CTA Form No. 8

22-000365-0043

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10937

SOUTH COTABATO 1 ELECTRIC COOPERATIVE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
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Bureau of Internal Revenue
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Sen. Miriam Defensor-Santiago Avenue
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8767 Paseo de Roxas, 1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **April 18, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 22, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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SOUTH COTABATO 1 ELECTRIC COOPERATIVE, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10937

Members:

DEL ROSARIO, *P.J.*,
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:
APR 1 8 2024, 10:10AM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] posted on July 8, 2022 by petitioner South Cotabato 1 Electric Cooperative, Inc. ("**Petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), under Section 3(a), Rule 8,[2] in relation to Section 3(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**").

[1] Docket, pp. 7-21.
[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
[3] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(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
[4] A.M. No. 05-11-07-CTA.

THE PARTIES

Petitioner South Cotabato 1 Electric Cooperative, Inc. was incorporated as a non-stock non-profit membership electric cooperative on August 31, 1971 under the provisions of Republic Act ("**RA**") No. 6038, otherwise known as the National Electrification Administration ("**NEA**") Act. [5] Petitioner is registered with the Bureau of Internal Revenue ("**BIR**") with Tax Identification Number 000-940-174.[6]

Respondent CIR is vested under the law with the authority to carry out the functions, duties, and responsibilities of said office, including the power to assess and collect all national internal revenue taxes.[7]

THE FACTS

On December 27, 2007, the Regional Director of Revenue Region No. 18 released two *Formal Letters of Demand* ("**FLD**") dated December 10, 2007, and signed by Regional Director Esmeralda M. Tabule, against petitioner. The first *FLD* demanded the payment of ₱19,120,471.85 representing deficiency income tax ("**IT**"), percentage tax ("**PT**"), value-added tax ("**VAT**") expanded withholding tax ("**EWT**"), and final withholding tax ("**FWT**") for calendar year ("**CY**") 2004, while the second *FLD* demanded the payment of ₱83,400.00 in compromise penalties.[8]

On March 5, 2008, petitioner allegedly applied and paid for the tax amnesty for its 2004 tax liabilities pursuant to RA No. 9480.[9]

On March 30, 2009, respondent issued a *Preliminary Collection Letter* ("**PCL**"), which petitioner received on March 31, 2009. The *PCL,* signed by Revenue District Officer Muslimen L. Maca-Agir Al-Hadj,[10] prompted petitioner to file a *Reply Letter* on April 3, 2009.[11]

[5] Petition for Review, par. 1.
[6] *Id.*, par. 10; admitted by respondent in his Answer, par. 2, p. 264.
[7] *Id.*, par. 3; admitted by respondent in his Answer, par. 1, p. 264.
[8] *Id.*, par. 11; admitted by respondent in his Answer, par. 2, formally offered by petitioner as Exhibit "P-5", but denied admission by the Court for failure of petitioner to present the originals for comparison; BIR Records, pp. 251-252.
[9] Tax Amnesty Act of 2007, May 24, 2007.
[10] Petition for Review, par. 13; BIR Records, p. 254.
[11] *Id.*, par. 13.

On August 29, 2009, respondent issued a *Final Notice Before Seizure* ("**FNBS**") in the total amount of ₱19,120,471.85.[12]

On October 22, 2009, petitioner allegedly received a *Letter* from respondent dated September 24, 2009, informing petitioner that it considered petitioner's application for tax amnesty. However, the *Letter* also informed petitioner that the Revenue District Office would still be enforcing the collection of the alleged deficiency EWT and FWT.[13]

On October 28, 2009, petitioner filed a *Request for Reprieve on Surcharges, Penalties, and Compromise Penalties.*[14]

On October 31, 2009, petitioner paid basic deficiency withholding taxes.[15]

On January 13, 2011, petitioner received another FNBS for ₱19,203,871.85.[16]

On June 8, 2022, petitioner, through Francis Ian A. Fedoc (**Mr. Fedoc**), received a Warrant of Distraint and/or Levy ("**WDL**").[17]

PROCEEDINGS BEFORE THE COURT

On July 8, 2022, petitioner posted a *Petition for Review* with an *Urgent Motion to Suspend Tax Collection and Prayer for the Issuance of a Temporary Restraining Order* ("**TRO**").[18] The Court received the *Petition* on July 25, 2022.

On August 15, 2022, the Court issued a *Resolution* finding the *Petition for Review* deficient and directing petitioner to submit the *Judicial Affidavit* of its witnesses and the original copies of (i) *Verification and Certification of Non-Forum Shopping*; (ii) *Secretary's Certificate*; and (iii) *Special Power of Attorney.*[19]

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[12] *Id.*, par. 14.
[13] *Id.*, par. 16.
[14] *Id.*, par. 17; BIR Records, p. 272.
[15] *Id.*, par. 18.
[16] *Id.*, par. 19; admitted by respondent in his Answer, par. 2; BIR Records, p. 277.
[17] *Id.*, par. 20; admitted by respondent in his Answer, par. 2; Exhibit "P-7", Docket, p. 183.
[18] *Supra* at note 1.
[19] Docket, pp. 60-61.

On September 20, 2022, petitioner filed a *Motion to Admit Verification and Certification of Non-Forum Shopping, Secretary's Certificate, and Special Power of Attorney and to Extend the Deadline of the Judicial Affidavit of Petitioner's Witness.*[20] On September 23, 2022, it filed a *Motion to Admit the Judicial Affidavit of Francis Ian A. Fedoc.*[21] Both motions were granted in an *Order* dated September 29, 2022.[22]

On September 29, 2022, petitioner presented its witness, Mr. Fedoc, who testified on direct examination by way of a *Judicial Affidavit.*

On October 4, 2022, respondent received a *summons.*[23]

On October 7, 2022, petitioner filed a *Formal Offer of Evidence (for Petitioner's Urgent Motion to Suspend Tax Collection with Prayer for the Issuance of TRO),*[24] to which respondent filed his *Comment (Re: Petitioner's FOE in relation to Urgent Motion to Suspend Tax Collection with Prayer for the Issuance of TRO)* on October 11, 2022.[25] The Court resolved the said *FOE* on October 20, 2022.[26]

After being ordered by the Court, petitioner filed its *Compliance (Submission of Petitioner's Memorandum)* on November 2, 2022,[27] and respondent filed his *Memorandum (on Petitioner's Urgent Motion to Suspend Tax Collection and Prayer for the Issuance of a Temporary Restraining Order)* on November 10, 2022.[28]

On November 3, 2022, respondent posted his *Motion for Extension of Time to File Answer.*[29]

On November 22, 2022, the Court submitted petitioner's *Urgent Motion to Suspend Tax Collection, and Prayer for the Issuance of a Temporary Restraining Order* incorporated in the *Petition for Review* for resolution. In the same *Resolution,* respondent's *Motion for Extension of Time to File Answer* was

[20] *Id.*, pp. 68-72.
[21] *Id.*, pp. 79-82.
[22] *Id.*, pp. 169-171.
[23] *Id.*, p. 173.
[24] *Id.*, pp. 180-182.
[25] *Id.*, pp. 212-215.
[26] *Id.*, pp. 222-223.
[27] *Id.*, pp. 224-241.
[28] *Id.*, pp. 242-251.
[29] *Id.*, pp. 253-256.

granted, and respondent was ordered to certify and elevate the entire BIR records of the instant case to the Court.[30]

On December 5, 2022, respondent filed his *Answer (Re: Petition for Review with Urgent Motion to Suspend Tax Collection, and Prayer for the Issuance of a Temporary Restraining Order dated July 7, 2022).*[31]

On January 6, 2023, the Court granted petitioner's *Urgent Motion to Suspend Tax Collection and Prayer for the Issuance of TRO* without the necessity of depositing or posting a bond.[32]

On January 11, 2023, respondent filed his *Compliance,* elevating the BIR Records, which consisted of one folder with 417 pages.[33]

On January 18, 2023, the Court issued a *Resolution* referring this case for mediation.[34] However, the Philippine Mediation Center Office filed a *No Agreement to Mediate* on March 13, 2023.[35]

The case was not mediated, so it was set for a pre-trial conference.[36] Respondent filed his *Pre-Trial Brief* on April 26, 2023.[37]

On July 17, 2023, petitioner filed a *Motion for Summary Judgment*[38] to which respondent belatedly filed his *Comment and Opposition (Re: Motion for Summary Judgment dated 17 July 2023)* on August 14, 2023.[39]

On August 24, 2023, petitioner filed a *Compliance with Submission*, together with a *Pre-Trial Brief.*

After being submitted for resolution on August 17, 2023, the Court partially granted petitioner's *Motion for Summary Judgment* in a *Resolution* dated September 4, 2023.[40] Accordingly, the case was submitted for decision.

[30] *Id.*, pp. 262-263.
[31] *Id.*, pp. 264-274.
[32] *Id.*, pp. 279-288.
[33] *Id.*, pp. 289-291.
[34] *Id.*, p. 299.
[35] *Id.*, p. 301.
[36] *Id.*, p. 305.
[37] *Id.*, pp. 310-312.
[38] *Id.*, pp. 321-331.
[39] *Id.*, pp. 494-497.
[40] *Id.*, pp. 519-522.

Hence, this *Decision.*

THE ISSUES

The parties raised the following issues in their respective *Pre-trial Briefs*:

Petitioner:

1. Whether the Respondent's right to collect has prescribed; and

2. Whether there are factual and legal bases to hold Petitioner liable for the deficiency tax for the calendar year 2004 in the aggregate amount of Pesos: Fifty-Six Million Seven Hundred Eleven Thousand Five Hundred Fifty-Eight & 26/100 (₱56,711,558.26) inclusive of surcharges, interest, and penalties.

Respondent:

1. Whether or not petitioner is liable to pay for deficiency Income Tax, Value-Added Tax, Percentage Tax, Expanded Withholding Tax, Final Withholding Tax, and Compromise Penalty amounting to Php56,711,558.26 for taxable year 2004; and

2. Whether or not all necessary requirements and compliance have been complied with the requirements for Tax Amnesty under Republic Act No. 9480.

PETITIONER'S ARGUMENTS

Petitioner argues that respondent's right to collect has prescribed. According to petitioner, respondent only has three (3) years from the taxpayer's receipt of the assessment to collect taxes.[41] Petitioner contends that it was able to receive the FLD on December 27, 2007.[42] However, petitioner only received the WDL on June 8, 2022.[43]

Petitioner further argues that it timely availed of the tax amnesty which afforded it immunity from deficiency tax assessments for the subject taxable year.[44] According to petitioner, respondent even acknowledged petitioner's

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[41] Petition for Review, par. 24.
[42] *Id.*, par. 30.
[43] *Id.*, par. 31.
[44] *Id.*, par. 39.

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application for and payment of the tax amnesty.[45] Petitioner adds that it had already paid basic deficiency EWT and FWT as these taxes were not covered by the tax amnesty law.[46]

RESPONDENT'S ARGUMENTS

Respondent contends that petitioner's application for tax amnesty is not automatically approved upon submission. The Tax Amnesty Task Force has not yet confirmed and validated this, as no certification was issued in favor of petitioner.[47]

Respondent maintains that petitioner is liable for deficiency income tax on disallowed birthday gifts for the employees [48] and unsubstantiated income tax credits; [49] deficiency percentage tax on sales of energy not subject to franchise tax;[50] deficiency VAT on non-operating revenues;[51] and deficiency withholding taxes on director's fees,[52] outside services, security services, and "ads and publication expense."[53]

RULING OF THE COURT

The *Petition* is impressed with merit.

The Court has jurisdiction over the instant Petition for Review.

Before delving into the merits of the case, We shall first address our jurisdiction over the instant *Petition*.

Section 7(a)(1) and (2) of Republic Act ("**RA**") No. 1125,[54] as amended by RA No. 9282,[55] confers jurisdiction to this Court relative to decisions and inactions of respondent, to wit:

SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:

[45] *Id.*, par. 40.
[46] *Id.*, par. 43.
[47] Answer, par. 11, pp. 264-274.
[48] *Id.*, par. 16.
[49] *Id.*, par. 17.
[50] *Id.*, par. 19.
[51] *Id.*, par. 22.
[52] *Id.*, par. 25.
[53] *Id.*, par. 26.
[54] An Act Creating the Court of Tax Appeals, June 16, 1954.
[55] 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, March 30, 2004.

> (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) **Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; *[Emphasis supplied.]*

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the [CIR]...**may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ...** *[Emphasis supplied]*

The above provisions are likewise reflected in Section 3(a)(1) and (2), Rule 4[56] of the RRCTA.

Based on the foregoing, the jurisdiction of the Court of Tax Appeals (CTA) is not limited to the CIR's decisions on disputed assessments and claims for refunds but also includes the CIR's decisions on "**other matters**" arising from the NIRC of 1997, as amended, or other laws administered by the BIR.

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[56] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(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) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

The term "other matters" has been ruled to include, but not limited to, a review of the CIR's authority and decision to compromise,[57] a **prescription** of the CIR's right to collect taxes,[58] and a determination of the **validity of a WDL**.[59]

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands (BPI),*[60] the Supreme Court declared that the CTA has jurisdiction to determine the propriety of a WDL, as the law expressly vests the CTA with authority to take cognizance of "other matters" arising from the NIRC, viz.:

> . . . [T]he issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.
>
> The law expressly vests the CTA the authority to take cognizance of "**other matters**" arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.
>
> **Thus, the CTA properly exercised jurisdiction over BPI's Second Petition [assailing the WDL**]. [*Emphasis supplied*]

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital),*[61] the Supreme Court echoed the CTA's jurisdiction to determine the validity of the WDL, *viz.*:

> As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division,* the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR**. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.** [*Emphasis supplied*]

[57] *Philippine National Oil Company v. Court of Appeals, et al.*, and *Philippine National Bank v. Court of Appeals, et al.*, G.R. Nos. 109976 and 112800, April 26, 2005.
[58] *Commissioner of Internal Revenue v. Court of Tax appeals Second Division*, G.R. No. 258947, March 29, 2022; *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[59] *La Flor Dela Isabela, Inc. c. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021; *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[60] G.R. No. 227049, September 16, 2020.
[61] G.R. No. 255473, February 13, 2023.

In the instant case, petitioner received on June 8, 2022, a WDL from the BIR seeking to collect from it the alleged deficiency IT, PT, VAT, EWT, and FWT for CY 2004 for ₱56,711,558.26, including interest and surcharge.[62] Records reveal that the WDL was issued based on the FLD issued on December 10, 2007, and "released" on December 27, 2007.[63]

Under the circumstances, We find that petitioner's remedy was indeed to appeal to this Court within 30 days from the date it was notified of the WDL.[64] Therefore, the filing of the instant *Petition for Review* on July 8, 2022, or within 30 days from receipt of the WDL, is on time.[65]

We shall now resolve whether the CIR may collect the alleged deficiency taxes.

Respondent's right to collect the alleged deficiency taxes from petitioner has already prescribed.

Section 203 of the NIRC of 1997, as amended, which provides for the *three (3)-year* ordinary prescriptive period to assess and collect taxes, reads:

> SEC. 203. Period of Limitation Upon Assessment and Collection. — **Except as provided in Section 222**, internal revenue taxes shall be assessed **within three (3) years** after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. [*Emphasis supplied*]

The Supreme Court, in *CIR v. Court of Tax Appeals Second Division & QL Development (QL Development)*,[66] citing *CIR v. United Salvage and Towage (Phils.), Inc.*,[67] held that in cases of

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[62] *Supra* at note 17.
[63] Resolution dated January 6, 2023. Docket, pp. 279 to 288.
[64] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.
[65] *Supra* at note 1.
[66] G.R. No. 258947, March 29, 2022.
[67] G.R. No. 197515, July 2, 2014, 738 PHIL 335-357.

assessments issued within the three-year ordinary period, the CIR has *another three years* to collect taxes, *viz.*:

> In *CIR v. United Salvage and Towage (Phils.), Inc.*, the Court held that in cases of assessments issued within the three-year ordinary period, **the CIR has another three years within which to collect taxes**, thus:
>
> > The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax **begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.** [*Emphasis and underscoring supplied.*]

On the other hand, Section 222 of the NIRC of 1997, as amended, provides the exceptions to the 3-year prescriptive period to assess and collect taxes, to wit:

> 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.
>
> ... ...
>
> (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. (*Emphasis supplied*)

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Indeed, when the BIR validly issues the assessment within the prescribed 3-year period under Section 203, it has another three (3) years to collect the tax due. However, when the assessment is issued within the extraordinary period of ten (10) years in case of false or fraudulent return or failure to file a return under Section 222, the BIR has five (5) years to pursue collection efforts.

As ruled in the *QL Development* case, the 3-year period to collect the assessed tax begins when the assessment notice is released, mailed, or sent to the taxpayer.[68] Furthermore, the CIR's collection efforts are initiated by *distraint, levy, or court proceeding.* The *distraint and levy proceedings* are validly begun or commenced by the issuance of a WDL and service thereof on the taxpayer. A *judicial action* for the collection of a tax is initiated: (a) by the filing of a complaint with the court of competent jurisdiction; or (b) where the assessment is appealed to the CTA by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.

Relatedly, Section 223 of the NIRC of 1997, as amended, provides the instances when such period to collect is tolled, *viz.*:

> 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 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."

[68] *Id.*

As pointed out in our Resolution dated January 6, 2023,[69] a review of the FLD shows that it was issued on December 10, 2007, and was "released" on **December 27, 2007**. Applying the rules on the prescriptive period as discussed above, respondent had, at most, until **December 27, 2010,** to collect on the deficiency taxes if the FLD was issued within the 3-year ordinary period, or until **December 27, 2012,** if the FLD was issued within the extra-ordinary period of 10 years in case of false or fraudulent return or failure to file a return.

Here, none of the circumstances provided in Section 223 that may suspend the period to collect is present. Moreover, no WDL was served to petitioner, and no judicial proceeding was initiated by the CIR within the period to collect. As such, the prescriptive period counted from the "release" of the FLD on **December 27, 2007**, remains uninterrupted.

Verily, prescription had already set in when the WDL was served to petitioner's witness on **June 8, 2022,**[70] more than **fourteen (14) years** after the "release" of the FLD. Regardless of which period to apply, i.e., *three years* under Section 203 or *five years* under Section 222, the CIR's collection effort was already barred by prescription.

At this juncture, the Court ought to reiterate that while taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite and infinite periods to assess and collect alleged unpaid taxes. Certainly, it is an injustice to leave taxpayers in perpetual uncertainty whether they will be made liable for deficiency or delinquent taxes.[71]

With the foregoing ruling, the Court deems it unnecessary to discuss the other issues raised by the parties.

In closing, the Court reminds counsels to be more circumspect in preparing pleadings filed before it.

In the instant case, respondent states in his *Pre-trial Brief*[72] that he finds it unnecessary to present evidence, to wit:

[69] Docket, pp. 279 to 288.
[70] Exhibit "P-7-1," Docket, p. 183.
[71] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division, supra* at note 66.
[72] Pre-trail Brief dated April 17, 2023, Docket, pp. 310-314.

IV. <u>Documents or Exhibits to be Presented</u>

1. Considering that respondent will submit **legal issues**, he finds it **unnecessary to present evidence**.

However, in respondent's *Comment and Opposition (Re: Motion for Summary Judgment dated 17 July 2023)*, he insists on a "full-blown trial" to allow him to present his evidence, *viz.*:

> 1. In the instant Motion, petitioner prays that a summary judgment be rendered, a permanent injunction order be issued in its favor and that the scheduled pre-trial conference on 31 August 2023 be deferred. With this, respondent respectfully opposes the Motion for utter lack of merit.
>
> 2. ...
>
> **3.** Respondent also submits that there are other issues submitted before this Honorable Court which requires trial on the merits. Further, **respondent has not yet exhausted all his defenses for the merits of the case.**
>
> 4. ...
>
> **5.** Considering the variance in the allegations of petitioner and respondent, **it would definitely serve due process if respondent will be given the opportunity to present his evidence <u>to attest and support his defenses on the merits.</u>**
>
> 6. ...
>
> 7. In view of the conflicting averments of the parties, **a <u>full-blown trial</u> is necessary to provide this Honorable Court sufficient evidence to properly ruled on the instant case.** Petitioner's prayer for a summary judgment without full-blown trial is clearly in violation of respondent's right to due process given that petitioner failed to satisfactorily show that its allegations in the petitioner were sufficiently denied in respondent's Answer, thus creating a genuine issue as to the material facts in the petition. Hence, the Motion for Summary Judgment must fail.
>
> 8. In fact, even a perusal of petitioner's allegations in its motion would readily reveal that a full-blown trial is necessary. **Respondent should not be denied of his right to <u>controvert petitioner's allegations.</u>**

The inconsistency in respondent's submissions cannot just be ignored. While asserting in his *Comment and Opposition* that a "full-blown trial" is warranted because he has yet to present evidence to attest and support his defenses on the merits and controvert petitioner's allegations, his *Pre-trial Brief* indicates a contrary stance by deeming the presentation of evidence unnecessary as he will submit "legal issues."

Hence, given the foregoing, the Court reminds counsels, especially the CIR's counsels, of the prohibition against misleading the Court[73] and to be more circumspect or cautious when preparing and filing pleadings before the Court.

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. Respondent Commissioner of Internal Revenue's right to collect from petitioner South Cotabato 1 Electric Cooperative, Inc. the alleged deficiency taxes in the amount of ₱56,711,558.26 including interest and surcharge, for CY 2004 is declared to have **PRESCRIBED.**

Accordingly, the undated Warrant of Distraint and/or Levy No. RR18-22-113 enforcing collection of the deficiency tax liabilities per the Formal Letter of Demand dated December 10, 2007, is **CANCELLED** and **SET ASIDE,** for being **NULL and VOID**.

Further, respondent is **ENJOINED** from proceeding with the collection of taxes in the above-captioned case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[73] 2023 New Code of Professional Responsibility.

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice