REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CALUMPIT WATER DISTRICT, *Petitioner,*	**CTA Case Nos. 9493**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 01 2017 10:05 a.m.

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AMENDED DECISION

MANAHAN, J.:

This resolves petitioner's **Motion for Reconsideration (Of the Honorable Court's 14 August 2017 Decision)** filed on August 31, 2017 with respondent's **Comment/Opposition (Re: Motion for Reconsideration)** filed on September 14, 2017.

Petitioner is seeking for the reversal and setting aside of this Court's Decision dated August 14, 2017 and the issuance of a new one dismissing respondent's assessment of deficiency franchise tax, including surcharge and interest.

Petitioner argues that Section 222 of the 1997 National Internal Revenue Code (NIRC), as amended, was discussed in the assailed decision despite the respondent's failure to cite said particular provision.

Petitioner further argues that even if said codal provision applies, respondent's right to collect franchise tax had already prescribed because from the time the Final Letter of Demand (FLD) and Assessment Notice was issued on February 26, 2008, respondent had only five (5) years to collect said deficiency franchise tax or until February 25, 2013. *cmv*

Petitioner also questions the imposition of surcharge and interest in the assailed decision citing the decision rendered by the Secretary of Justice dated March 20, 2006 on the case entitled "*Camarines Norte Water Disitrict (CNWD) v. Bureau of Internal Revenue*" where the former rules that CNWD is not liable for franchise tax.

The evidence submitted and admitted during the trial of this case evinces that no franchise tax return was filed by the petitioner albeit it is liable under the law and among the acts covered by Section 222 of the NIRC is taxpayer's failure to file a return.

Further, the facts of the case also reveal that there is malice on petitioner's part as it has purposively hindered the respondent from performing his duty, as quoted from the assailed decision:

> It is likewise noteworthy to mention that it was the fault of the petitioner why the revenue examiners of the respondent were able to assess the assailed deficiency franchise tax only in 2008.
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> As shown by the above facts, from the time the LOA was received by the petitioner on October 3, 2005, the latter tried to block the effort of said revenue examiners to perform said examination/investigation by asking for its deferment and when the revenue examiners insisted on such examination, petitioner still failed to give its accounting books and records for calendar year (CY) 2003 by issuing a board resolution that authorized the submission of its accounting books and records for CY 2004 instead of 2003.
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> It was only when the respondent issued a subpoena duces tecum on August 13, 2007 that the petitioner submitted its accounting books and records for CY 2003 on September 7, 2007. By that time, the three-year period to assess petitioner's franchise tax obligation under Section 203 of the NIRC had already expired, thus, an indication of bad faith on the part of the petitioner.
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> Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter. The position of the petitioner that its letter protest did not constitute a request for reinvestigation that would suspend the running of the SOL holds no weight because with or without that letter, the respondent had 10 years to assess from the date of his

> discovery of the non-filing of tax return by petitioner on its revenue from franchise operation.

Petitioner should be aware that "**an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case,**"[1] as in the instant case where respondent failed to raise Section 222 of the NIRC.

Further, Section 8, Rule 51 of the Rules of Court allows that certain errors even not cited in the party's pleadings may be ruled by an appellate Court. Among them is when "an unassigned error closely related to an error properly assigned or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as an error."[2] Section 222 of the NIRC is closely related to the issue of prescription raised by the petitioner.

Petitioner, in justifying the inapplicability of Section 222 of the 1997 NIRC, cited also the decision of the Secretary of the Department of Justice (SDOJ) in the case of *Camarines Norte Water District v. BIR (OSJ-2005-03)* which allegedly directed the payment of franchise tax in lieu of the VAT.

Petitioner should be aware that the decision of the SDOJ although has persuasive effect is not binding on this Court. In *Liezl Co v. Harold Lim et al.*,[3] the Supreme ruled in this effect, to wit:

> Once a case is filed with the court, any disposition of it rests on the sound discretion of the court. The trial court is not bound to adopt the resolution of the Secretary of Justice, since it is mandated to independently evaluate or assess the merits of the case. Reliance on the resolution of the Secretary of Justice alone would be an abdication of its duty and jurisdiction to determine a prima facie case. The trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor, which the court may order the latter to produce before the court; or any evidence already

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[1] *Carvajal v. Luzon Development Bank et al.*, G.R. No. 186169, August 01, 2012.
[2] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, G.R. No. 169454, December 27, 2007.
[3] G.R. Nos. 164669-70, October 30, 2009.

> adduced before the court by the accused at the time the motion is filed by the public prosecutor.

Although the afore-cited case is a criminal case, the underlying *ratio* of the ruling is also applicable in the instant case.

As to petitioner's argument that the right of the respondent to collect said assessment has already prescribed even if the prescription period that would apply is the ten-year period under Section 222 of the NIRC, said argument is tenable.

Section 222(c) of the NIRC, as amended, provides that:

> **SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –**
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> xxx xxx
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> > (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

The above-cited provision allows the collection of any assessed deficiency internal revenue taxes only within five-years from the time of the issuance of the final assessment of said deficiency taxes.

In *Bank of the Philippine Islands v. Commissioner of Internal Revenue*,[4] the Supreme Court ruled as follows:

> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by Batas Pambansa Blg. 700.[10] Thus, the CIR has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment.
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> When it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and **the** three (3)-year **period for collection of the assessed tax begins to run on** cm

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[4] G.R. No. 174942, March 07, 2008.

> **the date the assessment notice had been released, mailed or sent to the taxpayer.** (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[5] this Court, *citing Clara Diluangco Palanca et al. v. Commissioner of Internal Revenue et al.*,[6] emphasizes how the collection of assessment should be done, to wit:

> In relation thereto, in Palanca, et al. vs. Commissioner of Internal Revenue, et al., the Supreme Court decreed when the tax collection process is considered begun, viz:
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>> " ... A judicial action for the collection of a tax is begun by the filing of a complaint with the proper court of first instance, or where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for. **And the summary remedy of distraint and levy is begun by the issuance of a warrant of distraint and levy. This has been the practice long observed in the Bureau of Internal Revenue, and this practice had been taken cognizance of by this Court in a number of cases**, where it held that the right of the Commissioner of Internal Revenue to collect by summary method has the effect of stopping the running of prescription once a warrant of distraint and levy is issued. From such pronouncement it can be inferred that the issuance of the warrant of distraint and levy begins the summary remedy of distraint and levy and that it is not necessary that it be actually executed to be made effective." (Emphasis supplied and citations omitted)

Applying the provision of the NIRC as well as the foregoing jurisprudence, the subject final assessment notice, which has not yet prescribed during its issuance, was issued on February 26, 2008. Counting five (5) years from said date, respondent should have commenced its collection efforts, either judicially or administratively not later than February 26, 2013.

However, the facts of the case reveal that as of the time of petitioner's filing of its petition for review, the respondent has

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[5] CTA EB No. 1204 (CTA Case No. 8376), March 17, 2016.
[6] G.R. No. L-16661, January 31, 1962.

not issued any warrant of distraint or levy, nor serve any collection letter to petitioner.

Further, the period for the running of the statute of limitation for the collection of said assessed deficiency was not suspended because of the absence of an approved request for reinvestigation from the BIR.

Section 223 of the NIRC, as amended, provides *inter alia* that in order for the running of the statute of limitation to be suspended, there must be a request for reinvestigation which should have been granted by the respondent. In *China Banking Corporation v. Commissioner of Internal Revenue*,[7] the Supreme Court ruled that request for reinvestigation must be approved by the respondent, to wit:

> The provision is clear. A request for reinvestigation alone will not suspend the statute of limitations. Two things must concur: there must be a request for reinvestigation and the CIR must have granted it. *BPI v. Commissioner of Internal Revenue* emphasized this rule by stating:
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>> In the case of *Republic of the Philippines v. Gancayco*, taxpayer Gancayco requested for a thorough reinvestigation of the assessment against him and placed at the disposal of the Collector of Internal Revenue all the [evidence] he had for such purpose; yet, the Collector ignored the request, and the records and documents were not at all examined. Considering the given facts, this Court pronounced that—
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>> x x x. **The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension**. (*Collector v. Suyoc Consolidated*, supra; also *Republic v. Ablaza*, supra). Moreover, the Collector gave appellee until April 1, 1949, within which to submit his evidence, which the latter did one day before. There were no impediments on the part of the Collector to file the collection case from April 1, 1949 x x x. (*Underscoring and emphasis supplied*)

The written protest[8] filed by the petitioner, through the Office of the Government Corporate Counsel (OGCC), merely seeks for the setting aside and cancellation of the FLD dated

[7] G.R. No. 172509, February 04, 2015.
[8] Docket, CTA Case No. 9493, pp. 124-131.

February 26, 2008. Respondent should have issued a warrant of distraint or levy or preliminary collection letter not later than February 26, 2013. However, respondent failed to do so. Hence, respondent cannot issue any warrant of distraint or levy from February 27, 2013 onwards because his right to collect the assessed deficiency franchise tax has already prescribed.

As to the imposition of surcharge and interest, the issue becomes moot and academic.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Of the Honorable Court's 14 August 2017 Decision) is hereby **GRANTED**. Accordingly, the respondent is barred from collecting the deficiency franchise tax by reason of prescription.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice