Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIPPINE POWER MC DISTRIBUTION, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9263

Members:

CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 06 2018
3:15 p.m.

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DECISION

CASANOVA, *J.*:

The instant Petition for Review[1] was filed by petitioner, Philippine Power MC Distribution, Inc., on February 19, 2016 praying that the final decision of the Commissioner[2] dated January 7, 2016, which upheld the Final Decision on Disputed Assessment (FDDA)[3] of the Regional Director, assessing petitioner of deficiency income tax and value-added tax (VAT) covering the fiscal year (FY) ending June 30, 2008, in the total amount of ₱110,945,462.44, inclusive of surcharge and interest, as well as compromise penalty, as computed below, be cancelled and withdrawn:

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[1] Docket, pp.10-23.
[2] Exhibit "P-19".
[3] Exhibit "P-17".

	VAT	Income Tax	Compromise Penalty	Total
Basic Tax	₱ 48,531,123.16	₱ 1,854,293.33		₱ 50,385,416.49
Surcharge	24,265,561.28	927,146.67		25,192,707.95
Interest	34,106,594.89	1,220,743.11		35,327,338.00
Compromise Penalty			₱ 40,000.00	40,000.00
Total	**₱106,903,279.33**	**₱4,002,183.11**	**₱ 40,000.00**	**₱110,945,462.44**

Petitioner Philippine Power MC Distribution, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at NDI Building, A.S. Fortuna St. Mandaue City.[4]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who is empowered to perform the duties of said office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law.[5]

Letter of Authority (LOA) No. 00028485 dated March 10, 2010 was issued and duly served and received by petitioner[6] on March 25, 2010.[7]

On October 19, 2010 petitioner received a Formal Letter of Demand (FLD) dated September 29, 2010 with Assessment (FAN) Nos. 80-IT-13-fy06/30/08-2010-9-573 and 80-VT-13-fy06/30/08-2010-9-572, representing alleged income tax and VAT deficiencies all dated September 29, 2010, for FY ending June 30, 2008.[8]

On October 21, 2010, petitioner filed a Protest against FAN[9], where petitioner manifested its difficulties in reconciling the alleged deficiency taxes as assessed by respondent due to the fact that its documents were destroyed by fire on May 31, 2009.[10]

[4] Paragraph (Par.) 2, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 120.
[5] Par. 1, *Ibid.*
[6] Par. 3, *Id.*
[7] Exhibit "R-1".
[8] Par. 4, *supra.*
[9] Par. 5, *supra.*
[10] Exhibit "P-15".

In a letter dated November 18, 2010, respondent, through the Regional Director of Revenue Region No. 13, Jose N. Tan, informed petitioner that its protest letter did not conform with the requisites of a valid protest pursuant to Revenue Regulations (RR) No. 12-85, as amended by RR No. 12-99, in relation to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. Thus, petitioner was given a chance to comply with the correct format within 10 days from the receipt of the letter.[11]

On January 19, 2012, petitioner received a Final Decision on Disputed Assessment (FDDA) dated January 2, 2012[12]. Resolving petitioner's revised protest letter dated April 18, 2011, and demanding payment of deficiency VAT and income tax in the reduced amount of ₱110,945,462.44, after reinvestigation.[13]

On February 1, 2012, petitioner filed a Motion for Reconsideration on the FDDA with the Office of the CIR, pursuant to RR No. 12-99, which provides that the taxpayer may elevate his protest to the CIR within 30 days from receipt of the final decision of the CIR's duly authorized representative, in which case, the latter's decision shall not be considered final, executory and demandable. The protest shall then be decided by the CIR.[14]

On January 20, 2016, petitioner received the decision of the CIR dated January 7, 2016, signed by the CIR, denying the protest of petitioner against the FLD.[15]

Petitioner filed the instant Petition for Review[16] on February 19, 2016, where petitioner claims, that respondent's assessments were based on mere presumption when it used the cost-ratio method to impute the IT and VAT deficiencies of the petitioner. Moreover, it controverts respondent's claim that petitioner had under-declared purchases during the taxable year as allegedly sourced from third-party suppliers, thus resulting an unreported and additional taxable sales. It further refutes the imposition of the 50% surcharge imposed by respondent in its assessment and, lastly, petitioner argues that the

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[11] Exhibit "P-16".
[12] Exhibit "P-17".
[13] BIR Records, pp. 484-502.
[14] Exhibit "P-18".
[15] Par. 7, Facts Admitted, JSFI, Docket, p. 121..
[16] Docket, pp. 10-23.

period to collect the alleged deficiency taxes pursuant to Section 222(c) of the NIRC of 1997, as amended, had already lapsed.

Respondent filed his Answer[17] on May 16, 2016 interposing the following special and affirmative defense:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

The Assessment has factual and legal basis.

5. Petitioner posits that respondent failed to provide the factual and legal basis of the assessment since respondent, in assessing petitioner, utilized the mathematical application of 'cost-ratio' method in the determination of its undeclared purchases.

6. Petitioner's bare contentions without proof are bereft of merit.

7. First, assessments of made by the Bureau of Internal Revenue are presumed correct and made in good faith and taxpayers have the duty to prove otherwise.

8. The Honorable Supreme Court has thoroughly explained in the case of CIR v. Hantex the presumption in favor the correctness of tax assessments, specifically:

> As a general rule, tax assessments by tax examiners are presumed correct and made in good faith. **All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence**. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly

[17] Docket, pp. 55-62.

> performed their duties. **This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer**: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> **(Emphasis supplied).**

9. In the case at hand, the revenue officers have painstakingly examined all records of petitioner made available to them as regards petitioner's sales and purchases.

10. Moreover, the use of cost-ratio analysis for the determination of the tax liabilities of petitioner is only one of the audit procedures utilized by respondent. In fact, other audit procedures adopted include analysis of petitioner's accounting system, reconciliation of petitioner's books of accounts against the returns it filed, third party matching of data, sampling and verification of revenue as to whether the income it reported truly reflects the actual results of petitioner's business operation.

11. It bears to stress that petitioner has not presented an iota of evidence to reconcile the discrepancy between the purchases it declared in its VAT Returns and the Summary List of Sales submitted its suppliers.

12. The case of Sy Po vs. CTA and CIR explained:

> **Where the taxpayers is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability** by a full and fair disclosure of all pertinent data in his possession. Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession.

(Emphasis supplied)

13. Thus, since petitioner failed to refute the regular findings of respondent, the assessment should be upheld.

Respondent properly subjected petitioner for fifty percent (50%) surcharge for the willful filing of a false, misleading and inaccurate returns, statements and schedules.

14. Section 248 (B) of the Tax Code is clear. The Filing of a

SEC. 248. Civil Penalties. –

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In case of a willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **shall constitute prima facie evidence of a false or fraudulent return:**

-xxx-

(Emphasis supplied)

15. In the case at hand, petitioner has grossly underdeclared its sales. This substantial underdeclaration coupled by other factors merits the imposition of the fifty percent (50%) surcharge.

The period to collect the assessment has not prescribed.

16. Petitioner claimed that the period to collect the assessment has prescribed since the Final Decision on Disputed Assessment was issued beyond the five (5) year period.

17. Again, petitioner is mistaken.

18. Section 223 of the National Internal Revenue Code clearly provides for the suspension on the period of collection. It states:

> **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 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.

19. In the instant case, respondent has been prevented from making the collection since petitioner has filed a protest to the Final Assessment Notice.

20. Therefore, clearly, the period to collect was suspended pursuant to Section 223; and thus has not prescribed."

After the filing of the pre-trial briefs of both parties, the case was eventually set for Pre-Trial Conference on June 23, 2016.[18]

On July 12, 2016, the parties filed their Joint Stipulation of Facts and Issues[19] and, thereafter, a Pre-Trial Order[20] was issued by the Court on August 2, 2016.

Trial ensued, giving both parties the opportunity to present their respective documentary and testimonial evidence.

On September 21, 2016, petitioner presented Ms. Marilou B. Cantero, Ms. Consuelo Deiparine and the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Glenn Ian D. Villanueva.[21] In Resolutions dated November 25, 2016[22] and April 25, 2017[23], the Court admitted petitioner's documentary evidence except for Exhibits "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28" and "P-31".

On the other hand, respondent presented his lone witness, Atty. Markneil S. Collado and orally offered Exhibits "R-1" to "R-7", which were admitted by the Court.[24]

[18] Notice of Pre-Trial Conference, Docket, pp. 69-70.
[19] Docket, pp. 120-125.
[20] Docket, pp. 134-138.
[21] Minutes of the Hearing, Docket, p. 226.
[22] Docket, pp. 346-347.
[23] Docket, pp. 389-393.
[24] Minutes of the Hearing dated June 28, 2017, Docket, p. 396.

Petitioner filed its Memorandum on July 28, 2017, whereas respondent failed to file his memorandum as per Records Verification[25] dated August 8, 2017. Accordingly, the case was submitted for decision[26] on August 11, 2017.

The parties submit that the issues[27] to be resolved in this case are:

1. Whether petitioner is liable to pay the aggregate amount of ₱110,945,462.44 as deficiency IT and VAT for taxable year 2008 plus 50% surcharge and 20% deficiency and delinquency interest for late payment pursuant to Sections 248 and 249 of the Tax Code, as amended; and

2. Whether the period to collect the alleged deficiency taxes of petitioner for the fiscal year ending June 30, 2007 has already prescribed in accordance with Section 222(c) of the 1997 National Internal Revenue Code, as amended.

It is necessary that this Court shall first determine whether it has jurisdiction over this case. Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (CTA) provides:

> "RULE 4.
>
> Jurisdiction of the Court. –
>
> xxx xxx xxx.
>
> SEC. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,**

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[25] Docket, p. 413.
[26] Resolution, Docket, p. 414.
[27] Issue, JSFI, Docket, p. 121.

> refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" (Emphasis supplied)

Moreover, Section 228 of the NIRC of 1997, as amended, provides that a taxpayer may appeal before the CTA the decision of the Commissioner within 30 days from the receipt of the decision, or from the lapse of the 180 day period provided by law, otherwise the decision shall become final, executory and demandable.

Relative thereto is Section 3.1.5 of RR No. 12-99 which provides for the same period within which to file an appeal before the CTA.

Considering that petitioner received the decision of the Commissioner on January 20, 2016, the petition was timely filed.

As stated on the Details of Discrepancies,[28] the assessment is based on the following:

> **"VALUE ADDED TAX (Section 106 of the Tax Code of 1997)**
>
> Per Subject Letter Notice, total purchases per Summary List of Sales submitted by your suppliers amounted to P1,286,440,779.39 while purchases declared in your VAT returns as per our records in the Integrated Tax System totalled P783,757,430.65, hence the discrepancy of P502,683,348.72 or 39.08% under-declaration of local purchases. This resulted to additional taxable sales of P509,355,911.16 using cost ratio of 98.69% as reflected in your income tax return for fiscal year ending June 30, 2008 filed with our office as posted in the Integrated Tax System. Hence, the deficiency VAT of **P118,819,007.49** inclusive of increments.

xxx xxx xxx

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[28] Exhibit "P-11"

INCOME TAX (Section 27(A) of the Tax Code of 1997)

Income tax due was recomputed to include the additional gross income of the above mentioned additional taxable sales. Additional gross income of ₱6,672,562.44 was computed using the gross profit rate of 1.31% per income tax return for FY ending June 30, 2008 as per our records in the Integrated Tax System and it resulted to deficiency income tax of **P4,429,576.00** inclusive of increments."

After reinvestigation, respondent reduced the assessment to ₱110,945,462.44, taking into consideration the reduction of the discrepancy of purchases per Letter Notice of ₱502,683,348.72 to ₱399,128,045.38. As stated in the FDDA, this was arrived at per reconciliation of petitioner's purchases per Summary List of Purchases (SLP) with total amount of ₱1,182,885,476.04 against the total purchases reported in its VAT Returns of ₱783,757,430.65. The total deficiency assessment of ₱110,945,462.44 was computed as follows:

VAT

Discrepancy of local purchases per re-investigation	₱ 399,128,045.39
Divide by Cost Ratio	98.69%
Additional Taxable Sales	₱ 404,426,026.33
Multiply by VAT Rate	12%
Deficiency VAT	₱ 48,531,123.16
Add: Surcharge (50%)	24,265,561.28
Interest (7-26-08 to 1-31-2012)	34,106,594.89
Total Amount Due	**₱ 106,903,279.33**

INCOME TAX

Discrepancy of local purchases per LN	₱ 399,128,045.39
Divide by Cost Ratio	98.69%
Additional Taxable Sales	₱ 404,426,026.33
Multiply by Gross Profit Rate	1.31%
Additional Gross Income	₱ 5,297,980.94
Add: Taxable Income per ITR	8,900,425.71
Total Taxable Income	₱ 14,198,406.65
Multiply by Normal Income Tax Rate	35%
Adjusted Income Tax Due	₱ 4,969,442.33
Less: Income Tax Due per return	3,115,149.00

Deficiency Income Tax	₱ 1,854,293.33
Add: Surcharge (50%)	927,146.67
Interest (7-26-08 to 1-31-2012)	1,220,743.11
Total Amount Due	**₱ 4,002,183.11**

Compromise Penalty	**₱ 40,000.00**
Grand Total	**₱ 110,945,462.44**

The foregoing assessments were affirmed by Commissioner Kim S. Jacinto-Henares, in her final Decision[29] dated January 7, 2016, which was received by petitioner on January 20, 2016.

As shown in the above assessments, the sole basis for the income tax assessment and the VAT assessment issued by respondent is the finding that there was under-declaration of purchases in the amount of P399,128,045.39. Simply put, respondent's theory is that since there was an under-declaration of purchases, the same should translate to taxable income for income tax purposes, and taxable gross receipts, for VAT purposes.

As regards the issue on petitioner's deficiency income tax, it bears to note that the three elements in the imposition of income tax are:

1) there must be gain or profit;
2) that the gain or profit is realized or received, actually or constructively; and
3) It is not exempted by law or treaty from income tax.[30]

Income tax is assessed on income received from any property, activity or service.[31] Such being the case, in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, and not when there is an under-declaration of purchases.[32]

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[29] Exhibit "P-19.
[30] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[31] *Ibid.*
[32] *Philippine Daily Inquirer, Inc. vs. CIR*, CTA Case No. 7853, February 16, 2012.

In the instant case, said elements are not present. Respondent merely presumed that the alleged discrepancy/under-declared purchases constitute an undeclared income. Hence, respondent's assessment was not based on undeclared income actually received by petitioner.

Moreover, it is important to note that, for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[33]

Thus, even when there is under-declaration of purchases, the same is not prohibited by law. Accordingly, mere reliance on the fact that there were under-declared purchases is not enough basis for the Court to uphold respondent's assessment of the subject deficiency income tax. Consequently, respondent's deficiency income tax on the alleged additional taxable income of P5,297,980.94 should be cancelled.

Now, as regards respondent's assessment for deficiency VAT, it must be pointed out that under Section 106(A) of the NIRC of 1997, as amended, VAT is imposed on the "gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor".

Also, under Section 108(A) of the same Code, VAT is imposed on the "gross receipts derived from the sale or exchange of services". Significantly, the law defines "gross selling price" and "gross receipts" as follows:

> ". . . '**gross selling price**' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax."
>
> ". . . '**gross receipts**' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the

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[33] *The Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.

amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Clearly, VAT can be imposed only when it is shown that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from sale or exchange of services, and not when there are under-declared purchases. In other words, the VAT is imposed when one sells, not when one purchases.

At this juncture, it must be pointed out that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[34] Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[35]

Consequently, the presumption of correctness of the assessment does not apply in the present case considering that respondent's conclusion, *i.e.,* the under-declared purchase is translated and would automatically result in undeclared income or additional taxable sales, which would in turn increase petitioner's income tax and VAT liabilities, is not based on actual facts and thus, is a mere presumption.

Accordingly, the surcharge imposed due to the alleged under-declaration of sales of more than 30%, which in turn resulted from the alleged finding of undeclared purchases for the fiscal year ending June 30, 2008, should likewise be cancelled.

Moreover, there being no mutual agreement between the parties, the imposition of compromise penalty in the amount of P40,000.00 against petitioner for failure to file SLS/SLP is, likewise, cancelled. Settled is the rule that the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[36] RMO No. 1-90 expressly provides that "compromise penalties are only amounts

[34] *Collector of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987.
[35] *Ibid.*
[36] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*, G.R. No. L-35266, January 21, 1991.

suggested in settlement of criminal liability, and may not, therefore, be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty". Considering petitioner did not pay the compromise penalties imposed by the respondent, it clearly did not agree to settle the same.

On the second issue raised by the parties, the Court finds for the petitioner.

Section 203 of the NIRC of 1997, as amended, provides for the period of limitation for assessment and collection of internal revenue taxes, to wit:

> "**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 <u>for the collection</u> 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 supplied)

Similarly, Section 222 of the NIRC of 1997, as amended, provides the exceptions to the above-mentioned period of limitation of assessment and collection of taxes, to wit:

> "**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 the (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.

(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.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon."

Based on the foregoing provisions, there are two (2) kinds of prescriptive periods for the assessment and collection of taxes, namely: (1) normal/regular prescriptive period of assessment and collection of taxes under Section 203 available to the government if the taxpayer filed a return and is not false or fraudulent; and (2) exceptional prescriptive period under Section 222 in case the taxpayer: (a) fails to file a return; (b) filed a false or fraudulent return with the intent to evade tax; (c) and the Commissioner agreed in writing to waive the prescriptive period of assessment of tax.

There is no fraud assessment in this case to qualify for Sections 222 (a) and (c). Moreover, the waiver of the Statute of Limitations was executed after the issuance of the FAN and therefore will not qualify as second exemption under Sections 222 (b) and (d). Thus, the period to assess and collect taxes is 3 years from the date of the FAN, under the normal/regular prescriptive period pursuant to Section 203 of the NIRC of 1997, as amended.

On the other hand, Section 223 of the NIRC of 1997, as amended, provides for the suspension of the running of the statute of limitations provided in Sections 203 and 222, 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 the 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 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 the 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." (Emphasis supplied)

Considering that petitioner requested for a reinvestigation on April 19, 2011, the running of the period of the Statute of Limitations has been tolled for a period of 60 days after the filing of the protest. Thus, the period to assess was suspended until June 18, 2011. Therefore, respondent has 3 years from June 18, 2011, or until June 17, 2014, to assess and collect the alleged deficiency taxes.[37]

[37] 2012 being a leap year

In the present case, collection efforts were made by the respondent by issuing a Warrant of Distraint and/or Levy on May 16, 2016, which was received by petitioner on June 21, 2016. The issuance of the Warrant of Distraint and/or Levy was already beyond the 3-year prescriptive period under Section 203 of the NIRC of 1997, as amended.[38]

Consequently, the period to assess and collect by the respondent on the alleged deficiency taxes of petitioner for the fiscal year ending June 30, 2008 has already prescribed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the Final Decision of the Commissioner of Internal Revenue dated January 7, 2016 and received by herein petitioner on January 20, 2016, holding petitioner liable for deficiency VAT and income tax for the fiscal year ending June 30, 2008 in the total amount of ₱110,945,462.44 is hereby **CANCELLED** and **WITHDRAWN** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[38] BIR Records, p. 1303.

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice