REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

STAEDTLER (PHILIPPINES), INC., Petitioner,	**CTA CASE NO. 8431**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 04 2015; 2:47 p.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution is respondent's **Motion for Reconsideration** filed on February 5, 2015, with petitioner's **Comment/Opposition (to Respondent's Motion for Reconsideration dated 3 February 2015)** filed on March 5, 2015.

In the aforesaid motion, respondent assails the Decision dated January 20, 2015, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner for the taxable year 2007, covering deficiency VAT in the amount of ₱117,251.67 is **CANCELLED** and **WITHDRAWN**. However, the assessments for deficiency income tax and EWT are **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** the amount of ₱60,501.01 and ₱8,681.04, representing deficiency income tax and EWT, respectively, inclusive of the

twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Income Tax	₱ 48,400.81	₱ 12,100.20	₱ 60,501.01
EWT	6,944.83	1,736.21	8,681.04
TOTAL	**₱ 55,345.64**	**₱ 13,836.41**	**₱ 69,182.05**

In addition, petitioner is **ORDERED TO PAY** the following:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱48,400.81 and EWT of ₱6,944.83, computed from April 15, 2008 and January 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b) Delinquency interest at the rate of 20% per annum on the total deficiency taxes of ₱69,182.05, computed from December 4, 2010 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and

c) Delinquency interest at the rate of 20% per annum on the 20% deficiency interest which have accrued as afore-mentioned in "a", computed from December 4, 2010 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED."

Respondent contends that the Court erred in cancelling the assessment on deficiency Value-Added Tax (VAT) in the amount of ₱117,251.67 and Expanded Withholding Tax (EWT) for January to September 2007.

As alleged by respondent, the running of the statute of limitations to make an assessment against taxpayer is suspended upon the grant of the latter's request for reinvestigation pursuant to Section 223 of the National Internal Revenue Code (NIRC) of 1997, as amended. Accordingly, respondent asserts that when petitioner's request for reinvestigation was granted, the running of the period to assess the latter was suspended. Thus, the right of respondent to assess petitioner was allegedly not prescribed for deficiency VAT for the 1st to 3rd quarters of taxable year 2007 and deficiency EWT for January to September 2007.

However, petitioner objects to the afore-mentioned motion on the ground that respondent's arguments are irrelevant because the assailed Decision not only pronounced the deficiency VAT assessment as prescribed, but it was also cancelled for lack of basis, while the deficiency EWT assessment was modified.

The Court finds the Motion for Reconsideration unmeritorious.

Section 223 of the NIRC of 1997, as amended, provides:

> "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 relation hereto is Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR 18-2013, which states that:

> "3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The

taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) Request for reconsideration – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) Request for reinvestigation – refers to a **plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation.** It may also involve a question of fact or of law or both." *(Emphasis supplied)*

In the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[1], the Supreme Court held:

"A. The statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor.

Though the statute of limitations on assessment and collection of national internal revenue taxes benefits both the Government and the taxpayer, it principally intends to afford protection to the taxpayer against unreasonable investigation. The indefinite extension of the period for assessment is unreasonable because it deprives the said taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. As aptly explained in *Republic of the Philippines v. Ablaza* –

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

[1] G.R. No. 139736, October 17, 2005.

> 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.

> In order to provide even better protection to the taxpayer against unreasonable investigation, the Tax Code of 1977, as amended, identifies specifically in Sections 223 and 224 thereof the circumstances when the prescriptive periods for assessing and collecting taxes could be suspended or interrupted.

> To give effect to the legislative intent, these provisions on the statute of limitations on assessment and collection of taxes shall be construed and applied liberally in favor of the taxpayer and strictly against the Government.

> xxx xxx xxx

> To reiterate, Section 224[2] of the Tax Code of 1977, as amended, identifies specific circumstances when the statute of limitations on assessment and collection may be interrupted or suspended, among which is a request for reinvestigation that is granted by the BIR Commissioner. The act of filing a request for reinvestigation alone does not suspend the period; such request must be granted. The grant need not be express, but may be implied from the acts of the BIR Commissioner or authorized BIR officials in response to the request for reinvestigation."

Records reveal that petitioner's Protest Letter[3] dated November 19, 2010 against the Formal Letter of Demand and the attached Final Assessment Notice did not request for a reinvestigation. The said Protest Letter shows that it was a mere request for reconsideration

[2] Now Section 223 of the NIRC of 1997, as amended.
[3] Exhibit "M", docket, p. 1682.

against the Preliminary Assessment Notice attaching the Protest Letter dated October 29, 2010. It states:

> "We are in receipt today of your Formal Letter of Demand with No. 040-B105-07 dated November 4, 2010 allegedly for deficiency taxes for calendar year ending December 31, 2007.
>
> Please be informed that on October 21, 2010, we have received a preliminary assessment notice dated October 8, 2010 on the same subject matter and we have sent our letter reply dated October 29, 2010 duly received by Ms. Nelia A. Delos Reyes, Billing Section on October 29, 2010. A photocopy of said letter is attached for your reference. We are surprised to receive a formal letter of demand."

Notwithstanding the fact that petitioner submitted its Schedule of 2007 Purchases of Services with corresponding ORs, Schedule of 2007 Marine Insurance with corresponding ORs, 2007 VAT Relief Diskette/CD acknowledgement form – 4 quarters and Schedule of 2007 Purchases,[4] there was no reinvestigation conducted on petitioner's deficiency taxes on the basis of newly discovered or additional evidence. It is clear on the Final Decision dated January 19, 2012 that there was no reinvestigation made by respondent, *viz*:

> "Please be informed that your case was returned by the investigating officer of Revenue District Office No. 39, South Quezon City, **recommending for the reiteration of the assessments issued against you considering that you failed to submit documents in support of your protest.**" (Emphasis supplied)

Accordingly, it is apparent from the foregoing that neither there was a request for reinvestigation made by petitioner nor a reinvestigation conducted by respondent to toll the running of the statute of limitations on the making of assessment. Moreover, in the assailed Decision, the Court not only found the deficiency VAT assessment prescribed, but it was also cancelled for lack of basis.

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[4] Exhibit "O", docket, p. 1688.

WHEREFORE, considering the foregoing, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice