

**SECOND DIVISION****[ G.R. No. 118176, April 12, 2000 ]****PROTECTOR'S SERVICES, INC., PETITIONER, VS. COURT OF  
APPEALS AND COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENTS.****D E C I S I O N****QUISUMBING, J.:**

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

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

The facts are as follows:

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

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

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

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

Without formally acting on the petitioner's protest, the BIR sent a follow-up letter

dated July 12, 1988, ordering the settlement of taxes based on its computation. Additional documentary stamp taxes of two thousand twenty-five (P2,025.00) pesos on petitioner's capitalization for 1983 and 1984, and seven hundred three pesos and forty-one centavos (P703.41) as deficiency expanded withholding tax were included in the amount demanded. The total unsettled tax amounted to two million, eight hundred fifty-one thousand, eight hundred five pesos and sixteen centavos (P2,851,805.16).

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

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

"...[T]hat the salaries paid to the security guards form part of your taxable gross receipts in the determination of the 3% and 4% contractor's tax imposed under Section 191 of the Tax Code prior to its amendment by the provision of Executive Order No.273.

Considering that the security guards are actually your employees and not that of your clients, the salaries corresponding to the services rendered by your employees form part of your taxable receipts. This contention finds support in the case of *Avecilla Building Corporation versus Commissioner, et al.*, G.R. L-42395, 17 January 1985 and *Resty Arbon Singh versus Commissioner*, CTA Case No.1901, 5 December 1970."<sup>[3]</sup>

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

- 1) Assessments for documentary stamp tax and expanded withholding tax are without basis since they were paid on July 22, 1988.
- 2) The period for collection of the 1985 percentage tax had prescribed, because PSI denied having received any assessment letter for the same year.
- 3) Percentage taxes for the three quarters of 1984 were filed as follows: 1st Qtr. -April 23, 1984; 2nd Qtr. -July 20, 1984, and; 3rd Qtr. - October 19, 1984. The three-year prescriptive period to collect percentage taxes for the 1st, 2nd and 3rd quarters had prescribed because the BIR sent an assessment letter only on December 10, 1987.
- 4) The base amount for computing percentage tax was erroneous because the BIR included in the taxable amount, the salaries of the security guards and the employer's corresponding remittances to SSS, SIF, and Medicare, which amounts were earmarked for other persons, and should not form part of PSI's receipts.

The CTA dismissed the petition on the following grounds: (1) The three-year period of limitation for assessment of taxes in 1984 commenced from the date of filing the

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

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

- I. WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION TO ACT ON THE PETITION FOR REVIEW FILED BEFORE IT.
- II. WHETHER THE ASSESSMENTS AGAINST THE PETITIONER FOR DEFICIENCY PERCENTAGE TAX FOR TAXABLE YEARS 1983 AND 1984 WERE MADE AFTER THE LAPSE OF THE PRESCRIPTIVE PERIOD.
- III. WHETHER THE PERIOD FOR THE COLLECTION OF TAXES FOR TAXABLE YEARS 1983, 1984, AND 1985 HAS ALREADY PRESCRIBED.
- IV. WHETHER THE ASSESSMENTS ARE CORRECT."<sup>[4]</sup>

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

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

"Section 270. *Protesting of assessment.* --When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by the implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final, and unappealable.

If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable."

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

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

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

"Sec. 1, Section 318 of the National Internal Revenue Code, as amended, is hereby amended to read as follows:

'Sec. 318. *Period of limitation upon assessment and collection.* --Except as provided in the succeeding sections, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.'

x x x

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

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

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

1. Assessment made on or after April 5, 1984 (date, of approval of BP 700) will still be governed by the original