REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

CITIPARKING MANAGEMENT CORPORATION,
Respondent.

CTA EB NO. 2626
CTA Case No. 9451

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAR 05 2024 4:30pm

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R E S O L U T I O N

MANAHAN, *J.:*

For resolution of this Court is Petitioner's *Motion for Reconsideration En Banc's Decision dated September 29, 2023* filed through accredited courier on October 19, 2023, with respondent's *Comment* filed on November 20, 2023.

For easy reference, the dispositive portion of the assailed decision reads as follows:

> "**WHEREFORE**, the Petition for Review, filed by the Commissioner of Internal Revenue, is **DENIED** for lack of merit.
>
> The Decision and Resolution, dated July 23, 2021 and April 28, 2022, respectively, in CTA Case No. 9451 are **AFFIRMED**.

> The Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the foregoing assessments. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.
>
> **SO ORDERED**."[1]

In his motion, petitioner asserts that the running of the statute of limitations should be suspended upon the filing of respondent's request for reconsideration, in compliance with the doctrine of exhaustion of administrative remedies.

On the other hand, respondent asserts that petitioner's right to collect had already prescribed because no actual reinvestigation took place.

Upon careful consideration, the Court *En Banc* finds the motion unmeritorious.

Petitioner merely rehashed his arguments, which arguments were already passed upon extensively by the Court in Division in the assailed Decision.

At any rate, the Court will highlight its earlier ruling on the merits of this case.

As previously cited in the assailed Decision, Sections 203 and 223 of the 1997 National Internal Revenue Code (NIRC), as amended, respectively provide:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) 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 case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For 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."

[1] Court *En Banc* Docket, p. 85.

> "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 on the above-quoted provisions, the collection of assessed deficiency taxes must be made within three (3) years from the last day prescribed by law for the filing of the return or, if filed earlier, then such date of filing of the return shall be considered as filed on the last day. The three (3)-year period shall be interrupted when the taxpayer *requests for a reinvestigation* which is granted by the Commissioner.

In order to determine whether the above three (3)-year prescriptive period was interrupted in this case, an examination of respondent's Letter[2] dated December 5, 2011 is imperative. The letter states:

> "Ma'am/Sir,
>
> This concerns the letter we received last November 11, 2011 from the OIC-Regional Director of Revenue Region No. 7 informing us about their final decision of reiteration of the assessments issued to us due to, according to the letter, failure to submit documents in support of our protest (please see attached letter). In the spirit of fairness and reasonableness, we are asking for a reconsideration

[2] Division Docket, Exhibit "R-13", p. 257.

of that decision. We are asking for a review from your office as a remedy provided for by Sec. 228 of the NIRC. Please accept relevant source/supporting documents that were previously received by the BIR (please refer to folder 1).

We also have a question regarding the propriety of issuing us a *second set of findings* (please refer to Folder 2). We submitted on July 14, 2011 *two hundred twenty two pages of relevant supporting documents* including guide schedules following the order of 'Annex A' Details of Discrepancies, ref. FAN/Demand Letter No. OA-043A-B007-07. We were not able to support PHP148,221.40 from the total PHP1,968,232.28 in basic taxes that were assessed us (please refer to Folder 1). On July 20, 2011, our accountant was summoned to the BIR in Rev. Region No. 7. She thought there will be a final reconciliation but she was given another set of findings in which eight (8) other accounts were included (not included in the assessment which is the basis of the FAN) and those we had already supported were again included.

My accountant has to submit *additional one hundred twenty four pages of source documents* from said additional findings but these were not accepted anymore as one of the employees in Region 7 advised us to just wait for a letter/notice coming from the BIR as a final decision was already made (Please refer to Folder 2).

We have no intention of defrauding or depriving you of collections, only that such collection should be made in accordance with law and reason as any arbitrariness negates the very reason for the Government itself.

We assure you of our full cooperation for the closure of this tax issue the soonest time possible. We all want to move on as there are other LOAs and the current taxable year to take care of.

Thank you very much for your kind attention and consideration."

Section 228 of the 1997 NIRC, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – xxx
> xxx xxx
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> xxx xxx xxx"

In relation to the above-quoted provision, Revenue Regulation (RR) No. 12-85 defines a request for reconsideration or reinvestigation, as follows:

> "**SECTION 6**. *Protest.* —
>
> xxx xxx xxx
>
> For the purpose of the protest herein —
>
> (a) Request for reconsideration — refers to a plea of re-evaluation of the 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.
>
> (b) 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 law or both." *(Emphasis supplied)*

Applying Section 228 of the 1997 NIRC, as amended, in relation to a request for reconsideration and a request for reinvestigation as defined under RR No. 12-85, the above-quoted letter dated December 5, 2011 should be treated in the nature of a request for reconsideration. The wordings of the said letter clearly suggest that respondent is making a plea of re-evaluation of the assessment *on the basis of existing records* without need of additional evidence. Meanwhile, while it is true that respondent intended to submit an additional one hundred twenty four pages of source documents, said documents were no longer presented based on the alleged representations of one of the employees of the Bureau of Internal Revenue Region 7 that a final decision was already made.

Considering that a request for reconsideration and not a request for reinvestigation was made by respondent, the above-quoted Section 223 of the 1997 NIRC, as amended, explicitly provides that only a request for reinvestigation which is granted by the Commissioner will suspend the running of the Statute of Limitations under Section 203 of the same law.

To conclude, the Court *En Banc* finds no compelling reason to deviate from its previous ruling in the assailed Decision. Hence, the denial of the instant motion is in order.

WHEREFORE, petitioner's *Motion for Reconsideration En Banc's Decision dated September 29, 2023* is **DENIED**, for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice