REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CHUAYUCO STEEL MANUFACTURING CORPORATION,
Respondent.

C.T.A. EB NO. 458
(C.T.A. CASE NO. 6642)

Present:

ACOSTA, Presiding Justice
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

AUG 0 4 2009 Arfapolinario 1:45 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner") under *Section 11 of RA No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended,* which seeks to set aside the Decision dated October 23, 2008 and Resolution dated January 19, 2009 rendered by the First Division of this Court in C.T.A.

Case No. 6642, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review as regards the remaining assessment notice is hereby **GRANTED**. Accordingly, Assessment Notice No. TFD-96-EWT-014-02 for deficiency expanded withholding tax for the taxable year 1996 in the amount of P357,468.71 inclusive of 50% surcharge and 20% interest is hereby **CANCELLED**.
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> **SO ORDERED**."
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> "**WHEREFORE,** finding no justification or compelling reasons to amend and/or overturn this Court's Decision dated October 23, 2008, respondent's "**Motion for Reconsideration**" is hereby **DENIED** for lack of merit
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> **SO ORDERED**."

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including inter alia, the power to decide disputed assessments, refunds on internal revenue taxes, fees or other charges, penalties in relation thereto, and other matters arising under the tax laws. He holds office at the BIR National Office Building, Diliman, Quezon City.

Respondent Chuayuco Steel Manufacturing Corporation (hereafter "respondent corporation"), on the other hand, is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of manufacturing, processing, buying, and selling of iron, steel, and tin products.

THE FACTS

The facts, as culled from the records, are as follows:

For the taxable years 1996 and 1997, respondent corporation filed its corresponding Corporate Annual Income Tax Returns on April 15, 1997 and April 15, 1998.

Pursuant to a Revalidated Letter of Authority issued on November 5, 1998, respondent's books of accounts and other accounting records, were examined by petitioner CIR's authorized representatives for all internal revenue taxes covering the periods from January 1, 1997 to December 31, 1997. For taxable year 1996, however, the Bureau of Internal Revenue Tax Fraud Unit conducted an investigation.

On July 10, 2000, petitioner issued a Preliminary Assessment Notice to respondent covering the taxable years 1996 and 1997. Subsequently, on June 11, 2002, respondent corporation received the Final Assessment Notices dated May 20, 2002 for deficiency income,

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value-added, and withholding tax assessments in the following amounts and details, viz.:

Year	Tax	Assessment Notice No.	Date of Issuance	Amount
1996	EWT	TFD-96-EWT-014-02	20-May-02	357,468.71
1996	VAT	TFD-96-VAT-015-02	20-May-02	41,866,480.41
1996	Income	TFD-96-IT-016-02	20-May-02	144,030,765.23
1997	Income	TFD-97-IT-017-02	20-May-02	39,064,609.64
1997	VAT	TFD-97-VAT-018-02	20-May-02	11,371,817.65
		Total		**236,691,141.64**

On July 10, 2002, respondent corporation filed its letter-protest dated July 8, 2002, with the Office of the Assistant Commissioner (Enforcement Services). On September 9, 2002, a Supplemental Memorandum dated September 6, 2002 was likewise filed by respondent corporation, attaching thereto documents in support of its protest.

On April 4, 2003, in view of the inaction of petitioner, respondent filed a Petition for Review with this Court, docketed as C.T.A. Case No. 6642.

In his Answer, petitioner CIR alleged the following special and affirmative defenses:

> "7. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

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8. Petitioner, in its [P]etition for [R]eview, assailed the validity of the deficiency assessments issued against it for the years 1996 and 1997 in the total amounts of P186,254,714.35 and P50,436,427.29, respectively, on the following grounds that: (1) Petitioner availed of the VAP pursuant to RMO 59-97, hence, there should be no investigation conducted relative to its taxable period ending 31 December 1996; (2) The right of the government to assess petitioner for the years involved has prescribed; (3) That petitioner's books of account for the year 1997 had been examined and completed under Letter of Authority Number 000009234; (4) That the tax assessments for the years 1996 and 1997 have no factual and legal basis;

9. On the first issue raised, assuming that petitioner indeed applied for the Voluntary Assessment Program (VAP) under RMO 59-97 for the taxable period 1996, it bears stressing that the availment of said program is not a guarantee of the absolute immunity from investigation. When there is a finding of fraud, as in this case, the taxpayer availing of the VAP may still be investigated and assessed deficiency taxes if warranted;

10. On the claim that the government's authority to assess petitioner has prescribed, this position is without merit. Be it noted that as per result of the investigation by the Revenue Officers, a prima facie case was established that there were huge discrepancies in the amounts declared as purchases of raw materials per VAT returns as compared to its data per information supplied by third party, the National Steel Corporation. The finding yielded the result that petitioner has under-declared its purchases of raw materials intended for its business deliberately or intentionally in huge amount. Because of this, there exists sufficient proof to support respondent's findings that petitioner's 1996 and 1997 returns filed were false and/or fraudulent. The three (3) year prescriptive period within which the government is authorized to assess petitioner is, therefore, not applicable. Instead, the ten (10) year period should apply in this case[;]

11. As to the third issue, petitioner contended that its book of accounts for the years 1996 and 1997 had been examined under the Letters of Authority Nos. 000009081 and 000009063, respectively, dated 29 June 1998 issued by the RDO Anselmo G. Adriano, Revenue District No. 51, Pasay City. We disagree. Worth stressing is the fact that the Letters of Authority (LOA) mentioned were revalidated by the Letters of Authority Nos. 000009291 and 000009263 dated 15 November 1998, respectively. The LOA dated 29 June 1998 was limited to the examination of petitioner's books of account for VAT purpose only, whereas, the LOA issued dated 15 November 1998, covers all internal revenue taxes. Nevertheless, it should be noted also that the Letter of Authority in question was issued by the Commissioner himself on the strength of a prima facie evidence of fraud as provided in Section 235 of the Tax Code[;]

12. Lastly, petitioner's contention that the subject assessments lack factual and legal basis, deserves no credence. Be it noted that the issuance of the subject tax assessment was based on the data taken from a third party, in this case, the supplier, National Steel Corporation which is allowed under Section 6 (A)(B) of the Tax Code, because of petitioner's failure to present its books of account. And based on the records obtained from such entity, in 1996, petitioner's purchases of raw material per VAT returns amounted to Php661,442,857.54 as against the amount of Php777,533,539.40 as raw materials purchases per access to records, or with a total undeclared amount of Php111,090,681.86 for that year alone. And, for the year 1997, petitioner's purchases of raw materials per VAT returns amounted to Php648,191,647.80 as compared to the amount of Php694,334,340.90 per access to records, hence, a difference of Php46,142,693.10. The above-stated undeclared purchases refer to the purchases of raw materials intended to be used in business. If indeed, the funds used for the purchases came from any of the assets or said goods had been acquired on credit, then the corresponding account should have been included in the balance sheet as of the year

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> end. Also, the undeclared purchases were no longer included in the inventory at the year end. Logically, the same were presumed to have been sold at regular gross profits as appearing in the income statement[;]
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> 13. Perusal of the income statement disclosed no interest expense was claimed. Loans payable account had been idle for a long period and considering the huge amount, it is highly questionable that no interest expense will be incurred. Inasmuch as the nature of the business of petitioner is VATABLE, the likely source of undeclared income is also VATABLE. Hence, deficiency VAT is due from petitioner;
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> 14. Petitioner failed to submit documents or proof that appropriate taxes on its income payments for 1996 were withheld and remitted. This resulted in deficiency assessment for expanded withholding tax; [and]
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> 15. Finally, it is a well settled rule in taxation that assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

Respondent corporation presented Oliver Gianan, George Chua, FO3 Renato Recto, Manuel Landicho, Eugenio Magtanoc, and Evelyn Gonzales, as witnesses, and documentary evidence, marked as Exhibits "A" to "I[15]", inclusive of their submarkings.

On April 9, 2008, before petitioner CIR presented his evidence, respondent manifested that it has availed of the tax amnesty under *RA*

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9480 on March 6, 2008, and moved for the partial withdrawal of the Petition for Review.

In a Resolution dated April 24, 2008, the First Division granted respondent's motion and considered as withdrawn, the following assessment notices:

1) Assessment Notice No. TFD-96-VAT-015-02 for deficiency VAT of P41,866,480.41, inclusive of 50% surcharge and 20% interest;

2) Assessment Notice No. TFD-96-IT-016-02 for deficiency income tax of P14,030,765.23, inclusive of 50% surcharge and 20% interest;

3) Assessment Notice No. TFD-97-IT-017-02 for deficiency income tax of P39,064,609.64, inclusive of 50% surcharge and 20% interest;

4) Assessment Notice No. TFD-97-VAT-018-02 for deficiency VAT in the amount of P11,371,817.65, inclusive of 50% surcharge and 20% interest.

However, as regards the assessment for expanded withholding tax (EWT), considering that the same is not covered by the tax amnesty under RA 9480, trial proceeded.

During the hearing on April 22, 2008, petitioner CIR's counsel waived his right to present evidence.

On October 23, 2008, the First Division rendered a Decision canceling Assessment Notice No. TFD-96-EWT-014-02 for deficiency EWT in the amount of P357,468.71, inclusive of 50% surcharge and 20% interest.

Not satisfied, on November 14, 2008, petitioner CIR filed a "Motion for Reconsideration", which was denied by the First Division in a Resolution dated January 19, 2009.

Hence, this instant Petition for Review raising this sole:

ISSUE

WHETHER OR NOT THE FIRST DIVISION ERRED IN CANCELLING ASSESSMENT NOTICE NO. TFD-96-EWT-014-02 FOR DEFICIENCY EXPANDED WITHHOLDING TAX FOR THE TAXABLE YEAR 1996 IN THE AMOUNT OF P357, 468.71.

On February 27, 2009, without necessarily giving due course to the petition, We required the respondent to file its comment, not a motion to dismiss, within ten (10) days from notice.

On March 16, 2009, respondent filed its "Comment".

[initials]

On March 19, 2009, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum, the case was deemed submitted for decision on April 27, 2009.

THE COURT *EN BANC'S* RULING

The petition has no merit.

Record shows that one of petitioner CIR's defenses in his Answer filed in C.T.A. Case No. 6642 is that his right to assess respondent of withholding tax has not yet prescribed. Petitioner maintains that the BIR found a prima facie evidence of fraud through the filing of false or fraudulent returns in order to justify the application of the ten (10) year prescriptive period, and not three (3) years, within which the government is authorized to assess.

However, when the First Division ruled out the existence of fraud for failure of petitioner to prove such allegation, petitioner's position changed in his Motion for Reconsideration of the First Division's Decision dated October 23, 2008, and alleged that *Section 251 of the NIRC of 1997* is applicable in this case since respondent was assessed not for the collection of income tax, but it is being held liable to a penalty

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equal to the total amount of tax not collected and remitted, therefore, the 5-year prescriptive period under Section 281 should be applied in this case. Petitioner CIR reiterates such position in this present appeal.

Respondent corporation, on the other hand, maintains that Section 203 of the NIRC does not make any distinction as to the nature of the internal revenue assessment for purposes of the running of the prescriptive period. *Section 251 of the NIRC* refers to criminal proceedings. This is not the proceedings in the court below, cancellation of deficiency withholding tax assessment and/or collection of unpaid taxes, which is civil in nature. The First Division, as well as petitioner's examiners, found that respondent was able to adduce evidence to prove that it withheld and remitted the correct amount of withholding taxes for the year 1996.

We rule for respondent corporation.

At the outset, We agree with the findings of the First Division that there was no failure to collect and remit withholding taxes as respondent corporation has satisfactorily proven its withholding and remittance of the correct withholding taxes for the taxable year 1996. As aptly ruled by the First Division:

"As to the issue of substantiation, petitioner has duly supported its claim that it properly and correctly withheld and remitted the corresponding taxes on all its income payments with its Monthly Remittance Return of Income Taxes Withheld and Annual Information Return of Income Taxes Withheld on Compensation, Expanded and Final Withholding Taxes. Based on these documents, ***petitioner indeed withheld and remitted the taxes on its income payments for the taxable year 1996 in the total amount of P515,241.92, contrary to respondent's findings of under-withholding.*** These same documents and a summary of remittance were likewise submitted by petitioner to respondent.

In fact, based on the findings of Revenue Officers Vicente Gamad, Jr., Henry Sarmiento and Raul Magtanob, with the corresponding approval of the Assistant Commissioner of Internal Revenue – Enforcement Division, Mr. Percival Salazar, it was recommended that the assessment issued against petitioner for deficiency expanded withholding taxes for the taxable year 1996 be cancelled. Accordingly, upon review of the records, they admit to errors as properly pointed out by petitioner, and made revisions on the assessments, this time canceling the alleged deficiency expanded withholding taxes for the taxable year 1996.

Inasmuch as ***petitioner has satisfactorily proven its withholding and remittance of the proper taxes for taxable year 1996***, this Court deems it proper to cancel the assailed assessment notice." (Emphasis Ours)

Record shows that as a result of its reinvestigation, the Tax Fraud Division has reconsidered some points in respondent corporation's protest, and one of these is the cancellation of the 1996 assessment for withholding tax deficiencies, which was recommended in the amendment of the final assessment, as contained in the Memorandum dated June 2, 2003 *(BIR Records, p. 757).* Undoubtedly, respondent corporation has sufficiently substantiated, before the BIR and more importantly before this Court, its claim that it is not liable for the alleged withholding tax deficiency.

As regards the issue of prescription, We find that petitioner CIR's right to assess had already prescribed. *Section 203 of the NIRC of 1977, as amended,* provides:

> "*SEC. 203. Period of Limitation Upon Assessment and Collection.*- Except as provided in the succeeding section, 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."

Pursuant to the above provision, the law prescribes a period of three years from the day the return was actually filed or from the last day prescribed by law for the filing of such return, whichever comes later, within which the BIR may assess a national internal revenue tax. However, the law increased the prescriptive period to assess or to begin a court proceeding for the collection without an assessment to ten (10) years when a false or fraudulent return is filed, with the intent of evading the tax or when no return was filed at all. In such cases, the ten-year period begins to run only from the date of discovery by the BIR of the falsity, fraud or omission *(Commissioner of Internal Revenue vs. Philippine Global Communication, Inc., G.R. No. 167146, October 31, 2006 [506 SCRA 427]).*

In this case, as found by the First Division, respondent corporation filed its Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes for taxable year 1996 on January 29, 1997. Pursuant to the above-quoted provision, petitioner had until January 29, 2000, three (3) years from the filing of the returns, within which to assess respondent for deficiency withholding tax for taxable year 1996. However, record shows that the Formal Letter of Demand, together with the Assessment Notice, was issued on May 20, 2002 only. Clearly, the subject assessment was issued beyond the three (3) year prescriptive period.

Furthermore, as aptly ruled by the First Division, fraud was not proven by petitioner CIR, in fact, he did not present evidence before the Court in Division to prove his allegations of under-withholding and fraud, and consequently waived his right to present his evidence, during the

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hearing on April 22, 2008. Well-settled is the rule that fraud cannot be presumed and it must be established by clear and sufficient evidence *(Heng Tong Textile, Co. vs. CIR, G.R. No. L-19737, August 26, 1968 [24 SCRA 767]).* Therefore, even the ten (10) year prescriptive period to assess, in case of existence of fraud, cannot be applied in this case, absent a clear and convincing proof of the same.

Petitioner CIR's reliance on *Sections 251 and 281 of the NIRC 1997, as amended,* is clearly misplaced. As regards *Section 251*, which provides for the penalty imposed to those withholding agents who fail to collect and remit tax, it must be emphasized that for this provision to apply, there must first be a finding of such failure and conviction, which are both wanting in this present case. Similarly, *Section 281* which provides for a prescription of five (5) years, for violation of any provision of the tax code, refers to the prescription of crimes covered by the said code. It bears stressing that this is not a criminal proceeding against respondent, and in fact, petitioner CIR never filed a criminal case for the alleged violation of the law that would warrant the application of the five (5) year prescriptive period. Hence, since both provisions relied upon by petitioner refer to criminal actions, the same are not applicable in the instant case, which is a civil case.

OP

Finding no reversible error, We affirm the assailed Decision dated October 23, 2008 and Resolution dated January 19, 2009 rendered by the First Division in C.T.A. Case No. 6642.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and accordingly **DISMISSED,** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice