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FIRST DIVISION

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

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

D E C I S I O N

CORONA, J.:

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

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

1986 — Deficiency Percentage Tax	
Deficiency percentage tax	P 7, 270,892.88
Add: 25% surcharge	1,817,723.22
20% interest from 1-21-87 to 10-28-88	3,215,825.03
Compromise penalty	15,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P12,319,441.13
1986 — Deficiency Documentary Stamp Tax	
Deficiency percentage tax	P93,723,372.40
Compromise penalty	15,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P12,319,441.13[5]

Both notices of assessment contained the following note:

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

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

1. Your "deficiency assessments" are no assessments at all. The taxpayer is not informed, even in the vaguest terms, why it is being assessed a deficiency. The very purpose of a deficiency assessment is to inform taxpayer why he has incurred a deficiency so that he can make an intelligent decision on whether to pay or to protest the assessment. This is all the more so when the assessment involves astronomical amounts, as in this case.

   We therefore request that the examiner concerned be required to state, even in the briefest form, why he believes the taxpayer has a deficiency documentary and percentage taxes, and as to the percentage tax, it is important that the taxpayer be informed also as to what particular percentage tax the assessment refers to.

2. As to the alleged deficiency documentary stamp tax, you are aware of the compromise forged between your office and the Bankers Association of the Philippines [BAP] on this issue and of BPI's submission of its computations under this compromise. There is therefore no basis whatsoever for this assessment, assuming it is on the subject of the BAP compromise. On the other hand, if it relates to documentary stamp tax on some other issue, we should like to be informed about what those issues are.

3. As to the alleged deficiency percentage tax, we are completely at a loss on how such assessment may be protested since your letter does not even tell the taxpayer what particular percentage tax is involved and how your examiner arrived at the deficiency. As soon as this is explained and clarified in a proper letter of assessment, we shall inform you of the taxpayer's decision on whether to pay or protest the assessment.[7]

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

> ... although in all respects, your letter failed to qualify as a protest under Revenue Regulations No. 12-85 and therefore not deserving of any rejoinder by this office as no valid issue was raised against the validity of our assessment... still we obliged to explain the basis of the assessments.
>
> xxx xxx xxx
>
> ... this constitutes the final decision of this office on the matter.[8]

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

On February 18, 1992, BPI filed a petition for review in the CTA.[11] In a decision dated November 16, 1995, the CTA dismissed the case for lack of jurisdiction since the subject assessments had become final and unappealable. The CTA ruled that BPI failed to protest on time under Section 270 of the National Internal Revenue Code

(NIRC) of 1986 and Section 7 in relation to Section 11 of RA 1125.[12] It denied reconsideration in a resolution dated May 27, 1996.[13]

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

This petition raises the following issues:

> 1) whether or not the assessments issued to BPI for deficiency percentage and documentary stamp taxes for 1986 had already become final and unappealable and
>
> 2) whether or not BPI was liable for the said taxes.

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

> Sec. 270. Protesting of assessment. — **When the [CIR] or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings.** Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the [CIR] **shall issue an assessment based on his findings**.
>
> xxx xxx xxx (emphasis supplied)

WERE THE OCTOBER 28, 1988 NOTICES VALID ASSESSMENTS?

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

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

BPI counters that due process demanded that the facts, data and law upon which

the assessments were based be provided to the taxpayer. It insists that the NIRC, as worded now (referring to Section 228), specifically provides that:

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

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

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

> Sec. 228. Protesting of Assessment. — **When the [CIR] or his duly authorized representative finds that proper**vided, however, That a preassessment notice shall not be required in the following cases: **taxes should be assessed, he shall first notify the taxpayer of his findings:** Provided, however, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx (emphasis supplied)

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

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

> In the present case, Reyes was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. She was merely notified of the findings by the CIR, who had simply relied upon the provisions of former Section 229 prior to its amendment by [RA] 8424, otherwise known as the Tax Reform Act of 1997.
>
> First, RA 8424 has already amended the provision of Section 229 on protesting an assessment. **The old requirement of merely notifying the taxpayer of the CIR's findings was changed in 1998** to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid.
>
> It was on February 12, 1998, that a preliminary assessment notice was issued against the estate. On April 22, 1998, the final estate tax assessment notice, as well as demand letter, was also issued. During those dates, RA 8424 was already in effect. **The notice required under**

> **the old law was no longer sufficient under the new law.**[25] (emphasis supplied; italics in the original)

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

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

The sentence

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

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

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

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

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

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

We disagree.

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