REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

WARNER LAMBERT PHILIPPINES, INC.,
(now, Pfizer, Inc.)
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6925

Members:

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

Promulgated:
DEC 14 2007 : 10:35 AM

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DECISION

BAUTISTA, *J.*:

The instant petition seeks to dispute respondent's Final Decision on Disputed Assessment finding petitioner liable for deficiency income tax in the amount of P65,471,465.25 for the year 1999.

Pfizer, Inc. (Petitioner) is a corporation organized and existing under Philippine laws with office address at 23rd Floor, Ayala Life-FGU Center, 6811 Ayala Avenue, Makati City 1200.[1] Warner Lambert Philippines, Inc. (Warner Lambert) merged with petitioner on January 18, 2001, with the latter as the surviving entity. All assets and liabilities of Warner Lambert were transferred to, and absorbed by petitioner.

[1] Paragraph 1, Joint Stipulation of Facts and Issues (JSFI); *Rollo*, page 164

Petitioner is engaged in the business of manufacturing, preparing, buying, acquiring, owning, processing, selling, distributing, exporting and importing goods of every kind, including, but not limited to, chemical, pharmaceutical, medicinal, and biological products.[2]

Commissioner of Internal Revenue (Respondent) is the officer of the Bureau of Internal Revenue (BIR) vested with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.

On April 14, 2000, Warner Lambert filed its Annual Income Tax Return (ITR) for taxable year 1999, reflecting net losses in the amount of P110,218,381.00.[3]

On June 4, 2003, petitioner received a Preliminary Assessment Notice (PAN) dated April 2, 2003 together with the Details of Discrepancies. In the PAN, the BIR informed petitioner that it has an alleged internal revenue tax liability of P208,876,361.00 representing deficiency income, value-added, and expanded withholding taxes, inclusive of interest and compromise penalties, computed as follows:[4]

INCOME TAX		
Taxable Income Per Return		**(110,218,381.00)**
Add:		
Severance and Termination Cost Accrued in 1998		156,000,000.00
Provision for Inventory Obsolescence		46,718,185.28
Disallowed Expenses-Prior Period/Others		16,704,158.81
Additional Income Arising from Discrepancy in Sales Report		
Per VAT	1,657,613,646.55	
Per Financial Statement		
Net Sales	1,563,836,809.00	
Proceeds from Sale of PPE	41,935,847.00	
Sale of Scrap	37,989.56	
	1,605,810,645.56	51,803,000.99
Building Written Off		66,224,000.00
Income Payment Not Subjected to EWT	19,986,956.91	19,986,956.91
Adjusted Taxable Income		**357,436,301.99**
Tax Rate		33%

[2] Paragraph 3, JSFI, *Rollo,* page 165
[3] Exhibit "A"; Paragraphs 4 and 5, JSFI, *Rollo,* page 164
[4] Paragraphs 6 and 7, JSFI; *Rollo,* pages 165-166; BIR Records, pages 751-754

Tax Due		117,953,979.66
Add Disallowed Tax Credit		8,025,993.62
Total		125,979,973.28
Add		
Interest from April 16, 2000 to May 16, 2003		78,107,583.43
Compromise Penalty		25,000.00
Total Amount Due		**204,112,556.71**

VALUE-ADDED TAX(VAT)		
Taxable sales per VAT returns		**1,651,374,804.60**
Value-Added Tax @ 10%		165,137,480.46
Less:		
VAT input	117,581,527.90	
Disallowed input	(1,812,796.71)	
Input allocated to exempt sales	(442,547.37)	
Monthly payments	23,882,763.67	
Quarterly payments	20,123,238.81	
Tax credit certificate	3,549,950.00	162,882,136.30
Deficiency VAT		2,255,344.16
Add:		
Interest from January 25, 2000 to May 25, 2003		1,511,080.59
Compromise Penalty		25,000.00
Total Amount Due		**3,791,424.75**

Expanded Withholding Tax (EWT)		
Tax Due		9,314,885.35
Tax Remitted		8,744,598.20
Basic Tax Due		570,287.15
Add: Interest from January 25, 2000 to May 25, 2003	382,092.39	
Compromise	20,000.00	402,092.39
Total Amount Due		**972,379.54**

On June 19, 2003, petitioner protested the PAN in a letter dated June 16, 2003.[5]

On June 23, 2003, four days after the protest was filed, petitioner received Final Assessment Notice Nos. 99-000063, 99-000070 and 99-000077, together with the corresponding Formal Letters of Demand and Details of Discrepancies, all dated June 15, 2003. The assessments are summarized as follows:[6]

Tax Type	**Income Tax**	**EWT**	**VAT**	**Total**
Assessment Notice No.	99-000063	99-000070	99-000077	
Basic	125,979,973.28	570,287.15	2,255,344.16	
Interest	82,932,616.41	399,201.01	1,578,740.91	
Compromise Penalty	25,000.00	20,000.00	25,000.00	
	208,937,589.69	**989,488.16**	**3,859,085.07**	**213,786,162.92**

[5] Paragraph 8, JSFI, *Rollo,* page 166
[6] Paragraph 9, JSFI, *Rollo,* page 166; BIR Records, pages 810-817

On July 18, 2003, petitioner protested these assessments via protest letter[7] and on September 15, 2003, petitioner submitted its relevant documents in support of the protest.[8]

After one hundred eighty (180) days from petitioner's submission, or on March 13, 2004, respondent had not issued a final decision on petitioner's disputed assessments. Hence, petitioner filed a Petition for Review with this Court on April 12, 2004 praying for the cancellation of the assessments in the aggregate amount of P213,786,162.92.[9]

Ten days after the filing of the Petition for Review, or on April 22, 2004, petitioner received respondent's Final Decision on Disputed Assessment (FDDA) dated March 29, 2004 which reduced petitioner's deficiency tax as follows:[10]

Type of Tax	Amount
Income Tax	65,873,014.69
VAT	215,864.62
EWT	132,358.43
Total	**66,221,237.74**

A breakdown of respondent's computation of petitioner's deficiency tax is provided as follows:

Type of Tax	For Collection	For Assessment	Total
Income Tax	401,549.44	65,471,465.25	65,873,014.69
VAT	215,864.62		215,864.62
EWT	132,358.43		132,358.43
Total	**749,772.49**	**65,471,465.25**	**66,221,237.74**

On April 30, 2004, petitioner paid a total amount of P749,772.49 to Land Bank of the Philippines – East Avenue Branch for the amounts declared in the FDDA as subject "For Collection."[11]

In view of the developments that have taken place after the filing of the Petition, on May 17, 2007, petitioner filed its Supplement (To Petition for Review, dated 29 March 2004), which only questions the deficiency income tax assessment in the amount of P65,471,465.25.

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[7] Paragraph 11, JSFI, *Rollo,* page 167; BIR Records, pages 818-842
[8] Paragraph 13, JSFI, *Rollo,* page 167
[9] Paragraphs 15, 16, and 17, JSFI, *Rollo,* page 167-168
[10] BIR Records, pages 1720-1727
[11] Paragraph 31, JSFI, *Rollo,* page 171

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After trial on the merits, the case was submitted for decision on July 20, 2007.

The issues[12], jointly stipulated by the parties for this Court's resolution, are the following:

1. Whether the right of the Government to assess deficiency income tax for the taxable year 1999 has prescribed.
2. Assuming the right of the Government to assess deficiency income tax for the taxable year 1999 has not prescribed, whether the deficiency income tax assessment has factual and legal bases.
3. Whether Respondent correctly disallowed the amount of P43,955,234.43 as deductible inventory write-off.

First Issue:
Prescription and Validity of Waiver

The general rule on the prescription of the right to assess taxpayers is provided in Section 203 of the NIRC as follows:

> "**Section 203.** *Period of Limitation Upon Assessment.* – 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 after the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

The period to assess, however, may be extended in the case of waivers executed by the taxpayer as stated in Section 222(b) of the NIRC which provides:

> "**Section 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
>
> x x x
>
> (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

[12] JSFI, *Rollo*, page 173

> 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."

Since petitioner filed its Annual ITR for taxable year 1999 on April 14, 2000, respondent had until April 15, 2003 to assess petitioner. However, petitioner executed a waiver which extended respondent's right to assess to June 30, 2003.[13] Now, the Court must determine whether the waiver complied with the requirements provided by law and jurisprudence. In the event that the waiver is found to be valid, the assessment issued will not have prescribed. Otherwise, the assessment will be null and void for having been issued beyond the period prescribed by law.

The requisites for a valid waiver are laid down by the Supreme Court in **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**[14] as follows:

> "A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. The BIR had issued Revenue Memorandum Order (RMO) No. 20-90 on 04 April 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be administratively dealt with."

Upon carefully studying the waiver executed by petitioner, this Court finds the same valid because it was (1) in writing; (2) agreed to by both respondent and petitioner; (3) before the expiration of the ordinary prescriptive period for assessment on April 15, 2003; and (4) for a definite period beyond the ordinary prescriptive period for assessment or until June 30, 2003. Moreover, the execution of the waiver complied with RMO No. 20-90 as regards the indication of the date of acceptance, *viz.*, December 9, 2002.

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[13] Exhibit "B", BIR Records, page 737
[14] G.R. No. 139736. October 17, 2005

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Second and Third Issues:
Validity of Assessment

The deficiency income tax assessment of P65,471,465.25, as contained in the FDDA, was computed by respondent as follows:

Income Tax		
Taxable Income Per Return		**(110,218,381.00)**
Provision for inventory obsolescence		
Total	46,725,970.15	
Claim duly supported by BIR Cert	2,769,735.72	
Disallowed	43,955,234.43	43,955,234.43
Building Written Off		66,224,000.00
Total		110,179,234.43
Tax Rate		33%
Tax Due		36,359,147.36
Add:		
Interest from April 16, 2000 to April 15, 2004		29,087,317.89
Compromise Penalty		25,000.00
Total		**65,471,465.25**

A simple perusal of the foregoing immediately shows that respondent erroneously computed the deficiency income tax. In computing the deficiency, respondent completely ignored petitioner's net loss of P110,218,381.00. Thus, the assessment shall be re-computed to include the net loss as follows:

Income Tax		
Taxable Income Per Return		**(110,218,381.00)**
Provision for inventory obsolescence		
Total	46,725,970.15	
Claim duly supported by BIR Cert	2,769,735.72	
Disallowed	43,956,234.43	
Building Written Off	66,224,000.00	110,180,234.43
Total		**(38,146.57)**

Even with the disallowance of the provision for inventory obsolescence and write-off, petitioner would still be in a net loss position. As a result of the re-computation, petitioner owes no deficiency tax to respondent. Thus, respondent's assessment of deficiency income tax against petitioner should fall for lack of factual and legal basis. Considering that there is no deficiency tax to speak of, this Court sees no reason to dwell on the merits of the assessment.

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IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **GRANTED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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
Chairperson, First Division

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