REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

FILIPINAS PALMOIL PLANTATIONS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6429

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
MAR 3 1 2009
3:42 p.m.

x---x

DECISION

CASTAÑEDA, JR., J.:

This is a petition for review of the assessment made by respondent in the total amount of ₱ 2,369,262.94 as deficiency value-added tax of petitioner for the year 1996.

FACTS

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of Philippine law, with principal office located at 7th Floor, Citibank Center, Paseo de Roxas, Makati City.[1]

[1] *JOINT STIPULATION OF FACTS AND ISSUES* (paragraph 1), *Rollo*, pp. 142 to 147.

It is engaged in the business of cultivating, developing, operating, maintaining oil plantations and other agricultural lands, and harvesting oil palm and other agricultural crops thereon,[2] and is a value-added tax (VAT) taxpayer registered with the Bureau of Internal Revenue (BIR) as such in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997 with VAT Registration/Taxpayer Identification No. 000-317-036.[3]

On the other hand, respondent is the Commissioner of Internal Revenue duly appointed to perform the duties of his office, including, among others, the power to act upon and render final decisions on the protest against internal tax assessments, and holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes.[4]

On December 4, 1998, petitioner was served with Letter of Authority No. 141790 dated December 2, 1998, whereby Revenue Officers Noli M. Perez and Lisa E. Tomameng were authorized to examine petitioner's books of accounts and other accounting records for VAT for the period from January 1, 1996 to December 31, 1996.[5]

On separate dates[6], the BIR issued three notices addressed to petitioner, wherein petitioner was required to submit the following documents: books of accounts, sales and purchase journals, subsidiary sales and purchase books, sales receipts/invoices, purchase invoices, inventory list, schedule stating the name of seller/suppliers, schedule of input taxes claimed,

---

[2] *Id.* (paragraph 3), *Id.*
[3] *Id.* (paragraph 4), *Id.*
[4] *Id.* (paragraph 2), *Id.*
[5] Exhibit "1", BIR Records, p. 29.
[6] December 3, 1998, January 20, 1999, and February 1, 1999.

and all other pertinent documents and records relative to the period under audit.[7]

On May 20, 1999, petitioner executed a WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE (Waiver), which will expire on December 31, 1999.[8]

On October 22, 1999, the BIR issued a Pre-Assessment Notice covering the VAT liabilities for the year 1996 of petitioner.[9]

On December 2, 1999, the BIR received from petitioner a letter dated November 24, 1999 from petitioner, requesting for a reinvestigation or review of the finding of the BIR.[10]

On December 6, 1999, petitioner executed another Waiver to expire on December 31, 2000.[11]

On May 25, 2000, petitioner received from the respondent Assessment Notice No. 104-97-00013-35 and Formal Letter of Demand[12] both dated April 19, 2000 assessing Petitioner for deficiency VAT for taxable year 1996 in the amount of ₱ 2,306,226.38 (inclusive of interest) broken down as follows:[13]

Value-Added Tax	
VAT Sales per audit	₱ 529,224,459.03
Add: Other income per Income Statement	4,480,109.00
Total Vatable Income	₱ 533,704,568.03

[7] Exhibits "2", "3", and "4", BIR Records, pp. 30, 31, and 32, respectively.
[8] Exhibit "5", BIR Records, p. 36.
[9] Exhibit "9", *Id.*, p. 103.
[10] BIR Records, p. 104.
[11] Exhibit "7", BIR Records, p.41.
[12] Exhibit "12", *Id.*, p.120.
[13] *JOINT STIPULATION OF FACTS AND ISSUES* (paragraph 5) *Rollo*, pp. 142 to 147.

Output Tax	₱	53,370,456.80
Less: Input Tax Per Audit		2,096,947.42
VAT Due	₱	51,273,509.38
Less: VAT Payments		49,879,984.60
Deficiency VAT	₱	1,393,524.78
Add: Interest from 1.21.97 to 4.30.00		912,701.60
Total VAT Due and Payable	₱	2,306,226.38

The above deficiency VAT allegedly arose due to the following:

(i) Unrecorded Vatable Sales amounting to ₱ 896,315.27 on the ground that said amount was not subjected to VAT; and

(ii) Disallowance of input tax claimed amounting to ₱ 855,882.35 on the ground that total allowable input taxes per source document amounted only to 2,096,947.42 while per return total input claimed was ₱ 2,952,829.77.[14]

On June 16, 2000, within the 30-day period within which to formally protest any deficiency tax assessment, petitioner filed with the Office of the Acting Regional Director of Revenue Region No. 17 (Butuan City) its protest letter dated June 5, 2000 pursuant to then Section 229 of the NIRC, as amended,[15] specifying the factual and legal bases of the protest against the aforecited assessment, requesting the reinvestigation of the deficiency VAT assessment therein[16], and enclosing a copy of petitioner's letter[17] to one of its major customers granting its request for a higher discount due to the very

[14] *Id.* (paragraph 6), *Id.*
[15] Now Section 228, NIRC of 1997.
[16] *Id.* (paragraph 7), *Id.* See also Exhbit "RRRRRRRR".
[17] Exhibit "UUUUUUUU".

poor quality of crude palm oil and copies of the only available sales invoices (#s 577 and 578)[18].

In the said protest letter, petitioner, in part, stated—

1. Unrecorded vatable sales

xxxx

We have enclosed a copy of our letter to one of our major customers granting their request for a higher discount due to the very poor quality of the CPO and copies of the only available sales invoices (#s 577 and 578) with the adjusted discounts reflected including the corresponding adjusting entries.

Our problem, however, is we lost some of our records during the transfer of our office from Makati City to Quezon City. Thus, we have been unable to produce all the other sales invoices which will account for the entire amount of the supposed unrecorded sales.

xxxx

Our accountant presented all the original documents pertaining to the company's money placements to prove that part of other income shown in the income statement was already subjected to final withholding tax. However, it seems that this was not considered in the assessment.

2. Unsupported input tax claimed

Only the transactions of the Manila office, which constitutes a small number of transactions, had no support for the same reason that records were lost. However, we submitted all the supports for the Agusan transactions plus a summary of the Manila office transactions. However, it seems that the entire assessment for deficiency covered transactions of both offices.[19]
xxxx

On December 20, 2000, the BIR received from the petitioner another letter dated December 19, 2000, which were written by way of a supplemental protest to the above-stated June 5, 2000 protest letter, arguing that the Formal Letter of Demand dated April 19, 2000 was already barred by prescription, pursuant to Sections 203 and 222(b) of the NIRC of 1997.[20]

---

[18] Exhibits "SSSSSSSS" and "TTTTTTTT".
[19] Exhibit "RRRRRRRR".
[20] Exhibit "C".

On January 4, 2001, after re-investigation pursuant to the protest letter dated June 5, 2000[21], petitioner received from the respondent Assessment Notice No. 104-97-00013-35 dated December 18, 2000 assessing Petitioner for deficiency VAT for taxable year 1996 in the amount of ₱ 2,369,262.94 (inclusive of interest) broken down as follows:[22]

Value-Added Tax		
VAT Sales per audit		₱ 529,224,459.03
Add: Other income per Income Statement		4,480,109.00
Total Vatable Income		₱ 533,704,568.03
Output Tax		₱ 53,370,456.80
Less: Input Tax Per Audit	₱ 2,096,947.42	
Additional Input Tax per Investigation	69,048.48	2,165,995.90
VAT Due		₱ 51,204,460.90
Less: VAT Payments		49,879,984.60
Deficiency VAT		₱ 1,324,476.30
Add: Interest from 1.21.97 to 12.31.00		1,044,786.64
Total VAT Due and Payable		₱ 2,369,262.94

The above deficiency VAT allegedly arose due to the following:

(iii) Unrecorded Vatable Sales amounting to ₱ 896,315.27 on the ground that said amount was not subjected to VAT; and

(iv) Disallowance of input tax claimed amounting to ₱ 786,833.87 on the ground that total allowable input taxes per source

[21] Based on the Joint Stipulation of Facts and Issues of the parties (*Rollo*, pp. 142 to 147), what was stated is "(o)*n January 4, 2001, after re-investigation pursuant to the supplemental protest letter dated December 19, 2000, xxx*". However, upon a careful reading of the said "*supplemental protest letter*" (Exhibit "C"), nowhere in the said letter did petitioner request for any reinvestigation, as it argued that the Formal Letter of Demand has already prescribed, pursuant to Sections 203 and 222(b) of the NIRC of 1997. Thus, there was a palpable mistake on the part of the parties.

[22] *JOINT STIPULATION OF FACTS AND ISSUES* (paragraph 8), *Rollo*, pp. 142 to 147.

document amounted only to ₱ 2,165,995.90 while per return total input claimed was ₱ 2,952,829.77.[23]

Said Assessment Notice No. 104-97-00013-35 dated December 18, 2000, together with a Formal Demand Letter, also dated December 18, 2000, were released and sent by mail on December 22, 2000.[24]

It must be noted that the Assessment Notice No. 104-97-00013-35 dated April 19, 2000 and Assessment Notice No. 104-97-00013-35 dated December 18, 2000 raise the same issues and findings, except that in the latter notice the BIR allowed input tax in the amount of ₱ 69,048.48.[25]

On January 27, 2001, petitioner received a letter dated December 27, 2000 from Mr. Danilo A. Duncano, Acting Regional Director of Revenue Region No. 17-Butuan City, informing petitioner that the case has become final and demandable and was already forwarded to the respondent, and that any further action and/or protest regarding the case should already be addressed to the same.[26]

On February 28, 2001, respondent received a letter from petitioner referring to the above-stated letter of Mr. Duncano.[27]

On March 11, 2002, petitioner received from respondent a Final Notice Before Seizure (FNBS) dated January 23, 2002, demanding petitioner to pay

---

[23] *Id.* (paragraph 9), *Id.*

[24] Exhibits "24" and "27-B". Although these exhibits were objected to by petitioner (*Rollo*, p. 849), the latter did *not* refute, in its Memorandum (*Rollo*, p. 865), that Assessment Notice No. 104-97-00013-35 and Formal Demand Letter, both dated December 18, 2000, were received through mail. Thus, the following presumptions, insofar as the mailing of the said documents are concerned, stands, *viz*: that *"official duty has been regularly performed"* [Section 2(m), Rule 131] and *"a letter duly directed and mailed was received in the regular course of the mail"* [Section 2(v), Rule 131].

[25] *JOINT STIPULATION OF FACTS AND ISSUES* (paragraph 10), *Rollo*, pp. 142 to 147.

[26] Exhibit "D".

[27] Exhibit "E".

the deficiency VAT assessment for the taxable year 1996 in the total amount of ₱ 2,369,262.94.[28]

On March 21, 2002, petitioner also received from the respondent a Warrant of Distraint and/or Levy dated January 31, 2002 seeking to enforce collection measures for the alleged deficiency VAT assessment for the taxable year 1996 in the total amount of ₱ 2,369,262.94.[29]

On the same date, petitioner was informed by Philippine National Bank, Agusan Del Sur Branch, that a Warrant of Garnishment dated January 31, 2002 was issued by the respondent against the deposit of Petitioner in said Bank.[30]

On April 10, 2002, the instant PETITION FOR REVIEW WITH MOTION FOR SUSPENSION OF COLLECTION OF TAX was filed with this Court.

Petitioner instituted said Petition for Review in order to appeal the FNBS within (30) days from receipt thereof, pursuant to Section 228 of the NIRC of 1997 and Section 7 of R.A. 1125, otherwise known as an "Act Creating the Court of Tax Appeals", and the Decision of the Supreme Court (SC) dated July 11, 2001 in the case of *Commissioner of Internal Revenue vs. Isabela Cultural Corporation,* G.R. No. 135210, in which the SC rules as follows:

> In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a

---

[28] *Id.* (paragraph 11), *Id.* - In the Joint Stipulation of Facts. The Final Notice Before Seizure (FNBS) was dated January 23, 2001, however upon examination of the FNBS it was dated January 23, 2002.
[29] *Id.* (paragraph 12), *Id.*
[30] *Id.* (paragraph 13), *Id.*

> *final* notice prior to seizure of property. The letter itself clearly stated that respondent was being given 'this last LAST OPPORTUNITY' to pay; otherwise, its properties would be subjected to distraint and levy. How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of properties?[31]

By Answer[32] filed on May 14, 2002, respondent alleged the following special and affirmative defenses—

> 4. Petitioner did not protest Assessment Notice No. 104-97-00013-35 dated December 18, 2000 for deficiency VAT in the amount of ₱ 2,369,262.94 for the year 1996 within thirty (30) days from its receipt thereof on January 4, 2001. Hence, the assessment has become final, executory and demandable (Section 228, Tax Code) and, therefore, this Honorable Court has no jurisdiction to act on the petition.
>
> 5. Verification of petitioner's sales invoices disclosed that vatable sales in the amount of ₱ 896,315.27 were not subjected to VAT.
>
> 6. Verification also disclosed that the total allowable input taxes per source documents amounted to only ₱ 2,165,995.90, while the total input taxes claimed by petitioner per return amounted to ₱ 2,952,829.77, or an unsupported input tax claim of ₱ 786,833.87.
>
> 7. The assessment was issued in accordance with law and regulations.
>
> 8. All presumptions are in favor of the correctness of tax assessments.
>
> 9. Petitioner has not shown that the collection of the tax will jeopardize its interest and/or the interest of the government, as provided in Section 11 of R.A. No. 1125, so as to justify the suspension of said collection.

On January 7, 2003, the Court issued a Resolution ordering the respondent to cease and desist from enforcing the Warrant of Distraint and/or Levy and the Warrant of Garnishment, both dated January 31, 2002. Such

---

[31] *Id.* (paragraph 14), *Id.*
[32] *Rollo*, pp. 36 to 38.

order was decreed to remain effective until final adjudication of the merits of the case.[33]

After the approval of the parties' Joint Stipulation of Facts and Issues, per this Court's Resolution dated April 11, 2003, trial on the merits ensued.

Per this Court's Resolution dated August 20, 2008, this case was submitted for decision.

ISSUES

As stipulated by the parties[34], the issues of the case are as follows—

1. Whether or not the addition in the amount of ₱ 896,315.27 should form part of Petitioner's additional gross vatable sales for taxable year 1996 subject to VAT;

2. Whether or not disallowance of Petitioner's excess input VAT for taxable year 1996 in the total amount of ₱ 786,833.87 on the ground that such input VAT is unsupported is proper;

3. Whether or not the BIR's right to assess Petitioner of the disputed deficiency tax assessment is already barred by prescription;

4. Whether or not Petitioner protested Assessment Notice No. 104-97-00013-35 dated December 18, 2000 for deficiency VAT in the amount of ₱ 2,369,262.94 for the year 1996;

5. Whether or not the assessment has become final, executory and demandable.

However, the foregoing can be reduced to two basic but essential issues, namely:

1. WHETHER OR NOT THE DISPUTED DEFICIENCY TAX WAS ASSESSED WITHIN THE PERIOD OF LIMITATION PRESCRIBED BY LAW; and

2. IF THE FOREGOING ISSUE IS RESOLVED IN THE AFFIRMATIVE, WHETHER OR NOT THE SUBJECT TAX

[33] *Rollo*, pp. 103 to 104.
[34] See footnote no. 1.

ASSESSMENT HAS BECOME FINAL, EXECUTORY AND DEMANDABLE.

THE COURT'S RULING

The instant petition is not meritorious.

I.

THE ASSESSMENT IS NOT YET BARRED BY PRESCRIPTION

As a rule, Section 203 of the NIRC of 1997 provides the period within which internal revenue taxes shall be assessed. It reads—

> SEC. 203. *Period of Limitation Upon Assessment.*— **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**, 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. (Emphasis supplied)

Correspondingly, Section 222 of the same Code provides the exceptions to such rule, to wit—

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*—
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxxx

Based on the foregoing provisions, the BIR shall, in general, assess internal revenue taxes within three (3) years after the last day prescribed by law for the filing of the return. However, such three-year period will not apply in case the taxpayer filed a false or fraudulent return with intent to evade tax or in case of failure to file a return, in which case, the BIR shall assess the internal revenue tax within ten (10) years after the discovery of the falsity, fraud or omission.

In *Aznar vs. Court of Tax Appeals, et al.*[35], the Supreme Court had the occasion to interpret the above-quoted provisions, to wit—

> We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which aggregates the situations into three different classes, namely "falsity", "fraud" and "omission". That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.
>
> The ordinary period of prescription of 5 years[36] within which to assess tax liabilities under Sec. 331[37] of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a)[38] NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.

In this case, in saying that the assessment has been barred by prescription, petitioner invokes Sections 203 and 222(b) of the NIRC of

---

[35] G.R. No. L-20569, August 23, 1974, 58 SCRA 519.
[36] Now three years.
[37] Now Section 203.
[38] Now Section 222(a).

1997;[39] on the other hand, respondent relies on Section 222(a), arguing that petitioner filed a false return, and thus, the said assessment was not yet barred by prescription.[40]

Specifically, it is petitioner's stand that the assessment has been barred by prescription because it was not made within three (3) years after the last day prescribed by law for the filing of the return; while respondent says otherwise because an assessment may be issued at any time within ten (10) years after the discovery of the falsity.

Thus, the determination on whether, in the instant case, the assessment has been issued within the prescribed period would depend on whether petitioner filed a false return.

As above quoted in *Aznar*, a false return merely implies a deviation from the truth or fact, whether intentional or not.

One of the findings of the BIR examiners who conducted the tax examination on petitioner's records for the year 1996, upon the first investigation and even after reinvestigation, is that there were *"unrecorded vatable sales"* amounting to ₱ 896,315.27, which were not subjected to VAT.

In its protest letter dated June 5, 2000 or at the administrative level, petitioner made the following explanations in regard to the said *"unrecorded vatable sales"* —

> There were sales transactions in January 1996 that had to be adjusted due to justified demands of the company's customers for rebate due to very poor quality of crude palm oil (CPO) delivered. As you are probably aware, the very we season in Agusan del Sur occurs in the months of November to January. The very wet conditions severely affect the quality of the fruits harvested and, consequently, result to poor quality CPO. You

[39] Petitioner's Memorandum, paragraphs 14 to 24. *Rollo,* pp. 870 to 880.
[40] Respondent's Memorandum, pp. 31 to 34. *Rollo,* pp. 937 to 940.

> would note, therefore, that the supposed unrecorded sales occurred only in January with transactions for the rest of the year found in order.
>
> We have enclosed a copy of our letter[41] to one of our major customers granting their request for a higher discount due to the very poor quality of the CPO and copies of the **only available** sales invoices (#s 577 and 578)[42] with the adjusted discounts reflected including the corresponding adjusting entries.
>
> **Our problem, however, is we lost some of our records during the transfer of our office from Makati City to Quezon City.** Thus, we have been unable to produce all the other sales invoices which will account for the entire amount of the supposed unrecorded sales. (Emphases supplied)

Notwithstanding such explanation, petitioner, in this appeal, was able to present and offer *additional* documentary evidence, *viz*: pages 4, 14, and 21 of petitioner's supposed general ledger for year 1996[43], to prove that the said unrecorded sales had been adjusted or reversed in petitioner's financial records.[44]

This cannot be allowed.

In *Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue, et al.*[45], the Supreme Court held—

> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court — which is supposed to *review* administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal. xxx

---

[41] Exhibit "UUUUUUUU".
[42] Exhibits "SSSSSSSS" and "TTTTTTTT", respectively.
[43] Exhibits "VVVVVVVV", "WWWWWWWW", and "XXXXXXXX", respectively
[44] Petitioner's Formal Offer of Evidence, p. 21. *Rollo*, p. 698.
[45] G.R. No. L-29790, February 25, 1982, 112 SCRA 136.

Thus, Our "*review*" shall be limited only to the sales invoice nos. 577 and 578[46] to determine whether the finding of respondent of petitioner's *"unrecorded vatable sales"* should be sustained, with the end in view of determining whether there is falsity in petitioner's VAT return for the first quarter of 1996.

Suffice it to state, however, that the said sales invoices are inadequate to establish the fact of recording of the transactions therein indicated.

For one thing, said sales invoices failed to comply with the invoicing requirements under Section 108(a) of the NIRC, as amended,[47] by not indicating petitioner's VAT registration number or Tax Identification Number. Thus, said invoices are invalid.

For another, to be considered as "recorded", it must be shown that the transactions are reflected on ALL the books of accounts required to be kept by the taxpayer in accordance with the following pertinent provisions of the NIRC, as amended, to wit—

> **SEC. 232.** *Keeping of Books of Accounts.* —
>
> (A) *Corporations, Companies, Partnerships or Persons Required to Keep Books of Accounts.* — All corporations, companies, partnerships or persons required by law to pay internal revenue taxes **shall keep a journal and a ledger or their equivalents**: xxx [48] (Emphasis supplied)
>
> **SEC. 108.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
> xxx
>
> (B) *Accounting Requirements.* — Notwithstanding the provisions of Section 233[49], all persons subject to the value-added tax under Sections

Jz

[46] Exhibits "SSSSSSSS" and "TTTTTTTT", respectively.
[47] Now Section 113(A), NIRC of 1997.
[48] Retained as Section 232 of the NIRC of 1997.
[49] **SEC. 233.** *Subsidiary books.* — All corporations, companies, partnerships, or persons keeping the books of accounts mentioned in the preceding section **may, at their option, keep subsidiary books** as the needs of their business may require: *Provided,* That where such subsidiaries are kept they shall form part of the accounting system of the taxpayer and shall be subject to the same rules and

> 100 and 102 **shall, in addition to the regular accounting records required, maintain a subsidiary sales journal** and subsidiary purchase journal **on which the daily sales** and purchases **are recorded**. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.[50] (Emphases supplied)

Thus, for a sale to be considered as recorded, the taxpayer must present not only the sales invoices, but also the journal, ledger, AND subsidiary sales journal.

Furthermore, it is of no moment that there are, in sales invoice nos. 577 and 578[51], supposed *"adjusting entries"*, since such entries are not in its proper place. Accounting entries are recorded in the above-stated books of accounts, *not* in the sales invoices.

While it may be true that petitioner alleged that its records for the year 1996 was lost with regard to the *"unrecorded vatable sales"*, it is a well-settled rule that the determinations and assessments of the BIR are presumed correct and made in good faith.[52] The taxpayer has the duty of proving otherwise.[53] Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[54]

Thus, having failed to refute the finding of *"unrecorded vatable sales"* by the BIR, such finding stands. Correspondingly, the sales and the VAT thereon were never reflected in the VAT quarterly return of petitioner for the first quarter of 1996. Such being the case, such return is a false return as defined in *Aznar.*

---

regulations as to their keeping, translation, production and inspection as are applicable to the journal and the ledger. (Emphasis supplied) (Retained as Section 233 of the NIRC of 1997)

[50] Now Section 113(B), NIRC of 1997, as amended.

[51] Exhibits "SSSSSSSS" and "TTTTTTTT", respectively.

[52] *Marcos II vs. Court of Appeals, et al.,* G.R. No. 120880, June 5, 1997, 273 SCRA 47.

[53] *Id.*

[54] *Id.*

We need not belabor to examine the other findings of the BIR, since one finding of falsity in the subject return makes the whole return false.

In fine, the subject assessment was not yet barred by prescription.

II.

THE ASSESSMENT HAS BECOME FINAL, EXECUTORY AND DEMANDABLE

In order for this Court to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the respondent to warrant a decision from which a petition for review may be taken to this Court. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof. This is pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 11 of Republic Act No.(RA) 1125, as amended by RA No. 9282.

Section 228 of the NIRC of 1997 provides as follows:

SEC. 228. *Protesting of Assessment.*— xxx

> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xx
>
> 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; otherwise, the decision shall become final, executory and demandable.

xxx xxx xxx

Section 11 of RA No. 1125, as amended by RA No. 9282 provides:

SEC. 11. *Who may appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry of the Secretary of Agriculture or the Central Board of Assessment of Appeals or the Regional Trial Courts may file an appeal with the CTA within (30) thirty days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a) (2) herein.

xxx xxx xxx

In supplementary thereto, Section 3.1.5 of Revenue Regulation No. 12-99 further states:

3.1.5 **Disputed Assessment.** — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory, demandable, in which case, the protest shall be decided by the Commissioner. (Emphasis supplied)

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.

It must be remembered that, on May 25, 2000, petitioner received from the respondent Assessment Notice No. 104-97-00013-35 and Formal Letter of Demand[55] both dated April 19, 2000, and on June 16, 2000, petitioner filed with the Office of the Acting Regional Director of Revenue Region No. 17 (Butuan City) its protest letter dated June 5, 2000, requesting the reinvestigation of the deficiency VAT assessment therein[56], and enclosing certain documents. Jc

---

[55] Exhibit "12", *Id.*, p.120.
[56] *JOINT STIPULATION OF FACTS AND ISSUES* (paragraph 7), *Rollo*, pp. 142 to 147. See also Exhibit "RRRRRRRR".

Thus, the 180-day period commenced to run from June 17, 2000 and ended on December 13, 2000. From the latter date, petitioner had until January 12, 2001 to file a petition for review with this Court, but apparently preferred to await the final decision of the BIR before doing so.

This leads Us to the determination of the BIR's final disposition of the disputed assessment which is ripe for appeal before this Court.

We rule that it is the letter dated December 27, 2000 of Mr. Danilo A. Duncano[57], Acting Regional Director of Revenue Region No. 17-Butuan City which was received by petitioner on January 27, 2001, subsequent to the receiving of Assessment Notice No. 104-97-00013-35 dated December 18, 2000 on January 4, 2001 which constitutes the final decision of the BIR appealable to this Court and *not* respondent's FNBS dated January 23, 2002[58] which was received by petitioner on March 11, 2002[59].

The body of the letter dated December 27, 2000 of Mr. Duncano reads as follows:

> We acknowledge the receipt of the letter of MR. EMMANUEL C. ALCANTARA of SGV&Co. Tax Division dated December 19, 2000, requesting the cancellation of our assessment on your 1996 VAT deficiency for reasons quoted under Sec. 203 and Sec. 222(b) of the CTRP.
>
> Be informed that on the 6th day of December, 1999, Mr. Rolamdo A. Dazo from your Company, subsequently executed a Waiver in defense of prescription of this case under Section 223(b) of the NIRC, photocopy is hereto attached.
>
> Since in the aforementioned letter, no protest has been raised against the findings of the reinvestigation conducted by Revenue Officers Liza E. Tomameng and Noli M. Perez this case is now entered in our Monthly Report of Taxes Assessed for the month of December 2000, and is now considered **final and demandable** within the jurisdiction of our National

---

[57] Exhibit "D".
[58] BIR Records, p. 160.
[59] *Id.* (paragraph 11), *Id.*

> Office, **it appearing that the amount involved is more than P1 Million.** We have exerted much efforts to convince you to settle your 1996 VAT liability within this Region to augment our tax collections, however, it is imperative to refer this case to our higher office as a result of a revised assessment due to reinvestigation. (Emphases supplied)
>
> Therefore, on any further action and/or protest regarding this case that your office may initiate, please address the matter to the Commissioner of Internal Revenue, BIR Diliman, Quezon City.

Based on the previously mentioned laws and revenue regulations, the final decision on disputed assessment rendered by the Commissioner of Internal Revenue should be appealed to the Court of Tax Appeals within thirty (30) days, otherwise, failure to appeal within the said period is fatal to the case. However, when it is the Commissioner's duly authorized representative who denied the administrative protest with finality, the taxpayer has two options. It may either appeal directly to the Court of Tax Appeals or elevate its protest to the Commissioner of Internal Revenue both within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative.

In this case, neither of the two remedies was availed of by petitioner within the period allowed by law.

Petitioner failed to exercise its right to bring the matter before this Court within the reglementary period upon receipt of the letter of Mr. Duncano dated December 27, 2000. Being a final disposition by the BIR, the same would have been a proper subject of an appeal. The period of thirty (30) days to appeal the adverse decision on petitioner's protest had already lapsed when the instant petition was filed with this Court only on April 10, 2002. gr

On the other hand, when petitioner elevated its protest to the Commissioner of Internal Revenue, it was again filed out of time. It should be noted that it was on January 27, 2001 when petitioner received Mr. Duncano's letter. [60] Accordingly, petitioner has thirty (30) days from January 27, 2001 or until February 26, 2001 to elevate his case to the Commissioner. It was only on February 28, 2001 that the Commissioner of Internal Revenue received a letter [61] from petitioner referring to the letter of Mr. Duncano dated December 27, 2000.

Clearly, the assessment becomes final, executory and demandable when petitioner failed to appeal within the period prescribed by law.

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* [62], the Supreme Court made the following pronouncements:

> xxx. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.** (Emphasis supplied)
>
> In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision of the Court of Tax Appeals within 30 days after receipt of the copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.

---

[60] *Supra*, note 26.
[61] *Supra*, note 27.
[62] G.R. No. 168498, April 24, 2007, 55 SCRA 144.

Apart from the finality of the assessment, it is apparent that, in "referring" the case to the higher office, Mr. Duncano, as Acting Regional Director of Revenue Region No. 17, had in mind Section 207(A) of the NIRC of 1997, since the assessment amounted to ₱ 2,369,262.94. Said provision reads:

> **SEC. 207.** *Summary Remedies.—*
>
> (A) *Distraint of Personal Property.* — **Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required**, the Commissioner or his duly authorized representative, **if the amount involved is in excess of One million pesos (P1,000,000)**, or the Revenue District Officer, if the amount involved is One million pesos (P1,000,000) or less, shall seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property of such persons in sufficient quantity **to satisfy the tax, or charge, together with any increment thereto incident to delinquency**, and the expenses of the distraint and the cost of the subsequent sale. (Emphases supplied)
>
> xxx

At that time he was already contemplating of seizure and distraint of petitioner's property, but was only prevented by the foregoing provision of the NIRC of 1997 and accordingly, was constrained to refer the case to the National Office of the BIR.

While the denial of the petitioner's protest was in the form of the said letter, the notation in the same letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as his final decision.

Furthermore, the case of *Commissioner of Internal Revenue vs. Isabela Cultural Corporation* [63] is not applicable to the present case. In

[63] G.R. No. 135210, July 11, 2001, 361 SCRA 71.

Isabela, the FNBS was considered as the commissioner's decision disposing of the request for reconsideration filed by the taxpayer, since no other response to the taxpayer's protest was received and the tenor of the FNBS suggested the finality of the commissioner's decision.

Meanwhile, in the instant case petitioner received several correspondences from the BIR after filing the original protest letter dated June 5, 2000[64] (request for investigation) and the supplemental protest letter dated December 19, 2000[65], to wit:

1. Assessment Notice No. 104-97-00013-35 dated December 18, 2000, together with a Formal Demand Letter, both dated December 18, 2000, which were mailed on December 22, 2000 and actually received on January 4, 2001;[66]
2. the said letter dated December 27, 2000 of Mr. Duncano received on January 27, 2001;[67]
3. FNBS dated January 23, 2001 received on March 11, 2002;[68] and
4. Warrant of Distraint and/or Levy dated January 31, 2002 received on March 21, 2002.[69]

Also, the FNBS in *Isabela* does not have the same tenor as that found in the subject FNBS. Specifically, the latter did not state that the taxpayer is being given a "LAST OPPORTUNITY" to pay. It contemplated that petitioner might have already paid the amount assessed, and thus, it says: *"if payment*

---

[64] Exhbit "RRRRRRRR".
[65] Exhibit "C".
[66] Exhibits "22", "23", and "B".
[67] Exhibit "D".
[68] BIR Records, p. 160.
[69] BIR Records, p. 163.

had already been made, please furnish us your copies of the receipts of payment together with this letter to be the basis for canceling/closing your liabilities."

WHEREFORE, the instant Petition for Review is **DISMISSED** for being filed beyond the reglementary period under Section 228 of the NIRC of 1997 in relation Section 11 of RA 1125, as amended.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division