REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE GLOBAL COMMUNICATIONS, INC.,
Petitioner,

- versus -

C.T.A.. CASE NO. 6568

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 09 2004

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DECISION

This is a judicial appeal from the final decision of the respondent denying petitioner's protests on deficiency income tax assessment for the taxable year 1990 in the aggregate amount of P118,271,672.00, inclusive of surcharge, interest, and compromise penalty.

The antecedent facts are as follows:

On April 15, 1991, petitioner filed its Annual Corporate Income Tax Return (ITR) for the taxable year ending December 31, 1990 (*Annex B, Petition for Review*).

On April 13, 1992, the Commissioner of Internal Revenue, Jose U. Ong, through his Assistant Revenue Service Chief, Special Operations Service, Bernardo A. Frianeza, issued Letter of Authority No. 0002307, which authorized Revenue Officer Reynaldo Lojuco under the supervision of Group Supervisor Marilou Gacutan, to examine the books of accounts and other accounting records of petitioner in relation to to the investigation of petitioner's 1990 income tax liability (*BIR Records, p. 127*).

Pursuant to Section 20, Revenue Regulation No. 1, Revenue Officer Reynaldo Lojuco sent a letter to petitioner on April 22, 1992, requesting the latter to present for examination certain records and documents (*BIR Records, p. 126*). This was received by petitioner on even date.

On April 21, 1994, petitioner received a Preliminary Assessment Notice dated April 13, 1994, signed by Mr, Osmundo Umali, Regional Director of Revenue Region No. 8, Makati City, covering alleged deficiency income tax assessment for taxable year 1990 in the total amount of P118,271,672 inclusive of surcharge, interest, and compromise penalty (*Annex C, Petition for Review*).

On April 22, 1994, petitioner received a Formal Assessment Notice with Assessment Notice No. 000688-80-7333 (*Annex D, Petition for Review*) dated April 14, 1994, likewise signed by Mr. Osmundo Umali, covering alleged deficiency income tax assessment for the taxable year 1990 in the total amount of P118,271,672, inclusive of surcharge, interest and compromise penalty.

On May 6, 1994, petitioner, by counsel, Ponce Enrile Cayetano Reyes and Manalastas Law Offices, filed a formal protest letter (*Annex E, Petition for Review*) against the said Formal Assessment Notice. On May 23, 1994, again petitioner filed another protest letter (*Annex F, Petition for Review*) through another counsel, the Siguion Reyna, Montecillo & Ongsiako Law Offices. Petitioner requested for the cancellation of the tax assessments for lack of factual and legal basis.

On October 16, 2002, petitioner, through its counsel, the Ponce Enrile Cayetano Reyes and Manalastas Law Offices, received a final decision dated October 8, 2002 and signed by the Commissioner of Internal Revenue, denying petitioner's protests against Assessment Notice No. 000688-80-7333 *(Annex A, Petition for Review)*.

Unsatisfied with the respondent's decision, petitioner elevated the case through a petition for review before this court on November 15, 2002.

Summons was duly served upon respondent and in his Answer filed on January 3, 2003, he advanced *inter alia* the following affirmative and special defenses, to wit:

> "10. Also, petitioner argued that assuming without admitting that respondent's right to assess has not prescribed, respondent's right to collect had nevertheless already prescribed since petitioner's protest letter never requested for a reinvestigation of the assessment, under Section 223 of the Tax Code. This averment deserves no credence. In the case of Commissioner of Internal Revenue vs. Capitol Subdivision, Inc., (G.R. No. L-18993, April 30, 1964, 10 SCRA 773) the Honorable Supreme Court explicitly ruled that the prescriptive period provided by law to make a collection by distraint or levy or by proceeding in court is interrupted once a taxpayer requests for a reinvestigation or reconsideration of the assessments. Thus the court held:
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>> The period of prescription of action to collect a taxpayer's deficiency income tax assessment is interrupted when the taxpayer requests for a

review or consideration of the said assessment, and starts to run again when said request is denied.

Maintaining the above-mentioned ruling, the High Court again in its decision in the case of Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc. and Court of Tax Appeals, G.R. No. 76281, 30 September 1991, (202 SCRA 125) re-affirmed the same pronouncement.

Petitioner posited the view that there is no incident in this case that could have tolled the running of the three-year prescriptive (*sic*) because it never requested the BIR for the reinvestigation of the assailed assessments. This is not true. The records of the case clearly show that indeed petitioner requested for a reinvestigation of the assailed assessment. The subject assessment was duly protested. In fact, records show that two (2) protest letters were filed on behalf of petitioner by the law firms of Ponce Enrile, Cayetano, Reyes, and Manalastas and Siguion Reyna, Montecillo, and Ongsiako dated 06 May 1994 and 20 May 1994, respectively. These two protest letters disputing point by point the validity of the findings of the investigation as contained in its letters, were in fact and in substance a request for reinvestigation of the same. In fact, in both letters, it prays for the cancellation of the same. Simple reason would dictate that a request for the cancellation of an assessment cannot be acted upon without a reinvestigation being conducted. Be it noted also that Revenue Officer Rustico E. Escobar, the examiner who conducted the reinvestigation, testified during the conference hearing dated 08 March 1996, that upon his assignment to conduct the reinvestigation, he immediately requested petitioner to present various accounting records for the year 1990, in addition to other documents in relation to the disallowed items. This was followed by another request for submission of documents, but these requests were never heeded by petitioner. In fact, during the said conference hearing, petitioner's representative Atty. Consunji, even admitted the fact that petitioner has no intention whatsoever to present any records relative to this case. Obviously, petitioner's argument that it did not request for reinvestigation of the questioned assessment is without merit;"

Believing that respondent's Answer failed to tender genuine issues of fact, more particularly, on the matter of prescription of the right to collect the tax deficiency, petitioner filed a motion for Summary Judgment on March 14, 2003 (*CTA Records, p. 90*).

In a resolution dated August 25, 2003, the court granted the above-mentioned motion and declared that in this case a judgment may be rendered without need of a trial. Consequently, the parties were required to submit their respective memorandum and the case was submitted for decision.

The court finds that the sole issue to be resolved in this case is whether or not the right of the respondent to collect the assessed deficiency income tax from the petitioner for the taxable year 1990 has prescribed.

Material to the resolution of this case is the determination of whether or not the protest letters filed by petitioner had suspended the running of the prescriptive periods provided for in Sections 203 and 223 (c) the National Internal Revenue Code (NIRC) of 1977, the law then in force, which are quoted hereunder for reference:

> "Sec. 203. *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 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."
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> "Sec. 223. *Exceptions as to the period of limitation of assessment and collection of taxes.* - xxx xxx xxx
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> > 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."

Petitioner consistently argued that their protest letters did not ask for any reinvestigation and that both protests merely asked for the cancellation of the assessment. It further argued that its refusal to submit any of its records or documents to the revenue examiner *(Minutes of Conference-Hearing, March 8, 1996, BIR Records, p. 344)* is a clear indication that it never sought any reinvestigation. That "[i]n any event, petitioner's refusal to submit any records or documents could not have tolled the running of the prescriptive period" citing BIR Ruling No. 24-80 (17 October 1980), as follows:

> "[r]efusal or failure of the taxpayer to present his books of accounts does not stop the running of the five-year period of prescription within which to assess because such refusal or failure is **not one of the grounds that would suspend the running of the statute of limitations** provided for in Section 320 of the Tax Code. (Emphasis Supplied)" (*Petitioner's Memorandum, p. 9; CTA Records, p. 204*)

Respondent for his part argued that:

> "7. In both letters of protest, petitioner basically argued that the assessment is a jeopardy assessment for having been issued merely to toll the running of the three (3) year prescriptive period within which a valid assessment can be issued. However, on the matter of disallowed expenses due to non-withholding, which is basically the core of the deficiency income tax assessment in the amount of Php: 118,271,672.00,

it is observed that there are some variations in the arguments raised by the two law firms. Nevertheless it is obvious in those protest letters that petitioner requested for a detailed information on the items of deductions which were disallowed by the BIR. In the said protests, both counsels questioned point by point the issues raised in the disallowed items, adducing arguments to the effect that petitioner had sufficiently complied with the essential requisites needed to qualify as such and therefore, petitioner is entitled to the deductions claimed.

It is significant to note that in a relatively similar case, the case of *Commissioner of Internal Revenue vs. Capitol Subdivision, Inc., (G.R. No. L-18993, 30 April 1964)*, the Honorable Court made it clear that the prescriptive period for collection is suspended when the taxpayer requested for the information on the items of deduction which had been disallowed, even though the letter or request did not specifically use the words review or reconsideration. Thus, the Court said:

> "The right to enforce collection of the disputed assessment has not yet been lost. There is no question that the period commenced to run on April 8, 1953 when the assessment was made. The same, however, was interrupted when the respondent taxpayer, by letter of May 30, 1953, requested for an itemized information on the disallowed items. While it is true that the said letter did not specifically use the words "review" or "reconsideration", the request itself for an explanation of the disallowances made in the assessment in effect was an exception to the correctness thereof."

8. Applying the above-ruling in the instant case, petitioner's contention that it did not request for the reinvestigation of the subject assessment is misplaced. The two letters of protest filed, disputing point by point the findings of the Revenue Officer, specifically the itemized deductions which were disallowed, are in fact and in substance requests for reinvestigation, despite the notations contained in the protest letters that the taxpayer is not asking for a reinvestigation. It our *(sic)* position that said notation was placed with the sole intention of hiding, or if not, to confuse the Bureau of Internal Revenue of its true intention;" (*Respondent's Opposition/Comment to Petitioner's Motion for Summary Judgment, pp. 4 to 6; CTA Records, pp. 179 to 181*).

The petition is impressed with merit.

The protest letters filed by the petitioner did not toll the running of the prescriptive period to collect the assessed deficiency income tax. Section 224 of the NIRC of 1977, as amended, provides:

> "Sec. 224. *Suspension of running of statute.* - The running of the statute of limitation provided in Sections 203 and 223 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 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: xxx xxx xxx." (Emphasis supplied)

The foregoing provision requires the concurrence of two distinct acts before the periods stated in Sections 203 and 223 shall be suspended by virtue of a reinvestigation, to wit: 1) that there be a request for reinvestigation filed by the taxpayer and 2) that the Commissioner of Internal Revenue grants the request for reinvestigation.

In the case before us, none of the above-mentioned requisites is present. That is, there is no request for reinvestigation coming from the taxpayer and consequently, the second requisite cannot exist by itself. The protests letters, dated May 6, 1994 and May 20, 1994, filed by the petitioner asked for the cancellation of the assessment and not a reinvestigation thereof. This court ruled in *Allied Broadcasting Center, Inc. vs. CIR, C.T.A. Case No. 5413 promulgated on February 21, 2002*, as follows:

> "In the instant case, petitioner did not request for a reinvestigation. In 1990, the Warrants of Garnishment, Distraint and/or Levy were prepared but were never served to the taxpayer. Within the 5-yr period, the records only show that the case was referred to the Legal Department of the BIR on October 5, 1990. No other actions were taken thereon until petitioner was finally informed of the denial of the protest in a letter dated July 13, 1998. At that time, the period to collect has already prescribed."

A review of the BIR records of this case revealed that when petitioner's protest letters were referred to Rustico E. Escober, the revenue officer tasked to reinvestigate the assessment (*Answer, p. 6; CTA Records, p. 72*), he wrote a letter dated July 6, 1994 addressed to the president of petitioner corporation requesting for some records and documents from the petitioner. The letter contained, among others, the following statement:

> "I assume that your request is for re-investigation and not cancellation of the tax assessment as there is no such (*sic*) in the Revenue Regulation No. 12-85." (*BIR Records, p. 172*)

to which petitioner replied through a letter dated July 29, 1994, in pertinent part as follows:

> "We submit that no investigation at this stage can be conducted. The protest that we filed cannot be treated as a request for reinvestigation as you assumed it to be. There are two different remedies as could be gleaned from 11.C of Revenue Memorandum Order No. 37-94:
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> > C. All letters of protests, requests for reinvestigation and similar communications shall be filed with or referred to the Assessment Division of the Revenue Regions or to the Intelligence and

> Investigation Service, as the case may be, for proper recording and resolution of the protest." (*BIR Records, p.190*)

With the foregoing exchange of communication, petitioner made its position very clear to the respondent that it is not seeking a reinvestigation of the assessment made against it. Hence, respondent's defense that the prescriptive period provided for the collection of the assessed tax was suspended by reason of petitioner's request for reinvestigation is untenable. Respondent, as early as July 29, 1994, should have initiated collection proceedings against petitioner.

As succinctly explained by the Supreme Court in the case of *Republic vs. Acebedo, 22 SCRA 1356*, a request for reinvestigation of an assessment, standing alone, is not enough to suspend the running of the prescriptive period to collect the tax liability by any of the means provided by law. The High Court ruled:

> "The plaintiff contends that the period of prescription was suspended by the defendant's various requests for reinvestigation or reconsideration of the tax assessment. **The trial court rejected this contention, saying that a mere request for reinvestigation or reconsideration of an assessment does not have the effect of such suspension**. The ruling is logical, otherwise there would be no point to the legal requirement that the extension of the original period be agreed upon in writing.
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> In the case at bar, the defendant, after receiving the assessment notice of September 24, 1949, asked for a reinvestigation thereof on October 11, 1949 (Exh. A). There is no evidence that this request was considered or acted upon. In fact, on October 23, 1950 the then Collector of Internal Revenue issued a warrant of distraint and levy for the full amount of the assessment (Exh. D), but there was no follow up of this warrant. **Consequently, the request for reinvestigation did not suspend the running of the period for filing an action for collection**.
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> xxx xxx xxx
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> It will be noted that up to October 4, 1955 the delay in collection could not be attributed to the defendant at all. His requests in fact had been unheeded until then, and **there was nothing to impede enforcement of the tax liability by any of the means provided by law**. By October 4, 1955, more than five years had elapsed since the assessment in question was made, and hence prescription had already set in, making subsequent events in connection with the said assessment entirely immaterial. xxx xxx xxx" (Emphasis supplied)

Applying the foregoing ruling to the case at bar, while it may be true that respondent has issued the questioned assessment within the three (3) year prescriptive period to assess under Section 203, still it cannot be denied that respondent's Decision, dated October 8, 2002, was rendered beyond the three-year period to collect the tax counted from April 14, 1994, the date of the assessment. This is a clear eight (8) long years of inaction on the part of the Commissioner. Therefore, the respondent's right to collect the tax has prescribed. The respondent was not in any way precluded from commencing collection proceedings against the petitioner from April 14, 1994 up to April 14, 1997, pursuant to Section 223 (c) of the NIRC of 1997. Having failed to initiate collection proceedings within the period allowed by law, herein respondent cannot revive his right to collect the tax by belatedly issuing his final decision on the protests filed by the petitioner.

Of particular significance in relation to the facts and the isssue involved in this case is this court's previous ruling in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 4498, May 3, 1996:*

> "As stated by the petitioner in its protest letter, dated May 13, 1985, it was not requesting for a reconsideration or a reinvestigation or a plea of accommodation indicative that the defense of prescription is not being waived (Exh. C). Nothing in the records of the case would show that by the acts of petitioner, respondent was made to believe and was persuaded for good reasons to postpone the collection of the tax. Neither was a request for reinvestigation sufficient to toll the running of the prescriptive period to collect. Otherwise there would be no need for the legal requirement that an extension of the original period can be agreed upon by the parties in writing. With more reason, like in the case at bar, if the petitioner did not even request for a reinvestigation or a reconsideration in its protest. Therefore, the assessments issued on April 12, 1985 cannot anymore be enforced by summary remedy nor by judicial action for collection of the taxes involved herein. Hence the same cannot be given force and effect."

The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law." (*Republic vs. Ablaza, 108 Phil 1105*).

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioner. Accordingly, respondent's Final Decision dated October 8, 2002 is hereby **REVERSED** and **SET ASIDE** and respondent is hereby **ORDERED** to **WITHDRAW** and **CANCEL** Assessment Notice No. 000688-80-7333 issued against the petitioner for its 1990 income tax deficiency because respondent's right to collect the same has prescribed.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice