

## COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, AS LIQUIDATOR OF PARAMOUNT ACCEPTANCE CORPORATION, RESPONDENT.

*G.R. No. 135446. September 23, 2003*

Ponente: CORONA, J.

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### CORONA, J.:

Respondent Bank of the Philippine Islands (BPI) is the liquidator of Paramount Acceptance Corporation (PAC), a financing corporation which was dissolved on July 17, 1989 pursuant to the January 30, 1986 resolution of its Board of Directors and stockholders, shortening its corporate life to March 31, 1987.

After the dissolution of the PAC, respondent BPI learned from the newspapers that petitioner Commissioner of Internal Revenue (CIR) filed certain criminal cases against Horacio V. Poblador and Ramon A. Albert, former president and treasurer of PAC, respectively, for willful failure to pay the corporation's final deficiency tax assessments for the years 1981 and 1982. According to the petitioner, PAC was liable for a total amount of P411,382.11 in deficiency taxes, computed as follows:

1981

Deficiency Income Tax

**P166,923.00**

Deficiency Expanded Withholding Tax

3,727.01

Deficiency Documentary Stamp Tax

44,300.00

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**TOTAL**

**P214,950.01**

1982

Deficiency Income Tax

**P150,707.20**

Deficiency Percentage Tax

35,887.91

Deficiency Expanded Withholding Tax

9,836.99

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**TOTAL**

**P196,432.10[1]**

Respondent wrote to the petitioner, claiming that it was not aware of any assessment regarding any tax deficiency owed by PAC, but that it was willing to compromise and pay the deficiency tax. At the same time, respondent asked for the withdrawal of the criminal cases against Poblador and Albert. The parties agreed to settle for not less than 30% of the basic income and documentary stamps taxes and 100% of the basic expanded withholding tax due. Respondent paid to the petitioner a total amount of P119,815.13, broken down as follows:

1981

Deficiency Income Tax

**P 31,298.10**

Deficiency Expanded Withholding Tax

1,625.01

Deficiency Documentary Stamp Tax

44,000.00

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**TOTAL**

**P 76,923.11**

1982

Deficiency Income Tax

**P 28,257.60**

Deficiency Percentage Tax

4,797.43

Deficiency Expanded Withholding Tax

9,836.99

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**TOTAL**

**P 42,892.02[2]**

However, in spite of the payment, petitioner continued to prosecute the criminal cases against Poblador and Albert: Criminal Cases Nos. 91-5800, 91-5801 and 91-5802, involving the 1981 assessments, before the Regional Trial Court of Makati, Branch 150; and, Criminal Case No. 91-4007 involving the 1982 percentage tax deficiency, pending in the Regional Trial Court of Makati, Branch 143.

Respondent, in its August 18, 1992 letter to petitioner, pointed out that the assessments were not sent to the proper address and asked for the refund of the P119,815.13 it paid under the compromise agreement since the criminal cases against Poblador and Albert were not dropped as agreed upon. Petitioner did not answer the letter and continued to prosecute the said cases.

At the trial of Criminal Case Nos. 91-5800, 5801 and 5802, the following facts were established:

(a)

that Paramount filed its Annual Income Tax Return for 1985 on April 2, 1986, in which it disclosed in the space provided for in the Return, that its current address was 8[th] Floor, FCC Bldg., Paseo de Roxas, Makati, Metro Manila, while its "Previous Address (if different from current year)" was Ground Flr., DCG Building cor. De la Rosa and Legaspi Sts. Makati, Metro Manila;

(b)

that Paramount filed its Annual Income Tax Return for the three months of 1986, i.e., up to March 31, 1986, on April 30, 1986 and indicated in the proper space provided for in the return that its current address was "BPI Building, Ayala Avenue, Makati, Metro Manila while its "Previous address (if different from current year)" was 8[th] Floor, FCC Building, Paseo de Roxas, Makati, M.M.

xxx xxx xxx

(e)

that on July 17, 1987 the SEC issued to Paramount the Certificate of Filing of Amended Articles of Incorporation shortening the term of existence and thereby dissolving the corporation;

(f)

that after issuing such Certificate, the SEC sent a letter dated July 14, 1987 to the respondent, informing him that pursuant to Executive Order No. 1026 which requires a tax clearance before a corporation may be dissolved, the SEC had dissolved Paramount as of March 31, 1986 in view of the tax clearance certificate which the respondent had issued on November 11, 1986. The same letter further informed respondent that "[t]he principal office of the corporation was located at 8[th] Flr., BPI-FB Bldg., 8753 Paseo de Roxas, Makati, MM;

(g)

that contrary to the testimony of prosecution witness Rolando Bumbay of the respondent's Collection Enforcement Division that he just could not locate Paramount, he looked everywhere except the Makati BIR Office, where Paramount had been filing its income tax returns, and the Litigation Division of the BIR which would have informed him that instead of disappearing and hiding from the BIR, Paramount even sued the respondent in the Court of Tax Appeals for the refund of excess creditable income taxes paid in 1986, docketed as CTA Case No. 4257. (Citations omitted)[3]

In an order dated June 22, 1993, Criminal Case Nos. 91-5800 to 5802 were dismissed by the trial court, on motion of the BIR Special Prosecutor. The motion to dismiss was "anchored on the fact that the assessments made by the BIR on the tax deficiencies of PAC/accused Poblador and Albert for the year 1981 have already been paid and amicably settled, evidenced by the Letter of Deputy Commissioner Eufracio D. Santos to Atty. Sabino Padilla, Jr. dated June 6, 1991." [4] Strangely, however, petitioner did not move for the dismissal of Criminal Case No. 91-4007 involving the 1982 corporate percentage tax deficiency.

On November 15, 1993, petitioner finally replied to respondent's August 18, 1992 letter, refusing to grant a refund and denying that a compromise settlement was reached by them. Petitioner reasoned that it could not have entered into a compromise agreement with respondent since the criminal cases had already been filed in court, and to enter into a compromise after the filing of the cases would have violated Section 204 of the Tax Code. Thus, the payment of P119,815.13 could not have been accepted by the CIR in the concept of a compromise settlement.

On December 12, 1993, respondent filed a case with the Court of Tax Appeals (CTA) for the refund of the money it paid petitioner. The CTA, however, dismissed it on the ground of *litis pendencia*. Respondent appealed to the Court of Appeals, which ruled that *litis pendencia* was not present and ordered the CTA to commence trial on the refund case. Thus, petitioner elevated the case to this Court via a petition for review.

The petition is denied for being moot.

On January 28, 2000, the Regional Trial Court of Makati City, Branch 143, rendered a decision [5] in Criminal Case No. 91-4007 acquitting Poblador and Albert of willful failure to pay the corporate percentage tax deficiency for 1982. Furthermore, a copy of the said decision was served on petitioner by registered mail, [6] prior to the submission of its memorandum in this case. [7] Despite being furnished a copy of the RTC decision, petitioner merely adopted its comment as its memorandum and did not discuss the effect of Poblador and Albert's acquittal on the present petition. Petitioner even stated that respondent BPI may recover the amount it paid once Poblador and Albert were acquitted in the criminal case. [8]

In its decision in Criminal Case No. 91-4007, the trial court ruled that the prosecution failed to establish that PAC was in fact liable for deficiency taxes prior to its liquidation. Assuming *arguendo* that there was a deficiency tax for which PAC was liable, petitioners failed to make a valid assessment on it since the notice of assessment was

sent to the PAC's old (and therefore improper) office address. PAC already indicated its new address in its 1986 tax return filed with the BIR's Makati office. This notwithstanding, petitioner CIR sent the notice of assessment to PAC's old business address instead of its new address, which was also BPI's (PAC's liquidator) office address.

Since there was a failure to effect a timely valid assessment, the period for filing a criminal case for PAC's tax liabilities had prescribed by the time petitioner instituted the criminal cases against its former officers. Thus, Poblador and Albert were correctly acquitted by the trial court.

WHEREFORE, the petition is hereby DENIED.

**SO ORDERED.**

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

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[1] Resolution, Court of Tax Appeals dated January 23, 1995; Rollo, p. 41.

[2] Resolution, Court of Tax Appeals dated January 23, 1995; Rollo, p. 42.

[3] Decision, Court of Appeals dated July 16, 1998; Rollo, pp. 29-30.

[4] Ibid.

[5] Rollo, p. 139.

[6] Registry Receipt No. 42485 dated September 1, 2000.

[7] Petitioner's Memorandum dated September 5, 2000 was received by the Supreme Court on September 8, 2000.

[8] Rollo, p. 157.

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