REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

BASF COATING + INKS PHILS., INC.,
Respondent.

C.T.A. EB NO. 664
(C.T.A. CASE NO. 7125)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUN 16 2011 4:15pm

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner CIR") under *Section 11 of RA 9282,* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended,* which seeks to reverse and set aside the Decision dated February 17, 2010 and Resolution dated July 13, 2010 rendered by the Special First

Division of this Court in C.T.A. Case No. 7125, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the Petition for Review is hereby **GRANTED.** The assessments for deficiency income tax in the amount of P14,227,425.39, deficiency value-added tax of P3,981,245.66, deficiency withholding tax on compensation of P49,977.21, deficiency expanded withholding tax of P156,261.97 and deficiency documentary stamp tax of P256,432.91, including increments, in the aggregate amount of P18,671,343.14 for the taxable year 1999 are hereby **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, there having no new matters or issues advanced by the respondent in the present motion which may compel this Court to reverse, modify or amend the February 17, 2010 Decision of this Court, respondent CIR's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner CIR is the duly appointed Commissioner of Internal Revenue, with the authority, among others, to decide, approve and grant tax credit and/or refund, and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent BASF Coatings + Inks Philippines, Inc. (hereafter "respondent BASF"), on the other hand, is a domestic corporation

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organized and existing under the laws of the Republic of the Philippines and is in the process of dissolution, with BIR registered address located at No. 101 Marcos Alvarez, Bo. Talon, Las Piñas City, Metro Manila.

THE FACTS

The antecedent facts, as summarized by the Special First Division of this Court, are hereunder adopted, to wit:

> "In a joint special meeting of the Board of Directors and stockholders representing more than two-thirds of the entire subscribed and outstanding capital stock, and a majority of the Board of Directors, resolved to dissolve the corporation by shortening its corporate term to March 31, 2001.
>
> On June 26, 2001, petitioner (now respondent) filed before the BIR Revenue Region No. 8, RDO No. 53, Alabang, Muntinlupa, two (2) LETTERS. The letter dated April 26, 2001 was a notice of petitioner's dissolution, in compliance with Section 52(C) of the Tax Code. The letter dated June 22, 2001 was to submit BIR Form No. 1905 in connection with the corporation's dissolution, and other supporting documents.
>
> Petitioner (now respondent) also filed with the Securities and Exchange Commission a Notice of Dissolution on August 16, 2001, and published the same in Malaya on August 22, 29 and September 5, 2001.
>
> In a Formal Assessment Notice dated January 17, 2003, with Details of Discrepancies and Assessment Notices, petitioner (now respondent) was found liable for the following taxes:

I. Deficiency Income Tax		P(61,848,868.00)
Add: Discrepancies per investigation		
Unsupported importation	P22,782,456.50	
Disallowed purchase of goods & services not subject to w/tax	5,052,221.24	27,834,677.74
Net loss for investigation		(34,014,190.26)
Add: Net operating Loss Carry-over		61,848868.00
Taxable income per investigation		27,834,677.74
Income tax due thereon (33%)		9,185,443.65
Less: payments		86,872.00
Deficiency Income Tax		9,098,571.65
Add: interest (4/15/00 to 2/10/03)		5,128,853.74
Total Amount Due		14,227,425.39
II. Deficiency Value Added Tax		
Gross receipts per audit		P320,780,174.00
Less: Non-vatable sales:		
Export Sales	18,961,088.70	
Zero-rated Sales	19,660,145.99	38,621,234.69
Taxable basis per audit on sales		282,158,939.31
Add: taxable basis per audit on royalties		5,596,920.20
		287,755,859.51
Output tax due thereon (10%)		28,775,585.95
Less: allowable input tax	18,442,676.56	
Payments	7,857,347.89	26,300,024.45
Deficiency VAT		2,475,561.50
		1,505,684.16
Total amount due		3,981,245.66
III. Deficiency Withholding Tax due on Compensation		
Taxable salaries & wages paid during the year		51,675,136.00
Withholding tax due thereon		3,682,679.36
Less: withholding taxes paid per return		3,651,603.24
Deficiency withholding tax on compensation		31,076.12
Add: 20% interest (1/25/00 to 2/10/03)		18,901.09

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Total amount due			49,977.21

IV. Deficiency Expanded withholding tax

Particulars	Amount of Income payment	Tax rate	EWT due
Vita Color	P1,153,366.70	5%	P57,668.34
Pacific Resin payment thru offsetting	3,898,854.54	1%	38,988.55
Total EWT due per investigation			96,656.89
Less: payments			0
Deficiency EWT			96,656.89
Add: 20% interest (1/10/00 to 2/10/03)			59,605.08
Total			156,261.97

V. Deficiency DST

DST on bank loans: (192,090,500/5,000)10	P384,181.20
Less: tax paid	246,806.23
Deficiency DST	137,374.77
Add: 25% surcharge	34,343.70
Total	171,718.47
Add: 20% interest (1/10/00 to 2/10/03)	84,714.44
Total amount due	256,432.91

On March 5, 2004, the Chief of the Collection Section of the BIR Revenue Region No. 7, RDO No. 39, Quezon City, issued *First Notice Before Issuance of Warrant of Distraint and Levy.*

On March 19, 2004, petitioner (now respondent) filed a protest letter dated March 17, 2004, on the grounds of lack of due process and prescription. On April 16, 2004, petitioner filed with respondent (now petitioner) a Supplemental Protest. On June 14, 2004, petitioner submitted relevant documents necessary to prove the defenses raised in its protest letters dated March 17, 2004 and April 16, 2004.

> As respondent (now petitioner) has no action on petitioner's (now respondent) protest and the 180-day period had lapsed, petitioner (now respondent) filed the instant *Petition for Review* on January 10, 2005."

After trial on the merits, on February 17, 2010, the Special First Division rendered a Decision, granting respondent BASF's Petition for Review, and accordingly cancelled and set aside the assessments of the BIR.

On March 16, 2010, petitioner CIR filed a "Motion for Reconsideration" of the Decision dated February 17, 2010, which the Special First Division denied for lack of merit in its Resolution dated July 13, 2010.

Not satisfied, on August 20, 2010, petitioner CIR filed the instant Petition for Review before this *Court En Banc*, raising the following:

ISSUES

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WHETHER OR NOT RESPONDENT COMPLIED WITH THE REQUIREMENTS UNDER SECTION 223 OF THE 1997 TAX CODE IN RELATION TO SECTION 11 OF REVENUE REGULATIONS NO. 12-85, RELATIVE TO THE VALID CHANGE OF ADDRESS.

II

WHETHER OR NOT THE RIGHT OF PETITIONER TO ASSESS HEREIN RESPONDENT FOR DEFICIENCY

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INCOME TAX, VALUE-ADDED TAX, WITHHOLDING TAX ON COMPENSATION, EXPANDED WITHHOLDING TAX AND DOCUMENTARY STAMP TAX, FOR TAXABLE YEAR 1999 WAS SUSPENDED OR HAS ALREADY PRESCRIBED.

III

WHETHER OR NOT THE FORMAL ASSESSMENT NOTICE (FAN) ISSUED BY PETITIONER TO HEREIN RESPONDENT FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX, WITHHOLDING TAX ON COMPENSATION, EXPANDED WITHHOLDING TAX AND DOCUMENTARY STAMP TAX, FOR TAXABLE YEAR 1999 HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

Without necessarily giving due course to the Petition for Review, on September 29, 2010, we ordered respondent BASF to file its comment, not a motion to dismiss, within ten (10) days from notice.

On October 11, 2010, respondent BASF filed its Comment.

On January 11, 2011, the case was deemed submitted for decision.

Petitioner CIR's Arguments

Petitioner CIR contends that the running of the prescriptive period under *Sections 203 and 222 of the 1997 Tax Code* was suspended for failure of respondent to comply with the requirements under *Section 223 of the 1997 Tax Code*, in relation to *Section 11 of Revenue Regulations No.12-85*, relative to the valid change of address; that the documents proffered by respondent to prove that it complied with the requirements under *Section 223 of the NIRC of 1997,* in relation to *Section 11 of Revenue Regulations No. 12-85*, are misleading, immaterial and inadmissible as evidence; respondent constructively received the subject Formal Assessment Notices (FAN) and Demand Letter, all dated January 17, 2003, issued by petitioner for taxable year 1999; and respondent's filing of the Petition for Review subject of CTA Case No. 7125 was premature.

Respondent BASF's Counter-Arguments

Respondent BASF, on the other hand, counter-argues that the running of the prescriptive period was not suspended because petitioner CIR failed to send the proper notice on time and that petitioner was properly notified of and had actual knowledge of respondent's new address; it did not constructively receive the FAN and demand letter both dated January 17, 2003, and the filing of the Petition for Review before the Court in Division is not premature.

THE COURT *EN BANC'S* RULING

The Petition has no merit.

Section 223 of the NIRC of 1997, as amended, provides:

"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."

Pursuant to the above quoted provision, the running of the statute of limitations under *Sections 203 and 222 of the NIRC of 1997, as amended,* may be suspended in the following instances:

1) 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;

2) When the taxpayer requests for a reinvestigation which is granted by the Commissioner;

3) 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;

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4) 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

5) When the taxpayer is out of the Philippines.

In this case, petitioner CIR invokes the third instance wherein the absence of the whereabouts of the taxpayer would toll the running of the period to assess and collect.

Petitioner CIR's contention is misplaced.

The third instance under *Section 223 of the NIRC of 1997, as amended,* applies only if the whereabouts of the taxpayer cannot be ascertained. In this case, records show that respondent BASF had already been dissolved and had already ceased business operations, prompting it to close its office in Muntinlupa City, and moved to Carmelray Industrial Park, Canlubang, Calamba, Laguna. Records further show that petitioner CIR was aware of respondent BASF's change of business address, as shown in the following documents attached to the BIR records of this case:

1) p. 866 - Checklist on Income Tax/ Withholding Tax/ Documentary Stamp Tax/ Value-Added Tax and Other Percentage Taxes;
2) p. 864 – General Information;
3) p. 862 – Report on Taxpayer's Delinquent Account dated 27 June 2002;
4) p. 861 – Activity report dated 17 October 2002;

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5) pp. 859-860 – Memorandum Report of Examiner dated June 27, 2002;
6) p. 858 – Revenue Officer's Audit Report on Income Tax;
7) p. 856 - Revenue Officer's Audit Report on Value-Added Tax;
8) p. 854 - Revenue Officer's Audit Report on Withholding Tax;
9) p. 853 - Revenue Officer's Audit Report on Expanded Withholding Tax;

10)p. 847 – Letter of the Revenue District Officer to Petitioner dated April 24, 2002 re: Ten-Day Preliminary Letter informing Petitioner of the results of investigation of the 1999 internal revenue taxes and inviting Petitioner for an informal conference; and

11)p. 645 – Letter of the Revenue District Officer to Petitioner dated May 30, 2002 acknowledging receipt of Petitioner's reply to the Ten-Day Preliminary Letter (*Exhibits "O"-"Y"*).

Clearly, petitioner CIR knew the whereabouts of respondent BASF. As aptly ruled by the Special First Division, petitioner CIR was aware of the whereabouts of the respondent BASF, to wit:

> "However, this Court notes that respondent (now petitioner) was aware where petitioner (now respondent) may be located.
>
> First, petitioner (now respondent) caused publication of the Notice of Dissolution in the August 22, 29 and September 5, 2001 issues of the daily newspaper Malaya. The notice included the address "BASF Corporate Complex, Road 5 Phase I GIZ, Carmelray Industrial Park, Canlubang, Calamba, Laguna" where people with claims against petitioner (now respondent) may go to.
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> Second, respondent conducted investigation of petitioner's (now respondent) internal revenue taxes for 1999 at the Carmelray Industrial Park, Canlubang, Calamba, Laguna, as evidenced by the following:
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> 1) Letter dated September 27, 2001 signed by Revenue Officer I Eugene R. Garcia;
> 2) Final Request for Presentation of Records Before Sub-Poena Duces Tecum dated March 20, 2002 requesting for

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the submission of additional requirements pursuant to the investigation of petitioner's 1999 internal revenue taxes signed by Revenue Officer I Eugene R. Garcia;

3) Letter dated May 30, 2002 of the Revenue District Officer Marcelino Quito;
4) BIR Form No. 0500 (Revenue Officer's Audit Report on Documentary Stamp Tax, Expanded Withholding tax, Value-Added Tax, and Income Tax) for the Period January 1 to December 31, 1999;
5) Memorandum dated June 27, 2002 of Revenue Officer Eugene R. Garcia and noted by Marilyn Dumapias, Group Supervisor;
6) Activity Report dated October 17, 2002;
7) Report on Taxpayer's Delinquent Account dated June 27,2002;
8) BIR Form No. 2302 dated October 17, 2000; and
9) Checklist of Income Tax/withholding Tax/Documentary Stamp Tax/Value-Added Tax and Other Percentage Taxes."

It is clear, therefore, that petitioner CIR had sufficient notice and was completely aware that respondent BASF may be located at Carmelray Industrial Park, Canlubang, Calamba, Laguna. Thus, *Section 223 of the NIRC of 1997, as amended,* is not applicable, and the running of the three-year period to assess respondent BASF for deficiency taxes was not suspended. As a result, petitioner CIR is already barred from assessing respondent BASF for deficiency taxes for taxable year 1999 due to prescription.

As regards the FAN for deficiency taxes for taxable year 1999, we cannot sustain petitioner CIR's contention that the FAN issued to respondent BASF has attained finality, since respondent BASF never received it, actually or constructively.

Petitioner CIR further invokes *Section 3.1.7 of Revenue Regulations No. 12-99* and *Section 3(v) of Rule 131 of the Rules of Court* to prove that respondent BASF has constructively received the aforesaid FAN and Demand Letter.

Again, we do not agree.

Section 3.1.7 of RR No. 12-99 requires that the registered mail is sent to the correct address of the taxpayer. As we have ruled, petitioner CIR sent the assessments to respondent BASF's old abandoned address, despite having actual knowledge of respondent BASF's new address. Thus, *Section 3.1.7 of RR No. 12-99* does not apply.

On the other hand, *Section 3(v) of Rule 131 of the Rules of Court* is a disputable presumption; thus, it may be controverted by evidence to the contrary. In this case, as found by the Special First Division, there is evidence that respondent BASF did not receive the subject assessments considering that these were sent to the wrong address.

Finding no reversible error, we affirm the assailed Decision dated February 17, 2010 and Resolution dated July 13, 2010 rendered by the Special First Division of this Court.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED**, and, accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice