Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

STANDARD INSURANCE CO., INC., Petitioner,	**CTA CASE NO. 9550**
-versus-	Members: CASTAÑEDA, JR., *Chairperson,* and MINDARO-GRULLA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 04 2019 2:10 PM

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves the Commissioner of Internal Revenue's (CIR) "Motion for Reconsideration (Re: Decision promulgated on March 25, 2019)" assailing the Court's March 25, 2019 Decision, the dispositive portion of which states:

> *"**WHEREFORE**, premises considered, this Court is constrained to **GRANT** the Petition for Review. The Decision dated January 31, 2017 of respondent Commissioner of Internal Revenue (CIR) is **SET ASIDE**. Accordingly, the Assessment Notice no. 34-2001 against the petitioner as to its 2001 Documentary Stamp Tax deficiency is CANCELLED and SET ASIDE on the ground that respondent's right to collect the same has prescribed.*
>
> ***SO ORDERED.***"

In assailing this Court's Decision, CIR claims that the Court erred in failing to consider petitioner's request to hold in abeyance the service and execution of the warrants of distraint and/or levy and garnishment as positive request or positive act that justify the suspension of the prescriptive period for collection.

Respondent CIR argued that petitioner's request to hold in abeyance the service and execution of the warrants of distraint and/or levy and garnishment was granted and such

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positive act justify the suspension of the prescriptive period citing Commissioner of Internal Revenue vs. Consolidated Mining Co., G.R. No.11527, 29 November 1968 and Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., et al., 104 Phil 819.

On April 30, 2019, the Court ordered petitioner to comment on the "Motion for Reconsideration (Re: Decision promulgated on March 25, 2019)" within ten (10) days from receipt otherwise the motion shall be deemed submitted for resolution. In compliance, on May 20, 2019, petitioner filed an "Opposition to the Motion for Reconsideration of the Decision dated 25 March 2019".

We resolve to deny CIR's "Motion for Reconsideration (Re: Decision promulgated on March 25, 2019)".

After a careful examination of petitioner's motion for reconsideration, the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and discussed by the Court's Decision promulgated on March 25, 2019.

Respondent CIR's assertion that petitioner's request to hold in abeyance the service and execution of the warrants of distraint and/or levy and garnishment, which was granted by Deputy Commissioner Jose Mario C. Buñag, through a letter[1] dated January 21, 2005, is a positive act that justify the suspension of the prescriptive period. Respondent CIR cites Commissioner of Internal Revenue vs. Consolidated Mining Co., G.R. No.11527, 29 November 1968, and Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., et al., 104 Phil 819.

We are not persuaded. At the outset the request to hold in abeyance the service and execution of the warrants of distraint and/or levy and garnishment is not akin nor equivalent to a motion for reinvestigation which toll the running of the prescriptive period for the collection of an assessed tax. The prescriptive period for collection is interrupted or suspended when the taxpayer files a request for reinvestigation, provided that, as clarified and qualified

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[1] Exhibit "R-4", Docket (Vol. II), p. 460.

herein, such request is granted by the BIR Commissioner.[2] Respondent CIR's sloppy citation of a case entitled "Commissioner of Internal Revenue vs. Consolidated Mining Co., G.R. No.11527, 29 November 1968" does not help the cause, it does not exist.

On the other hand, the case of *Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., et al.*[3], is not in all fours. Respondent CIR failed to enumerate the repeated request or positive acts that induce the government to delay the collection of the assessed tax. Respondent CIR should have been on guard on the right of the government. Failure to collect within the statutory period on a mere request to hold in abeyance the service and execution of the warrants of distraint and/or levy and garnishment with the consequence that the period to collect the assessed tax might prescribed is very unfortunate.

To reiterate, internal revenue taxes which are assessed within the period of limitation may be collected within five (5) years following the assessment.

The 5-year period to collect should be reckoned from the date when the BIR mails/releases/sends the assessment notice to the taxpayer. The Supreme Court in the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[4], ruled as follows:

> *"When the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years [now five years] after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. The assessment of the tax is deemed made and* ***the three-year period [now five-year period] for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.***
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> *In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST*

[2] Bank of Philippine Islands vs. Commissioner of Internal Revenue, G.R. No. 139736 October 17, 2005.
[3] G.R. No. L-11527, November 25, 1958
[4] G.R. No. 139736, October 17, 2005.

following its Assessment. While Assessment No. F AS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989. Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST.

The earliest attempt of the BIR to collect on Assessment No. F AS-5-85-89-002054 was its issuance and service of a Warrant of Distraint and/or Levy on petitioner BPI. Although the Warrant was issued on 15 October 1992, previous to the expiration of the period for collection on 19 October 1992, the same was served on petitioner BPI only on 23 October 1992.

Under Section 223(c) of the Tax Code of 1977, as amended, it is not essential that the Warrant of Distraint and/or Levy be fully executed so that it can suspend the running of the statute of limitations on the collection of the tax. It is enough that the proceedings have validly began or commenced and that their execution has not been suspended by reason of the voluntary desistance of the respondent BIR Commissioner. ***Existing jurisprudence establishes that distraint and levy proceedings are validly begun or commenced by the issuance of the Warrant and service thereof on the taxpayer. It is only logical to require that the Warrant of Distraint and/or Levy be, at the very least, served upon the taxpayer in order to suspend the running of the prescriptive period for collection of an assessed tax, because it may only be upon the service of the Warrant that the taxpayer is informed of the denial by the BIR of any pending protest of the said taxpayer, and the resolute intention of the BIR to collect the tax assessed.***

If the service of the Warrant of Distraint and/or Levy on petitioner BPI on 23 October 1992 was already beyond the prescriptive period for collection of the deficiency DST, which had expired on 19 October 1992, then what more the letter of respondent BIR Commissioner, dated 13 August 1997 and received by the counsel of the petitioner BPI only on 11 September 1997, denying the protest of petitioner BPI and requesting payment of the deficiency DST? Even later and more unequivocally barred by prescription on collection

> *was the demand made by respondent BIR Commissioner for payment of the deficiency DST in her Answer to the Petition for Review of petitioner BPI before the CTA, filed on 08 December 1997." (Emphases supplied)*

In this case, while there is no allegation as to when the FAN dated May 5, 2004 was actually mailed, released or sent to petitioner, the Court notes the acknowledgement made by petitioner in its Legal Memorandum that it was able to receive the subject FAN.[5] Petitioner's witness, Ms. Janet R. Inoceno, even testified[6] that a protest thereon was filed by petitioner on May 19, 2004. In the said "Protest Against the Final Assessment Notice and Letter of Demand both dated May 5 2004 of Standard Insurance Co., Inc. for alleged DST liability 2001"[7], petitioner acknowledged the receipt of that Final Assessment Notice on May 5, 2004. Consequently, reckoning date from which the 5-year prescriptive period to collect is on May 5, 2004. Thus, the BIR had 5 years from such date, or until May 5, 2009 to collect the same.

Records reveal that respondent held in abeyance the service of warrants of distraint/levy and garnishment in a Memorandum[8] dated January 24, 2005. Likewise, as testified by respondent's witness, Revenue Officer II, Jefferson T. Ocampo, the service of warrants of distraint/levy and garnishment was held in abeyance and there is no evidence that the same were served to petitioner. In fact, respondent did nothing to pursue its assessment until the January 31, 2017 Decision of CIR Caesar R. Dulay. The CIR eventually denied petitioner's Request for Reconsideration of the Decision dated September 20, 2004 of Regional Director Teodorica R. Arcegar. Evidently, respondent's right to collect the Deficiency DST under Assessment Notice No. 34-2001, within the five (5) year prescriptive period has lapsed.

The running of the aforementioned 5-year period to collect may nonetheless be suspended under Section 223 of the 1997 NIRC, as amended, *viz*:

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[5] Par. 20, Legal Memorandum (For Petitioner: Standard Insurance Co., Inc.), Docket (Vol. II), p. 483

[6] Answer to Question No. 4, Supplemental Judicial Affidavit of Janet R. Inoceno (In Question and Answer Form), p. 394.

[7] BIR Records, p. 380.

[8] Exhibit "R-3", Docket (Vol. II), pp. 458-459.

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> 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)

Based thereon, only the following grounds can suspend the collection of taxes: (1) during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court; (2) when the taxpayer requests a reinvestigation which is granted by the Commissioner; and, (3) 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.

In this case, none of the above-mentioned grounds for suspension is present. As to the first ground for suspension, while records, indeed, show that petitioner had requested Deputy Commissioner Jose Mario C. Buñag, through a letter[9] dated January 21, 2005, to hold in abeyance the issuance of warrants of distraint/levy and garnishment and that the same was granted by the latter in his Memorandum[10] dated January

[9] Exhibit "R-4", Docket (Vol. II), p. 460.
[10] Exhibit "R-3", Docket (Vol. II), pp. 458-459.

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24, 2005, it appears, however, that petitioner was not informed or notified of the existence of such Memorandum.

The Court, likewise, notes that no other written communication was sent by respondent to petitioner, other than the assailed Decision dated January 31, 2017, in which he denied petitioner's request for reconsideration. The issuance thereof was certainly beyond the five-year period to collect, which had expired on May 5, 2009. Consequently, the said assailed Decision could no longer be enforced as the same was already barred by prescription.

For such reasons, respondent's defense that the prescriptive period provided for the collection of the assessed tax was suspended by the issuance of the said Memorandum has no leg to stand on.

With regard to the second ground for the suspension of the 5-year period to collect, the records are bereft of any showing that petitioner filed a request for reinvestigation of the subject deficiency tax assessment. Lastly, the third ground for the suspension of collection, there is likewise no showing that petitioner could not be located by the BIR.

In sum, We found that no substantial argument was raised to merit reconsideration of our Decision promulgated on March 25, 2019.

WHEREFORE, premises considered, the "Motion for Reconsideration (Re: Decision promulgated on March 25, 2019)" is hereby **DENIED** for lack of merit.

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

I CONCUR:

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