REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SAN MIGUEL CAMPOCARNE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **11582**

Members:

BACORRO-VILLENA, *Chairperson*, *and*
CUI-DAVID, JJ.

Promulgated:
4:10 pm

x - x

RESOLUTION

For the Court's resolution is petitioner San Miguel Campocarne Corporation's (**petitioner**'s) "Extremely Urgent Prayer for Issuance of Temporary Suspension Order and/or Suspension Order Enjoining the Collection of Taxes" (**Motion for Suspension**) incorporated in its Petition for Review[1] filed on 02 August 2024, with respondent Commissioner of Internal Revenue's (**respondent/CIR**'s) "Comment/Opposition (Re: Petitioner's Extremely Urgent Prayer for Issuance of Temporary Suspension Order and/or Suspension Order Enjoining the Collection of Taxes)"[2] (**Comment**) filed on 29 November 2024.

The Petition for Review with Motion for Suspension was initially raffled to this Court's Third Division.[3]

Petitioner avers that its arguments in the main case are also applicable to its prayer for the issuance of a suspension order enjoining the tax collection, particularly: (**1**) the period to collect the alleged deficiency income tax (**IT**) and value-added tax (**VAT**) for taxable year

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[1] Division Docket, Volume I, pp. 7-50.
[2] Id., pp. 110-120.
[3] Composed of (ret.) Associate Justice Catherine T. Manahan as chairperson, Associate Justice Marian Ivy F. Reyes-Fajardo and Associate Justice Henry S. Angeles, as members.

(**TY**) 2012 has prescribed; (**2**) the period to assess petitioner for the alleged deficiency IT and VAT for TY 2012 has also prescribed; (**3**) the Formal Letter of Demand[4] (**FLD**) and Assessment Notices[5] (**AN**s), both dated 26 June 2017, are void for violation of petitioner's right to due process; and (**4**) the deficiency IT and VAT are invalid for lack of factual and legal bases.

Expounding on the allegation of prescription, petitioner explains that the FLD and ANs were issued on 26 June 2017. Applying the periods laid down in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*,[6] (**QL Development**), respondent had three (3) years, or until 26 June 2020 within which to collect the tax liabilities. It further avers that even if the deficiency taxes qualify for the five (5)-year collection period, respondent should have collected it on or before 26 June 2022. However as the Warrant of Distraint and/or Levy[7] (**WDL**) No. RR7B-WDL-2024-06-27-00007 was only issued on 11 July 2024, on both instances, the period to collect are already barred by prescription.

Petitioner also assails the premature issuance of the WDL considering that the alleged deficiency taxes are not yet delinquent. It adds that it had timely filed a judicial protest to contest the said tax assessments before this Court, thus these have not attained finality.

Finally, petitioner deems that the imminent collection of the subject deficiency taxes of ₱67,846,096.68 will result to grave and irreparable injury against it.

On the other hand, respondent counters that petitioner is not entitled to the injunctive relief prayed for as it has not proven that the exception under Section 2, Rule 10 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) is applicable in the case at bar. He or she maintains that petitioner failed to show the existence of an extreme urgency that would warrant the suspension of tax collection. Respondent asserts that the government would suffer great damage if a suspension order will be issued as it would be deprived of the taxes due to it. Petitioner also neither proved that all the requisites for the remedy of injunction, are present because the burden of proof for the issuance of an injunctive relief, rests with it.

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4 Exhibit "P-8"/ "P-8-SO", id., pp. 307-312.

5 Id.

6 G.R. No. 258947, 29 March 2022.

7 Exhibit "P-14-1" / "P-14-1-SO", Division Docket, Volume II, p. 560.

Moreover, respondent argues that should the motion for suspension be granted, petitioner should not be excused from posting a bond since the grounds it raised such as prescription and non-delinquency may only be determined after the conduct of a full-blown trial.

In a Resolution dated 10 October 2024,[8] the Third Division scheduled the hearing for the Motion for Suspension. In addition, it temporarily refrained respondent from pursuing any administrative action for collection of petitioner's alleged deficiency taxes while the said motion is pending.

In the hearing that ensued, petitioner presented two (2) witnesses: Chona M. Donato (**Donato**) and Marlyn G. Deleonio (**Deleonio**).

Through her Judicial Affidavit,[9] Donato testified that: (**1**) she is an accountant of San Miguel Corporation (**SMC**), petitioner's parent company; (**2**) petitioner is engaged in the business of producing, processing, manufacturing and marketing on wholesale of processed meat products; (**3**) based on third party information (**TPI**), petitioner had undeclared sales for TY 2012; (**4**) acting on the said TPI, on 22 June 2016, respondent issued a Letter of Authority[10] (**LOA**) to authorize the investigation of petitioner's books for TY 2012; (**5**) petitioner received the Preliminary Assessment Notice[11] (**PAN**) and FLD and ANs on 05 June 2017 and 28 June 2017, respectively; (**6**) on 28 July 2017, petitioner filed a Protest to the FLD and ANs by way of a request for reinvestigation;[12] (**7**) thereafter, petitioner submitted a transmittal letter[13] accompanied by a sworn affidavit[14] executed by Deleonio, stating that Grand Union Supermarket, Inc. (**GUSI**) erroneously reflected in its Summary List of Purchases (**SLP**) certain purchases from San Miguel Foods, Inc. (**SMFI**) by indicating petitioner's tax identification number (**TIN**) instead of that of SMFI; (**8**) on 03 April 2018, respondent issued the Final Decision on Disputed Assessment[15] (**FDDA**), which the Regional Director had signed; (**9**) on 04 May 2018, petitioner filed a Request for Reconsideration of

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8 Id., Volume I, pp. 94-95
9 Exhibit "P-25", Judicial Affidavit of Chona M. Donato, id., pp. 65-84.
10 Exhibit "P-5" / "P-5-SO", id., p. 229.
11 Exhibit "P-7" / "P-7-SO", id., pp. 301-304.
12 Exhibit "P-9" / "P-9-SO", id., pp. 313-318.
13 Exhibit "P-10" / "P-10-SO", id., p. 349.
14 Exhibit "P-10-1" / "P-10-1-SO", id., p. 351.
15 Exhibit "P-11" / "P-11-SO", id., pp. 352-354.

the FDDA[16] with CIR; (**10**) thereafter, on 11 July 2024, petitioner received the CIR's Final Decision[17] dated 22 April 2024 and the WDL; (**11**) to appeal the Final Decision, on 02 August 2024, petitioner filed the instant Petition for Review[18] before the Court of Tax Appeals (**CTA**); (**12**) in support of the petition, petitioner claims that: (*i*) the period to collect the alleged deficiency taxes has already prescribed; (*ii*) the periods to assess the IT and VAT are also prescribed; (*iii*) the FLD and ANs do not contain a due date and an actual demand to pay; (*iv*) petitioner's right to due process was violated since it was not furnished with a copy of the alleged TPI confirmation letter (which became the basis for the assessment); and (*v*) there is no factual basis for the deficiency assessments for TY 2012 as petitioner had ceased its operations in the latter part of TY 2002.

As for the Motion for Suspension, by way of the same Judicial Affidavit, Donato declared that: (**1**) apart from the above arguments, there is no basis for issuance of the WDL since it had timely filed a judicial appeal to contest the alleged deficiency taxes; and (**2**) based on its Audited Financial Statement (**AFS**) for 2023,[19] petitioner only has ₱33,220.00 cash and has no real property, hence, it is financially incapable to satisfy the subject tax liabilities.[20]

During her cross-examination, Donato confirmed that petitioner had ceased operations in TY 2002. Moreso, she clarified that petitioner's liabilities are composed of long-standing accounts payable and accrued expenses which it owed to its parent company, SMC. The Court then inquired about petitioner's status, to which Donato answered that while the former had ceased its business operations, it did not dissolve its corporate existence. As a result, petitioner still files its annual returns although it no longer has any business transactions. In the same cross-examination, Donato explained that the deficit of ₱1,307,702,115.00 pertains to petitioner's accumulated net losses since its non-operation in TY 2002.[21]

No redirect examination was conducted.[22]

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16 Exhibit "P-12" / "P-12-SO", id., pp. 356-373.
17 Exhibit "P-14" / "P-14-SO", id., Volume II, pp. 550-559.
18 Supra at note 1.
19 Exhibit "P-20" / "P-20-SO", Division Docket, Volume II, pp. 893-915.
20 Exhibit "P-25", Judicial Affidavit of Chona M. Donato, supra at note 9.
21 TSN dated 19 November 2024, pp. 8-16.
22 Id., p. 16.

Next to assume the witness stand was Deleonio who testified that: (**1**) she is GUSI's head accountant and has been with petitioner since 2001; (**2**) one of GUSI's tradenames is South Grocer; (**3**) in 2016 and 2017, petitioner requested a certification from GUSI in relation to an audit in TY 2012; (**4**) based on the certifications, GUSI declared that it had no purchases from petitioner in TY 2012; (**5**) GUSI incorrectly reported in its SLP that purchases amounting to ₱6,749,184.97 and ₱87,477,273.77 were made from petitioner, when in fact these purchases were made from SMFI; (**6**) in November 2017, when respondent asked GUSI to fax a letter confirming that it had reported purchases from petitioner, GUSI replied in the affirmative (albeit the same was due to its erroneous reporting); (**7**) in 2018, petitioner informed GUSI that respondent issued the FDDA which maintained the deficiency tax assessments due to the inconsistencies in GUSI's sworn affidavits; and (**8**) to correct the misinformation, GUSI executed another sworn affidavit to clarify that while there were reported purchases from petitioner, the same were due to erroneous encoding of TIN and that the purchases were actually from SMFI.

During the cross-examination, Deleonio said that the purchases were made in SMFI's name, but these were mistakenly recorded under petitioner's TIN, owing to the similarity between the TINs of SMFI and that of petitioner. She also added that petitioner was GUSI's supplier up until the former ceased its business operations in TY 2002. When the Court inquired if she had a copy of the SLP she filed with the BIR, Deleonio said that she only had the printout thereof.[23]

No redirect examination was conducted.[24]

When the Court asked Deleonio of when GUSI discovered the mistake, she answered that such matter was only raised in 2016 when petitioner asked for the certification to prove that it had no sales transactions with GUSI for TY 2012.[25]

Thereafter, on 14 January 2025, petitioner filed its Formal Offer of Evidence[26] (**FOE**). Without respondent's comment,[27] in a Resolution dated 27 October 2025, the Third Division admitted all of petitioner's

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23 Id., pp. 22-28.
24 Id., p. 28.
25 Id.
26 Division Docket, Volume I, pp. 153-166.
27 See Records Verification dated 14 July 2025, id., Volume II, p. 944.

exhibits.[28] In the same Resolution, the Third Division submitted the Motion for Suspension for resolution.

In the *interim*, respondent filed his or her Answer[29] on 27 December 2024 through electronic filing, which was subsequently filed *via* registered mail on 02 January 2025. There, respondent counters that the periods to assess and collect have not yet prescribed. Under Section 223[30] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, one of the instances when the running of the statute of limitation is suspended is when the taxpayer requests for a reinvestigation and the CIR had granted it. In this case, when petitioner filed its Protest to the FLD and ANs by way of a request for reinvestigation, the same was granted on 29 August 2017. Thus, the statute of limitation was suspended effectively.

Moreover, respondent claims that the period to collect coincided with the Corona Virus Disease 2019 (**COVID-19**) pandemic. Considering the numerous Bureau of Internal Revenue (**BIR**) issuances which extended the period of assessment and/or collection totalling to 420 days, then his or her right to collect the tax liabilities has not yet prescribed when it issued the WDL. Respondent further argues (in the Answer) that petitioner's right to due process was not violated since it was able to protest the deficiency tax assessments. Also, the tax assessments were duly supported with factual and legal bases.

On 27 March 2025, the case was set for meditation for the possibility of an amicable settlement.[31] However, the parties agreed not to have the case mediated.[32] Thereafter, in a Minute Resolution of 14 January 2026, this case was transferred to the Second Division pursuant to the reorganization of the divisions of the CTA.[33]

We resolve.

A perspicacious review of the present motion, as incorporated in the Petition for Review, yields the inescapable conclusion that respondent's authority to collect the subject deficiency taxes has long been extinguished by prescription.

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[28] See Resolution dated 27 October 2025.
[29] Id., pp. 919-929.
[30] **SEC. 223**. *Suspension of Running of Statute of Limitations*.
[31] See Minute Resolution dated 06 February 2025, Division Docket, Volume II, pp. 934-935.
[32] See No Agreement to Mediate dated 22 April 2025, id., p. 939.
[33] Administrative Circular No. 01-2026.

For the orderly disposition of the issues for resolution, We shall discuss in the following order: (**1**) whether there is basis to apply the ten (**10**)-year prescriptive period to assess; and (**2**) whether respondent's right to collect the subject taxes has already prescribed.

RESPONDENT PROPERLY APPLIED THE TEN (10)-YEAR PRESCRIPTIVE PERIOD TO ASSESS.

Section 203 of the NIRC of 1997, as amended, provides for the prescriptive period in the assessment and collection of internal revenue taxes:

> . . .
> **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.
> . . .

As an exception, Section 222 of the same law enumerates the instances when a different period to assess shall be used –

> . . .
> **SEC. 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
> . . .

Here, respondent claims that there is a *prima facie* case of false or fraudulent return, thus, the extraordinary period of 10 years to assess is applicable.

After a careful review of the admitted exhibits vis-à-vis the parties' arguments, We agree with respondent's observation.

In *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*[34] (**Villanueva**), the Supreme Court declared that two (**2**) requisites must concur for the application of the 10-year prescriptive period in cases of *prima facie* finding of false or fraudulent return, to wit –

> ...
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> ...[B]ased on the afore-quoted guidelines, **for the 10-year prescriptive period to apply, the following must concur: (1) the CIR has established a *prima facie* case of a false or fraudulent return or otherwise proved intent to evade on the part of the taxpayer; and (2) the CIR complied with the requirements of due process.**
>
> In this case, none of the foregoing conditions were established. Thus, the extension of the prescriptive period to 10 years is not proper in this case.
>
> *Foremost*, the CIR failed to observe the requirements of due process requirements.
>
> As discussed, the **CIR fell short of proving that respondent actually received the assessment notices, which would have informed the latter of the factual and legal bases of his deficiency taxes and the application of the extraordinary 10-year prescriptive period**. Consequently, respondent would have been able to refute or protest the subject assessments had the latter actually received the assessment notices.
>
> Moreover, upon a cursory reading of the PAN and FAN/FLD, apart from the computation of respondent's deficiency taxes for 2006 and references to provisions of the 1997 NIRC, **nothing therein stated or even suggested that the CIR is applying the 10-year prescriptive period. No explanation was indicated in the said assessment notices for the application of the extraordinary prescriptive period**.
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> ...
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> *Secondly*, the CIR failed to establish a *prima facie* case of a false or fraudulent return or prove that respondent was animated with intent to evade taxes.

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[34] G.R. No. 249540, 28 February 2024.

> **Apart from bare allegations that respondent failed to indicate in his Final/Amended ITR for taxable year 2006 a gross income amounting to PHP31,164,900.67, the CIR failed to substantiate, much less, prove the source and bases for said amount.**[35]
>
> ...

In this case, based on the Letter Notice dated 14 June 2014, respondent initially determined that petitioner had undeclared sales transactions in the total amount of ₱6,749,184.97.[36] Compared with the zero (0) sales that petitioner reported in its AFS ending 31 December 2012[37], respondent averred that there is a *prima facie* case of false or fraudulent return since there is substantial under-declaration of more than thirty percent (**30%**).

To substantiate this finding, respondent had acquired from GUSI a letter dated 22 November 2017[38] (signed by Deleonio) which stated that, indeed, it had vatable purchases of ₱6,749,184.97 and exempt purchases of ₱80,728,088.80 from petitioner for TY 2012. With the said supporting document, We deemed that respondent had duly established the *prima facie* case of false or fraudulent return. Thus, the *first requisite* is present.

As to the *second requisite*, *Villanueva*[39] discussed that the CIR should have informed the taxpayer the factual and legal bases of the deficiency taxes and the application of the extraordinary 10-year prescriptive period. Here, an examination of the Details of Discrepancies (**DOD**) of the PAN and the FLD reveals that respondent had duly complied with the said requirements, thus satisfying the *second requisite*. The relevant parts of their DOD state –

> ...
>
> **<u>Undeclared Sales / Income ₱87,477,273.77</u>** – In the partial tally of the computerized matching conducted by this Bureau on the Sales per Summary List of Purchases (SLP) submitted by your customers against the amount declared in your tax returns shows an understatement of sales resulting to Undeclared Income in the amount of ₱87,477,273.77.
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> ...

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35 Italics in the original text and emphasis supplied.

36 See Exhibit "P-3" / "P-3-SO", Letter Notice dated 14 June 2014, Division Docket, Volume I, p. 226.

37 Exhibit "P-19-9" / "P-19-9-SO", Division Docket, Volume II, p. 876.

38 Attached as Annex "B" in the Final Decision on Disputed Assessment, Exhibit "P-11" / "P-11-SO", supra at note 15, p. 355.

39 Supra at note 34.

> **Undeclared Sales, ₱6,749,184.97** – The undeclared income in the partial tally is also subject to VAT[.]
>
> . . .
>
> **PERIOD OF PRESCRIPTION**
>
> The running of the three-year statute of limitation as provided under Section 203 of the NIRC of 1997, as amended, is not applicable with respect to your Income Tax and Value-Added Tax liabilities by rather to ten (10) year prescriptive period pursuant to Section 222(a) of the tax code which states that: "In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission.[40]
>
> . . .

Even in the FDDA, respondent explained why he or she maintained the deficiency tax assessments despite petitioner's presentation of the Deleonio's sworn affidavits –

> . . .
>
> In reply thereto, please be informed that the contentions in your said letter has been given favorable action. However, with reference to the report of Revenue Officer Michelle E. Dela Torre of Revenue District Office (RDO) No. 43- Pasig City, there has been inconsistencies found on your submitted documents particularly on the notarized affidavit executed on August 30, 2017 of Grand Union Supermarket, Inc. (GUSI) versus their confirmation letter sent to us on November 22, 2017 (**Please see ANNEX-B**). Hence, the assessments are hereby reiterated.[41]
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> . . .

From the totality of the above circumstances, it is evident that respondent properly applied the extraordinary period of 10 years to assess petitioner's books for TY 2012. Pursuant to Section 222(a) of the NIRC of 1997, as amended, the extraordinary period to assess is reckoned from the time of the discovery of the alleged fraud or false return, that is, from **14 June 2014** (or the date of the Letter Notice[42]). Certainly, the PAN, FLD and ANs issued in 2017 are deemed to have been issued within the 10-year prescriptive period to assess.

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[40] Supra at note 11, pp. 303-304; and note 4, pp. 311-312.
[41] Supra at note 15, p. 352. Emphasis in the original text.
[42] Supra at note 3636.

RESPONDENT'S RIGHT TO COLLECT THE SUBJECT DEFICIENCY TAXES HAD ALREADY PRESCRIBED.

In *QL Development*,[43] the Supreme Court, citing the case of *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[44] (**United Salvage**), ruled that the period to collect is reckoned from the date the assessment notice had been released, mailed or sent to the taxpayer:

> . . .
> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of *Batas Pambansa Blg.* 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. **The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer**.[45]
> . . .

Moreover, *QL Development*[46] clarified that the five (5)-year period for collection of taxes applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return pursuant to Section 222 of the NIRC of 1997, as amended –

> . . .
> . . . The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return. Indeed, Section 222 of the NIRC, as amended, provides:
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> > SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
> >
> > (a) In the case of a **false or fraudulent return with intent to evade tax or of failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which

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[43] Supra at note 6.
[44] G.R. No. 197515, 02 July 2014.
[45] Citation omitted and emphasis supplied.
[46] Supra at note 6.

> has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> xxxx
>
> (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.[47]

. . .

From the discussion above, here, it is proper to apply the five (5)-year collection period considering that respondent applied the 10-year assessment period pursuant to Section 222(a) of the NIRC of 1997, as amended, on petitioner's books for TY 2012.

Meanwhile, Section 223 of the NIRC of 1997, as amended, provides for instances when the running of the statute of limitation may be suspended, to wit:

> . . .
> **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.[48]
> . . .

The foregoing Section is plainly worded and could hardly be the subject of any other interpretation. To suspend the running of the prescriptive periods for assessment and collection, the CIR or his or

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[47] Empasis supplied.
[48] Emphasis supplied and italics in the original text.

her duly authorized representative must have granted the request for reinvestigation.[49]

In the case at bar, the Court notes that the FLD[50] and ANs were issued on **26 June 2017** (and received by petitioner on 28 June 2017). In response thereto, petitioner timely filed a Protest by way of a request for reinvestigation on 27 July 2017.[51] In the Answer, respondent claimed that the same was granted on **29 August 2017**,[52] thus, effectively tolling the running of the statute of limitation. Thereafter, on **03 April 2018**, respondent issued the FDDA,[53] which petitioner timely elevated to the CIR *via* the Request for Reconsideration on 04 May 2018.[54]

Per Section 223 of the NIRC of 1997, as amended, by operation of law, the original three (3)-year prescriptive period may be suspended during a period where respondent or the authorized representative is prohibited from making the assessment and for sixty (**60**) days thereafter.

In this regard, Section 4(z)[55] of Republic Act (**RA**) No. 11469,[56] which declared a national emergency due to the COVID-19 pandemic, and the subsequent issuance of Revenue Regulations (**RR**) Nos. 11-2020[57] and 12-2020,[58] must be taken into account. These

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49 *Bank of the Philippine Islands (Formerly: Far East Bank and Trust Company) v. Commissioner of Internal Revenue*, G.R. No. 174942, 07 March 2008.

50 Exhibit "P-10", Division Docket, Volume I, pp. 376-384.

51 Supra at note 12.

52 Supra at note 29, p. 923.

53 Supra at note 15.

54 Supra at note 16.

55 Section 4. *Authorized Powers*. - Pursuant to Article VI. action 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:

...

(z) Move statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine[.]

56 AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES.

57 Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

58 Amends Revenue Regulations No. 10-2020, as amended by Revenue Regulations No. 11-2020, relative to the extension of statutory deadlines and timeliness for the filing and submission of any

regulations excluded from the computation of prescriptive periods the days when affected areas were under Enhanced Community Quarantine (**ECQ**) or Modified Enhanced Community Quarantine (**MECQ**), recognizing that the BIR (specifically Revenue Region No. 7 – Quezon City [who conducted the audit] and respondent's National Office[59] [where the request for reconsideration was pending]) could not perform audit, assessment, or collection functions during such periods. Accordingly, in computing the prescriptive period to collect from 2020 to 2022, the following restrictive quarantine periods imposed in the National Capital Region (**NCR**) must be considered:

Dates	Imposed Quarantine Restriction	Number of days	COVID-19-related Issuances
01 June 2020 to 15 June 2020	GCQ	15	Inter-Agency Task Force (**IATF**) Resolution No. 40, 27 May 2020
16 June 2020 to 30 June 2020	GCQ	15	IATF Resolution No. 46-A, 15 June 2020
01 July 2020 to 15 July 2020	GCQ	15	IATF Resolution No. 50-A, 29 June 2020
16 July 2020 to 31 July 2020	GCQ	16	IATF Resolution No. 55-A, 14 July 2020
01 August 2020 to 03 August 2020	GCQ	3	IATF Resolution No. 60-A, 30 July 2020
04 August 2020 to 18 August 2020	**MECQ**	**15**	**Memorandum from the Executive Secretary dated 03 August 2020**
19 August 2020 to 31 August 2020	GCQ	13	IATF Resolution No. 64, 17 August 2020
01 September 2020 to 30 September 2020	GCQ	30	IATF Resolution No. 66, 27 August 2020
01 October 2020 to 31 October 2020	GCQ	31	IATF Resolution No. 75-A, 28 September 2020
01 November 2020 to 30 November 2020	GCQ	30	IATF Resolution No. 81, 26 October 2020
01 December 2020 to 31 December 2020	GCQ	31	Memorandum from the Executive Secretary from 01 December 2020
01 January 2021 to 31 January 2021	GCQ	31	Memorandum from the Executive Secretary from 01 January 2021
01 February 2021 to 28 February 2021	GCQ	28	Memorandum from the Executive Secretary from 29 January 2021
01 March 2021 to 28 March 2021	GCQ	28	Memorandum from the Executive Secretary from 27 February 2021
29 March 2021 to 30 April 2021	**ECQ/MECQ**	**33**	**Memorandum from the Executive Secretary from 27 March 2021; IATF-EID Resolution No. 108-A,**

document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

59 Situated at BIR National Office Building, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.

			04 April 2021; IATF-EID Resolution No. 109-A, 10 April 2021
01 May 2021 to 14 May 2021	**MECQ**	**14**	**IATF-EID Resolution No. 113-A, 29 April 2021**
15 May 2021 to 31 May 2021	GCQ	17	IATF-EID Resolution No. 115-A, 13 May 2021
01 June 2021 to 30 June 2021	GCQ	30	IATF-EID Resolution No. 118-A, 31 May 2021; IATF-EID Resolution No. 121, 14 June 2021
01 July 2021 to 31 July 2021	GCQ	31	IATF-EID Resolution No. 124, s. 2021, 30 June 2021; IATF-EID Resolution No. 127-E, 15 July 2021
01 August 2021 to 05 August 2021	GCQ	5	**IATF-EID Resolution No. 130-A, 29 July 2021**
06 August 2021 to 20 August 2021	**ECQ**	**15**	
21 August 2021 to 31 August 2021	**MECQ**	**11**	**IATF-EID Resolution No. 134, 19 August 2021**
01 September 2021 to 07 September 2021		**7**	**IATF-EID Resolution No. 135-A, 26 August 2021**
08 September 2021 to 15 September 2021		**8**	**IATF-EID Resolution No. 137, 07 September 2021**
16 September 2021 to 30 September 2021	GCQ	15	IATF-EID Resolution No. 136-F, 06 September 2021
16 September 2021 to 15 March 2022	Alert Levels 4, 3, 2 and 1[60]	181	Guidelines on the Pilot Implementation of Alert Levels System for COVID-19 Response in the National Capital Region, 13 September 2021; IATF-EID Resolution No. 141-A, 30 September 2021; IATF-EID Resolution No. 143-A, 14 October 2021

From the foregoing tabulation, apart from 16 March 2020 to 31 May 2020 *per* RMC No. 136-2020,[61] NCR was also under: (*i*) MECQ from 04 August 2020 to 18 August 2020 for fifteen (15) days; (*ii*) ECQ/MECQ from 29 March 2021 to 14 May 2021 for forty-seven (47) days; and (*iii*) ECQ/MECQ from 06 August 2021 to 15 September 2021 for forty-one (41) days.

Summatim, respondent only had until **23 March 2024** to collect the deficiency taxes, as follows:

Date	Event
26 June 2017	Issue date of the FLD and ANs

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60 The highest Alert Level imposed in Metro Manila was Alert Level 4, during which government agencies, such as the BIR, were already required to be fully operational.

61 Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020.

29 August 2017	Respondent CIR's authorized representative's acceptance of petitioner's request for reinvestigation (as alleged in the Answer)
03 April 2018	**Issue date of the FDDA**
28 January 2023[62]	End of the five (5)-year period to collect after considering the 64 days between the issuance of the FLD and ANs and the acceptance of petitioner's request for reinvestigation
23 March 2024[63]	**End of the five (5)-year period to collect after considering COVID-related suspension of 420 days**
22 April 2024	**Issue date of the CIR's Final Decision**
11 July 2024	**Issue date of the WDL.**

The Supreme Court has clarified in *QL Development*[64] that the BIR's collection efforts are initiated by distraint, levy, or court proceeding. The distraint and levy proceedings are validly begun or commenced by the **issuance of a WDL and service thereof on the taxpayer**. On the other hand, a judicial action for the collection of a tax is initiated: (a) by the filing of a complaint with the court of competent jurisdiction; or (b) where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.

From the above, it is evident that when respondent issued the WDL on 11 July 2024, the same was already beyond the reglementary period to collect. Inescapably, respondent's right to collect the subject deficiency taxes had already prescribed.

Further, We would like to point out that while what has been submitted for our resolution is petitioner's Motion for Suspension, We

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Issue date of the FLD and ANs	26 June 2017
Date the request for reinvestigation was granted	29 August 2017
No. of days lapsed	64 days
Period to collect (in days)	1825 days
Less: No. of days lapsed	66 days
Remaining no. of days (period to collect)	1761 days
Issue date of the FDDA	03 April 2018
Add: Remaining no. of days (period to collect)	1761 days
Last day of period to collect	**28 January 2023**

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Last day of period to collect	28 January 2023
Add: COVID-19 related suspension	420 days
Last day of period to collect after COVID-19 related suspension	**23 March 2024**

64 Supra at note 6.

are not barred from consolidating it with the main case for purposes of expediency. Section 6, Rule 10 of the RRCTA, as amended, reads —

> ...
>
> **SECTION 6**. *Hearing of the motion.* — The movant shall, upon receipt of the opposition, set the motion for hearing at the next available motion day, and the Court shall give preference to the motion over all other cases, except criminal cases. At the hearing, both parties shall submit their respective evidence. If warranted, the Court may grant the motion if the movant shall deposit with the Court an amount in cash equal to the value of the property or goods under dispute or filing with the Court of an acceptable surety bond in an amount not more than double the disputed amount or value. **However, for the sake of expediency, the Court, *motu proprio*** or upon motion of the parties, **may consolidate the hearing of the motion for the suspension of the collection of the tax with the hearing on the merits of the case.**[65]
>
> ...

Relative thereto, Section 1, Rule 9 of the Rules of Civil Procedure, as amended, also provides that the court shall dismiss the case *motu proprio* on the ground of prescription:

> ...
>
> SEC. 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However**, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior judgment or **by statute of limitations, the court <u>shall</u> dismiss the claim.**[66]
>
> ...

The use of the word "shall" underscores the mandatory character of the Rule. The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.[67] Hence, using the above proviso, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*,[68] the Supreme Court proceeded to dismiss the case *motu proprio* due to prescription:

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65 Rule 10 - Suspension of Collection of Tax; Emphasis supplied.

66 Emphasis and underscoring supplied.

67 *Cipriano Enriquez, et al. v. Maximo Enriquez (Now Deceased), Substituted by Carmen Agana, et al.*, G.R. No. 139303, 25 August 2005.

68 G.R. No. 181836, 09 July 2014.

> ...
>
> **If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense.** In *Heirs of Valientes v. Ramas*, we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.[69]
>
> ...

Here, the issue of prescription was not merely implied or belatedly raised; rather, it was squarely alleged in the Petition for Review. A review of the available records, specifically respondent's Answer, shows that respondent admitted the relevant dates and failed to controvert petitioner's allegation concerning the prescription of respondent's right to collect taxes. It bears emphasis that once the Answer is filed, the issues are joined, meaning the parties have completed their initial pleadings such that the disputed factual and legal matters are already framed by the petition for review and the answer (through specific denials and/or affirmative defenses), with defenses not raised in the Answer generally deemed waived.[70]

Where prescription has clearly set in and no valid cause for suspension or interruption exists, it becomes legally pointless to proceed to trial. To litigate further on the merits of petitioner's alleged deficiency tax liability that has already been extinguished by the passage of time would be an exercise in futility.

ACCORDINGLY, premises considered:

1. Petitioner San Miguel Campocarne Corporation's "Extremely Urgent Prayer for Issuance of Temporary Suspension Order and/or Suspension Order Enjoining the Collection of Taxes", as incorporated in the Petition for Review filed on 02 August 2024, is **DENIED** for being moot and academic. There being no collection to suspend as the right of respondent Commissioner of Internal Revenue to collect the subject deficiency taxes is already barred by the statute of limitations.

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[69] Citations omitted, emphasis supplied and italics in the original text.
[70] See *Samuel M. Alvarado v. Ayala Land, Inc., et al.*, G.R. No. 208426, 20 September 2017.

2. Petitioner's Petition for Review filed on 02 August 2024 is hereby **GRANTED**. Accordingly, the collection of the subject deficiency taxes is declared **VOID** for having been issued and/or enforced beyond the prescriptive period.

3. Respondent Commissioner of Internal Revenue, including any of the latter's authorized officers, agents, or representatives, is hereby **PERMANENTLY ENJOINED** from enforcing or collecting the deficiency taxes subject of the assessments.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice