**Republic of the Philippines**
**COURT OF TAX APPEALS**
**Quezon City**

***EN BANC***

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| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **C.T.A. E.B. NO. 73** (C.T.A. Case No. 6362) |
| - versus - | **Acosta**, *P.J.*, **Castañeda, Jr.**, **Bautista**, **Uy**, **Casanova**, and **Palanca-Enriquez**, *JJ.* |
| **HAMBRECHT & QUIST PHILIPPINES, INC.,** Respondent. | Promulgated: AUG 1 2 2005 |

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# DECISION

**UY, *J.*:**

Petitioner elevates to this Court *En Banc* by way of a Petition for Review filed on March 30, 2005, seeking the reversal of the Decision and Resolution rendered by the then Court of Tax Appeals in C.T.A. Case No. 6362, entitled "Hambrecht & Quist Philippines, Inc. vs. Commissioner of Internal Revenue", which under R.A. No. 9282, is now a Division of the current Court of Tax Appeals, to wit:

1. Decision promulgated on September 24, 2004 which cancelled and withdrew Assessment Notice No. 001543-89-5668 for failure of the Commissioner of Internal Revenue, to enforce collection thereof within the period prescribed by law; and

2. Resolution promulgated on February 23, 2005 which denied petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration.

Petitioner submits that this "Honorable Court's Original Division cannot rule that petitioner's right to collect the assessment has prescribed precisely because it has no jurisdiction to act on the petition." Petitioner further argues that the Court should have dismissed the petition outright for lack of jurisdiction.[1]

In its Comment, respondent raises the following grounds for denying due course and/or dismissing the instant petition:

> "THE COURT OF TAX APPEALS' ('CTA') ORIGINAL DIVISION DID NOT ERR IN EXERCISING JURISDICTION OVER HQPI'S PETITION FOR REVIEW IN CTA CASE NO. 6362 AND RULING THEREON THAT PETITIONER COMMISSIONER OF INTERNAL REVENUE'S ('CIR') RIGHT TO ENFORCE COLLECTION OF THE DEFICIENCY INCOME TAX AND EXPANDED WITHHOLDING TAX ASSESSMNET ISSUED AGAINST HQPI HAD ALREADY PRESCRIBED CONSIDERING THAT:
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> A. SECTION 11 OF REPUBLIC ACT NO. 9282 ('RA 9282') EXPRESSLY PROVIDES THAT ANY PARTY ADVERSELY AFFECTED BY A DECISION, RULING OR INACTION OF THE CIR MAY FILE AN ACTION WITH THE CTA WITHIN THIRTY (30) DAYS FROM RECEIPT OF SUCH DECISION OR RULING. HAVING RECEIVED THE CIR'S RULING DENYING ITS PROTEST AGAINST THE DEFICIENCY INCOME AND WITHHOLDING TAX ASSESSMENTS ON 7 NOVEMBER 2001, HQPI VALIDLY INSTITUTED A PETITION FOR REVIEW ON 6 DECEMBER 2001.
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> B. SECTION 7 OF RA 9282 CLEARLY ESTABLISHES THAT THE CTA HAS EXCLUSIVE APPELLATE JURISDICTION TO REVIEW BY APPEAL THE DECISIONS OF THE CIR IN CASES INVOLVING <u>OTHER MATTERS</u> ARISING UNDER THE NATIONAL INTERNAL REVENUE CODE ('NIRC') OR OTHER LAWS ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE ('BIR'). SINCE THE CIR'S RIGHT TO COLLECT OR ENFORCE COLLECTION OF DEFICIENCY INCOME AND WITHHOLDING TAX ASSESSMENTS ARISES UNDER THE NIRC AND IS ADMINISTERED BY THE BIR, CLEARLY, THE CTA HAS APPELLATE JURISDICTION OVER THE SAME.

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[1] Petition for Review, pages 7 and 8

> C. ASSUMING, WITHOUT ADMITTING, THAT DOUBT EXISTS IN THE APPLICATION OF SECTIONS 7 AND 11, THE DOUBT MUST BE RESOLVED LIBERALLY IN FAVOR OF THE TAXPAYERS AND STRICTLY AGAINST THE TAXING AUTHORITY, IN ORDER TO OBTAIN A JUST DETERMINATION OF EVERY ACTION AND PROCEEDING. THEREFORE, SECTIONS 7 AND 11 MUST BE CONTRUED TO GIVE THE CTA JURISDICTION OVER THE INSTANT CASE AND THE CONCOMITANT RIGHT TO PREVENT AND RESTRAIN THE COLLECTION OF TAXES THAT HAVE OBVIOUSLY PRESCRIBED. IN ANY EVENT, THE CIR IS ALREADY ESTOPPED FROM QUESTIONING THE CTA'S JURISDICTION OVER THE INSTANT CASE."

The undisputed facts of the case are as follows:

Petitioner Commissioner of Internal Revenue is the official of the Republic of the Philippines charged with the duty of assessing and collecting national internal revenue taxes holding office at the BIR National Office Building, Diliman, Quezon City.

On the other hand, respondent Hambrecht & Quist Philippines, Inc. is a domestic corporation duly registered with the Securities and Exchange Commission with principal office located at the 22nd Floor, PCIB Tower 2, Makati Avenue corner H.V. De La Costa Streets, Makati City.

In a letter dated February 15, 1993, respondent informed the Bureau of Internal Revenue (BIR), through its West-Makati District Office of its change of business address from the 2nd Floor Corinthian Plaza, Paseo de Roxas, Makati City to the 22nd Floor PCIB Tower II, Makati Avenue corner H.V. De la Costa Streets, Makati City. Said letter was duly received by the BIR-West Makati on February 18, 1993.

On November 4, 1993, respondent received a tracer letter or follow-up letter dated October 11, 1993 issued by the Accounts Receivable/Billing Division of the BIR's National Office and signed by then Assistant Chief Mr. Manuel B. Mina, demanding for payment of alleged deficiency income and expanded withholding taxes for the taxable year 1989 amounting to P2,936,560.87.

On December 3, 1993, respondent, through its external auditors, filed with the same Accounts Receivable/Billing Division of the BIR's National Office, its protest letter against the alleged deficiency tax assessments for 1989 as indicated in the said tracer letter dated October 11, 1993.

The alleged deficiency income tax assessment apparently resulted from an adjustment made to respondent's taxable income for the year 1989, on account of the disallowance of certain items of expense, namely, professional fees paid, donations, repairs and maintenance, salaries and wages, and management fees. The latter item of expense, the management fees, made up the bulk of the disallowance, the examiner alleging, among others, that petitioner failed to withhold the appropriate tax thereon. This is also the same basis for the imposition of the deficiency withholding tax assessment on the management fees. Revenue Regulations No. 6-85 (EWT Regulations) does not impose or prescribe EWT on management fees paid to a non-resident.

On November 7, 2001, nearly eight (8) years later, respondent's external auditors received a letter from herein petitioner Commissioner of Internal Revenue dated October 27, 2001. The letter advised the respondent that petitioner had rendered a final decision denying its protest on the ground that the protest against the disputed tax assessment was allegedly filed beyond the 30-day reglementary period prescribed in then Section 229 of the National Internal Revenue Code.

On December 6, 2001, respondent filed a Petition for Review docketed as CTA Case No. 6362 before the then Court of Tax Appeals, pursuant to Section 7 of Republic

Act No. 1125, otherwise known as an 'Act Creating the Court of Tax Appeals' and Section 228 of the NIRC, to appeal the final decision of the Commissioner of Internal Revenue denying its protest against the deficiency income and withholding tax assessments issued for taxable year 1989.

On September 24, 2004, the assailed Decision in the instant petition was rendered, holding that although the subject assessment notice sent by registered mail to herein respondent's former place of business has become final and unappealable for failure to protest the same within the period provided by law, nevertheless, the right of respondent Commissioner of Internal Revenue in said case to collect the assessed taxes has already prescribed. Correspondingly, Assessment Notice No. 001543-89-5668 was cancelled and withdrawn. The Motion for Reconsideration with Supplemental Motion for Reconsideration of said Decision filed on October 14, 2004 and November 22, 2004, respectively, filed by the Commissioner of Internal Revenue, was denied for lack of merit.

Hence, the instant Petition for Review *En Banc* filed by the Commissioner of Internal Revenue, as petitioner herein, claiming that the Original Division of this Court erred in ruling that the right of the government to collect the assessment has prescribed. Petitioner claims that when the subject assessment became final and unappealable due to failure of herein respondent to protest the same within the reglementary period, the Original Division had no jurisdiction to act on the petition disputing said assessment, more so, to rule that his right to collect on the assessment has prescribed. Petitioner raises a lone issue, to wit:

> "WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION TO RULE THAT THE RIGHT TO COLLECT THE TAX HAS PRESCRIBED"

We note that this issue was also raised in petitioner's Supplemental Motion for Reconsideration of the Decision of September 24, 2004. And in the Resolution thereof promulgated on February 23, 2005, it was found that "xxx, aside from the issue of the assessment, the issue of the period of collection was also raised. Pursuant to Section 7 of R.A. No. 1125 (now amended by R.A. No. 9282, The Act Expanding the Jurisdiction of the Court of Tax Appeals), this Court is not deprived of its jurisdiction to decide other issues raised which are related to the assessment, other than that of the assessment notice issue. xxx"[2]

Petitioner further argues that when the law says that this Court has jurisdiction over "other matters", it presupposes that the assessment has not become final and unappealable. Thus, if the assessment has become final and unappealable, this Court has no jurisdiction to decide "other matters" related to the assessment, such as, the issue on the right to collect the same.

We do not agree. Nowhere in the law does any limitation appear as to the extent of the jurisdiction of the Court over "other matters". On the contrary, Section 7 of Republic Act No. 1125, as amended, provides that:

> "The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue or other law or part of law administered by the Bureau of Internal Revenue.**"

Clearly, the law dictates that the appellate jurisdiction of the Court of Tax Appeals is not limited to cases which involve disputed assessments. The second part

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[2] Resolution promulgated on February 23, 2005, page 4 of 6

also covers other cases that arise out of the National Internal Revenue Code or other related laws administered by the Bureau of Internal Revenue.

> "Conformably with the principle of *ejusdem generis*, the term 'other matters' as regards the CTA's jurisdiction could be those cases which do not necessarily involve disputed assessments or refunds in the case of the BIR or those related to Customs protest or forfeiture cases but controversies which are still within the functions of the BIR and (Bureau of) Customs.
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> xxx xxx xxx
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> It might also be possible that 'other matters' in the CTA's jurisdiction could also include questions relative to the propriety of tax collection x x x."[3] *(Underscoring Ours)*

As correctly pointed out by herein respondent, a tax assessment deals with how much taxes are due from a taxpayer, while tax collection deals with the whole process of collecting the same from the taxpayers. Therefore, it can really happen, as in this case, that while there may no longer be any dispute on the assessment as it has become final, there is still an existing controversy pertaining to the right of the BIR to legally collect the assessed taxes.

In this regard, We look into the provisions of Section 203 of the 1977 National Internal Revenue Code, as amended, the applicable law at the time the subject assessment was made, 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.

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[3] Aban, Law on Basic Taxation, 1994 Ed., p. 229

Pertinent thereto, we also look at the provisions of Sections 223 and 224 of the same Code, which provide for exceptions to period of limitation and suspension of running of statute of limitation, *viz*:

> **SEC. 223**. *Exceptions as to period of limitation of assessment and collection of taxes.* – (a) xxx
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> xxx xxx xxx
>
> (c) Any **internal revenue tax which has been assessed within the period of limitation above described may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax**. *(Emphasis Supplied)*
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> xxx xxx xxx
>
> **SEC. 224**. *Suspension of running of statute.* - The running of the statute of limitation provided in Sections 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. . . 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 inform the Commissioner 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; xxx

From the foregoing, the Commissioner of Internal Revenue must make a tax assessment within three (3) years after the correspondent return is filed. However, no action can be brought by it for the recovery of the tax after the lapse of that period in case no assessment has been made. Any tax assessed must in turn be collected by the remedies provided by law, *i.e.* distraint or levy, within three years following the assessment save in cases specified by law. This brings Us to the question of prescription and the jurisdiction of the Original Division of this Court in resolving CTA Case No. 6362.

We note that the assailed decision of September 24, 2004 had exhaustively delved on the issue of prescription, its exceptions or suspension of the statute of limitation as applied in the present case. And for emphasis, We reiterate that a request for reconsideration or reinvestigation filed by a taxpayer, which has not been seasonably filed, does not interrupt the prescriptive period to collect taxes appropriately assessed.

In the instant case, the Original Division of this Court found the assessment issued against herein respondent, HQPI to be final and unappealable because its motion for reconsideration/reinvestigation was filed out of time. This being so, petitioner should have instituted collection proceedings within the three-year period from assessment as prescribed by Section 223 ( c ) of the NIRC, either by distraint or levy, or by judicial action. Apparently, petitioner did not initiate collection proceedings within the period provided by law to enforce Assessment Notice No. 001543-89-5668, and herein respondent had the legal right to assail the same when it filed CTA Case No. 6362.

Correspondingly, the Original Division of this Court appropriately possessed the jurisdiction to act on said case because the officers of the Bureau of Internal Revenue should not be allowed to benefit from their neglect in collecting taxes from herein respondent within the reglementary period.

It bears stressing that the law prescribing a limitation of actions for the collection of taxes is beneficial both to the Government and to its citizens[4]. To the Government, because tax officers would be obliged to act swiftly in issuing assessments, resolving disputes thereon, and enforcing collection thereof; and to the citizens, they would have a feeling of security from any possible harassment by unscrupulous tax agents after the prescriptive period to assess and collect taxes have lapsed.

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[4] Republic of the Philippines vs. Ablaza, 108 SCRA 1105, [1960]

Petitioner is thus reminded to be more vigilant in the exercise of the government's right to collect taxes, considering that the life of the nation depends heavily on its ability to raise revenues for our financially strapped government.

**WHEREFORE,** the Petition for Review is **DENIED DUE COURSE** and the case is accordingly **DISMISSED** for lack of merit.

**SO ORDERED**.

**ERLINDA P. UY**
Associate Justice

***WE CONCUR:***

**ERNESTO D. ACOSTA**
Presiding Justice

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

# CERTIFICATION

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 before the case was assigned to the writer of the opinion of this Court.

**ERNESTO D. ACOSTA**
Presiding Justice