REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION,
Petitioner,

- versus-

ATTY. KIM S. JACINTO-HENARES, IN HER CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE, AND MELQUIADES A. CANCELA, IN HIS CAPACITY AS THE OIC-REVENUE DISTRICT OFFICER OF REVENUE DISTRICT NO. 70, MASBATE CITY,
Respondent.

CTA Case No. 8150

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

OCT 0 1 2013
11:07 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

This case involves a Petition for Review (With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion for Suspension of Collection of Tax) filed pursuant to Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.

While this instant case is pending, petitioner seeks the issuance of (i) an order suspending the collection of the alleged deficiency excise taxes for taxable years 1991, 1992 and 1993 covered by Assessment Notices issued by respondent against petitioner; and (ii) a temporary restraining order and/or writ of preliminary injunction preventing respondents and all persons acting under their direction and authority from (a) collecting on the Assessments, (b) issuing a warrant of distraint/levy and thereby distraining and levying on petitioner's properties and (c) filing a judicial action for collection of the alleged deficiency excise taxes.

After trial, petitioner seeks for the issuance of a decision (i) making permanent the order suspending the collection of the alleged deficiency excise taxes covered by the Assessment Notices and the temporary restraining order/writ of preliminary injunction prayed for; (ii) reversing, canceling, and setting aside the Assessments; and (iii) reversing, canceling, and setting aside the revocation of BIR Ruling No. DA-722-2006 dated December 15, 2006, including the Memorandum Letter to the Regional Director of Revenue Region No. 10 dated July 13, 2010 and Revenue Memorandum Circular (RMC) No. 67-2010.

THE FACTS

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at the 7th Floor, Quad Alpha Centrum Building, 125 Pioneer Street, Mandaluyong City.[1]

Respondent Commissioner of Internal Revenue (CIR) is a public officer duly appointed by the President of the Republic of the Philippines and is the head of the Bureau of Internal Revenue (BIR). Respondent CIR is vested with the power to interpret tax laws and to decide matters arising from the Tax Code.[2] She holds office at the BIR National Office Building, Diliman, Quezon City.

Respondent Revenue District Officer Melquiades A. Cancela (Respondent RDO) is a public officer and is the head of the BIR Revenue District Office No. 70, Masbate City. Respondent RDO is tasked with the duty to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with.[3]

On February 29, 2000, BIR Revenue Region No. 10 issued Assessment Notices directing petitioner to pay on or before March 29, 2000 alleged deficiency excise taxes for

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 237.
[2] Par. 2, Admitted Facts, JSFI, docket, p. 237.
[3] Par. 3, Admitted Facts, JSFI, docket, p. 238.

taxable years 1991, 1992 and 1993.[4] The Assessments were broken down as follows:

	1991	1992	1993	Total
Basic Tax	P19,625,697.63	P33,734,557.57	P28,971,060.96	P82,331,316.16
50% Surcharge	9,812,848.81	16,867,278.79	14,485,530.48	41,165,658.08
20% Interest (per annum)	17,663,127.86	30,361,101.81	26,073,954.86	74,098,184.53
	P47,101,674.30	P80,962,938.17	P69,530,546.30	**P197,595,158.77**

On May 24, 2000, petitioner received a Formal Letter of Demand[5], attached to which are the Assessment Notices, from BIR Revenue Region No. 10 requesting petitioner to settle its alleged deficiency excise tax liabilities.[6]

Petitioner failed to file an administrative protest within the period prescribed under Section 228 of the NIRC of 1997, as amended.[7]

On November 21, 2006, petitioner wrote the BIR requesting for the issuance of a ruling confirming that it is no longer subject to assessment and collection by the BIR with respect to excise tax due from petitioner for taxable years 1991 to 1993.[8]

On December 15, 2006, the BIR issued BIR Ruling No. DA-722-2006[9] confirming, among others, that the period to collect on the Assessments has already prescribed.[10] The ruling, in part, provides:

> "In the instant case, since the enumerated exceptions mentioned above are not present, the period within which to assess and collect is three (3) years. Thus, since the returns are no longer available for examination, the timeliness of the assessment prescribed in Section 203 of the said Code cannot be ascertained. On the other hand, even if it were to be assumed that the assessment notice dated February 29, 2000 was issued within the prescriptive period, Atlas' liability for the subject excise taxes would still have been extinguished as the period within which to collect has

[4] Par. 4, Admitted Facts, JSFI, docket, p. 238; Exhibits "A", "5-b", "B", "5-c", "C", "5-d", docket, pp. 294-296.
[5] Exhibits "D", "5", docket, p. 297.
[6] Par. 5, Admitted Facts, JSFI, docket, p. 238.
[7] Par. 5, Petition for Review, docket, p. 3.
[8] Exhibit "E", docket, pp. 298-301.
[9] Exhibit "F", docket, pp. 302-305.
[10] Par. 6, Admitted Facts, JSFI, docket, p. 238.

likewise prescribed as more than six years have lapsed from the time of the issuance of the notice."

On November 24, 2008, the Regional Director of BIR Revenue Region Office No. 10 wrote the BIR requesting the reversal/revocation of the above ruling on the ground of alleged misrepresentation of the facts presented by petitioner. According to the Regional Director, petitioner, contrary to its representations in the Request for Confirmatory Ruling, "willfully neglected to file the required excise tax returns and failed to pay the excise tax due within the prescribed period."[11]

On December 17, 2008, the Revenue District Officer of Revenue District No. 70 of Masbate City demanded the payment of the alleged deficiency excise taxes from petitioner.[12]

On January 13, 2009, petitioner received the above Demand Letter.[13]

On January 15, 2009, in response to the above Demand Letter, petitioner wrote the respondent RDO stating that the BIR has issued BIR Ruling No. DA-722-2006 which confirmed that the period within which an action may be instituted for the collection of the assessed excise taxes had already prescribed.[14]

On July 13, 2010, Respondent CIR issued the Memorandum Letter addressed to the Regional Director declaring BIR Ruling No. DA-722-2006 dated December 15, 2006 null and void.[15]

Subsequently, RMC No. 67-2010 was issued on August 10, 2010 circularizing the full text of the Memorandum Letter.[16]

Pursuant to RMC No. 67-2010, Respondent RDO sent to petitioner another letter dated August 11, 2010 demanding payment of the Assessments within ten (10) days after receipt

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[11] Pars. 7 and 8, Admitted Facts, JSFI, docket, p. 238.
[12] Par. 9, Admitted Facts, JSFI, docket, p. 239; Exhibit "12", BIR Records, pp. 226-227.
[13] Par. 10, Admitted Facts, JSFI, docket, p. 239.
[14] Exhibit "H", docket, pp. 308-309.
[15] Par. 11, Admitted Facts, JSFI, docket, p. 239.
[16] Exhibit "I", docket, pp. 314-316; Exhibit "14", BIR Records, pp. 311-313.

of the letter by petitioner.[17] The letter states that if full settlement will not be received, the letter shall serve as formal notice of Warrant of Distraint and/or Levy and Garnishment with Notices of Tax Lien on all existing properties of petitioner.

On August 17, 2010, petitioner filed the instant Petition for Review (With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion for Suspension of Collection of Tax).

On August 19, 2010, Respondent CIR, through Respondent RDO, issued a Warrant of Distraint and/or Levy against petitioner. The Warrant was served by the BIR on September 24, 2010.[18]

On August 31, 2010, respondents filed their Opposition[19] to petitioner's Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction and Motion for Suspension of Collection of Tax. Respondents based its opposition on the following grounds: (1) The Honorable Court of Tax Appeals (CTA) has no jurisdiction over petitioner's case; (2) petitioner's causes of action are not proper issues that may be elevated before the Honorable CTA; and (3) petitioner did not present any valid ground for its application for TRO to be granted.

Petitioner filed its Reply[20] to respondents' Opposition on September 13, 2010. Petitioner countered, among others, that the Honorable Court has jurisdiction over the petition; that the rule on exhaustion of administrative remedies is not applicable; that the revocation of the Ruling was an exercise of quasi-judicial power under the second paragraph of Section 4 of the NIRC of 1997, as amended; and that petitioner is entitled to the issuance of the TRO.

On October 13, 2010, respondents filed their Answer[21] and averred the following special and affirmative defenses: (1) the Honorable CTA has no jurisdiction to entertain the petition; (2) respondents' right to assess petitioner had not yet prescribed; (3) respondents' right to collect taxes from

[17] Pars. 12 and 13, Admitted Facts, JSFI, docket, p. 239; Exhibit "J", docket, p. 317.
[18] Exhibits "K", "15", docket, p. 318.
[19] Docket, pp. 57-66.
[20] Docket, pp. 73-93.
[21] Docket, pp. 114-122.

petitioner is within the prescribed period; and (4) respondent CIR has a legal basis in revoking BIR Ruling No. DA-722-2006.

In the Resolution[22] dated October 14, 2010, the Court granted petitioner's application for TRO and/or writ of preliminary injunction and motion for suspension of collection of tax, treating the same as a Motion for the Suspension of Collection of Tax in accordance with Rule 10, Section 2 of the Revised Rules of the Court of Tax Appeals.[23] The Court found that the collection of deficiency excise taxes may unduly jeopardize the interest of petitioner. Petitioner was ordered to file a surety bond.

On October 27, 2010, respondents filed a Motion for Reconsideration[24] of the above resolution. On November 23, 2010, petitioner filed its Comment[25] thereto.

In compliance with the October 14, 2010 Resolution, petitioner submitted CAP General Insurance Corporation Surety Bond [Bond No. JCL(8) 00078] in the amount of P296,392,738.06 on October 28, 2010[26].

In the Resolution[27] dated January 5, 2011, the Court denied respondent's Motion for Reconsideration of the October 14, 2010 Resolution for lack of merit. The Court likewise found the documents submitted by petitioner in relation to its surety bond in compliance with the October 14, 2010 Resolution. Consequently, the Court enjoined respondents and all persons acting under their direction or authority from undertaking any and all remedies to collect, including the issuance of a Warrant of Distraint and Garnishment and/or Levy, from petitioner on its assessed deficiency taxes.

On January 26, 2011, this Court issued a Notice of Pre-Trial Conference[28], notifying the parties that the case is set for pre-trial conference on February 17, 2011 and directing the parties and their respective counsels to be present at the pre-trial and to file with this Court their respective Pre-Trial Briefs at least three (3) days before the date of pre-trial.

[22] Docket, pp. 126-131.
[23] Erroneously referred to in the Resolution as "Rule 10, Section 2 of (R.A.) 9282".
[24] Docket, pp. 132-140.
[25] Docket, pp. 191-200.
[26] Docket, pp. 142-144; 147-172.
[27] Docket, pp. 208-211.
[28] Docket, p. 216.

On February 1, 2011, respondents filed their Pre-Trial Brief[29]; while petitioner filed its Pre-Trial Brief[30] on February 15, 2011.

During the pre-trial proceedings held on February 17, 2011, this Court gave the counsel for petitioner a period of twenty (20) days from February 17, 2011 or until March 9, 2011 within which to submit the Joint Stipulation of Facts and Issues.[31]

On March 9, 2011, the parties submitted their Joint Stipulation of Facts and Issue.[32]

On March 29, 2011, this Court issued the Pre-Trial Order[33], summarizing the facts and issues stipulated by the parties, the evidence to be presented by the parties and the hearing dates, and stating that the pre-trial is deemed terminated.

During trial, petitioner presented Mr. Jesus C. Valledor, Jr.[34], Assistant Vice President for Administration and Comptroller of petitioner as its witness.

Thereafter, petitioner filed on September 5, 2011 its Formal Offer of Evidence[35], submitting Exhibits "A" to "L", and "L-1", which were admitted by this Court in the Resolution[36] dated January 2, 2012, except Exhibit "G".

On the other hand, respondents presented Revenue Officer Reynaldo S. Negro[37] and Revenue District Officer Melquiades A. Cancela[38] as their witnesses.

Thereafter, respondents filed on June 1, 2012 their Formal Offer of Evidence[39], submitting Exhibits "1" to "17", inclusive of their sub-markings, which were admitted by this Court in the Resolution[40] dated July 12, 2012, except Exhibits

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[29] Docket, pp. 217-220.
[30] Docket, pp. 222-233.
[31] Minutes of the February 17, 2011 Pre-Trial Proceedings, docket, p. 235.
[32] Docket, pp. 237-241.
[33] Docket, pp. 248-252.
[34] Minutes of Hearing dated March 30, 2011, docket, p. 258.
[35] Docket, pp. 275-283.
[36] Docket, pp. 410-412.
[37] Minutes of Hearing dated February 1, 2012, docket, p. 416.
[38] Minutes of Hearing dated March 5, 2012, docket, p. 427.
[39] Docket, pp. 431-435.
[40] Docket, pp. 457-459.

"1", "7", "4" and "6". Subsequently, on November 27, 2012, respondent filed its Supplemental Formal Offer of Evidence.[41] Thereafter, in the Resolution[42] dated December 19, 2012, this Court admitted Exhibits "1" and "7". During the May 6, 2013 hearing[43], the Court likewise admitted Exhibits "4" and "6".

On July 31, 2013, this case was submitted for decision[44], considering respondent's Memorandum[45] filed on July 11, 2013 and petitioner's Memorandum[46] filed on July 22, 2013 by registered mail and received by this Court on July 25, 2013.

ISSUES

The parties submitted the following issues[47] for this Court's resolution:

1. Whether or not this Honorable Court has jurisdiction over the Petition;

2. Whether or not the BIR's right to collect on the Assessments has prescribed;

3. Whether or not the Respondent Commissioner erred in revoking BIR Ruling No. DA-722-2006; and

4. Whether or not the revocation of BIR Ruling No. DA-722-2006 is prejudicial to Petitioner's defense of prescription.

DISCUSSION/RULING

The Court's Jurisdiction

This Court shall first resolve the issue pertaining to the jurisdiction of this Court over the instant case.

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[41] Docket, pp. 534-538.
[42] Docket, pp. 543-546.
[43] Minutes of Hearing dated May 6, 2012, docket, p. 633.
[44] Docket, p. 787.
[45] Docket, pp. 661-679.
[46] Docket, pp. 739-784.
[47] Issues to be Resolved, JSFI, docket, p. 239.

Respondents argue that the Court has no jurisdiction over the present petition. Since petitioner admitted that it failed to file any administrative protest against respondents' Formal Letter of Demand and Assessment Notices within the prescribed period under Section 228 of the NIRC of 1997, as amended, then, the assessment became final and executory on June 23, 2000, or 30 days after the receipt of the Formal Letter of Demand and Assessment Notices on May 24, 2000. The assessment not having been protested or contested, there could never be a decision on disputed assessment that may be appealed to this Court. As cited under Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, what is reviewable by the CTA is the decision of the CIR on a disputed assessment.

Respondents also argue that petitioner's causes of action are not proper issues that may be elevated before this Court. An examination of the petition for review shows that petitioner's cause of action is anchored on respondent CIR's revocation of its previous requested ruling, *i.e.*, BIR Ruling No. DA-722-2006 dated December 15, 2006, and her issuance of RMC No. 67-2010 dated August 10, 2010 circularizing the revocation of the said ruling. The revocation of the said ruling and RMC must be properly elevated before the Secretary of Finance, under the rules on exhaustion of administrative remedies and based on Section 4 of the NIRC of 1997, as amended, and further clarified by RMC No. 40-A-02[48].

On the other hand, petitioner counters that this Court's jurisdiction is not limited to "disputed assessments" as claimed by respondents. Based on Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, this Court has the power to hear and decide tax disputes in general, which includes other matters arising under the Tax Code or other laws administered by the BIR. In its petition for review, petitioner acknowledged that it failed to file an administrative protest within the period prescribed, thus, the Assessment Notices became final and executory on June 23, 2000. However, respondents failed to exert efforts to collect on the Assessments, by distraint or levy, or by a proceeding in court within the prescribed period under Section 222 of the NIRC of 1997, as amended. Such period lapsed on February 27, 2005. Thus, petitioner's reason for refusing to pay the Assessments is because of the lapse of the BIR's period to collect. Petitioner

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[48] Department Order No. 7-02, "Providing for the Implementing Rules of the First Paragraph of Section 4 of the National Internal Revenue Code of 1997, Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99".

submits that notwithstanding the finality of the assessments, this Court has jurisdiction over the petition since one of the issues relates to the right of respondents to legally collect the assessed taxes.

Petitioner also asserts that review of rulings issued by the CIR has been ruled to be within the jurisdiction of this Court and not the regular courts, since it falls within "other matters arising from" the Tax Code and other laws administered by the BIR. Contrary to respondents' argument, RMC No. 40-A-02 does not apply to the present case because the revocation of the ruling falls under the second paragraph of Section 4 of the NIRC of 1997, as amended. Assuming *arguendo* that RMC No. 40-A-02 applies, filing of the petition without prior resort to the Secretary of Finance is justified under the circumstances.

There is no dispute that the assessments for deficiency excise taxes for taxable years 1991, 1992 and 1993 have become final and executory. Petitioner received the Formal Letter of Demand and Assessment Notices for deficiency excise taxes on May 24, 2000. However, it failed to file an administrative protest within thirty (30) days from the date of receipt of the Formal Letter of Demand and Assessment Notices as prescribed under Section 228 of the Tax Code. Hence, petitioner's deficiency excise taxes became final, executory and demandable on June 23, 2000. In fact, both parties agreed that the assessments became final and executory on June 23, 2000. [49]

Consequently, the main issue in this case boils down on the prescription of the BIR's right to collect on the assessments.

Section 7(a)(1)of RA No. 1125[50], as amended by RA No. 9282, provides:

> "Sec.7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,

[49] Par. 5, Petition for Review, docket, p. 3 and Respondents' Memorandum, docket, p. 663.
[50] An Act Creating the Court of Tax Appeals.

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

From the foregoing provision, the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR as held in the case of *Philippine Journalists, Inc. v. CIR*[51].

In *CIR vs. Hambrecht & Quist Philippines, Inc.*[52], the Supreme Court held:

> "... **the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction**.
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> Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
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> Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.
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> **To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within**

[51] G.R. No. 162852, December 16, 2004.
[52] G.R. No. 169225, November 17, 2010.

> **the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**" (Emphasis supplied)

From the foregoing, the issue on the prescription of the BIR's right to collect taxes is covered by the term "other matters arising under the National Internal Revenue Code". Hence, this Court has jurisdiction over the subject matter of the present petition.

BIR's Right to Collect

Respondents claim that from the time the assessment became final, executory and demandable, respondents exerted sufficient efforts to collect petitioner's delinquent account. On July 28, 2000, respondents, through Rene Q. Aguas, Regional Director of Revenue Region No. 10, filed a criminal complaint[53] against Fernando S. Verde as President of petitioner for non-payment of excise tax. Subsequently, an Information[54] dated September 27, 2000 was filed in the Regional Trial Court. Thereafter, a Warrant of Arrest was issued. To date, accused Fernando S. Verde remains at large. Respondents even sent letters to various government offices to confirm whether petitioner has any leviable property. Unfortunately, no property could be levied. Since accused could not be located, his absence prevented respondents from collecting the deficiency excise taxes, thereby suspending the running of the prescriptive period to collect provided under Section 222 of the NIRC of 1997, as amended, in relation to Section 223 thereof.

Petitioner counters that the criminal case should not be deemed to have been filed in the absence of proof authorizing the Regional Director to prosecute and conduct the criminal proceeding. Even assuming that respondents' argument is correct, there is no criminal case that can suspend the running of the prescriptive period to collect. In any event, respondents' reliance on Section 223 of the NIRC of 1997, as amended, is misplaced. Neither the filing of a criminal case nor failure to arrest the accused is a situation contemplated by

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[53] Exhibit 6, BIR Records pp. 137-139.
[54] Exhibit 7, docket, p.541.

Section 223 that would suspend the running of the prescriptive period to collect.

Section 222(c) of the NIRC of 1997, as amended, provides:

> "SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
>
> xxx xxx xxx
>
> (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**." (Emphasis supplied)

From the foregoing provision, when the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another 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 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.[55]

In this case, there is no dispute on the validity of the issuance of the Assessment and on its finality, only on the prescription of the period to collect the deficiency excise taxes. While the Formal Letter of Demand[56] was undated and the Assessment Notices[57] were dated February 29, 2000 and received by petitioner on May 24, 2000, there was no showing as to when the said Assessment Notices were released, mailed or sent by the BIR. Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment Notices to petitioner was on the same date they were received by the latter. Counting the five-year prescriptive period from May 24, 2000, then the BIR only had until May 24, 2005 within which to collect the assessed deficiency excise taxes.

On December 17, 2008, or more than eight (8) years from the time the assessments were made, Respondent RDO wrote

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[55] *Bank of the Philippine Islands vs. CIR*, G.R. No. 139736, October 17, 2005.
[56] Exhibits "D", "5", docket, p. 297.
[57] Exhibits "A", "5-b", "B", "5-c", "C", "5-d", docket, pp. 294-296.

a letter to petitioner demanding payment of the deficiency excise taxes.[58] Respondent RDO wrote another letter dated August 11, 2010, reiterating its demand for payment.[59] In the same letter, Respondent RDO stated that if full settlement will not be received, the letter shall serve as formal notice of Warrant of Distraint and/or Levy and Garnishment with Notices of Tax Lien on all existing properties of petitioner.

Records show that Respondent RDO issued a Warrant of Distraint and/or Levy against petitioner only on August 19, 2010. The Warrant was served by the BIR on September 24, 2010.[60] Existing jurisprudence establishes that distraint and levy proceedings are validly begun or commenced by the issuance of the Warrant and service thereof on the taxpayer.[61] Therefore, the service of the Warrant on petitioner on September 24, 2010 was already beyond the prescriptive period for collection of the deficiency excise taxes, which had expired on May 24, 2005. Neither has the BIR filed any collection case in court against petitioner.

However, respondents insist that the running of the prescriptive period to collect was suspended since the accused Fernando S. Verde remains at large. *We* are not convinced.

Section 223 of the NIRC of 1997, as amended, provides:

> 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

[58] Exhibit "12", BIR Records, pp. 226-227.
[59] Exhibit "J", docket, p. 317.
[60] Exhibits "K", "15", docket, p. 318.
[61] *Bank of the Philippine Islands vs. CIR*, G.R. No. 139736, October 17, 2005, citing *Republic v. Hizon*, G.R. No. 130430, 13 December 1999, 320 SCRA 574; *Advertising Associates, Inc. v. Court of Appeals*, G.R. No. L-59758, 26 December 1984, 133 SCRA 765; *Palanca, et al. v. CIR*, 114 Phil 203 (1962).

with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

From the foregoing, the running of the statute of limitations under Sections 203 and 222 of the NIRC of 1997, as amended, may be suspended in the following instances:

> 1) 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;
>
> 2) When the taxpayer requests for a reinvestigation which is granted by the Commissioner;
>
> 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: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended;
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> 4) 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
>
> 5) When the taxpayer is out of the Philippines.

None of the instances mentioned above is present in this case.

This Court does not agree with respondents' claim that the period to collect the deficiency excise taxes was suspended considering that accused Fernando S. Verde could not be located and it seems that there is no property of petitioner that can be located.

The third instance under Section 223 of the NIRC of 1997, as amended, applies only if the whereabouts of the taxpayer cannot be ascertained.[62]

In this case, even though the whereabouts of petitioner's then President, Fernando S. Verde, was unknown, still the corporate address of petitioner was known to respondents. There is nothing in the records that would show that

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[62] *CIR vs. BASF Coatings + Inks Philippines, Inc.*, CTA EB Case No. 664, June 16, 2011.

respondents cannot locate any officer or employee of petitioner at its corporate address. Respondents could have served the Warrant of Distraint and/or Levy upon Mr. Jesus C. Valledor, Jr., who is connected with petitioner since January 1988[63], or any responsible officers or authorized representative of petitioner after the assessments became final and executory. However, it failed to do so and resorted only to the filing of a criminal complaint against Fernando S. Verde as then President of petitioner.

There is likewise nothing in the records that would show the other efforts made by respondents to collect on the deficiency tax from May 24, 2000 to May 24, 2005, or the period within which the BIR can collect on the deficiency excise taxes. The BIR records show that respondent RDO inquired with the Municipal Assessor of Aroroy, Masbate, the City Assessor of Masbate City, Provincial Assessor of Masbate City, the Registry of Deeds of Masbate and the Department of Environment and Natural Resources - Mines and Geosciences Bureau, if petitioner has any leviable property, and all government agencies replied in the negative. However, making inquiries into any leviable property of petitioner is not one of the instances that will suspend the running of the period to collect on the deficiency tax. Moreover, all of these communications were made only in 2008, long after the period to collect on the deficiency tax has prescribed. Also, these communications were not offered in evidence.

Respondents should have served the Warrant of Distraint and/or Levy upon petitioner first notwithstanding the fact that no property can be located. 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 begun or commenced and that their execution has not been suspended by reason of the voluntary desistance of the respondent BIR Commissioner. It is only logical to require that the Warrant of Distraint and/or Levy be, at the very least, served upon the taxpayer 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

[63] Judicial Affidavit of Mr. Jesus C. Valledor, Jr, Exhibit "L", docket, p. 253.

pending protest of the said taxpayer, and the resolute intention of the BIR to collect the tax assessed.[64]

The Supreme Court explained in the case of *Republic of the Philippines vs. Ablaza*[65] the rationale behind the prescriptive period for actions for collection, to wit:

> "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."

Respondents also cite Section 281 of the NIRC of 1997, as amended, as additional basis for the suspension of the running of the prescriptive period to collect the deficiency tax, which provides in part:

> "SECTION 281. Prescription for Violations of any Provision of this Code. — xxx xxx xxx
>
> xxx xxx xxx
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines."

Needless to say, the above provision pertains to prescription on the criminal liability for the violation of the NIRC and not prescription on the right to collect on the deficiency tax.

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[64] *Supra*, Note 55.
[65] G.R. No. L-14519, July 26, 1960.

Anent BIR Ruling No. DA-722-2006, suffice it to say that it was not the legal basis for the grant of the relief sought herein, hence, no reason exists for the Court to delve on the validity of its revocation.

It bears to stress that BIR Rulings are not conclusive in the interpretation of tax laws. Said rulings should not be taken as the gospel truth of the interpretation of tax laws which will deprive the courts of its statutory mandate to interpret said laws. They are merely persuasive in nature.[66]

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**.

The Assessment Notices dated February 29, 2000 for deficiency excise taxes for taxable years 1991, 1992 and 1993 are hereby CANCELLED and WITHDRAWN for failure of respondents to enforce collection thereof within the period allowed by law.

Consequently, the Warrant of Distraint and/or Levy issued on August 19, 2010 is hereby declared NULL and VOID and of no legal effect. Respondents and all persons acting under their direction or authority are now precluded from collecting the amount of P197,595,158.77, representing petitioner's excise tax liabilities for taxable years 1991, 1992 and 1993.

The CAP General Insurance Corporation Surety Bond [Bond No. JCL(8) 00078] in the amount of P296,392,738.06 posted by the petitioner shall be cancelled upon the finality of this decision.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[66] *Jewel Pawnshop Corp. vs. CIR*, CTA Case No. 6824, September 14, 2004.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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