REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PRIME STEEL MILL, INCORPORATED, Petitioner,	**CTA CASE NO. 8818** Members:
- versus -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 21 2017 3:20 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J*.:

For this Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration**, filed on February 9, 2017, without respondent's comment despite notice as per Records Verification dated March 9, 2017; and

2. respondent's **Motion for Partial Reconsideration**, filed on February 13, 2017, with petitioner's **Comment**, filed on March 16, 2017.

The parties seek reconsideration of the Court's Decision[1] dated January 23, 2017 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2005 covering deficiency value-added tax (₱ 15,754,207.87),

[1] Docket volume (vol.) 2, pp. 501-525.

is **CANCELLED** and **WITHDRAWN**. However, the assessment issued by respondent against petitioner for taxable year 2005 covering deficiency income tax is **AFFIRMED but with modifications**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount **THIRTY-ONE THOUSAND SEVEN HUNDRED THIRTY-SIX PESOS AND 1/100 (₱31,736.01)** representing basic deficiency income tax of ₱25,388.81, and twenty-five percent 25% surcharge of ₱6,347.20 imposed under Section 248(A)(3) of the NIRC of 1997, as amended.

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty percent 20% per annum on the basic deficiency income tax of ₱25,388.81 computed from April 15, 2006 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and,

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱31,736.01 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from May 14, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."[2]

In its motion, petitioner alleges that the stipulated issue of "Whether the FAN and FLD issued for taxable year 2005 against petitioner representing alleged Income and VAT deficiencies and the right of the Government through the Bureau of Internal Revenue to collect such alleged deficiency taxes had prescribed pursuant to Section 203 and 222 of the 1997 Tax Code, as amended.", was not settled by the Court in the assailed Decision. It claims that what was resolved by the assailed Decision was only with respect to prescription of the three (3) year period to assess under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended and not the prescription of the five (5) year period to collect under Section 222(c) of the NIRC of 1997, as amended.

Petitioner avers that the commencement of the five (5) year period to collect is reckoned from the date of issuance of the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD), which in this case was received by petitioner on February 12, 2009. Thus, petitioner claims that the five (5) years period to collect will expire on February 12, 2014.

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[2] Docket vol. 2, p. 524.

According to petitioner, respondent presented no evidence that could have stopped the running of the prescriptive period to collect. It claims that considering the Final Decision on Disputed Assessment was issued on April 14, 2014, respondent could not have issued any Warrant of Distraint and/or Levy or instated any judicial proceedings for the collection of taxes that would toll the running of the five (5) year prescriptive period to collect. Thus, petitioner prays that an amended decision be rendered ordering the cancellation and withdrawal of the assessment of income tax deficiency against it for taxable year 2005 amounting to ₱31,736.01.

Petitioner's Motion for Partial Reconsideration is bereft of merit.

Section 222(c) of the NIRC of 1997, as amended, provides that respondent has five (5) years following the assessment of tax within which to collect by distraint or levy or by a proceeding in court, *viz*:

> "SEC. 222. **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 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."

In the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*[3], the Supreme Court held that the period for collection begins to run on the date the assessment notice has been, released, mailed or sent to the taxpayer, to wit:

> "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 ours*)

However, as provided in Section 223 of the NIRC of 1997, as amended, the running of the five (5)-year period to collect shall be suspended when the taxpayer requests for a reinvestigation which is granted by Commissioner. The provision, reads as follows:

/h

[3] G.R. No. 197515, July 2, 2014.

> "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." (*Emphasis ours*)

The Supreme Court, in the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[4], explained why a request for reinvestigation interrupts the running of the statute of limitations on the collection of the assessed tax, to wit:

> "It bears to emphasize that under Section 224 of the Tax Code of 1977, as amended, the running of the prescriptive period for collection of taxes can only be suspended by a request for reinvestigation, not a request for reconsideration. Undoubtedly, **a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax**, while the latter cannot." (*Emphasis ours*)

However, in the case of *China Banking Corporation vs. Commissioner of Internal Revenue*[5], the Supreme Court held that "A request for reinvestigation alone will not suspend the statute of limitations. Two things must concur: there must be a request for reinvestigation and the CIR must have granted it."

In this case, the records show that petitioner received the Formal Letter of Demand (FLD) with Details of Discrepancies[6] and Final Assessment

[4] G.R. No. 139736, October 17, 2005.
[5] G.R. No. 172509, February 4, 2015.
[6] Exhibits "P-8" and "P-8-A", docket, vol. 1, pp. 284-287.

Notices (FAN)[7] dated January 14, 2009, on February 12, 2009. Then on March 6, 2009, petitioner filed a letter[8] dated March 5, 2009 to respondent disputing the FLD and FAN and asking for their cancellation. Petitioner submitted its explanations and supporting documents to show that the assessment has no basis in fact. This was considered a request for reinvestigation by respondent and was granted through the issuance of a Tax Verification Notice[9] dated January 25, 2010.

The filing of the request for reinvestigation by petitioner and the subsequent granting by respondent interrupted the running of the statute of limitations on the collection of the assessed tax. Thus, the five (5) year period to collect under Section 222(c) of the NIRC of 1997, as amended, has yet to prescribe.

Considering the foregoing, the Court finds petitioner's motion bereft of merit.

Now, in respondent's Motion for Partial Reconsideration, respondent moves for the Court to reverse and set aside the assailed Decision on the following grounds:

1. Petitioner has unaccounted sources of cash in the amount of ₱25,587,799.58 for the year 2005;
2. Petitioner is liable to pay deficiency income tax, value-added tax (VAT), and compromise penalty in the aggregate amount of ₱37,675,379.58;
3. The right of the government to assess petitioner for deficiency income tax and VAT for taxable year 2005, and to collect the same have not yet prescribed pursuant to Sections 203 and 222 of the NIRC of 1997, as amended; and
4. The alleged input VAT in the amount of ₱3,636,370.41 should have been disallowed for not complying with the invoicing requirements under Revenue Regulations No. 16-2005 dated 19 October 2005.

Petitioner, in its Comment, avers that respondent's motion states nothing new and restates the ruling of this Court on the matters raised by respondent. Petitioner also reiterates its allegation with regard to the prescription of the period to collect the assessed tax.

With respect to the prescription of the period to collect the deficiency taxes involved in this case, the Court reiterates that the same has not yet prescribed considering that the filing of the request for reinvestigation and the

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[7] Exhibits "P-9", "P-9-A" and "P-9-B", docket, vol. 1, pp. 288-290.
[8] Exhibit "P-10", docket, vol. 1, pp. 291-294.
[9] Exhibit "R-1", docket, vol. 1, p. 448.

subsequent granting by respondent was found to have interrupted the running of the statute of limitations on the collection of the assessed tax.

As to the remaining arguments, the Court finds the same to be a mere rehash of the arguments raised in his Memorandum[10] which have been duly considered and extensively discussed by the Court in the assailed Decision.

Considering the fact that respondent did not raise any new argument that would merit a reconsideration of the assailed Decision, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on January 23, 2017.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration** and respondent's **Motion for Partial Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[10]Docket vol. 1, pp. 486-492.