Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CAGAYAN DE ORO OIL COMPANY, INC.,
Respondent,

EB CASE NO. 166
(CTA Case No. 6951)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:
AUG 3 1 2006

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DECISION

CASANOVA, J.:

This is a Petition for Review to the Court of Tax Appeals En Banc pursuant to Section 18 of Republic Act No. 9282 ("RA 9282"). The petition seeks to reverse and set aside the 28 October 2005 Decision rendered by the First Division of the Honorable Court in CTA Case No. 6951 and the 25 January 2006 Resolution denying petitioner's Motion for Reconsideration.

The facts of the case as culled from the records are as follows:

Petitioner is the official of the Republic of the Philippines charged with the duty of assessing and collecting national internal revenue taxes, holding office at the BIR National Office Building, Diliman, Quezon City.

Respondent is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), and existing under and by virtue of Philippine laws, with principal address at the 16th Floor UCPB Building, Makati Avenue, Makati City.

On March 30, 1990, petitioner issued Assessment Notice Nos. FAS-1-87-90-001103 and FAS-1-87-90-001104 against respondent 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, respondent, through its external auditors, filed with the Collection Office of the BIR, National Office, its protest letter and on April 23, 1990, respondent filed its supplemental protest letter.

Respondent, 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, respondent received a letter dated July 15, 1991 issued by the Accounts Receivable/Billing Division of the BIR, National Office and signed by the then Chief, Severino P. Buot, demanding for payment of deficiency internal taxes for taxable year 1987 amounting to P12,402,645.56 representing deficiency income tax and withholding tax.

On December 21, 2000, respondent received from petitioner a Tax Verification Notice (TVN) No. TVN 1999-002001124 authorizing the Revenue Officer named therein to verify respondent'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, respondent, through its external auditor, filed with the Large Taxpayers Audit and Investment Division I 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, petitioner rendered a decision denying the protest letter and ordering respondent 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 respondent has failed to present evidence.

On April 19, 2004, respondent filed with the Court of Tax Appeals a Petition for Review docketed as "Cagayan de Oro Oil Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6951". After trial on the merits, the Court's First Division promulgated a Decision on October 28, 2005, the dispositive portion of which reads as follows:

> "**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**."

Petitioner filed a Motion for Reconsideration on December 6, 2005 seeking the review of the above-mentioned Decision of the First Division. On January, 25, 2006, the First Division rendered a Resolution denying petitioner's Motion for Reconsideration for lack of merit.

Hence, this appeal by way of a Petition for Review filed with the Court *En Banc,* wherein petitioner raised its sole issue, to wit:

WHETHER THE RIGHT OF THE GOVERNMENT TO COLLECT THE SUBJECT TAXES HAS ALREADY PRESCRIBED.

With regard to the issue of prescription, the Court *En Banc,* after a careful and thorough evaluation and consideration of the records of the case, finds no new matters which have not yet been considered and passed upon by the First Division in the its assailed Decision and Resolution.

In support of its Petition for Review, petitioner argues that it was respondent who requested for reconsideration of the assessment issued by the

BIR thru its letter dated 17 July 1991. In the said letter, respondent requested that the docket of the case be transmitted to the Appellate Division of the BIR for resolution of the factual issues involved therein. Such action of the respondent reasonably and equitably tolled the running of the prescriptive period to collect the assessed taxes.

We do not agree with the petitioner's contention.

Pertinent to the resolution of this case is Section 224 of the 1993 Tax Code, as amended (now Section 223), which is quoted hereunder for easy reference:

> **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 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*)

It is clear from the foregoing provision that the running of the Statute of Limitation on the making of the assessment and the beginning of distraint and 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 is being assessed or collected.

In the present case, petitioner claims that respondent's letter for resolution by the BIR Appellate Division of the factual issues of the deficiency tax assessments persuaded the BIR to postpone the collection of the said taxes. However, in order to toll the prescriptive period to make a collection of taxes provided under the Tax Code, a request for reconsideration or reinvestigation must be made by the taxpayer and the same must be granted by the Commissioner.

In a Supreme Court Decision, the Highest Tribunal had the occasion to state that:

> "The act of requesting a reinvestigation alone of a tax assessment does not suspend the period of prescription for the collection of the tax because said request should first be granted in order to effect such suspension." (*Republic of the Philippines vs. Santiago Gancayco, G.R. No. L-18307, June 30, 1964, 11 SCRA 380*).

This 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.

Applying the above Supreme Court doctrine in the instant case, the CTA First Division found out that "there is no evidence that the respondent (petitioner-herein) replied to the letter request of the respondent (petitioner-herein) dated July 15(sic), 1991. What the records instead show is that petitioner's (respondent-herein) 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 the petitioner (respondent-herein), 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." (*CTA First Division Decision, page 10*)

As shown by the records of the case, the period within which the BIR was supposed to collect the subject tax began to run on March 30, 1990, when petitioner issued Assessment Notice Nos. FAS-1-87-90-001103 and FAS-1-87-90-001104 against the respondent, 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. The subsequent issuance by the petitioner of a TVN on December 21, 2000, or more than nine (9) years later, for the purpose of reopening another investigation 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 to the instant case. Said provision is quoted hereunder for easy reference:

> "(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 (3) year period. The period so agreed upon may be extended by subsequent agreements made before the expiration of the period previously agreed upon."

As held by the Supreme Court in *Collector of Internal Revenue vs. Pineda (2 SCRA 401)*, to wit:

> "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."

In the case before Us, respondent 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 respondent's request for reinvestigation against the alleged deficiency tax assessments was issued only on March 2, 2004, or after fourteen (14) years, which is way beyond the three (3) year prescriptive period within which the Government has the right to collect the assessed taxes.

The failure of the BIR to proceed and collect on the assessment within the prescriptive period bars collection on said assessments against the respondent. The petitioner should have proceeded to collect said taxes in 1991 because there is nothing that prevented it from doing so. 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 up with the collection after such demand. Under these circumstances, the petitioner is barred from proceeding with the collection of taxes under the subject assessments. Neither is the BIR permitted to revive such right under the guise that a reinvestigation will be conducted pursuant to an issued TVN.

The Highest Tribunal, in the case of *Republic of the Philippines vs. Ablaza (G.R. No. L-14519, July 26, 1960, 108 PHIL 1105)* explained the rationale behind the prescriptive period for actions for collection, in this regard:

> "The provision of law on prescription was adopted in our statute books upon recommendation of the tax commissioner of the Philippines which declares:
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> > "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 dated 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 law prescribing a limitation of actions for the collection of the income tax is beneficial to both the Government and the taxpayers; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to the taxpayers because after the lapse of the period of prescription, they would have a feeling of security against scrupulous tax agents who will always find an excuse to inspect the book of taxpayers, not to determine the latter's liability but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense, taxpayers would 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 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 sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed October 28, 2005 Decision and January 25, 2006 Resolution of the CTA First Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

In addition, the Court *En Banc* hereby corrects a typographical error in the dispositive portion of the assailed Decision. As quoted above, the dispositive portion indicated the taxable year 1997. However, after going over the records of the case, the questioned assessments pertain to the taxable year 1987. Thus, there is a need to correct the taxable period of 1997 to 1987.

WHEREFORE, with the above modification, the appealed Decision is hereby AFFIRMED in all other respects. The dispositive portion of the assailed Decision is hereby modified to read as follows:

> "**WHEREFORE**, the disputed deficiency income and withholding tax assessments for the year 1987 in the aggregate amount of P12,402,645.56 are hereby **CANCELLED**.
>
> **SO ORDERED**."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice