REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

ALPHALAND BALESIN RESORT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10485

Members:

RINGPIS-LIBAN, *Chairperson, and*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

NOV 05 2024 4:r p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a *Petition for Review*, filed on March 15, 2021, praying that this Court (1) declare Warrant of Distraint and/or Levy ("WDL") No. 126-2021-039, dated February 18, 2021, null, void, and cancelled; (2) declare the letter, dated January 26, 2021, null and void; and (3) declare the Formal Letter of Demand ("FLD") and accompanying assessment notices issued against petitioner null and void.

The Parties

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.[1]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), tasked to assess and collect all national internal revenue taxes, fees, and charges, and enforce all forfeitures, penalties, and fines connected therewith.[2]

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1 *See* Petition for Review, p. 2, *Rollo* Vol. 1, p. 8.
2 *See* Pre-Trial Order, March 14, 2022, p. 2, *Rollo* Vol. 3, p. 1577.

The Facts

On October 11, 2016, respondent issued Letter of Authority No. eLA201200042592, authorizing Revenue Officers ("RO") Juan Luna, Jr., Melinda Lim, and Theodore Maroket, with Group Supervisor ("GS") Greg M. Buhain, Chief of the Regular Large Taxpayer Audit Division ("RLTAD") III, to examine petitioner's books of accounts and other records for all internal revenue taxes for the period from January 1, 2015 to December 31, 2015 ("year 2015").[3]

GS Buhain then issued a Notice of Informal Conference to petitioner on April 25, 2018.[4] A few months later, the parties executed two Waivers of the Defense of Prescription, dated August 17, 2018[5] and October 15, 2018,[6] respectively.

RO Luna then served petitioner with a Preliminary Assessment Notice ("PAN"), dated April 4, 2019, on even date.[7] This was followed by two more Waivers of the Defense of Prescription, dated May 10, 2019[8] and September 16, 2019,[9] respectively. Petitioner apparently did not protest the PAN.

On January 8, 2020, RO Luna served petitioner with the assailed FLD with accompanying assessment notices.[10] The FLD was signed by Deputy Commissioner Arnel SD. Guballa, Operations Group, RLTAD III.[11]

Aggrieved, petitioner filed a protest to the FLD on February 7, 2020,[12] with RLTAD III.[13]

Petitioner then received the assailed WDL on February 18, 2021. In response, on February 19, 2021, petitioner filed a request to lift said WDL with the office of respondent. The request was denied in the assailed letter, oddly dated January 26, 2021 and received by petitioner on February 26, 2021, from Large Taxpayers Service OIC Assistant Commissioner ("ACIR") Manuel V. Mapoy.[14]

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3 *See* Petition for Review, p. 3, *Rollo* Vol. 1, p. 9.
4 *Id.*
5 BIR Records, p. 292.
6 *Id.* at 293.
7 *See* Petition for Review, pp. 3-4, *Rollo* Vol. 1, pp. 9-10.
8 BIR Records, p. 348.
9 *Id.* At 348A.
10 *See* Petition for Review, p. 4, *Rollo* Vol. 1, p. 10.
11 *See* Formal Letter of Demand, dated January 8, 2020, p. 4, *id.* At 133.
12 *See* Petition for Review, p. 4, *id.* at 10.
13 *See* Letter, dated February 6, 2020, p. 1, *id.* at 143.
14 *See* Petition for Review, pp. 5-7, *id.* at 11-13.

Aggrieved, petitioner filed the instant Petition on March 15, 2021, with an accompanying prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order and/or Stay Order against the assailed WDL.

Respondent then filed his *Opposition (Urgent Motion to Suspend Collection of Tax)*[15] against the prayer for an injunction against the WDL on June 3, 2021, before filing his *Answer*[16] on July 27, 2021.

Following a hearing for the presentation of petitioner's evidence in support of its prayer for injunction, the Court denied said prayer in a Resolution,[17] promulgated on September 6, 2021. Petitioner did not appeal said denial, so trial on the main case ensued.

After the presentation of petitioner's and respondent's respective evidence, both parties were ordered to file their respective Memoranda.[18] While respondent filed his *Memorandum* on December 9, 2022,[19] petitioner instead filed a *Manifestation and Motion*[20] through registered mail on December 6, 2022, stating that it intended to present rebuttal evidence and asking the Court to issue a *subpoena duces tecum* and *subpoena ad testificandum* for such purpose. While the Court eventually granted this prayer,[21] it later cancelled the issued *subpoenas* as respondent was willing to present the document sought and stipulate on its genuineness.[22] A hearing was thus held for the presentation of this rebuttal evidence.[23]

Following this hearing, respondent filed his *Amended Memorandum*[24] on October 9, 2023, while petitioner still failed to file any Memorandum of its own.[25] The Court consequently submitted this case for decision on November 8, 2023.[26]

Hence, this Decision.

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15 *Id.* at 335-345.
16 *Rollo* Vol. 2, pp. 972-998.
17 *Id.* at 1001-1009.
18 *See* Resolution, dated October 28, 2022, p. 2, *Rollo* Vol. 4, p. 1857.
19 *Id.* at 1863-1898.
20 *Id.* at 1900-1903.
21 *See* Resolution, dated February 1, 2023, p. 3, *id.* at 1920.
22 *See* Resolution, dated June 22, 2023, pp. 3-4, *id.* at 1953-1954.
23 *See* Minutes of the Hearing, held on September 7, 2023, *id.* at 1956.
24 *Id.* at 1958-1997.
25 *See* Records Verification, dated October 25, 2023, *id.* at 1999.
26 *See* Minute Resolution, dated November 8, 2023, *id.*, unpaginated.

The Issues[27]

(1) Whether or not respondent's right to assess and collect the alleged deficiency taxes against petitioner and to issue the assailed assessment notices for year 2015 has prescribed; and
(2) Whether or not petitioner is liable to pay the amount assessed against it for year 2015.

Arguments of the Parties

Petitioner's Arguments

In its Petition, petitioner argues that:

(1) The WDL is void for having been issued while petitioner's protest to the FLD was still pending, violating petitioner's right to due process;
(2) The WDL is void for having been issued after respondent's right to assess and collect the taxes sought had prescribed;
(3) The WDL is void for being based on invalid assessments, given that said assessments were issued after respondent's right to assess petitioner had prescribed; and
(4) ACIR Mapoy's declaration, through the January 26, 2021 letter, that petitioner's protest to the WDL is invalid for having been filed in the wrong venue is itself invalid for being contrary to applicable law and jurisprudence.

Furthermore, while it did not argue the point directly, petitioner impliedly argued, through its presentation of rebuttal evidence, that the assessment is void as RO Luna recommended the issuance of such assessment after he had been transferred from RLTAD III to RLTAD II, thus losing the authority to participate in the assessment.

Respondent's Arguments

Respondent counters these contentions in his Amended Memorandum, as follows:

(1) The assessment has become final and executory, so this Court has no jurisdiction over it;

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[27] *Supra* note 2.

(2) The Court should not rule on issues not raised at the administrative level;
(3) RO Luna's transfer to a different RLTAD did not render the assessment void;
(4) Petitioner should not be allowed to attack the Waivers of the Defense of Prescription for the first time on appeal;
(5) Respondent's right to assess petitioner had not yet prescribed when the assessments were issued;
(6) Petitioner was accorded due process of law; and
(7) The WDL was validly issued.

The Ruling of the Court

The Court lacks jurisdiction over the assailed assessment. However, We find merit in petitioner's prayer regarding the WDL.

The Court lacks jurisdiction over the subject assessments

Respondent argues that the assessment has become final and executory due to petitioner's failure to file a valid protest to the FLD. Petitioner denies this, insisting that its protest to the FLD was perfectly valid.

The controversy stems from *Item (II)(1) of Revenue Memorandum Circular* ("*RMC*") *No. 039-13*:

> 1. All letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall only be filed by the taxpayers or their duly authorized representatives, in person or through registered mail with return card, with the Office of the concerned Regional Director (RD), Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) and Assistant Commissioner-Enforcement Service (ACIR-ES), *who signed the Preliminary Assessment Notices (PANs), FANs and Formal Letters of Demand*, for proper recording of the protests, and evaluation if the same is in accordance with Section 228 of the NIRC, as implemented by Revenue Regulations No. 12-99 . If the aforesaid procedures are not followed, then the letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall be considered void and without force and effect.
>
> (Italics supplied.)

The above provides a list of offices with which a taxpayer may validly file a protest: "Office of the concerned Regional Director (RD), Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) and Assistant Commissioner-Enforcement Service (ACIR-ES), who signed the Preliminary Assessment Notices (PANs), FANs and Formal Letters of Demand."

This list is ambiguous. Specifically, the phrase "who signed the [PANs, FANs, and FLD]" can be interpreted in two incompatible ways, as either a noun phrase or an adjectival phrase. Petitioner subscribes to the former while respondent insists on the latter.

Under the first interpretation, the phrase "who signed…" is read as a distinct item in the list of officers provided. The list consequently identifies *four* offices with which a protest may be validly filed:

(1) The office of the concerned Regional Director ("RD");
(2) The office of the ACIR-LTS;
(3) The office of the Assistant Commissioner-Enforcement Service ("ACIR-ES"); and
(4) The office of *whoever signed the PANs, FANs, and FLD.*

Conversely, the second interpretation sees the phrase "who signed…" as merely *modifying* each item in the list of officers provided. It thus gives only *three* offices with which a protest may be validly filed:

(1) The office of the concerned RD *who signed the PANs, FANs, and FLD*;
(2) The office of the ACIR-LTS *who signed the PANs, FANs, and FLD*; and
(3) The office of the ACIR-ES *who signed the PANs, FANs, and FLD.*

Petitioner filed its protest to the FLD with RLTAD III. Following the first interpretation, it insists that its protest was valid as the FLD was signed by Deputy Commissioner Gruballa, an officer of RLTAD III. Following the second interpretation, respondent holds that petitioner should have filed its protest with the Office of the ACIR-LTS instead.

After a review *RMC-039-13* and related issuances, the Court agrees with respondent's interpretation.

First, the syntax of the list seems to limit it to only *three* items. Note that the conjunction "and" appears before the item "Assistant Commissioner-Enforcement Service (ACIR-ES)." The conjunction, however, does *not* come between "concerned Regional Director (RD)" and "Assistant Commissioner-Large Taxpayers Service (ACIR-LTS)," which are instead separated by a comma. This implies that the conjunction "and" does not merely separate individual items on the list. It instead signals the *end* of the list.

Following the syntax used in the issuance itself, the list can thus be reconstructed as follows:

(1) the concerned RD,
(2) ACIR-LTS *and*
(3) ACIR-ES.

Such a construction is more faithful to the way the issuance is actually written than that produced by the first interpretation:

(1) the concerned RD,
(2) ACIR-LTS,
(3) ACIR-ES *and*
(4) [the officer] who signed the PANs, FANs and FLD.

The second interpretation furthermore makes more sense than the alternative list that remains faithful to the syntax of the issuance but inserts an errant "and" right in the middle of the enumeration:

(1) concerned RD,
(2) ACIR-LTS *and*
(3) ACIR-ES,
(4) [the officer] who signed the PANs, FANs and FLD.

The lists that follow the first interpretation thus depart from either the actual syntax of the issuance or the regular and accepted use of the conjunction "and" in lists. Both lists, and the interpretation on which they are based, must consequently be rejected.

Following the specific way in which the issuance was worded, then, petitioner should have filed its protest with the Office of the ACIR-LTS.

Second, the purpose of the issuance encourages a more restrictive interpretation. Under *Item I of RMC No. 039-13*, the Bureau of Internal Revenue ("BIR") at the time faced a familiar problem: taxpayers were filing protests letters with offices not necessarily tasked or authorized to act on said letters. This caused, among other issues, protests to assessments that had already attained finality to be referred for reinvestigation, despite said finality. To curb this problem, then-CIR Kim S. Jacinto-Henares issued *RMC No. 039-13*, clarifying the proper venues for the filing of protests.

The Circular was thus issued to prevent taxpayers from filing protests with any and all BIR offices and to funnel them towards the offices actually tasked and authorized to act on such protests. Considering this, allowing taxpayers to file a protest with whosoever signed an assessment notice or FLD would be antithetical to the very purpose for clarifying the proper venues for filing protests. The more reasonable reading, then, would be to see *RMC No.*

039-13 as limiting the filing of protests to the office of the concerned RD, of the ACIR-LTS, or of the ACIR-ES.

Keeping in mind the very problem *RMC No. 039-13* sought to address, then, petitioner should have filed its protest with the Office of the ACIR-LTS.

Third and finally, the second interpretation is supported by *RMC No. 011-14*, issued to clarify certain parts of *RMC No. 039-13*. *Item (1) of RMC No. 011-14* reads as follows:

> (1) RR 12-99, as amended by RR 18-2013, provides that the Commissioner or his duly authorized representative shall issue the Preliminary Assessment Notice (PAN), Formal Letter of Demand/Final Assessment Notice (FLD/FAN) and Final Decision on Disputed Assessment (FDDA). *The term "duly authorized representative" therein refers to Revenue Regional Directors, Assistant Commissioner-Large Taxpayers Service, and Assistant Commissioner-Enforcement and Advocacy Service.*
>
> Accordingly, pursuant to Revenue Memorandum Circular No. 39-2013, taxpayers shall submit/file their responses to the PAN and protests (requests for reconsideration/reinvestigation) to the FLD/FAN with *the duly authorized representative of the Commissioner who signed the PAN and FLD/FAN.* Protests in the nature of requests for reconsideration of taxpayers elevated to the Commissioner arising from inactions or adverse decisions of the "duly authorized representatives" shall be filed with the Office of the Commissioner.
>
> (Italics supplied.)

Note that the first paragraph of the above quotation defines the "duly authorized representative[s]" of the CIR as "Revenue Regional Directors, Assistant Commissioner-Large Taxpayers Service, and Assistant Commissioner-Enforcement and Advocacy Service." Note further that the second paragraph states that a protest to a FLD must be filed "with the duly authorized representative of the Commissioner who signed the PAN and FLD/FAN." The phrase "who signed the PAN and FLD/FAN" here more clearly and obviously modifies the phrase "the duly authorized representative of the Commissioner" without referring to any other possible fourth officer. In this way, *RMC No. 011-14* clarified that the protest may be validly filed with only the concerned RD, the ACIR-LTS, or the Assistant Commissioner-Enforcement and Advocacy Service, whichever of these specific officers signed the PAN or FLD/FAN.

A potential counterargument to this is that any officer of the BIR can be considered a "duly authorized representative" of the CIR so long as they sign the PAN, FAN, or FLD, as only such a "duly authorized representative" of the CIR can issue said notices. Consequently, if a Deputy Commissioner of a RLTAD, for example, signs the FLD, they are considered a "duly authorized representative" of the CIR and can thus accept protests.

However, *Item (1) of RMC No. 011-14* deals with where to validly file protests, not with who can issue PANs, FANs, and FLDs. Its general, brief, and simplified statement about who is authorized to issue such notices should thus not be applied to its specific provisions about where taxpayers can validly file protests. Consequently, while *RMC No. 011-14* does not prohibit, say, a Deputy Commissioner of a RLTAD from issuing a FLD, it requires the concerned taxpayer to file its protest with the ACIR-LTS.

What happens when none of the three duly authorized representatives personally signed the PAN, FAN, and FLD? The reasonable answer here would be that the protest should be filed with whichever of these representatives is hierarchically "above" the officer who actually signed the assessment notices and FLD. Considering the goal of preventing protests from being filed with any and all BIR offices, the same can also apply when *different* officers sign the assessment notices and FLD, such as when an officer from the ACIR-LTS signs the PAN while an officer from a RLTAD signs the FLD. Rather than filing a protest with both or arbitrarily choosing one of the two, a taxpayer should file a protest with the Office of the ACIR-LTS only, as the ACIR-LTS is the "duly authorized representative" who is hierarchically "above" the RLTADs.[28]

The PAN in this case was signed by Teresita M. Dizon, then-OIC ACIR-LTS. Meanwhile, the FLD was signed by an officer of RLTAD III who is not among those enumerated by *RMC No. 011-14* as a "duly authorized representative" of the CIR for the purpose of filing an administrative protest. However, RLTAD III is organizationally "under" the Large Taxpayers Service. Following the above discussion, petitioner should not have filed its protest with Deputy Commissioner Guballa, who is hierarchically "below" the ACIR-LTS and who, in any event, did not sign the PAN, which was actually signed by the then-ACIR-LTS.

Consistent with the clarification of *RMC No. 011-14*, then, petitioner should have filed its protest with the Office of the ACIR-LTS.

The Court also notes that petitioner was even informed of the proper venue for filing its protest to the FLD. In the Details of Discrepancies attached to the FLD, Deputy Commissioner Gruballa explicitly said that petitioner could disagree with the assessment against it by submitting a protest "to the Large Taxpayers Service – Assistant Commissioner located at Rm 307 National Office Building, BIR Road, Diliman, Quezon City."[29] Nowhere in petitioner's protest to the FLD does it address this. As such, the Court cannot

[28] *See Revenue Administrative Order No. 001-18*, March 6, 2018.
[29] Details of Discrepancy, dated January 8, 2020, p. 7, *Rollo* Vol. 1, p. 136.

even see petitioner's wrong choice of venue as principled obedience to what it thought, in good faith, was required of it by *RMC No. 039-13*. It is simply a failure to obey the relevant rules and regulations.

In sum, following the wording of and reasoning behind *RMC No. 039-13*, as clarified by *RMC No. 011-14*, petitioner's protest against the FLD against it was filed with the wrong venue. Said protest was thus invalid, and the assailed assessment has already become final and executory. This Court consequently lacks the jurisdiction to rule on it. And as a court without jurisdiction over a subject matter has no power but to dismiss any action concerning it,[30] We have no option but to dismiss petitioner's prayers regarding the assessment.

The Court has jurisdiction over the assailed WDL

The instant Petition does not only assail the assessment against petitioner. It also prays that this Court declare the WDL issued against petition void. It must be stressed that respondent's collection effort is distinct from his assessment. Furthermore, petitioner's claim that respondent's right to collect has prescribed is independent from the validity of the assessment. The Court may thus still take cognizance of the prayer regarding the WDL, despite Our lack of jurisdiction over the assessment.[31]

Under *Section 7(a)(1) of Republic Act No. 1125, as amended*, the Court of Tax Appeals ("CTA") has jurisdiction over decisions of the CIR involving "other matters" arising from the *NIRC*:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties related thereto, or *other matters arising under the National Internal Revenue Code* or other laws administered by the Bureau of Internal Revenue;
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> . . . .
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> (Italics supplied.)

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[30] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

[31] *See Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022, *citing Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

The CTA has long taken this provision to grant it jurisdiction over the CIR's efforts to collect tax liabilities. This position has been consistently affirmed by the Supreme Court as well.[32]

As far as procedure goes, *Rule 8, Section 3(a) of the Revised Rules of the Court of Tax Appeals, as amended*, gives taxpayers 30 days from receipt of the assailed issuance within which to raise an appeal to this Court.

Petitioner's prayer for the voiding of the WDL essentially involves a disputed collection. It thus falls under this Court's "other matters" jurisdiction. As to the timeliness of its prayer, petitioner received the WDL on February 18, 2021, giving it until March 22, 2021,[33] within which to raise its appeal. As it filed its Petition on March 15, 2021, the same was timely filed.

The Court thus has jurisdiction over the assailed WDL.

Respondent's right to collect the subject tax liabilities has prescribed

Moving on to the substance of petitioner's arguments, the Court first notes that two of the three contentions offered by petitioner involve the assailed assessment: (1) the issuance of the WDL violated petitioner's right to due process as it still had a valid protest pending with the BIR; and (2) the WDL is void for being based on a void assessment. However, the Court has already found petitioner's protest to have been invalid, refuting the alleged violation of its right to due process. The lack of a valid protest concomitantly allowed the assessment to become final and executory, undermining the claim that the same is void. The Court can thus reject these two arguments already.

This leaves petitioner's contention that respondent's right to collect had prescribed by the time the WDL was issued. Given that (1) the taxes sought to be collected were for the year 2015; and (2) the WDL was issued only on February 18, 2021, the same was clearly issued past the prescriptive period.

We find for petitioner.

Under *Section 203 of the NIRC*, respondent normally has three years from the last day prescribed by law for the filing of a return[34] within which to collect tax liabilities. As the relevant date here is April 15, 2016, respondent had until April 15, 2019, within which to collect petitioner's tax liabilities.

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32 *Id.*

33 The 30-day period technically ended on March 20, 2021, but the same was a Saturday.

34 While *Section 203* allows the three-year period to be counted from the date on which the taxpayer actually filed the return, if such date is after said last day for filing, neither party gave an exact date for petitioner's filing. The Court thus falls back on the default reckoning point.

Notably, however, the parties executed four Waivers of the Defense of Prescription. These were dated August 17, 2018, October 15, 2018, May 10, 2019, and September 16, 2019, respectively. Importantly, the waivers did not extend the period to collect indefinitely. The last of these, dated September 16, 2019, allowed respondent to collect the tax liabilities past the original prescriptive period "but not later than July 31, 2020." The final deadline was thus *July 31, 2020.*

To review, respondent issued the WDL on *February 18, 2021*, almost a year after July 31, 2020. Having been issued after the original three-year period, and even after the extended period granted by the Waivers, the WDL was issued late. Respondent's right to collect the taxes sought had concomitantly already prescribed.

The WDL is thus void *ab initio* due to prescription.

All told, while the Court lacks jurisdiction over the assailed assessment, We find the WDL void for being issued after respondent's right to collect the subject taxes had prescribed.

ACCORDINGLY, the instant Petition for Review, filed on March 15, 2021, is hereby **DISMISSED** for lack of jurisdiction, insofar as it prays for the voiding of the subject Assessment Notices, Formal Letter of Demand, and denial latter.

However, the Petition for Review is **GRANTED**, insofar as it prays for the voiding of the subject Warrant of Distraint and/or Levy. Warrant of Distraint and/or Levy No. 126-2021-039, dated February 18, 2021, is declared **NULL** and **VOID**. Respondent and his officers are **ORDERED** to lift said Warrant of Distraint and/or Levy.

Further, given that his right to collect has already prescribed, respondent and his officers are hereby **ENJOINED** and **PROHIBITED** from collecting the petitioner's deficiency taxes for the year 2015.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

With Concurring Opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ALPHALAND BALESIN RESORT CORPORATION, *Petitioner,*	**CTA CASE NO. 10485**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 05 2024 4:10 p.m.

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CONCURRING OPINION

RINGPIS-LIBAN, J.:

In the decision, I agree with the discussion and conclusion that the Court has jurisdiction over the assailed Warrant of Distrain and/or Levy (WDL) under Section 7(a)(1) of Republic Act No. 1125.

There is a point I would like to discuss concerning respondent's *right to collect* the subject tax liabilities under Section 203 of the 1997 Tax Code.

Previously, under Section 318 of the 1977 Tax Code, the ordinary prescriptive periods for the respondent's *right to assess* and *right to collect* were both fixed at five years.

The text of Section 203 of the 1997 Tax Code, which was lifted from Section 318, appears to provide *only* for the prescription of respondent's *right to assess* and <u>does *expressly* mention prescription of the *right to collect*, unlike its previous version in the 1977 Tax Code</u>:[1]

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[1] Section 203 in the 1997 Tax Code was lifted from Section 318 of the 1977 Tax Code. When Section 318 of the 1977 Tax Code was amended and renumbered to Section 203 of the 1997 Tax Code, however, the provision on the prescription of the *right to collect* was <u>deleted and transferred</u> to Section 222(c) of the 1997 Tax Code:

Under Section 318 of the 1977 Tax Code, the prescription of the *right to assess* was five (5) years and the prescription of the *right to collect* was also five (5) years:

> "**Sec. 318.** *Period of Limitation Upon Assessment and Collection.* - <u>Except as provided in the succeeding Section, internal-revenue taxes shall be assessed within five years after</u>

> "**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." (*Underscoring supplied*)

However, in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.* (QLDI),[2] the Supreme Court recently clarified this issue and stated that currently, under the 1997 Tax Code, both *ordinary* periods of prescription for the *right to assess* and the *right to collect* have been shortened to three (3) years:

> "In *CIR v. United Salvage and Towage (Phils.), Inc.*, the Court held that in cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes, thus:
>
> > '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

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the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after expiration of such period. For the purposes of this Section, return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

318(1) *Purpose of the statute of limitation.* — The Government may assess a tax within five (5) years after the corresponding tax return is filed, but 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. After assessment is made, the Government may, within five (5) years from the date of assessment, collect the tax by the remedies provided for by law. These periods of limitation relative to the assessment and collection of taxes do not however apply in the following cases:

(a) Where no return at all has been filed or where the return filed is false or fraudulent;

(b) Where the Commissioner of Internal Revenue and the taxpayer have agreed in writing to the assessment of the tax after the period of limitation of assessment; and

(c) Where the Commissioner of Internal Revenue and the taxpayer, before the expiration of the five-year period of limitation, have agreed in writing as to the time within which the time may be collected.

The proposal is in accord with the provisions of the Bookkeeping Law and is designed to secure the taxpayer against unreasonable investigation after the lapse of five (5) years following the filing of his tax return. (*Vol. I, Report of the Tax Commission of the Philippines. p. 98*)." (*Underscoring supplied*)

[2] G.R. No. 258947, March 29, 2022.

> 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.'

Applying the foregoing ruling, the Court holds that the CTA Division erred when it applied the five-year period to collect taxes. <u>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</u>. Indeed, Section 222 of the NIRC, as amended, provides:

> 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.
>
> x x x x
>
> (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. (Emphasis supplied)

<u>Here, given that the subject assessment was issued within the three-year ordinary prescriptive period to assess, the CIR had another three years to initiate the collection of taxes by distraint or levy or court proceeding</u>. Accordingly, since the FAN/FLD was mailed on December 12, 2014,the CIR had another three years reckoned from said date, or until December 12, 2017, to enforce collection of the assessed deficiency taxes. Verily, prescription had already set in when the CIR initiated its collection efforts only in 2020. The Court also notes that regardless of which period to apply, i.e., five years as determined by the CTA Division or three years, the CIR's collection efforts were, as they are, barred by prescription." (*Underscoring supplied; citations omitted*)

As part of the legal system interpreting Section 203,[3] *QLDI* has settled the issue on the ordinary prescriptive period to collect.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[3] Article 8 of the Civil Code.