REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ISLAND QUARRY AND AGGREGATES CORPORATION, Petitioner,	CTA Case No. 8710
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	JUN 19 2017 11:28 a.m.

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review[1] filed by Island Quarry and Aggregates Corporation on September 20, 2013, seeks for the cancellation and withdrawal of the tax deficiency assessments issued against it for income tax (IT), value-added tax (VAT), and withholding tax (WT) in the aggregate amount of Forty-Eight Million Four Hundred Sixty-Two Thousand Eight Hundred Seven Pesos and 59/100 (₱48,462,807.59) for taxable years 1995, 1996, and 1997.

Petitioner Island Quarry and Aggregates Corporation is a domestic corporation, with principal office address at Sitio Tagbac, Barangay San Jose, Antipolo City.[2]

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[1] *With Motion to Suspend Collection of Income, Value-added, Withholding Taxes and Surcharges, Interests and Penalties Subject of this Petition*, docket, pp. 6-26.
[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues (JSFI)*, docket, p. 720.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) vested with the authority to administer and enforce national internal revenue laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 18, 2000, petitioner received a Final Assessment Notices (FAN) and Formal Letters of Demand (FLD),[3] finding it liable for deficiency IT, VAT, withholding tax on compensation, and other withholding taxes, including surcharges, interests and penalties for taxable years 1995, 1996, and 1997, in the aggregate amount of ₱48,462,807.64, broken down as follows:[4]

FAN NO.	PERIOD	TAX TYPE	TOTAL AMOUNT
ST-WC-95-0167-2000	1995	Withholding Tax on Compensation	₱ 3,600,180.17
ST-LP-95-0106-2000	1995	Penalties on Late Remittance of Withholding Tax	2,882,693.51
ST-INC-96-0183-2000	1996	IT	10,968,493.90
ST-WT-96-0184-2000	1996	Withholding Tax	1,835,448.12
ST-VAT-96-0185-2000	1996	VAT	15,934,885.30
ST-VAT-97-0112-2000	1997	VAT	11,395,702.17
ST-CP-97-044-2000	1997	Penalties on Late Remittance of Withholding Tax	1,845,404.47
TOTAL			**₱48,462,807.64**

Petitioner protested[5] the assessment for each taxable year on February 17, 2000, with Supplement[6] thereon filed on April 17, 2000 together with documents in support of its protest.

On September 29, 2000, petitioner received a letter[7] dated September 18, 2000, stating that a reinvestigation of all its internal revenue tax liabilities for the years 1995, 1996 and 1997 had been assigned to Revenue Officers Marivic S.P. Andres, Evangeline M. Casipe, Enrique C. Pinos, and Ma. Theresa A. Raagas.

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[3] Exhibits "P-15", "P-16", and "P-17".
[4] Exhibit "P-25".
[5] Exhibits "P-18", "P-19", and "P-20".
[6] Exhibits "P-21", "P-22", and "P-23".
[7] Exhibit "P-24".

On November 6, 2001, petitioner received a collection letter[8] dated October 25, 2001, demanding payment of all its deficiency tax assessments for taxable years 1995, 1996 and 1997, within ten (10) days from notice.

On September 16, 2002, respondent issued a Warrant of Distraint and/or Levy[9] for the satisfaction of petitioner's deficiency withholding taxes, inclusive of surcharges, interests and penalties for the year 1995, in the amount of ₱3,600,180.17, which petitioner paid[10] on October 16, 2002.

On February 4, 2008, petitioner filed a letter[11] with the Large Taxpayers Audit and Investigation Division, stating its intention to avail of the benefits under the tax amnesty law. On even date, petitioner paid the amount of ₱500,000.00 as amnesty tax and submitted to respondent the required documents as follows: (1) Notice of Availment of Tax Amnesty; (2) Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005; (3) Tax Amnesty Return (BIR Form No. 2116); (4) Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617); and (5) BIR Tax Payment Deposit Slip dated February 4, 2008.

Several years thereafter, or on March 7, 2013, petitioner received a letter[12] dated February 21, 2013 from the Large Taxpayers Collection Enforcement Division for petitioner's immediate submission of documents for the purpose of post evaluation of its Tax Amnesty Return under Republic Act (RA) No. 9480. The same letter indicated that non-compliance thereof shall be construed as lack of interest to avail of the benefits under the Tax Amnesty Law and respondent shall be constrained to enforce the collection of the total assessment amounting to ₱48,462,807.59.

On September 10, 2013, petitioner received a Final Notice Before Seizure (FNBS) dated September 2, 2013, for the payment of the deficiency tax assessments referred to in

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[8] Exhibit "P-25".
[9] Exhibit "P-26".
[10] Exhibits "P-27" and "P-28".
[11] Exhibit "P-29".
[12] BIR Record, folder 2, p. 827.

the letter of February 21, 2013, amounting to ₱48,462,807.59.

On September 20, 2013, petitioner filed the instant *Petition for Review (With Motion to Suspend Collection of Income, Value-added, Withholding Taxes and Surcharges, Interests and Penalties Subject of this Petition)*, assailing the validity of the collection letter and the FNBS.

On December 23, 2013, respondent filed his Answer[13] assailing the jurisdiction of the Court as the subject assessment has become final and incontestable for failure of petitioner to appeal within the prescribed period. And Even assuming that the Court has jurisdiction, respondent insists that petitioner is still liable to pay the deficiency tax assessment which allegedly became final, executory and demandable, and considered accounts receivable of the BIR or properties/assets of the Government that is not covered by the tax amnesty program under RA No. 9480.

As regards petitioner's *motion* to suspend collection, respondent submits that petitioner is not legally entitled to an order of suspension of collection of taxes as it failed to establish a clear legal right which ought to be protected. And granting that petitioner has a clear right, it has no proof of irreparable damage that will jeopardize its interest as contemplated in an application for an injunctive relief.

After the parties traded pleadings and hearings on the incident, the Court granted petitioner's *Motion to Suspend Collection of Income, Value-Added, Withholding Taxes and Surcharges, Interests and Penalties* in the Resolution[14] dated February 21, 2014.

On May 30, 2014, a Pre-Trial Order[15] was issued after the parties filed their Joint Stipulation of Facts and Issues[16] (JSFI).

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[13] Docket, pp. 397-421.
[14] Docket, pp. 658-665.
[15] Docket, pp. 797-805.
[16] Docket, pp. 720-727.

In support of its case, petitioner presented its lone witness **Atty. Adrian V. Bancoro**, who executed a Judicial Affidavit[17] dated February 14, 2014, with Supplement[18] dated June 18, 2014, for his direct testimony.

Atty. Bancoro testified that as petitioner's Tax Director, he is responsible for all of petitioner's tax-related matters and has custody of petitioner's books of accounts and other tax-related documents and files.

The instant case involves disputed assessments against petitioner for IT, VAT, WT including surcharges, interests and penalties for taxable years 1995, 1996 and 1997 in the total amount of ₱48,462,807.59.

On March 7, 2013, petitioner received a Collection Letter dated February 21, 2013, for the payment of alleged deficiency assessments for taxable years 1995, 1996, and 1997. He opined that the subject deficiency assessments were totally extinguished by virtue of petitioner's availment of the Tax Amnesty Program under RA No. 9480 on February 4, 2008, for which it paid the amount of ₱500,000.00 as amnesty tax. Moreover, the period to collect the subject deficiency tax assessments has already prescribed as more than three (3) years had passed counted from receipt of the denial of its protest (*i.e.* Collection Letter dated October 25, 2001) up to receipt of the Final Notice Before Seizure dated September 2, 2013.

Atty. Bancoro also declared that petitioner has settled in full its deficiency withholding taxes for taxable year 1995. The BIR issued a Warrant of Distraint and/or Levy for the satisfaction of the said deficiency withholding taxes, which petitioner already paid as early as October 16, 2002, as evidenced by Official Receipt No. 10360754.

Further, petitioner also partially paid the deficiency IT and VAT for TYs 1996 and 1997. In two (2) separate letters

[17] Exhibit P-47, docket, pp. 479-494.
[18] Exhibit P-48, docket, pp. 816-820.

dated December 23, 1999 and February 16, 2000, sent to the BIR, petitioner obliged itself to pay the following deficiency taxes: (1) deficiency IT for TY 1996 in the amount of ₱1,250,996.78; (2) deficiency VAT for TY 1996 in the amount of ₱154,393.24; (3) deficiency IT for TY 1997 in the amount of ₱510,423.83; (4) deficiency VAT for TY 1997 in the amount of ₱309,931.18; and (5) deficiency expanded withholding tax for TY 1997 in the amount of ₱127,852.64. Petitioner fully settled all the deficiency taxes as evidenced by the Payment Forms (BIR Form No. 0605) and Local Clearing Checks.

Atty. Bancoro confirmed that petitioner attached its Annual Income Tax Return for TY 2005 with Audited Financial Statements for the year ended December 31, 2005, when it submitted the Notice of Availment of Tax Amnesty dated February 1, 2008.

Meanwhile, on August 8, 2014, petitioner moved[19] for the early resolution of the legal issue of prescription it was however denied in the Resolution[20] dated October 15, 2014.

Petitioner formally offered its documentary evidence and rested its case per Resolutions dated February 18, 2015[21] and November 16, 2015[22].

For his part, respondent presented Revenue Officers (ROs) Nathanael E. Cadungog and Beatriz S. Hermoso, as his witnesses.[23]

Witness **Nathanael E. Cadungog** testified[24] that before his assignment at the Collection Performance Monitoring Division of the BIR, he was a member of the Secretariat of the Technical Working Group on Compromise – National Evaluation Board.

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[19] Motion for Early Resolution (On the Legal Issue of Prescription), docket, pp. 892-911.
[20] Docket, pp, 986-989.
[21] Docket, pp. 1009-1010.
[22] Docket, pp. 1049-1050.
[23] Minutes of the Hearing dated February 16, 2016, docket, p. 1055.
[24] Exhibit R-8, docket, pp. 692-695.

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In 2001, petitioner applied for compromise of its tax liabilities. In the course of evaluating petitioner's application for compromise, they gathered from the BIR Information Group (ISG) report that petitioner had subsequently availed of the tax amnesty program and that petitioner had deficiency withholding taxes and penalties still due which were not covered by the tax amnesty program. Consequently, he prepared a Memorandum dated September 12, 2012, which was routed and finally referred to Large Taxpayers Collection and Enforcement Division.

Witness **Ms. Beatriz S. Hermoso** testified[25] that as Revenue Officer III assigned at the Large Taxpayers Collection Enforcement Division of the BIR, her main function is to enforce collection of delinquent accounts through administrative summary remedies.

On October 8, 2012, she was issued a Memorandum of Assignment authorizing her to verify whether petitioner's tax liabilities for taxable years 1995, 1996 and 1997 have been paid/settled or should a warrant of distraint or levy be issued. Initially, she sent a letter to petitioner dated February 21, 2013, requiring it to submit the documents of the Tax Amnesty Task Force for its availment of the benefits under the Tax Amnesty Program. In a letter dated May 16, 2013 sent to the BIR, petitioner requested to photocopy some documents from the BIR related to its case. On September 10, 2013, she personally served a Final Notice Before Seizure at petitioner's address at Petron Mega Plaza, Gil Puyat Ave., Makati City.

On April 11, 2016, respondent was deemed to have rested his case upon the admission of all his documentary exhibits.[26]

On June 21, 2016,[27] the case was deemed submitted for decision after the parties filed their respective memoranda.

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[25] Exhibit R-8, docket, pp. 681-685.
[26] Resolution dated April 11, 2016, docket, pp. 1078-1079.
[27] Resolution, docket, p. 1128.

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THE ISSUES

The parties submitted the following issues[28] for the Court's disposition:

1. Whether the Honorable Court has jurisdiction over the present petition.

2. Whether petitioner is liable to pay the amount of Php48,462,807.64 as deficiency taxes including the corresponding penalty and deficiency and delinquent interest.

3. Whether the right of respondent to collect the subject deficiency taxes for the years 1995, 1996 and 1997 is already barred by prescription.

THE COURT'S RULING

The Court has jurisdiction over the present case under the term "other matters" pursuant to Section 7(a)(1)[29] of Republic Act No. 1125, as amended.

Respondent assails the jurisdiction of the Court over the instant petition saying that the subject assessments had become final and executory for failure of petitioner to seek judicial review within the thirty-day period mandated under Section 7 of RA No. 1125, as amended, and Section 228 of the NIRC of 1997, as amended.

In refutation, petitioner claims that it is not disputing the validity of the subject assessments but the right of respondent

[28] Issues, Pre-Trial Order, docket, pp. 798-799.

[29] SEC. 7. *Jurisdiction. — The CTA shall exercise:*

(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 or other laws administered by the Bureau of Internal Revenue**;

to enforce the collection thereof through the FNBS. It argues that the issue of prescription of respondent's right to collect taxes is provided in the Tax Code, and is under and covered by the phrase *"other matters arising under the National Internal Revenue Code"* under Section 7(a)(1) of RA No. 1125. Hence, the instant petition falls within the jurisdiction of the Court.

The Court agrees with petitioner.

In the case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,*[30] the Supreme Court affirmed this Court's jurisdiction to rule on the issue of prescription of respondent's right to collect taxes even if the assessments had already become final and unappealable, in the following fashion:

> "Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).
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> In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223(c):
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>> **Any internal revenue tax** which has been assessed within the period of limitation above-prescribed **may be collected** by distraint or levy or by a proceeding in court **within**

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[30] G.R. No. 169225, November 17, 2010.

> **three years following the assessment of the tax.**

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

> Sec. 3. Powers and duties of Bureau. - The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws.

Thus, from the foregoing, the issue of prescription of the BIRs right to collect taxes may be considered as covered by the term other matters over which the CTA has appellate jurisdiction.

Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over other matters arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an other matter must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment." *(Emphasis supplied)*

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Indeed, the issue of prescription of respondent's right to collect taxes is covered by the term "other matters" over which the Court has jurisdiction.

Further, Section 11 of RA No. 1125, as amended, states that any party adversely affected by a decision or ruling of respondent CIR may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.

The record shows that petitioner received the assailed FNBS dated September 2, 2013 on September 10, 2013. Counting thirty days therefrom, it had until October 10, 2013 to file a Petition for Review. Clearly, petitioner seasonably filed the present Petition for Review on September 20, 2013. In fine, the Court has jurisdiction over the present case.

The right of respondent to collect the subject deficiency tax assessments for the years 1995, 1996, and 1997 has prescribed.

Petitioner claims that respondent's right to collect the subject deficiency tax assessments is already barred by prescription. Allegedly, when it received the FNBS on September 10, 2013, more than three (3) years had passed counted from October 25, 2001, when the subject assessments became final.

Respondent, on the other hand, counters that the period to collect was suspended pursuant to Section 223 of the NIRC of 1997, as amended, when he granted petitioner's protest/motion for reinvestigation of the FAN.

Petitioner's stance has merit.

Note that the subject deficiency tax assessments involve TYs 1995, 1996 and 1997, hence, the provisions of the 1977 Tax Code, as amended, shall apply since the NIRC of 1997 took effect only on January 1, 1998.

Section 203 of the 1977 Tax Code, as amended, provides that respondent has three (3) years to assess and collect an internal revenue tax, to wit:

> SEC. 203. *Period of limitation upon assessment and collection.* - Except as provided in the succeeding section, 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 the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Corollarily, Section 223 of the 1977 Tax Code, as amended, provides that when the BIR validly issues an assessment within the prescribed period fixed therefor, the BIR has three (3) years after the assessment within which to collect national internal revenue tax due by distraint, levy or by a court proceeding, thus:

> SEC. 223. - *Exceptions as to period of limitation of assessment and collection of taxes.* - xxx
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> xxx xxx xxx
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> (c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

The assessment is deemed made on the date the assessment notice was released, mailed or sent to the taxpayer[31]. However, in case there is no showing as to when such assessment was released, mailed or sent by the BIR, it will be deemed made on the date of receipt by the taxpayer.[32]

The record reveals that the FAN was received by petitioner on January 18, 2000, hence, respondent had until January 18, 2003, within which to collect the assessed deficiency taxes.

It must however be stressed that the 1977 Tax Code, as amended, also recognizes instances when the running of the statute of limitations on the assessment and collection of national internal revenue taxes could be suspended. Section 224 thereof, provides:

> "SEC. 224. *Suspension of running of statute.* - **The running of the statute of limitation provided in Section[s] 203 and 223 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 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 and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when

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[31] *Basilan Estates, Inc. vs. The Commissioner of Internal Revenue, et al.*, G.R. No. L-22492, September 5, 1967.

[32] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

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the taxpayer is out of the Philippines." *(Emphasis supplied)*

Undeniably, the running of the three-year period to collect was effectively suspended when respondent granted petitioner's request for reinvestigation filed on February 17, 2000. However, when respondent issued the Collection Letter dated October 25, 2001, requesting petitioner to pay the subject deficiency tax assessments, respondent effectively denied petitioner's protest to the FAN. The said Collection Letter constituted the final decision on the disputed assessments and the three (3) year period to collect the deficiency taxes commenced to run anew.

In the instant case, the three-year prescriptive period to collect commenced to run on January 18, 2000, when petitioner received the FAN, and the same was suspended on February 17, 2000, when petitioner filed a protest/motion for reinvestigation. Notably, when the running of the prescriptive period to collect was tolled, only a month had passed. Hence, from October 25, 2001, when respondent issued the Collection Letter, he still had two (2) years and eleven (11) months, or until September 24, 2004, to collect the subject deficiency tax assessments.

Evidence show that on September 16, 2002, respondent issued a Warrant of Distraint and/or Levy. But the said Warrant of Distraint and/or Levy was only for the payment of deficiency withholding tax liabilities for TY 1995 in the amount of ₱3,600,180.17. Significantly, petitioner sufficiently established that it paid the said amount on October 16, 2002, as indicated in the Official Receipt and Payment Form (BIR Form No. 0605).

Further, there is no showing that respondent exerted any effort to collect the other or remaining deficiency taxes on or before September 24, 2004, or the last day of the three-year period to collect. Thus, the attempt of respondent to collect the subject deficiency taxes through the issuance of the FNBS dated September 2, 2013 produces no effect as prescription had already set in barring respondent from collecting the remaining deficiency taxes.

In view of the foregoing disquisition, a discussion on the remaining issues is deemed unwarranted.

WHEREFORE, the Petition for Review filed by Island Quarry and Aggregates Corporation is hereby **GRANTED**. Accordingly, the tax deficiency assessments issued against petitioner for Income Tax, Value-Added Tax, and Withholding Tax in the aggregate amount of ₱48,462,807.59, for taxable years 1995, 1996, and 1997, are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, 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