was, therefore, merely pro forma. Therefore, the Archbishop's petition for review should have been lodged with the Tax Court not later than 21 December 1957, but it was actually filed only on 1 February 1958.

4. Doctrine in North Camarines Lumber Co. vs. Collector of Internal Revenue, (109 Phil. 511)

The Supreme Court cannot countenance the theory that would make the commencement of the statutory 30-day period solely dependent on the will of the taxpayer and place the latter in a position to put off indefinitely and at his convenience the finality of a tax assessment. Such an absurd procedure would be detrimental to the interest of the Government, for 'taxes are the lifeblood of the government, and their prompt and certain availability an imperious need.' (Bull vs. U. S. 295, U. S. 247)."

[8]

Filipinas Investment & Finance Corporation vs. Commissioner of Internal Revenue (GR L-23501, 16, May 1967)

En Banc, Reyes JBL (J): 8 concur

Facts: The Commissioner of Internal Revenue, through the Director of Regional District 3, issued a letter dated 18 April 1961, to Filipinas Investment & Finance Corporation, assessing against the latter the sum of P5,007.00 as advance sales tax on an automobile which it purchased from a tax-exempt individual, plus P300.00 as compromise penalty, or a total of P5,307.00. Believing itself not liable therefor, the Company, through counsel, disputed the above assessment in a letter dated 15 May 1961, and requested that the same be cancelled and/or withdrawn. Meanwhile, BIR Assistant Regional Director Toledo followed up said assessment with a demand letter dated 21 June 1961, to which the Company replied, calling the former's attention to its letter of 15 May 1961 which contested the assessment and has not yet been acted upon. The Commissioner denied the company's request for cancellation and/or withdrawal of the assessment in a letter dated 17 August 1962, which was sent to the Company. The record does not, however, show when the Company received this letter of denial; but, in a letter dated 28 September 1962, which the Commissioner received on 1 October 1962, the Company reiterated its request that the said assessment be cancelled and/or withdrawn. In the meantime, the BIR record of the Company was transmitted, on 24 September 1962 to its Collection Branch for collection by summary remedies; and pursuant thereto, Regional Director Tagle sent directly to the Company (not to its counsel) another demand letter dated 25 September 1962, enclosing therewith a copy of the letter of denial of 17 August 17, 1962. On 18 October 1962, the Company answered the letter, and on 23 January 1963, the Company, through its counsel, further moved to reconsider the denial of its original request for cancellation and/or withdrawal of the assessment. On 22 July 1963, the Commissioner again denied the Company's requests (of 28 September 1961 and 23 January 1963) for reconsideration of the assessment; which letter of denial, the Company received on 12 August 1963.

On 11 September 1963, the Company filed its petition for review in the Tax Court, (CTA Case 1450)

Haystacks (Berne Guerrero)

disputing the legality of the imposition of advance sales tax on the purchase and subsequent sale of the said automobile. The Commissioner moved to dismiss on ground that the petition was filed beyond the 30-day period fixed in Section 11 of Republic Act 1125. On 8 August 1964, the Tax Court, after finding that petitioner consumed 33 days in filing its petition for review from the date of receipt of the Commissioner's ruling on the disputed assessment, issued its resolution, sustaining the Commissioner's motion to dismiss. Not satisfied, the Company appealed to the Supreme Court.

The Supreme Court affirmed the appealed resolution; with costs against the Company.

1. Nature of the letters

The Commissioner's letter-assessment of 18 April 1961 became a "disputed" assessment when the Company requested for the cancellation and/or withdrawal of the same in its letter of 15 May 1961 (St. Stephen's Association vs. Collector of Internal Revenue, 104 Phil., 314). The Commissioner's letter of 17 August 1962, denying the Company's request for cancellation constitutes the decision on the "disputed" assessment, which is appealable to the Tax Court as contemplated under Sections 7 and 11 of Republic Act 1125. The Company's letter of 28 September 1962 which the Commissioner received on 1 October 1962 is a mere pro-forma request for reconsideration of the letter-decision of 17 August 1962 and did not adduce new facts or arguments. The Commissioner's letter of 22 July 1963 which the Company received on 12 August 1963 is the resolution on the said request for reconsideration (North Camarines Lumber Co., Inc. vs. Collector of Internal Revenue, GR L-12353, 30 September 1960).

2. Letter-decision of 17 August 1962 touched upon allegation of 15 May 1961 letter

The contention, that the letter-decision of 17 August 1962 did not touch on its allegation in its preceding letter (of 15 May 1961) that the automobile had passed through three previous non- tax exempt owners before reaching the Company's hands, is not tenable. The Commissioner's letter expressly declared that, "According to the findings of our examiners, your client is the first non-tax exempt entity to acquire ownership over the car in question"; and these words directly contradicted and overruled the Company's pretense.

3. Petition properly dismissed; Period of appeal jurisdictional and non-extendible

Considering that the period to appeal from a decision of the Commissioner of Internal Revenue to the Tax Court under Republic Act 1125 is jurisdictional and non-extendible, and that a taxpayer may not delay indefinitely a tax assessment by reiterating his original defenses over and over again, without substantial variation, the Tax Court correctly dismissed the petition for review filed by the Company.

[9]

Commissioner of Internal Revenue vs. Isabela Cultural Corporation (GR 135210, 11 July 2001)

Third Division, Panganiban (J): 3 concur, 1 on leave

Facts: In an investigation conducted on the 1986 books of account of Isabela Cultural Corporation had the preliminary finding that the corporation incurred a total income tax deficiency of P9,985,392.15, inclusive of increments. Upon protest by [respondent's] counsel, the said preliminary assessment was reduced to the amount of P325,869.44. On 23 February 1990, the corporation received from the Commissioner an assessment letter, dated 9 February 1990, demanding payment of the amounts of P333,196.86 and P4,897.79 as deficiency income tax and expanded withholding tax inclusive of surcharge and interest, respectively, for the taxable period from 1 January 1986 to 31 December 1986. In a letter, dated 22 March 1990, filed with the Commissioner's office on 23 March 1990, the corporation requested a reconsideration of the subject assessment. Supplemental to its protest was a letter, dated 2 April 1990, filed with the Commissioner office on 18 April 1990, to which were attached certain documents supportive of its protest, as well as a Waiver of Statute of Limitation, dated 17 April 1990, where it was indicated that the Commissioner would only have

Haystacks (Berne Guerrero)

until 5 April 1991 within which to assess and collect the taxes that may be found due from the corporation after the re-investigation. On 9 February 1995, the corporation received from the Commissioner a Final Notice Before Seizure, dated 22 December 1994. In said letter, the Commissioner demanded payment of the subject assessment within 10 days from receipt thereof. Otherwise, failure on its part would constrain the Commissioner to collect the subject assessment through summary remedies. The corporation considered said final notice of seizure as the Commissioner's final decision.

The corporation filed a petition for review with the Court of Tax Appeals (CTA) on 9 March 1995 (CTA Case 5211). The CTA having rendered judgment dismissing the petition, the corporation filed a petition with the Court of Appeals, anchored on the argument that the Commissioner's issuance of the Final Notice Before Seizure constitutes its decision on the corporation's request for reinvestigation, which the corporation may appeal to the CTA. In its Decision of 19 August 1998 (CA-GR SP 46383), the Court of Appeals reversed the Court of Tax Appeals. The CA considered the final notice sent by the Commissioner as the latter's decision, which was appealable to the CTA. The appellate court reasoned that the final Notice before seizure had effectively denied the corporation's request for a reconsideration of the commissioner's assessment. The appellate court ordered the case be remanded to the CTA.

The Commissioner filed a petition for review on certiorari before the Supreme Court. The Supreme Court denied the petition and affirmed the assailed decision.

1. Normal procedure as to assessment of delinquent taxes; Final decision

In the normal course, the revenue district officer sends the taxpayer a notice of delinquent taxes, indicating the period covered, the amount due including interest, and the reason for the delinquency. If the taxpayer disagrees with or wishes to protest the assessment, it sends a letter to the BIR indicating its protest, stating the reasons therefor, and submitting such proof as may be necessary. That letter is considered as the taxpayer's request for reconsideration of the delinquent assessment. After the request is filed and received by the BIR, the assessment becomes a disputed assessment on which it must render a decision. That decision is appealable to the Court of Tax Appeals for review. Prior to the decision on a disputed assessment, there may still be exchanges between the commissioner of internal revenue (CIR) and the taxpayer. The former may ask clarificatory questions or require the latter to submit additional evidence. However, the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review.

2. Final Notice Before Seizure is the final decision of the Commissioner

The Final Notice Before Seizure, transmitted after the corporation requested for reconsideration of the assessment made by the Commissioner as to delinquent taxes, should be considered as the commissioner's decision disposing of the request for reconsideration filed by the corporation, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy.

3. Section 228 NIRC; Protesting an Assessment

Section 228 of the National Internal Revenue Code states that a delinquent taxpayer may nevertheless directly appeal a disputed assessment, if its request for reconsideration remains unacted upon 180 days after submission thereof. Section 228 provides that "Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting

Haystacks (Berne Guerrero)

documents shall have become final. If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable.”

4. Final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment; Commissioner of Internal Revenue v. Ayala Securities Corporation

In *Commissioner of Internal Revenue v. Ayala Securities Corporation*, it was held that the letter is tantamount to a denial of the reconsideration of the corporation’s protest of the assessment made by the Commissioner, considering that the said letter was in itself a reiteration of the demand by the BIR for the settlement of the assessment already made, and for the immediate payment of the amount in spite of the vehement protest of the corporation. This certainly is a clear indication of the firm stand of the Commissioner against the reconsideration of the disputed assessment, in view of the continued refusal of the corporation to execute the waiver of the period of limitation upon the assessment in question.

5. Final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment; Surigao Electric Co., Inc. vs. Court of Tax Appeals and CIR vs. Union Shipping

Similarly, in *Surigao Electric Co., Inc. vs. Court of Tax Appeals* and again in *CIR v. Union Shipping Corp.*, it was held that the letter of demand unquestionably constitutes the final action taken by the commissioner on the company’s several requests for reconsideration and re-computation. In this letter the commissioner not only in effect demanded that the company pay the amount but also gave warning that in the event it failed to pay, the said commissioner would be constrained to enforce the collection thereof by means of the remedies provided by law. The tenor of the letter, specifically the statement regarding the resort to legal remedies, unmistakably indicated the final nature of the determination made by the commissioner of the company’s deficiency franchise tax liability.

6. BIR should always indicate to the taxpayer in clear and unequivocal language what constitutes final action on a disputed assessment; Purpose

The BIR should always indicate to the taxpayer in clear and unequivocal language what constitutes final action on a disputed assessment. The object of this policy is to avoid repeated requests for reconsideration by the taxpayer, thereby delaying the finality of the assessment and, consequently, the collection of the taxes due. Furthermore, the taxpayer would not be groping in the dark, speculating as to which communication or action of the BIR may be the decision appealable to the tax court.

7. Commissioner vs. Algue not applicable

Commissioner v. Algue is not in point. In that case, the Warrant of Dstraint and Levy, issued to the taxpayer without any categorical ruling on its request for reconsideration, was not deemed equivalent to a denial of the request. Because such request could not in fact be found in its records, the BIR cannot be presumed to have taken it into consideration. The request was considered only when the taxpayer gave a copy of it, duly stamp-received by the BIR. Hence, the Warrant was deemed premature. In the present case, petitioner does not deny receipt of the Company’s protest letter. As a matter of fact, it categorically relates the following in its “Statement of Relevant Facts”. Having admitted as a fact the company’s request for reconsideration, the Commissioner must have passed upon it prior to the issuance of the Final Notice Before Seizure.

[10]

Commissioner of Internal Revenue vs. Union Shipping Corporation (GR 66160, 21 May 1990)
Second Division, Paras (J): 4 concur

Haystacks (Berne Guerrero)

Facts: In a letter dated 27 December 1974, the Commissioner of Internal Revenue assessed against Yee Fong Hong, Ltd. and/or Union Shipping Corporation, the total sum of P583,155.22 as deficiency income taxes due for the years 1971 and 1972. Said letter was received on 4 January 1975, and in a letter dated 10 January 1975, received by the Commissioner on 13 January 1975, the Company protested the assessment. The Commissioner, without ruling on the protest, issued a Warrant of Distraint and Levy, which was served on the Company's counsel, Clemente Celso, on 25 November 1976. In a letter dated 27 November 1976, received by the Commissioner on 29 November 1976, the Company reiterated its request for reinvestigation of the assessment and for the reconsideration of the summary collection thru the Warrant of Distraint and Levy. The Commissioner, again, without acting on the request for reinvestigation and reconsideration of the Warrant of Distraint and Levy, filed a collection suit before Branch XXI of the then Court of First Instance of Manila (Civil Case 120459) against the Company. Summons in the said collection case was issued to the Company on 28 December 1978.

On 10 January 1979, the Company filed with the Court of Tax Appeals its Petition for Review of the Commissioner's assessment of its deficiency income taxes in a letter dated 27 December 1974 (CTA Case 2989), wherein it prays that after hearing, judgment be rendered holding that it is not liable for the payment of the income tax herein involved, or which may be due from foreign shipowner Yee Fong Hong, Ltd. The Tax Court, in a decision dated 9 December 1983, ruled in favor of the Company, reversing the decision of the Commissioner which assessed against and demanded from the Company the payment of deficiency income tax, inclusive of 50% surcharge, interest and compromise penalties, in the amounts of P73,958.76 and P583,155.22 for the years 1971 and 1972, respectively.

The Commissioner filed a Petition for Certiorari with the Supreme Court. The Supreme Court dismissed the petition and affirmed the assailed decision of the Court of Tax Appeals.

1. Final determination of disputed assessment must be indicated in clear and unequivocal language; Purpose

The Commissioner of Internal Revenue 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 Republic Act 1125, as amended. On the basis of this 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. This 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 Commissioner, 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 Commissioner 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.

2. Present case: Taxpayer left in the dark as to which is the appealable decision

Herein, the Commissioner did not rule on the Company's motion for reconsideration but, left the Company in the dark as to which action of the Commissioner is the decision appealable to the Court of Tax Appeals. Had he categorically stated that he denies the Company's motion for reconsideration and that his action constitutes his final determination on the disputed assessment, the Company without needless difficulty would have been able to determine when his right to appeal accrues and the resulting confusion would have been avoided.

Haystacks (Berne Guerrero)

3. Reviewable decision contained in letter of Commissioner, not in warrants of distraint

The reviewable decision of the Bureau of Internal Revenue is that contained in the letter of its Commissioner, that such constitutes the final decision on the matter which may be appealed to the Court of Tax Appeals and not the warrants of distraint (*Advertising Associates, Inc. v. Court of Appeals*, 133 SCRA 769 [1984]). The procedure enunciated is demanded by the pressing need for fair play, regularity and orderliness in administrative action.

4. Reckoning period of prescriptive period of appeal

Under the circumstances, the Commissioner of Internal Revenue, not having clearly signified his final action on the disputed assessment, legally the period to appeal has not commenced to run. Thus, it was only when the Company received the summons on the civil suit for collection of deficiency income on 28 December 1978 that the period to appeal commenced to run. The request for reinvestigation and reconsideration was in effect considered denied by the Commissioner when the latter filed a civil suit for collection of deficiency income. So that on 10 January 1979 when the Company filed the appeal with the Court of Tax Appeals, it consumed a total of only 13 days well within the thirty day period to appeal pursuant to Section 11 of RA 1125.

5. Union Shipping is the husbanding agent of vessel Yee Fong Hong Ltd.

Union Shipping is actually and legally the husbanding agent of the vessel of Yee Fong Hong, Ltd. as (1) it neither performed nor transacted any shipping business, for and in representation, of Yee Fong Hong, Ltd. or its vessels or otherwise negotiated or procured cargo to be loaded in the vessels of Yee Fong Hong, Ltd.; (2) it never solicited or procured cargo or freight in the Philippines or elsewhere for loading in said vessels of Yee Fong Hong, Ltd.; (3) it had not collected any freight income or receipts for the said Yee Fong Hong Ltd.; (4) it never had possession or control, actual or constructive, over the funds representing payment by Philippine shippers for cargo loaded on said vessels; it never remitted to Yee Fong Hong, Ltd. any sum of money representing freight incomes of Yee Fong Hong, Ltd.; and (5) that the freight payments made for cargo loaded in the Philippines for foreign destination were actually paid directly by the shippers to the said Yee Fong Hong, Ltd. upon arrival of the goods in the foreign ports.

6. Husbanding agent not liable for income tax due from foreign shipowners and withholding tax

The corporation being merely a husbanding agent is not liable for the payment of the income taxes due from the foreign ship owners loading cargoes in the Philippines. Neither can the Company be liable for withholding tax under Section 53 of the Internal Revenue Code since it is not in possession, custody or control of the funds received by and remitted to a non-resident taxpayer. If an individual or corporation, like Union Shipping herein, is not in the actual possession, custody, or control of the funds, it can neither be physically nor legally liable or obligated to pay the so-called withholding tax on income claimed by the non-resident taxpayer, herein Yee Fong Hong, Ltd.

7. Factual findings of the CTA binding upon the Supreme Court

The factual findings of the Court of Tax Appeals are binding on the Supreme Court. It is well-settled that in passing upon petitions for review of the decisions of the Court of Tax Appeals, the Court is generally confined to questions of law. The findings of fact of said Court are not to be disturbed unless clearly shown to be unsupported by substantial evidence.

[11]

Commissioner of Internal Revenue vs. Philippine American Life Insurance Co. (GR 105208, 29 May 1995)

Third Division, Romero (J): 2 concur, 1 took no part.

Facts: On 30 May 1983, the Philippine American Life Insurance Co. (Philamlife) paid to the Bureau of

Haystacks (Berne Guerrero)

Internal Revenue (BIR) its first quarterly corporate income tax for Calendar Year (CY) 1983 amounting to P3,246,141.00. On 29 August 1983, it paid P396,874.00 for the Second Quarter of 1983. For the Third Quarter of 1983, it declared a net taxable income of P2,515,671.00 and a tax due of P708,464.00. After crediting the amount of P3,899,525.00 it declared a refundable amount of P3,158,061.00. For its Fourth and Final quarter ending 31 December, Philamlife suffered a loss and thereby had no income tax liability. In return for that Quarter, it declared a refund of P3,991,841.00 as withholding taxes on rental income for 1983 and P133,084.00 representing 1982 income tax refund applied as 1983 tax credit. In 1984, Philamlife again suffered a loss and declared no income tax liability. However, it applied as tax credit for 1984, the amount of P3,991,841.00 representing its 1982 and 1983 overpaid income taxes and the amount of P250,867.00 as withholding tax on rental income for 1984. On 26 September 1984, Philamlife filed a claim for its 1982 income tax refund of P133,084.00. On 22 November 1984, it filed a petition for review with the Court of Tax Appeals (CTA Case 3868) with respect to its 1982 claim for refund of P133,084.00. On 16 December 1985, it filed another claim for refund with the Commissioner's appellate division in the aggregate amount of P4,109,624.00 for the period of 1982 to 1984 less the amount claimed in CTA Case 3868.

On 2 January 1986 Philamlife filed a petition for review with the CTA (CTA Case 4018 regarding its 1983 and 1984 claims for refund) Later, it amended its petition by limiting its claim for refund to only P3,858,757.00. On 16 September 1991, the CTA rendered a decision, granting Philamlife's claim for refund for P3,246,141.00 and P396,874.00 representing excess corporated income tax payments for the first and second quarters of 1983, respectively, or a total of P3,643,015.00. The Commissioner appealed.

The Court of Appeals affirmed the decision of the Court of Tax Appeals on 26 March 1992 (CA-GR 26598). The Commissioner filed a petition for review on certiorari.

The Supreme Court dismissed the petition and affirmed the decision of the Court of Appeals in toto; without costs.

1. Section 230 NIRC; Recovery of tax erroneously or illegally collected

Section 230 of the National Internal Revenue Code (formerly Section 292) provides that "No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

2. Section 230 NIRC; Forfeiture of refund

Section 230 of the National Internal Revenue Code (formerly Section 292) further provides that ". — A refund check or warrant issued in accordance with the pertinent provisions of this Code which shall remain unclaimed or uncashed within five (5) years from the date said warrant or check was mailed or delivered shall be forfeited in favor of the government and the amount thereof shall revert to the General Fund."

3. Pacific Procon Ltd. vs. Court of Tax Appeals overturned by CIR vs. TMX Sales

Although it is true that in the Pacific Procon case, the Court held that the right to bring an action for refund had prescribed, the tax having been found to have been paid at the end of the first quarter when the withholding tax corresponding thereto was remitted to the Bureau of Internal Revenue, not at the time of filing of the Final Adjustment return in April of the following year; said case was overturned by the Court in

Haystacks (Berne Guerrero)

Commissioner of Internal Revenue v. TMX Sales Incorporated and the Court of Tax Appeals, where the Court held that “it is necessary to consider not only Section 292 (now Section 230) of the National Internal Revenue Code but also the other provisions of the Tax Code, particularly Sections 84, 85 (now both incorporated as Section 68), Section 86 (now Section 70) and Section 87 (now Section 69) on Quarterly Corporate Income Tax Payment and Section 321 (now Section 232) on keeping of books of accounts; and that all these provisions of the Tax Code should be harmonized with each other.”

4. Section 292 (now Section 230) NIRC qualified by Sections 68 and 69 of present Tax Code

Section 292 (now Section 230) stipulates that the two-year prescriptive period to claim refunds should be counted from date of payment of the tax sought to be refunded. When applied to tax payers filing income tax returns on a quarterly basis, the date of payment mentioned in Section 292 (now Section 230) must be deemed to be qualified by Sections 68 and 69 of the present Tax Code.

5. Section 68 NIRC; Declaration of Quarterly Income Tax

Section 68 of the Tax Code provides that “Every corporation shall file in duplicate a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax, as provided in Title II of this Code shall be levied, collected and paid. The Tax so computed shall be decreased by the amount of tax previously paid or assessed during the preceding quarters and shall be paid not later than sixty (60) days from the close of each of the first three (3) quarters of the taxable year.

6. Section 69 NIRC; Final Adjustment Return

Section 69 of the Tax Code provides that “Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either: (a) Pay the excess still due; or (b) Be refunded the excess amount paid, as the case may be. In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.”

7. Refund due is amount shown in final adjustment return and not on its quarterly returns

The last paragraph of Section 69 of the Tax Code provides that the refundable amount, in case a refund is due a corporation, is that amount which is shown on its final adjustment return and not on its quarterly returns. This is in light of the fact that although quarterly taxes due on are required to be paid within sixty days from the close of each quarter, the fact that the amount shall be deducted from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, the taxes paid in the preceding quarters are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation.

8. Reckoning date determined after a final adjustment return is accomplished

The prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is 16 April 1984, and two years from this date would be 16 April 1986. The record shows that the claim for refund was filed on 10 December 1985 and the petition for review as brought before the CTA on 2 January 1986. Both dates are within the two-year reglementary period. Philamlife being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As earlier said in the TMX Sales case, Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be considered in conjunction with it.

9. Two-year period not jurisdictional

Even if the two-year period had already lapsed, the same is not jurisdictional and may be suspended

Haystacks (Berne Guerrero)

for reasons of equity and other special circumstances.

[12]

ACCRA Investments Corporation vs. Court of Appeals (GR 96322, 20 December 1991)

Third Division, Gutierrez Jr. (J): 4 concur

Facts: ACCRA Investment Corporation is a domestic corporation engaged in the business of real estate investment and management consultancy. On 15 April 1982, the corporation filed with the Bureau of Internal Revenue (BIR) its annual corporate income tax return for the calendar year ending 31 December 1981 reporting a net loss of P2,957,142.00. In the said return, the corporation declared as creditable all taxes withheld at source by various withholding agents (the Malayan Insurance Co., the Angara Concepcion Regala & Cruz Law Offices, MJ Development Corp. and Philippine Global Communications Inc., totaling P82,751.91. The withholding agents paid and remitted amounts representing taxes on rental, commission and consultancy income of the corporation to the BIR from February to December 1981. In a letter dated 29 December 1983 addressed to the Commissioner of Internal Revenue, the corporation filed a claim for refund inasmuch as it had no tax liability against which to credit the amounts withheld.

Pending action of the Commissioner on its claim for refund, the corporation, on 13 April 1984, filed a petition for review with the Court of Tax Appeals (CTA) asking for the refund of the amounts withheld as overpaid income taxes. On 27 January 1988, the CTA dismissed the petition for review after a finding that the two-year period within which the corporation's claim for refund should have been filed had already prescribed pursuant to Section 292 of the National Internal Revenue Code (NIRC) of 1977, as amended. Acting on the corporation's motion for reconsideration, the CTA in its resolution dated 27 September 1988 denied the same for having been filed out of time.

On 14 January 1989, the corporation filed with the Supreme Court its petition for review, which the Court referred to the appellate court in the Court's resolution dated 15 February 1990 for proper determination and disposition. On 28 May 1990, the appellate court affirmed the decision of the CTA opining that the two-year prescriptive period in question commences "from the date of payment of the tax" as provided under Section 292 of the Tax Code of 1977 (now Sec. 230 of the NIRC of 1986), i.e., "from the end of the tax year when a taxpayer is deemed to have paid all taxes withheld at source", and not "from the date of the filing of the income tax return" as posited by the corporation. Its motion for reconsideration with the appellate court having been denied in a resolution dated 20 November 1990, the corporation elevated this case to the Supreme Court.

The Supreme Court granted the petition, reversed and set aside the 28 May 1990 decision and 20 November 1990 resolution of the Court of Appeals, and directed the Commissioner of Internal Revenue to refund to the corporation the amount of P82,751.91.

1. Section 230 NIRC; Recovery of tax erroneously or illegally collected

Section 230 of the Tax Code provides that " No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress. In any case, no such suit or proceeding shall begin after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears to have been erroneously paid." (Emphasis Supplied).

Haystacks (Berne Guerrero)

2. Ruling in Gibbs v. Commissioner of Internal Revenue (155 SCRA 318 [1965])

Payment is a mode of extinguishing obligations (Art. 1231, Civil Code) and it means not only the delivery of money but also the performance, in any other manner, of an obligation (Id., Art 1231). A taxpayer, resident or non-resident, does so not really to deposit an amount to the Commissioner of Internal Revenue, but, in truth, to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax liabilities for that year. Consequently, a taxpayer whose income is withheld at source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 (now part of Section 230) of the Revenue Code starts to run with respect to payments effected through the withholding tax system.

3. Present case: Alternative reckoning dates and Nature of refund claim

The Gibbs ruling presents two alternative reckoning dates, i.e., (1) the end of the tax year; and (2) when the tax liability falls due. Herein, the corporation's withholding agents had paid the corresponding taxes withheld at source to the BIR from February to December 1981. In having applied the first alternative date — “the end of the tax year” in order to determine whether the corporation's claim for refund had been seasonably filed, the appellate court failed to appreciate properly the attending circumstances of the case. The corporation is not claiming a refund of overpaid withholding taxes, per se. It is asking for the recovery of the sum of P82,751.91.00, the refundable or creditable amount determined upon the petitioner corporation's filing of the its final adjustment tax return on or before 15 April 1982 when its tax liability for the year 1981 fell due. The distinction is essential in the resolution of this case for it spells the difference between being barred by prescription and entitlement to a refund.

4. Section 49 of 1986 NIRC; Payment and assessment of income tax for individuals and corporations

Under Section 49 of the National Internal Revenue Code of 1986, as amended, it is explicitly provided that “(a) Payment of tax — (1) In general. — The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed . . .”

5. Section 70 (b) of 1986 NIRC; Time of filing the income return

Section 70, subparagraph (b) of the Tax Code states when the income tax return with respect to taxpayers like the petitioner corporation must be filed. It provides that “The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.”

6. Present case: Corporation complied with filing of final adjustment return

The corporation's taxable year is on a calendar year basis, hence, with respect to the 1981 taxable year, ACCRAIN had until 15 April 1982 within which to file its final adjustment return. The corporation duly complied with this requirement. On the basis of the corporate income tax return which ACCRAIN filed on 15 April 1982, it reported a net loss of P2,957,142.00. Consequently, as reflected thereon, the petitioner corporation, after due computation, had no tax liability for the year 1981. Had there been any, payment thereof would have been due at the time the return was filed pursuant to subparagraph (c) of Section 70 of the NIRC.

7. Section 70 (c) of 1986 NIRC; Time payment of the income tax

Section 70, subparagraph (c) of the Tax Code provides that “The income tax due on the corporate quarterly returns and the final income tax returns computed in accordance with Section 68 and 69 shall be paid at the time the declaration or return is filed as prescribed by the Commissioner of Internal Revenue.”

8. Section 8 of BIR Revenue Regulation 13-78; Claims for tax credit or refund

Haystacks (Berne Guerrero)

Anent claims for refund, section 8 of Revenue Regulation No. 13-78 issued by the Bureau of Internal Revenue requires that “Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form No. 1 743-A) showing the amount paid and the amount of tax withheld therefrom.”

9. Section 69 of 1986 NIRC; Final Adjustment Return

The term “return,” in the case of domestic corporation like ACCRAIN, refers to the final adjustment return as mentioned in Section 69 of the Tax Code of 1986, as amended, which partly reads “Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either: (a) Pay the excess tax still due; or (b) Be refunded the excess amount paid, as the case may be.”

10. Need to file a return before a claim for refund

There is the need to file a return first before a claim for refund can prosper inasmuch as the Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue.

11. Reckoning date for two-year prescriptive period; CIR vs. Asia Australia Express Ltd.

In the Supreme Court Resolution dated 10 April 1989 in the case of Commissioner of Internal Revenue v. Asia Australia Express, Ltd. (G.R. No. 85956), the Supreme Court ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the corporation had until April 15, 1984 within which to file its claim for refund.

12. Rationale in computing the 2-year prescriptive period

The rationale in computing the two-year prescriptive period with respect to the corporation’s claim for refund from the time it filed its final adjustment return is the fact that it was only then that the corporation could ascertain whether it made profits or incurred losses in its business operations. The “date of payment”, therefore, was when its tax liability, if any, fell due upon its filing of its final adjustment return.

[13]

Koppel (Phils.) Inc. vs. Collector of Internal Revenue (GR L-10550, 19 September 1961)

En Banc, Paredes (J): 9 concur, 1 took no part.

Facts: Koppel (Philippines) Inc., is a domestic corporation of American capital duly organized and existing by virtue of the Philippine laws. During the year 1942 to the early part of 1945, the Company sustained losses arising from the occupation of the Philippines by the Japanese Military forces from 1941 to the battle of liberation in 1945. On 27 March 1942, the U.S. Congress passed Public Law 506 (War Damage Insurance Act) to cover insurance of all properties in the Philippines which might be damaged, destroyed or lost due to the operations of war. The Company, relying on the provisions of this legislation, entered in its books as “accounts receivable” from the U.S. Government the entire value of its properties damaged, destroyed and lost during World War II. On 30 April 1946, the U.S. Congress enacted Public Law 370 (Philippine Rehabilitation Act of 1946), which provided that the Philippine War Damage Commission supersedes the War Damage Commission.

[Prior Case: GR L-6701] On 15 January 1947, the U.S.-Philippine War Damage Commission, the agency

Haystacks (Berne Guerrero)

entrusted with the enforcement of said Public Law 370, issued a notice to the effect that 25 February 1947, was the date agreed upon as the initial date for the issuance of forms for the claimants of war damages and the claims could not be filed until after 1 March 1947. In 1947, the Company came to know that its losses equivalent to 25% or P256,054.88 could not be recovered, for which reason Company could not claim deduction for said losses in its 1945 and 1946 income tax returns. Company, therefore, in its book of accounts for the year 1947, wrote off as “bad debts”, the said amount of P256,054.88. On 6 June 1949, the Collector of Internal Revenue, assessed against the Company’s income tax for 1947, the sum of P34,636.21, corresponding to the amount of P256,054.88 as war losses sustained and ascertained to be unrecoverable in 1946. On 29 June 1949, the Company paid under protest with the BIR the amount of P34,636.21 as alleged deficiency income tax due, based on the disallowed deduction of P256,054.88. The Company repeatedly sought from the Collector a reconsideration of the assessment and the refund of the amount of P34,636.21 later reduced to P30,726.21, on the ground that said assessment was illegal. The then Secretary of Finance, Pio Pedrosa, on 11 September 1951, sustained Company’s stand and that of other taxpayers similarly situated, setting rules to be followed. The Collector issued General Circular V-123 addressed to all Internal Revenue officers and income tax examiners to apply the rules in the investigation of income tax returns involving war damage losses. On 21 September 1951, the Company reiterated its demand for the refund of the amount of P30,726.53. The Company, on 28 July 1953, received a communication denying the refund of the amount, on the ground that the ruling of Finance Secretary Pedrosa had already been revoked by his successor, Secretary of Finance Aurelio Montinola.

On 27 August 1953, the Company filed a petition for review with the then Board of Tax Appeals (BTA Case 157), praying that the Collector be ordered to refund to the Company the sum of P30,726.53, to which on 5 September 1953 the Collector answered, praying for the dismissal of the case. The case was submitted for decision after the parties had filed their respective memoranda. Notwithstanding the lapse of 60 days from the filing of the petition for review, the Board of Tax Appeals, had not rendered any decision. On 4 November 1953, Company gave notice of intention to file an appeal, pursuant to section 21 of Executive Order 401-A. On 13 November 1953, the Company received a copy of the decision of the Board of Tax Appeals dated 26 October 1953, confirming the order of the Collector, in denying the refund requested by the Company. A petition for review was presented before the Supreme Court (GR L-5701). The Supreme Court, on 29 April 1954, dismissed the Company’s appeal in said case “without prejudice, following the decision in University of Sto. Tomas vs. Board of Tax Appeals, G.R. No. L-6701”.

[Present Case: GR 10550] On 18 May 1954, Company filed a complaint with the Manila Court of First Instance (Civil Case 22893), praying that the Collector be ordered to refund to the Company the sum of P30,726.53. Upon motion of the Solicitor General, the Manila CFI remanded the case to the Court of Tax Appeals, pursuant to section 22 of RA 1125, in which Court, on 14 December 1955, the parties submitted a stipulation of facts. On 5 March 1956, the Court of Tax Appeals rendered a decision, declaring that it had no jurisdiction over the dispute, on the ground that Company’s cause of action to seek the refund of P30,726.53, had already prescribed under section 306 of the National Internal Revenue Code. The Tax Court also sustained the order of the Collector, denying the refund of P30,726.53, under section 30 par. (d), sub-par. (2) and sec. 30 par. (e) sub-par. (1), of the said revenue Code. The Company appealed.

The Supreme Court dismissed the appeal, with costs.

1. Section 102 of Public Law 370

Section 102 of Public Law 370 states: “Provided further, that in case the aggregate amount of the claims which would be payable to anyone claimant under the foregoing provisions exceeds \$500, the aggregate amount of the claims approved in favor of such claimant shall be reduced by 25 per centum of the excess over \$500.”

2. Section 306 NIRC

Haystacks (Berne Guerrero)

Section 306 of the National Internal Revenue Code provides that “No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.”

3. Section 306 NIRC construed; Kiener Co. vs. David

In the case of Kiener Co. Ltd. vs. S. David, the Court declared that “To this end, and bearing in mind that the Legislature is presumed to have understood the language it used to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say, without doing violence to the context of either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued but not, as the appellant contends, that pending consideration of the claim, the period of the two years provided in the last clause shall be deemed interrupted. Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector’s action. Having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should, without the statutory period of two years proceed with his suit without waiting for the Collector’s decision. We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice or warning that, unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow. Previous and timely notice is, in other cases and for diverse salutary reasons, made a prerequisite to the prosecution of contemplated proceedings without imposing on the party to whom the notice was sent any obligation to make any move.”

4. Present case: Company did not act within 2 years of payment, waited decision made after 4 years from payment

The two years within which to file an action in court for the recovery of the tax in the present case expired on 29 June 1951. Within the said period, the Company failed to file an action for refund either in the Court of First Instance or the Board of Tax Appeals, immediately after the creation of the Board under Executive Order 401-A promulgated on 5 January 1951. The Company just waited for the decision of the Collector in its claim for refund, which was handed down on 28 July 1953, after more than 4 years from payment. It is clearly ruled in the Kiener case that the Company should not have folded his arms and wait for the decision, knowing, that the “time for bringing an action for a refund of income tax, fixed by statute, is not extended by the delay of the Collector of Internal Revenue in giving notice of the rejection of such claim. There was an assessment; the Company paid; the Company asked for refund; it was denied; a motion for reconsideration was presented and no resolution was forthcoming from the Collector. Aware of the provisions of the law, it was the duty of the Company to have urged the Collector for his decision and wake him up from his lethargy or file his action within the time prescribed by law.

5. Laches; State not estopped by errors and mistakes of its agents

The court should not give a premium to a litigant who sleeps on his rights. The lawyers of the Company may not come now and invoke estoppel when they have been in laches themselves. The government is never estopped by error or mistake on the part of its agents (Pineda, et al. v. CFI and Coll. of Int. Rev., 52 Phil., 803).

6. Reservation of the Supreme Court in GRL-5701 construed; Applicability of the Kiener case

The reservation made by the Supreme Court in the case L-5701 should not be interpreted as permitting the Company to file another case under all circumstances, but as the facts and circumstances might warrant under the law. The ruling in the Kiener case is still a sound one, and should be, as it is applied, as a

Haystacks (Berne Guerrero)

matter of public policy, in the enforcement of tax laws.

[14]

Commissioner of Internal Revenue vs. Victorias Milling Co. (GR L-24108, 3 January 1968)

En Banc, Bengzon JP (J): 10 concur

Facts: On 23 December 1957 Victorias Milling Co., Inc. filed a claim for the refund of the sum of P12,464.53 representing 50% of the specific tax paid on the manufactured oils and fuels used in its agricultural operation for the period from 18 June 1952 to 18 June 1957. The Commissioner of Internal Revenue granted refund in the sum of P3,415.18 representing the tax paid for the period from 1 January 1956 to 18 June 1957 but denied the claim in the amount of P2,817.08 which corresponds to the tax paid during the period from 18 June 1952 to 31 December 1955 for the reason that the same was filed after the 2-year period provided for in Section 306 of the Tax Code had elapsed.

Victorias Milling Co., Inc. appealed to the Court of Tax Appeals contending that Section 306 does not apply to its claim. The Court of Tax Appeals took the taxpayer's view and ordered the CIR to refund Victorias Milling the amount of P2,817.08 representing the 50% of the specific tax paid on the oils used by it in agriculture during the period from 18 June 1952 to 31 December 1955. From said judgment, the Commissioner of Internal Revenue has appealed.

The Supreme Court reversed the decision appealed from, and dismissed the petition for refund on the ground of prescription; without costs.

1. Section 306 of the Tax Code

Section 306 (Recovery of tax erroneously or illegally collected) provides that "No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

2. Applicability of Section 306 for refund; CIR vs. Insular Lumber Co.

Sections 306 and 309 of the National Internal Revenue Code were intended to govern all kinds of refunds of internal revenue taxes — those taxes imposed and collected pursuant to the National Internal Revenue Code. Thus, the Supreme Court stated that "this provision" referring to Section 306, "which is mandatory, is not subject to qualification, and, hence, it applies regardless of the conditions under which payment has been made." A claim for refund of a specific tax, an internal revenue tax imposed in Section 142 of the National Internal Revenue Code, is beyond the scope of Sections 306 and 309 is to thwart the aforesaid intention and spirit underlying said provisions.

3. Prescription of claim of refund, Reckoning period; CIR vs. Insular Lumber Co.

The intention is clear that refunds of internal revenue taxes are generally governed by Sections 306 and 309 of the Tax Code. Since in those cases the tax sought to be refunded was collected legally, the running of the two-year prescriptive period provided for in Section 306 should commence, not from the date the tax was paid, but from the happening of the supervening cause which entitled the taxpayer to a tax refund. And the claim for refund should be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted, within the said two-year period.

Haystacks (Berne Guerrero)

4. Ruling in Muller & Phipps modified; CIR vs. Insular Lumber Co.

In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund. The ruling in Muller & Phipps is accordingly modified.

5. Right of Victorias Milling to claim refund has prescribed

The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. In the light of the ruling in CIR vs. Insular Lumber Co., the right of Victorias Milling Co., Inc. to claim refund of P2,817.08 has prescribed.

[15]

Commissioner of Internal Revenue vs. Concepcion (GR L-23912, 15 March 1968)

En Banc, Fernando (J): 8 concur, 1 on leave

Facts: An assessment in the sum of P1,181.33 and P2,616.10 representing estate and inheritance taxes on 50 shares of stock of Edward J. Nell Company issued in the names of both spouses “as joint tenants with full rights of survivorship and not as tenants in common” was made by the Commissioner of Internal Revenue on the ground that there was a transmission to the husband of one-half share thereof upon the death of the wife, the above shares being conjugal property. Jose Concepcion, as ancillary administrator of the estate of Mary H. Mitchell-Roberts, and Jack F. Mitchell-Roberts, husband of the deceased, opposed and maintained that there was no transmission of property since under English law, ownership of all property acquired during the marriage vests in the husband, and that the shares of stock were issued to the spouses “as joint tenants with full rights of survivorship and not as tenants in common. Not being agreeable to the theory entertained by the Commissioner of Internal Revenue, Concepcion and Mitchell-Roberts, in CTA Case 168, appealed such a decision under RA 1125. The Court of Tax Appeals, however and on 29 April 1957, dismissed such an appeal as the petition for review because it was filed beyond the reglementary period of 30 days. That decision became final.

On 14 June 1957, Concepcion and Mitchell-Roberts paid the taxes in question amounting to P1,181.33 (as estate tax) and P2,616.10 (as inheritance tax), inclusive of delinquency penalties, and at the same time filed a claim for the refund of said amounts. Without waiting for the decision of the Commissioner of Internal Revenue on the claim for refund, Concepcion and Mitchell-Roberts instituted an appeal with the Court of Tax Appeals on 11 June 1959 in order to avoid the prescriptive period of two years provided for in Section 306 of the Revenue Code. The Court of Tax Appeals ordered the Commissioner of Internal Revenue to refund the inheritance and estate taxes paid in the amount of P3,797.43. The Commissioner filed a petition for review with the Supreme Court.

The Supreme Court reversed the decision of the Court of Tax Appeals under review; with costs against Concepcion and Mitchell-Roberts.

1. Reliance on La Paz y Buen Viaje Cigar & Cigarette Factory misplaced

The very same day the decision in La Paz y Buen Viaje Cigar & Cigarette Factory was affirmed, the opinion in Republic of the Philippines v. Lopez was handed down. The case of Republic vs. Lopez was an appeal by the Republic from an order of the CFI Baguio dismissing its complaint for collection of a deficiency income tax against Lopez on the ground that the action had prescribed. After noting that prescription as a defense did not lie, the Supreme Court stated that another ground for reversing the dismissal

Haystacks (Berne Guerrero)

of the complaint is that the proper remedy of the taxpayer against the assessment complained of was to appeal the ruling of the Collector to the Court of Tax Appeals.

2. Effects of finality of assessment; Republic vs. Lim Tian Teng Sons & Co, Morales vs. Collector of Internal Revenue

The taxpayer's failure to appeal to the Court of Tax Appeals in due time made the assessment in question final, executory and demandable. A subsequent action to enforce the deficiency assessment was already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of his tax liability on the merits. Thus, once the matter has reached the stage of finality in view of the failure to appeal, it could no longer be reopened through the expedient of an appeal from the denial of the taxpayer's request for cancellation of the warrant of distraint and levy.

3. Procedure in Section 306 NIRC not available to revive right to contest validity of assessment when appeal not taken

In the same way that the expedient of an appeal from a denial of a tax request for cancellation of warrant of distraint and levy cannot be utilized for the purpose of testing the legality of an assessment, which had become conclusive and binding on the taxpayer, there being no appeal, the procedure set forth in Section 306 of the National Internal Revenue Code is not available to revive the right to contest the validity of an assessment once the same had been irretrievably lost not only by the failure to appeal but likewise by the lapse of the reglementary period within which to appeal could have been taken.

4. Estate administrator and deceased's husband liable for taxes

The liability of Concepcion as an ancillary administrator of the estate of the deceased wife and of Mitchell-Roberts as the husband for the amount of P1,181.33 as estate tax and P2,616.10 as inheritance tax was beyond question. Having paid the same, they are clearly devoid of any legal right to sue for recovery.

[16]

Philippine Bank of Communications vs. Commissioner of Internal Revenue (GR 112024, 28 January 1999)

Second Division, Quisumbing (J): 4 concur

Facts: The Philippine Bank of Communications (PBCom), a commercial banking corporation duly organized under Philippine laws, filed its quarterly income tax returns for the first and second quarters of 1985, reported profits, and paid the total income tax of P5,016,954.00. The taxes due were settled by applying PBCom's tax credit memos and accordingly, the Bureau of Internal Revenue (BIR) issued Tax Debit Memo 0746-85 and 0747-85 for P3,401,701.00 and P1,615,253.00, respectively. Subsequently, however, PBCom suffered losses so that when it filed its Annual Income Tax Returns for the year-ended 31 December 1985, it declared a net loss of P25,317,228.00, thereby showing no income tax liability. For the succeeding year, ending 31 December 31, 1986, PBCom likewise reported a net loss of P14,129,602.00, and thus declared no tax payable for the year. But during these two years, PBCom earned rental income from leased properties. The lessees withheld and remitted to the BIR withholding creditable taxes of P282,795.50 in 1985 and P234,077.69 in 1986. On 7 August 1987, PBCom requested the Commissioner of Internal Revenue, among others, for a tax credit of P5,016,954.00 representing the overpayment of taxes in the first and second quarters of 1985. Thereafter, on 25 July 1988, PBCom filed a claim for refund of creditable taxes withheld by their lessees from property rentals in 1985 for P282,795.50 and in 1986 for P234,077.69.

Pending the investigation of the Commissioner of Internal Revenue, PBCom instituted a Petition for Review on 18 November 1988 before the Court of Tax Appeals (CTA). On 20 May 1993, the CTA dismissed the petition for lack of merit; and thus denied PBCom's claim for refund/tax credit of overpaid income tax for 1985 in the amount of P5,299,749.95 for having been filed beyond the reglementary period, and likewise

Haystacks (Berne Guerrero)

denied the 1986 claim for refund amounting to P234,077.69 since PBCom has opted and automatically credited the same to the succeeding year. On 22 June 1993, PBCom filed a Motion for Reconsideration of the CTA's decision but the same was denied due course for lack of merit.

PBCom filed a petition for review of CTA decision and resolution with the Court of Appeals. On 22 September 1993, the Court of Appeals affirmed in toto the CTA's resolution dated 20 July 1993. Hence the petition for review with the Supreme Court. The Supreme Court denied the petition and affirmed the decision of the Court of Appeals appealed from, with costs against PBCom.

1. Purpose of taxes, due process of law, and claims for refund or tax credit

Basic is the principle that "taxes are the lifeblood of the nation." The primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal. Due process of law under the Constitution does not require judicial proceedings in tax cases. This must necessarily be so because it is upon taxation that the government chiefly relies to obtain the means to carry on its operations and it is of utmost importance that the modes adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible. From the same perspective, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters.

2. Section 230 NIRC (1977)

Section 230 of the National Internal Revenue Code (NIRC) of 1977 (now Sec. 229, NIRC of 1997) provides for the prescriptive period for filing a court proceeding for the recovery of tax erroneously or illegally collected. Section 230 (Recovery of tax erroneously or illegally collected) provides that "no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; Provided however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

3. Reckoning period for claim of refund or credit

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. The two-year prescriptive period provided, should be computed from the time of filing the Adjustment Return and final payment of the tax for the year.

4. Application of Section 230 of 1977 NIRC; CIR vs. Phil-Am Life Insurance Co. and CIR vs. TMX Sales

In Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., the Supreme Court explained the application of Section 230 of 1977 NIRC. Therein, the Court stated that the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. As earlier said in the TMX Sales case, Sections 68, 16 69, 17 and 70 18 on Quarterly Corporate Income Tax Payment and Section 321 should be considered in conjunction with it.

5. RMC 7-85 invalid

When the Acting Commissioner of Internal Revenue issued RMC 7-85, changing the prescriptive

Haystacks (Berne Guerrero)

period of two years to ten years on claims of excess quarterly income tax payments, such circular created a clear inconsistency with the provision of Section 230 of 1977 NIRC. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.

6. Nature of Revenue memorandum-circulars

It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue.

7. Interpretation by executive officers entitled to great respect but not conclusive

It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement. As held in the case of *People vs. Lim*, the rules and regulations issued by administrative officials to implement a law cannot go beyond the terms and provisions of the latter.

8. Memorandum-circular does not shield taxpayer from judicial action

Fundamental is the rule that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. Article 8 of the Civil Code recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. A memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same. The non-retroactivity of rulings by the Commissioner of Internal Revenue is not applicable because the nullity of RMC 7-85 was declared by the courts and not by the Commissioner of Internal Revenue. Lastly, it must be noted that a claim for refund is in the nature of a claim for exemption and should be construed in strictissimi juris against the taxpayer.

9. Section 69 of the 1977 NIRC; Availment of the exclusive relief of refund or automatic tax credit

Section 69 of the 1977 NIRC (now Section 76 of the 1997 NIRC) provides that any excess of the total quarterly payments over the actual income tax computed in the adjustment or final corporate income tax return, shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.

10. PBCom opted to apply for automatic tax credit

PBCom opted to apply for automatic tax credit. This was the basis used (vis-a-vis the fact that the 1987 annual corporate tax return was not offered by the petitioner as evidence) by the CTA in concluding that PBCom had indeed availed of and applied the automatic tax credit to the succeeding year, hence it can no longer ask for refund, as to [sic] the two remedies of refund and tax credit are alternative. Since PBCom opted for an automatic tax credit in accordance with Section 69 of the 1977 NIRC, as specified in its 1986 Final Adjusted Income Tax Return, such a finding of fact must be respected by the Supreme Court. This, especially, in light that the 1987 annual corporate tax return of PBCom was not offered as evidence to controvert said fact.

[17]

Haystacks (Berne Guerrero)

Ungab vs. Cusi Jr. (GR L-41919-25, 30 May 1980)

Second Division, Concepcion Jr. (J): 4 concur

Facts: In July 1974, BIR Examiner Ben Garcia examined the income tax returns filed by Quirico P. Ungab for the calendar year ending 31 December 1973. In the course of his examination, the examiner discovered that Ungab failed to report his income derived from sales of banana saplings. As a result, the BIR District Revenue Officer at Davao City sent Ungab a “Notice of Taxpayer” informing him that there is due from him the amount of P104,980.81, representing income, business tax and forest charges for the year 1973 and inviting Ungab to an informal conference where Ungab, duly assisted by counsel, may present his objections to the findings of the BIR Examiner. Upon receipt of the notice, Ungab wrote the BIR District Revenue Officer protesting the assessment, claiming that he was only a dealer or agent on commission basis in the banana sapling business and that his income, as reported in his income tax returns for the said year, was accurately stated. The examiner, however, was fully convinced that Ungab had filed a fraudulent income tax return so that he submitted a “Fraud Referral Report,” to the Tax Fraud Unit of the BIR. After examining the records of the case, the Special Investigation Division of the BIR found sufficient proof that Ungab is guilty of tax evasion for the taxable year 1973 and recommended his prosecution. In a second indorsement to the Chief of the Prosecution Division, dated 12 December 1974, the Commissioner approved Ungab’s prosecution.

The State Prosecutor Jesus Acebes, who had been designated to assist all Provincial and City Fiscals throughout the Philippines in the investigation and prosecution, if the evidence warrants, of all violations of the NIRC, as amended, and other related laws, in Administrative Order 116 dated 5 December 1974, and to whom the case was assigned, conducted a preliminary investigation of the case, and finding probable cause, filed 6 informations against Ungab with the CFI Davao City. On 16 September 1975, Ungab filed a motion to quash the informations upon the grounds that: (1) the informations are null and void for want of authority on the part of the State Prosecutor to initiate and prosecute the said cases; and (2) the trial court has no jurisdiction to take cognizance of the above-entitled cases in view of his pending protest against the assessment made by the BIR Examiner. However, the trial court denied the motion on 22 October 1975.

Ungab filed a petition for certiorari and prohibition with preliminary injunction and restraining order to annul and set aside the informations filed in Criminal Cases 1960 to 1965 of the CFI Davao. The Supreme Court dismissed the petition, and set aside the temporary restraining order issued; with costs against Ungab.

1. Ruling in Estrella vs. Orendain

“Under Sections 1679 and 1686 of the Revised Administrative Code, in any instance where a provincial or city fiscal fails, refuses or is unable, for any reason, to investigate or prosecute a case and, in the opinion of the Secretary of Justice it is advisable in the public interest to take a different course of action, the Secretary of Justice may either appoint as acting provincial or city fiscal, to handle the investigation or prosecution exclusively and only of such case, any practicing attorney or some competent officer of the Department of Justice or office of any city or provincial fiscal, with complete authority to act therein in all respects as if he were the provincial or city fiscal himself, or appoint any lawyer in the government service, temporarily to assist such city or provincial fiscal in the discharge of his duties, with the same complete authority to act in dependently of and for such city or provincial fiscal, provided that no such appointment may be made without first hearing the fiscal concerned and never after the corresponding information has already been filed with the court by the corresponding city or provincial fiscal without the conformity of the latter, except when it can be patently shown to the court having cognizance of the case that said fiscal is intent on prejudicing the interests of justice. The same sphere of authority is true with the prosecutor directed and authorized under Section 3 of Republic Act 3783, as amended and/or inserted by Republic Act 5184. “

2. Rule established in Estrella vs. Orendain not violated when State Prosecutor conducted investigation in the 6 cases against Ungab

Haystacks (Berne Guerrero)

The rule established in *Estrella vs. Orendain* had not been violated. The State Prosecutor, although believing that he can proceed independently of the City Fiscal in the investigation and prosecution of these cases, first sought permission from the City Fiscal of Davao City before he started the preliminary investigation of these cases, and the City Fiscal, after being shown Administrative Order 116, dated 5 December 1974, designating the said State Prosecutor to assist all Provincial and City fiscals throughout the Philippines in the investigation and prosecution of all violations of the NIRC, as amended, and other related laws, graciously allowed the State Prosecutor to conduct the investigation of said cases, and in fact, said investigation was conducted in the office of the City Fiscal.

3. Filing of informations not premature

What is involved herein is not the collection of taxes where the assessment of the Commissioner of Internal Revenue may be reviewed by the Court of Tax Appeals, but a criminal prosecution for violations of the NIRC which is within the cognizance of courts of first instance. While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code.

4. Assessment of deficiency tax not necessarily before criminal prosecution

An assessment of the deficiency tax due is not necessary before the taxpayer can be prosecuted criminally for the charges preferred. The crime is complete when the violator has, as in this case, knowingly and willfully filed fraudulent returns with intent to evade and defeat a part or all of the tax. An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

5. Petition for reconsideration does not suspend prescriptive period of a criminal action for violation of law

A petition for reconsideration of an assessment may affect the suspension of the prescriptive period for the collection of taxes, but not the prescriptive period of a criminal action for violation of law. The protest of the taxpayer against the assessment of the District Revenue Officer cannot stop his prosecution for violation of the NIRC.

[18]

Commissioner of Internal Revenue vs. Court of Appeals (GR 119322, 4 June 1996)

First Division, Kapunan (J): 1 concur

Facts: On 1 June 1993, the President issued a Memorandum creating a Task Force to investigate the tax liabilities of manufacturers engaged in tax evasion scheme, such as selling products through dummy marketing corporations to avoid payment of correct internal revenue tax, to collect from them any tax liabilities discovered from such investigation, and to file the necessary criminal actions against those who may have violated the tax code. The task force was composed of the Commissioner of Internal Revenue as Chairman, a representative of the Department of Justice and a representative of the Executive Secretary. On 1 July 1993, the Commissioner of Internal Revenue issued a Revenue Memorandum Circular 37-93 reclassifying best selling cigarettes bearing the brands "Hope," "More," and "Champion" as cigarettes of foreign brands subject to a higher rate of tax. On 3 August 1993, the Fortune Tobacco Corporation (Fortune) questioned the validity of the reclassification of said brands of cigarettes as violative of its right to due process and equal protection of law. Parenthetically, on 8 September 1993, the Court of Tax Appeals by resolution ruled that the reclassification made by the Commissioner "is of doubtful legality" and enjoined its enforcement.

Haystacks (Berne Guerrero)

In a letter of 13 August 1993 which was received by Fortune on 24 August 1993, the Commissioner assessed against Fortune the total amount of P7,685,942,221.66 representing deficiency income, ad valorem and value-added tax for the year 1992 with the request that the said amount be paid within 30 days upon receipt thereof. Fortune on 17 September 1993 moved for reconsideration of the assessments. On 7 September 1993, the Commissioner filed a complaint with the Department of Justice against Fortune, its corporate officers, 9 other corporations and their respective corporate officers for alleged fraudulent tax evasion for supposed non-payment by Fortune of the correct amount of income tax, ad valorem tax and value-added tax for the year 1992. The complaint (IS 93-508), was referred to the Department of Justice Task Force on revenue cases which found sufficient basis to further investigate the allegations that Fortune, through fraudulent means, evaded payment of income tax, ad valorem tax, and value-added tax for the year 1992 thus, depriving the government of revenues in the amount of P7.5 Billion. On 8 September 1993, the Department of Justice Task Force issued a subpoena directing private respondents to submit their counter-affidavits not later than 20 September 1993. Instead of filing their counter-affidavits, Fortune, et. al. on 15 October 1993 filed a Verified Motion to Dismiss; Alternatively Motion to Suspend. The panel of prosecutors denied the motion to dismiss and treated the same as Fortune, et. al.'s counter- affidavits. On 20 October 1993, Fortune, et. al. filed a motion for reconsideration of the order. On 21 October 1993, Fortune, et. al. filed a motion to require the submission by the BIR of certain documents in further support of their Verified Motion to Dismiss. On 26 October 1993, Fortune, et. al. moved for the inhibition of the State Prosecutors assigned to the case for alleged lack of impartiality. Fortune, et. al. also sought the production of the "Daily Manufacturer's Sworn Statements" submitted by certain cigarette companies similarly situated as Fortune but were not proceeded against, on the premise that Fortune and its officers were being singled out for criminal prosecution which is discriminatory and in violation of the equal protection clause of the Constitution. On 20 December 1993, the panel of prosecutors issued an Omnibus Order denying Fortune, et. al.'s motion for reconsideration, motion for suspension of investigation, motion to inhibit the State Prosecutors, and motion to require submission by the BIR of certain documents to further support Fortune, et. al.'s motion to dismiss.

On 4 January 1994, Fortune, et. al. filed a petition for certiorari and prohibition with prayer for preliminary injunction with the RTC Quezon City (Branch 88, Case Q-94-18790), praying that the complaint of the Commissioner and the orders of the prosecutors be dismissed or set aside, alternatively, the proceedings on the preliminary investigation be suspended pending final determination by the Commissioner of Fortune's motion for reconsideration/reinvestigation of the 13 August 1993 assessment of the taxes due. On 17 January 1994, the Commissioner, et. al. filed a motion to dismiss the petition. On 25 January 1994, the trial court issued an order granting the prayer for the issuance of a preliminary injunction. On 26 January 1994, Fortune, et. al. filed with the trial court a Motion to Admit Supplemental Petition and sought the issuance of a writ of preliminary injunction to enjoin the State Prosecutors from continuing with the preliminary investigation filed by them against Fortune et. al. with the Quezon City Prosecutor's Office for alleged fraudulent tax evasion, committed by Fortune, et. al. for the taxable year 1990. On 28 January 1994, Fortune, et. al. filed with the trial court a second supplemental petition, also seeking to stay the preliminary investigation in a third complaint filed against Fortune et. al. with the DOJ for alleged fraudulent tax evasion for the taxable year 1991. On 31 January 1994, the lower court admitted the 2 supplemental petitions and issued a temporary restraining order in I.S. 93-17942 and I.S. 93-584. Also, on the same day, the Commissioner, et. al. filed an Urgent Motion for Immediate Resolution of the Commissioner, et. al.'s motion to dismiss. On 7 February 1994, the trial court issued an order denying the Commissioner, et. al.'s motion to dismiss Fortune, et. al.'s petition seeking to stay preliminary investigation in I.S. 93-508. On 14 February 1994, the trial court issued an order granting Fortune, et. al.'s petition for a supplemental writ of preliminary injunction, likewise enjoining the preliminary investigation of the 2 other complaints filed with the Quezon City Prosecutor's Office and the DOJ for fraudulent tax evasion, I.S. 93-17942 and I.S. 93- 584, for alleged tax evasion for the taxable years 1990 and 1991, respectively.

On 7 March 1994, the Commissioner, et. al. filed a petition for certiorari and prohibition with prayer for

Haystacks (Berne Guerrero)

preliminary injunction before the Supreme Court. However, the petition was referred to the Court of Appeals for disposition by virtue of its original concurrent jurisdiction over the petition. On 19 December 1994, the Court of Appeals (CA-GR SP- 33599) rendered a decision denying the petition. Their motion for reconsideration having been denied by appellate court on 23 February 1995, the Commissioner, et. al. filed a petition for review. The Supreme Court dismissed the petition.

1. Section 127 (b) NIRC

Section 127 (b) [Determination of gross selling price of goods subject to ad valorem tax] provides that “Unless otherwise provided, the price, excluding the value- added tax, at which the goods are sold at wholesale in the place of production or through their sales agents to the public shall constitute the gross selling price. If the manufacturer also sells or allows such goods to be sold at wholesale price in another establishment of which he is the owner or in the profits at which he has an interest, the wholesale price in such establishment shall constitute the gross selling price. Should such price be less than the costs of manufacture plus expenses incurred until the goods are finally sold, then a proportionate margin of profit, not less than 10% of such manufacturing costs and expenses, shall be added to constitute the gross selling price.

2. Section 142 (c) NIRC

Section 142 (c) [Cigarettes packed in twenties] provides that “There shall be levied, assessed and collected on cigarettes packed in twenties an ad valorem tax at the rates prescribed below based on the manufacturer’s registered wholesale price.”

3. Proper basis of ad valorem tax

Under Section 127(b), the ad valorem tax should be based on the correct price excluding the value-added tax, at which goods are sold at wholesale in the place of production. Among the goods subject to ad valorem tax, the law — specifically Section 142(c) — requires that the corresponding tax on cigarettes shall be levied, assessed and collected at the rates based on the “manufacturer’s registered wholesale price.”

4. Supervision of cigarette companies; BIR and the National Tobacco Administration

The reason “why the wholesale price need to be registered and the purpose of the registration” is self-evident, i.e. to ensure the payment of the correct taxes by the manufacturers of cigarettes through close supervision, monitoring and checking of the business operations of the cigarette companies. No industry is as intensely supervised by the BIR and also by the National Tobacco Administration (NTA). Thus, the purchase and use of raw materials are subject to prior authorization and approval by the NTA. Importations of bobbins or cigarette paper, the manufacture, sale, and utilization of the same, are subject to BIR supervision and approval.

5. Supervision of cigarette companies; Production

For purposes of closer supervision by the BIR over the production of cigarettes, Revenue Enforcement Officers are detailed on a 24-hour basis in the premises of the manufacturer to secure production and removal of finished products. Composite Mobile Teams conduct counter-security on the business operations as well as the performance of the Revenue Enforcement Officers detailed thereat. Every transfer of any raw material is not allowed unless, in addition to the required permits, accompanied by Revenue Enforcement Officer.

6. Supervision of cigarette companies; Filing of Manufacturer’s Declaration

For the purpose of determining the “Manufacturer’s Registered Wholesale Price” a cigarette manufacturer is required to file a Manufacturer’s Declaration (BIR Form 31.03) for each brand of cigarette manufactured, stating: a.) Materials; b) Labor; c) Overhead; d) Tax Burden and the Wholesale Price by Case. The data submitted therewith is verified by the Revenue Officers and approved by the Commission of Internal Revenue. Any change in the manufacturer’s registered wholesale price of any brand cannot be effected without submitting the corresponding Sworn Manufacturer’s Declaration and verified by the Revenue Officer

Haystacks (Berne Guerrero)

and approved by the Commissioner on Internal Revenue. The amount of ad valorem tax payments together with the Payment Order and Confirmation Receipt Nos. must be indicated in the sales and delivery invoices and together with the Manufacturer's Sworn Declarations on (a) the quantity of raw materials used during the day's operations; (b) the total quantity produced according to brand; and (c) the corresponding quantity removed during the day, the corresponding wholesale price thereof, and the VAT paid thereon must be presented to the corresponding BIR representative for authentication before removal.

7. Conclusion that Fortune made fraudulent returns or willfully attempted to evade payment of taxes due premature

If every step in the production of cigarettes was closely monitored and supervised by the BIR personnel specifically assigned to Fortune's premises, and considering that the Manufacturer's Sworn Declarations on the data required to be submitted by the manufacturer were scrutinized and verified by the BIR and, further, since the manufacturer's wholesale price was duly approved by the BIR, then it is presumed that such registered wholesale price is the same as, or approximates "the price, excluding the value-added tax, at which the goods are sold at wholesale in the place production," otherwise, the BIR would not have approved the registered wholesale price of the goods for purposes of imposing the ad valorem tax due. In such case, and in the absence of contrary evidence, it was precipitate and premature to conclude that Fortune, et. al. made fraudulent returns or wilfully attempted to evade payment of taxes due.

8. "Willful" and "Fraud"

"Wilful" means "premeditated; malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence." "Fraud" in its general sense, "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage taken of another."

9. Fraud not presumed

Fraud cannot be presumed. If there was fraud or wilful attempt to evade payment of ad valorem taxes by Fortune, et. al. through the manipulation of the registered wholesale price of the cigarettes, it must have been with the connivance or cooperation of certain BIR officials and employees who supervised and monitored Fortune's production activities to see to it that the correct taxes were paid. But there is no allegation, much less evidence, of BIR personnel's malfeasance. In the very least, there is the presumption that the BIR personnel performed their duties in the regular course in ensuing that the correct taxes were paid by Fortune.

10. Tax due proved before one is prosecuted for willful attempt to evade

Before one is prosecuted for wilful attempt to evade or defeat any tax under Sections 253 and 255 of the Tax Code, the fact that a tax is due must first be proved. Before Fortune, et. al. could be prosecuted for tax evasion under Sections 253 and 255 of the Tax Code, the fact that the deficiency income, ad valorem and value-added taxes were due from Fortune for the year 1992 should first be established. The Commissioner has not resolved Fortune, et. al.'s request for reconsideration up to the present. The Court cannot subscribe to the Commissioner, et. al.'s' thesis citing, *Ungad v. Cusi*, that the lack of a final determination of Fortune's exact or correct tax liability is not a bar to criminal prosecution, and that while a precise computation and assessment is required for a civil action to collect tax deficiencies, the Tax Code does not require such computation and assessment prior to criminal prosecution.

11. Proper construction of Ungad vs. Cusi ruling; Willful attempt to evade taxes must be shown

Reading *Ungad* carefully, the pronouncement therein that deficiency assessment is not necessary prior to prosecution is pointedly and deliberately qualified by the Court with following statement quoted from *Guzik v. U.S.*: "The crime is complete when the violator has knowingly and wilfully filed a fraudulent return with intent to evade and defeat apart or all of the tax." In plain words, for criminal prosecution to proceed

Haystacks (Berne Guerrero)

before assessment, there must be a prima facie showing of a wilful attempt to evade taxes. There was a wilful attempt to evade tax in Ungad because of the taxpayer's failure to declare in his income tax return "his income derived from banana sapplings."

12. Criminal prosecutions cannot be enjoined; Exceptions

As a general rule, criminal prosecutions cannot be enjoined: However, there are recognized exceptions which, as summarized in *Brocka v. Enrile* are: (a) To afford adequate protection to the constitutional rights of the accused; (b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (c) When there is a prejudicial question which is sub judice; (d) When the acts of the officer are without or in excess of authority; (e) Where the prosecution is under an invalid law, ordinance or regulation; (f) When double jeopardy is clearly apparent; (g) Where the court had no jurisdiction over the offense; (h) Where it is a case of persecution rather than prosecution; (i) Where the charges are manifestly false and motivated by the lust for vengeance; and (j) When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

13. Basis of issuance of writ of preliminary injunction by the trial court

In issuing the orders granting the issuance of a writ of preliminary injunction, the trial court believed that said orders were warranted to afford Fortune, et. al. adequate protection of their constitutional rights, particularly in reference to presumption of innocence, due process and equal protection of the laws. The trial court also found merit in Fortune, et. al.'s contention that preliminary injunction should be issued to avoid oppression and because the acts of the state prosecutors were without or in excess of authority and for the reason that there was a prejudicial question.

14. Preliminary investigation may be enjoined

Preliminary investigation may be enjoined where exceptional circumstances so warrant. In *Hernandez v. Albano* and *Fortun v. Labang*, injunction was issued to enjoin a preliminary investigation. Indeed, the purpose of a preliminary injunction is to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of crime, from the-trouble, expense and anxiety of a public trial and also to protect the state from useless and expensive trials.

15. Section 3, Rule 112 (Procedure) of the Rules of Court

Section 3 provides that "except as provided for in Section 7 hereof, no complaint or information for an offense-cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner: (a) The complaint shall state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents, in such number of copies as there are respondents, plus two (2)-copies for the official file. The said affidavits shall be sworn to before any fiscal, state prosecutor or government official authorized to administer oath, or, in their absence or unavailability, a notary public, who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits. (b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss the same if he finds no ground to continue with the inquiry, or issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents. Within ten (10) days from receipt thereof, the respondent shall submit counter-affidavits and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant. (c) Such counter-affidavits and other supporting evidence submitted by the respondent shall also be sworn to and certified as prescribed in paragraph (a) hereof and copies thereof shall be furnished by him to the complainant. (d) If the respondent cannot be subpoenaed, or if subpoenaed does not submit counter-affidavits within the ten (10) day period, the investigating officer shall base his resolution on the evidence presented by the complainant. (e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may

Haystacks (Berne Guerrero)

submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned. (f) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

16. Obvious haste in the issuance of subpoena

There was obvious haste by which the subpoena was issued to Fortune, et. al., just the day after the complaint was filed, hence, without the investigating prosecutors being afforded material time to examine and study the voluminous documents appended to the complaint for them to determine if preliminary investigation should be conducted. The precipitate haste in the issuance of the subpoena justified Fortune et. al.'s misgivings regarding the objectivity and neutrality of the prosecutors in the conduct of the preliminary investigation and so, the appellate court concluded, the grant of preliminary investigation by the trial court to afford adequate protection to Fortune, et. al.'s constitutional rights and to avoid oppression does not constitute grave abuse of discretion amounting to lack of jurisdiction.

17. Appeal vis-à-vis special action of Certiorari

The burden is upon the Commissioner, et. al. to demonstrate that the questioned orders constitute a whimsical and capricious exercise of judgment, which they have not. For certiorari will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by a special civil action of certiorari. Herein, the Regional Trial Court acted correctly and judiciously, and as demanded by the facts and the law, in issuing the orders granting the writs of preliminary injunction, in denying the Commissioner's motion to dismiss and in admitting the supplemental petitions. What they should have done was to file an answer to the petition filed in the trial court, proceed to the hearing and appeal the decisions of the court if adverse to them.