REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BPI FAMILY SAVINGS BANK, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7786

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
DEC 14 2009; 2:20pm

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DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

This is a Petition for Review that seeks judgment setting aside respondent's adverse decision on petitioner's disputed assessment and ordering the cancellation and withdrawal of the deficiency documentary stamp tax assessment issued to petitioner in the amount of **TWENTY SEVEN MILLION EIGHTY FOUR THOUSAND NINE HUNDRED TWENTY PESOS AND 24/100 (P27,084,920.24)** under Assessment Notice No. LTDO-122-DS-2000-00014 for the period covering October and November 2000.

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STATEMENT OF FACTS

The facts as culled from the Joint Stipulation of Facts and Admissions[1] are as follows:

Petitioner BPI FAMILY SAVING BANK INC., (BPI FSBI) is a banking institution, a corporation duly created and existing under the laws of the Republic of the Philippines, with principal office at Paseo de Roxas corner De La Rosa St., Makati City.

Respondent COMMISSIONER OF INTERNAL REVENUE is a public officer authorized under the National Internal Revenue Code of the 1997 to examine any taxpayer including *inter alia*, the power to issue tax assessments, evaluate and decide upon protest relative thereto. She holds office at the BIR National Office Building, Agham Road, Diliman Quezon City;

On December 11, 2000, petitioner was issued Letter of Authority No. LOA 00035384[2] dated December 8, 2000 for the examination of its books of accounts and other accounting records for Documentary Stamp Tax (DST) purposes, covering the period October 1, 2000 to November 30, 2000.

On October 27, 2003, petitioner executed a Waiver[3] of the defense of prescription of the statute of limitations under the National Internal Revenue Code (NIRC) of 1997, good only until March 31, 2004.

On April 10, 2007, petitioner received from the Bureau of Internal Revenue (BIR), an undated Formal Letter of Demand and Assessment Notice No. LTDO -122-DS-2000-00014[4] requesting payment of petitioner's deficiency DST allegedly on

[1] Joint Stipulation of Facts and Admissions (JSFA); Division Docket, pp. 42-45.
[2] Annex A, Petition for Review, Division Docket, p. 10.
[3] Annex B, ibid. p. 11.
[4] Annexes C, C-1, and D, id., pp. 12-14.

transactions covered by Section 180 of the NIRC of 1997, in the total amount of P27,084,920.24. The aforesaid DST tax assessment cited among other things, Section 180 of the Tax Code as the legal basis thereof, which reads:

> "**Sec. 180. Stamp Tax on All Bills of Exchange or Drafts. –** On all bills of exchange (between points within the Philippines) or drafts, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such bill of exchange or draft."

On April 25, 2007, petitioner seasonably filed its letter-protest[5] over the said demand letter and/or assessment notice, invoking prescription under Sections 203 and 222, and violation of Section 228 of the NIRC of 1997.

Petitioner received from the BIR a Final Decision on Disputed Assessment[6] dated February 13, 2008 denying its 24 April 2007 letter-protest on the assessment, the pertinent portion thereof is hereunder quoted:

> "In view of the foregoing, we regret to inform you that your protest on our assessment is hereby denied for lack of factual and legal basis. And it is requested that your aforesaid deficiency documentary stamp tax in the total amount of P27,421,757.34 details of which are as follows:

Basic		P 10,084,943.44
Surcharge		2,521,235.86
Interest	3-31-08	14,790,578.04
Compromise		25,000.00
Total		P 27,421,757.34

> be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from the date of receipt hereof, otherwise our said deficiency documentary stamp tax assessment shall become final and demandable."

[5] Annex E, Petition for Review, Division Docket, pp. 15-16.
[6] Annex F, ibid, Docket, pp. 17-18.

The parties submitted their Joint Stipulation of Facts and Admissions[7] on August 28, 2008 citing the following additional facts stipulated and admitted, to wit:

"ADDITIONAL FACTS STIPULATED AND ADMITTED

The following additional facts are stipulated and admitted, to wit:

1. Petitioner's letter-protest dated April 25, 2007 invoked prescription, citing Sections 203 and 222 of the 1997 Tax Code, as well as violation of Section 228 of the same Code as regards the issuance of tax assessment;

2. Petitioner thru its head office and branches elsewhere in the country, filed and paid during the 2000 taxable year its October and November documentary stamp tax (DST) returns pursuant to Section 180 of the 1997 Tax Code (now Section 179, NIRC pursuant to Republic Act No. 9243, which took effect on March 20, 2004), using BIR Form No. 2000 otherwise known as Documentary Stamp Tax Declaration/Return;

3. The basic tax deficiency assessment of P10,084,943.44 is anchored on non-filing of DST returns and non-payment of the corresponding DST imposed under Section 180 of the Tax Code (now Section 179, NIRC), and not based on the false or fraudulent DST returns filed, hence, the imposition of 25% surcharge only and not 50%, per respondent's Final Decision (Annex "D" of the petition), the decretal portion of which is quoted hereunder, *viz*:

'In view of the foregoing, we regret to inform you that your protest on our assessment is hereby denied for lack of factual and legal basis. And it is requested that your aforesaid deficiency documentary stamp tax in the total amount P27,421,757.34 details of which are as follows:

Basic		P10,084,943.44
Surcharge		2,521,235.86
Interest	3-31-08	14,790,578.04
Compromise		25,000.00
Total		P27,421,757.34

[7] Supra 1.

be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency documentary stamp tax assessment shall become final and demandable.

xxxxx.....'

4. Respondent's Demand Letter and Assessment Notice mentioned nothing on the failure or omission of petitioner to file a DST return for the months ending October 31, 2000, and November 30, 2000, on transactions said to be covered by Section 180 of the Tax Code.

5. On April 18, 2008, petitioner received from the BIR a Final Decision on Disputed Assessment dated February 13, 2008.

6. Petitioner did not receive a Pre-Assessment Notice (PAN) from the BIR as mandated by Section 3.1.2 of Revenue Regulations No. 12-99."

Thereafter, after two consecutive resettings of its initial presentation of its evidence, petitioner manifested on November 13, 2008 that it will no longer present any witness and that it is submitting this case based on the legal issue of prescription. Both parties have admitted all the facts including the amount of assessment. A portion of the Transcript of Stenographic Notes[8] taken on that hearing reads:

"Atty. Naputo: Your Honors, we decided not to present evidence anymore in this case and in light of the latest jurisprudence pertaining to the issuance of the Preliminary Assessment Notice, we deemed it is no longer necessary to present our witness on that issue, to let somebody testify on the receipt of the Preliminary Assessment Notice, (interrupted).

[8] Pars. 3-6. JSFA, Division Docket pp. 44-45.

Justice Acosta:	Why? What is the issue here? Have you filed already your joint stipulation of facts and issues?
Atty. Naputo:	Yes, your honors.
Justice Acosta:	And it's covered there? Is it covered there, the receipt of the Preliminary Assessment Notice.
Atty. Naputo:	True enough, your Honors, in fact, your honors, we have stipulated that it was not in fact received by the petitioner. Nonetheless, were submitting the case based on legal issues, your Honors.
Justice Acosta:	Legal issue?
Atty. Naputo:	Prescription, it's basically prescription, your Honors.
Justice Acosta:	Of what?
Atty. Naputo:	The right of the BIR to assess petitioner, your Honors.
Justice Acosta:	Prescription of assessment?
Atty. Naputo:	Yes, your honors.
Justice Acosta:	Whether or not the assessment they issued has already prescribed?
Atty. Naputo:	Yes, your Honors.
Justice Acosta:	Atty. Dekit, do you agree?
Atty. Dekit:	Yes, your Honors.
Justice Acosta:	So, if that is so, you admit all the facts including the amount of the assessment, so you're submitting what, your respective Memorandum?
Atty. Naputo:	Yes, your Honors, we request a period of thirty (30) days within which to file our Memorandum.
Atty. Dekit:	The same number of days, your Honors, within thirty (30) days.
Justice Acosta:	All right, both of you, file your respective Memorandum within thirty (30) days from today,

> upon receipt of your Memorandum or Memoranda or the expiry of the thirty (30) day period, the case shall be submitted for decision."

Hence, this case was submitted for decision on January 6, 2009 taking into consideration petitioner's Memorandum filed on December 4, 2008 *sans* respondent's Memorandum.

STATEMENT OF ISSUES

As per Joint Stipulation of Facts and Admissions[9], the parties submitted the following issues for this Court's resolution:

> "1. Whether or not the assessment was issued pursuant to Section 3.1.4 of RR 12-99 and whether or not the same is void.
>
> 2. Whether or not respondent violated petitioner's right to procedural due to process for failure to observe Section 3.1.2 of RR 12-99 and Section 228 of the Tax Code on the issuance of Preliminary Assessment Notice (PAN).
>
> 3. Whether or not the right of respondent to assess has prescribed.
>
> 4. Whether or not the DST assessment has factual and legal bases."

However, as per Manifestation of both parties in the November 13, 2008 hearing before this Court, this case shall be resolved on the sole issue of whether or not respondent's assessment has already prescribed.

THE COURT'S RULING

The period within which to assess internal revenue taxes is governed by the National Internal Revenue Code (NIRC) of 1997, as amended, the pertinent provision reads:

[9] JSFA, Division Docket, p. 45.

> "**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." (Emphasis provided)

From the foregoing, the three (3)-year period to assess internal revenue taxes commences from the date of actual filing of the return; or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

Petitioner was assessed for its alleged deficiency DST for the period October 1, 2000 to November 30, 2000.

The period for the filing of the DST Returns is determined by Section 200 (B) of the NIRC of 1997:

> "**SEC. 200. Payment of Documentary Stamp Tax. –**
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> **(B) Time for Filing and Payment of Tax.** – Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed."

Pursuant to the aforequoted provision of the NIRC, petitioner should file its DST Return within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred.

As admitted by both parties in their Joint Stipulation of Facts and Admissions, petitioner, thru its head office and branches elsewhere in the country, filed and paid during the 2000 taxable year its October and November DST returns pursuant to Section 180 of the NIRC of 1997 (now Section 179, NIRC pursuant to Republic Act No. 9243) using BIR Form No. 2000, also known as DST Declaration/Return. Considering petitioner's circumstances, it had until November 10, 2000 to file its DST return for the transactions for the month of October and December 10, 2000 to file its DST return for its transactions for the month of November pursuant to Section 180 of the NIRC.

Counting from the aforementioned dates, respondent had until November 10, 2003 and December 10, 2003, respectively, within which to assess petitioner for its alleged deficiency DST. However, due to a waiver of the defense of prescription of the statute of limitations under the NIRC of 1997 executed by petitioner on October 27, 2003, respondent had until March 31, 2004 within which to assess petitioner for its alleged DST pursuant to Section 180 of the NIRC of 1997.

Respondent issued an undated Formal Letter of Demand to petitioner, which the latter received on April 7, 2007. Clearly, respondent's right to assess had already lapsed when he issued the questioned assessment on April 7, 2007, which is way beyond the three-year period to assess.

Moreover, the instant case does not fall within the purview of Section 222(a) of the NIRC, which states:

> "**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."

It has been duly stipulated by the parties that petitioner filed its DST returns and paid its DST for October and November 2000. Likewise, there were no pieces of evidence presented to show that petitioner filed a false or fraudulent return. Therefore, the ten-year period to assess will not apply. Accordingly, respondent can no longer validly assess petitioner due to his failure to issue an assessment either within the three-year or ten-year period to assess.

In closing, this Court quotes the explanation made by the Honorable Supreme Court in the case of **Commissioner of Internal Revenue vs. FMF Development Corporation**[10], to wit:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.
>
> xxx xxx xxx
>
> Consequently, petitioner cannot rely on its invocation of the rule that the government cannot be estopped by the mistakes of its revenue

[10] G.R. No. 167765, June 30, 2008.

> officers in the enforcement of RMO No. 20-90 because the law on prescription should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law. To the Government, its tax officers are obliged to act promptly in the making of assessment so that taxpayers, after the lapse of the period of prescription, would have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents."

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency documentary stamp tax assessment for the period covering October to November 2000 issued against petitioner in the amount of P27,084,920.24 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division