REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MABUHAY BISCUIT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **11803**

Members:

BACORRO-VILLENA, *Chairperson and*
CUI-DAVID, *JJ.*

Promulgated:
4:20 pm

x - x

RESOLUTION

Before the Court is petitioner Mabuhay Biscuit Corporation's (**petitioner**'s/**MBC**'s) "Extremely Urgent Prayer for Issuance of Temporary Suspension Order and/or Suspension Order Enjoining the Collection of Taxes"[1] (**Prayer for Suspension**) embodied in its Petition for Review[2] filed on 14 March 2025 and e-mailed on even date, with respondent Commissioner of Internal Revenue's (**respondent**'s/ **CIR**'s) "Comment/Opposition (To Petitioner's [Prayer for Suspension])"[3] (**Opposition**) filed on 09 June 2025 and e-mailed on 25 September 2025.

The Petition for Review with Prayer for Suspension was initially raffled to this Court's Third Division.

On 25 June 2025, petitioner filed its "Formal Offer of Evidence (Re. Extremely Urgent Prayer for Issuance of Suspension Order Enjoining the Collection of Taxes)"[4] (**FOE**). Thereafter, on 08 July 2025, respondent filed his or her "Answer (Re: Petition for Review with Review Motion for for the Issuance of a Temporary Suspension Order

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1 Division Docket, Volume I, pp. 34-43.
2 Id., pp. 7-48.
3 Id., pp. 136-156.
4 Id., pp. 192-225.

and/or Suspension Order Enjoining the Collection of Taxes)"[5] (**Answer**). On 09 July 2025, respondent filed his or her "Comment (To Petitioner's Formal Offer of Evidence re: Suspension Order)"[6] (**Comment**).

Subsequently, in a Minute Resolution 18 July 2025,[7] the Court noted respondent's Answer,[8] filed personally on 08 July 2025 and *via* e-mail on 09 July 2025.

In his or her Answer, respondent admits: (**1**) the issuance of the Formal Letter of Demand (**FLD**)/ Final Assessment Notice (**FAN**) on 06 May 2019;[9] (**2**) his or her acceptance of petitioner's request for reinvestigation on 11 July 2019;[10] (**3**) the issuance of the Final Decision on Disputed Assessment (**FDDA**) on 09 June 2020;[11] and (**4**) the issuance of the CIR's own Decision on 23 December 2024[12] (**Final Decision**) and received by petitioner on 12 February 2025.[13]

On prescription, respondent argues that the State's right to collect has not prescribed because the running of the prescriptive period for collection was suspended (tolled) by petitioner's post-FDDA administrative recourse. Respondent notes that petitioner asserts the BIR had only three (3) years from the mailing of the FDDA (allegedly 22 June 2020), or until 22 June 2023, within which to collect. According to respondent, this position disregards the express tolling rule under Section 223 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which suspends the running of the statute of limitations in specified instances, including when a taxpayer-requested reinvestigation is granted and for sixty (60) days thereafter.

Respondent stresses that: (**a**) petitioner filed a "Request for Reconsideration of [FDDA] for Taxable Year 2017" (**Request for Reconsideration**)[14] on 03 August 2020; and (**b**) the request remained pending until petitioner received the Final Decision only on 12 February 2025. Thus, respondent posits that from 03 August 2020 to 12 February 2025, the period to collect did not run because the CIR was

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5 Id., Volume II, pp. 769-798.
6 Id., pp. 859-868.
7 Id., p. 874.
8 Supra at note 5.
9 Par. 16, Factual Antecedents, Answer, supra at note 5, p. 772.
10 Par. 17, id.
11 Par. 18, id.
12 Exhibit "P-15", id., Volume I, pp. 52-54.
13 Par. 19, Factual Antecedents, Answer, supra at note 5, p. 773.
14 Id., Volume I, pp. 422-436.

effectively precluded from enforcing collection while the administrative recourse was unresolved. In any event, respondent maintains that Section 223[15] of the NIRC of 1997, as amended, expressly suspends the prescriptive period when a taxpayer-requested reinvestigation is granted, and for sixty (60) days thereafter.

Consequently, respondent argues that the three (3)-year collection period could not have lapsed on 22 June 2023. Instead, respondent submits that the period began to run anew only upon petitioner's receipt of the Final Decision on 12 February 2025, plus the additional sixty (60) days provided by law (*i.e.,* up to approximately 12 April 2025), and possibly longer depending on the unexpired balance of the original three (3)-year period. Respondent further contends that petitioner's reliance on Section 203 alone is misleading because Sections 203[16] and 223 of the NIRC of 1997, as amended, must be read together lest the tolling mechanism under Section 223 of the NIRC of 1997, as amended, be rendered nugatory. Lastly, respondent maintains that petitioner's interpretation would unfairly prejudice the State by counting the time spent resolving petitioner's own administrative appeal against the State's prescriptive period to collect.

On 27 October 2025, the Court issued a Resolution on petitioner's Formal Offer of Evidence admitting its offered exhibits in support of its Prayer for Suspension, *i.e.,* Exhibits Nos. **"P-1"** to **"P-37-SO,"** inclusive of the sub-markings.

In a Resolution dated 14 January 2026, the present case was transferred to the Court's Second Division pursuant to Administrative Circular No. 01-2026 (Reorganizing the Divisions of the Court of Tax Appeals [**CTA**]) dated 13 January 2026.[17]

In the case at bar, petitioner has been assessed for alleged deficiency taxes and compromise penalties for the calendar year (**CY**) ended 31 December 2017 (**2017**). The total assessed amount is **₱141,029,696.22** inclusive of interest and penalties, as detailed in respondent's FDDA dated 09 June 2020,[18] which petitioner received on 02 July 2020. The breakdown of the alleged deficiency tax assessment is shown in the following tabulation:

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15 **SEC. 223**. *Suspension of Running of Statute of Limitations.*
16 **SEC. 203**. *Period of Limitation Upon Assessment and Collection.*
17 Division Docket, Volume II, p. 945.
18 Exhibit "P-13", id., Volume I, pp. 417-420.

Tax Type	Basic	Interest	Total
Income Tax	₱82,179,204.04	₱18,435,534.76	₱100,614,738.80
Value-Added Tax (**VAT**)	29,349,715.88	7,679,842.30	37,029,558.18
Expanded Withholding Tax (**EWT**)	114,362.79	30,496.74	144,859.53
Withholding Tax on Compensation (**WTC**)	881,987.40	235,196.64	1,117,184.04
Subtotal	***₱112,525,270.11***	***₱26,381,070.44***	***₱138,906,340.55***
Compromise Penalties	2,123,355.67	-	2,123,355.67
Total	**₱114,648,625.78**	**₱26,381,070.44**	**₱141,029,696.22**

In its Prayer for Suspension, petitioner argues that: (**1**) the State's right to collect the alleged deficiency taxes for CY 2017 is already barred by prescription, because no collection action was instituted within three (3) years from the issuance date of the FDDA, *i.e.,* 22 June 2020; (**2**) the deficiency tax assessments are not delinquent, since they remain disputed and have not attained finality; thus, the BIR cannot employ collection remedies such as the issuance of a Warrant of Distraint and Levy (**WDL**); (**3**) any imminent collection effort, *e.g.,* specifically a WDL, poses a real and actual threat of grave and irreparable injury, given the substantial amount of ₱141,029,696.22 and petitioner's insufficient financial capacity; (**4**) FLD/FAN, FDDA and Final Decision are void for being prescribed, for merely reproducing *verbatim* the contents of earlier notices without addressing petitioner's arguments, for introducing new disallowances only at the FDDA stage, for stating indefinite amounts and omitting the required due dates and for being issued without the supporting assessment notices that should have been attached; (**5**) any BIR collection would pre-empt judicial review and render any CTA judgment ineffectual, contrary to the purpose of injunctive relief; (**6**) a Suspension Order is necessary to preserve the status quo, prevent unlawful collection, and avoid irreparable damage while the assessments are being disputed before the Court; and (**7**) the Court may dispense with the bond requirement, citing *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. The Court of Tax Appeals – First Division and the Commissioner of Internal Revenue,*[19] where courts may restrain tax collection without bond if the method used by respondent is not sanctioned by law or if collection is otherwise invalid.

During the 10 June 2025 hearing on petitioner's Prayer for Suspension, petitioner presented Maricel R. Santos (**Santos**), Accounting Supervisor of Jocker's Foods Industries (**JFI**), petitioner's sister company, who declared that:

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[19] G.R. No. 213394, 06 April 2016.

(1) Petitioner timely filed all its VAT and income tax returns for CY 2017, including Monthly VAT Declarations, Quarterly VAT Returns, Quarterly Income Tax Returns and the Annual Income Tax Return with attached Audited Financial Statements (**AFS**);

(2) Petitioner seeks injunctive relief because the FAN/FLD and FDDA are void, as:

a. the period to collect the alleged deficiency taxes has prescribed;
b. the FAN/FLD is a mere reiteration of the PAN;
c. the FDDA merely repeats the FAN/FLD;
d. new bases for disallowances were raised for the first time only in the FDDA;
e. the FDDA does not provide a definite due date; and
f. the FAN/FLD states no definite amount due;

(3) The deficiency assessments are devoid of factual and legal bases, rendering both the FAN/FLD and FDDA invalid;

(4) Petitioner is entitled to injunctive relief because the assessments are still under administrative and judicial appeal, meaning the alleged deficiency taxes are not yet delinquent and may not be the subject of BIR's summary remedies;

(5) Unrestrained collection would cause grave and irreparable injury, as petitioner lacks the cash to pay the alleged deficiency taxes; payment would deprive it of essential working capital and jeopardize the continuation of its business operations; and

(6) If respondent proceeds with collection while the case is pending, petitioner's operations and very existence would be placed in jeopardy, thus justifying the issuance of a suspension order.[20]

On cross-examination, Santos clarified that: (**1**) she serves as JFI's Accounting Supervisor and not petitioner's employee, and that she assists petitioner only because JFI is petitioner's sister company; (**2**) she explained that her participation in petitioner's CY 2017 audit

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[20] See Judicial Affidavit of Maricel R. Santos dated 12 March 2025 and Supplemental Judicial Affidavit dated 04 June 2025, Exhibits "P-36-SO" and "P-37-SO", respectively, Division Docket, Volume I, pp. 58-84 and pp. 109-112, respectively.

involved collating, reviewing and submitting documents to petitioner's tax consultants and the BIR, including transmitting copies of the Letter of Authority (**LOA**), Notice of Informal Conference (**NIC**), Preliminary Assessment Notice (**PAN**), FLD/FAN and FDDA in her custody; (**3**) she is not a certified public accountant (**CPA**) nor an expert witness; (**4**) she did not prepare nor certify petitioner's CY 2023 AFS; and (**5**) she did not conduct liquidity, solvency or working-capital analysis to support her statements regarding petitioner's financial capacity.[21]

Santos further acknowledged that: (**1**) her conclusions rest solely on the AFS; (**2**) petitioner's assets—including total assets, cash, receivables, PPE, equity and retained earnings—increased from 2022 to 2024; (**3**) petitioner consistently reported profits rather than losses; (**4**) her view on the possible invalidation of the FLD/FAN and FDDA constitutes her personal opinion; (**5**) she had no personal knowledge of how the AFS were prepared; (**6**) although half of petitioner's receivables are overdue, they remain collectible; and (**7**) petitioner's loan repayments, increasing retained earnings and positive sales trends.[22]

On re-direct examination, Santos expounded that her responsibilities included checking and reviewing documents before submitting them to petitioner's consultants. She clarified petitioner's asset composition, identifying cash, receivables, finished goods, raw materials and PPE as necessary to petitioner's operations. She described trade receivables as sales on account, finished goods as inventory ready for sale, raw materials as production inputs and machinery as equipment essential to manufacturing. She emphasized that disposing of any current or non-current asset could force petitioner to cease operations, given that each asset category plays a vital role in sustaining its business.[23]

Lastly, during re-cross examination, Santos explained that she reviewed documents in preparing the tabulations appearing in her judicial affidavit and not merely forwarded documents. She reiterated that petitioner's receivables are collectible despite half being overdue and clarified that she focused only on cash and receivables in concluding petitioner's cash balance was insufficient because those items fund daily operations. She stated that using other assets, *i.e.,* inventory, raw materials, or PPE, to satisfy the deficiency assessments would cripple operations since those assets are indispensable to

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21 TSN dated 10 June 2025, pp. 10-22.
22 Id.
23 Id., pp. 22-25.

production. She maintained that any required surety bond, even as low as ₱1 million, would still impair petitioner's financial position. She also confirmed that petitioner has not received any WDL, garnishment or final collection letter from the BIR.[24]

In respondent's Opposition, he or she posits that petitioner's claim that the deficiency assessments remain non-delinquent is misleading because a FAN/FLD constitutes a notice and demand that creates a legal obligation to pay and delinquency attaches once the taxpayer fails to pay within the period stated therein. Respondent asserts that pendency of an appeal before the CTA does not suspend the delinquent status of an assessment, nor the BIR's authority to collect. Respondent further argues that the deficiency assessments became final at the administrative level upon issuance of the FDDA, which petitioner received on 02 July 2020 and petitioner's failure to pay thereafter rendered the amount due delinquent and collectible. Respondent reiterates that prescription has not set in because petitioner's Request for Reconsideration, filed on 03 August 2020, tolled the running of the prescriptive period under Section 223 of the NIRC of 1997, as amended, and the period resumed only upon petitioner's receipt of the CIR's Final Decision on 12 February 2025. Respondent maintains that the State remains well within the allowable period to collect. Respondent asseverates that petitioner's argument on financial hardship is unsubstantiated, contradicted by its own AFS, and belied by its significant assets, liquidity and retained earnings. Respondent highlights that petitioner owns valuable real properties, machinery, inventory and receivables that may be used to secure a bond and therefore cannot claim incapacity. Respondent further stresses that the bond requirement may be waived only in exceptional cases involving patently illegal assessments, such as those issued without a valid LOA, which is not the case here. Respondent finally invokes the presumption of regularity of tax assessments, argues that petitioner has failed to present competent evidence to rebut such presumption and concludes that petitioner's Prayer for Suspension must be denied for lack of merit.

We resolve.

A perspicacious review of the present motion, as incorporated in the Petition for Review, yields the inescapable conclusion that respondent's authority to collect the subject deficiency taxes has long been extinguished by prescription.

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[24] Id., pp. 25-31.

Section 203 of the NIRC of 1997, as amended, provides for the prescriptive period in the assessment and collection of internal revenue taxes:

> . . .
> **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 a 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.
> . . .

In *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*[25] (**QL Development**), the Supreme Court, citing the case of *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[26] (**United Salvage**), ruled that in cases of valid assessment issued within the three (3)-year period, BIR has another three (3) years to collect the taxes reckoning from the date the assessment notice had been released, mailed or sent to the taxpayer:

> . . .
> 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**.[27]
> . . .

However, in cases of fraud under Section 222 of the NIRC of 1997, as amended, the period of collection extends to five (5) years:

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25 G.R. No. 258947, 29 March 2022; Emphasis and italics in the original text.
26 G.R. No. 197515, 02 July 2014.
27 Citation omitted and emphasis supplied.

. . .

... The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return. Indeed, Section 222 of the NIRC, as amended, provides:

> SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
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> (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.
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> xxxx
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> (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)[28]

. . .

Meanwhile, Section 223 of the NIRC of 1997, as amended, provides for instances when the running of the statute of limitation may be suspended, to wit:

. . .

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.[29]

. . .

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28 Supra at note 25; Empasis supplied.
29 Emphasis supplied and italics in the original text.

The foregoing Section is plainly worded and could hardly be the subject of any other interpretation. To suspend the running of the prescriptive periods for assessment and collection, the CIR or his or her duly authorized representative must have granted the request for reinvestigation.[30]

In the case at bar, the Court notes that the FLD[31] was issued on **06 May 2019** (and received by petitioner on 16 May 2019) and in the FLD, there was no allegation of a false or fraudulent return with intent to evade tax.

In response, petitioner timely filed a "Protest and Request for Reinvestigation"[32] (**Protest**) on 14 June 2019, which respondent accepted on 11 July 2019[33] and effectively tolled the running of the period to collect. Thereafter, on 09 June 2020, respondent issued the FDDA, which petitioner timely elevated to the CIR *via* the Request for Reconsideration on 03 August 2020.

Respondent would have the Court hold that the pendency of petitioner's Request for Reconsideration before the CIR likewise suspended the statute of limitations on the collection of deficiency taxes on the theory that the assessments remained "disputed" and thus supposedly prevented respondent from commencing collection proceedings.

The Court cannot lend its *imprimatur* to such a proposition.

The wordings of Section 223 of the NIRC of 1997, as amended, are clear. Only a request for reinvestigation which the CIR has granted will suspend the running of the statute of limitations and not request for reconsideration. 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.[34] This justifies why the former can suspend the running of the statute of limitations on the collection of the assessed tax, while the latter cannot.[35]

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30 *Bank of the Philippine Islands (Formerly: Far East Bank and Trust Company) v. Commissioner of Internal Revenue*, G.R. No. 174942, 07 March 2008.
31 Exhibit "P-10", Division Docket, Volume I, pp. 376-384.
32 Exhibit "P-11", id., pp. 385-396.
33 Exhibit "P-11-1", id., p. 411.
34 *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 181836; 09 July 2014.
35 Id.

The Supreme Court squarely ruled in *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*,[36] that a request for reconsideration does not suspend the statute of limitations for the collection of assessed taxes; only a request for reinvestigation, if granted, has that effect, to wit:

> . . .
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> The distinction between a request for reconsideration and a request for reinvestigation is significant. **It bears repetition that a request for reconsideration, unlike a request for reinvestigation, cannot suspend the statute of limitations on the collection of an assessed tax.** If both types of protest can effectively interrupt the running of the statute of limitations, an erroneous assessment may never prescribe. If the taxpayer fails to file a protest, then the erroneous assessment would become final and unappealable.
>
> . . .

The foregoing dovetails with the plain text of the NIRC of 1997, as amended. Section 223 of the NIRC enumerates the specific instances when prescription is suspended, including "when the taxpayer requests for a reinvestigation which is granted by the Commissioner," but it does not include a request for reconsideration.

Accordingly, petitioner's Request for Reconsideration before the CIR did not suspend the statute of limitations on the collection of the deficiency taxes.

Additionally, the doctrine of *ejusdem generis* provides that "where general terms follow the designation of particular things or classes of persons or subjects, the general term will be construed to comprehend those things or persons of the same class or of the same nature as those specifically enumerated."[37] In the same vein, the doctrine of *noscitur a sociis* provides that "proper construction may be had by considering the company of words in which the term or phrase in question is founded or with which it is associated."[38] Applying the foregoing guidelines in the instant case, the phrase "the period during which the Commissioner is prohibited from...beginning distraint or levy or a proceeding in court" should be construed to mean those of the same class or nature as the succeeding grounds under Section 223 of the NIRC of 1997, as amended: (**1**) when the taxpayer requests for a

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36 G.R. No. 167146, 31 October 2006; Emphasis supplied.

37 *National Power Corporation v. Honorable Zain B. Angas, District Judge of the Court of First Instance of Lanao del Sur, et.al.*, G.R. Nos. 60225-26, 08 May 1992.

38 *People of the Philippines v. Meinrado Enrique A. Bello, et. al.*, G.R. Nos. 166948-59, 29 August 2012.

reinvestigation and it is granted; (**2**) when the taxpayer cannot be located at the address stated in the return; (**3**) when a warrant is served but no property can be located; and (**4**) when the taxpayer is out of the Philippines. All of which suggests that the grounds for suspension under Section 223 of the NIRC of 1997, as amended, contemplate **intervening circumstances attributable to the taxpayer or other external factors**, *i.e.,* **matters not within the CIR's unilateral control**. It bears emphasis that a request for reconsideration merely entails a re-evaluation of an assessment on the **basis of existing records without need of additional evidence from the taxpayer**.[39]

Moreover, to interpret the law otherwise (*i.e.,* to allow a pending request for reconsideration to *also* toll the prescriptive period) would make the specific mention of a granted request for reinvestigation "superfluous" or unnecessary, as the broader category would already cover it. This goes against a rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant.[40] To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory.[41] Therefore, a pending request for reconsideration before the CIR cannot be considered as one that "prohibits" the CIR from initiating the collection proceedings.

The foregoing rules on prescription make clear that the running of the statute of limitations may be suspended only in the specific instances provided by law and not by the CIR's unilateral inaction, nor by the mere pendency of a request for reconsideration that requires no new evidence. If We were to accede to such postulation, prescription would be rendered illusory. Interests and surcharges would accumulate indefinitely; taxpayers would be left in limbo and compelled to preserve records for an unlimited time; and an erroneous assessment could be collected long after it was issued—an outcome the Supreme Court has expressly rejected.[42]

Indeed, the law prescribing a limitation of actions for the collection of taxes is beneficial both to the State and to its citizens; to the State because tax officers would be obliged to act promptly in the

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[39] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, supra at note 34.

[40] *Main T. Mohammad v. Office of The Secretary, Department of Justice, Menardo I. Guevarra, in his capacity as Secretary of Justice*, G.R. No. 256116, 27 February 2024.

[41] Id.

[42] See *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*, supra at note 36.

making of assessment or collection, 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.[43] The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer.[44]

However, even if the pending appeal before the CIR did not suspend the statute of limitations on the collection of deficiency taxes, other circumstances nonetheless operate to suspend said prescriptive period, which the Court is duty-bound to examine.

Pursuant to Section 223 of the NIRC of 1997, as amended, by operation of law, the original three (3)-year prescriptive period may be suspended during a period where respondent or the authorized representative is prohibited from making the assessment and for sixty (60) days thereafter. In this regard, Section 4(z)[45] of Republic Act (**RA**) No. 11469,[46] which declared a national emergency due to the Corona Virus Disease 2019 (**COVID-19**) pandemic, and the subsequent issuance of Revenue Regulations (**RR**) Nos. 11-2020[47] and 12-2020,[48] must be taken into account. These regulations excluded from the computation of prescriptive periods the days when affected areas were under Enhanced Community Quarantine (**ECQ**) or Modified Enhanced Community Quarantine (**MECQ**), recognizing that the BIR (specifically

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43 See *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, supra at note 34.

44 Id.

45 Section 4. *Authorized Powers*. - Pursuant to Article VI. action 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:

...

(z) Move statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine[.]

46 AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH. AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS. TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES.

47 Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

48 Amends Revenue Regulations No. 10-2020, as amended by Revenue Regulations No. 11-2020, relative to the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

Revenue Region No. 5 – Caloocan City [who conducted the audit] and respondent's National Office[49] [where the request for reconsideration was pending]) could not perform audit, assessment, or collection functions during such periods. Accordingly, in computing the prescriptive period to collect from 2020 to 2022, the following restrictive quarantine periods imposed in the National Capital Region (**NCR**) must be considered:

Dates	Imposed Quarantine Restriction	Number of days	COVID-19-related Issuances
01 June 2020 to 15 June 2020	GCQ	15	Inter-Agency Task Force (**IATF**) Resolution No. 40, 27 May 2020
16 June 2020 to 30 June 2020	GCQ	15	IATF Resolution No. 46-A, 15 June 2020
01 July 2020 to 15 July 2020	GCQ	15	IATF Resolution No. 50-A, 29 June 2020
16 July 2020 to 31 July 2020	GCQ	16	IATF Resolution No. 55-A, 14 July 2020
01 August 2020 to 03 August 2020	GCQ	3	IATF Resolution No. 60-A, 30 July 2020
04 August 2020 to 18 August 2020	**MECQ**	**15**	**Memorandum from the Executive Secretary dated 03 August 2020**
19 August 2020 to 31 August 2020	GCQ	13	IATF Resolution No. 64, 17 August 2020
01 September 2020 to 30 September 2020	GCQ	30	IATF Resolution No. 66, 27 August 2020
01 October 2020 to 31 October 2020	GCQ	31	IATF Resolution No. 75-A, 28 September 2020
01 November 2020 to 30 November 2020	GCQ	30	IATF Resolution No. 81, 26 October 2020
01 December 2020 to 31 December 2020	GCQ	31	Memorandum from the Executive Secretary from 01 December 2020
01 January 2021 to 31 January 2021	GCQ	31	Memorandum from the Executive Secretary from 01 January 2021
01 February 2021 to 28 February 2021	GCQ	28	Memorandum from the Executive Secretary from 29 January 2021
01 March 2021 to 28 March 2021	GCQ	28	Memorandum from the Executive Secretary from 27 February 2021
29 March 2021 to 30 April 2021	**ECQ/MECQ**	**33**	**Memorandum from the Executive Secretary from 27 March 2021; IATF-EID Resolution No. 108-A, 04 April 2021; IATF-EID Resolution No. 109-A, 10 April 2021**
01 May 2021 to 14 May 2021	**MECQ**	**14**	**IATF-EID Resolution No. 113-A, 29 April 2021**

49 Situated at BIR National Office Building, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.

15 May 2021 to 31 May 2021	GCQ	17	IATF-EID Resolution No. 115-A, 13 May 2021
01 June 2021 to 30 June 2021	GCQ	30	IATF-EID Resolution No. 118-A, 31 May 2021; IATF-EID Resolution No. 121, 14 June 2021
01 July 2021 to 31 July 2021	GCQ	31	IATF-EID Resolution No. 124, s. 2021, 30 June 2021; IATF-EID Resolution No. 127-E, 15 July 2021
01 August 2021 to 05 August 2021	GCQ	5	**IATF-EID Resolution No. 130-A, 29 July 2021**
06 August 2021 to 20 August 2021	**ECQ**	**15**	
21 August 2021 to 31 August 2021	**MECQ**	**11**	**IATF-EID Resolution No. 134, 19 August 2021**
01 September 2021 to 07 September 2021		7	**IATF-EID Resolution No. 135-A, 26 August 2021**
08 September 2021 to 15 September 2021		**8**	**IATF-EID Resolution No. 137, 07 September 2021**
16 September 2021 to 30 September 2021	GCQ	15	IATF-EID Resolution No. 136-F, 06 September 2021
16 September 2021 to 15 March 2022	Alert Levels 4, 3, 2 and 1[50]	181	Guidelines on the Pilot Implementation of Alert Levels System for COVID-19 Response in the National Capital Region, 13 September 2021; IATF-EID Resolution No. 141-A, 30 September 2021; IATF-EID Resolution No. 143-A, 14 October 2021

From the foregoing tabulation, apart from 16 March 2020 to 31 May 2020 *per* RMC No. 136-2020,[51] NCR was also under: (***i***) MECQ from 04 August 2020 to 18 August 2020 for fifteen (15) days; (***ii***) ECQ/MECQ from 29 March 2021 to 14 May 2021 for forty-seven (47) days; and (***iii***) ECQ/MECQ from 06 August 2021 to 15 September 2021 for forty-one (41) days.

Summatim, respondent only had until **28 May 2024** to collect the deficiency taxes, as follows:

Date	Event
06 May 2019	Issue date of the FLD/FAN
11 July 2019	Respondent CIR's authorized representative's acceptance of petitioner's request for reinvestigation
09 June 2020	**Issue date of the FDDA**

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50 The highest Alert Level imposed in Metro Manila was Alert Level 4, during which government agencies, such as the BIR, were already required to be fully operational.

51 Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020.

04 April 2023[52]	End of the three (3)-year period to collect after considering the 66 days between the issuance of the FLD/FAN and the acceptance of petitioner's request for reinvestigation
28 May 2024[53]	**End of the three (3)-year period to collect after considering COVID-related suspension of 420 days**
23 December 2024	**Issue date of the CIR's Final Decision.**
08 July 2025	**Respondent's filing of his or her Answer demanding the payment of the deficiency taxes.**

The Supreme Court has clarified in *QL Development*[54] that the BIR'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. And, 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**. More importantly, Santos during re-cross examination, clarified that respondent did not serve any WDL. Thus, respondent's Answer in this case, *i.e.,* filed before the CTA and praying for payment, is the only collection action done by respondent and it was done too late.

Further, We would like to point out that while what has been submitted for our resolution is petitioner's Prayer for Suspension, We are not barred from consolidating it with the main case for purposes of expediency:

...

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Issue date of the FLD/FAN	06 May 2019
Date the request for reinvestigation was granted	11 July 2019
No. of days lapsed	66 days
Period to collect (in days)	1095 days
Less: No. of days lapsed	66 days
Remaining no. of days (period to collect)	1029 days
Issue date of the FDDA	09 June 2020
Add: Remaining no. of days (period to collect)	1029 days
Last day of period to collect	**04 April 2023**

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Last day of period to collect	04 April 2023
Add: COVID-19 related suspension	420 days
Last day of period to collect after COVID-19 related suspension	**28 May 2024**

54 Supra at note 25.

> **SECTION 6**. *Hearing of the motion.* — The movant shall, upon receipt of the opposition, set the motion for hearing at the next available motion day, and the Court shall give preference to the motion over all other cases, except criminal cases. At the hearing, both parties shall submit their respective evidence. If warranted, the Court may grant the motion if the movant shall deposit with the Court an amount in cash equal to the value of the property or goods under dispute or filing with the Court of an acceptable surety bond in an amount not more than double the disputed amount or value. **However, for the sake of expediency, the Court, *motu proprio*** or upon motion of the parties, **may consolidate the hearing of the motion for the suspension of the collection of the tax with the hearing on the merits of the case**.[55]
>
> . . .

Relative thereto, Section 1, Rule 9 of the Rules of Civil Procedure, as amended, also provides that the court shall dismiss the case *motu proprio* on the ground of prescription:

> . . .
>
> SEC. 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However**, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior judgment or **by statute of limitations, the court <u>shall</u> dismiss the claim.**[56]
>
> . . .

The use of the word "shall" underscores the mandatory character of the Rule. The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.[57] Hence, using the above proviso, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*,[58] the Supreme Court proceeded to dismiss the case *motu proprio* due to prescription:

> . . .
>
> **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

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[55] Rule 10 - Suspension of Collection of Tax, 2025 Revised Rules of the Court of Tax Appeals, as amended; Emphasis supplied.

[56] Emphasis and underscoring supplied.

[57] *Cipriano Enriquez, et al. v. Maximo Enriquez (Now Deceased), Substituted by Carmen Agana, et al.*, G.R. No. 139303, 25 August 2005.

[58] G.R. No. 181836, supra at note 34.

> 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.[59]
>
> ...

Here, the issue of prescription was not merely implied or belatedly raised; rather, it was squarely alleged in the Petition for Review. A review of the available records, specifically respondent's Answer, shows that respondent admitted the relevant dates and failed to controvert petitioner's allegation concerning the prescription of respondent's right to collect taxes. It bears emphasis that once the Answer is filed, the issues are joined, meaning the parties have completed their initial pleadings such that the disputed factual and legal matters are already framed by the petition for review and the answer (through specific denials and/or affirmative defenses), with defenses not raised in the Answer generally deemed waived.[60]

Where prescription has clearly set in and no valid cause for suspension or interruption exists, it becomes legally pointless to proceed to trial. To litigate further on the merits of petitioner's alleged deficiency tax liability that has already been extinguished by the passage of time would be an exercise in futility.

ACCORDINGLY, premises considered:

1. Petitioner Mabuhay Biscuit Corporation's "Extremely Urgent Prayer for Issuance of Temporary Suspension Order and/or Suspension Order Enjoining the Collection of Taxes", as incorporated in the Petition for Review filed on 14 March 2025, is **DENIED** for being moot and academic. There being no collection to suspend as the right of respondent Commissioner of Internal Revenue to collect the subject deficiency taxes is already barred by the statute of limitations.

2. Petitioner's Petition for Review filed on 14 March 2025 is hereby **GRANTED**. Accordingly, the collection of the subject deficiency taxes is declared **VOID** for having been issued and/or enforced beyond the prescriptive period.

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59 Citations omitted, emphasis supplied and italics in the original text.

60 See *Samuel M. Alvarado v. Ayala Land, Inc., et al.*, G.R. No. 208426, 20 September 2017.

3. Respondent Commissioner of Internal Revenue, including any of the latter's authorized officers, agents, or representatives, is hereby **PERMANENTLY ENJOINED** from enforcing or collecting the deficiency taxes subject of the assessments.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice