REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CAGAYAN DE ORO OIL COMPANY, INC.,
Petitioner,

C.T.A. CASE NO. 6951

-versus-

Members:

Acosta, *Chairperson,*
Bautista, and
Casanova, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 28 2005

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DECISION

ACOSTA, P.J.:

This is an appeal by way of a Petition for Review seeking the reversal of the Decision of the respondent Commissioner of Internal Revenue promulgated last March 2, 2004 in the case entitled "In the Matter of the Protest of the Cagayan De Oro Oil Co., Inc. against Assessment Notice Nos. FAS-1-87-90-001103 and FAS-1-87-90-001104 demanding the payment of the Respective Amounts of P12,352,683.15 and P49,962.41 as Deficiency Income and Withholding Taxes for the Taxable Year 1987".

The facts of the case as jointly stipulated by the parties and culled from the records are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), and existing under and by virtue of Philippine laws,

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with principal office address at the 16th Floor UCPB Building, Makati Avenue, Makati City.

On March 30, 1990, respondent issued Assessment Notice Nos. FAS-1-87-90-001103 and FAS-1-87-90-001104 against petitioner assessing it for deficiency income tax and withholding tax liabilities for the year 1987 in the amount of P12,352,683.15 and P49,962.41, inclusive of increments, respectively.

The said assessments were issued within the prescriptive period as provided for in Sections 203, 222 and 224 of the Tax Code, as amended.

On April 4, 1990, petitioner, through its external auditors, filed with the Collection Office of the Bureau of Internal Revenue, National Office, its protest letter and on April 25, 1990, petitioner, through its external auditors, filed its supplemental protest letter.

Petitioner, in its letter dated July 17, 1991, requested that its "docket be transmitted to the Appellate Division for resolution of the factual issues involved therein".

On August 1, 1991, petitioner received a letter dated July 15, 1991 issued by the Accounts Receivable/Billing Division of the Bureau of Internal Revenue, National Office and signed by the then Chief Severino P. Buot, demanding for payment of deficiency internal taxes for taxable year 1987 amounting to P12,402,647.56 representing deficiency income tax and withholding tax.

On December 21, 2000, the petitioner received from respondent a Tax Verification Notice (TVN) No. TVN 1999-002001124 authorizing the Revenue Officer named therein to verify petitioner's documents and/or pertinent records covering the taxable year 1987.

In a letter dated March 6, 2001, which was received by the BIR on March 7, 2001, petitioner, through its external auditor, filed with the Large Taxpayers Audit and Investment Division 1 of the National Office, its protest letter against the said TVN on the ground that the right of the government to collect the subject taxes has prescribed.

In a letter dated March 2, 2004, respondent rendered a decision denying the protest letter and ordering petitioner to pay the respective amounts of P12,352,683.15 and P49,962.41 or a total of P12,402,645.56, representing deficiency income tax and withholding taxes for the taxable year 1987, plus increments that have accrued thereon until the actual date of payment, to the Collection Service, BIR National Office, on the ground that the right of the government to collect the tax has not prescribed and that petitioner has failed to present evidence.

Hence, this petition.

In his Answer filed on June 10, 2004, respondent asserted the following Special and Affirmative Defenses, to wit:

> "4. The assessments were issued within the prescriptive period allowed by law. The legal provision governing the prescription of the Government's right to assess taxes in ordinary cases is Section 203 of the Tax Code, as amended, which reads as follows:
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> "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 from the filing of the return xxx. 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."
>
> Section 222 of the Tax Code, as amended, on the other hand, provides the exceptions as to the period of limitation of assessment and collection, which reads as follows:
>
> "Sec. 222. Exceptions as to the Period of Limitation of Assessment and Collection of Taxes. –

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(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) 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 proceeding in court within five (5) years following the assessment of the tax.
(d) xxx
(e) xxx"

The ordinary period of prescription of three (3) years within which to assess and collect tax liabilities under Section 203 of the Tax Code, as amended, 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, the period of ten (10) years provided for in Section 222 (a) of the same Code should be the one enforced.

Likewise, Section 224 of the Tax Code provides specific instances when the three-year period to collect is suspended or interrupted, viz.:

1. When the Commissioner is prohibited from making the assessment or beginning distraint and levy or a proceeding in court and for sixty (60) days thereafter;

2. **When the taxpayer requests for a reinvestigation which is granted by the Commissioner;**

3. 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; xxx

4. 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

5. When the taxpayer is out of the Philippines.

It is important to note from the instances enumerated above, that the primordial considerations for the commencement of the running of prescriptive period to collect are that *first*, it presupposes that the assessment is, or has become final, and, *second*, there must be no

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predicament or situation preventing the government from enforcing collection of the assessed tax either by distraint or levy or by judicial action.

The petitioner, thru its letter dated 17 July 1991, requested that the docket of the case be transmitted to the Appellate Division of the Bureau of Internal Revenue for resolution of the factual issues involved therein. The same was granted by the Commissioner on 24 July 1991 when the docket was transmitted to the Appellate Division per instruction of the Deputy Commissioner Deoferio.

It bears stressing that the use of the words "reinvestigation" or "reconsideration" is not indispensable in order to toll the running of the prescriptive period to collect. In the case of Commissioner of Internal Revenue vs. Consolidated Mining Co., G.R. No. 11527, November 29, 1968, the Supreme Court declared that 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. In another case, Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., et.al., 104 Phil. 819, it was held that 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. xxx These repeated positive requests or positive acts on the part of the taxpayer justify the suspension of the prescriptive period for collection.

Hence, the questioned assessments have not been rendered final and executory. While it may be true that the then Deputy Commissioner issued a decision reiterating the collection of the taxes involved, the same had not been enforced in view of the letter of the petitioner dated 17 July 1991 requesting that the docket of the case be forwarded to the Appellate Division in order that issues of fact may be properly resolved and ventilated in an administrative hearing conducted for the purpose. Just like in the aforementioned *Wyeth Suaco* case, the petitioner, thru its representative, did not categorically use the words "reconsideration" or "reinvestigation". However, an analysis of the whole text of the letter shows that its purpose is precisely to ask for the reconsideration of the decision on the assessment by contending that certain issues of fact were not properly appreciated and considered.

The Commissioner rendered its Final Decision only on 2 March 2004, hence, the period to collect the assessments has not yet prescribed.

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Settled is the rule that the prescriptive period by law to make a collection by distraint and levy or by proceeding in court is interrupted once a taxpayer requests for reinvestigation or reconsideration of the assessment (Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc. and the Court of Tax Appeals, G.R. No. 76281, September 30, 1991).

5. The paramount rule in taxation is that the claims for deductions are a matter of legislative grace and the taxpayer in every instance has the burden of justifying the allowance of any claimed deduction (Merten's Law of Federal Income Taxation, Section 25.03).

The fundamental principles in claiming deductions are the following:

a) The taxpayer must prove that there is a law authorizing deductions; and
b) The taxpayer must prove that he is entitled to deductions.

Petitioner failed to present evidence to support its allegations in its protest.

6. Sections 34 (A)(b) and (K) of the Tax Code, as amended, provide the substantiation requirements before deductions from gross income shall be allowed and only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with the existing revenue regulations.

7. When one waives the prescriptive period, it is no longer necessary to indicate the length of the extension of the prescriptive period since the person waiving may no longer use this defense (Commissioner of Internal Revenue vs. Philippine Journalist, Inc. CA-G.R. SP No. 72128 dated 5 August 2003).

8. Issues and defenses not raised in the administrative level cannot be raised for the first time on appeal. As held in the case of Aguinaldo Industries Corp. Fishing Nets Division vs. Commissioner of Internal Revenue, et.al., L-29790, Feb. 25, 1982:

> "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."

Likewise, in the case of Commissioner of Internal Revenue v. Guerrero, et.al., L-19074, Jan. 31, 1967, it was held that:

"Inasmuch as the tax court's jurisdiction is appellate in nature, it is essential that matters taken up in the appeal should be included in the contested assessment."

9. An assessment is deemed made when notice to this effect is released, mailed or sent by the Commissioner of Internal Revenue to the taxpayer within the aforementioned five (now three) year period. (Basilan Estates, Inc. v. Commissioner of Internal Revenue, 21 SCRA 17)

10. The assessment was issued in accordance with the existing law and regulations.

11. Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments. (Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, 98 Phil. 290: Sy Po v. CTA, et.al., G.R. No. 81446, August 18, 1988; Dayrit, et.al. v. Cruz, et.al., L-39910, September 26, 1988; Cagayan Robina Sugar Milling Company v. Court of Appeals, et. al., G.R. No. 122451, October 12, 2000).

12. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. (Delta Motors Co. v. Commissioner, CTA Case No. 3782, May 21, 1986: Commissioner of Internal Revenue v. Court of Appeals, et.al., G.R. Nos. 104151 and 105563, March 10, 1995)."

During the course of the trial, the parties decided to stipulate on the issues to be resolved by the Court, namely:

1. Whether or not the right of the respondent to collect the subject taxes has already prescribed.

2. Corollarily, whether the assessments issued by the BIR for the taxable year 1987 have already become final and executory. In the affirmative, when did the assessment for the taxable year 1987 become final and executory.

3. Whether or not the petitioner is liable to pay the respective amounts of P12,352,683.15 and P49,962.41 inclusive of interest and compromise

penalties, representing deficiency income and withholding taxes, respectively, for the taxable year 1987.

4. Whether or not the following issues are relevant for purposes of resolving the question as to whether the right of the government to collect the tax assessments for taxable year 1987 has already prescribed:

   a. Whether or not the requisites for deductibility of business expenses and the substantiation requirements in accordance with the pertinent provision of the Tax Code, and its implementing revenue regulations have been complied with by the petitioner.

   b. Whether or not there was a waiver of the statute of limitations executed by the petitioner which was accepted by the respondent through his authorized representative.

   c. Whether or not the petitioner can raise the issue of prescription for the first time on appeal. (*Joint Stipulations of Facts and Issues, pages 97-98, Records*).

Basically, the issue for resolution is "whether or not the right of the government to collect the tax assessments for taxable year 1987 has already prescribed?"

After a thorough evaluation of the facts and the applicable laws and jurisprudence, We find that the right of the government to collect has already prescribed.

At this juncture, the Court deems it appropriate to cite **Section 224 of the 1993 Tax Code, as amended** (now Section 223) inasmuch as it is the crux of controversy.

> **SEC. 224. 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

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> 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*)

From the foregoing, the running of the Statute of Limitations on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection of deficiency taxes shall be suspended for the period during which the Commissioner is (1) prohibited from making the assessment or beginning distraint or levy or a proceeding in court, (2) when the taxpayer requests for a reinvestigation which is granted by the Commissioner, and (3) 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.

Here, the respondent claims that the petitioner's letter request for resolution by the BIR Appellate Division of the factual issues of the assessment persuaded the BIR to postpone the collection of the tax. However, it must be pointed out that the prescriptive period provided by law to make a collection is interrupted only when a taxpayer requests for reinvestigation of the assessment and the same is granted by the Commissioner.

A mere request for "reinvestigation" without the corresponding action on the part of the Commissioner does not interrupt the running of the prescriptive period. The request should first be granted in order to effect suspension (**Republic of the Philippines vs. Santiago Gancayco,** *G.R. No. L-18307, June 30, 1964, 11 SCRA 380*). Otherwise, there would be no need for the legal requirement that an extension of the original period can be agreed upon by the parties in writing.

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In fact, there is no evidence that respondent replied to the letter request of petitioner dated July 15, 1991. What the records instead show is that petitioner's request for a resolution by the Appellate Division of the BIR of the factual issues was not granted nor was any action taken thereon. Nothing in the records of the case would show that by the acts of petitioner, the Bureau of Internal Revenue was convinced to postpone the collection of the tax due to reinvestigation. In fact, there was no reinvestigation conducted as can be shown from the records. Accordingly, the running of the prescriptive period was never interrupted or suspended.

The High Tribunal in the case of **Republic vs. Acebedo** (*22 SCRA 356*) reiterated this principle that the running of the statute of limitations shall not be suspended or interrupted unless the taxpayer's request for review or reconsideration is acted upon by the Commissioner, thus:

> **"The plaintiff contends that the period of prescription was suspended by the defendant's various requests for reinvestigation or reconsideration of the tax assessment. The trial court rejected this contention, saying that a mere request for reinvestigation or reconsideration of an assessment does not have the effect of such suspension. The ruling is logical, otherwise there would be no point to the legal requirement that the extension of the original period be agreed upon in writing.**
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> xxx xxx xxx
>
> **In the case at bar, the defendant, after receiving the assessment notice of September 24, 1949, asked for a reinvestigation thereof on October 11, 1949 (Exh. A). There is no evidence that this request was considered or acted upon.** In fact, on October 23, 1950 the then Collector of Internal Revenue issued a warrant of distraint and levy for the full amount of the assessment (Exh. D), but there was no follow up of this warrant. **Consequently, the request for reinvestigation did not suspend the running of the period for filing an action for collection.**
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> xxx xxx xxx
>
> It will be noted that up to October 4, 1955 **the delay in collection could not be attributed to the defendant at all. His requests in fact had been unheeded until then, and there was**

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> **nothing to impede enforcement of the tax liability by any of the means provided by law.** By October 4, 1955, more than five years had elapsed since the assessment in question was made, and hence prescription had already set in, making subsequent events in connection with the said assessment entirely immaterial. . . ." (*Emphasis supplied*)

Similarly, in the case entitled **Mermac Inc. vs. CIR**, *CTA Case No. 5223, August 6, 1997*, this Court sustained the observation of the taxpayer that the BIR slept on its right. This Court ruled that as the prescriptive period had lapsed, the Bureau of Internal Revenue could no longer proceed to collect the assessed taxes. The Court declared thus:

> "Applying the aforequoted provisions to the instant case, respondent had five years within which to assess deficiency income taxes counted from the filing of the adjusted final income tax return and another five years from the assessment to effect collection of the deficiency tax.
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> **The records of this case do not show that respondent exerted any effort sanctioned by the law to collect the assessed income tax deficiency. The period of limitation to collect income tax is counted from the assessment of the tax (Gutierrez v. Collector of Internal Revenue,** *14 SCRA 33*). The assessment was deemed made on April 10, 1981 as shown by the assessment notice sent to the petitioner and presented to this Court as Exhibit "C". While it is true that petitioner executed a waiver of the statute of limitations, this waiver was only up to April 15, 1990 as clearly seen in the document offered as Exhibit "J" and forming part of the BIR records submitted. No extension of the waiver was again executed to prolong the right to collect. **Clearly, respondent should have pursued any of the methods for collection provided by law on or before April 15, 1990. Petitioner is correct when it observed that respondent slept on her rights to collect and it may be added that she continued to be in "deep slumber" during the trial of this case. This Court is well aware that there are exceptions to the period of limitation and collection of taxes. However, a thorough analysis of the facts of this case reveals that the instant case does not fall under any of those exceptions."** *(Emphasis supplied)*

In the case before Us, the period within which the respondent was supposed to collect the subject tax began to run on March 30, 1990, when respondent issued

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Assessment Notice Nos. FAS-1-87-90-001103 and FAS-1-87-90-001104 against petitioner assessing it for deficiency income tax and withholding tax liabilities for the year 1987 in the amounts of P12,352,683.15 and P49,962.41, inclusive of increments, respectively, and ended three (3) years thereafter pursuant to Section 223 (c) of the NIRC. And long-settled is the rule that the period of limitation to collect is counted from the assessment of the tax (**Lino Gutierrez vs. Collector**, *L-19537, May 20, 1965*).

The subsequent issuance by the respondent of a TVN on December 21, 2000 or more than nine (9) years later for the purpose of reopening another reinvestigation on the disputed tax assessments did not revive such right to collect taxes.

The statutory exception upon the collection of taxes under **Section 223 (d)** (now Section 222) of the 1993 Tax Code, as amended, does not apply in this case. Said provision provides:

> "(d) Any internal revenue tax, which has been assessed within the period agreed upon xxx 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 three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon."

As decided by the Supreme Court, the Tax Code recognizes only but one instance where the BIR may still collect despite the expiration of the three (3) or five (5)-year period. This is when an agreement was entered into between the taxpayer and the Commissioner of Internal Revenue, which was executed before the lapse of the said five (5)-year period under the law (**In the matter of Testate Estate of Patricio Ponferrada,** *G.R. No. L-22369, October 15, 1966*). As the Supreme Court ruled in **Collector of Internal Revenue vs. Solano,** *L-11475, July 31, 1958, cited in Collector vs. Pineda, 2 SCRA 401*:

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"The only agreement that can suspend the running of the prescriptive period for the collection of taxes is written agreement between the taxpayer and the Collector of Internal Revenue, entered into before the expiration of the five-year prescription period, **extending the period of limitation prescribed by law.** (Section 332 (c), NIRC) The rule is in accord with the general law on prescription that requires a written acknowledgment of the debtor to renew the cause of action or interrupt the running of the limitation period."

Here, petitioner did not execute a waiver extending the period within which collection of the assessed taxes for 1987 may be made. The decision of the Commissioner on petitioner's protest against the alleged deficiency tax assessments was only issued after fourteen (14) years, which is beyond the three (3)-year prescriptive period within which the Government has the right to collect the assessed tax.

The failure of the BIR to proceed and collect on the assessment within the prescriptive period bars collection on said assessments against the petitioner. The BIR should have proceeded to collect said taxes in 1991 because there is nothing that prevented it from so doing. In fact, the letter dated July 15, 1991 is a demand letter for the payment of tax under the 1987 tax assessment. The BIR failed to follow through with the collection after such demand. Hence, under the circumstances, the BIR is no longer allowed by the law to proceed with the collection of the taxes under the subject assessments. Much less, it is not permitted to revive such right under the guise that a reinvestigation will be conducted pursuant to an issued TVN.

The Honorable Supreme Court explained in the case of **Republic of the Philippines vs. Luis G. Ablaza** (*G.R. No. L-14519, July 26, 1960, 108 Phil. 1105*) the rationale behind the prescriptive period for actions for collection, to wit:

"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 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 collections, 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)". *(Emphasis supplied)*

The High Court further rationalized that 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 be feeling a security against scrupulous 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 positive purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law.

In view of all the foregoing, in the absence of fraud or valid waiver of the Statute of Limitations, the failure of the BIR to proceed and collect on the assessment within the prescriptive period bars collection on said assessments against the petitioner. When the respondent issued on March 30, 1990 Assessment Notice Nos. FAS-1-87-90-001103 and FAS-1-87-90-001104 against petitioner for deficiency

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income and withholding tax liabilities for the year 1987, he had three (3) years within which to enforce collection as required by law. Therefore, the BIR had until 1993 to collect said taxes inasmuch as there was nothing that prevented it from so doing. Accordingly, the BIR is no longer allowed by the law to proceed with the collection of the taxes under the subject assessments.

WHEREFORE, the disputed deficiency income and withholding tax assessments for the year 1997 in the aggregate amount of P12,402,645.56 are hereby **CANCELLED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice