REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

THE STANLEY WORKS SALES (PHILS.), INCORPORATED,
Respondent.

C.T.A. E.B. NO. 406
(C.T.A. CASE NO. 6971)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
FEB 27 2009 10:15 a.m.

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed through registered mail on August 15, 2008 and duly received by this Court on August 28, 2008 under Republic Act No. 1125, as amended by Republic Act No. 9282, and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division) which granted the Petition for Review in CTA Case No. 6971, entitled "The Stanley Works Sales

(Philippines), Inc., petitioner, vs. Commissioner of Internal Revenue, respondent",[1] to wit:

1) Decision promulgated on May 6, 2008[2] granting the Petition for Review in CTA Case No. 6971 and accordingly canceling herein petitioner's assessment against herein respondent for deficiency income tax, inclusive of surcharge, interest and penalty, in the amount of FORTY ONE MILLION TWO HUNDRED EIGHTY FOUR THOUSAND NINE HUNDRED SIXTY EIGHT AND 34/100 PESOS (P41,284,968.34) due to prescription; and

2) Resolution promulgated on July 14, 2008[3] denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit.

THE FACTS

The factual antecedents of the case, as found by the Court in Division, are as follows:

Petitioner is the duly appointed officer of the Bureau of Internal Revenue (BIR) mandated to exercise the powers and perform the duties of his office including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code. Respondent, on the other hand, is a domestic corporation duly organized and existing under Philippine laws and duly registered with the Securities and Exchange Commission. Its office address is at the 5th Floor, Pan Pacific Hotel, Adriatico Street corner Gen. Malvar Street, Manila.

Respondent is authorized "to engage in the business of designing, manufacturing, fabricating, or otherwise producing, and the purchase, sale at

[1] Ponencia of Associate Justice Lovell R. Bautista, First Division, concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.
[2] Docket, pp. 20-38.
[3] Ibid., at pp. 40-41.

wholesale, importation, export, distribution, marketing or otherwise dealing with, construction and hardware materials, tools, fixtures and equipment".

On January 1, 1979, respondent and Stanley Works Agencies (Pte.) Limited, Singapore (Stanley-Singapore) entered into a Representation Agreement. Under such agreement, Stanley-Singapore appointed respondent as its sole agent for the selling of its products within the Philippines on an indent basis.

On April 16, 1990, respondent filed with the BIR its Annual Income Tax Return for taxable year 1989.[4]

On March 19, 1993, pursuant to Letter of Authority dated July 3, 1992, the BIR issued against respondent Pre-Assessment Notice (PAN) No. 002523 for 1989 deficiency income tax.

On March 29, 1993, respondent received its copy of the PAN.

On April 12, 1993, petitioner, through OTC Domingo C. Paz of Revenue Region No. 4B-2 of Makati, issued to respondent Assessment Notice No. 002523-89-6014 for deficiency income tax for taxable year 1989. The Notice was sent on April 15, 1993 and respondent received it on April 21, 1993.

On May 19, 1993, respondent, through its external auditors Punongbayan & Araullo, filed a protest letter and requested reconsideration and cancellation of the assessment.

On November 16, 1993, a certain Mr. John Ang, on behalf of respondent, executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver). Under

[4] Erroneously stated in the assailed Decision as "taxable year 1999".

the terms of the Waiver, respondent waived its right to raise the defense of prescription under Section 223 of the NIRC of 1977 insofar as the assessment and collection of any deficiency taxes for the year ended December 31, 1989, but not after June 30, 1994. The Waiver was not signed by petitioner or any of his authorized representatives and did not state the date of acceptance as prescribed under Revenue Memorandum Order No. 20-90. Respondent did not execute any other Waiver or similar document before or after the expiration of the November 16, 1993 Waiver on June 30, 1994.

On January 6, 1994, respondent, through its external auditors Punongbayan & Araullo, wrote a letter to the Chief of the BIR Appellate Division and requested the latter to take cognizance of respondent's protest/request for reconsideration, asserting that the dispute involved pure questions of law. On February 22, 1994, respondent sent a similar letter to the Revenue District Officer (RDO) of BIR Revenue Region No. 4B-2 and asked for the transmittal of the entire docket of the subject tax assessment to the BIR Appellate Division.

On September 30, 1994, respondent, through its external auditors Punongbayan & Araullo, submitted a Supplemental Memorandum on its protest to the BIR Revenue Region No. 4B-2.

On September 20, 1995, respondent, through its external auditors Punongbayan & Araullo, filed a Supplemental Memorandum with the BIR Appellate Division.

On November 29, 2001, the Chief of the BIR Appellate Division sent a letter to respondent requiring it to submit duly authenticated financial statements for the worldwide operations of Stanley Works and a sworn declaration from the home office on the allocated share of respondent as a "branch office."

On December 11, 2001, respondent, through its counsel, the Quisumbing Torres Law Offices, wrote the BIR Appellate Division and asked for an extension of period within which to comply with the request for submission of documents. On January 15, 2002, respondent sent a request for an extension of period to submit a Supplemental Memorandum.

On March 4, 2002, respondent, through its counsel, the Quisumbing Torres Law Offices, submitted a Supplemental Memorandum alleging, inter alia, that petitioner's right to collect the alleged deficiency income tax has prescribed.

On March 22, 2004, petitioner rendered a Decision denying respondent's request for reconsideration and ordering respondent to pay the deficiency income tax plus interest that may have accrued. The dispositive portion reads:

> "**IN VIEW WHEREOF,** this Office resolves, as it hereby resolves, to DENY the request for reconsideration of **STANLEY WORK SALES (Philippines), INC.** dated May 19, 1993 of Assessment No. 002523-89-6014 dated April 12, 1993 issued by this Bureau demanding payment of the total amount of Php41,284,968.34 as deficiency income tax for taxable year 1989. Consequently, Stanley Works Sales (Philippines), Inc. is hereby ordered to pay the above-stated amount plus interest that may have accrued thereon to the Collection Service, within thirty (30) days from receipt hereof, otherwise, collection will be effected through the summary remedies provided by law.
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> This constitutes the **final decision** of this Office on the matter.[5]"

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[5] Exhibit "K", CTA Case No. 6971 Records, pp. 190-194, at p. 194.

On March 30, 2004, respondent received its copy of the assailed Decision. Hence, on April 28, 2004, respondent filed before the Court in Division a Petition for Review docketed as C.T.A. Case No. 6971 entitled "The Stanley Works Sales (Philippines), Inc., petitioner, vs. Commissioner of Internal Revenue, respondent". After trial on the merits, the Court in Division rendered its Decision dated May 6, 2008, the dispositive portion of which states:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent's (herein petitioner's) Decision dated March 22, 2002 is hereby **REVERSED** and **SET ASIDE**. The Assessment Notice No. 002523-89-6014 dated April 12, 1993 is hereby ordered **CANCELLED**.
>
> **SO ORDERED.**[6]"

Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied herein petitioner's Motion for Reconsideration of the aforesaid Decision in the Resolution dated July 14, 2008.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision and Resolution dated May 6, 2008 and July 14, 2008, respectively, of the Court in Division be reconsidered and set aside; and another decision be issued dismissing the Petition for Review in CTA Case No. 6971, and ordering respondent to pay the amount of P41,284,968.34 as deficiency income tax for taxable year 1989, covered under Assessment Notice No. 002523-89-6014 dated April 12, 1993, plus surcharge and interest.

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[6] Docket, p.37.

On September 16, 2008, this Court issued a Resolution[7] requiring respondent to file a Comment to the instant Petition for Review. Upon submission of respondent's Comment on September 26, 2008,[8] the Court issued a Resolution dated October 2, 2008[9] giving due course to the instant petition and requiring both parties to submit their memoranda within the period of thirty (30) days from notice.

After both parties filed their respective Memorandum on November 5, 2008[10] and November 7, 2008,[11] this case was deemed submitted for decision in a Resolution dated November 18, 2008.

Hence, this Decision.

THE ISSUES

The issues raised by petitioner in the instant petition are as follows:

> A. Whether or not petitioner's right to collect the deficiency income tax of respondent for taxable year 1989 was suspended or prescribed; and
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> B. Whether or not respondent's repeated requests and positive acts constitute "estoppel" from setting up the defense of prescription under the NIRC.[12]

Petitioner's Arguments:

In the instant petition for review, petitioner raises the following assignments of errors:

(1) The Hon. Court's First Division erred in holding that petitioner's right to collect the deficiency income tax of respondent for taxable year 1989 has already prescribed;

[7] Ibid., at pp. 43-44.
[8] Id., at pp. 45-52.
[9] Id., at pp. 54-55.
[10] Id., at pp. 81-92.
[11] Id., at pp. 56-80.
[12] Id., at p. 8.

(2) The Hon. Court's First Division erred in holding that respondent's repeated requests and positive acts does not constitute estoppel from setting up the defense of prescription under the NIRC.

According to petitioner, respondent is estopped from setting up the defense of prescription against the collection of its deficiency income tax for taxable year since it repeatedly requests and performed positive acts that persuaded the petitioner to delay the collection of its deficiency income tax, applying the *principle of estoppel* enunciated in the cases of Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., et al. (104 Phil. 819), and Republic vs. Arcache, et al. (L-15547, February 29, 1964).

Relative thereto, petitioner points out that as contained in the Judicial Affidavit of his witness (in CTA Case No. 6971), Atty. Roberto A. Baquirin, herein respondent's Letters dated January 6, 1994, February 22, 1994, September 30, 1994, September 20, 1995, December 12, 2001, January 15, 2002 and March 4, 2002, were the very reason why petitioner considered to postpone the collection of the subject deficiency income tax to make respondent feel that the demand was not unreasonable or that no harassment or injustice is meant by the BIR. Therefore, it is clear that the suspension of petitioner's right to collect the deficiency income tax of respondent for taxable year 1989 was justified; hence, his right to collect has not prescribed. And thus, the issuance of the Final Decision dated March 22, 2004, denying the request for reinvestigation/reconsideration of respondent involving the subject deficiency income tax was valid.

Respondent's Counter-arguments:

Respondent filed its Comment[13] thereto on September 26, 2008 praying for the denial/dismissal of the present petition for being devoid of any factual or legal basis. It posits that: (a) petitioner's arguments are mere rehash of his previous arguments in the Motion for Reconsideration of the assailed Decision in the Court in Division level; (b) respondent's letters and memoranda submitted to petitioner were dictated purely by the circumstances, and not by any malicious design on its part to induce petitioner to postpone further the collection of the disputed tax deficiencies; (c) it was petitioner who practically kept respondent hostage by sitting on the protest for more than six (6) years before he acted anew on respondent's protest; and (d) the subject letters cannot be used to justify the suspension of the statute of limitations for the collection of the disputed tax deficiencies against respondent as nothing therein contains any persuading statement, making the *principle of estoppel* inapplicable in the present case.

THE COURT EN BANC'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review readily reveals that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Court in Division which had already been exhaustively discussed and passed upon by it in its assailed Decision and Resolution. We thus adhere to the factual and legal findings of the Court in

[13] Id., at pp. 45-52.

Division that the right of petitioner to collect from respondent the deficiency income tax had already prescribed.

We quote with approval the discussion of the Court in Division on the matter, to wit:

> "Petitioner (herein respondent) argues that respondent's (petitioner's) right to collect deficiency income taxes has prescribed under Section 203 and 223 of the NIRC of 1977, as amended. From the date of assessment for deficiency income taxes, respondent (herein petitioner) has another period of three years within which to collect. And since there was no valid waiver, respondent's (petitioner's) right to collect has prescribed.
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> This Court agrees with petitioner (herein respondent).
>
> In **Commissioner of Internal Revenue vs. Philippine Global Communication, Inc.,**[14] the Supreme Court ruled:
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>> 'Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue, issued on 27 November 1985, defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:
>>
>>> Section 6. Protest. — The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:
>>>
>>> xxx xxx xxx
>>>
>>> For the purpose of protest herein —
>>>
>>> (a) *Request for reconsideration* — refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>>>
>>> (b) *Request for reinvestigation* — refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional

[14] G.R. No. 167146, October 31, 2006.

> evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both.

The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence. A re-evaluation of existing records which results from a request for reconsideration does not toll the running of the prescription period for the collection of an assessed tax. Section 271 distinctly limits the suspension of the running of the statute of limitations to instances when **reinvestigation** is requested by a taxpayer and is granted by the CIR. The Court provided a clear-cut rationale in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue* explaining why a request for reinvestigation, and not a request for reconsideration, interrupts the running of the statute of limitations on the collection of the assessed tax:

> Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter cannot.'

In the case of **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**,[15] the Supreme Court further elucidated:

> 'xxx, we need to examine Section 320[16] of the Tax Code of 1977, which states:
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> Sec. 320. *Suspension of running of statute.* — The running of the statute of limitations provided in Sections 318 or 319 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 days thereafter; **when the taxpayer requests for a re-investigation which is granted by the Commissioner**; when the taxpayer cannot be

[15] G.R. No. 174942, March 7, 2008.
[16] Now Section 223 of the NIRC of 1997.

> 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 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)

The above section is plainly worded. In order to suspend the running of the prescriptive periods for assessment and collection, the request for reinvestigation must be granted by the CIR.

In ***BPI v. Commissioner of Internal Revenue***, the Court emphasized **the rule that the CIR must first grant the request for reinvestigation as a requirement for the suspension of the statute of limitations**. The Court said:

> In the case of *Republic of the Philippines v. Gancayco*, taxpayer Gancayco requested for a thorough reinvestigation of the assessment against him and placed at the disposal of the Collector of Internal Revenue all the evidences he had for such purpose; yet, the Collector ignored the request, and the records and documents were not at all examined. Considering the given facts, this Court pronounced that —
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> x x x ***The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension****. (Collector v. Suyoc Consolidated, supra; also Republic v. Ablaza, supra).* Moreover, the Collector gave appellee until April 1, 1949, within which to submit his evidence, which the latter did one day before. There were no impediments on the part of the Collector to file the collection case from April 1, 1949...
>
> In *Republic of the Philippines v. Acebedo*, this Court similarly found that —

X x x [T]he defendant, after receiving the assessment notice of September 24, 1949, asked for a reinvestigation thereof on October 11, 1949 (Exh. "A"). ***There is no evidence that this request was considered or acted upon***. In fact, on October 23, 1950 the then Collector of Internal Revenue issued a warrant of distraint and levy for the full amount of the assessment (Exh. "D"), but there was follow-up of this warrant. Consequently, ***the request for reinvestigation did not suspend the running of the period for filing an action for collection***. [Emphasis in the original]

The Court went on to declare that the burden of proof that the request for reinvestigation had been actually granted shall be on the CIR. Such grant may be expressed in its communications with the taxpayer or implied from the action of the CIR or his authorized representative in response to the request for reinvestigation. (Emphasis supplied)

Applying the above BIR regulations and Supreme Court rulings, petitioner's (respondent's) request for reconsideration did not suspend the running of the prescriptive period to collect deficiency income tax. Petitioner's (Respondent's) protest merely requested a reconsideration of the FAN, and not a request for reinvestigation."[17]

Moreover, as regards the argument that respondent's repeated requests and positive acts allegedly constitute "estoppel" from setting up the defense of prescription under the NIRC of 1977, as amended, the Court in Division correctly accentuated that:

"In finding that respondent's right to collect deficiency income tax from petitioner has prescribed, this Court quotes the Highest Tribunal's ruling in **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**[18] as follows:

'The statute of limitations on collection may only be interrupted or suspended by a valid waiver executed in accordance with paragraph (d) of Section 223 of the

[17] Decision dated May 6, 2008, CTA Case No. 6971; Docket, pp. 29-32.
[18] G.R. No. 139736, October 17, 2005.

Tax Code of 1977, as amended, and the existence of the circumstances enumerated in Section 224 of the same Code, which include a request for reinvestigation granted by the BIR Commissioner.

Even when the request for reconsideration or reinvestigation is not accompanied by a valid waiver or there is no request for reinvestigation that had been granted by the BIR Commissioner, the taxpayer may still be held in estoppel and be prevented from setting up the defense of prescription of the statute of limitations on collection when, by his own repeated requests or positive acts, the Government had been, for good reasons, persuaded to postpone collection to make the taxpayer feel that the demand is not unreasonable or that no harassment or injustice is meant by the Government, as laid down by this Court in the *Suyoc* case.

Applying the given rules to the present Petition, this Court finds that —

(a) The statute of limitations for collection of the deficiency DST in Assessment No. FAS-5-85-89-002054, issued against petitioner BPI, had already expired; and

(b) None of the conditions and requirements for exception from the statute of limitations on collection exists herein: Petitioner BPI did not execute any waiver of the prescriptive period on collection as mandated by paragraph (d) of Section 223 of the Tax Code of 1977, as amended; the protest filed by petitioner BPI was a request for reconsideration, not a request for reinvestigation that was granted by respondent BIR Commissioner which could have suspended the prescriptive period for collection under Section 224 of the Tax Code of 1977, as amended; and, petitioner BPI, other than filing a request for reconsideration of Assessment No. FAS-5-85-89-002054, did not make repeated requests or performed positive acts that could have persuaded the respondent BIR Commissioner to delay collection, and that would have prevented or estopped petitioner BPI from setting up the defense of prescription against collection of the tax assessed, as required in the Suyoc case.

This is a simple case wherein respondent BIR Commissioner and other BIR officials failed to act

> **promptly in resolving and denying the request for reconsideration filed by petitioner BPI and in enforcing collection on the assessment. They presented no reason or explanation as to why it took them almost eight years to address the protest of petitioner BPI. The statute on limitations imposed by the Tax Code precisely intends to protect the taxpayer from such prolonged and unreasonable assessment and investigation by the BIR.**' (Emphasis supplied)
>
> Respondent (herein Petitioner) or her duly authorized representatives simply failed to act promptly on petitioner's (respondent's) request for reconsideration and took no effort to collect the deficiency income tax from petitioner (herein respondent) when there was nothing that prevented the BIR from doing so. So that in this case, when the petitioner (herein respondent) received the assessment on April 21, 1993, respondent (herein petitioner) may only collect the deficiency tax until April 1996 but respondent (herein petitioner) rendered a decision denying the protest only on March 22, 2004, eight (8) years have lapsed."[19]

Apparently, from the foregoing conclusion judiciously arrived at by the Court in Division, herein petitioner failed to properly act on respondent's protest (in the form of a request for reconsideration) within the prescribed period mandated by law.

Records reveal that as early as May 19, 1993, respondent already filed a protest letter and requested for a reconsideration of the assessment against it which remains unacted by the petitioner until November 29, 2001 where the Chief of the BIR appellate Division sent a letter to respondent requiring it to submit some documents and finally the Decision which was rendered only on March 22, 2004. As aptly ruled by the Court in Division, petitioner's right to collect at the time it acted upon the protest of the respondent has already

[19] Decision dated May 6, 2008, CTA Case No. 6971; Docket, pp. 35-37.

lapsed. Further, the contention that respondent executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal revenue Code" (Waiver) on November 16, 1993 cannot be used by herein petitioner as a basis to extend the period for assessment and collection as there was no evidence that petitioner acted upon such waiver. The waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. As an agreement, petitioner needs to take action upon the waiver before it takes effect for the relinquishment of respondent's right to invoke the defense of prescription. Evidently, in the case at bench, petitioner also failed to sign the waiver or pose any sign of acceptance of the waiver, hence, the unilateral act of respondent in executing the said document did not produce any effect to the prescriptive period for assessment and collection of respondent's deficiency tax.

It bears stressing that this Court cannot turn blind on the importance of the statute of limitations upon the assessment and collection of internal revenue taxes provided for under the NIRC. 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 properly in the making of the 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 a 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 beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.[20]

By way of reiteration, We would like to emphasize that the period for petitioner to assess and collect an internal revenue tax is limited to three (3) years by Section 203 of the NIRC of 1977, as amended, which states:

> "**SEC. 203**. Period of limitation upon assessment and collection. — Except as provided in the succeeding section, 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 the 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."

Evidently, petitioner has three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. When petitioner validly issues an assessment against a taxpayer for

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[20] Republic of the Philippines vs. Luis G. Ablaza, No. L014519, July 26, 1960, 108 Phil. 1105, 1108.

deficiency taxes, within either the three (3) year or ten (10)-year period, then petitioner has another three (3) years after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding.

However, the three-year period of limitations on the assessment and collection of national internal revenue taxes as set by Section 203 of the NIRC of 1977, as amended, can be affected, adjusted, or suspended, in accordance with Sections 223 and 224 of the same Code, in relation to Revenue Memorandum Order No. 20-90 and Revenue Regulations No. 12-85, and the doctrine laid down in the case of *Collector of Internal Revenue vs. Suyoc Consolidated Mining Co.*[21]

In view thereof, the rules on the exceptions to the statute of limitations on collection may be summarized as follows: the statute of limitations on collection may only be interrupted or suspended by a valid waiver executed in accordance with paragraph (d) of Section 223[22] of the Tax Code of 1977, as amended, and the existence of the circumstances enumerated in Section 224[23] of the same Code, which includes a request for reinvestigation granted by the BIR Commissioner; and even when the request for reconsideration or reinvestigation is not accompanied by a valid waiver or there is no request for reinvestigation that had been granted by the BIR Commissioner, the taxpayer may still be held in estoppel and be prevented from setting up the defense of prescription of the statute of limitations on collection when, by his own repeated requests or positive acts, the Government had been, for good

[21] 104 Phil. 819 (1958).
[22] Now Section 222(b) of the NIRC of 1997.
[23] Now Section 223 of the NIRC of 1997.

reasons, persuaded to postpone collection to make the taxpayer feel that the demand is not unreasonable or that no harassment or injustice is meant by the Government, as laid down by this Court in the *Suyoc* case.[24] As correctly found by the Court in Division, none of the foregoing exceptions is applicable in the case at bench. Therefore, petitioner's right to collect from respondent the deficiency income tax for taxable year 1989 had already prescribed.

Correspondingly, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated May 6, 2008 and July 14, 2008, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[24] Bank of the Philippine Islands vs. Commissioner of Internal Revenue, G.R. No. 139736, October 17, 2005.

CERTIFICATION

Pursuant to Section 13, 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice