REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

THE STANLEY WORKS SALES (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6971

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAY 06 2008 11:40 am

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DECISION

BAUTISTA, ***J.:***

This is a Petition for Review of respondent's March 22, 2002 Decision denying petitioner's protest to Assessment Notice No. 002523-89-6014 dated April 12, 1993 and ordering petitioner to pay deficiency income tax, inclusive of surcharge, interest and penalty, in the amount of P41,284,968.34 for taxable year 1989.

Petitioner Stanley Works Sales (Philippines), Inc. is a domestic corporation organized and existing under Philippine laws and duly registered with the Securities and Exchange Commission. Its office address is at the 5th Floor, Pan Pacific Hotel, Adriatico Street corner Gen. Malvar Street, Manila.[1]

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 117.

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Respondent is the duly appointed officer of the Bureau of Internal Revenue (BIR) mandated to exercise the powers and perform the duties of his office including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code.[2]

Petitioner is authorized "to engage in the business of designing, manufacturing, fabricating, or otherwise producing, and the purchase, sale at wholesale, importation, export, distribution, marketing or otherwise dealing with, construction and hardware materials, tools, fixtures and equipment."[3]

On January 1, 1979, petitioner and Stanley Works Agencies (Pte.) Limited, Singapore (Stanley-Singapore) entered into a Representation Agreement. Under such agreement, Stanley-Singapore appointed petitioner as its sole agent for the selling of its products within the Philippines on an indent basis.[4]

On April 16, 1990, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for taxable year 1999 and declared the following:[5]

Taxable Income		36,392.00
Tax Due		12,737.00
Quarterly Payments Made This Year		
1st	3.050	
2nd	3.053	
3rd		
		(6,103.00)
Balance of Tax Due		6,634.00
Total Amount Due		6,634.00

[2] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 118.
[3] Par. 3, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*
[4] Exhibit "C."
[5] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 118; BIR Records, pp. 101-102.

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On March 19, 1993, pursuant to Letter of Authority dated July 3, 1992[6], the BIR issued against petitioner a Pre-Assessment Notice (PAN) No. 002523[7] for 1989 deficiency income tax computed as follows:

Net income subject to tax	61,968,674.68
Income tax due thereon	21,689,036.13
Less amount already assessed/paid	12,737.00
Deficiency income tax	21,676,299.13
Add: 25% surcharge	5,419,074.78
Interest	14,089,594.43
Compromise	400,000.00
TOTAL DEFICIENCY TAXES, excl interest	41,284,968.39

On March 29, 1993, petitioner received its copy of the PAN.[8]

On April 12, 1993, respondent, through OIC Domingo C. Paz of Revenue Region No. 4B-2 of Makati, issued to petitioner Assessment Notice No. 002523-89-6014 for deficiency income tax for taxable year 1989.[9] The Notice was sent on April 15, 1993 and petitioner received it on April 21, 1993.[10]

On May 19, 1993, petitioner, through its external auditors *Punongbayan & Araullo*, filed a protest letter and requested reconsideration and cancellation of the assessment.[11]

On November 16, 1993, a certain Mr. John Ang, on behalf of petitioner, executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver).[12] Under the terms of the Waiver, petitioner waived its right to raise the defense of prescription under Section 223 of

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[6] Exhibit "1"; BIR Records, p. 103.
[7] Exhibit "4", BIR Records, p. 185.
[8] BIR Records, p. 165.
[9] Par. 6, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 118.
[10] Par. 8, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 119; Exhibits "5", BIR Records, p. 166.
[11] Par. 9, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*; Exhibit "6", BIR Records, pp. 167-178.
[12] Par. 10, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*

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the NIRC of 1977 insofar as the assessment and collection of any deficiency taxes for the year ended December 31, 1989, but not after June 30, 1994.[13] The Waiver was not signed by respondent or any of his authorized representatives and did not state the date of acceptance as prescribed under Revenue Memorandum Order No. 20-90.[14] Petitioner did not execute any other Waiver or similar document before or after the expiration of the November 16, 1993 Waiver on June 30, 1994.[15]

On January 6, 1994, petitioner, through its external auditors *Punongbayan & Araullo*, wrote a letter to the Chief of the BIR Appellate Division and requested the latter to take cognizance of petitioner's protest/request for reconsideration, asserting that the dispute involved pure questions of law. On February 22, 1994, petitioner sent a similar letter to the Revenue District Officer (RDO) of BIR Revenue Region No. 4B-2 and asked for the transmittal of the entire docket of the subject tax assessment to the BIR Appellate Division.[16]

On September 30, 1994, petitioner, through its external auditors *Punongbayan & Araullo*, submitted a Supplemental Memorandum on its protest to the BIR Revenue Region No. 4B-2.[17]

On September 20, 1995, petitioner, through its external auditors *Punongbayan & Araullo*, filed a Supplemental Memorandum with the BIR Appellate Division.[18]

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[13] Par. 11, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 119.
[14] Par. 12, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*
[15] Par. 13, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*
[16] Par. 14, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*; Exhibits "8" and "10", BIR Records, pp. 187-188, and 191-192.
[17] Par. 15, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*
[18] Par. 17, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 120; Exhibits "15" and "18", BIR Records, pp. 249-253, and 258-259.

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On November 29, 2001, the Chief of the BIR Appellate Division sent a letter to petitioner requiring it to submit duly authenticated financial statements for the worldwide operations of Stanley Works and a sworn declaration from the home office on the allocated share of petitioner as a "branch office."[19]

On December 11, 2001, petitioner, through its counsel the *Quisumbing Torres* Law Offices, wrote the BIR Appellate Division and asked for an extension of period within which to comply with the request for submission of documents. On January 15, 2002, petitioner sent a request for an extension of period to submit a Supplemental Memorandum.[20]

On March 4, 2002, petitioner, through its counsel the *Quisumbing Torres* Law Offices, submitted a Supplemental Memorandum alleging, *inter alia*, that respondent's right to collect the alleged deficiency income tax has prescribed.[21]

On March 22, 2004, respondent rendered a Decision denying petitioner's request for reconsideration and ordering petitioner to pay the deficiency income tax plus interest that may have accrued. The dispositive portion reads:[22]

> "**IN VIEW WHEREOF**, this Office resolves, as it hereby resolves, to **DENY** the request for reconsideration of **STANLEY WORK SALES (Philippines), INC.** dated May 19, 1993 of Assessment No. 002523-89-6014 dated April 12, 1993 issued by this Bureau demanding payment of the total amount of Php 41,284,968.34 as deficiency income tax for taxable year 1989. Consequently, Stanley Works Sales (Philippines), Inc. is hereby ordered to pay the above-stated amount plus interest that may have accrued thereon to the Collection Service, within thirty (30) days from receipt hereof, otherwise, collection will be effected through the summary remedies provided by law.

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[19] Par. 18, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 121.
[20] Par. 19, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*; Exhibit "17", BIR Records, pp. 255-256.
[21] Par. 20, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*
[22] Par. 21, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 122; Exhibit "19", BIR Records, pp. 280-284.

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This constitutes the **final decision** of this Office on the matter."

On March 30, 2004, petitioner received its copy of the assailed Decision.[23]

Hence, on April 28, 2004, petitioner filed before this Court a Petition for Review.

In his Answer filed on July 23, 2004, respondent alleges the following Special and Affirmative Defenses:[24]

"5. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

6. **Paragraph 6 of Article 5 of the RP-Singapore Tax Treaty**, which is the applicable provision in determining whether or not petitioner is a **'Permanent Establishment'** of Stanley-Singapore, provides as follows:

> '(6) An enterprise of a Contracting S(t)ate shall not be deemed to have a permanent establishment in the Contracting S(t)ate merely because it carries on in that other State through a broker, general commission agent or any other agent of an independent status, where such person are acting in the ordinary course of their business. **However, when the activities of such agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered as agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length condition.**' xxx

7. In the case of **Philippine Fund vs. Commissioner of Internal Revenue, CTA Case No. 4461**, this Honorable Court ruled that 'the agent shall not be considered independent if the activities of such agent are devoted wholly or almost wholly on behalf of that resident.'

8. The activities of petitioner shows that it is acting as an exclusive agent devoted wholly on behalf of Stanley-Singapore. The following facts belie the allegations of petitioner that it is acting as a general commission agent or a mere broker of Stanley-Singapore, viz:

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[23] Par. 22, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, *ibid.*
[24] Docket, pp. 81-84.

(a) The corporate income tax return and the accompanying financial statements of petitioner shows that its business operation is devoted wholly to Stanley-Singapore.
(b) The agency contract only allows petitioner to sell products under the 'Stanley' brand. Consequently, petitioner did not sell any other products other than the 'Stanley' brand.
(c) 100% of its expenses are reimbursed by Stanley-Singapore.
(d) 30% of petitioner is owned by the parent company, Stanley Works U.S.A.

9. Petitioner is just a branch of Stanley-Singapore. An examination of petitioner's income tax return and the corresponding financial statements for taxable year 1989 reveal that it does not operate based on the purposes for which it was established, but solely for the purpose of soliciting buyers of Stanley products for Stanley-Singapore. The general restriction imposed under the Representative Agreement entered into by Stanley-Singapore and petitioner practically restrict the business operation of the latter, thus, transacting business solely for the benefit of the Stanley-Singapore, hence, petitioner is a branch of Stanley-Singapore.

10. The doctrine on corporate fiction is not absolute. The veil of corporate fiction may be legally pierced where a corporation is a dummy, is unreal or a sham and serves no business purpose and is intended only as a blind, the corporation form may be ignored for the law cannot countenance a form that is bald and a mischievous fiction (**LIDDEL & Co., vs. Collector of Internal Revenue, L-9687, June 30, 1961**). Thus, to allow petitioner to avoid its tax liability on the ground that the sales were made through Stanley-Singapore, when it is proved that the former is virtually owned by the latter or that they are practically one and the same is to sanction a circumvention of ou(r) tax laws.

11. The perfection of the contract of sale in Singapore (Stanley[-]Singapore) is immaterial in this case because sales purportedly consummated abroad by the home office shall be treated as sales constructively consummated in the Philippines and made by the branch Office, hence, income therefrom shall be considered income from sources within the Philippines. This finds support **under Par. 3.1 of Revenue Audit Memorandum Order No. 1-86**, xxx:

xxx xxx xxx

12. Moreover, petitioner activity of soliciting buyers of Stanley Products exclusively for Stanley-Singapore is considered under Section 1 of RA 5455 as business acts, and constructive sales under the **2nd Par. of 3.1 of RAMO No. 1-86**, xxx:

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xxx xxx xxx

13. Settled is the rule under the Tax Code that when the taxpayer request for the reinvestigations which is granted by the Commissioner, the running of the prescriptive period for assessment and collection of taxes is suspended. In the instant case, the prescriptive period for the collection of the income taxes due from petitioner for taxable year 1989 was suspended considering the fact that its request for reinvestigation was duly granted by the BIR Commissioner.

14. Settled is the rule that a taxpayer may be prevented from setting up the defense of prescription of collection of taxes even if he has not previously waived it in writing, as when by his repeated 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. These repeated request or positive acts on the part of the taxpayer justify the suspension of the prescriptive period for collection (**Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., et al., 104 Phil. 819; Republic vs. Arcache, et al., L-15547, February 29, 1964**).

15. The deficiency income tax assessment issued against petitioner, involving the amount of P41,284,968.34, for taxable year 1989, covered under Income Tax Assessment Notice No. 002523-89-6014 dated April 12, 1993 was made in accordance with law and regulations.

16. All presumptions are in favor of the correctness of tax assessments."

The present case was submitted for decision on May 11, 2007 after trial on the merits and submission of petitioner's Memorandum on March 23, 2007.

For the Court's resolution are the following stipulated issues:[25]

"(a) Whether or not respondent's right to assess and collect deficiency income tax and penalties from petitioner for the taxable year ended 31 December 1989 has prescribed under Sections 203 and 223 of the 1977 NIRC, in relation to Revenue Regulations No. 12-85 and Revenue Memorandum Order No. 20-90 on the requirements for the valid execution of waivers of the defense of prescription;

[25] Stipulation of Issues, Joint Stipulation of Facts and Issues, Docket, pp. 123-124.

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(b) Whether or not RAMO 1-86, which prescribes the tax audit rules for foreign companies maintaining branch offices in the Philippines, is applicable and may serve as legal basis for the instant income tax assessment on petitioner;

(c) Whether or not paragraph 6 of Article 5 of the RP-Singapore Tax Treaty is applicable in determining whether petitioner is a *permanent establishment* of Stanley Singapore;

(d) Whether or not, under the terms and the implementation of the Representation Agreement between the petitioner and Stanley Singapore, petitioner qualifies as a *permanent establishment* of the latter under provisions of the RP-Singapore Tax Treaty;

(e) Whether or not petitioner is merely a branch of Stanley Singapore who performs activities wholly devoted in behalf of the latter;

(f) Assuming *arguendo* that petitioner qualifies as a *permanent establishment*, whether or not the business profits which may be attributed to petitioner from the sales of Stanley Works products are deemed derived from sources outside the Philippines and are not therefore taxable herein; and

(g) Whether or not petitioner is liable to pay the amount of P41,284,968.34, plus interest and penalties, representing the assessed deficiency income tax, covered under Income Tax Assessment Notice No. 002523-89-6014 dated 12 April 1993 for the taxable year 1989."

The Court will first resolve the issue of prescription.

Section 203 of the National Internal Revenue Code of 1977, as amended, provides:

"**SEC. 203. Period of Limitation Upon Assessment and Collection**. – Except as provided in 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 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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Section 70, in relation to Section 69, of the National Internal Revenue Code of 1977, as amended requires a corporation to file its Final Adjustment Return covering the total net income for the preceding calendar year on or before the 15th day of April. Records show that petitioner filed its Final Adjustment Return on April 16, 1990. Counting from said date, the BIR has until April 15, 1993 to assess deficiency income tax from petitioner.[26] It is noted that respondent issued Pre-assessment Notice on March 19, 1993 and Final Assessment Notice (FAN) on April 12, 1993.

Basic is the rule that assessment is deemed made when notice is released, mailed or sent by the Commissioner, and it is not required that the notice be received by the taxpayer within the three-year period.[27] Thus, respondent's right to assess deficiency income taxes has not prescribed.

The next query is whether respondent's right to collect deficiency income taxes has prescribed.

Petitioner argues that respondent's right to collect deficiency income taxes has prescribed under Section 203 and 223 of the NIRC of 1977, as amended. From the date of assessment for deficiency income taxes, respondent has another period of three years within which to collect. And since there was no valid waiver, respondent's right to collect has prescribed.

This Court agrees with petitioner.

In **Commissioner of Internal Revenue vs. Philippine Global Communication, Inc.**[28], the Supreme Court ruled:

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[26] 1992 being a leap year.

[27] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, Rogelio A. Dio and Virginia S. Dio*, G.R. No. 128315. June 29, 1999; and *Basilan Estates, Inc. vs. Commissioner of Internal Revenue*, 21 SCRA 17.

[28] G.R. No. 167146, October 31, 2006.

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"Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue, issued on 27 November 1985, defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:

> Section 6. Protest. - The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:
>
> xxx xxx xxx
>
> For the purpose of protest herein—
>
> (a) *Request for reconsideration* -- refers to a plea for a 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.
>
> (b) *Request for reinvestigation* — refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both.

The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence. A re-evaluation of existing records which results from a request for reconsideration does not toll the running of the prescription period for the collection of an assessed tax. Section 271 distinctly limits the suspension of the running of the statute of limitations to instances when **reinvestigation** is requested by a taxpayer and is granted by the CIR. The Court provided a clear-cut rationale in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue* explaining why a request for reinvestigation, and not a request for reconsideration, interrupts the running of the statute of limitations on the collection of the assessed tax:

> Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter cannot."

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In the case of **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**[29], the Supreme Court further elucidated:

"xxx, we need to examine Section 320 of the Tax Code of 1977, which states:

Sec. 320. *Suspension of running of statute.*—The running of the statute of limitations provided in Sections 318 or 319 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 re-investigation 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. (Emphasis supplied)

The above section is plainly worded. In order to suspend the running of the prescriptive periods for assessment and collection, the request for reinvestigation must be granted by the CIR.

In ***BPI v. Commissioner of Internal Revenue,*** the Court emphasized **the rule that the CIR must first grant the request for reinvestigation as a requirement for the suspension of the statute of limitations**. The Court said:

In the case of *Republic of the Philippines v. Gancayco,* taxpayer Gancayco requested for a thorough reinvestigation of the assessment against him and placed at the disposal of the Collector of Internal Revenue all the evidences he had for such purpose; yet, the Collector ignored the request, and the records and documents were not at all examined. Considering the given facts, this Court pronounced that—

[29] G.R. No. 174942, March 7, 2008.

> x x x ***The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension.*** (*Collector v. Suyoc Consolidated, supra;* also *Republic v. Ablaza, supra*). Moreover, the Collector gave appellee until April 1, 1949, within which to submit his evidence, which the latter did one day before. There were no impediments on the part of the Collector to file the collection case from April 1, 1949...
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> In *Republic of the Philippines v. Acebedo,* this Court similarly found that—
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> Xxx [T]he 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 follow-up of this warrant. Consequently, ***the request for reinvestigation did not suspend the running of the period for filing an action for collection.*** [Emphasis in the original]
>
> The Court went on to declare that the burden of proof that the request for reinvestigation had been actually granted shall be on the CIR. Such grant may be expressed in its communications with the taxpayer or implied from the action of the CIR or his authorized representative in response to the request for reinvestigation." (*Emphasis supplied*)

Applying the above BIR regulations and Supreme Court rulings, petitioner's request for reconsideration did not suspend the running of the prescriptive period to collect deficiency income tax. Petitioner's protest merely requested a reconsideration of the FAN, and not a request for reinvestigation.

Furthermore, petitioner's Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code did not suspend the running of the period of limitation. Section 223(b) of the 1977 NIRC states:

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"**SEC. 223. Exceptions as to period of limitation of assessment and collection of taxes**.— xxx

(b) If before the expiration of the time prescribed in the preceeding section for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

In the landmark case of **Philippine Journalists, Inc. vs. Commissioner of Internal Revenue**[30], the High Court ruled:

"The NIRC, under Sections 203 and 222 (Section 223 in the 1977 NIRC), provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. As was held in *Republic of the Phils. 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 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.* (Emphasis supplied)

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[30] G.R. No. 162852, December 16, 2004.

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RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed, thus:

> In the execution of said waiver, the following procedures should be followed:
>
> 1. The waiver *must be* in the form identified hereof. This form may be reproduced by the Office concerned *but there should be no deviation from such form. The phrase 'but not after __________ 19___' should be filled up...*
>
> 2. ...
>
>   Soon after the waiver is signed by the taxpayer, *the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver.* The date of such acceptance by the Bureau should be indicated...
>
> 3. The following revenue officials are authorized to sign the waiver. xxx

A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. 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. RMO No. 20-90 explains the rationale of a waiver:

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> ... The phrase 'but not after ________ 19___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. *The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.* (Emphasis supplied)"

On the basis of the foregoing jurisprudence, petitioner's Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code was not valid and binding for several reasons. *First*, there was no conformity, either by respondent or his duly authorized representative. *Second*, there was no date of acceptance to show that both parties agreed on the Waiver before the expiration of the prescriptive period. *Third*, there was no proof that petitioner was furnished a copy of the Waiver. As the Waiver was defective, the running of the prescriptive period was not suspended.

In finding that respondent's right to collect deficiency income tax from petitioner has prescribed, this Court quotes the Highest Tribunal's ruling in **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**[31] as follows:

> "The statute of limitations on collection may only be interrupted or suspended by a valid waiver executed in accordance with paragraph (d) of Section 223 of the Tax Code of 1977, as amended, and the existence of the circumstances enumerated in Section 224 of the same Code, which include a request for reinvestigation granted by the BIR Commissioner.
>
> Even when the request for reconsideration or reinvestigation is not accompanied by a valid waiver or there is no request for reinvestigation that had been granted by the BIR Commissioner, the taxpayer may still be held in estoppel and be prevented from setting up the defense of prescription of the statute of limitations on collection when, by his own repeated requests or positive acts, the Government had been, for good reasons, persuaded to postpone collection to make

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

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the taxpayer feel that the demand is not unreasonable or that no harassment or injustice is meant by the Government, as laid down by this Court in the *Suyoc* case.

Applying the given rules to the present Petition, this Court finds that –

(a) The statute of limitations for collection of the deficiency DST in Assessment No. FAS-5-85-89-002054, issued against petitioner BPI, had already expired; and

(b) None of the conditions and requirements for exception from the statute of limitations on collection exists herein: Petitioner BPI did not execute any waiver of the prescriptive period on collection as mandated by paragraph (d) of Section 223 of the Tax Code of 1977, as amended; the protest filed by petitioner BPI was a request for reconsideration, not a request for reinvestigation that was granted by respondent BIR Commissioner which could have suspended the prescriptive period for collection under Section 224 of the Tax Code of 1977, as amended; and, petitioner BPI, other than filing a request for reconsideration of Assessment No. FAS-5-85-89-002054, did not make repeated requests or performed positive acts that could have persuaded the respondent BIR Commissioner to delay collection, and that would have prevented or estopped petitioner BPI from setting up the defense of prescription against collection of the tax assessed, as required in the *Suyoc* case.

This is a simple case wherein respondent BIR Commissioner and other BIR officials failed to act promptly in resolving and denying the request for reconsideration filed by petitioner BPI and in enforcing collection on the assessment. They presented no reason or explanation as to why it took them almost eight years to address the protest of petitioner BPI. The statute on limitations imposed by the Tax Code precisely intends to protect the taxpayer from such prolonged and unreasonable assessment and investigation by the BIR." (*Emphasis supplied*)

Respondent or her duly authorized representatives simply failed to act promptly on petitioner's request for reconsideration and took no effort to collect the

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deficiency income tax from petitioner when there was nothing that prevented the BIR from doing so. So that in this case, when the petitioner received the assessment on April 21, 1993, respondent may only collect the deficiency tax until April 1996 but respondent rendered a decision denying the protest only on March 22, 2004, eight (8) years have lapsed.

Considering that the right of respondent to collect from petitioner the deficiency income tax had already prescribed, the resolution of the remaining issues is now rendered moot.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's Decision dated March 22, 2002 is hereby **REVERSED** and **SET ASIDE**. The Assessment Notice No. 002523-89-6014 dated April 12, 1993 is hereby ordered **CANCELLED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division