WYETH SUACO LABORATORIES,
INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3055

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x --------------------------- x

8/29/86

D E C I S I O N

Assailed by petitioner Wyeth Suaco Laboratories, Inc. in this appeal is the decision of respondent Commissioner of Internal Revenue dated December 10, 1979, finding it liable for deficiency withholding tax at source for the fourth quarter of 1973 in the aggregate amount of ₱1,973,112.86, inclusive of surcharge and interest as well as deficiency sales tax for the period from November 1, 1972 to October 31, 1973, in the aggregate amount of ₱61,155.21, inclusive of surcharge, interest and compromise penalty.

There is no controversy as to the facts of the case as may be gathered from the pleadings, the evidence presented, and the records of the Bureau of Internal Revenue pertaining to this proceeding.

It appears that petitioner is a corporation organized and existing under the laws of the Philippines engaged in the manufacture and sale of pharmaceutical and nutritional products. Its accounting period is on a fiscal year basis ending October 31 of every year. (Exh. "A", pp. 65-66; Exh. "4", pp. 67-68, BIR rec.)

By virtue of Letter Of Authority No. 52415 dated June 17, 1974, respondent, through one of his examiners, conducted an investigation of petitioner's books. (Exh. "1", p. 61, BIR rec.) After said investigation, it was determined that petitioner was liable for:: (1) deficiency withholding tax at source in the total amount of ₱3,178,994.15, inclusive of surcharge and interest for the fourth quarter of 1973; and (2) deficiency sales tax in the total amount of ₱61,155.26, inclusive of surcharge, interest and compromise penalty.

On December 16, 1974 and December 17, 1974, respondent issued the corresponding assessment notices for the tax deficiencies above-mentioned, the details of which are as follows:

Deficiency Withholding
Tax At Source -
1973
4th Quarter

Royalties - - - - - - - - -	₱3,517,456.46	
Dividends - - - - - - - - -	2,952,391.00	
Technical Services - - -	13,647.00	
Royalties - - - - - - - - -	125,448.84	
Total amount unremitted	- - - - - - - - - - - -	₱6,608,943.30
Tax due thereon - - - - - - - - - - - - - - - - -		₱2,313,130.15
Add: 25% surcharge - - - - - - - - - - - - - - -		578,282.53
14% annual int. fr. 1-26-74 to 12-16-74 - - - - -		287,591.47
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - - - -		₱3,178,994.15

(Exhs. "B" & "6", pp. 78-79, BIR rec.) and

Deficiency Sales Tax -

1. Net sales subject to 7% tax (Before P.D. No. 69) - - - - - - - - - -		₱9,169,907.54	
Less: Deductible raw materials:			
Per returns - -	₱2,924,712.36		
Disallowed - -	148,344.00	2,776,368.36	
Net sales subject to 7% tax - - - - - -		₱6,393,539.18	
7% tax thereon - - - - - - - - - - - - - -		₱ 447,547.74	
Less: Amount already paid - - - - - -		437,163.66	
Deficiency 7% tax - - - - - - - - - - - -		₱ 10,384.08	
25% sur. for late payment - - - - - - -		2,596.02	
		₱ 12,980.10	
14% int. p.a. per P.D. No. 69 - - - -		1,090.33-	₱14,070.43
2. Net sales subject to 5% tax (Under P.D. No. 69) - - - - - - - - - -		₱30,910,338.75	
Less: Deductible raw materials:			
Per returns -	₱12,921,797.72		
Disallowed - -	675,790.00	12,246,007.72	
Net sales subject to 5% tax - - - - - -		₱18,664,331.03	
NET SALES SUBJECT TO 5% TAX CARRIED FORWARD - - - - - - - - - - - -		₱18,664,331.03	
TOTAL AMOUNT DUE BEFORE P.D. 69 - - - - - - - - - - - -			₱14,070.43
NET SALES SUBJECT TO 5% TAX FORWARDED - - - - - - - - - - - - - - - -		₱18,664,331.03	
5% tax thereon - - - - - - - - - - - - - -		₱ 933,216.55	
Less: amount already paid - - - - - -		899,427.38	
Deficiency 5% tax - - - - - - - - -		₱ 33,798.50	
25% sur. for late payment - - - - - - -		8,447.38	
		₱ 42,236.88	
14% int. p.a. per P.D. No. 69 - - - -		3,547.90-	45,784.78
3. Advance sales tax per Customs computation - - - - - - - - - -		₱ 3,795.00	
Amount paid per O.R. No. 7974906 dated 11-2-72 - - - - - - - - - -		2,795.00	
Short payment -			1,000.00
TOTAL AMOUNT DUE			₱ 60,855.21

(Exhs. "JJ" & "7", pp. 81-82, BIR rec.)

Both assessment notices were received by petitioner on December 19, 1974.

In two separate letters dated January 17, 1975 and February 8, 1975, petitioner disputed the assessments stating its justification and requested cancellation or withdrawal thereof on the ground of lack of factual or legal basis. (Exhs. "C" & "9"; Exh. "KK", pp. 91-96 and 111-113, respectively, BIR rec.)

On September 12, 1975, respondent invited petitioner to avail of the compromise settlement under LOI 308. (Exh. "D", p. 110, BIR rec.) In reply thereto, petitioner signified its amenability to compromise 10% provided it be applied only to the basic sales tax, excluding surcharge and interest. As to the alleged withholding tax at source, petitioner took exception on the ground that it involves purely a legal question and some of the amounts included in the assessment have already been paid.

On December 10, 1979, respondent rendered his decision denying petitioner's offer to compromise the deficiency sales tax and reiterated his demand for payment of the sales tax assessment of ₱61,155.21. With regards however to the withholding tax at source, respondent reduced the assessment to ₱1,973,112.86 after verification that ₱1,205,881.29 of the original assessment of ₱3,178,994.15, had already been paid by petitioner. (Exhs. "G" & "10", G-3, pp. 170-171, BIR rec.) Said decision was allegedly received by petitioner on January 2, 1980.

Not satisfied with respondent's decision, petitioner appealed to this Court on January 18, 1980, raising the question of prescription, among others. (pp. 1-5, CTA rec.)

Subsequently, on February 7, 1980, respondent issued the corresponding warrants of distraint and levy which were served on petitioner on March 12, 1980 to enforce collection of the alleged deficiency taxes. (Exhs. "H" & "I", pp. 212 and 214, respectively, BIR rec.)

Collection of the alleged deficiency taxes through the warrants of distraint and levy was however enjoined by this Court pending appeal, upon motion of petitioner after filing and approval of the necessary bond in the amount of ₱2,040,000.00 posted by Allied Guarantee Insurance Co., Inc., to guarantee, in the event that it loses its case, payment to the Bureau of Internal Revenue of the assessments in question. (See Resolutions dated May 2 and 22, 1980, pp. 34-36 & 43-44, CTA rec.) The bond was however reduced upon motion of petitioner and approval by this Court. (See Resolution dated May 21, 1981, pp. 123-124, CTA rec.)

On May 30, 1980, respondent filed his answer to the petition for review and as special and affirmative defenses insists that the assessments against petitioner in the amount of ₱61,155.21 as deficiency sales tax and the amount of

₱1,973,112.86 as withholding tax at source for 1973 as well as the issuance and enforcement of the warrants of distraint and levy are in accordance with law and regulation. (pp. 46-49, CTA rec.)

The issues having been joined, the Court upon motion of petitioner heard the question of presciption together with the merits of the case. (See Minutes of the session of October 14, 1980, p. 61, CTA rec. & t.s.n. pp. 1-3)

ISSUES:

1. Whether or not the right of respondent to collect the deficiency assessments has already prescribed;

2. Whether or not the deficiency withholding tax assessment is correct or valid; and

3. Whether or not respondent is correct in imposing surcharge and interest on account of the withholding tax at source assessment against petitioner.

The law involved is Section 319(c) formerly Section 332 of the pre-1977 Revenue Code, the pertinent provision of which is quoted hereunder for ready reference, to wit:

> "Sec. 319. <u>Exceptions as to period of limitation of assessment and collection of taxes.</u>- (c) Where the assessment of any internal revenue tax has been made within the period of

> limitation above-prescribed, such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

Petitioner maintains that the right of respondent to collect the deficiency taxes, surcharges and interests, in this case has already prescribed while respondent argues otherwise.

We find the view of petitioner well taken. A careful perusal of the records of this case reveals that while the assessments for the alleged deficiency taxes involved herein were made within the five-year period of limitation, the right of respondent to collect the same has already prescribed.

Under the aforequoted provision of Section 319(c) which provides an exception to the period of assessment and collection, it is so stated that where an assessment of any internal revenue tax within the five-year period of limitation, such tax may be collected by <u>distraint or levy</u> or by a proceeding in court, <u>but only if begun</u> (1) <u>within five years after assessment of the tax</u>, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period and the period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In the instant case, the assessments for deficiency sales tax and deficiency withholding tax at source were issued on December 16 and 17, 1974, respectively, and the assessment notices were received by petitioner on December 19, 1974, so that the five year period of limitation within which respondent may collect was supposed to end on December 19, 1979. When the warrants of distraint and levy issued on February 7, 1980, were served on petitioner on March 12, 1980, five (5) years two (2) months and twenty one (21) days have already elapsed from December 19, 1974, obviously beyond the five (5) year period allowed by law within which the Commissioner of Internal Revenue may collect the taxes. The law is tailored to fill an explicit contingency.

We cannot subscribe to the position of respondent that his right to enforce collection of the deficiency taxes, surcharges and interests has not prescribed because petitioner's request for withdrawal or cancellation of the assessments amount to requests for reinvestigation and the same, having been granted by respondent, suspended the running of the five year prescriptive period. The records show that petitioner merely disputed the assessments, and requested for cancellation or withdrawal thereof on the ground of lack of factual or legal basis. Moreover, the same issue has been squarely resolved in the case of Guanzon Lime Development Co., Inc. vs. Misael P. Vera, as Commissioner of Internal Revenue, CTA Case No. 2649, November 28, 1978, where this Court did not sustain the position of respondent that the right of the government to collect the tax has not yet prescribed on account of the vigorous protests and requests for reinvestigation lodged by petitioner against the deficiency assessment, for the records show that petitioner merely disputed or questioned the legality of the assessment which pertains to disallowances of its claim for deductions by giving reasons why the deductions should be allowed and why it should not pay said deficiency tax. Citing Limjoco, Jr. vs. Domingo, CTA Case No. 1191, May 29, 1964; Coll. of Int. Rev., vs. Pineda, G.R. No. L-14522, May 31, 1961; Coll. of Int. Rev. vs. Solano, G.R. No. L-11475, July 31, 1958. Respect for the authority of this Court is not served by the precipitious overruling of multiple precedents.

Having such view on the question of prescription raised in this case, we deemed it unnecessary to resolve the other issues presented.

WHEREFORE, the decision appealed from is hereby reversed and respondent Commissioner of Internal Revenue is hereby enjoined from collecting the deficiency withholding tax at source for the fourth quarter of 1973 as well as the deficiency sales tax assessed against petitioner. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 29, 1986.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge