

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. WESTERN PACIFIC CORPORATION, RESPONDENT.

G. R. No. L-18804. May 27, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

On March 2, 1959, the respondent Western Pacific Corporation, was assessed for P3,731.00, as deficiency income tax for the year 1953. This assessment was brought about by the disallowance of P8,265.82, listed in respondent's return for 1953, as expense items, and P10,387.50, as written off "bad debts." The assessment was received by respondent on the same date (March 2, 1959). On March 5, 1959, the Commissioner of Internal Revenue wrote the respondent corporation a letter of demand for the payment of the amount, including therein a breakdown of said assessment. Under date of June 29, 1959, respondent corporation, thru Rufino Melo & Company, Consulting and Examining Auditors, requested for non-assessment, claiming "that there has been prescription in making the assessment, that the expense items and bad debts were allowable deductions. The letter was accompanied by a Resolution of the corporation, dated February 2, 1954, where it was resolved to write off the debts of the people appearing in another annex. The Commissioner on July 30, 1959 replied to the request, denying the same, and demanding the payment of the amount due within thirty (30) days from receipt of said demand. On September 19, 1959, respondent corporation requested that it be permitted until September 25, 1959, to submit formal objections to the assessment. The formal objections appearing in the letter of September 22, 1959, were identical to those of the June 29, 1959 communication, reason for 'which the Commissioner did not give any favorable action. The last letter of the Commissioner, dated October 28, 1959, among others, requested payment of the assessment within ten (10) days from receipt thereof.

On December 18, 1959, respondent Western Pacific Corporation, presented with the Court of Tax Appeals a petition for Review the assessment made by the Commissioner, on three (3) counts, to wit:

- (1) whether or not the making of the assessment had prescribed;
- (2) whether expenses incurred in securing ICC Licenses are capital expenditures, and, as such, not deductible from the income; and
- (3) whether the bad debts written off should likewise be deducted.

When the issues were joined, by the filing of the Answer, end after hearing, the CTA rendered judgment absolving the Western Pacific Corporation from the assessment. It, however, ruled out prescription, stating that March 2, 1959, was the last day of the five (5) year period within which to make the assessment. On this point, the CTA ruled:

"However, we do not agree with petitioner that the assessment question was issued beyond the 5-year statutory limitation. February 28, 1959 fell on a Saturday. Pursuant to Republic Act No. 1880, as implemented by Executive Order No. 25, effective July 1, 1959, all bureaus and offices of the government, except schools, courts, hospitals and health clinics, hold office only five days a week or from Monday to Friday. Saturday and

Sunday are constituted public holidays or days of exemption from labor or work as far as government offices, including that of respondent Commissioner, are concerned. The offices and bureaus concerned are officially closed on those days. So that on February 28, 1959, which were Saturday and Sunday, respectively, the office of respondent was officially closed. And where the last day for doing an act required by law falls on a holiday, the act may be done on the next succeeding business day. (Section 31, Revised Administrative Code.) Similarly, in computing any period of time prescribed by statute, the day of the act after which the designated period of time begins to run is not included. But the last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday or a holiday (Section 1, Rule 28, Rules of Court). Consequently, since February 28, 1959 was a Saturday and the next day, March 1, 1959, a Sunday, respondent had until the next succeeding business day, March 2, 1959, Monday, within which to issue the deficiency assessment. The assessment in question having been issued on March 2, 1959, it was, therefore, seasonably made."

We concur in the above findings and conclusions, convinced as we are, that they are factually and legally correct.

The above ruling notwithstanding, the Commissioner of Internal Revenue, appealed against the judgment which absolved respondent Western Pacific Corporation from liability, alleging that the CTA erred:

- (1) In taking cognizance of the case, notwithstanding lack of jurisdiction; and
- (2) Granting it had jurisdiction, in considering the expense items and the written off bad debts, as deductible.

Without going into the merits of the decision absolving the respondent corporation of tax liability, We find that the assessment made by the Commissioner should be maintained, for the simple reason that when the petition for review was brought to the CTA by the respondent corporation, the said Court no longer had jurisdiction to entertain the same. The assessment had long become final. A petition for review should be presented, within the reglementary period, as provided for in Section 11, Republic Act No. 1125, which is "thirty (30) days from receipt of the assessment." The thirty (30) day period is jurisdictional (*Pangasinan Transportation Co. vs. Blaquera*, 107 Phil., 975).

It will be noted that the assessment was received by the respondent corporation on March 2, 1959. It was only on June 29, 1959, when said corporation formally assailed the assessment, on the grounds of prescription in making the assessment and the impropriety of the disallowance of the listed deductions. From March 3 to June 29, 1959, manifestly more than thirty (30) days had lapsed and the assessment became final, executory and demandable (*Entanilla vs. Bd. of Tax Appeals, et al.*, L-7384, Dec. 19, 1955). Of course, in the interim, a number of communications were exchanged between the parties, the latest of which was dated October 28, 1959. Even if this date is considered as the commencement of the thirty (30) day period, still the petition for review with the CTA was out of time, because it was only on December 18, 1959, that said petition was presented. Failure to comply with the thirty day statutory period, would bar appeal and deprive the CTA of its jurisdiction to entertain and determine the correctness of the assessment (*Gibbs & Gibbs vs. Coll. of Int. Rev. & CTA*, 107 Phil., 232).

In view of the foregoing, the decision of the CTA is hereby set aside for having been rendered without jurisdiction, the assessment in question having been already final, executory and demandable before the petition for Review was presented; and another entered, ordering the respondent Western Pacific Corporation to pay the assessments made by the Collector of Internal Revenue, and the further amounts of 5% surcharge and 1% monthly interest on the amount assessed, from April 1, 1959 until date of full payment. Costs against the respondent corporation.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Regala, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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