REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ISLAND QUARRY AND AGGREGATES CORPORATION,
Respondent.

CTA *EB* NO. 1750
(CTA Case No. 8710)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

AUG 14 2019 3:31 p.m.

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RESOLUTION

MANAHAN, J.:

To be resolved before this Court is petitioner's **Motion for Reconsideration [re: Decision dated April 5, 2019]**[1] filed on April 30, 2019, praying for the reversal and setting aside of the CTA *En Banc* Decision dated April 5, 2019 and the issuance of a new decision ordering the respondent to pay the deficiency tax assessments in the aggregate amount of ₱48,462,807.64 plus surcharge, penalties, and interest until full payment as provided under the 1997 National Internal Revenue Code (NIRC), as amended. The dispositive portion of the abovementioned decision is quoted below:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed June 19, 2017 *Decision* and November 20, 2017 *Resolution* are hereby **AFFIRMED**.

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[1] *Rollo*, CTA EB No. 1750, pp. 200-207.

SO ORDERED.

Petitioner argues that this Court has no jurisdiction on the instant case and that the provision on "other matters arising under the NIRC or other laws administered by the BIR" under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, should not be liberally interpreted. Further, petitioner faulted this Court in using the three-year period to collect the assessed deficiency taxes instead of the five-year period under the 1997 NIRC, as amended.

Petitioner likewise insists that this Court erroneously ruled that only the issuance of the warrant of distraint and levy (WDL) suspended the period of collection and that the period to collect had not yet prescribed because the running of such period had been tolled by the grant of the reinvestigation and issuance of the WDL.

In respondent's comment,[2] it argues that this Court has jurisdiction on the instant case and that the right of the petitioner to collect deficiency tax assessments for the years 1995, 1996, and 1997 has already prescribed. Also, respondent argues that the suspension of the period to collect has been lifted upon the issuance by the petitioner of a collection letter dated 25 October 2001 and that 12 years had already lapsed before the petitioner tried to collect from it.

We deny the Motion for Reconsideration.

The records of the instant case reveal that the abovementioned issues and arguments have already been amply discussed in the assailed decision. However, this Court shall reiterate the relevant disquisitions pertaining to the issues raised in the instant motion.

The Court has jurisdiction over the case

The basis for respondent's filing of its petition for review was petitioner's issuance of the Final Notice Before Seizure (FNBS). The purpose of the issuance of said FNBS was to enforce the collection of the alleged deficiency tax assessments still pending against the respondent. Thus, it fell under

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[2] *Rollo*, CTA EB No. 1750, pp. 216-238.

Section 7(a)(1) of RA No. 1125, as amended, and Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals on "other matters arising under the NIRC or other laws administered by the BIR." The Court is not taking a liberal interpretation of this provision of law, but is guided by several Supreme Court decisions on this subject, such as but not limited to the case of *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[3]

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[4], the Supreme Court ruled:

> **The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds**. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.
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> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court. (*Emphasis supplied*)

Likewise, in *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation*[5], the Supreme Court ruled that the term "other matters arising under this Code" should relate to petitioner's action or inaction pertaining to disputed assessments or refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, to wit:

> As the CIR aptly pointed out, the phrase "other matters arising under this Code," as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding

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[3] G.R. No. 169225, November 17, 2010.
[4] G.R. No. 162852, December 16, 2004.
[5] G.R. No. 207843, July 15, 2015.

> phrase "disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto" and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.

In this case, the subject FNBS is related to the assessment issued by the petitioner which was subsequently disputed by the respondent. It is an action from the petitioner which enforces his deemed denial of respondent's protest with finality, therefore, within the term "other matters arising under this Code". Hence, this Court acquires jurisdiction over the instant case.

The right of petitioner to collect taxes has already prescribed

As to petitioner's argument that the period to collect had not yet prescribed because the running of such period had been tolled by the grant of the reinvestigation and issuance of the WDL, the factual antecedents of this case reveal otherwise.

The taxable years involved in this case were 1995, 1996, and 1997. Thus, the applicable law was the 1977 NIRC and not the 1997 NIRC which took effect only January 1, 1998.

Section 223(c) of the 1977 NIRC, as amended, provides:

> Sec. 223. *Exceptions as to period of limitation of assessment and collection of taxes.* — (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) **Any internal revenue tax which has been assessed within the period of limitation** above-prescribed **may be collected** by distraint or levy or by a proceeding in court **within three years following the assessment of the tax**.
>
> xxx xxx xxx

Although a letter dated September 18, 2000 was received by the respondent from petitioner on September 29, 2000 stating that revenue officers were assigned for the alleged reinvestigation,[6] there was no evidence that such reinvestigation had pushed through. In fact, neither a report on the result of such reinvestigation nor the supposed petitioner's final decision on disputed assessment (FDDA) was issued as action on respondent's protest.

What was clear from the facts of the instant case is that, after the issuance of the final assessment notice (FAN) and formal letter of demand (FLD) and the corresponding protest made by the respondent, petitioner issued the collection letter dated October 25, 2001 demanding the payment of all its deficiency tax assessments for taxable years 1995, 1996, and 1997.[7] Thus, the running of the period of statute of limitation (SOL) on petitioner's right to collect from the respondent its alleged tax deficiencies for the said taxable periods had not been interrupted considering that the warrant of distraint and levy issued by the petitioner applied only to taxable year 1995 as discussed in the assailed decision.

Granting that there was a reinvestigation, still, the issuance of the final notice before seizure on September 2, 2013 is still null and void by reason of prescription.

The factual antecedents of the case reveal that respondent received the FAN and FLD on January 18, 2000. From that time until respondent received the letter of petitioner dated September 18, 2000, which purportedly granted the request for reinvestigation by respondent, 255 days of the 3-year period to collect had already lapsed, leaving the petitioner only 840 days from September 29, 2000, the date when respondent received the collection letter, or until February 24, 2004 to enforce the collection of the alleged tax deficiencies for taxable years 1996 and 1997.

The collection letter constitutes denial by the petitioner of respondent's protest. Applying the case of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*,[8] which was cited in the assailed decision, petitioner's receipt of the collection letter was deemed a denial on such protest. Thus,

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[6] *Rollo*, CTA EB No. 1750, Decision, p. 168.
[7] *Id.*
[8] G.R. No. 148380, December 9, 2005.

the suspension of the running of the period of SOL on the former's right to collect had been lifted.

There being no other new issues or matters raised by the petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration [re: Decision dated April 5, 2019] is hereby **DENIED** for lack of merit. Consequently, the June 19, 2017 *Decision* and November 20, 2017 *Resolution* are hereby **UPHELD** and **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ON LEAVE
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

NO PART
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice