REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SOLID-ONE MILLS, PHILS., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8507

Members:

DEL ROSARIO, ***Chairperson,***
UY, *and*
MINDARO-GRULLA, ***JJ.***

Promulgated:
MAY 29 2014 , 1:40p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a petition for review filed on June 25, 2012 by Solid-One Mills, Phils., Inc. seeking the cancellation and withdrawal of Assessment Notice No. 59/2003 and the Formal Letter of Demand dated May 31, 2007 issued by respondent Commissioner of Internal Revenue assessing petitioner for alleged deficiency Value-Added Tax (VAT), Expanded Withholding Tax (EWT) and Compromise Penalties for taxable year 2003, in the total amount of **TWELVE MILLION EIGHT HUNDRED THOUSAND ONE HUNDRED FOURTEEN PESOS AND 98/100** (P12,800,114.98). Petitioner also prays that the corresponding Warrants of Distraint and/or Levy and the Warrants of Garnishment be quashed and that a temporary restraining order and preliminary injunction be issued against respondent and all persons acting on her behalf to restrain, enjoin, and prohibit them from collecting the assessment subject of this case and enforcing the warrants issued to the banks and customers of petitioner against the latter's account pursuant to the same assessment.

THE FACTS

Petitioner Solid-One Mills, Phils., Inc. is a corporation organized and existing under and by virtue of Philippine law, with address at Km. 68 Laurel Highway, Barangay Darasa, Tanauan City, Batangas.[1] Petitioner is a duly registered Non-VAT taxpayer as shown in its Certificate of Registration No. OCN 2002-059-0390.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR). She is vested with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel or abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules, and regulations. Her office address is at the Bureau of Internal Revenue National Office Building, BIR Road, Diliman, Quezon City.[3]

On March 7, 2002, petitioner entered into a contract denominated as a "Toll Feedmilling Agreement" with San Miguel Foods, Inc.[4]

On April 15, 2004, petitioner filed its Annual Income Tax Return for taxable year 2003.[5]

On February 14, 2005, Acting Regional Director Merlinda L. Ordoyo of BIR Revenue Region No. 9, San Pablo City issued Letter of Authority (LOA) No. 97528 addressed to the president of petitioner. Based on the LOA, Revenue Officer Ruby Cacdac and Group Supervisor Thelma Hernandez were authorized to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the *year 2003*.[6]

On July 20, 2005, Revenue District Officer Juan P. Leron of BIR RDO No. 59, Lipa City, issued a Preliminary Assessment Notice (First PAN) informing petitioner that after investigation, petitioner was found

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[1] C.T.A. Docket, p. 541.
[2] C.T.A. Docket, pp. 230, 519, 746.
[3] *Cf.* C.T.A. Docket, p.p. 7-8.
[4] C.T.A. Docket, pp. 87-101, 519, 750-757.
[5] C.T.A. Docket, p. 515.
[6] C.T.A. Docket, p. 515; BIR Docket, p. 580.

liable for deficiency income tax, VAT and compromise penalties in the total amount of P14,525,821.92, covering taxable year 2003.[7]

On November 20, 2005, OIC-Assistant Regional Director Glen A. Geraldino of BIR Revenue Region No. 9, San Pablo City, issued another Preliminary Assessment Notice (Second PAN) to petitioner. Petitioner was informed that after investigation, it was found to be liable for deficiency income tax, EWT, VAT and compromise penalties for taxable year 2003 in the total amount of P14,795,990.74.[8]

In the meantime, on December 21, 2005, petitioner availed of the Enhance Voluntary Assessment Program (EVAP) under Revenue Regulation (RR) No. 18-2005 and Revenue Memorandum Circular (RMC) No. 70-2005. Petitioner paid a total amount of P100,000.00 for the EVAP and the corresponding Certificate of Qualification was issued on December 29, 2005.[9]

On April 12, 2006, BIR Ruling No. DA-245-2006 was issued by Pablo M. Bastes, Jr., OIC-Head Revenue Executive Assistant of the Legal Service, which stated that *"[i]n view of the foregoing, the sale or importation of prepared animal feeds by Solid whether on its own or for and in behalf of SMFI or another entity is exempt from VAT."*[10]

On *June 8, 2007*, petitioner received[11] a Formal Letter of Demand[12] (FLD) and Final Assessment Notices[13] (FAN) No. 59/2003 dated May 31, 2007, issued by OIC-Regional Director Araceli L. Francisco, assessing petitioner for the following deficiency taxes for the *year 2003*:

I.	Expanded Withholding Tax	P	158,355.20
II.	Value Added Tax		12,628,759.78
III.	Compromise Penalties		13,000.00
	Total Amount Due	**P**	**12,800,114.98**

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[7] C.T.A. Docket, p. 515; BIR Docket, p. 597.
[8] C.T.A. Docket, p. 515; BIR Docket, p. 611.
[9] C.T.A. Docket, p. 9 *and* Annex E of the Petition for Review, C.T.A. Docket, pp. 198-201.
[10] C.T.A. Docket, pp. 230-232, 518, 747-749.
[11] C.T.A. Docket, p. 528.
[12] C.T.A. Docket, p. 515; BIR Docket, p. 715.
[13] BIR Docket, pp. 716-718.

Petitioner, by counsel, filed its protest against the afore-stated FLD and FAN on July 2, 2007.[14]

In a letter dated July 9, 2007 signed by OIC-Regional Director Araceli, the BIR denied petitioner's protest.[15] The letter was received by petitioner's counsel on August 6, 2007.[16]

Petitioner appealed the denial of its protest before then BIR OIC-Commissioner Lilian B. Hefti on September 4, 2007.[17] A *Decision* dated June 6, 2012 was rendered by the Commissioner affirming petitioner's liability for deficiency VAT EWT, and compromise penalties in the total amount of P12,800,114.98, for taxable year 2003.[18]

Incidentally, on December 20, 2007, petitioner availed of the privileges under the Tax Amnesty Act of 2007 (Republic Act No. 9480) and paid a total amount of P193,418.00 as amnesty tax.[19]

In its effort to collect on petitioner's tax liability, respondent, through Assistant Commissioner for Collection Elvira R. Vera issued a Notice of Tax Lien dated June 7, 2012 addressed to the Register of Deeds of Tanauan City and received by the latter on June 14, 2012,[20] a Warrant of Distraint and/or Levy dated June 7, 2012 which was received by petitioner on June 14, 2012,[21] and Warrants of Garnishment dated June 7, 2012 which were served to San Miguel Foods, Inc. (SMFI)[22] and Metropolitan Bank & Trust Co.[23] on June 15, 2012 and to Union Bank of the Philippines[24] on June 18, 2012.

On June 25, 2012, petitioner filed the subject Petition for Review before this Court.

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[14] C.T.A. Docket, p. 515; BIR Docket, pp. 722-723.
[15] C.T.A. Docket, p. 515; BIR Docket, pp. 724-726.
[16] C.T.A. Docket, p. 517, 528.
[17] C.T.A. Docket, pp. 51-54, 515.
[18] BIR Docket, pp. 738-744.
[19] C.T.A. Docket, p. 9 *and* Annex F of the Petition for Review, C.T.A. Docket, pp. 203-206.
[20] BIR Docket, pp. 756-758.
[21] C.T.A. Docket, p. 515; BIR Docket, pp. 759-761.
[22] C.T.A. Docket, p. 518; BIR Docket, pp. 766-767.
[23] C.T.A. Docket, p. 518; BIR Docket, pp. 768-769.
[24] BIR Docket, pp. 770-771.

In her Answer,[25] respondent CIR raised the following special and affirmative defenses:

1) Petitioner cannot rely on BIR Ruling No. DA 245-2006 dated April 12, 2006 which exempts petitioner from VAT on its sale or importation of prepared animal feeds, whether on its own or for or on behalf of SMFI. In the present case, petitioner is being assessed for deficiency VAT for services rendered to SMFI and for providing technology and expertise to SMFI for purposes of converting the latter's raw material to finished feeds.

2) The period to assess petitioner has not yet prescribed. The subject assessment was for VAT and EWT and there is nothing on record which shows that petitioner filed VAT and EWT returns for the year 2003. As a consequence, the period within which to assess petitioner for deficiency VAT and EWT for taxable year 2003 shall be ten (10) years counted from the date of discovery of petitioner's non-filing of VAT and EWT returns.[26]

3) As to petitioner's EVAP payments, when petitioner availed of such, it merely entitled it to last priority in the audit and investigation of its *income tax* only, and not to its VAT and EWT liabilities.

4) Lastly, the Warrant of Distraint and/or Levy was issued appropriately and respondent's right to collect the taxes due against petitioner has not prescribed. The prescription of the BIR's right to collect taxes began to run only when the FLD has attained finality. The period for collection was suspended when petitioner elevated the case to the Appellate Division of the BIR until the same was acted upon through the *Decision* dated June 6, 2012.[27]

In a Resolution[28] dated July 3, 2012, the Court granted petitioner's prayer for the issuance of a Temporary Restraining Order and/or Preliminary Injunction and issued a Suspension of Collection of Taxes. The Court ordered the BIR to hold in abeyance the collection of the alleged deficiency VAT, EWT and compromise penalties for taxable year 2003, in the total amount of P12,800,114.98, until further orders from the Court, upon petitioner's filing of a bond from a reputable surety company duly accredited by the Supreme Court in the amount of P19,200,172.47. On August 23, 2012, the Court approved the surety bond posted by petitioner. Thus, the Commissioner and all persons acting on her behalf were enjoined from collecting the subject deficiency taxes subject of the present case, until further orders from the Court.

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[25] C.T.A. Docket, pp. 303-314.
[26] C.T.A. Docket, pp. 309-310.
[27] C.T.A. Docket, pp. 312-314.
[28] C.T.A. Docket, pp. 245-248.

Pre-Trial Conferences were held on July 12, 2013[29] and August 16, 2013.[30] Considering the stipulations and admissions of the parties in their Joint Stipulation of Facts and Issues[31] filed on July 29, 2013 and those made during the pre-trial conferences, the parties agreed that the case will be resolved on the basis of said stipulations and admissions. Thus, the Court directed both parties to submit their respective memoranda within thirty (30) days from August 16, 2013.[32]

The case was submitted for resolution on January 7, 2014,[33] after the filing of petitioner's Memorandum[34] on October 16, 2013 and respondent's Memorandum[35] on November 12, 2013.

ISSUES

During the Pre-Trial Conference,[36] both parties agreed to simplify the issues of this case, as follows:

1. Whether or not the **assessment** made by the Commissioner for taxable year 2003 has prescribed;

2. Whether or not the **collection** of tax assessed against petitioner for taxable year 2003 has prescribed; *and*,

3. Whether or not petitioner is liable for deficiency VAT and EWT for the year 2003 in the sum of P12,800,114.98, plus all increments incident to delinquency.

As to the third issue, the parties stipulated on the accuracy of respondent's computation of the assessment and the amount to be collected for which petitioner will be held liable if the Court makes a determination that either the assessment or the collection, or both, have not prescribed.[37]

[29] C.T.A. Docket, pp. 514-516.
[30] C.T.A. Docket, pp. 528-529.
[31] C.T.A. Docket, pp. 517-520.
[32] C.T.A. Docket, pp. 528-529.
[33] C.T.A. Docket, pp. 800-801.
[34] C.T.A. Docket, pp. 541-556.
[35] C.T.A. Docket, pp. 765-785.
[36] C.T.A. Docket, p. 514.
[37] C.T.A. Docket, pp. 528-529.

RULING OF THE COURT

To resolve the issues, it is indispensable to examine the provisions of Sections 203, 222 and 223 of the 1997 NIRC, as amended, which state:

> "**SEC. 203**. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, **internal revenue taxes shall be assessed within three 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-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)*
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> "**SEC 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
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> (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 omissio**n: 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.
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> (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.
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> (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**.
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> (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.**

(e) *Provided, however*, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." (Emphases supplied)

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"**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 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." (Emphasis supplied)

Pursuant to Section 203 of the 1997 NIRC, as amended, internal revenue taxes must generally 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. An assessment notice may be issued after the lapse of the three-year prescriptive period, however, provided that the instances under Section 222 of the 1997 NIRC, as amended, are present. In particular, under Section 222(a) of the 1997 NIRC, as amended, if a taxpayer failed to file a return, the right of the Commissioner to assess a taxpayer for deficiency tax shall be within ten (10) years after the discovery of the taxpayer's omission or failure to file its return.

With regard to collection of taxes, Section 222(c) of the 1997 NIRC, as amended, states that internal revenue taxes which are assessed within the period of limitation may be collected within five (5) years following the assessment, unless said five-year period to collect has been extended in writing before its expiration as provided under Section 222(d). Moreover, Section 223 of the 1997 NIRC, as amended, provides for the instances when the running of the statute of limitations on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection of deficiency taxes shall be suspended.

I. Prescription of Commissioner's right to assess petitioner for deficiency VAT, EWT and compromise penalties (non-filing of VAT returns and non-filing of alphalist of payees subject to EWT) for taxable year 2003

Petitioner maintains that the BIR's right to assess it for deficiency VAT had already prescribed. Since petitioner filed its Annual ITR for taxable year 2003 on April 15, 2004, petitioner argues that the BIR had only until April 15, 2007 within which to issue the FLD and FAN, assessing it for deficiency VAT for the year 2003. Since the FLD and FAN were issued only on May 31, 2007, the same were invalid for having been issued beyond the three-year prescriptive period.

In addition, petitioner insists that pursuant to BIR Ruling No. DA-245-2006 dated April 12, 2006, its business activities are exempt from VAT. Being a non-VAT taxpayer, petitioner is of the position that it is not required to file VAT returns and pay VAT on its transactions. Hence, the BIR's position that the prescription of its right to assess petitioner for deficiency VAT is ten (10) years counted from the discovery of petitioner's failure to file VAT returns has no basis.

The Court shall first determine if petitioner is liable for VAT on the tolling fees received from SMFI for services rendered under the Toll Feedmilling Agreement.[38] If petitioner is found liable for VAT on said tolling fees, then petitioner should have filed its VAT returns and declared the tolling fees as part of its VATable gross receipts. In which case, the three-year prescriptive period shall be reckoned from the period fixed by law for the filing of the VAT returns (not from the filing of the Annual ITR as erroneously argued by petitioner) or the actual date of filing of the VAT returns, whichever is later.

There is nothing in BIR Ruling No. DA-245-2006 which shows that the BIR declared petitioner as a VAT-exempt entity. Instead, under BIR Ruling No. DA-245-2006, only *the "sale or importation of animal feeds by petitioner, whether on its own or for and in behalf of SMFI or another entity, is exempt from VAT"*. In other words, in order for petitioner's transaction to be exempted from VAT, the same should pertain to "sale or importation" of animal feeds. The VAT exemption contemplated in BIR Ruling No. DA-

[38] C.T.A. Docket, pp. 87-101.

245-2006 does not include the rendition of *"feedmilling services"* by petitioner to SMFI or to another entity.

This Court agrees with the findings of respondent in her *Decision*. As aptly emphasized by respondent, petitioner actually rendered services to SMFI as a feedmill toll processor. The Toll Feedmilling Agreement between SMFI and petitioner clearly provides that Solid One as feedmill toll processor represents itself to possess the expertise, competence, qualifications and facilities required by SMFI and offers its services to the latter. Petitioner is a service-oriented enterprise, which renders its services solely to SMFI as provided in the Toll Feedmilling Agreement. Article II.1 of the Toll Feedmilling Agreement disclosed that the premixes, raw materials, packaging materials, tags, thread and other supplies necessary for the manufacture of feeds were provided by SMFI. Since all necessary materials for production were supplied by SMFI, petitioner, as a feedmill toll processor, was contracted by SMFI to provide the needed technology and expertise to convert the materials provided by SMFI into finished feeds. Article II.3 and Article II.4 of the Toll Feedmilling Agreement affirm petitioner's obligation to render services to SMFI in consideration for a tolling fee.

It is clear from the foregoing that the Toll Feedmilling Agreement between petitioner and SMFI involves sale of service by petitioner to SMFI and not sale of animal feeds. Since sale of service is not one of the VAT exempt transactions contemplated in BIR Ruling No. DA-245-2006 and in Section 109 of the 1997 NIRC, as amended, the tolling fees derived by petitioner therefrom, for taxable year 2003, are appropriately subject to 10% VAT under Section 108 (A) of the 1997 NIRC, as amended. In view thereof, petitioner should have filed VAT returns and paid the 10% VAT due on said tolling fees, for the year 2003. In this case, petitioner admitted that it did not file VAT returns for the year 2003 nor paid 10% VAT on said tolling fees.

Anent the assessment for deficiency EWT and compromise penalty (non-filing of alphalist of payees subject to EWT) for taxable year 2003, there is also nothing on record which shows that petitioner filed its EWT returns and its alphalist of payees subject to EWT for the year 2003.

In view of the foregoing, respondent has a right to assess petitioner for deficiency VAT, EWT and compromise penalties (non-filing of VAT returns and non-filing of alphalist of payees subject to EWT), for the year 2003, within ten (10) years from discovery of said non-filing of VAT and EWT returns and alphalist of payees subject to EWT.

Accordingly, the FLD and FAN, which were issued on May 31, 2007, assessing petitioner for deficiency VAT, EWT and compromise penalties (non-filing of VAT returns and non-filing of alphalist of payees subject to EWT) for the year 2003 were validly issued within the ten-year prescriptive period counted from year 2005, when the audit and investigation of petitioner's books of accounts and accounting records for taxable year 2003 commenced, during which petitioner's non-filing of VAT and EWT returns and non-filing of alphalist of payees subject to EWT were presumably discovered by the BIR.

The Court shall now proceed to determine whether respondent has lost her right to collect the deficiency VAT, EWT and compromise penalties (non-filing of VAT returns and non-filing of alphalist of payees subject to EWT) for the year 2003.

II. Prescription of the Commissioner's right to collect from petitioner the deficiency EWT, VAT and compromise penalties for taxable year 2003

As afore-quoted, Section 222(c) states that internal revenue taxes which are assessed within the period of limitation may be collected within five (5) years **following the assessment**. In **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**,[39] (*BPI*) the Supreme Court clarified:

> "When the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years [now five years] **after the assessment** within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. **The assessment of the tax is deemed made and the three-year period [now five-year period] for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.**
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> In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. FAS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or

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[39] G.R. No. 139736, October 17, 2005.

> sent by the BIR. **Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989.** Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST.
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> The earliest attempt of the BIR to collect on Assessment No. FAS-5-85-89-002054 was its issuance and service of a Warrant of Distraint and/or Levy on petitioner BPI. **Although the Warrant was issued on 15 October 1992, previous to the expiration of the period for collection on 19 October 1992, the same was served on petitioner BPI only on 23 October 1992.**
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> Under Section 223(c) of the Tax Code of 1977, as amended, it is not essential that the Warrant of Distraint and/or Levy be fully executed so that it can suspend the running of the statute of limitations on the collection of the tax. It is enough that the proceedings have validly began or commenced and that their execution has not been suspended by reason of the voluntary desistance of the respondent BIR Commissioner. **Existing jurisprudence establishes that distraint and levy proceedings are validly begun or commenced by the issuance of the Warrant <u>and</u> service thereof on the taxpayer. It is only logical to require that the Warrant of Distraint and/or Levy be, at the very least, <u>served upon the taxpayer</u> in order to suspend the running of the prescriptive period for collection of an assessed tax, because it may only be upon the service of the Warrant that the taxpayer is informed of the denial by the BIR of any pending protest of the said taxpayer, and the resolute intention of the BIR to collect the tax assessed.**
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> If the service of the Warrant of Distraint and/or Levy on petitioner BPI on 23 October 1992 was already beyond the prescriptive period for collection of the deficiency DST, which had expired on 19 October 1992, then what more the letter of respondent BIR Commissioner, dated 13 August 1997 and received by the counsel of the petitioner BPI only on 11 September 1997, denying the protest of petitioner BPI and requesting payment of the deficiency DST? Even later and more unequivocally barred by prescription on collection was the demand made by respondent BIR Commissioner for payment of the deficiency DST in her Answer to the Petition for Review of petitioner BPI before the CTA, filed on 08 December 1997." *(Emphases supplied)*

Hence, when an assessment is timely issued, the BIR is given a period of five years within which to collect the tax assessed, reckoned from the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer. This five-year prescriptive period to collect applies to internal revenue tax assessments, including EWT assessments.[40]

Here, although it was established that petitioner received the FLD and FAN, both dated May 31, 2007, on June 8, 2007, it was not established when the FLD and FAN were released, mailed or sent by the BIR to petitioner. As held in *BPI*, in such a case, the **date of receipt** by petitioner of the FLD and FAN should be regarded as the date when the FLD and FAN were released, mailed or sent to petitioner. Since petitioner received the FLD and FAN on June 8, 2007, the BIR had until **June 8, 2012** within which to collect the deficiency taxes.

Although the Notice of Tax Lien, Warrant of Distraint and/or Levy and Warrants of Garnishment were issued by the BIR on June 7, 2012 or one (1) day before the expiration of the period for collection on June 8, 2012, the Notice of Tax Lien was served on the Register of Deeds of Tanauan City on June 14, 2012,[41] the Warrant of Distraint and/or Levy was received by petitioner on **June 14, 2012**,[42] and the Warrants of Garnishment were received by SMFI[43] and Metropolitan Bank & Trust Co.[44] on June 15, 2012, and by Union Bank of the Philippines[45] on June 18, 2012.

Following the pronouncement of the Supreme Court in *BPI*, distraint and levy proceedings did not validly begin or commence with the mere issuance of the Warrant of Distraint and/or Levy. The Warrant of Distraint and/or Levy must be served upon the taxpayer, within the prescriptive period to collect, in order to suspend the running of the prescriptive period for collection of the deficiency taxes. Since the Warrant of Distraint and/or Levy was served on petitioner only on June 14, 2012 or six (6) days beyond the expiration of the five-year prescriptive period, the government lost its right to collect the assessed deficiency taxes and penalties.

Respondent insists that the five-year period to collect was extended pursuant to Section 222(d) of the 1997 NIRC, as amended, or was, at the very least, suspended under Section 223 of the same Code. OM

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[40] Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., G.R. No. 76281, September 30, 1991; Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.
[41] BIR Docket, pp. 756-758.
[42] C.T.A. Docket, p. 515; BIR Docket, pp. 759-761.
[43] C.T.A. Docket, p. 518; BIR Docket, pp. 766-767.
[44] C.T.A. Docket, p. 518; BIR Docket, pp. 768-769.
[45] BIR Docket, pp. 770-771.

As afore-stated, under Section 222 (d) of the 1997 NIRC, as amended, the *five-year period to collect may be extended in writing before its expiration*. In the present case, there is nothing on record which shows that petitioner executed a waiver extending the five-year period to collect pursuant to Section 222(d) of the 1997 NIRC, as amended. In the absence of said waiver, the Court finds that the five-year period to collect from petitioner the deficiency VAT, EWT and compromise penalties (non-filing of VAT returns and non-filing of alphalist of payees subject to EWT) for the year 2003 had already prescribed on **June 8, 2012**.

It may be that under Section 223 of the 1997 NIRC, as amended, the running of the statute of limitations on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection of deficiency taxes shall be suspended for the period during which the Commissioner is (1) *prohibited from making the assessment or beginning distraint or levy or a proceeding in court*; (2) *when the taxpayer requests a reinvestigation which is granted by the Commissioner*; and, (3) *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.*

After a painstaking review of the records of the case, the Court finds that there is nothing therein which indicates, even remotely, that the five-year period to collect the deficiency tax assessment was suspended.

With regard to the first cause for suspension of the five-year period to collect, **Protector Services, Inc. vs. Court of Appeals**[46] indeed elucidates that the filing of action before the courts validly suspended the running of the prescriptive period to collect taxes, *viz.*:

> As a subsidiary defense, petitioner interposes the third issue claiming that since the CIR failed, until now, to commence the collection of the 1983, 1984, and 1985 deficiency tax, the right to collect had, likewise, prescribed. Petitioner urges us to consider that for the government's failure to institute collection remedies either by judicial action or by distraint and levy, the right to collect the same has prescribed pursuant to Section 219 of the NIRC. **Note, however, that Section 271 of the 1986 Tax Code provides for the suspension of running of the statute of limitation of tax collection**, as follows:
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> > Sec. 271. *Suspension of running of statute.* — The running of the statute of limitations provided in Sections 268 and 269 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency,

[46] G.R. No. 118176, April 12, 2000

> 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 days thereafter*; when the taxpayer request 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 limitation will not be suspended; when the warrant of distraint and 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.)
>
> In the instant case, PSI filed a petition before the CTA to prevent the collection of the assessed deficiency tax. When the CTA dismissed the case, petitioner elevated the case before us, hoping for a review in its favor. **The actions taken by the petitioner before the CTA and now before us, suspended the running of the statute of limitation.** In the old case of *Republic of the Philippines vs. Ker and Company, Ltd.*, we held:
>
>> Under Section 333 (renumbered to 271 during the instant case) of the Tax Code the running of the prescriptive period to collect deficiency taxes shall be suspended for the period during which the Commissioner of Internal Revenue is prohibited from beginning a distraint and levy or instituting a proceeding in court, and for sixty days thereafter. **In the case at bar, the pendency of the taxpayer's appeal in the Court of Tax Appeals and in the Supreme Court had the effect of temporarily staying the hands of the said Commissioner. If the taxpayer's stand that the pendency of the appeal did not stop the running of the period because the Court of Tax Appeals did not have jurisdiction over the case of taxes is upheld, taxpayers would be encouraged to delay the payment of taxes in the hope of ultimately avoiding the same. Under the circumstances, the running of the prescriptive period was suspended.** (*Emphases supplied; citations omitted)*

As afore-stated, the present case was filed before this Court on June 25, 2012, which was way beyond the five-year period to collect, counted from petitioner's receipt of the FLD and FAN on June 8, 2007. Thus, it cannot be said that the filing of the present petition before this Court suspended the five-year prescriptive period to collect because at the time of its filing, there was no more period to suspend.

Anent the second basis for the suspension of the five-year period to collect, there is nothing on record which shows that petitioner requested for a reinvestigation of the subject deficiency tax assessment. Stated differently, there is no evidence to show that by the acts of petitioner, respondent was convinced to postpone the collection of the taxes because of petitioner's request for reinvestigation. Truth to tell, a perusal of the protest letter[47] filed by petitioner reveals that it did not actually request for a reinvestigation of the FLD and FAN. Petitioner categorically requested for the withdrawal of the FAN for lack of basis. In fact, based on BIR Records, the BIR itself recognized that petitioner was not requesting for a reinvestigation.[48]

Finally, as to the third ground for the suspension of collection, there is also nothing on record which shows that petitioner could not be located by the BIR. There is no dispute that petitioner received the two PANs, FLD and FAN, the letter dated July 9, 2007 issued by OIC-Regional Director Araceli which denied petitioner's protest, and the CIR's *Decision* dated June 6, 2012.

In **Republic of the Philippines vs. Luis G. Ablaza,**[49] the Supreme Court discussed the rationale behind the prescriptive period for actions for collection, *viz.*:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the positive purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law."

All told, the running of the prescriptive period for collection was never extended, interrupted or suspended by any of the instances mentioned under Sections 222(d) and 223 of the 1997 NIRC, as amended. Although the Warrant of Distraint and/or Levy was issued on June 7, 2012, it was served on petitioner only on **June 14, 2012 or six (6) days beyond the expiration of the five-year prescriptive period to collect on June 8, 2012**. The right of respondent to collect the deficiency taxes as indicated in the subject FLD

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[47] Exhibit "P-15", C.T.A. Docket, pp. 741 to 742.
[48] BIR Docket, p. 745.
[49] G.R. No. L-14519, July 26, 1960.

and FAN has by then prescribed. Thus, the cancellation of the subject FLD and FAN as well as the Notice of Tax Lien, Warrant of Distraint and/or Levy and Warrants of Garnishment issued by the BIR on June 7, 2012 is, therefore, warranted.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand[50] (FLD) and Final Assessment Notices[51] (FAN) No. 59/2003 dated May 31, 2007, assessing petitioner for alleged deficiency VAT, EWT and compromise penalties for taxable year 2003, in the total amount of P12,800,114.98, as well as the Notice of Tax Lien dated June 7, 2012, the Warrant of Distraint and/or Levy dated June 7, 2012, and the Warrants of Garnishment dated June 7, 2012 are hereby **CANCELLED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice

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[50] C.T.A. Docket, p. 515; BIR Docket, p. 715.
[51] BIR Docket, pp. 716-718.