REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

QL DEVELOPMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF BUREAU OF INTERNAL REVENUE and BUREAU OF INTERNAL REVENUE,
Respondents.

CTA CASE NO. 10291

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JUN 07 2021 11:15 AM

x - x

RESOLUTION

Before this Court is petitioner's **Motion for Early Resolution of the Issue of Prescription of Collection of Taxes – with – Motion to Defer Pre-Trial**, filed on March 5, 2021.

On February 1, 2021, the Court issued an Order stating that "Considering the manifestation of respondent's counsel that he will no longer present evidence on the issue of prescription, but will instead present its evidence in the main case, the issue of prescription is now submitted for resolution."

In its motion, petitioner prays that the upon presentation of parties' witnesses and evidence on the issue of prescription and/or the adoption of witnesses and evidence already part of the records of the instant case, the Court shall issue a judgment:

a. declaring the *Questioned Decision* dated February 4, 2020 as void and/or without merit since, among others, the right of respondent CIR and BIR to collect has already prescribed; and

b. declaring the *Assessment* against petitioner as void and/or without merit and thereby, ordering the respondents to cancel the FAN/FLD and Assessment Notices, as well as any Warrant of Distraint and/or Levy, if any would be subsequently issued.

It is averred by petitioner that the motion is based on the following grounds:

I. it is respectfully submitted that the Honorable Court has the authority to render an early resolution/partial judgment on the issue of prescription of collection of taxes, prior to a full-blown trial on the merits of the case, in order to achieve a just, speedy, and inexpensive determination of the instant case considering that the prescription of the right of respondents to collect the alleged deficiency taxes against petitioner QLDI renders other matters moot and academic; and

II. respondents' right to collect the alleged deficiency taxes against petitioner QLDI has already prescribed as early as December 12, 2019.

Accordingly, the *Decision* dated February 4, 2020 of respondent CIR was clearly issued with grave abuse of discretion, whimsical exercise of jurisdiction and/or in blatant violation of law and applicable jurisprudence considering that at the time respondent CIR promulgated the *Questioned Decision* on February 4, 2020 for Collection of alleged deficiency taxes with an aggregate amount of Seven Million Two Hundred Fifty-Five Thousand Six Hundred Seventy Three and 65/100 (₱7,255,673.65), respondents' right to collect has already prescribed.

Petitioner avers that this Court has authority to render an early resolution/partial judgment on the issue of prescription of collection of taxes, prior to a full-blown trial on the merits of the case, in order to achieve a just, speedy, and inexpensive determination of the instant case considering that the prescription of the right of respondents to collect the alleged deficiency taxes against petitioner renders other matters moot and academic.

It alleges that in the *Questioned Decision*, respondent CIR denied the request for reconsideration filed by petitioner and ordered it to pay the aggregate amount of Seven Million Two Hundred Fifty-Five Thousand Six Hundred Seventy-Three and 65/100 (₱7,255,673.65), increments included, representing deficiency income tax, expanded withholding tax, IAET and compromise penalty for the taxable year 2010.

Petitioner claims that at the time respondent CIR issued the *Questioned Decision* on February 4, 2020, the respondents can no longer validly enforce the collection of the alleged deficiency taxes of petitioner since the right to collect has already prescribed on December 12, 2019.

Petitioner contends that to recall, on December 12, 2014, respondent BIR already sent out its Formal Assessment Notice/Formal Letter of Demand and Audit Results (FAN/FLD) dated December 11, 2014 reiterating the demand of respondent BIR – Legazpi City for the payment of the Deficiency Taxes and Increments which now increased to Seven Million Two Hundred Fifty-Five Thousand Six Hundred Seventy-Three and 65/100 (₱7,255,673.65) due to legal increments.

Petitioner states that applying Section 222(c) of the NIRC as well as the cases of *Commissioner of Internal Revenue vs. Stanley Works Sales (Phils.), Inc. supra, Bank of the Philippine Islands vs. Commissioner of Internal Revenue,* G.R. No. 181836 (July 9, 2014), *and China Banking Corp. vs. Commissioner of Internal Revenue, supra,* the prescriptive period to collect taxes is five (5) years from the date of mailing/release/sending of the FAN/FLD on December 12, 2014 or on December 12, 2019.

It further asserts that in applying Section 222(c) of the NIRC as well as the cases *Commissioner of Internal Revenue vs. Hambretch & Quist Philippines, Inc., supra,* and *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, the Letters sent out to protest the assessments are all in nature of request for reconsideration which do not toll the prescriptive period to collect taxes.

At the outset, it must be noted that in a Resolution dated March 8, 2021, the Court already submitted for resolution the issue on prescription, considering the manifestation of respondent's counsel last February 1, 2021 that respondents will no longer present evidence on the issue of prescription and considering further petitioner's Motion for Early Resolution of the Issue of Prescription of Collection of Taxes -with- Motion to Defer Pre-trial, filed on March 5, 2021. Thus, the Court shall proceed to determine if the respondents' right to collect taxes in this case already prescribed.

To resolve the issue, it is indispensable to examine the provisions of Sections 203, 222 and 223 of the 1997 National Internal Revenue Code (NIRC), as amended, which state:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
>
> xxx xxx xxx
>
> "SEC 222. *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 filed without assessment, at any time within ten (10) 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.
>
> (b) If before the expiration of the time prescribed in Section 203 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.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(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 five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however,* That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." (Emphases supplied)

XXX XXX XXX

"SEC. 223. *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 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 (60) 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 or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines." (Emphasis supplied)

As afore-quoted, Section 222(c) of the 1997 NIRC, as amended, states that internal revenue taxes which are assessed within the period of limitation may be collected within five (5) years following the assessment. In *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*,[1] *(BPI)* the Supreme Court clarified:

> "When the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years [now five years] after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. **The assessment of the tax is deemed made and the three-year period [now five-year period] for collection of the assessed tax begins to run on the date the assessment notice had been <u>released, mailed or sent</u> by the BIR to the taxpayer.**
>
> In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. FAS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989. Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST.

---

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

The earliest attempt of the BIR to collect on Assessment No. FAS-5-85-89-002054 was its issuance and service of a Warrant of Distraint and/or Levy on petitioner BPI. Although the Warrant was issued on 15 October 1992, previous to the expiration of the period for collection on 19 October 1992, the same was served on petitioner BPI only on 23 October 1992.

Under Section 223(c) of the Tax Code of 1977, as amended, it is not essential that the Warrant of Distraint and/or Levy be fully executed so that it can suspend the running of the statute of limitations on the collection of the tax. It is enough that the proceedings have validly began or commenced and that their execution has not been suspended by reason of the voluntary desistance of the respondent BIR Commissioner. Existing jurisprudence establishes that distraint and levy proceedings are validly begun or commenced by the issuance of the Warrant and service thereof on the taxpayer. It is only logical to require that the Warrant of Distraint and/or Levy be, at the very least, served upon the taxpayer in order to suspend the running of the prescriptive period for collection of an assessed tax, because it may only be upon the service of the Warrant that the taxpayer is informed of the denial by the BIR of any pending protest of the said taxpayer, and the resolute intention of the BIR to collect the tax assessed.

If the service of the Warrant of Distraint and/or Levy on petitioner BPI on 23 October 1992 was already beyond the prescriptive period for collection of the deficiency DST, which had expired on 19 October 1992, then what more the letter of respondent BIR Commissioner, dated 13 August 1997 and received by the counsel of the petitioner BPI only on 11 September 1997, denying the protest of petitioner BPI and requesting payment of the deficiency DST. Even later and more unequivocally barred by prescription on collection was the demand made by respondent BIR Commissioner for payment of the deficiency DST in her Answer to the Petition for Review of petitioner BPI before the CTA, filed on 08 December 1997." *(Emphasis supplied)*

Hence, when an assessment is timely issued, the BIR is given a period of five years within which to collect the tax assessed, reckoned from the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.

After perusal of the records of the case, the envelope[2] that came with the FAN/FLD[3] show that there is a stamp indicating that said documents were mailed on December 12, 2014[4]. Thus, applying the above discussion, respondent had five (5) years from December 12, 2014 within which to collect the said assessed deficiency or until December 12, 2019.

In the instant case, respondent BIR issued the *BIR Letter* on August 10, 2020[5], the *BIR Letter* on September 4, 2020[6] and the *BIR Letter* on September 11, 2020[7], for collection of the Subject Assessment. Clearly, these collection efforts by the respondents were beyond December 12, 2019, and therefore prescribed.

At this juncture, the Court stresses the following pronouncements in the case of *China Banking Corporation vs. Commissioner of Internal Revenue,*[8] to wit:

> "If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense. In *Heirs of Valientes v. Ramas,* we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. **The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time."** (Emphasis supplied)

[2] Exhibits "P-7", docket, vol. II, p. 709.
[3] Exhibit "P-6", docket, vol. II, pp. 703-708.
[4] Exhibits "P-7-b", docket, vol. II, p. 709.
[5] Exhibit "P-15", docket, vol. II, p. 784.
[6] Exhibit "P-16", docket, vol. II, p. 786.
[7] Exhibit "P-17", docket, vol. II, p. 788.
[8] G.R. No. 172509, February 4, 2015.

Notably, in this case, the issue on prescription of respondents' right to collect was raised as early as the filing of the Petition for Review. However, a review of the records, specifically respondents' Answer, and even their opposition to the motion to suspend collection of taxes, shows that respondents failed to controvert petitioner's allegation concerning the prescription of respondents' right to collect taxes. Even during the hearing set for the presentation of respondents' evidence on the issue of prescription as one of the grounds for petitioner's urgent motion to suspend collection of taxes, the respondents manifested that they will no longer present evidence, but will instead present its evidence in the main case.[9]

Considering the Court's Resolution dated March 8, 2021, submitting the issue of prescription for resolution, that the findings on respondents' right to collect is based on the evidence on record, and that respondents failed to controvert the same, despite being given the opportunity to do so, it can be concluded that the government's demand for payment of deficiency taxes in the Questioned Decision dated February 4, 2020 is already barred by prescription and must therefore be cancelled. Thus, it is no longer necessary to dwell on the propriety of the assessment.

WHEREFORE, premises considered, petitioner's **Motion for Early Resolution of the Issue of Prescription of Collection of Taxes – with – <u>Motion to Defer Pre-Trial</u>** is **GRANTED**. Accordingly, the assessment for deficiency taxes for taxable year 2010 issued against petitioner and contained in the FAN/FLD dated December 11, 2014 and Questioned Decision dated February 4, 2020, is **CANCELLED**.

SO ORDERED.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[9] Minutes of the hearing held on February 1, 2021.