REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**EB No. 274** (CTA Case No. 6564)
-versus-	Present: ACOSTA, *P.J.* CASTAÑEDA JR., BAUTISTA UY, CASANOVA, and PALANCA-ENRIQUEZ, *JJ*:
SECURITY BANK CORPORATION, Respondent.	Promulgated:

JUL 1 1 2007 [signature]

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DECISION

CASANOVA, J:

This is a Petition for Review[1], filed by Petitioner-Commissioner of Internal Revenue (*CIR*), of the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated November 28, 2006 in CTA Case No. 6564 entitled, "*Security Bank Corporation vs. Commissioner of Internal Revenue*", reversing and setting aside the Decision of the CIR dated August 8, 2002. Accordingly, the Assailed Decision ordered the CIR to withdraw and cancel Assessment Notice Nos. FAS-1-82-87-007151, FAS-1-82-87-007152 and FAS-1-82-87-007153 issued against Respondent-Security Bank Corporation (*SBC*) for deficiency income and documentary stamp taxes for taxable year 1982 because respondent's right to collect the same has already prescribed. Also being assailed

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[1] CTA En Banc Rollo., pp. 9-20.
[2] CTA En Banc Rollo., pp. 22-40.

is the Resolution[3] (*Assailed Resolution*) dated February 7, 2007, denying petitioner-CIR's Motion for Reconsideration.

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

> "Petitioner[4] is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at 6776 Ayala Avenue, Makati City. It is engaged in the business of banking and is a member of the Bankers Association of the Philippines. It is registered with the Bureau of Internal Revenue and was issued the Taxpayer Identification No. 047-000-498-020.[5]
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> Respondent[6] is the Commissioner of the Bureau of Internal Revenue (BIR) who is vested with authority under the National Internal Revenue Code (NIRC) to exercise the functions of said office, including, inter alia, the power to decide disputed assessments, with office address at the BIR Building, Diliman, Quezon City.
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> For the taxable year 1982, petitioner duly filed its Annual Income Tax Return on April 13, 2003.[7] On October 15, 1987, the Senior Operations Office of the BIR sent petitioner a pre-assessment notice[8] covering the latter's income and business tax liabilities for the year 1982. In this regard, petitioner, on October 30, 1987[9], sent a reply to the said pre-assessment notice requesting for a breakdown of the disallowed expenses pertaining to the non-taxable income amounting to P13,092,712.51.
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> Subsequently, on November 16, 1987, respondent issued against petitioner three (3) assessment notices covered under Assessment Nos. FAS-1-82-87-007151 for unpaid income for the year 1982 plus interest in the amount of P5,773,315.34, inclusive of interests; FAS-1-82-87-007152 for deficiency documentary stamp taxes on petitioner's sale of securities for the year 1982 in the amount of P7,039,037.25, inclusive of the compromise fee of P600.00; and FAS-1-82-87-007153 for deficiency documentary stamp taxes on the promissory notes issued by petitioner for the year 1982 in the amount of P1,042,957.20, inclusive of the compromise fee of P300.00.[10]

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[3] CTA En Banc Rollo., pp. 41-44.
[4] Respondent herein.
[5] As cited in the Petition for Review, CTA Second Division Rollo, p. 2.
[6] Petitioner herein.
[7] Should be April 14, 1983 as stated in Exhibit M, CTA Second Division Rollo, p. 202.
[8] Par. 3, Summary of Admitted Facts, CTA Second Division Rollo, p. 132.
[9] Par. 4, Summary of Admitted Facts, CTA Second Division Rollo, p. 133.
[10] Petition for Review, CTA Second Division Rollo, pp. 4-5.

On November 23, 1987, petitioner wrote a letter to the respondent, addressed to the Chief, Receivable Accounts Division, informing the said office that on October 30, 1987, it had already made a reply to Mr. Fortunato Aguas, Assistant Commissioner Sector Operations Office, as regards the pre-assessment notice on its 1982 tax liabilities.[11]

On September 21, 1990, the Chief of Collection Enforcement Division of the BIR, Cecilio T. Marcelo, wrote petitioner a letter notifying the latter that through the issuance of Revenue Memorandum Order (RMO) No. 29-90 on June 18, 1990, the BIR has extended the effectivity of the administrative compromise settlement of delinquent accounts under RMO 1-88, subject, however, to the evaluation and approval of higher authorities, and giving petitioner a period of ten (10) days from receipt thereof to make the necessary settlement of its liabilities under the aforesaid assessment notices, otherwise, the BIR would enforce the collection thereof.[12]

On August 8, 2002, respondent rendered the assailed Decision.[13]

On October 10, 2002, petitioner received a Final Notice Before Seizure from the Chief, Large Taxpayer — Collection and Enforcement Division requiring the former to pay the assessments in dispute, within ten (10) days from receipt thereof, otherwise collection thru administrative summary remedies without further notice shall be enforced.[14]

Petitioner filed this present petition through registered mail on November 6, 2002.

In his Answer, respondent raised the following as his Special and Affirmative Defenses:

1. The questioned Assessment Notices FAS-1-82-87-007151, FAS-1-82-87-007152 and FAS-1-82-87-007153 are valid Assessments and not arbitrary and confiscatory as alleged by petitioner for they are results or findings from the examination of petitioner's books of accounts and other accounting records by virtue of a Letter of Authority issued on May 7, 1984;

2. The assessment for deficiency income tax is based on costs and expenses incurred in the production of non-taxable revenues which cannot be deducted against the taxable income of the petitioner;

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[11] Exhibit H, CTA Second Division Rollo, p. 184.
[12] Petition for Review, CTA Division Rollo, pp. 6.
[13] Annex A, CTA Second Division Rollo, p. 28-33.
[14] Annex K, CTA Second Division Rollo, p. 42.

3. The non-negotiable promissory notes issued by the petitioner in its money market operation are in the nature of investment securities falling under the category of certificate of indebtedness subject to Documentary Stamp Tax under Section 223 of the Tax Code;

4. Said Assessment Notices for deficiency income tax and Documentary Stamp Taxes for the year 1982 were issued within the prescriptive period, and the period to collect the same has not prescribed;

5. As a matter of fact, petitioner failed to establish that it indeed protested the Assessment Notices for nothing in its letter dated November 23, 1987 would indicate that it pleaded for reinvestigation or reconsideration nor did it state the facts and laws supporting a protest. Hence, the assessments have become final, executory and demandable;

6. The assessments were issued in accordance with law and regulations; and

7. All presumptions are in favor of the correctness of tax assessments.

Upon the filing of the parties' respective memorandum, this case was deemed submitted for decision on May 22, 2006.

The issues as stipulated by the parties are as follows:

1. Whether or not petitioner is liable for payment of deficiency income tax in the amount of P5,773,315.34 including interest for the year 1982;

2. Whether or not petitioner is liable for payment of deficiency documentary stamp taxes (DST) on the sale of securities for the year 1982 in the total amount of P7,039,037.25;

3. Whether or not petitioner is liable for payment of deficiency documentary stamp taxes on promissory notes issued for the year 1982 in the total amount of P1,042,957.20;

4. Whether or not petitioner validly protested the assessments;

5. Whether or not the right to assess and collect the tax deficiencies has prescribed;

6. Whether or not the respondent violated the rights of petitioner to due process when he assessed the latter for income tax and DST deficiency on November 16, 1987 by issuing pre-assessment notices and the formal letter of demand and formal assessment notice without showing the facts and the law on which the assessment is based;

7. Whether or not the basis for the assessment for the DST on securities under FAS-1-82-87-007152 is Section 223 of the 1977 NIRC and not Section 229;

8. Whether or not the basis for the assessment of DST on promissory notes under FAS-1-82-87-007153 is Section 229 of the 1977 NIRC and not Section 223 of the same code; and

> 9. Whether or not petitioner has filed a proper 'protest' pursuant to Section 6 of Revenue Regulations No. 12-85. "

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision*, the dispositive portion of which reads as follows:

> "**IN VIEW OF ALL THE FOREGOING**, judgment is hereby rendered in favor of the petitioner[15]. Accordingly, the Decision of the respondent dated August 8, 2002 is hereby **REVERSED** and **SET ASIDE** and respondent[16] is **ORDERED** to **WITHDRAW** and **CANCEL** Assessment Notice Nos. FAS-1-82-87-007151, FAS-1-82-87-007152 and FAS-1-82-87-007153 issued against petitioner for deficiency income and documentary stamp taxes for the taxable year 1982 because respondent's right to collect the same has already prescribed. Respondent is likewise **ORDERED** to **DESIST** from further collecting the subject amounts from petitioner.
>
> **SO ORDERED**."

Aggrieved by the above-mentioned Decision, petitioner herein-CIR filed a "Motion for Reconsideration"[17] on December 27, 2006. In support thereof, the CIR raised the following ground, to wit:

> "The Honorable Court erred that respondent's right to collect the tax assessment for the year 1982 has already prescribed."[18]

On February 7, 2007, the CTA Second Division promulgated the *Assailed Resolution* denying the said motion for lack of merit. Petitioner-CIR received the *Assailed Resolution* on February 14, 2007 thus, giving him until March 1, 2007 within which to file a Petition for Review with the *CTA En Banc*.

On February 27, 2007, petitioner-CIR filed a "Motion for Extension of Time to File Petition for Review"[19], which was granted by the Court in an *En Banc* Resolution No. 01-04-05-CTA[20] dated February 28, 2007.

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[15] Respondent herein.
[16] Petitioner herein.
[17] CTA Second Division Rollo. pp. 312-319.
[18] As cited in the Motion for Reconsideration, CTA Second Division Rollo. p. 312.
[19] CTA En Banc Rollo., pp. 1-4.
[20] CTA En Banc Rollo., p. 7.

Petitioner-CIR filed a Petition for Review with the *CTA En Banc* on March 16, 2007 raising the following issue:

> WHETHER OR NOT PETITIONER'S RIGHT TO COLLECT FROM RESPONDENT'S DEFICIENCY INCOME AND DOCUMENTARY STAMP TAXES FOR THE TAXABLE YEAR 1982 HAS ALREADY PRESCRIBED.

In support of the instant petition, petitioner-CIR argued that:

1. The Second Division erred in holding that the present case does not fall into any of the exceptions as to period of limitation of collection or that the period to collect in this case was not suspended.
2. The Second Division erred in holding that petitioner did not start to initiate the proceeding for the collection of the assessed taxes within the prescribed period.
3. The Second Division erred in holding that it has jurisdiction to entertain the instant case.

On April 17, 2007, the *CTA En Banc* promulgated a Resolution[21] ordering the respondent to file a Comment on the instant Petition for Review. Respondent filed a "Motion for Extension of Time to File Comment"[22] on May 4, 2007, which was granted by the *CTA En Banc* in a Resolution No. 01-04-05-CTA[23] dated May 8, 2007 thus, giving respondent until May 19, 2007 within which to file a Comment. On May 21, 2007 (May 19, being a Saturday), respondent filed, through registered mail, a Comment[24] which was received by the Court on May 29, 2007. Hence, the instant Petition for Review is submitted for decision.

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[21] CTA En Banc Rollo., pp. 47-48.
[22] CTA En Banc Rollo., pp. 49-51.
[23] CTA En Banc Rollo., p. 52.
[24] CTA En Banc Rollo., pp. 54-65.

After a careful and thorough evaluation and consideration of the records of the case, the *CTA En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

With regard to the first and second arguments raised by the petitioner, the *CTA En Banc* agrees with the *CTA Second Division* in finding that the present case does not fall into any of the exceptions as to the period of limitation of collection or that the period to collect in this case was not suspended, and that petitioner-CIR did not start to initiate the proceeding for the collection of the assessed taxes within the prescribed period.

As correctly found by the *CTA Second Division* in the *Assailed Decision* and We quote, to wit:

> "Based on the foregoing, not only petitioner[25] had not validly protested the assessment notices for deficiency income and documentary stamp taxes covering the taxable year 1982, it had not settled its 1982 tax assessments by executing a compromise agreement. Thus, it appears that petitioner is liable for the subject deficiency income and documentary stamp taxes. In relation thereto, this Court at this point will have to resolve the issue of whether or not the right of respondent[26] to collect the tax deficiencies in question has already prescribed. Section 318 of the National Internal Revenue Code of 1977, as amended, provides:
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> > **Sec. 318. Period of limitation upon assessment and collection.** — Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and **no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.** 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: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code. (*Emphasis supplied*)

[25] Respondent herein.
[26] Petitioner herein.

Our Tax Code clearly provides for two main periods of prescription; the first one referring to assessments, while the other period refers to the remedy of collection. Thus, where an assessment of any internal revenue tax has been made within the period of limitation of five (5) years from the date of filing of the annual income tax returns, such tax may be collected through the remedy of a court proceeding only if the same is begun within five (5) years after the assessment of the tax has been made. Explicit are the wordings of the law that the five (5) year period is absolute with the Code itself, however, recognizing one exception, that is, when the 'suit has started prior to the expiration of any period for collection agreed upon in writing by the Commissioner of Internal Revenue and the taxpayer before the expiration of such five-year period.'[27] On the other hand, Section 320 of the same Code provides for the suspension of the running of the statute, thus:

> **Sec. 320. Suspension of running of statute**. — The running of the statute of limitations provided in Sections 318 and 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 assessments of 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 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 statute 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 and underscoring Ours.*)

As thoroughly discussed earlier on, there was no request for reinvestigation or reconsideration from the petitioner, thus, the assessment notices had become final and demandable. The law requires upon the respondent that within the prescribed period, he should have started to initiate the proceedings for the collection of the assessed taxes. However, this was not present in the case at bar.

[27] Section 319 (c), Tax Code of 1977, as amended.

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As a recap, respondent issued his assessment notices on November 16, 1987 and petitioner failed to protest the same within the period allowed by law. This case does not fall on any exception as to period of limitation of collection nor does the period to collect in this case was suspended. Thus, pursuant to the provisions of Section 318 of the Tax Code of 1977, as amended, respondent had a period of five (5) years within which to institute the remedies of collection or until November 16, 1992. Considering that there was no Warrant of Distraint and/or Levy served on the petitioner nor any judicial proceedings initiated by the respondent to collect the taxes so assessed, the earliest attempt of the respondent to collect the subject taxes due was when he filed his Answer in this case on March 31, 2006, which was several years beyond the five (5)-year period allowed by law to collect. Indubitably, respondent is now barred from collecting the assessed taxes.

It bears stressing that when respondent issued the assailed Decision on August 8, 2002, or fifteen (15) years after the issuance of the final assessment notices, said Decision stated that there was no compelling reason to withdraw or cancel the assessments as petitioner failed to administratively file a protest on the assessment. Therefore, the assessments became final and unappealable. To arrive at this conclusion would not require fifteen (15) years. It must be noted that no written agreement existed between the parties[28] and the grounds for the suspension of the running of the statute[29] did not exist here, the original five-year period prevails. Clearly, there was no legal obligation preventing respondent from collecting the assessed taxes against the petitioner.

The Supreme Court, in the recent case of **Commissioner of Internal Revenue vs. Philippine Global Communications, Inc.**,[30] clarified that the statute of limitations on the collection of taxes should benefit both the Government and the taxpayers. In citing several cases, the Supreme Court further illustrated the harmful effects that the delay in the assessment and collection of taxes inflicts upon the taxpayers, to wit:

> In the case of *Republic of the Philippines v. Ablaza (108 Phil. 1105, 1108)*, this Court emphatically explained that the statute of limitations of actions for the collection of taxes is justified by the need to protect law-abiding citizens from possible harassment:
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>> The law prescribing a limitation of actions for the collection of the income tax

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[28] Section 319 (c), Tax Code of 1977, as amended.
[29] Section 320, Tax Code of 1977, as amended.
[30] G.R. No. 167146, October 31, 2006.

> 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 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 beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law."

To reiterate, the law on prescription should be liberally construed in order to protect taxpayers and that, as a corollary, the exceptions to the law on prescriptions should be strictly construed.[31]

With regard to the third ground stated in the instant Petition for Review, the *CTA Second Division* had already passed upon this issue in the *Assailed Resolution*, and We quote:

> "It is erroneous for respondent to conclude that this Court should have dismissed the Petition for Review upon finding that there was no valid protest filed by petitioner against the assessment notices issued. It must be emphasized that the parties raised the issue of the petitioner's protest as well as the prescriptive period to collect. Necessarily, both issues had to be resolved in light with the circumstances surrounding the case. Thus, it may be that, generally, this Court has no jurisdiction to take cognizance of undisputed assessments, nevertheless, this instant case cannot be considered as one of those ordinary cases where this Court can just dismiss the case upon finding that there was no valid

[31] Commissioner of Internal Revenue vs. Philippine Global Communication, Inc., supra, citing the case of Commissioner of Internal Revenue vs. B.F. Goodrich (363 Phil 169,178)

> protest filed. This is mainly because there were other issues raised which deserved to be considered by the Court if a proper determination of the case is to be attained.
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> Indeed, this Court may not have jurisdiction to take cognizance of undisputed assessments, but it is worth stressing that this Court can take cognizance of 'tax collection cases involving final and executory assessments for taxes, fees, charges and penalties xxx'. Thus, the subject assessments having become final and executory, for failure of herein petitioner to file a valid protest thereto, it was necessary for the Court to rule on the legality of the enforcement of the remedy of collection by respondent."

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed November 28, 2006 Decision and February 7, 2007 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the November 28, 2006 Decision and February 7, 2007 Resolution of the *CTA Second Division* are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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.

ERNESTO D. ACOSTA
Presiding Justice