REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

BRAVO ALABANG, INC.,
Petitioner,

CTA CASE NO. 8199

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 29 2012
3:50 p.m.

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DECISION

CASTAÑEDA, JR., *J*.:

Before the Court is a Petition for Review filed on December 13, 2010 by Bravo Alabang, Inc., seeking the cancellation of deficiency income tax, value-added tax, and expanded withholding tax assessments issued against it for the year 1999 in the amounts P49,347.79, P214,781.63, and P31,596.73, respectively, inclusive of interest.

Petitioner Bravo Alabang, Inc. is a domestic corporation established and existing under the laws of the Republic of the Philippines, with mailing address at No. 156 Guava Drive, Ayala Alabang, Muntinlupa City.[1]

[1] Par. 1, Petition for Review, docket, p. 4

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, authorized to perform the duties of her Office, including, *inter alia*, the power to decide disputed assessments or other charges and penalties imposed in relation thereto, pursuant to the provisions of the National Internal Revenue Code (NIRC), as amended.

The case sprung from the Formal Assessment Notice (FAN) dated January 21, 2003 issued by respondent against petitioner for deficiency income tax, value-added tax, and expanded withholding tax assessments in the amounts of P1,826,777.81, P461,006.97, and P34,379.08, respectively, for taxable year 1999.[2]

Thereafter, petitioner filed a protest letter dated March 5, 2003, submitting that the deficiency income tax, value-added tax, and expanded withholding tax assessments for the year 1999 have no basis and must therefore be withdrawn and cancelled.[3]

On November 11, 2010, petitioner received a copy of the Final Decision on Disputed Assessment (FDDA) of respondent, informing it that after "reinvestigation", petitioner is still liable to pay deficiency income tax, value-added tax, and expanded withholding tax for taxable year 1999 in the reduced amounts of P49,347.79, P214,781.63, and P31,596.73, respectively.[4]

Petitioner then appealed the said Final Decision on Disputed Assessment via the instant Petition for Review filed on December 13, 2010.[5]

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[2] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 52
[3] Par. 3, Stipulation of Facts, JSFI, docket, p. 52; Exhibit "A"
[4] Par. 4, Stipulation of Facts, JSFI, docket, p. 53; Exhibit "B"
[5] Docket, pp. 4-7

In her Answer[6] filed on January 28, 2011, respondent interposed the following special and affirmative defenses:

"10) Verification disclosed that Petitioner's Salaries and Wages in the Alphalist for taxable year 1999 amounts to P1,916,279.79, while the Salaries and Wages in the Financial Statements for the same year amounts to P1,901,479.59 thereby producing a discrepancy in the amount of P14,800.20;

11) In the same manner, Petitioner's Rent Expense in the Alphalist for taxable year 1999 amounts to P1,484,432.00, while the Rent Expense reflected in the Financial Statements for the same year amounts to P1,460,675.00, thus, producing a discrepancy of P23,757.00;

12) Pursuant to the case of Perez vs. CTA and CIR, L-10507, dated 30 May 1958, unreflected sources of funds not accounted for in the taxpayer's tax returns leads to the inference that part of his income had not been reported, thus, the discrepancies noted between Petitioner's Alphalist and Financial Statements with regard to its Salaries & Wages account and Rent Expense account in the aggregate amount of P38,557.20 constitutes unreported income and must be proven otherwise by Petitioner and not the other way around;

13) Contrary to Petitioner's allegation, the Details of Discrepancies provided for the facts on the unsupported input tax from which the assessment arose from. The Details clearly stated that the disallowed input tax in the amount of P67,628.79 was arrived at after a comparison of the schedule of input tax and claimed input tax based on Petitioner's return;

14) Again, contrary to Petitioner's allegation, Respondent's Details of Discrepancies provided the legal and factual basis of the assessment on the Deficiency Expanded Withholding Tax. The Details clearly pointed that the disallowed expense in the amount of P99,317.96 was arrived at after a comparison of the Professional Fee in the Financial Statement, which amounted to P139,873.76, while the Professional Fee reported in its Alphalist amount only to P40,555.80;

[6] Docket, pp. 25-29

15) Respondent did not lose her right to collect the deficiency Income Tax, Value Added Tax and Expanded Withholding Tax for taxable year 1999 as Petitioner protested the findings in the Formal Assessment Notice (FAN). Consequently, Respondent issued her Final Decision on Disputed Assessment (FDDA) on 3 November 2010 and received by petitioner on 11 November 2010. It would truly be the height of injustice if Petitioner is allowed to reckon the period for filing of its Petition upon receipt of the FDDA and even assail the findings of the FDDA and yet reckon Respondent's right to collect upon the issuance of the FAN. Such a scenario would be like penalizing Respondent for giving due course to Petitioner's protest to the FAN;

16) Logic only dictates that the 5 year period to collect should also be reckoned from the issuance of FDDA and not the FAN otherwise, the assessment validly issued will be easily defeated by simply filing a protest and then delay the submission of documents until 5 years have elapsed. Such a scenario is surely not the intent of the law."[7]

Subsequently, the case was set for Pre-Trial Conference on March 17, 2011.[8] Petitioner's Pre-Trial Brief[9] was filed on March 11, 2011; while respondent's Pre-Trial Brief[10] was filed on March 17, 2011.

On April 11, 2011, the parties filed their Joint Stipulation of Facts and Issues.[11]

During trial, petitioner presented documentary and testimonial evidence to support its claims and contentions. Accordingly, petitioner Jc

[7] Docket, pp. 26-28
[8] Notice of Pre-Trial Conference, docket, p. 31
[9] Docket, pp. 32-35
[10] Docket, pp. 39-41
[11] Docket, pp. 52-54

formally offered in evidence Exhibits "A" to "D-6"[12], which was later on admitted in a Resolution[13] dated June 21, 2011.

On the other hand, in a Resolution[14] dated May 28, 2012, the Court denied respondent's Motion to Admit (Formal Offer of Evidence) with Profuse Apologies[15] and ordered the parties to file their respective memorandum within thirty (30) days from receipt of the said Resolution. Respondent filed a Motion for Reconsideration through registered mail on June 18, 2012. However, the said Motion was later denied as per Resolution of this Court dated July 27, 2012. The same Resolution likewise ordered the parties to file their respective memorandum within thirty (30) days from receipt of the said Resolution.[16]

On October 1, 2012, a Resolution[17] was issued by this Court submitting the case for Decision, considering the Report dated September 24, 2012 of the Records Division that no memorandum has been filed by both parties.

The parties submitted the following issues[18] for this Court's disposition:

"1. Whether or not the alleged increase in the amount of cash of Petitioner for the year 1999 is taxable income?

2. Whether or not the Details of Discrepancies on the final deficiency value-added tax and expanded withholding tax liabilities of the Petitioner for the year ended December 31, 1999 has complied with the requirements under Section 228 of the National Internal Revenue Code, as amended?

3. Whether or not Respondent has lost her right to collect the deficiency income tax, value-added tax and

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[12] Formal Offer of Evidence filed through registered mail on May 10, 2011, docket, pp. 65-72
[13] Docket, pp. 77-78
[14] Docket, pp. 160-164
[15] Docket, pp. 127-137
[16] Docket, pp. 177-181
[17] Docket, p. 183
[18] Docket, pp. 53-54

expanded withholding tax assessments issued against Petitioner for the year ended December 31, 1999 as the five (5) years period for collection thereof has elapsed pursuant to Section 222 (c) of the National Internal Revenue Code, as amended?

4. Whether Petitioner has unsupported sources of cash in the amount of P38,557.20;

5. Whether Petitioner was able to support its Input Tax in the amount of P67,628.79;

6. Whether Petitioner withheld the withholding tax due on professional fees it paid in the amount of P99,317.96; and

7. Whether for taxable year 1999, Petitioner incurred the following tax liabilities inclusive of interest until December 10, 2010: a) Deficiency Income Tax in the amount of P49,347.79; b) Deficiency Value Added Tax in the amount of P214,781.63; and c) Deficiency Expanded Withholding Tax in the amount of P31,596.73."

From the foregoing issues, the Court finds it proper to first address and discuss the third issue. It must be noted however, that there is no controversy as to the timeliness of the issuance of the Formal Assessment Notice. Thus, as per the issue raised by the parties, the Court shall proceed to determine whether respondent has lost her right to collect the deficiency income tax, value-added tax, and expanded withholding tax assessments issued against petitioner for the year ended December 31, 1999 as the five-year period for collection thereof had lapsed pursuant to Section 222(c) of the National Internal Revenue Code of 1997, as amended.

Sections 203, 222(c), and 223 of the NIRC of 1997, as amended, provide:

"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."

"SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

xxx xxx xxx

(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."

"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." *(Emphasis supplied)*

From the foregoing, the running of the statute of limitations on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection of deficiency taxes shall be suspended for the period during which the Commissioner is (1) prohibited from making the assessment or beginning distraint or levy or a proceeding in court, (2) when the taxpayer requests a reinvestigation which is granted by the Commissioner, and (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.

According to respondent, she did not lose her right to collect the deficiency income tax, value-added tax, and expanded withholding tax for taxable year 1999 as petitioner protested the findings in the Formal Assessment Notice. Consequently, respondent issued her Final Decision on Disputed Assessment on November 3, 2010 and received by petitioner on November 11, 2010. It would truly be the height of injustice if petitioner is allowed to reckon the period for filing of its petition upon receipt of the FDDA and even assail the findings of the FDDA and yet reckon respondent's right to collect upon the issuance of the FAN. Such a scenario would be like penalizing respondent for giving due course to petitioner's protest to the FAN. Logic dictates that the 5-year period to collect should also be reckoned from the issuance of the FDDA and not the FAN, otherwise, the assessment validly issued will be easily defeated by simply filing a protest and then delay the submission of documents until 5 years have elapsed. Such a scenario is surely not the intent of the law.

To address respondent's arguments, a plain reading of the earlier cited provisions would show that the prescriptive period provided by law to make a collection is interrupted only when a taxpayer requests for reinvestigation of the assessment and the same is granted by the Commissioner.

A mere request for "reinvestigation" without the corresponding action on the part of the Commissioner does not interrupt the running of the prescriptive period. The request should first be granted in order to effect suspension.[19]

In the case of *Republic of the Philippines vs. Felix B. Acebedo*[20], the High Court likewise stressed that the running of the statute of limitations shall not be suspended or interrupted unless the taxpayer's request for reinvestigation is acted upon by the Commissioner.

In the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[21], the High Court declared that the burden of proof that the request for reinvestigation had been actually granted shall be on the respondent. Such grant may be expressed in the communications with the taxpayer or implied from the action of the BIR Commissioner or her authorized representative in response to the request for reinvestigation.

In this case, there is nothing in the evidence presented which would show that by the acts of petitioner, respondent was convinced to postpone the collection of the tax due to reinvestigation or that petitioner was made aware of the action taken on its request. In fact, what only appears from the evidence admitted before the Court is that the protest[22] filed by petitioner is a mere request for reconsideration of the Formal Assessment Notice and that respondent issued the Final Decision on Disputed Assessment only on November 3, 2010, which was received by petitioner on November 11,

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[19] *Republic of the Philippines vs. Santiago Gancayco*, G.R. No. L-18307, June 30, 1964
[20] G.R. No. L-20477, March 29, 1968
[21] G.R. No. 174942, March 7, 2008
[22] Exhibit "A"

2010.[23] Accordingly, the running of the prescriptive period for collection was never interrupted or suspended.

Notably, the delay in collection could not be attributed to petitioner at all until November 11, 2010, that is when respondent issued the appealed Final Decision on Disputed Assessment. In fact, petitioner's request appeared to have been unacted until then, despite absence of any legal means which might impede enforcement of the tax liability. More than seven years had lapsed since the assessment in question was made. Thus, prescription had already set in, making subsequent events in connection with the said assessment, such as the issuance of the Final Decision on Disputed Assessment, entirely moot.

The Honorable Supreme Court explained in the case of *Republic of the Philippines vs. Luis G. Ablaza*[24] the rationale behind the prescriptive period for actions for collection, to wit:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, 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. Without such legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the positive purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law."

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[23] Exhibit "B"
[24] G.R. No. L-14519, July 26, 1960

In this case, respondent or her duly authorized representatives inordinately delayed acting on petitioner's request for reconsideration and took no effort to collect the deficiency income tax from petitioner when there was nothing that prevented them from doing so. When the Formal Assessment Notice dated January 21, 2003 for deficiency income tax, value-added tax, and expanded withholding tax assessments in the amounts of P1,826,777.81, P461,006.97, and P34,379.08, respectively, for taxable year 1999 was issued[25], respondent had five years within which to enforce collection as required by law. However, it was only on November 3, 2010[26], or after the lapse of seven (7) years, that respondent rendered a decision denying the protest. Since the protest filed by petitioner failed to suspend the running of the period to collect the deficiency taxes assessed, the right of respondent to collect the same is deemed to have already prescribed.

Considering the prescription of the government's right to collect the assessed taxes for the taxable year 1999, the resolution of the remaining issues concerning the validity of the assessment is already deemed moot.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Assessment Notice dated January 21, 2003 for deficiency income tax, value-added tax, and expanded withholding tax assessments for taxable year 1999 is hereby **CANCELLED**.

SO ORDERED.

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

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[25] Par. 2, Stipulation of Facts, JSFI, docket, p. 52
[26] Exhibit "B"

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice