REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ASIA UNITED INSURANCE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8916

Members:

DEL ROSARIO, *P.J., Chairperson*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
SEP 2 0 2017 2:50 pm

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RESOLUTION

MINDARO-GRULLA, J.:

For resolution is respondent's **Motion for Reconsideration (Re: Decision promulgated May 17, 2017)**, filed on June 6, 2017, with petitioner's **Comment [To Respondent's Motion for Reconsideration (Re: Decision promulgated May 17, 2017) dated 05 June 2017]**, filed on June 27, 2017.

Respondent seeks reconsideration of the Court's Decision dated May 17, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy dated December 18, 2013 is **NULL** and **VOID**.
>
> **SO ORDERED**."

Respondent assails the said Decision on the sole ground that the Court erred in holding that petitioner's repeated acts of paying its principal deficiency documentary stamp tax (DST) by installment *sans* the interest, and repeated request for the reduction, waiver or abatement of the interest and compromise penalty cannot be considered as positive requests or positive acts that justify the suspension of the prescriptive period for collection.

Allegedly, respondent is not barred from collecting the interest on the deficiency DST of petitioner for taxable year (TY) 2003 in the amount of ₱5,266,047.85. Respondent stresses that the words "reinvestigation" or "reconsideration" is not indispensable in order to suspend the running of the prescriptive period to collect taxes, and has cited the case of *Commissioner of Internal Revenue vs. Suyoc Consolidated Mining Co.*, wherein the Supreme Court declared that "the statutory period of limitation for collection may be interrupted if by the taxpayer's repeated requests or positive acts, the government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the government".

On the other hand, petitioner counter-argues that respondent's motion is a mere rehash of the arguments already rejected by this Court. According to petitioner, the prescription of the government's right to collect the deficiency tax was due to the inordinate delay by the respondent and not to the petitioner's payment and letter request for abatement.

A careful perusal of respondent's argument shows that the same is a mere rehash of the same facts and issues which has already been passed upon extensively in the assailed Decision.

Nonetheless, the Court shall discuss some points to fully settle the issue in this case.

It is worthy to emphasize that when the case *The Collector of Internal Revenue vs. Suyoc Consolidated Mining Company, et al.*[1], was promulgated, the law existing at the time was the 1939 National Internal Revenue Code (NIRC).

Section 333 of the 1939 NIRC provides:

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[1] G.R. No. L-11527, November 25, 1958.

"Sec. 333. *Suspension of running of statute.* – The running of the statute of limitations provided in section three hundred thirty-one or three hundred thirty-two on the making of assessments and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner of Internal Revenue is prohibited from making the assessment or beginning distraint or levy a proceeding in court, and for sixty days thereafter."

Presidential Decree (PD) No. 69 amended Section 333 of the 1939 NIRC and was consolidated with the 1977 NIRC, *viz*:

"Sec. 320. *Suspension of Running of Statute.* – The running of the statute of limitations provided in Section 318 and 319 on the making of assessments and the beginning of distraint or levy or a proceeding in Court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in Court, and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, That, if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended, when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines."

Now, Section 223 of the NIRC of 1997, as amended, expresses:

"SEC. 223. **Suspension of Running of Statute of Limitations.** – The **running of the Statute of Limitations** provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of

> any deficiency, **shall be suspended for the period during which the Commissioner is prohibited from** making the assessment or **beginning distraint or levy or a proceeding in court** and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected**: *Provided*, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; **when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located**; and **when the taxpayer is out of the Philippines.**" (*Emphasis supplied*)

In the 1939 NIRC, the running of the statute of limitations for collection of tax may be tolled by any positive acts made by taxpayer; unlike in the present law which is the 1997 NIRC, as amended, positive acts of taxpayer which may be considered as a request for reinvestigation may suspend the running of the statute of limitations for collection of tax provided the said request was granted by the Commissioner of Internal Revenue, **but not a request for reconsideration.**

In the cases of *China Banking Corporation vs. Commissioner of Internal Revenue*[2] and *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[3] (*BPI case*), the Supreme Court distinguished a request for reconsideration from a request for reinvestigation. It was ruled in the *BPI case* that a request for reinvestigation must first be granted by the Commissioner of Internal Revenue in order to suspend the running of the statute of limitations for collection. Also, in the same case, the Supreme Court categorically held that a request for reconsideration would not toll the running of the prescriptive period to collect tax.

As already discussed in the assailed Decision, petitioner's Letter dated February 23, 2006 is a request for reconsideration and not a request for reinvestigation because petitioner did not submit any

[2] G.R. No. 172509, February 4, 2015.
[3] G.R. No. 181836, July 9, 2014.

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additional evidence but merely appealed to respondent to reduce the interest due to petitioner's financial incapacity to pay. As such, the ruling in *Suyoc case*, which involved a different set of facts and law, may not be invoked in the instant case.

To reiterate the Court's findings, petitioner's repeated acts in paying its principal deficiency DST liability by installment *sans* the interest and repeated requests for the reduction, waiver, and abatement of interest and increments is considered as a request for reconsideration which does not suspend the running of the prescriptive period to collect.

It must again be stressed that 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.[4]

WHEREFORE, premises, considered, respondent's **Motion for Reconsideration (Re: Decision promulgated May 17, 2017)** is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[4] *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.) and the Court of Appeals,* G.R. No. 104171, February 24, 1999.