REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SALCEDO RISTORANTE ITALIANO, INC., Petitioner,	**CTA CASE NO. 8880**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Casanova,** *and* **Manahan,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 12 2017 3:53 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution before the court are the "Motion for Partial Reconsideration (of the DECISION)" of petitioner Salcedo Ristorante Italiano, Inc. (Salcedo) and the "MOTION FOR RECONSIDERATION (of the Decision dated 22 June 2017)" of respondent Commissioner of Internal Revenue (CIR). The parties failed to file their respective comments on the motions despite the opportunity provided.[1]

Both motions assail the June 22, 207 Decision of the court with the following dispositive portion:

[1] September 18, 2017 Resolution.

"**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTLY GRANTED**. The value-added tax, expanded withholding tax and withholding tax on compensation assessments, including the imposition of the compromise penalties, are hereby **CANCELLED**.

However, petitioner is **ORDERED** to pay deficiency income tax in the amount of ₱1,285,642.00, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997.

In addition, petitioner is **ORDERED** to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax of ₱1,028,513.60 computed from April 15, 2009 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and,

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,285,642.00 (representing basic deficiency income tax of ₱1,028,513.60 and 25% surcharge of ₱257,128.40) and on the deficiency interest which have accrued as afore-stated in (a), computed from September 5, 2014[2] until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

After careful deliberation, We find no merit in the motions of both parties.

On the one hand, petitioner moves for the cancellation and reversal of the income tax assessment on the grounds that the Formal Assessment Notice (FAN) was issued beyond the prescriptive period,[3] that there was error in finding that the "Best Evidence Rule" adopted was applicable and proper[4] and that, finally, the disallowed expenses due to non-withholding were proper and acceptable adjustments to income.[5]

On the other hand, respondent moves for dismissal of Salcedo's petition for lack of merit and specifically for the reconsideration of the court's holding that the three-year prescriptive period under Section

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[2] Exhibit P-9, Division Docket p. 197.
[3] Motion for Partial Reconsideration (of the DECISION), Division Docket, p. 276.
[4] Motion for Partial Reconsideration (of the DECISION), Division Docket, p. 278.
[5] Motion for Partial Reconsideration (of the DECISION), Division Docket, p. 279.

203 of the tax code applies instead of the ten-year period in cases of fraud or of false returns under Section 222.[6]

Petitioner's arguments on the application of the Best Evidence Rule and the disallowance of expenses for non-withholding have been sufficiently discussed in the assailed decision.[7] Other than a bare assertion and a general statement that petitioner submitted all the documents requested by the Revenue Officer,[8] petitioner failed to identify the nature and type of documents submitted and explain how these documents justify the cancellation of the assessment. In fact, during trial petitioner failed to present in court the same documents it submitted to the respondent to oppose the assessment.[9]

Petitioner should keep in mind that tax assessments are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[10]

Failure to present evidence for the court's consideration to rebut this presumption is fatal to petitioner's cause. This court is a highly specialized body that reviews tax cases and conducts trial *de novo*.[11] Clearly, petitioner was remiss in presenting crucial pieces of evidence in the *de novo* proceedings before the CTA and failed to prove relevant aspects of its defense against the income tax assessment.

With respect to the issue of prescription raised by both parties, the court remains unconvinced that its factual findings should be revisited.

Salcedo argues that the three-year prescription of the income tax assessment had already set-in when the FAN was issued on May 8, 2013. Nonetheless, petitioner did not address why Section 223 of the tax code when the running of the statute of limitations is suspended should not apply, even when it could no longer be located in the address registered with the respondent. The assailed decision precisely

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[6] Motion for Reconsideration (of the Decision dated 22 June 2017), Division Docket, pp. 276-278.
[7] Decision, Division Docket, pp. 266-272.
[8] Motion for Partial Reconsideration (of the DECISION), Division Docket, p. 278.
[9] Decision, Division Docket, p. 269.
[10] *Commissioner of Internal Revenue v. Traders Royal Bank*, G.R. No. 167134, March 18, 2015.
[11] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 215705-07, February 22, 2017.

focused on this issue which petitioner failed to rebut with a convincing explanation:

> "As early as February 2012, respondent's examiners have been attempting to serve the NIC and, thereafter, the PAN, to representatives of the petitioner in its registered address, without success. Revenue Officer Etorma later on learned from the building administrator that Salcedo moved out of building. In fact, the building administrator issued a Certification dated February 29, 2012, which stated that petitioner "does not have any existing lease contract with Classica Tower Condominium Assoc. Inc. and [is] no longer occupying Unit GF-1 at 114 H.V. dela Costa St., Salcedo Village, Makati City."
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> Furthermore, the taxpayer Salcedo admitted that it ceased commercial operations sometime in June 2012 and yet failed to inform the respondent of the cessation of the business and update the BIR registration system.
>
> Consequently, pursuant to Section 223, the running of prescription against the respondent CIR's right to assess was suspended beginning February 29, 2012 when its examiner was able to confirm that the taxpayer moved out of its registered address. By this time, however, the three-year prescription for the right to assess valued-added tax, expanded withholding tax and withholding tax on compensation had already set in.
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> Accordingly, except for the income tax assessment, the respondent's right to assess Salcedo is already barred by prescription." (citations omitted)

Contrary to petitioner's statements, respondent through its revenue examiner exerted due diligence in attempting to reach Salcedo several times and to serve the various processes related to the tax audit. Respondent's efforts proved futile, however. It was only in February 2012 when respondent was able to confirm that, in fact, petitioner had already left its registered address *without proper notice* when it finally secured a written certification from petitioner's lessor. Petitioner failed to dispute this fact, hence, the application of Section 223.

In view of the foregoing, we find no cogent reason to disturb the conclusions in the June 22, 2017 Decision. *ge*

WHEREFORE, the motions of both parties are **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice