Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ASIA UNITED INSURANCE, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8916
For: Assessment

Members:

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

Promulgated:

MAY 17 2017 2:15 pm

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review[1] filed on October 29, 2014 by Asia United Insurance, Inc., pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax

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[1] Docket, pp. 6-32.
[2] 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, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.
[3] Act Creating the Court of Tax Appeals.
[4] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.
[5] Sec. 4. *Where to appeal; mode of appeal.* –

Appeals, as amended, against the Commissioner of Internal Revenue, questioning the alleged deficiency documentary stamp tax (DST) assessment in the amount of ₱5,266,047.85 for taxable year (TY) 2003.[6]

Petitioner Asia United Insurance, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at Room 777, 7th Floor BPI Condominium, Plaza Cervantes, Binondo, Manila City.[7] It is engaged in the business of insurance and a registered taxpayer with Tax Identification Number 207-647-2006.[8]

Respondent is the duly appointed head of the Bureau of Internal Revenue (BIR) that is in charge of the assessment and collection of all internal revenue taxes, fees and charges, granting of refunds, abatement of tax assessments, and examination of books of accounts and returns filed with the BIR to determine the correctness of taxes paid. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 9, 2004, petitioner received a Letter of Notice (LN) No. 032-34-2004 dated October 25, 2004, informing petitioner that after a reconciliation of its due DST based on the third-party information from the Insurance Commission and actual payment sourced from respondent's records, there was underpayment of its documentary stamp tax in the amount of ₱20,783,192.67 for TY 2003.[9] As such, petitioner replied through a letter dated November 17, 2004, stating that the amount should be ₱20,651,949.82 instead of ₱20,783,192.67 and requested that the said amount be paid on installment basis.[10] On December 8, 2004, petitioner received respondent's letter dated November 23, 2004, denying the said request.[11]

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Par. I, Statement of the Case, Pre-Trial Order, Docket, p. 340

[7] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 303

[8] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 304; Exhibit "P-1", Docket, p. 99

[9] Par. 4, Summary of Admitted Facts, JSFI, Docket, p. 304; Exhibit "P-3", Docket, p. 101

[10] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 304; Exhibit "P-4", Docket, p. 102

[11] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 304

Accordingly, petitioner sent respondent a letter[12] dated December 21, 2004, together with BIR Form No. 0605[13] and Land Bank of the Philippines (LBP) Payment Slip, stating that an initial payment of ₱5,651,949.82 was made and reiterating its request to pay the deficiency in monthly installments. Petitioner likewise sent letters[14] on various dates to respondent, together with BIR Form No. 0605 and LBP payment slip, evidencing the payment of the basic deficiency DST.[15]

Despite the foregoing, petitioner received a Preliminary Assessment Notice[16] (PAN) dated January 24, 2005, assessing it for deficiency DST in the amount of ₱20,218,008.88, inclusive of interest and compromise penalty, to wit:[17]

DEFICIENCY DOCUMENTARY STAMP TAX-Sec. 184 NIRC

Direct Premiums			₱121,309,894.36
DST Due (at ₱0.50/4.00)			15,163,737.00
Add:	DST payable beg. per IC Report		12,019,455.67
DST Due for Remittance			₱ 27,183,192.67
Less:	Remittance/Payment		
	From Feb. 2003-Dec. 2003	₱5,900,000.00	
	BIR0605-Dec. 2004	5,651,949.82	11,551,949.82
Deficiency Documentary Stamp Tax			15,631,242.85
Add:	Increments		
	Interest: 01/06/04-02/20/05-Sec. 249 NIRC	₱4,561,766.03	
	Compromise Penalty-RMO 1-90	25,000.00	4,586,766.03
Total Amount Payable			₱ 20,218,008.88

On February 22, 2005, respondent received petitioner's Reply to the PAN, alleging that the balance of the latter's deficiency tax liability was only ₱12,000,000.00 and not ₱15,631,242.85, as well as reiterating its request to pay such deficiency in installment and to waive the payment of interest and compromise penalty due to petitioner's negative financial condition.[18]

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[12] Exhibit "P-5", Docket, p. 103
[13] Exhibit "P-6", Docket, p. 104
[14] Exhibits "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", and "P-16", Docket, p. 106, 109, 112, 115, 118, 121, 124, 127, 130, and 133, respectively
[15] Par. 8, Summary of Admitted Facts, JSFI, Docket, pp. 304 to 305
[16] Exhibit "P-17", Docket, p. 136
[17] Par. 9, Summary of Admitted Facts, JSFI, Docket, p. 305
[18] Par. 10, Summary of Admitted Facts, JSFI, Docket, p. 305; Exhibit "P-18", Docket, p. 137

On May 23, 2005, respondent issued an Amended PAN[19] which petitioner received on even date,[20] still assessing the latter for a DST deficiency in the amount of ₱13,308,257.42 for TY 2003, inclusive of interest and compromise penalty, *viz*:[21]

DEFICIENCY DOCUMENTARY STAMP TAX-Sec. 184 NIRC

Deficiency Basic DST Due per PAN dated Jan. 24, 2005			₱15,631,242.85
Less: Adjustments/Payments			
Discrepancy on DST payable as of Dec. 31, 2002			
DST payable as of Dec. 31, 2002 per IC Report		₱12,019,455.67	
Less: Per Computations			
DST payable as of Dec. 31, 2001 per IC Report	₱10,757,829.98		
Add: DST payable for 2002	14,648,623.93		
Total	₱25,406,453.91		
Less: Payments in 2002	13,494,421.83	11,912,032.08	
Discrepancy		107,423.59	
Payment on January 23, 2003		500,000.00	
Payments from January 2005 to April 2005		6,700,000.00	7,307,423.59
Net Basic Deficiency DST Due			₱8,323,819.26
Add: Increments			
Interest: 01/06/04-05/27/05-Sec. 249 NIRC		₱4,959,438.16	
Compromise Penalty-RMO 1-90		25,000.00	4,984,438.16
Total Amount Payable			₱13,308,257.42

On January 31, 2006[22], petitioner received a Final Assessment Notice[23] (FAN) (Demand No. 34-2003) dated January 27, 2006, assessing it for alleged deficiency DST in the amount of ₱5,289,866.91, inclusive of interest, and compromise penalty in the amount of ₱25,000.00 for TY 2003, as follows:[24]

Basic DST due per amended PAN dated May 23, 2005	₱8,323,819.06
Less: payments from August 31, 2005-October 28, 2005	8,300,000.00
Deficiency DST Due	₱ 23,819.06
Add: 25% Surcharge	
Interest (sec. 249)	

BALANCE		INTEREST	
AS OF	AMOUNT	PERIOD COVERED	DUE
1/5/2004	₱ 20,675,769.08	01/06/04 – 12/20/04	₱ 3,951,201.50
12/22/2004	15,023,819.06	12/22/04 – 01/25/05	283,769.90
1/26/2005	13,523,819.26	1/27/05 – 02/15/05	142,737.15
2/16/2005	12,023,819.26	02/17/05 – 03/29/05	287,218.98
3/30/2005	9,823,819.06	04/01/05 – 05/31/05	152,799.68
4/29/2005	8,323,816.06	04/30/05 – 05/31/05	143,348.65
6/1/2005	6,823,819.06	06/02/05 – 06/29/05	106,137.68
6/30/2005	5,323,819.06	07/01/05 – 07/28/05	82,806.68

[19] Exhibit "P-19", Docket, p. 138
[20] Par. 16, Petition for Review, Docket, pp. 10 to 11
[21] Par. 11, Summary of Admitted Facts, JSFI, Docket, p. 305
[22] Exhibit "R-1", Docket, p. 233
[23] Exhibit "P-20", Docket, p. 139
[24] Par. 12, Summary of Admitted Facts, JSFI, Docket, p. 305

7/20/2005	3,823,819.06	07/30/05 – 08/29/05	63,727.77	
8/3/2005	2,323,819.06	08/31/05 – 09/29/05	38,726.44	
9/30/2005	823,819.06	10/01/05 – 10/27/05	12,356.05	
10/28/2005	23,819.06	10/29/05 – 01/30/06	1,217.37	5,266,047.85
Compromise Penalty				
TOTAL AMOUNT DUE & COLLECTIBLE				₱5,289,866.91

Petitioner subsequently asked respondent to compute the interest on deficiency DST from the amount of ₱23,819.06, which was the balance of the former's DST liability and not from the amount of ₱8,323,819.06, which was the original deficiency DST.[25] However, respondent denied the said request on March 30, 2006.[26]

Petitioner through a letter dated April 25, 2006, requested the reduction or waiver of interest in the amount of ₱5,266,047.85, and respondent received the said letter on April 27, 2006.[27] Nonetheless, petitioner fully paid the basic deficiency DST for TY 2003 amounting to ₱23,819.06 on May 3, 2006.[28]

Respondent acknowledged receipt of petitioner's payment of the DST amounting to ₱23,819.06 via letter dated June 13, 2006.[29] However, respondent still denied petitioner's request for a reduction of interest and asked petitioner to settle the increments of ₱5,291,047.85.[30]

Petitioner sent again a letter dated June 26, 2006 to respondent, which the latter received on July 13, 2006, reiterating the former's request for the abatement of interest and compromise penalty due to its sensitive financial situation.[31] As a result, Regional Director Alfredo V. Misajon indorsed the docket of petitioner's tax case to respondent for the approval of the abatement of interest and compromise penalty amounting to ₱5,291,047.85.[32]

In a letter dated November 9, 2009, respondent approved the abatement of the compromise penalty amounting to ₱25,000.00, but

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[25] Exhibit "R-1", Docket, p. 233
[26] Exhibit "R-2", Docket, p. 235
[27] Par. 13, Summary of Admitted Facts, JSFI, Docket, p. 305; Exhibit "R-3", Docket, p. 236
[28] Par. 14, Summary of Admitted Facts, JSFI, Docket, pp. 305 to 306; Exhibit "P-21", Docket, p. 141
[29] Exhibit "R-4", Docket, p. 237
[30] *Ibid.*
[31] Par. 15, Summary of Admitted Facts, JSFI, Docket, p. 306; Exhibit "P-22", Docket, p. 163; Exhibit "R-5", Docket, p. 238
[32] Exhibit "R-6", Docket, p. 239

denied the abatement of the interest on deficiency DST amounting to ₱5,266,047.85. Petitioner received the subject letter on January 8, 2010.[33]

On December 18, 2013, petitioner received the Certificate of Approval for the abatement of the compromise penalty and the Notice of Denial as regards the request for abatement of the interest in the deficiency DST.[34] On even date, respondent served upon petitioner a Warrant of Distraint and/or Levy, collecting the interest on the latter's deficiency DST for TY 2003 in the amount of ₱5,266,047.85.[35]

Through a letter dated February 28, 2014, petitioner questioned and protested the right of respondent to initiate any collection proceedings for the interest and/or penalties in petitioner's deficiency DST for TY 2003 on the ground that the right of respondent to collect has already prescribed. The copy of said letter was received by respondent on March 4, 2014.[36]

On September 16, 2014, respondent denied petitioner's protest against the aforesaid collection of interest on the ground that the right of the former to collect has not yet prescribed. A copy of the said denial was received by petitioner on September 30, 2014.[37]

Thus, petitioner filed this Petition for Review (With Motion to Suspend Collection of Deficiency Interest and Penalties Subject of this Petition)[38] on October 29, 2014.

Respondent filed an Answer on December 9, 2014, interposing the following special and affirmative defenses:

> "33. 'The statutory period of limitation for collection may be interrupted if by the taxpayer's repeated requests or positive acts, the government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the government.'

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[33] Par. 16, Summary of Admitted Facts, JSFI, Docket, p. 306; Exhibit "P-23", Docket, p. 164
[34] Par. 17, Summary of Admitted Facts, JSFI, Docket, p. 306
[35] Exhibit "P-24", Docket, p. 189
[36] Par. 19, Summary of Admitted Facts, JSFI, Docket, p. 306; Exhibit "P-2", Docket, pp. 74 to 76
[37] Par. 20, Summary of Admitted Facts, JSFI, Docket, p. 307; Exhibit "P-25", Docket, p. 165
[38] Docket, pp. 7 to 21

34. 'After inducing the Commissioner, as in fact he did, it is most unfair for the taxpayer to elude his tax liability to the prejudice of the government by invoking the technical ground of prescription. These repeated positive requests or positive acts on the part of the taxpayer justify the suspension of prescriptive period for collection.'

35. In the present case, petitioner's repeated acts of paying its principal deficiency DST liability by installment sans the interest, as well as its repeated requests for reduction, waiver, and abatement of the interest, clearly demonstrate positive requests or positive acts on the part of the petitioner that justify the suspension of the prescriptive period for collection. Hence, respondent is not barred from collecting the interest on the deficiency DST liability of the petitioner for taxable year 2003 in the amount of PhP5,266,047.85 and the Warrant of Distraint and/or Levy dated 18 December 2013 is valid."

The Pre-Trial Brief for Petitioner[39] was submitted on March 16, 2015; while Respondent's Pre-Trial Brief[40] was filed through registered mail on March 13, 2015 and received by the Court on March 20, 2015.

The parties submitted their Joint Stipulation of Facts and Issues[41] on April 8, 2015, which the Court approved via Resolution dated April 21, 2015 and consequently terminated the pre-trial.[42] The Court subsequently issued a Pre-Trial Order[43] on May 5, 2015.

In support of the motion to suspend the collection of tax, petitioner presented Ms. Mary Therese Helen Yu as witness and formally offered its documentary evidence. The Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-25", "P-26", "P-28", and "P-28-a".[44]

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[39] Docket, pp. 193 to 214
[40] Docket, pp. 251 to 258
[41] Docket, pp. 303 to 325
[42] Resolution dated April 21, 2015, Docket, p. 328
[43] Docket, pp. 340 to 354
[44] Resolution dated June 11, 2015, Docket, p. 384

During trial on the merits held on May 5, 2015, petitioner's counsel manifested that he would be adopting the testimony of Ms. Yu in her Judicial Affidavit dated November 11, 2014 as part of petitioner's evidence, and respondent did not interpose any objection thereto.[45]

On July 28, 2015, the Court granted petitioner's motion for the suspension of the collection of tax liability.[46] Accordingly, respondent and any BIR officer and/or employee were ordered to hold in abeyance the collection of petitioner's tax liability under Warrant of Distraint and/or Levy dated December 18, 2013, provided a surety bond was posted.[47] However, petitioner filed a Motion for Partial Reconsideration[48], which the Court denied on October 19, 2015.[49]

Petitioner subsequently filed the required surety bond on October 29, 2015, which the Court noted via Resolution dated November 3, 2015.[50]

As regards the merits of this case, petitioner formally offered its documentary evidence. The Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-28", "P-28-a", "P-29", and "P-29-a".[51]

The documentary evidence formally offered by the petitioner are as follows:

Exhibit:	Description:
P-1	AUII's BIR Certificate of Registration Form No. 2303 (OCN 8RC0000019690)
P-2	AUII's Letter to the BIR dated 28 February 2014
P-3	Letter of Notice (LN No. 032-34-2004) dated 25 October 2004
P-4	Reply Letter to Letter of Notice (LN No. 032-34-2004) dated 17 November 2004
P-5	AUII's Letter to the BIR dated 21 December 2004

45 Minutes of the hearing dated May 5, 2015, Docket, pp. 356 to 357
46 Resolution, Docket, pp. 397 to 399
47 *Ibid.*
48 Docket, pp. 400 to 408
49 Resolution, Docket, pp. 422 to 425
50 Resolution dated November 3, 2015, Docket, p. 469
51 Resolution dated December 18, 2015, Docket, pp. 473 to 474

P-6	BIR Form 0605 stamped received on 21 December 2004 and Land Bank of the Philippines payment slip dated 21 December 2004
P-7	Letter to the BIR dated 31 January 2005 with attached BIR Form 0605 stamped received on 26 January 2005 and Land Bank of the Philippines payment slip dated 26 January 2005
P-8	Letter to the BIR dated 16 February 2005 with attached BIR Form 0605 stamped received on even date and Land Bank of the Philippines payment slip on even date
P-9	Letter to the BIR dated 30 March 2005 with attached BIR Form 0605 stamped received on 30 March 2005 and Land Bank of the Philippines payment slip dated 29 March 2005
P-10	Letter to the BIR dated 29 April 2005 with attached BIR Form 0605 stamped received on even date and Land Bank of the Philippines payment slip dated 27 April 2005
P-11	Letter to the BIR with attached BIR Form 0605 and Land Bank of the Philippines payment slip which are all dated 01 June 2005
P-12	Letter to the BIR with attached BIR Form 0605 and Land Bank of the Philippines payment slip which are all dated 30 June 2005
P-13	Letter to the BIR dated 28 July 2005 with attached BIR Form 0605 stamped received on 29 July 2005 and Land Bank of the Philippines payment slip dated 29 July 2005
P-14	Letter to the BIR with attached BIR Form 0605 and Land Bank of the Philippines payment slip which are all dated 30 August 2005
P-15	Letter to the BIR with attached BIR Form 0605 and Land Bank of the Philippines payment slip which are all dated 30 September 2005
P-16	Letter to the BIR with attached BIR Form 0605 and Land Bank of the Philippines payment slip which are all dated 28 October 2005
P-17	Pre-Assessment Notice dated 24 January 2005
P-18	AUII's Reply Letter to the Pre-Assessment Notice stamped received by the BIR on 22 February 20015
P-19	Amended Pre-Assessment Notice dated 23 May 2005
P-20	Final Assessment Notice (Demand No. 34-2003) dated 27 January 2006
P-21	AUII's Letter to the BIR with attached BIR Form 0605 and Land Bank of the Philippines payment slip which are all dated 03 May 2006
P-22	AUII's Letter to BIR dated 26 June 2006
P-23	BIR's Letter to AUII dated 09 November 2009
P-24	Warrant of Distraint and/or Levy

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P-25	BIR's Letter to AUII dated 16 September 2014
P-28 & P-28-a	Judicial Affidavit of Ms. Mary Therese Helen Yu dated 11 November 2014 including the signature of Ms. Mary Therese Helen Yu
P-29 & P-29-a	Supplemental Judicial Affidavit of Ms. Mary Therese Helen Yu dated 05 March 2015 including the signature of Ms. Mary Therese Helen Yu

On the other hand, respondent presented Revenue Officer Gloria S. Maliwanag as sole witness. Thereafter, respondent formally offered Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", and "R-7-1", which the Court later admitted as respondent's evidence.[52]

Respondent's documentary evidence are as follows:

Exhibit:	Description:
R-1	Letter dated 23 February 2006
R-2	Letter dated 30 March 2006
R-3	Letter dated 25 April 2006
R-4	Letter dated 13 June 2006
R-5	Letter dated 26 June 2006
R-6	Indorsement dated 26 July 2006
R-7	Judicial Affidavit of Gloria S. Maliwanag
R-7-1	Name and signature of Gloria S. Maliwang on the upper left portion of page 7 of her Judicial Affidavit

After considering the filing of respondent's Memorandum[53] on May 17, 2016 and the Memorandum[54] for petitioner on June 20, 2016, the instant case was deemed submitted for decision on June 30, 2016.[55]

The parties submitted the following issue for this Court's determination:

Whether the right of respondent to collect interest on petitioner's deficiency DST for TY 2003 is already barred by prescription.

Petitioner contends that the five-year period to collect payment on its assessed deficiency DST has already lapsed. Allegedly,

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[52] Resolution dated April 8, 2016, Docket, pp. 495 to 496
[53] Docket, pp. 502 to 509
[54] Docket, pp. 510 to 527
[55] Resolution, Docket, p. 529

respondent has not enforced any collection proceeding within five years since the FAN was issued on January 31, 2006. Petitioner claims that only on December 18, 2013 that respondent enforced the collection of the assessed deficiency DST. There is allegedly no written agreement between petitioner and respondent which could have extended the period to collect the said deficiency.

Petitioner also posits that a request for abatement and partial payment do not stall the prescriptive period to collect tax liability. It is alleged by petitioner that the letter requests for abatement and to pay in installment made by petitioner are not among the grounds which would toll the prescriptive period or prohibit respondent from beginning the collection.

Respondent counter-argues that his right to collect deficiency DST from petitioner has not yet prescribed. Allegedly, petitioner's repeated acts in paying its principal deficiency DST liability by installment *sans* the interest, and repeated requests for the reduction, waiver, and abatement of interest and increments, demonstrate positive requests or positive acts on the part of petitioner that would justify the suspension of the prescriptive period for collection. The aforesaid arguments are allegedly anchored on the ruling of the Supreme Court in *The Collector of Internal Revenue vs. Suyoc Consolidated Mining Company, et al.*[56] *(Suyoc* case*)*.

Considering petitioner's and respondent's arguments, the Court is now confronted with the factual issue of whether petitioner's request for reduction, waiver or abatement of interest and compromise penalty is either a motion for reinvestigation or positive request/act that would suspend or toll the prescriptive period for collection.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:

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[56] G.R. No. L-11527, November 25, 1958

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Relative thereto is Section 223 of the NIRC of 1997, as amended, which states:

"SEC. 223. *Suspension of Running of Statute of Limitations.* – The **running of the Statute of Limitations** provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy 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)*

In the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[57], the Supreme Court distinguished a request for reconsideration from a request for reinvestigation, and further ruled that the latter must be granted by the BIR Commissioner to suspend the running of the prescriptive periods for collection, to wit:

> "This Court gives credence to the argument of petitioner BPI that there is a distinction between a request for reconsideration and a request for reinvestigation. Revenue Regulations (RR) No. 12-85, issued on 27 November 1985 by the Secretary of Finance, upon the recommendation of the BIR Commissioner, governs the procedure for protesting an assessment and distinguishes between the two types of protest, as follows–
>
> xxx xxx xxx
>
> > (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.

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[57] G.R. No. 181836, July 9, 2014

> **(b) *Request for reinvestigation.* – refers to a plea for re-evaluation of an assessment on the basis of newly-discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both.**

> xxx 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 can not.

> xxx xxx xxx

> Even if, for the sake of argument, this Court glosses over the distinction between a request for reconsideration and a request for reinvestigation, and considers the protest of petitioner BPI as a request for reinvestigation, the filing thereof could not have suspended at once the running of the statute of limitations. **Article 224 of the Tax Code of 1977, as amended, very plainly requires that the request for reinvestigation had been granted by the BIR Commissioner to suspend the running of the prescriptive periods for assessment and collection.**" *(Emphasis supplied)*

Records show that petitioner received the FAN on January 31, 2006.[58] Likewise, instead of filing a protest letter against the FAN, petitioner sent a letter dated February 23, 2006 and received by respondent on February 28, 2006, requesting that the interest be computed on the deficiency DST balance of ₱23,419.06 and not on the original deficiency DST of ₱8,323,819.06, detailed as follows:[59]

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[58] Exhibit "R-1", Docket, p. 233
[59] *Ibid.*

"At the outset, we would like to thank your good Office for allowing us to pay our 2003 deficiency documentary stamp tax (DST) of ₱8,763,736.80, exclusive of interest, on installment basis.

xxx xxx xxx

In your Assessment Notice No. 34-2003 dated January 27, 2006, which we received January 31, 2006, we note that you are charging us interest in the amount of ₱5,266,047.85 computed on our original deficiency DST of ₱8,323,819.06. Again, we would like to request your good Office to compute said interest on the deficiency DST balance of ₱23,419.06, as the interest of ₱5,266,07.85 being charged by you is beyond our financial capacity to pay due to the following reasons:"

It is clear from the foregoing that petitioner is not protesting the FAN, but instead it is requesting a reconsideration to reduce the amount of the interest to be paid. Also, the said request cannot be considered a motion for reinvestigation since petitioner did not submit any additional evidence but merely appealed to respondent to reduce the interest due to the former's financial capacity to pay.

Accordingly, the FAN is final and executory. As such, respondent may already begin the distraint or levy or proceed in court for the collection of petitioner's tax liability.

Further, the Court finds that petitioner's repeated acts in paying its principal deficiency DST liability by installment *sans* the interest and repeated requests for the reduction, waiver, and abatement of interest and increments would not justify the suspension of the prescriptive period for collection. Likewise, the doctrine laid down by the Supreme Court in the *Suyoc* case is not applicable to the instant case considering the differences on the facts attending the two cases.

In the *Suyoc* case, the taxpayer filed a request for an extension to file its return since its records had been lost or destroyed, and the same was granted by the BIR Commissioner. The taxpayer filed three income tax returns for taxable year ending December 31, 1941. On the basis of the second final return, an assessment was made for deficiency income tax plus surcharges and interest. Then, the taxpayer asked for an extension of at least one year to pay the amount assessed, reserving its right to question the correctness of the assessment. The BIR Commissioner granted an extension of only three months. However, the taxpayer failed to pay its tax liability within the period granted, thus, the BIR Commissioner sent a letter demanding payment of the tax due as assessed. The taxpayer then filed a motion for reconsideration and reinvestigation which the BIR Commissioner granted. Subsequently, the BIR Commissioner made another assessment reducing the tax deficiency, and several other negotiations conducted thereafter at the request of the taxpayer. Eventually, the BIR Commissioner made a new assessment and notified the taxpayer of the same on July 28, 1955; however, the latter had already filed a petition for review of the assessment made on July 26, 1955.

Unlike in this case, there is neither a motion for reinvestigation nor any amended FAN issued.

It must be emphasized that petitioner requested the reduction, waiver or abatement of the 2003 deficiency interest for the late payment of DST in the letters of petitioner to respondent dated April 25, 2006[60] and June 26, 2006.[61] A closer perusal of the letter dated June 26, 2006 would reveal that petitioner herein requested the abatement of the charges amounting to ₱5,266,047.85. The said letter is devoid of any fact that would establish that petitioner herein sought for extensions of time to pay or requested for reinvestigation. Thus, respondent may not invoke the ruling in the *Suyoc* case as there is nothing in petitioner's acts which would induce respondent in postponing the collection of the deficiency interest against petitioner.

The Court shall now proceed to resolve the main issue.

Sections 203 and 222(c) and (d) of the NIRC of 1997, as amended, provide:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return,

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[60] Exhibit "R-3", Docket, p. 236
[61] Exhibit "P-22", Docket, p. 163

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 (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

"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.

(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."

To determine prescription, what is essential only is that the facts demonstrating the lapse of the prescriptive period were sufficiently and satisfactorily apparent on the record either in the allegations of the plaintiff's complaint, or otherwise established by the evidence.[62]

Based on the foregoing provisions, respondent has three (3) years from the date of actual filing of the tax return to assess petitioner's documentary stamp tax. When respondent has validly issued an assessment within the three-year period, he has another five

[62] *China Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 172509, February 4, 2015

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(5) years within which to collect the tax due by distraint, levy, or court proceeding. 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 to the taxpayer.

Applying the foregoing to the present case, since petitioner received the FAN on January 31, 2006, respondent had five years therefrom or until January 31, 2011 within which to begin distraint or levy or to proceed in court for the collection of deficiency DST.

It is noteworthy that petitioner did not file any protest against the FAN; thus, it is final and executory.

The following table would show that the prescriptive period within which to collect the interest for late payment of DST for the year 2003 has already lapsed:

Date when Assessment was received	Last Day Prescribed by Law for the Collection of Tax	Date when the Warrant of Distraint and/or Levy was served upon petitioner
January 31, 2006	January 31, 2011	December 18, 2013

It remains undisputed that the Final Assessment Notice (Demand No. 34-2003) was issued by respondent on January 27, 2006[63] and received by petitioner on January 31, 2006[64]. Respondent had five (5) years from January 31, 2006 or until January 31, 2011 within which to collect the interest on the tax due.

Considering that respondent served a Warrant of Distraint and/or Levy[65] to petitioner through its SVP – Accounting Helen Yu on December 18, 2013, it is way beyond the five-year prescriptive period for collection of internal revenue tax as mandatorily required by law. Consequently, the Warrant of Distraint and/or Levy dated December 18, 2013 may not be enforced by respondent for being barred by prescription.

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[63] Exhibit "P-20", Docket, p. 139
[64] Exhibit "R-1", Docket, p. 233
[65] Exhibit "P-24", Docket, p. 189

For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[66] Likewise, the same is reiterated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Standard Chartered Bank*[67].

The Supreme Court thoroughly explained the above principle in *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated*[68], to wit:

> "Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government.
>
> This Court has expounded on the significance of adopting a statute of limitation on tax assessment and collection in this case:
>
> The provision of law on prescription was adopted in our statute books upon recommendation of the tax commissioner of the Philippines which declares:
>
>> Under the former law, the right of the Government to collect the tax does not prescribe. However, in fairness to the taxpayer, the Government should be estopped from

[66] *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.) and the Court of Appeals,* G.R. No. 104171, February 24, 1999

[67] G.R. No. 192173, July 29, 2015

[68] G.R. No. 187589, December 3, 2014

> collecting the tax where it failed to make the necessary investigation and assessment within 5 years after the filing of the return and where it failed to collect the tax within 5 years from the date of assessment thereof. Just as the government is interested in the stability of its collection, so also are the taxpayers entitled to an assurance that they will not be subjected to further investigation for tax purposes after the expiration of a reasonable period of time. (Vol. II, Report of the Tax Commission of the Philippines, pp. 321-322)

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 beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law."

In recapitulation, the Court deems it proper to grant the instant petition considering that the collection of the subject deficiency interest in the amount of ₱5,266,047.85, as implemented by the Warrant of Distraint and/or Levy dated December 18, 2013 is already time-barred by the statute of limitations.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy dated December 18, 2013 is **NULL** and **VOID**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairpersonон, 1st Division