

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

-versus-

**PHILIPPINE GLOBAL
COMMUNICATIONS, INC.,**

Respondent.

C.T.A. EB No. 37
(C.T.A. Case No. 6568)

Present:

Acosta, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ:

Promulgated:

FEB 22 2005

[Signature]

X ----- X

D E C I S I O N

CASTAÑEDA, JR., J.:

Before Us is a Petition for Review filed by the Commissioner of Internal Revenue praying for the reversal of this Court's Decision in C.T.A. Case No. 6568 promulgated on June 9, 2004 and the Court's Resolution promulgated on September 22, 2004.

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On September 30, 2004, the petitioner received the Court's Resolution on his Motion for Reconsideration of the Decision dated June 9, 2004. On October 14, 2004, petitioner filed a Motion for Extension of Time to file a Petition for Review with the Court *En Banc* pursuant to Section 11 of Republic Act No. 9282 otherwise known as "An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court of Tax Appeals, And For Other Purposes". On October 29, 2004, petitioner filed another Motion for Extension of Time to file his Petition for Review.

In an *En Banc* Resolution promulgated on November 9, 2004, this Court granted the petitioner a non-extendible period of fifteen (15) days, reckoned from October 30, 2004, within which to file his Petition for Review. In view of said Resolution, petitioner had until November 15, 2004 within which to file his Petition for Review.

On November 25, 2004, the Court received a Notice of Appearance with Manifestation and Motion filed through registered mail on November 12, 2004 by the Office of the Solicitor General making of record its appearance as counsel of the petitioner and requesting for a fresh period of fifteen days from November 14, 2004 or until November 29, 2004 within which to file a Petition for Review on behalf of the Commissioner of Internal Revenue. The Court in an *En Banc*

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Resolution promulgated on December 7, 2004 deemed the aforesaid Motion as granted considering that the Petition for Review had already been filed through registered mail on November 16, 2004.

The challenged Decision in CTA Case No. 6568 ordered the Commissioner of Internal Revenue to withdraw and cancel the subject assessment for deficiency taxes on the ground of prescription. The dispositive portion of the Decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioner. Accordingly, respondent's Final Decision dated October 8, 2002 is hereby REVERSED and SET ASIDE and respondent is hereby ORDERED to WITHDRAW and CANCEL Assessment Notice No. 000688-80-7333 issued against the petitioner for its 1990 income tax deficiency because respondent's right to collect the same has prescribed.

The herein petitioner's Motion for Reconsideration of the above-cited Decision was denied by the Court in a Resolution promulgated on September 22, 2004. Hence, petitioner filed this Petition for Review with the following assignment of errors:

THE COURT OF TAX APPEALS ERRED IN RULING THAT THE RIGHT OF THE GOVERNMENT TO COLLECT THE DEFICIENCY INCOME TAX ASSESSMENT HAS PRESCRIBED.

A. THE PRESCRIPTIVE PERIOD WAS INTERRUPTED WHEN RESPONDENT FILED TWO LETTERS OF PROTEST DISPUTING IN DETAIL THE DEFICIENCY ASSESSMENT IN QUESTION AND REQUESTING THE CANCELLATION OF SAID ASSESSMENT. THE TWO LETTERS OF PROTEST ARE, BY NATURE, REQUESTS FOR REINVESTIGATION OF THE DISPUTED ASSESSMENT.

B. THE REQUESTS FOR REINVESTIGATION OF RESPONDENT WERE GRANTED BY THE BUREAU OF INTERNAL REVENUE. (*Petition for Review, p. 7*)

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The petitioner avers that he begs to differ from the Court's Decision saying that "the CTA ruled that the right of the government to collect the deficiency income tax has prescribed because the assessment was issued beyond the prescriptive period provided in Section 203 of the National Internal Revenue Code of 1997" (*Petition for Review, p. 8*).

Citing the case of ***Collector of Internal Revenue vs. Suyoc Mining Co., 104 Phil. 819 (1958)***, petitioner argues that the statutory period of limitation for the collection of taxes may be interrupted if by the taxpayer's repeated requests or positive acts, the government was, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice was meant by the government. The petitioner also argues that the two letters of protest reveal that respondent not only requested for the cancellation of the assessment but also sought a reinvestigation or reconsideration of the same when it disputed or challenged point by point the itemized deductions in the deficiency findings which were the core of the assessment invoking ***Commissioner of Internal Revenue vs. Capitol Subdivision, Inc., 10 SCRA 773 (1964)***. Petitioner contends "that the administrative remedy given by law to a taxpayer, if he desires to contest a deficiency assessment, is to ask for a reinvestigation or reconsideration of the same. The tax code does not mention a request for cancellation of the assessment as one of the remedies available to a taxpayer, although the same may be included as one of the prayers in a request for reinvestigation or

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request for cancellation of the deficiency assessment cannot be acted upon if no reinvestigation or reconsideration is undertaken by the BIR”.

The arguments presented by the petitioner in the present Petition for Review are only a rehash of his arguments on the issues involved in CTA Case No. 6568 which have been squarely ruled upon and discussed at length in the assailed CTA Decision and Resolution.

The Court is not convinced that petitioner’s arguments on the assigned errors warrant a reversal or modification of the assailed Decision. Firstly, the assailed Decision did not order the withdrawal and cancellation of the assessment against the herein respondent on the ground that the right of the government to collect the deficiency income tax has prescribed *because the assessment was issued beyond the prescriptive period provided in Section 203 of the NIRC of 1997*. The assailed Decision ordered the withdrawal and cancellation of the assessment on the ground that the right of the government to collect the tax had already prescribed. Nowhere in the assailed Decision was it stated that the reason for the prescription of the right to collect was due to the issuance of the assessment beyond the prescriptive period as the petitioner would like this Court to believe (*Petition for Review, p. 8*). Prescription of the right to collect and prescription of the right to assess are two different defenses that taxpayers may rely upon to prevent the government from enforcing an assessment.

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Secondly, the Supreme Court rulings in the cases of ***Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., 104 Phil 819 (1958)*** and ***Commissioner of Internal Revenue vs. Capitol Subdivision, Inc., 10 SCRA 773 (1964)*** are both inapplicable in CTA Case No. 6568 because as stated in the assailed Decision, the herein respondent categorically stated in a letter that its protest-letters cannot be treated as a request for reinvestigation. In addition, respondent refused to submit any document or record to the Revenue Examiner for purposes of reinvestigation. Respondent, therefore, had made it very clear that it was not seeking a reinvestigation of the assessment. At that particular time, petitioner should have started collection proceedings against the respondent because the prescriptive period for the collection of the assessed tax deficiencies was not suspended. As correctly held in the assailed Decision:

The protest letters filed by the petitioner did not toll the running of the prescriptive period to collect the assessed deficiency income tax. Section 224 of the NIRC of 1977, as amended, provides:

"Sec. 224. *Suspension of running of statute.* - The running of the statute of limitation provided in Sections 203 and 223 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 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: xxx xxx xxx." (Emphasis supplied)

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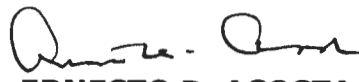
In the case before us, none of the above-mentioned requisites is present. That is, there is no request for reinvestigation coming from the taxpayer and consequently, the second requisite cannot exist by itself. The protests letters, dated May 6, 1994 and May 20, 1994, filed by the petitioner asked for the cancellation of the assessment and not a reinvestigation thereof.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the assailed Decision and Resolution in C.T.A. Case No. 6568 are hereby **AFFIRMED** *in toto*.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

We Concur:


ERNESTO D. ACOSTA
Presiding Justice


ERLINDA P. UY
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

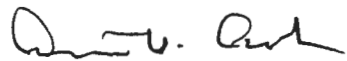

OLGA PALANCA-ENRIQUEZ
Associate Justice


CAESAR A. CASANOVA
Associate Justice



CERTIFICATION

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



ERNESTO D. ACOSTA
Presiding Justice

