REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PET PLANS, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10002

Members:
RINGPIS-LIBAN, *Chairperson, and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 05 2024
3:30 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

Before this Court is respondent's Motion for Reconsideration Re: Decision dated 23 March 2023, filed on 2 May 2023 ("Motion for Reconsideration"),[1] with petitioner's Comment/Opposition (to Respondent's Motion for Reconsideration Re: Decision dated 23 March 2023) filed on 29 May 2023 ("Comment").[2]

In the Motion for Reconsideration, respondent alleges that:

1. Respondent's right to assess petitioner has not prescribed. Petitioner did not declare a substantial portion of its taxable receipts, income payments, and compensation payments on its Value Added Tax ("VAT") Returns. Such substantial under-declaration warranted the use of the ten-year period to assess under ***Section 222 (a) of the National Internal Revenue Code***;

2. The Court erred in relying on ***Bureau of Internal Revenue ("BIR") Ruling No. DA-027-06*** (which found that Trust Fund Contributions should be excluded from gross receipts subject to VAT) considering that petitioner is not the one who applied for such BIR Ruling; and

3. The assessment of withholding taxes is imprescriptible.

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[1] Records, Vol. 3, pp. 1258-1273.
[2] Records, Vol. 3.

In the Comment, petitioner alleges that:

1. The Court did not err in ruling that respondent's right to assess has prescribed;

2. The Court did not err in ruling that Trust Fund Contributions should be excluded from gross receipts; and

3. The Court did not err in ruling that the assessment of withholding taxes is subject to prescription.

Following a studied review of the arguments, we **DENY** the Motion for Reconsideration for lack of merit.

As regards respondent's first contention that this Court erred in not applying the ten-year prescriptive period to assess, the Supreme Court on 8 August 2023 promulgated its Decision in the case entitled ***McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue ("McDonald's Case")***[3] providing detailed guidance on when and how the ten-year prescriptive period should be applied in tax assessment cases. The High Court in the ***McDonald's Case*** clarified that the basic rule under the ***National Internal Revenue Code*** is that respondent is permitted only a limited time of three (3) years within which to issue a deficiency tax assessment against a taxpayer. The extraordinary ten (10)-year period to assess applies only to instances of: a) failure to file a return, b) fraudulent returns, and c) false returns which contain deliberate or willful misstatements (*i.e.*, intentional errors). The ***McDonald's Case*** has already abandoned the doctrine enunciated in ***Jose B. Aznar v. Court of Tax Appeals***,[4] which applied the extraordinary ten-year period to assess to false returns in general, regardless of whether the deviation is intentional or not.

The ***McDonald's Case*** likewise required two (2) due process requirements before the ten-year period to assess can be applied.

First, the assessment notice must clearly state that: a) the extraordinary ten-year period to assess (and not the basic three-year period) is being applied, and b) the bases of allegations of falsity or fraud (*e.g.*, if respondent seeks to rely on the presumption of falsity or fraud, the formal notice to the taxpayer must set out the computation by which he ascertained that the misdeclaration in the return surpassed the 30% threshold),

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[3] G.R. No. 247737, 8 August 2023.
[4] G.R. No. L-20569, 23 August 1974.

Second, respondent or his representatives have not acted in a manner that is inconsistent with the invocation of the extraordinary period of prescription or have otherwise misled the taxpayer that the basic period will be applied.

Once the 30% threshold is satisfied, a presumption arises that a taxpayer's return is false or fraudulent. In such cases, there exists *prima facie* evidence of falsity or fraud, and the burden of proof shifts to the taxpayer to counter such presumption. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the ten-year period. On the other hand, if the taxpayer refutes the presumption, or if the taxpayer is successful in overturning the presumption (*e.g.*, by demonstrating that the misstatement as ascertained by respondent was inadvertent or attributable to a mistake or was not deliberate or willful on the part of the taxpayer), respondent cannot rely on the presumption in proving the taxpayer's intent to evade.

In the case at bar, the Court finds that petitioner was able to overcome the presumption that its returns were false or fraudulent. Although respondent, through his assessment, initially showed a substantial understatement of petitioner's sales, receipt or income subject to VAT in an amount more than 30%, such *prima facie* evidence has been duly controverted by petitioner when the latter proved before this Court that the supposed understatement was merely caused by respondent's failure to fully account the Trust Fund Contributions that should be deducted from petitioner's receipts subject to VAT.

Accordingly, the presumption that petitioner's tax returns are false or fraudulent has been duly refuted. The burden of proof is once again shifted to respondent to prove actual falsity or fraud in petitioner's tax returns, considering that he can no longer rely on a mere presumption of intent to evade on the part of petitioner.

However, respondent failed to prove actual falsity or fraud in petitioner's tax returns to justify the use of the extraordinary ten-year prescriptive period. Even in the Motion for Reconsideration, respondent failed to specifically identify such falsity or fraud. Consequently, this Court cannot apply the ten-year period to assess as it is merely an exception to the general rule that all tax assessments must be made within the three-year prescriptive period.

In relation to this, this Court likewise finds respondent's second contention (*i.e.*, that the Court erred in relying on ***BIR Ruling No. DA-027-06*** (which opined that Trust Fund Contributions should be excluded from gross receipts subject to VAT) considering that petitioner is not the one who applied for such BIR Ruling) unmeritorious. It is a principle undeterred that "[w]hile BIR rulings are not conclusive in the interpretation of tax laws, still, the interpretation placed upon a tax statute by the BIR, the administrative agency tasked to enforce tax laws, is entitled to great respect."[5] This is true regardless of whether the taxpayer who relied on such BIR Ruling is the one who applied for such opinion or not.

BIR Rulings are administrative ruling/opinions by respondent himself on the application of the provisions of the ***National Internal Revenue Code*** on certain facts or circumstances. Taxpayers therefore have the right to rely on the pronouncements made by respondent on such BIR Rulings if they are similarly situated with the facts considered on these BIR Rulings as that the BIR is the primary agency tasked to implement the ***National Internal Revenue Code*** and the various other tax laws of the country.

Respondent is not allowed to flip flop on his opinions vis-à-vis the interpretation of the provisions of the ***National Internal Revenue Code*** solely for his own benefit. He cannot simply brush aside a BIR Ruling he or one (1) of his predecessors issued for and to the benefit of one (1) taxpayer to prevent another taxpayer, who is in the same position and circumstances as the first taxpayer, from applying the same pronouncement on its case, simply because the second taxpayer was not the one who applied for the BIR Ruling. The equal protection clause of the ***Constitution*** requires that people of the same class or circumstance be treated alike.

Moreover, there is nothing wrong in the pronouncement made in ***BIR Ruling No. DA-027-06***. It must be emphasized once more that Trust Fund Contributions are exempted from VAT as ***Sec. 108 of the National Internal Revenue Code*** merely imposes VAT on the gross receipts derived from the sale or exchange of services. Trust Fund Contributions are not received by petitioner as payment for its pre-need services; the said funds were received only for management by petitioner, from which the pre-need benefits of the plan holders will be obtained.

Finally, as regards respondents' third contention that the assessment of withholding taxes is imprescriptible, the same is likewise terribly misplaced.

In ***Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.***,[6] the Supreme Court has already declared that withholding tax assessments are subject to prescription, *viz.*:

> "Withholding taxes are internal
> revenue taxes covered by
> Section 203 of the NIRC.

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[5] Trustmarks Holdings Corporation v. Commissioner of Internal Revenue, CTA Case No. 9072, 19 May 2017, *citing* Philippine Bank Communications v. Commissioner of Internal Revenue, *et al.*, G.R. No. 112024, 28 January 1999.

[6] G.R. No. 211289, 14 January 2019.

Section 203 of the NIRC provides for the ordinary prescriptive period for the assessment and collection of taxes, to wit:

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, 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 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)

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The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.

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Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.

As a consequence of the withholding tax system, two distinct liabilities arise — one for the income earner/payee and another for the withholding agent...

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It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.

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The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties...

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> Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code."

The Supreme Court, in the cited case, stated in no uncertain terms that a withholding tax assessment is not merely an imposition of penalty on the withholding agent. On the contrary, the collection of withholding taxes falls squarely within the purview of ***Section 203 of the NIRC.*** The three (3)-year prescriptive period under ***Section 203 of the NIRC*** thus applies to withholding tax assessments.[7]

As duly found by this Court, the Expanded Withholding Tax and Withholding Tax on Compensation assessments, similar to the VAT assessments have all prescribed.

Thus, from the foregoing discussions, the Motion for Reconsideration discloses no cogent reason to disturb the findings and conclusions which this Court made in the Decision, dated 23 March 2023. As such, nothing is left for this Court to do but to deny the same.

WHEREFORE, the instant Motion for Reconsideration Re: Decision dated 23 March 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[7] Commissioner of Internal Revenue v. First Philippine Electric Corporation, CTA *EB Case* No. 2091, CTA Case No. 9199, 11 November 2020.