REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE POWER MC DISTRIBUTION, INC., Petitioner,	**CTA CASE NO. 9263** Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 03 2018 2:00 PM

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RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's **Motion for Reconsideration (Re: Decision Promulgated on July 6, 2018)**, filed on July 24, 2018, with petitioner's **Comment and/or Opposition (Re: Respondent's Motion for Reconsideration)**, filed on August 9, 2018.

Respondent seeks reconsideration of the Court's Decision dated July 6, 2018 (assailed Decision), the dispositive portion of which reads:

> "**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₱110,945,462.44 is hereby **CANCELLED** and **WITHDRAWN** for lack of merit.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."

Respondent alleges that this Court erred in ruling that deficiency income tax, value-added tax (VAT) and compromise penalty were assessed beyond the prescriptive period allowed by law due to falsity. According to respondent, since petitioner did not declare purchases in the amount of ₱399,128,045.39, per third-party verification, this resulted to an under-declaration of 50.92% of its gross revenues. Consequently, the Court held that petitioner's VAT returns are fraudulent and respondent has 10 years to assess petitioner pursuant to Section 222(a) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent further avers that petitioner was not able to refute the assessment of respondent during administrative and judicial proceedings, thus, the presumption in favor of the correctness of tax assessment should be upheld.

Moreover, respondent claims that the request for reinvestigation tolled the running of the prescriptive period pursuant to Section 223 of the NIRC of 1997, as amended. As a consequence, the collection efforts of respondent thru the issuance of Warrant of Distraint and/or Levy on May 16, 2016 were made within the 5-year prescriptive period under Section 222(d) of the NIRC of 1997, as amended.

Lastly, respondent maintains that petitioner is liable for deficiency income tax and VAT resulting from unaccounted sales. Respondent reiterates that his audit investigation reveals the discrepancy on sales and purchases of petitioner and its suppliers.

On the other hand, petitioner counters the above allegations and claims that respondent failed to present evidence which would demand the application of the 10-year prescriptive period. Petitioner maintains that the fact of under-declaration of sales of more than 30% was not proven.

Furthermore, petitioner asserts that the period to assess or collect may be tolled by a request for reinvestigation only if such request has been granted by respondent. In the instant case, petitioner maintains that respondent presented or offered no documentary evidence which would show that petitioner requested for a reinvestigation or that respondent acted on the alleged request. Therefore, the running of the period was not tolled.

Finally, petitioner posits that irrespective of the existence and due execution of the alleged request for reinvestigation filed on April 19, 2011, the same can have no legal bearing since this was already beyond the 30-day period from the issuance or receipt of the Formal Letter of Demand (FLD). Accordingly, petitioner contends that as far as respondent is concerned, the assessment is final and executory. Respondent may then initiate the collection proceedings within three years.

At the outset, it must be noted that the grounds raised by respondent in his motion has already passed upon and resolved by the Court in the assailed Decision.

As laid down in the assailed Decision, the Court emphasized the elements in the imposition of income tax, i.e., (1) there must be gain or profit; (2) the gain or profit is realized or received, actually or constructively; and (3) it is not exempted by law or treaty from income tax. The Court found that said elements are not present in the instant case. 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.

The Court also noted 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 income tax law is to claim a deduction beyond the amount authorized therein." Thus, under-declaration of purchases is not prohibited by law.

For VAT, the Court ruled in the assailed Decision that such "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, VAT is imposed when one sells, not when one purchases." a

Consequently, the alleged application of 10-year prescriptive period on the ground of the filing of a fraudulent return based on the assumed under-declaration of sales of more than 30% has no basis. Thus, the regular prescriptive period to assess applies.

In addition, the Court upheld the applicability and correlation of Sections 203, 222 and 223 of the NIRC of 1997, as amended, with regard to the tolling of the running of the prescriptive period to collect, to wit:

> "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.
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> 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 the 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.
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> xxx xxx xxx
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> 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.

> In the present case, collection efforts were made by the respondent by issuing a Warrant of Distraint/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.
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> 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." (Citations omitted)

In view of the foregoing, the Court finds no cogent reason to disturb the ruling in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision Promulgated on July 6, 2018)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

I concur with result

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice