REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GETZ PHARMA (PHILS.), INC., Petitioner,	CTA CASE NO. 8922
	Members:
- versus -	BAUTISTA, *Chairperson*, FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	MAY 26 2017 10:02 a.m.

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RESOLUTION

Before the Court is the Motion for Reconsideration dated March 2, 2017 filed by respondent, seeking for the reversal of the Resolution dated February 13, 2017 finding the subject assessment issued against petitioner for the year 2010 for deficiency VAT for the first three (3) quarters, deficiency EWT for the months of January to November, and deficiency Income Taxes Withheld on Compensation for the months of January to November, has already prescribed.

While respondent concedes that under Section 203 of the National Internal Revenue Code (NIRC), as amended, the Bureau of Internal Revenue (BIR) has only three (3) years from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever is later, to assess internal revenue taxes, such rule is not absolute. The three-year prescriptive period under Section 203 of the NIRC is subject to the exceptions in Section 222 of the same Code which provides that in cases of a false or fraudulent return with intent to evade tax, an assessment can be made within ten (10) years from the discovery of falsity, fraud or omission.

Respondent claims that petitioner filed a false return warranting the application of the 10-year prescriptive period to assess. Allegedly, the tax returns filed by petitioner contained deviations from the truth and therefore considered as false returns which allows the BIR to assess beyond the regular 3-year prescriptive period.

According to respondent the Court should have accorded him the opportunity to present his case during trial on the merits.

In its Comment,[1] petitioner agrees with the Court's ruling that respondent's right to assess had already partially prescribed, pursuant to Section 203 of the NIRC, as amended.

Petitioner submits that under the circumstances of the case, the ten-year prescriptive period provided in Section 222 of the NIRC is not applicable. Besides, the law on prescription should be liberally construed to afford protection to the taxpayer against unreasonable investigation, and any exceptions to the same should be strictly construed.

Further, for the 10-year period to apply, there must be intention to evade the payment of tax, which is not attendant in the present case.

In addition, in order to support a finding of a false or fraudulent return justifying the application of the 10-year period to assess, it is not enough that fraud is alleged in the complaint, it must also be established by clear and convincing evidence. However, respondent utterly failed in this respect for he merely relied on the testimony of his sole witness on the incident which was based on mere conjecture as the said witness admitted that the third-party information gathered was never verified and that the witness merely assumed that they were authentic and accurate.

The Motion for Reconsideration filed by respondent should be denied.

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[1] Comment (Re: Motion for Reconsideration dated March 2, 2017) dated March 31, 2017.

It is absolutely incorrect for respondent to claim that he was not accorded the opportunity to present his side on the issue of prescription.

Respondent obviously failed to consider his active participation in the numerous hearings on the incident[2] conducted by the Court before the assailed Resolution of February 13, 2017 was issued. In fact, he presented Revenue Officer Reymel E. Jacinto on the issue of prescription during his turn to adduce evidence.[3] However, he failed to present further evidence, despite the opportunity granted by the Court, for reasons only known to him, on account of which, he was declared to have waived the right to do so.[4] Worse, the said ruling became final and executory without respondent asking for a reconsideration. In other words, respondent had himself alone to blame.

Further, respondent's theory that the ten (10)-year prescriptive period under Section 222 of the NIRC should apply in this case is a mere afterthought. In his Answer[5] dated January 13, 2015, respondent essentially anchored his defense on the contention that the assessment issued against petitioner was in compliance with the due process requirements under Section 228 of the NIRC. In addition, respondent asserted that the assessment he issued had become final and executory for failure of petitioner to seasonably filed a protest and to timely appeal the same to the Court.

Not even respondent's Pre-Trial Brief[6] dated March 10, 2015 could save the day for him with regard the matter. The same with the Preliminary Assessment Notice[7] dated November 27, 2017 and the attached Details of Discrepancies[8], the various Assessment Notices[9] and the Formal Letter of Demand[10] with Details of Discrepancies[11]. They never mentioned the application of the ten-year

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[2] See Minutes of hearing dated May 5, 2015, docket p. 387; Minutes of hearing dated February 29, 2016, docket p. 582.
[3] See Minutes of hearing dated February 29, 2016, docket p. 582.
[4] Minutes of hearing dated May 17, 2016, docket p. 587 and Resolution dated May 30, 2016, docket pp. 590-591.
[5] Docket pp. 193-197.
[6] Docket pp. 258-261.
[7] Exhibit P-5, docket pp. 423-424.
[8] Docket pp. 425-426.
[9] Exhibits P-6-a, P-6-b, P-6-c, P-6-d, docket pp. 429-432.
[10] Exhibit P-7, docket pp. 433-434.
[11] Exhibit P-7-a, docket pp. 435-436.

prescriptive period under Section 222 of the NIRC, as amended.

Significantly, petitioner's claim that prescription had set in was duly supported by the evidence presented, both testimonial and documentary. The data as appearing in petitioner's various documents fully established that prescription had set insofar as the assessment for the year 2010 for deficiency VAT for the first three quarters, for deficiency EWT for the months of January to November and for deficiency Income Taxes Withheld on Compensation for the months of January to November is concerned. Precisely, they were ordered cancelled. Such finding remains unrebutted by respondent, hence there is no basis for the Court to reverse its ruling. Note that respondent has the equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to its side,[12] which he miserably failed to do in this instance.

WHEREFORE, the Motion for Reconsideration dated March 2, 2017 filed by respondent is hereby **DENIED**, for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[12] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015