REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

-versus-

ISUZU PHILIPPINES CORPORATION,

Respondents.

CTA EB No. 1005
(CTA Case No. 8025)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 3 0 2015
3:35 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is petitioner's Motion for Reconsideration[1] posted on August 29, 2014 which was received by the Court on September 3, 2014. Petitioner seeks reconsideration of this Court's Decision[2], promulgated on August 4, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, considering all of the foregoing premises, the instant Petition for Review is **DENIED** for lack of merit. The assailed Decision of the First Division promulgated on December 11, 2012 in *Isuzu Philippines Corporation vs. Commissioner of Internal Revenue* (CTA Case No. 8025), and its Resolution dated March 22, 2013 are **AFFIRMED** *in toto.*

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[1] *Rollo*, pp. 142-158.
[2] *Rollo*, pp. 110-122.

SO ORDERED."

Petitioner bases its Motion for Reconsideration on two principal grounds:

1. That respondent is a mere withholding agent and, therefore, prescription under Section 203 of the National Internal Revenue Code (NIRC) of 1997 does not apply and respondent's liability for expanded withholding taxes (EWT) never prescribes; and

2. That even assuming that withholding taxes can be classified as internal revenue taxes, petitioner's right to assess respondent Deficiency EWT on compensation has not yet prescribed due to respondent's filing of false and insufficient returns which only prescribes ten (10) years after discovery of the falsity, fraud, or omission.

The issues raised by petitioner in its Motion for Reconsideration are not new. They have been exhaustively studied and considered by this Court prior to rendering our Decision dated August 4, 2014.

On the issue of prescription, petitioner argues that Section 203 of the NIRC is inapplicable because what it has been trying to collect from respondent by virtue of the assessment was not an "assessment of an internal revenue tax", but rather, an assessment of respondent's "liability as withholding agent."

Petitioner goes to great lengths to explain the withholding tax system to this Court, and, in fact, this Court agrees with the characterization of the system in *Philippine Guaranty Co., Inc. vs. Commissioner of Internal Revenue*[3], a case cited by petitioner wherein the Supreme Court declared that:

> "The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. **Thus, the withholding agent is constituted the agent of both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer.**

[3] G.R. No. L-22074, September 6, 1965, as cited in Filipinas Synthetic Fiber Corporation vs. Court of Appeals, Court of Appeals and CIR, G.R. No. 118498 & 124377, October 12, 1999.

> The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable to law." *(Emphasis ours)*

However, this Court also believes that the above pronouncement is not incompatible with the applicability of Section 203.

As withholding agent of the Government who failed to withhold, Section 80 mandates that an employer shall be liable to pay the tax together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.

As agent of the taxpayer, the withholding agent is responsible for filing the necessary withholding tax return and remittance of the tax withheld.

This dual role of a withholding agent is *sui generis*. Petitioner is splitting hairs when it seeks remedies under the umbrella of one role to the exclusion of the other. The deficiency payment the Government seeks is an internal revenue tax. As such, as with any taxpayer, Section 203 applies. The Government must issue an assessment in an effort to collect the tax within three (3) years after the last day prescribed by law for filing of the return, or in cases where the return is filed beyond the period prescribed by law, from the day the return was filed. We have emphasized the rationale for this rule in our Decision where we cited *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[4] which stated that "The statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor."

Section 203 was instituted to benefit the taxpayer, the principal of the withholding agent. *We* see no reason why a rule that applies to the principal should not apply to the agent as well. This was expounded on in our Decision, thus:

> "In complete contrast, the jurisprudential support cited by the First Division in its Decision are truly apropos.[5] In *Philippine Journalists, Inc. vs. CIR,*[6] the Supreme Court in 2004 applied Section 203 of the NIRC in ruling that prescription had set in against assessments for deficiency taxes on income tax, value-added tax, and expanded withholding tax. In *CIR vs. FMF Development Corporation,*[7] the Supreme Court in 2008 applied

[4] *Rollo*, p. 121.
[5] See pages 11-12 of the Decision.
[6] G.R. No. 162852, December 16, 2004.
[7] G.R. No. 167765, June 30, 2008.

Section 203 of the NIRC in ruling that prescription had set in against assessments for deficiency taxes on income tax and withholding taxes. More recently in 2010, in *CIR vs. Kudos Metal Corporation,*[8] the Supreme Court, in reiterating that exceptions extending the period to assess must be strictly construed, also cited Section 203 in ruling that the assessment for deficiency taxes on income tax, VAT and EWT had prescribed.

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The jurisprudence cited by the First Division in its Decision, on the other hand, included withholding taxes and EWT in the coverage of Section 203. In another case, the ambit of Section 203 was even extended to deficiency documentary stamp tax.[9]"

In this case, the Government failed to discharge its duty to assess and collect the deficiency EWT in a timely manner. Had it done so, then the liability of the withholding agent for failure to withhold could be properly determined. It belies logic and reason that liability would attach to the withholding agent when there has yet been no determination that it failed to withhold for lack of a valid and timely assessment.

As regards respondent's alleged filing of false and insufficient returns, we have already discussed at length why a change in theory on appeal cannot be allowed. Moreover, petitioner was unable to support its allegation with any evidence whatsoever and, therefore, cannot be afforded the benefit of the ten-year prescriptive period under Section 222 of the NIRC.

WHEREFORE, considering all of the foregoing premises, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[8] G.R. No. 178087, May 5, 2010.
[9] *Bank of the Philippine Islands vs. CIR,* G.R. No. 174942, March 7, 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
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