REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8376

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:
APR 16 2014
11:23 a.m.

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DECISION

BAUTISTA, J.:

The Petition for Review filed on November 14, 2011, pursuant to Section 7(a)(1)[1] of Republic Act ("RA") No. 1125,[2] as amended by RA No. 9282[3] and RA No. 9503,[4] seeks for the Court to:[5]

a. Suspend the collection of the disputed tax assessment and/or enjoin respondent from enforcing the

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[1] Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[2] An Act Creating the Court of Tax Appeals, as amended.

[3] 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.

[4] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] *Records*, pp. 1-54, with Annexes.

subject Warrant of Distraint and/or Levy dated October 27, 2011;

b. Declare the assessment for alleged deficiency expanded withholding taxes, withholding tax on deposit substitute, deficiency real estate dealer's tax (fixed tax) and penalties for late remittance of withholding tax on compensation, plus all increments incident to delinquency, or in the total amount of P1,624,930.32, and compromise penalty of P37,800.00 for the year 1986, as prescribed; and

c. Order the cancellation of the Final Assessment Notice, Assessment Notices, and Warrant of Distraint and/or Levy, dated October 27, 2011.

FACTS OF THE CASE

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission.[6] It holds office at the 20th Floor, Chatham House, Rufino corner Valero St., Salcedo Village, Makati City.[7]

Citytrust Banking Corporation (hereinafter referred to as "Citytrust") is a domestic corporation that is duly registered with the Securities and Exchange Commission ("SEC").[8]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (the "Commissioner"), empowered under the National Internal Revenue Code to authorize the examination of any taxpayer and the assessment of the correct amount of tax as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue ("BIR"). She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[9]

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[6] *Records*, p. 128, Joint Stipulation of Facts and Issues, I. Summary of Admitted Facts, paragraph 2.
[7] *Id.*, paragraph 3, p. 129.
[8] *Records*, Petition for Review, p. 2
[9] *Id.*, at paragraph 2, p. 128.

On August 11, 1989,[10] July 12, 1990,[11] and November 8, 1990,[12] Citytrust executed Waivers of the Statute of Limitations under the National Internal Revenue Code.

On May 6, 1991, respondent issued a Letter, with attached Assessment Notices[13] against Citytrust, for various deficiency internal revenue taxes in the total amount of P20,865,320.29, for the taxable year 1986. Included are the assessments for Expanded Withholding Taxes in the amount of Php1,582,815.03;[14] Withholding Tax on Deposit Substitutes in the amount of Php33,065.29;[15] Real Estate Dealer's Fixed Tax in the amount of Php7,175.00;[16] and penalties for the late remittance of withholding tax on compensation in the amount of Php39,675.00;[17] or a total of Php1,662,730.32, which is inclusive of the basic taxes, surcharges, interests and compromise penalties, for taxable year 1986.[18]

On May 30, 1991, Citytrust filed its Protest, dated May 27, 1991.[19]

On February 17, 1992, Citytrust filed its second Letter-Protest to the assessment, with a request that the case docket be transmitted to the Appellate Division for administrative hearing.[20]

On October 4, 1996, Citytrust entered into a merger agreement with petitioner, the latter being the surviving entity,[21] as shown in the Certificate of Filing of the Articles of Merger, as approved by the Securities and Exchange Commission ("SEC").[22]

On November 4, 2011, petitioner received a Warrant of Distraint and/or Levy, dated October 27, 2011,[23] stating that there is due from Bank of the Philippine Islands/Citytrust Banking Corporation the sum

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[10] Exhibit "B," *Records*, p. 238.
[11] Exhibit "C," *Records*, p. 239.
[12] Exhibit "D," *Records*, p. 240.
[13] Exhibits "E," "E-1," to "E-9," *Records*, pp. 241-244.
[14] Exhibit "G," *Records*, p. 249.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Exhibits "E-1 to E-9,"*Records*, pp. 242-244.
[19] Exhibit "F," *Records*, pp. 245-246.
[20] *Id.*, at paragraph 2.4., p. 4; Exhibit "G," *Records*, pp. 247-250.
[21] *Id.*, Petition for Review, paragraph 1.3, p. 2.
[22] *Id.*
[23] *Id.*, paragraph 2.6., p. 4; Exhibit "H," *Records*, p. 251.

of Php1,624,930.32, as deficiency expanded withholding taxes, withholding tax on deposit substitute, deficiency real estate dealers tax (fixed tax) and penalties for late remittance of withholding tax on compensation, plus all increments incident to delinquency, as well as a compromise penalty of Php37,800.00, all for the year 1986.

On November 14, 2011, petitioner filed the instant Petition for Review pursuant to Section 228 of the 1997 National Internal Revenue Code ("NIRC"), as amended.[24]

On December 28, 2011, respondent filed her Answer,[25] interposing the following Arguments:

> a. The Honorable Court has no jurisdiction to take cognizance of the instant case for failure of petitioner to file the judicial claim with the period prescribed by law;
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> b. Petitioner is liable to pay deficiency Expanded Withholding Tax, Withholding Taxes on Deposit Substitute and Real Estate Dealer's Tax plus penalties for taxable year 1986;
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> c. The assessments were issued within the prescriptive period provided by law. And that the issue on prescription was not raised in the administrative level, hence, cannot be raised for the first time on appeal; and
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> d. Petitioner is estopped from questioning the validity of the waivers.

On March 8, 2012, the parties filed their Joint Stipulation of Facts and Issues.[26]

Petitioner presented Atty. Alma Barcelo,[27] as witness, and documentary evidence marked as *Exhibits "A" to "TTT,"* inclusive of submarkings.[28]

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[24] *Records,* Petition for Review, paragraph 2.7., p.5.
[25] *Id.*, at pp. 63-82.
[26] *Records,* pp. 128-130.
[27] *Records,* Pre-Trial Order, p. 135.
[28] *Id.*, at pp. 202-209, Petitioner's Formal Offer of Evidence.

On the other hand, respondent presented Revenue Officer Amelia A. Taron,[29] and documentary evidence marked as *Exhibits "1"* to *"12-a."*[30]

On May 30, 2013,[31] the Court resolved to submit the case for decision, taking into consideration the Memoranda filed by both parties on May 28, 2013.[32]

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the issues for the Court's consideration are:[33]

1. WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE AMOUNT OF ONE MILLION SIX HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED THIRTY PESOS AND 32/100 (P1,624,930.32);

2. WHETHER OR NOT THE RIGHT OF THE RESPONDENT TO ASSESS DEFICIENCY EXPANDED WITHHOLDING TAXES, WITHHOLDING ON DEPOSIT SUBSTITUTE, DEFICIENCY REAL ESTATE DEALERS TAX (FIXED TAX) FOR TAXABLE YEAR 1986 AND PENALTIES FOR LATE REMITTANCE OF WITHHOLDING TAX ON COMPENSATION, PLUS ALL INCREMENTS INCIDENT TO DELINQUENCY HAD ALREADY PRESCRIBED;

3. WHETHER OR NOT THE RIGHT OF RESPONDENT TO COLLECT THE ALLEGED EXPANDED WITHHOLDING TAXES, WITHHOLDING ON DEPOSIT SUBSTITUTE, DEFICIENCY REAL ESTATE DEALERS TAX (FIXED TAX) FOR TAXABLE YEAR 1986 AND PENALTIES FOR LATE REMITTANCE OF WITHHOLDING TAX ON

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[29] *Id.*, at p. 403.
[30] *Id.*, at pp. 410-412, Respondent's Formal Offer of Evidence.
[31] *Records*, p. 245.
[32] *Id.*
[33] *Id.*, at pp. 129-130, Joint Stipulation of Facts and Issues.

COMPENSATION, PLUS ALL INCREMENTS INCIDENT TO DELINQUENCY HAD ALREADY PRESCRIBED;

4. WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION TO HEAR THE INSTANT CASE; and

5. WHETHER OR NOT THE ASSESSMENT NOTICE ISSUED AGAINST PETITIONER IS ALREADY CONSIDERED FINAL AND EXECUTORY.

RULING OF THE COURT

I. Jurisdiction of the Court.

The Court has jurisdiction over the case at bench pursuant to Section 7 of Republic Act No. 1125,[34] as amended by RA No. 9282,[35] and RA No. 9503,[36] to quote:

> "SEC. 7. *Jurisdiction.* -The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, other matters arising under the National Internal Revenue Code **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." (Boldfacing supplied.)**

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[34] An Act Creating the Court of Tax Appeals, as amended.

[35] 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.

[36] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

And the Supreme Court in the case of *Commissioner of Internal Revenue vs. Hambrecht and Quist Philippine, Inc.*,[37] has clarified the jurisdiction of the Court as follows:

> "Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term 'other matters' can be supported or even deduced. What is rather clearly apparent, however, is that the term 'other matters' is limited only by the qualifying phrase that follows it.
>
> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).
>
> In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223(c):
>
>> **Any internal revenue tax** which has been assessed within the period of limitation above-prescribed **may be collected** by distraint or levy or by a proceeding in court **within three years following the assessment of the tax**. (Emphases supplied.)
>
> In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:
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>> Sec. 3. *Powers and duties of Bureau.* - The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes,**

[37] G.R. No. 169225, November 17, 2010.

> **fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied.)
>
> Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term 'other matters' over which the CTA has appellate jurisdiction."

Clearly, from the foregoing, the Court has jurisdiction to entertain the instant Petition for Review filed on November 14, 2011,[38] as the issue involve is the right of respondent to assess and collect deficiency taxes for the year 1986, emanating from the issuance of Warrant of Distraint and/or Levy dated October 27, 2011.[39]

II. The Right of Respondent to Assess has Prescribed.

The provisions of the 1977 Tax Code, as amended, shall be considered, as the period covered by the assessments is in the year 1986, and the 1997 National Internal Revenue Code ("NIRC"), as amended or Republic Act No. 8424, entitled "*An Act Amending the National Internal Revenue Code, as amended,*" took effect only on January 1, 1998.

The period for the BIR to assess and collect an internal revenue tax is limited to three years by Section 203 of the Tax Code of 1977, as amended, which 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 years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for

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[38] *Records*, pp. 1 to 54, with "Annexes."
[39] Exhibit "H," *Records*, p. 251.

> 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 the 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.

The three-year period of limitations on the assessment and collection of national internal revenue taxes set by Section 203 of the Tax Code of 1977, as amended, can be affected, in accordance with the following provisions of the same Code:

> SEC. 223. – *Exceptions as to period of limitation of assessment and collection of taxes.* – (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

As enunciated in these statutory provisions, the BIR has three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. In case of a false or fraudulent return with intent to evade tax or the failure to file any return at all, the prescriptive period for assessment of the tax due shall be 10 years from discovery by the BIR of the falsity, fraud, or omission.[40]

In the instant case, there are four types of taxes being assessed, which are as follows: a. Deficiency Expanded Withholding Tax; b. Deficiency Remittance of Withholding Tax on Compensation; c.

[40] BPI vs. CIR, G.R No. 139736, October 17, 2005, 473 SCRA 205.

Deficiency Withholding Tax on Deposit Substitute; and d. Deficiency Real Estate Dealers Tax (Fixed Tax).[41]

In filing the return, for deficiency taxes involving Expanded Withholding Tax, Remittance of Withholding Tax on Compensation, and Withholding Tax on Deposit Substitute, the provisions of Section 51 of the 1977 Tax Code, as amended, Revenue Regulations (RR) RR No. 06-85,[42] RR No. 05-85,[43] and RR No. 17-84,[44] as amended by RR No. 03-85,[45] respectively, are relevant, to wit:

Section 51 of the 1977 Tax Code, as amended:

"SECTION 51. *Returns and payment of taxes withheld at source.* —

(a) *Quarterly returns and payment of taxes withheld.* — Taxes deducted and withheld under Section fifty-three (now 50) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not

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[41] *Ibid.*
[42] Revised and Consolidated Expanded Withholding Tax Regulations, July 1, 1985.
[43] Synchronization of the Time and Manner of Remitting Taxes Withheld under Sections 53, 54 and 93 of the National Internal Revenue Code, March 19, 1985.
[44] Income Taxation of Interest Income Derived from Deposits and Yield from Deposit Substitutes, October 12, 1984.
[45] Amending Revenue Regulations No. 23-84, March 1, 1985.

later than the last day of the month following the close of the quarter during which the withholding was made."

Section 5 of RR No. 06-85 provides:

"SECTION 5. *Monthly Return and Payment of Taxes Withheld at Source.* —

(a) The taxes herein deducted and withheld shall be paid upon filing a return in duplicate under BIR form — with the Revenue District Officer or the Collection Agent of the City or duly authorized Treasurer of the Municipality where the withholding agent has his legal residence or principal place of business except in cases where the Commissioner of Internal Revenue allows otherwise. The required return shall be filed within ten days (10) after the end of each month.

The taxes deducted and withheld by the withholding agents shall be considered trust funds and shall be maintained in a separate account and not commingled with any other fund of the withholding agent and held in trust for the government until paid to the collection officer."

Section 2 of Revenue Regulations No. 05-85 states:

"SECTION 2. *Monthly Return and Remittance of Taxes Withheld.* — Taxes deducted and withheld on:

(i) Compensation income,

(ii) income payments subject to the creditable (expanded) withholding taxes, and

(iii) income subject to final withholding taxes, shall be remitted within ten (10) days after the end of each calendar month with the filing, of the appropriate returns as follows:

BIR FORM NO. W-1A-	For Taxes withheld on Compensation Income
BIR FORM NO. 1743-A1-	For Creditable (expanded) Withholding Taxes
BIR FORM NO.-	For final income taxes withheld"

Section 5 of Revenue Regulations No. 17-84, which is amended by RR No. 03-85 to read as follows:

> "Section 2. *Manner of Filing Returns and Payment of Taxes.* — The provisions of Section 5 of Revenue Regulations No. 17-84 on the manner of filing returns and paying taxes withheld which was amended by Revenue Regulations No. 23-84 is hereby restored and shall read as follows:
>
> 'Sec. 5. *Manner of filing returns and payment of taxes.* — The taxes herein deducted and withheld shall be declared in a return which shall be filed in duplicate within twenty five (25) days after the end of each quarter of any calendar year with the Revenue District Officer or Collection Agent or duly authorized Treasurer of the city or municipality where the withholding agent's principal office is located and where its books of accounts are kept except in cases where the Commissioner of Internal Revenue otherwise allows. Upon filing of the return payment of the taxes shall be made to accredited banks, or, in places where there are no such banks, to the Collection Agent or authorized Municipal Treasurer.'"

On the other hand, for deficiency Real Estate Dealers Tax (Fixed Tax), relevant is Section 160 of the 1977 Tax Code, as amended by the 1986 Tax Code,[46] which provides for an annual payment of tax, on or before the last day of the first month of the taxable year.

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[46] Sec. 60. *Time for payment of fixed taxes.* - All fixed taxes shall be payable annually, on or before the last day of the first month of the taxable year adopted by the taxpayer for income tax purposes. Any person beginning a business must first pay the tax before engaging therein. (As amended by PD 1705 and PD 1994).

III. Prescriptive Periods.

Based on the dates of filing of petitioner's returns on the taxable year 1986 for deficiency Expanded Withholding Tax, deficiency remittance of Withholding Tax on Compensation, and deficiency Withholding Tax on Deposit Substitute, respondent have the following dates within which to issue her assessments against petitioner, as follows:

Deficiency Expanded Withholding Tax

Month	Date of Filing of Return	Last Day to Assess[47]
January	February 10, 1986[48]	February 10, 1989
February	March 7, 1986[49]	March 10, 1989
March	April 8, 1986[50]	April 10, 1989
April	May 8, 1986[51]	May 10, 1989
May	June 10, 1986[52]	June 10, 1989
June	July 11, 1986[53]	July 11, 1989
July	August 11, 1986[54]	August 11, 1989
August	September 10, 1986[55]	September 10, 1989
September	October 13, 1986[56]	October 13, 1989
October	November 11, 1986[57]	November 11, 1989
November	December 10, 1986[58]	December 10, 1989
December	January 12, 1987[59]	January 12, 1990

Deficiency Remittance *of Withholding Tax on Compensation*

[47]Article 13 of the Civil Code of the Philippines, when the law speaks of years, it shall be understood that the years are of 365 days each.
[48] Exhibits "L," "L-1," *Records*, pp. 255 and 256.
[49] Exhibits "L," L-2," *Records*, pp. 255 and 258.
[50] Exhibits "L," "L-3," *Records*, pp. 255 and 260.
[51] Exhibits "L," "L-4," *Records*, pp. 255 and 262.
[52] Exhibits "L," "L-5," *Records*, pp. 255 and 264.
[53] Exhibits "L," "L-6," *Records*, pp. 255 and 266.
[54] Exhibits "L," "L-7," *Records*, pp. 255 and 268.
[55] Exhibit L-8," p. 270, BIR Records, p. 226.
[56] Exhibits "L," "L-9," *Records*, pp. 255 and 271.
[57] Exhibits "L," "L-10-a," *Records*, pp. 255 and 274.
[58] Exhibits "L-11," L-11-a," *Records*, pp. 275and 276; BIR Records, p. 226.
[59] Exhibit "L-12," *Records*, p. 277.

Monthly Return	Date of Filing	Last day to Assess[60]
April[61]	May 13, 1986	May 13, 1989
May[62]	July 8, 1986[63]	July 8, 1989
June[64]	August 3, 1986[65]	August 3, 1989
July[66]	September 4, 1986[67]	September 4, 1989
August[68]	October 10, 1986[69]	October 10, 1989
September[70]	November 4, 1986[71]	November 4, 1989
October[72]	December 4, 1986[73]	December 4, 1989
November[74]	January 6, 1987[75]	January 6, 1990
December[76]	January 12, 1987	January 12, 1990

Deficiency Withholding Tax on Deposit Substitute

Quarterly Return	Date of Filing	Last day to Assess[77]
1st Quarter[78]	April 25, 1986	April 25, 1989
2nd Quarter[79]	July 25, 1986	July 25, 1989
3rd Quarter[80]	October 24, 1986	October 25, 1989
4th Quarter[81]	January 23, 1987	January 25, 1990

Based from the foregoing results, at most, respondent had until January 12, 1990 to assess petitioner for Deficiency Expanded Withholding Tax and Deficiency Remittance of Withholding Tax on

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[60] Article 13 of the Civil Code of the Philippines, when the law speaks of years, it shall be understood that the years are of 365 days each.
[61] BIR Records, p. 57.
[62] BIR Records, p. 55.
[63] *Ibid.*, Confirmation Receipt, p. 54.
[64] *Ibid.*, p. 53.
[65] *Ibid.*, Confirmation Receipt, p. 52
[66] *Ibid.*, p. 51.
[67] *Ibid.*, Confirmation Receipt, p. 50.
[68] *Ibid.*, p. 49.
[69] *Ibid.*, Confirmation Receipt, p. 48.
[70] *Ibid.*, p. 47
[71] *Ibid.*, Confirmation Receipt, p. 46.
[72] *Ibid.*, p. 45.
[73] *Ibid.*, Confirmation Receipt, p. 44.
[74] *Ibid.*, p. 43.
[75] *Ibid.*, Confirmation Receipt, p. 42.
[76] *Ibid.*, p. 161.
[77] Article 13 of the Civil Code of the Philippines, when the law speaks of years, it shall be understood that the years are of 365 days each.
[78] *Ibid.*, p. 302.
[79] *Ibid.*, p. 304.
[80] *Ibid.*, p. 306.
[81] *Ibid.*, p. 310

Compensation; and up to January 25, 1990 to assess petitioner for Deficiency Withholding Tax on Deposit Substitute.

Unfortunately, respondent issued Assessment Notices Nos.: FAS-1-86-91-001847,[82] FAS-1-86-91-001848,[83] FAS-1-86-91-001849,[84] FAS-1-86-91-00-1850,[85] FAS-1-86-91-00185,[86] FAS-1-86-91-001854,[87] FAS-8-86-91-001854,[88] only on May 6, 1991; apparently, beyond the prescribed three (3)-year period. Therefore, respondent is barred from assessing petitioner on its Expanded Withholding Tax, remittance on Withholding Tax on Compensation, and Withholding Tax on Deposit Substitute.

On the other hand, for deficiency Real Estate Dealers Tax (Fixed Tax), no return[89] has been found. What is found on record is a Business Tax Return,[90] which is not the same as the Real Estate Dealers Tax Return. A Real Estate Dealers Tax Return is based on renting property or rental income as ascribed in Section 161(2)(aa) of the 1977 Tax Code, as amended by the 1986 Tax Code.[91] Therefore, finding no Real Estate Dealers Tax, the reckoning period is 10-years from the discovery of the omission pursuant to Section 223(a) of the 1997 Tax Code, as amended,[92] which is on March 7, 1991,[93] the date of issuance of Pre-Assessment

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[82] Exhibit "E-1," *Records*, p. 242.
[83] Exhibit "E-2," *Records*, p. 242.
[84] Exhibit "E-3," *Records*, p. 243.
[85] Exhibit "E-4," *Records*, p. 243.
[86] Exhibit "E-5," *Records*, p. 243.
[87] Exhibit "E-6," *Records*, p. 244.
[88] Exhibit "E-8," *Records*, p. 244.
[89] Section 161. *Fixed taxes. – (1) Persons subject to percentage tax. –*
xxx xxx xxx
(2) *Persons not subject to percentage tax.* – xxx
xxx xxx xxx
(aa) Real estate dealers, one hundred fifty pesos, if the annual income from buying, selling, exchanging, leasing , or renting property (whether on their own account as principals or as owners of rental property or properties) does not exceed four thousand pesos;
[90] Exhibit "EEE," p. 318.
[91] Sec. 161. *Fixed taxes. – (1) Persons subject to percentage tax. –*
xxx xxx xxx
(2) Persons not subject to percentage tax. – xxx
xxx
(aa) Real estate dealers, one hundred fifty pesos, if the annual income from buying, selling, exchanging, leasing, or renting property (whether on their own account as principals or as owners of rental property or properties), does not exceed four thousand pesos;
[92] SEC. 223. – *Exceptions as to period of limitation of assessment and collection of taxes.* –
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
[93] BIR Records, p. 556.

Notice. Counting from the said date, respondent had until March 7, 2001 to assess petitioner. Hence, the Assessment Notice No. FAS-4-86-91-001853,[94] issued on May 6, 1991, was well within the prescribed period.

IV. Prescriptive period is not suspended by the Execution of a request for Reinvestigation/Reconsideration.

Section 224 of the 1977 Tax Code, as amended, provides for the statue of limitation on the running of the prescriptive period provided in Sections 203 and 223 of the 1977 Tax Code, as amended, within which respondent is to assess and collect taxes from petitioner:

> 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: *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.

Of particular importance to the present case is one of the circumstances enumerated in Section 224 of the Tax Code of 1977, as amended, wherein the running of the statute of limitations on assessment and collection of taxes is considered suspended "when the taxpayer requests for a reinvestigation which is granted by the Commissioner."

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[94] Exhibits "E-7," *Records,* p. 244.

In the instant case, glossing over the evidence presented, on February 17, 1992,[95] Citytrust requested for a reinvestigation/reconsideration of the subject assessments. However, nowhere on records was the request granted by the Commissioner. At most, what was presented was a Notice of Denial on May 26, 2011.[96] Based on the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[97] the Supreme Court has held that: "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." Therefore, considering that respondent did not grant the reinvestigation/reconsideration requested by petitioner, and, considering that nineteen (19) years have lapsed since the time of assessment, the period to asses and collect taxes was not suspended.

V. Prescriptive period is affected by the execution of Waivers of the Statute of Limitation.

Sections 223(b) and (d) of the 1977 Tax Code, as amended, provide as follows:

> "SECTION 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 preceding 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.
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> xxx xxx xxx

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[95] Exhibit "G," *Records*, p. 247.
[96] Exhibit "OOO," *Records*, p. 319.
[97] G.R. No. 162852, 16 December 2004, 447 SCRA 214.

> (d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon."

And Revenue Memorandum Order ("RMO") No. 20-90,[98] dated April 4, 1990, provides as follows:

> "Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/ or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. 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. 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.

[98] Entitled "Proper Execution of the Waiver of the Statute of Limitations under National Internal Revenue Code."

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2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

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. Both the date of execution by the taxpayer and date of acceptance by the bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

XXX XXX XXX

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/ collect shall be administratively dealt with.

This Revenue Memorandum Order shall take effect immediately."

In relation thereto, Revenue Memorandum Circular ("RMC") No. 20-86,[99] dated July 24, 1986 must be observed, to quote:

> "TO: All Internal Revenue Officers and Others Concerned
>
> It has been observed that one of the problem areas bearing on compliance with internal revenue tax rules and regulations is lack or insufficiency of due notice to the tax-paying public. Unless there is due notice, due compliance therewith may not be reasonably expected. And most importantly, their strict of the Constitutional provision on 'due process of law' and the essence of the Civil Code provision concerning effectivity of laws, whereby due notice is a basic requirement (*Sec. 1, ART. IV, Constitution; ART. 2, New Civil Code*).
>
> In order that there shall be a just enforcement of rules and regulations, in conformity with the said basic element of due process, the following procedures are hereby prescribed for the drafting, issuance and implementation of the said Revenue Tax Issuances:
>
> > 1. This circular shall apply only to (a) Revenue Regulations; (b) Revenue Audit Memorandum Orders; and (c) Revenue Memorandum Circulars and Revenue Memorandum Orders bearing on internal revenue tax rules and regulations.
> >
> > 2. Except when the law otherwise expressly provides, the aforesaid internal revenue tax issuances shall not begin to be operative until after due notice thereof may be fairly presumed.
> >
> > Due notice of the said issuances may be fairly presumed only after the following procedures have been taken:

[99] Entitled "Notice, Publication and Effectivity of Internal Revenue Tax Rules and Regulations."

> 2.1 The Records Division of the National Office shall furnish, thru registered mail, all of the following business and professional organizations with the corresponding revenue tax issuance:
>
> XXX XXX XXX
>
> 2.2 The provisions of paragraph 2.1 shall not be deemed an exclusion of other person or persons who may request for a copy of the corresponding revenue issuance from the Bureau of Internal Revenue.
>
> 2.3 The Bureau shall issue a press release about the new revenue issuance in any newspaper or newspapers of general circulation. The press release shall cover the highlights or features thereof.
>
> 2.4 Effectivity date for enforcement of the new revenue issuance shall take place thirty (30) days from the date the revenue issuance has been sent thru registered mail to the organizations enumerated under paragraph 2.1 hereof.

3. Procedures for dating of revenue tax issuances.- Per ANNEX I A' hereof, the revenue issuance shall be dated as follows:

> 3.1 The following information shall be shown at the upper left hand portion, first page, of the revenue issuance:
>
> XXX XXX XXX

> 3.2 The Records Division shall indicate in the upper right hand portion, first page, or the revenue issuance the effectivity date thereof which shall be thirty (30) days from the date copies of the issuance have been sent to the organizations enumerated under paragraph 2.1 hereof.
>
> Before sending copies of the revenue issuance, the Records Division shall already indicate its effectivity date in the manner and form as shown in ANNEX 'A' hereof.
>
> 4. Proof of (a) mailing of the revenue issuance to the organizations enumerated under paragraph 2.1 hereof, and (b) copy of the required press release, shall be attached to the original copy of the revenue issuance, which shall be filed by the Records Division for future reference.
>
> 5. Strict compliance with the foregoing procedures is enjoined."

In the instant case, petitioner respectively executed Waivers of the Statute of Limitations on August 11, 1989,[100] July 12, 1990,[101] and November 8, 1990.[102]

Applying the foregoing, the Waiver of the Statute of Limitations dated August 11, 1989, was executed before the issuance of RMO No. 20-90 on April 4, 1990; while the Waivers of the Statute of Limitations dated July 12, 1990, and November 8, 1990, were executed during the effectivity of the same RMO. Therefore, the Waiver dated August 11, 1989 is not covered by RMO No. 20-90, while the Waivers dated July 12, 1990 and November 8, 1990 are clearly within the coverage of the said RMO.

[100] Exhibit "B," *Records*, p. 238.
[101] Exhibit "C," *Records*, p. 239.
[102] Exhibit "D," *Records*, p. 240.

Thus, the Waiver dated August 11, 1989, has effectively extended the prescribed period until August 31, 1990;[103] on the other hand, considering that RMO No. 20-90 had already been in effect when the Waivers dated July 12, 1990[104] and November 8, 1990[105] were executed, thus, the same had failed to extend the three-year period.

Consequently, the Letter dated May 6, 1991,[106] with attached Assessment Notices Nos.: FAS-1-86-91-001848,[107] FAS-1-86-91-001849,[108] FAS-1-86-91-00-1850,[109] FAS-1-86-91-00185,[110] FAS-1-86-91-001854,[111] FAS-8-86-91-001854,[112] are clearly issued beyond the prescribed period, therefore are null and void.

VI. Period to Collect has Prescribed.

The right of respondent to collect has likewise prescribed pursuant to Section 223(c) of the 1997 Tax Code, as amended, to wit:

> "SEC. 223. *Exceptions as to period of limitation of assessment and collection of taxes.* –
>
> xxx xxx xxx
>
> (c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

In the instant case, respondent issued the Letter[113] with attached Assessment Notices,[114] on May 6, 1991, counting from the said date, respondent has until May 6, 1994 within which to collect the deficiency

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[103] Exhibit "B," *Records*, p. 238.
[104] Exhibit "C," *Records*, p. 239.
[105] Exhibit "D," *Records*, p. 240.
[106] Exhibit "E," *Records*, p. 241.
[107] Exhibit "E-2," *Records*, p. 242.
[108] Exhibit "E-3," *Records*, p. 243.
[109] Exhibit "E-4," *Records*, p. 243.
[110] Exhibit "E-5," *Records*, p. 243.
[111] Exhibit "E-6," *Records*, p. 244.
[112] Exhibit "E-8," *Records*, p. 244.
[113] Exhibit "E," *Records*, p. 241.
[114] Exhibits "E-1," to "E-9," *Records*, pp. 242-244.

taxes. Considering, however, that respondent only issued her Warrant of Distraint and/or Levy only on October 27, 2011,[115] the right of respondent to collect has prescribed.

Also, the Court takes judicial notice of a similar case involving the same parties which involve the same issues but of different tax base assessment, where the Court *a quo* upheld its jurisdiction and denied the Warrant of Distraint and/or Levy issued by respondent for being barred by prescription.[116]

In sum, the Court hereby declares the Warrant of Distraint and/or Levy dated October 27, 2011, as null and void. The Court deems the resolution of the other issues unnecessary.

WHEREFORE, the Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Distraint and/ or Levy dated October 27, 2011 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[115] Exhibit "H," p. 251.
[116] Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 8350, February 12, 2014.

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation , I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice