**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FIRST DIVISION

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| **ST. LUKE'S MEDICAL CENTER, INC.,** Petitioner, | **C.T.A. CASE NO. 7340** |
| | Members: |
| - versus - | **ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** AUG 24 2009; 11:00am |

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## DECISION

**CASANOVA, *J.*:**

Before this Court is an *Amended Petition for Review* praying for a judgment:[1]

"(a) declaring that right of respondent to assess and/or collect the disputed assessment for the taxable years 1985 and 1986 is already barred by the statue of limitations provided under Section 203 of the NIRC of 1977, as amended[;]

(b) ordering the cancellation and withdrawal of respondent's Collection Letter dated September 30, 2005, Assessment Notice No. FAN-1-85-90-001497 for deficiency expanded withholding tax on professional fees amounting to P523,866.24 plus 20% delinquency interest amounting to P1,629,459.75 for the taxable year 1985, and Assessment Notice No. FAN-1-86-90-001499 for deficiency expanded withholding tax on professional fees amounting to P764,099.90 plus 20% delinquency interest amounting to P2,153,325.99 for the taxable year 1986; or the total assessment of P5,294,120.42 for taxable years 1985 and 1986;

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[1] Docket, p. 174.

(c) ordering Respondent Commissioner of Internal Revenue to desist from collecting the same; and

Granting such other reliefs and remedies as may be just and equitable under the premises."

Culled from the parties' Joint Stipulation of Facts and Simplification of Issues, and from the records of the case, the facts are as follows:

Petitioner is a non-stock, non-profit corporation duly organized and existing under Philippine laws, with address at 279 E. Rodriguez Sr. Blvd., Cathedral Heights, Quezon City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue vested with the authority to exercise the functions of said office, including *inter alia*, the power to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed, and holding office of the BIR National Office Building, Diliman, Quezon City.[3]

Petitioner is organized "to establish, equip, operate and maintain a non-stock, non-profit Christian, benevolent, charitable and scientific hospital which shall give curative, rehabilitative and spiritual care to sick, diseased and disabled person; provided that purely medical and surgical services shall be performed by duly licensed physicians and surgeons who may be freely and individually contracted by the patients[.]"[4]

On April 15, 1986, petitioner filed with respondent its profit and loss statement and balance sheet for the taxable year 1985, together with the annual information return stating its gross income and expenses incurred during the year.

[2] Paragraph 1 of the Stipulation of Facts; *id.*, p. 303.
[3] Paragraph 2 of the Stipulation of Facts; *id.*, p. 304.
[4] Paragraph 3 of the Stipulation of Facts; *ibid.*.

Likewise, on April 15, 1987, petitioner filed with respondent its profit and loss statement and balance sheet for taxable year 1986, together with the annual information return stating its gross income and expenses incurred during the year.[5]

Pursuant to Letter of Authority No. 0335165 dated February 26, 1988, respondent's representative conducted an investigation to ascertain the tax liabilities of petitioner for the taxable years 1985 and 1986.[6]

Petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitation of the Tax Code for the assessment and collection of taxes for the taxable year 1985.[7]

Petitioner received an assessment letter, together with the following assessment notices issued by respondent, all dated April 11, 1990: Assessment Notice No. FAN-1-85-90-001496 for 1985 deficiency income tax amounting to Php8,237,105.50; Assessment Notice No. FAN-1-85-90-001497 for 1985 deficiency expanded withholding tax on professional fees amounting to Php523,866.24; Assessment Notice No. FAN-1-86-90-001498 for 1986 deficiency income tax amounting to Php14,148,367.12; and Assessment Notice No. FAN-1-86-90-001499 for 1986 deficiency expanded withholding tax on professional fees amounting to Php764,099.90, or a total deficiency tax assessment amounting to Php23,673,438.76 for the taxable years 1985 and 1986.[8]

On May 25, 1990, petitioner filed an administrative protest and requested for a reconsideration and reinvestigation of the alleged deficiency tax assessment, in

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[5] Paragraph 17 of the Stipulation of Facts; *id.*, p. 307.
[6] Paragraph 18 of the Stipulation of Facts; *id.*, p. 308.
[7] Paragraph 19 of the Stipulation of Facts; *id.*, p. 308.
[8] Paragraph 4 of the Stipulation of Facts; *id.*, p. 304 See also Exhibits A, B, C, D, and E.

accordance with Section 229 of the National Internal Revenue Code of 1977, as amended ("Tax Code").[9]

On September 12, 2005, petitioner received respondent's Final Decision on the subject assessment.[10] Respondent cancelled and withdrew Assessment Notice No. FAN-1-85-90-001496 assessing petitioner for deficiency income tax for 1985 amounting to Php8,237,105.50, and Assessment Notice No. FAN-1-86-90-001498 for deficiency income tax in 1986 amounting to Php14,148,367.12. However, respondent affirmed Assessment Notice No. FAN-1-85-90-001497 for 1985 deficiency expanded withholding tax on professional fees amounting to Php523,866.24, and Assessment Notice No. FAN-1-86-90-001499 for 1986 deficiency expanded withholding tax on professional fees amounting to Php764,099.90. Thus, petitioner filed a Petition for Review with this Court on October 12, 2005, appealing the denial of the protest in compliance with Section 229 of the Tax Code, lest it be barred by the Statute of Limitations.

However, on September 30, 2005, respondent, through Deputy Commissioner for Special Concern, Kim S. Jacinto-Henares, issued a Collection Letter requesting petitioner to pay its tax liabilities computed as follows:[11]

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| Deficiency EWT 1985 (FAN-1-85-90-001497 dtd 4/11/90) | 523,866.24 |
| Add: 20% delinquency interest from 4/12/90 to 10/31/05 (3.11045) | 1,629,459.75 |
| **Total Amount Due & Collectible** | **2,153,325.99** |
| | |
| Deficiency EWT 1986 (FAN-1-86-90-001499 dtd 4/11/90) | 764,099.90 |
| Add: 20% delinquency interest from 4/12/90 to 10/31/05 (3.11045) | 2,376,694.53 |
| **Total Amount Due & Collectible** | **3,140,794.43** |

[9] Paragraph 5 of the Stipulation of Facts; *ibid.*. See also Exhibit F.
[10] Paragraphs 6 and 7 of the Stipulation of Facts; *id.*, p. 305. See also Exhibit G.
[11] Paragraph 9 of the Stipulation of Facts; *id.*, p. 306. See also Exhibit H.

Said Collection letter was received by petitioner on October 29, 2005.[12]

Hence, petitioner filed this Amended Petition for Review with Leave of Court.[13]

In his Answer[14] and Amended Answer,[15] respondent prays for the dismissal of the instant Petition for lack of merit. He argues that:[16]

(1) petitioner is obliged to withhold taxes on the professional fees of doctors paid by its patients as provided for under Section 1 (a)(1) of Revenue Regulations (RR) No. 6-85;[17]

(2) the assessments were issued within the prescriptive period allowed by law;

(3) the applicable prescriptive period is ten (10) years as petitioner filed a false return because it did not withhold correct taxes;

(4) petitioner executed a valid waiver of the statute of limitations extending the prescriptive period to assess and to collect;

(5) issues and defenses not raised in the administrative level cannot be raised for the first time on appeal;

(6) the assessments were issued in accordance with the existing law and regulations, and *prima facie* presumed to be correct and made in good faith;

(7) the imposition of delinquency interest is justified under Section 249 of the Tax Code;

(8) injunction is not available to restrain collection of national internal revenue taxes pursuant to Section 218 of the Tax Code; and

(9) this Court has no jurisdiction to entertain the instant petition.

After issues were joined, trial proceeded. Both parties presented their respective testimonial and documentary evidence. After petitioner filed its

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[12] Paragraph 8 of the Stipulation of Facts; *id.*, pp. 305-306.
[13] Paragraph 9 of the Stipulation of Facts; *id.*, p. 306.
[14] Filed on December 22, 2005.
[15] Filed on March 24, 2006.
[16] Docket, pp. 99-111.
[17] Revised and Consolidated Expanded Withholding Tax Regulations, implementing Section 53(f) of the then Tax Code.

Memorandum on September 3, 2008, and for respondent's failure to file his Memorandum despite notice, the instant case was deemed submitted for decision on October 17, 2008.[18]

The parties stipulated the following issues for this Court's resolution:[19]

> "1. Whether the Waiver of Defense of Prescription signed by petitioner is validly executed, thus extending the right of Respondent to assess and collect taxes beyond the period provided under the Tax Code;
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> 2. Whether the filing of Petitioner's request for reconsideration or reinvestigation interrupted the prescriptive period to collect the tax deficiency assessment;
>
> 3. Whether respondent's right to collect or enforce collection of the disputed tax assessment is already barred by the statute of limitations;
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> 4. Granting the right to assess and to collect the subject deficiency taxes is not yet barred, Petitioner is liable for deficiency expanded withholding tax on professional fees for failure to deduct taxes on doctors' fees paid by patients;
>
> 5. Whether Petitioner is liable to pay the aggregate amount of Php5,294,120.42 as deficiency expanded withholding taxes for taxable years 1985 and 1986;
>
> 6. Whether Petitioner can question the validity of the waiver for the first time on appeal;
>
> 7. Whether it is proper to impose a 10% delinquency interest on Petitioner computed from 1990 to 2005;
>
> 8. Whether this Court has jurisdiction over the instant case."

Sections 268 and 269 of the Tax Code provides:

> **"Sec. 268.** ***Period of Limitation Upon Assessment and Collection.-*** Except as provided in the succeeding section, 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

[18] Docket, p. 738.
[19] Simplification of Issues in the *Joint Stipulation of Facts and Issues*, docket, pp. 308-309.

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."

**"Sec. 269. *Exceptions As to Period of Limitation of Assessment and Collection of Taxes.-*** (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; *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however,* That nothing in the immediately preceding section and paragraph (1) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree."

From the above, respondent has three years to assess deficiency tax reckoned after the last day prescribed by law for the filing of return.

On September 26, 1989, Revenue Examiners Glorializa G. Samoy and Rene R. Tabtab submitted their Examiner's Field Audit Report with adverse findings of deficiency expanded withholding taxes on professional fees and recommended issuance of assessments.[20] Further, on October 31, 1989, they wrote a Memorandum for the respondent stating therein their audit findings and recommendations.[21]

A scrutiny of the above-mentioned documents and a review of the BIR Records show that there was no finding that petitioner filed false Annual Returns for expanded withholding taxes. There was also no finding that there was intention on the part of petitioner to evade tax. Thus, the 10-year prescriptive period within which to assess deficiency tax does not apply as the filing of false returns must be with intent to evade tax.[22]

In the above-quoted Section 268 of the Tax Code, respondent has three years after the last day prescribed by law for the filing of the return, within which to assess petitioner for deficiency taxes. Relative thereto, Section 5(b) of RR No. 6-85 requires the filing of Annual Return for the expanded withholding tax on or before the 1st day of March of the year next following the year in which payments were made. Counting three years, respondent has until February 28, 1989 and February 28, 1990 to assess petitioner for deficiency expanded withholding taxes on professional fees for the taxable year 1985 and 1986, respectively.[23] The

[20] Exhibit 9-a; BIR Records, p. 550.
[21] BIR Records, pp. 574-579.
[22] *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., represented by Special Co-Administrators Lorna Kapunan and Mario Luza Bautista*, G.R. No. 147188, September 14, 2004.
[23] 1988 being a leap year.

assessment letter and assessment notices were all dated April 11, 1990. Even without the exact date when petitioner received the same, it is apparent that the assessment letter and the assessment notices were received by petitioner after their issuance on April 11, 1990. Hence, respondent's right to assess petitioner has prescribed, regardless of petitioner's execution of the Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue Code.

As admitted by the parties, petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue Code. Nonetheless, the execution of such waiver did not extend respondent's right to assess and to collect the subject deficiency taxes. In *Bank of the Philippine Islands v. Commissioner of Internal Revenue*,[24] the Supreme Court explained:

> "According to paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, the prescriptive periods for assessment and collection of national internal revenue taxes, respectively, could be waived by agreement, to wit –
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> > SEC. 223. – *Exceptions as to period of limitation of assessment and collection of taxes.* –
> >
> > . . .
> >
> > (b) If before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
> >
> > . . .
> >
> > (d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so

[24] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

The agreements so described in the afore-quoted provisions are often referred to as waivers of the statute of limitations. The waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The **waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally**.

A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, must be: **(1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection**. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. xxx.

This Court had consistently ruled in a number of cases that a request for reconsideration or reinvestigation by the taxpayer, without a valid waiver of the prescriptive periods for the assessment and collection of tax, as required by the Tax Code and implementing rules, will not suspend the running thereof." (emphasis supplied)

A careful examination of the subject waiver shows that it was executed after the expiration of the ordinary prescriptive periods for assessment and collection; and did not state a definite period beyond the ordinary prescriptive periods for assessment and collection.

For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[25]

In view of the above, the resolution of remaining issues becomes moot and irrelevant.

**WHEREFORE**, petitioner's **"Petition for Review"** is hereby **GRANTED**. Respondent's Assessment Notice No. FAN-1-85-90-001497 and Assessment Notice No. FAN-1-86-90-001499 for deficiency expanded withholding tax on professional fees in the sum of P5,294,120.42 for taxable years 1985 and 1986 are **CANCELLED** and **SET ASIDE** for having been issued beyond the prescriptive period. Respondent's Collection Letter dated September 30, 2005 is likewise **CANCELLED** and **SET ASIDE** as the right to collect has prescribed.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**LOVELL R. BAUTISTA**
Associate Justice

[25] *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc. (Now Sime Darby International Tire Co., Inc.) and The Court of Appeals*, G.R. No. 104171, February 24, 1999 (303 SCRA 546).

# CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

**ERNESTO D. ACOSTA**
Chairman, First Division
Presiding Justice