REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CALAMBA STEEL CENTER, INC., Formerly known as J S STEEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6643

Members:

Castañeda, Jr., Chairman
Uy, and
Palanca-Enriquez, *JJ.*

Promulgated:

MAY 2 6 2006

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R E S O L U T I O N

For resolution is petitioner's "Omnibus Motion (Re: Judicial Determination of Issue of Prescription) filed on April 20, 2004 praying that judgment be rendered finding the subject assessment to have been issued beyond the prescriptive period, and directing the respondent to cancel and withdraw the subject assessments, and enjoining the latter from enforcing the same.

The following facts are undisputed:

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office at Brgy. Saimsim, Calamba, Laguna; while respondent is empowered to perform the duties of his office including among others, the duty to issue assessments, with office at the Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.

On April 15, 1998, petitioner filed its Annual Income Tax Return for the year 1997. On April 21, 1997, July 21, 1997, October 20, 1997 and January 20, 1998, petitioner filed its VAT Returns for the First, Second, Third and Fourth Quarter of 1997, respectively.

On June 20, 2002, petitioner received Assessment Notice No. 57-97 and Formal Letter of Demand dated May 27, 2002 for deficiency income and value-added taxes for the year 1997.

Disagreeing with the assessment, petitioner filed on July 20, 2002 an administrative protest challenging their validity and submitted documents in support of its protest on September 10, 2002.

On April 4, 2003, averring inaction on the part of respondent within the one hundred eighty (180) day period mandated by Section 228 of the Tax Code, petitioner filed this Petition for Review seeking to nullify the Final Assessment Notice and Formal Letter of Demand for having been issued beyond the prescriptive period.

After respondent filed his Answer on May 23, 2003 and pre-trial was held on August 4, 2003, petitioner filed on April 20, 2004 the instant "Omnibus Motion (Re: Judicial Determination of the Issue of Prescription)" to allegedly abbreviate the proceedings. In said motion, petitioner claims that the right of the respondent to assess for deficiency income tax and VAT had long prescribed as it was done beyond the three-year prescriptive period.

Petitioner further contends that respondent additionally assesses petitioner fifty percent (50%) fraud penalty provided under Section 248 (B) of the Tax Code to allegedly escape the effects of the three-year limitation under Section 203 of the Tax Code as said fraud penalty is imposed in case of false or fraudulent returns willfully submitted by a taxpayer. This intent is averred in respondent's Answer stating that since petitioner filed false or fraudulent returns, the tax may be assessed at anytime within ten (10) years from the discovery of the falsity or fraud.

The principal issue raised in the subject motion, is whether or not the subject assessment is void for having been issued beyond the prescriptive period provided for by law. For purposes of determining the applicable prescriptive period, it is also necessary for the Court to determine whether or not petitioner filed false or fraudulent returns.

We find petitioner's motion to be meritorious.

We note that the taxable period involved in this case is 1997, and therefore, the applicable law is the National Internal Revenue Code of 1993, as amended, specifically, Sections 203 and 223 thereof (now Sections 203 and 222 of the 1997 National Internal Revenue Code), the pertinent portions of which read as follows:

> **Sec. 203. Period of limitation upon assessment and collection.-** *Except as provided in the succeeding section, internal revenue taxes shall be assessed* ***within three years*** *after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period:* **Provided**, *That in a case where a return is filed*

> *beyond the period provided by law, the three year period shall be counted from the day the return was filed. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.* (Emphasis Supplied)
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> **Sec. 223. 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 begun without assessment, at any time* ***within ten 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;* xxx (Emphasis Supplied)

From the foregoing it is clear that generally, the period to assess deficiency taxes is three years from the date of filing of the return. One of the exceptions thereto is that, in cases of false or fraudulent returns with intent to evade tax, the deficiency taxes may be assessed at any time within ten (10) years after discovery.

The dates when the assessment for petitioner's deficiency taxes should prescribe, reckoned from dates of filing of petitioner's Income Tax Return and four (4) Quarterly VAT Returns for 1997, are as follows:

Date Return Filed	**Nature of Tax Due**	**Last Date to Assess**
April 15, 1998	Income Tax	April 16, 2001*
April 21, 1997	1st Quarter VAT for 1997	April 20, 2000
July 21, 1997	2nd Quarter Vat for 1997	July 20, 2000
October 20, 1997	3rd Quarter VAT for 1997	October 19, 2000
January 20, 1998	4th Quarter VAT for 1997	January 19, 2001

(* April 14, 2000 falls on a Saturday and year 2000 being a leap year.)

Evidently, the Assessment and Formal Letter of Demand dated May 27, 2002, received by petitioner on June 20, 2002, were issued beyond the ordinary prescriptive period of three years.

Anent respondent's assertion that the ordinary prescriptive period of three (3) years is inapplicable because the returns filed by petitioner for the taxable year 1997 were false, the Court finds it necessary to review the antecedent facts prior to the issuance of the assailed assessment , which consequently led to the filing of the Petition for Review before this Court.

A perusal of the Bureau of Internal Revenue (BIR) Records submitted in this case, discloses the following sequence of events:

> Based on the Letter of Authority No. 8187 issued by respondent on November 12, 1998 *(BIR Records, p. 243)*, the BIR made three requests for petitioner to produce documents, on November 25, 1998, January 18, 1999 and October 24, 2000 *(ibid. pp. 176, 177 and 178)*.
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> Meanwhile, on February 2, 1999, petitioner, through its Chief Accountant, requested that the scheduled visit of respondent be moved "from February [19]99 to the end of March [19]99" to pave way for their *1998* Financial Audit *(ibid., p. 59)*. Also, petitioner partially complied and submitted on June 23, 1999 its Articles of Incorporation, Quarterly Income Tax Return, VAT Returns with Attachments (Input/Output Tax Sales and Purchases),Withholding Tax Returns and Alpha listings, Inventory Certificate and Worksheet-Ledger to the BIR, Revenue District Office 28, Novaliches *(ibid. p. 156)*. The submission of the required documents was acknowledged Revenue Officer I Librada Valencia in a Memorandum dated October 5, 1999 for the Revenue Officer of Revenue District No. 28 *(ibid. p. 159)*.
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> Then on March 18, 2000, petitioner made another request to move respondent's scheduled visit from March 20, 2000 to April 1, 2000 this time to pave the way for their *1999* Financial Audit to be submitted on April 15, 2000 *(ibid. p. 160)*.

On June 7, 2000, Revenue Officer Librada Valencia prepared another Memorandum for the Regional Director of Revenue Region 7, Quezon City stating that the verification on the documents submitted by petitioner revealed discrepancies. However, no audit was conducted because of petitioner's repeated requests for the postponement of audit. The tax case/docket of petitioner was then returned to the Office of the Regional Director for proper disposition *(ibid. p. 163)*.

On June 23, 2000 petitioner was informed that the examination of its books of accounts and other accounting records for 1997 was re-assigned to Revenue Officer Angelina Salapare to be supervised by Group Supervisor Estelita Reyes *(ibid. p. 127)*.

However, due to petitioner's failure to submit all the requested documents, respondent issued a Summons/Subpoena Duces Tecum on November 24, 2000, which received by petitioner on December 15, 2000 (*ibid.* p. 181).

In a letter received by respondent on December 20, 2000, petitioner requested for a schedule of inspection and verification of its records by BIR examiners at their plant site at Calamba, Laguna since the documents they intended to send were voluminous *(ibid. p. 182)*. There being no response from respondent, petitioner complied with the Subpoena and submitted Official Receipts and General Ledgers for the year 1997 to the Legal Division, Revenue Region No. 7 on January 2, 2001 *(ibid., pp. 184-185)*.

The Revenue Region No. 7 returned the docket of petitioner to Revenue District Office No. 28 enclosing therewith the documents submitted by petitioner and stating that those documents were submitted "in compliance with the mandate of the subpoena duces tecum" presumably on January 2, 2001 because a referral was made to "taxpayer's letter dated December 28, 2000", although the date of indorsement alleges the date January 2, 2000. The stamp receipts thereof shows that the docket was received by the Records Section of Revenue Region No. 7 on January 5, 2001 and received by the Revenue District Office No. 28 on January 17, 2001 *(ibid. p. 188)*. And on January 29, 2001, the docket was again returned by the Revenue District Officer of RDO No. 28 to the Regional Director of Revenue Region No. 7 with the information that petitioner has transferred its office address at Calamba, Laguna *(ibid. p. 190).*

On February 6, 2001, the docket of petitioner was forwarded to the Regional Director of Revenue Region No. 9, San Pablo City, Laguna for appropriate action (*ibid,* p. 193).

Revenue Officer Edison Del Agua exerted efforts to have petitioner's representative sign a Waiver of Statute of Limitations but the latter refused, which rendered the investigation impossible to complete *(ibid, p. 197).*

On April 3, 2001, a Revenue Officer of Revenue District No. 56 wrote a Memorandum for the Regional Director of Revenue Region No. 9, San Pablo City, returning the docket to the latter for proper disposition since "the case is about to prescribe" with the audit and investigation still not completed *(Ibid. p. 197).*

In a Memorandum dated April 10, 2001, the Assessment Division reported that the taxpayer failed to comply on time despite several follow-ups; made several requests for postponement/submission; failed to inform the BIR of their planned transfer to Calamba, Laguna; and it's representative's refusal to sign a waiver. Thus, it recommended to the Regional Director that the case be forwarded to the Special Investigation Division for appropriate action *(ibid., pp. 212-214).* And, on June 8, 2001, the Special Investigation Division received the docket of petitioner for appropriate action *(ibid., p. 218).*

On June 26, 2001 and July 25, 2001, respectively, respondent issued a 15-day Preliminary Collection Letter and Final Notice finding petitioner liable for deficiency taxes *(ibid, pp. 224-225 and 233-234).* On September 28, 2001 the Special Investigation Division received petitioner's response to the Preliminary Letter *(ibid. pp. 251-252).*

On August 16, 2001, respondent's Special Investigation Division received petitioner's request for an extension of thirty (30) days to submit the necessary documents pertaining to the disallowance of expenses and losses for the year 1997. *(ibid., p. 237).* And on September 4, 2001, petitioner forwarded to the BIR Special Investigation Division photocopies of Journal Entries representing Cash/Receipts/TR/Debit Notes/Other Related Transactions for year 1997 and photocopies of Journal Entries of

RM arrival and cost set up per Invoice for January to June 1997 *(ibid, p. 244)*.

On February 13, 2002, the Special Investigator wrote a Memorandum for the Regional Director of Revenue Region No. 9, San Pablo, Laguna and stated his findings in the case and recommended the issuance of a collection letter against petitioner *(ibid, pp. 258-259)*. Thus, on February 20, 2002 the docket was again forwarded to the Assessment Division for evaluation and review (*ibid,* p. 263).

On April 15, 2002 respondent issued the Preliminary Assessment Notice *(ibid, pp. 266-267)*. Thereafter, respondent issued the Assessment Notices, Formal Letter of Demand and Details of Discrepancies on May 27, 2002 and received by petitioner on June 20, 2002, *(ibid, pp. 268-272)*.

On July 20, 2002, petitioner filed its administrative protest against the assessments and requested for a reinvestigation *(ibid., pages 277-284)* and on September 10, 2002, petitioner submitted additional documents in support of its protest *(ibid., page 296)*. Due to respondent's inaction, petitioner filed this Petition for Review on April 4, 2003.

From the foregoing antecedent facts, We make the following observations and conclusions:

1) Prior to the issuance of the *Subpoena Duces Tecum,* petitioner already submitted several documents (i.e, Articles of Incorporation, Quarterly Income Tax Return, VAT Returns with Attachments, Withholding Tax Returns and Alpha Listings, Inventory Certificate and Worksheet Ledger) to respondent. After the issuance of the Subpoena Duces Tecum, petitioner submitted additional documents in compliance therewith, to wit: 27 Booklets of Official Receipts and 4 Volumes of General Ledgers. These actions of petitioner negate the assertion of respondent that there is deliberate intent on the part of petitioner to defraud the government.

2) As early as June 7, 2000, respondent's Revenue Officer Librada Valencia already found alleged discrepancies on the data reflected on the documents submitted by petitioner, yet no audit was conducted because of the so-called "repeated requests for the postponement of audit" made by petitioner. However, records disclose that petitioner sought for postponement of audit only on two occasions for valid reasons, which was to give way to their annual audit. Moreover, the postponements sought were for short periods only. Hence, the lapse of the prescriptive period to assess was not brought about by petitioner's postponements because it was within the prerogative of respondent to deny petitioner's requests for postponements to avoid delay and in order that the audit may push through.

3) Respondent's authorized revenue officer attempted to have petitioner sign a Waiver of the Statute of Limitations to extend the period of prescription. This attempt negates possible findings of fraud by respondent's revenue officer because otherwise, he would not have bothered to ask petitioner's representative to sign a Waiver if he is convinced that the supposed ten-year prescriptive period will apply.

4) The subsequent issuance on April 3, 2001 of a Memorandum by the Revenue Officer of Revenue District No. 56 for the Regional Director of Revenue Region No. 9, San Pablo City, returning the docket to the petitioner with the audit and investigation still not completed, shows that the revenue officer was contemplating of the ordinary three (3) year prescriptive period in

stating that "the case is about to prescribe" and not the ten (10) year prescriptive period applicable only when fraud is attributed to the taxpayer.

5) It was only on April 10, 2001, after the above Memorandum was issued, when the Assessment Division of Revenue Region No. 9 recommended that the case be forwarded to the Special Investigation Division for appropriate action. This is upon a supposed finding that there was deliberate intent on the part of petitioner to have the tax case prescribe by seeking several postponements and failing to inform the Bureau of their plan to transfer office to Calamba, Laguna. This theory of respondent does not however conform with the antecedent facts of the case considering that petitioner sought for the postponements of the audit only twice, and on both instances, respondent could have easily denied the requested postponements and the audit could have proceeded.

6) As regards respondent's claim that petitioner deliberately failed to inform petitioner of its intent to transfer its place of business, records show that on December 19, 2000, petitioner already wrote respondent seeking a schedule of inspection and verification of their records in their Calamba, District Office *(BIR Records, p. 145).* The Court likewise notes that the finding of "deliberate intent to have the case prescribe" was made by respondent even without the investigation having been completed and actual audit having been conducted.

Based on the aforementioned observations and conclusions, it is readily apparent that the allegation of fraud by respondent was a mere after-thought to avail of the longer prescriptive period of ten (10) years.

Respondent argues that the impropriety of petitioner's provision on bad debts, its unreported income, its improperly claimed foreign exchange losses, the discrepancy in its sales figures derived by comparing petitioner's VAT returns, and its income tax returns for the year are the very bases for its disallowance of petitioner's claimed expenses as these are allegedly indications that petitioner filed false returns as the discrepancy amounted to Php39,434,165.51. Consequently, this is allegedly anomalous and by no means unsubstantial. Thus, the revenue examiners allegedly have every reason to be alarmed and to attribute falsity in the income tax returns filed by petitioner because the latter failed to substantiate its claimed deductions.

We disagree with respondent.

Petitioner's failure to substantiate its claimed deductions does not necessarily mean there was fraud. Mere falsity of a return does not merit the application of the ten-year prescriptive period, the element of fraud as in the case of the taxpayer's intent to evade the payment of the correct amount of tax must be clearly established ***(Commissioner of Internal Revenue vs. BF Goodrich Philippines., Inc., 303 SCRA 546).*** Fraud contemplated by law in relation to the filing of income tax return is **actual and not constructive**. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by law. It must amount to intentional wrongdoing with the sole object of avoiding the tax (***Aznar v. Court of Tax Appeals, 58 SCRA 519***).

In the instant case, petitioner complied with respondent's requests for supporting documents of its claimed deductions although respondent claims that the documents submitted by petitioner were insufficient. However, the fact that petitioner made itself available for inspection belie the allegation that there was deliberate intent to claim unjustified deductions. If there were indeed discrepancies, respondent should have conducted the audit and assessed petitioner of its deficiency taxes within the ordinary three-year prescriptive period.

It bears stressing that the statute of limitations in the collection of taxes is provided by law to safeguard taxpayers from any unreasonable examination and investigation or assessment. 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 of prescription should perforce be strictly construed (***Commissioner of Internal Revenue vs. BF Goodrich Philippines., Inc.***, *supra*).

Legally speaking, respondent is bestowed with the powers to obtain information, examine, summon and take testimony (Section 7 of the 1977 Tax Code, as amended, now Section 5 of the 1997 Tax Code) and to assess the correct amount of tax on the best evidence obtainable (Section 16 of the 1977 Tax Code, as amended, now Section 6 of the 1997 Tax Code).

Notwithstanding all these accorded powers, respondent failed to establish petitioner's commission of fraud and intent to evade taxes in order that the special prescriptive period of ten (10) years to assess deficiency taxes will apply. Consequently, respondent's right to assess petitioner of any deficiency taxes for the year 1997 have already prescribed; the Final Assessment Notice and Demand Letter dated May 27, 2002 are void; and respondent's imposition of fraud surcharge cannot be allowed.

WHEREFORE, the instant Omnibus Motion is hereby **GRANTED**. The Final Assessment Notice and Letter of Demand dated May 27, 2002 are hereby declared **VOID** considering that the period to assess petitioner of its deficiency income and value-added taxes have prescribed.

Accordingly, the Final Assessment Notice and Letter of Demand dated May 27, 2002 are hereby **ORDERED CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

(On Official Business)
OLGA PALANCA-ENRIQUEZ
Associate Justice