

## THIRD DIVISION

[ G.R. No. 239464, May 10, 2021 ]

### COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. COURT OF TAX APPEALS THIRD DIVISION AND CITYSUPER, INCORPORATED, RESPONDENTS.

#### DECISION

##### LEONEN, J.:

When a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the petition is premature and the Court of Tax Appeals has no jurisdiction.

This Court resolves a Petition for Certiorari<sup>[1]</sup> assailing the Resolutions<sup>[2]</sup> of the Court of Tax Appeals Third Division, which canceled the assessment notices for deficiency income tax, value-added tax, withholding tax on compensation, and expanded withholding tax issued by the Commissioner of Internal Revenue against Citysuper, Inc. (Citysuper). It also found that the Commissioner was estopped from raising its lack of subject-matter jurisdiction over the case.<sup>[3]</sup>

On April 1, 2013, the Commissioner of Internal Revenue issued Letter of Authority No. 116-2013-00000017 for Bureau of Internal Revenue officials to examine Citysuper's books of account and other accounting records for an investigation for taxable year 2011.<sup>[4]</sup>

On April 1, 2015, the Commissioner of Internal Revenue issued a Preliminary Assessment Notice for 2011, informing Citysuper of its alleged deficiencies on income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and documentary stamp tax. The total assessed amount was P2,083,016,072.43.<sup>[5]</sup>

On April 24, 2015, Citysuper received the Formal Letter of Demand and Assessment Notices for the unpaid taxes. In response, on April 29, 2015, Citysuper filed a letter with the Bureau of Internal Revenue.<sup>[6]</sup>

On August 13, 2015, Citysuper filed before the Court of Tax Appeals a Petition for Review under Rule 43 of the Rules of Court, seeking to cancel the Formal Letter of Demand. To its pleading, it attached the Details of Discrepancies and Audit Result/Assessment Notices for 2011. On February 29, 2016, Citysuper submitted its Urgent Motion for Preferential Resolution of the Issue on Prescription. The Commissioner of Internal Revenue filed a Comment/Opposition to the Urgent Motion.<sup>[7]</sup>

On August 15, 2016, Citysuper presented Beley G. Chua, its corporate secretary.

She testified that she had issued an August 12, 2015 Secretary's Certificate attesting that Citysuper's Board of Directors did not authorize one Conchita V. Lee (Lee) "to waive [Citysuper's] defense of prescription for and on its behalf."<sup>[8]</sup>

On November 15, 2016, the Commissioner of Internal Revenue presented Rosario A. Arriola (Arriola), a revenue officer who testified among others that Citysuper, through Lee, executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (Waiver). This Waiver, she said, extended the period to assess Citysuper until December 31, 2015.<sup>[9]</sup>

During cross-examination, Arriola stated that she required Lee to show proof that she was authorized to sign the Waiver. Lee showed an authorization letter, but Arriola said she was not sure if it was notarized, adding that the letter was in her office and not attached to the case records.<sup>[10]</sup>

Since Arriola did not have the authorization letter with her, her crossexamination was set to continue on January 24, 2017. However, on that date, Citysuper's counsel failed to appear, prompting the Commissioner of Internal Revenue's lawyer to move for the waiver of the rest of the cross-examination, which the Court of Tax Appeals granted.<sup>[11]</sup>

When the Commissioner of Internal Revenue filed a Formal Offer of Evidence, the Court of Tax Appeals did not admit the authorization letter. It then ordered the parties to submit their memoranda. The Commissioner moved for partial reconsideration and for the submission of a memorandum to be deferred, but this omnibus motion was not deemed filed. On the other hand, Citysuper filed its Memorandum (On the Issue of Prescription).<sup>[12]</sup>

In its December 15, 2017 Resolution,<sup>[13]</sup> the Court of Tax Appeals partially granted the Petition for Review. The dispositive portion reads:

**WHEREFORE**, in view of all the foregoing, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent's Formal Letter of Demand dated April 24, 2015 is **PARTIALLY SET ASIDE** and the corresponding Assessment Notices for deficiency income tax, VAT, WTC, and EWT issued against petitioner are hereby **CANCELLED** and **WITHDRAWN**.

Let the hearing on the merits on the DST assessment, as found in the Formal Letter of Demand dated April 24, 2015, be set on **April 16, 2018 at 1:30 p.m.**

**SO ORDERED.**<sup>[14]</sup> (Emphasis in the original)

Citing provisions of the National Internal Revenue Code, the Court of Tax Appeals found that the prescription period was not validly waived.<sup>[15]</sup> Under Section 203 of the National Internal Revenue Code, assessments for deficiency taxes should be issued within three years from the last day prescribed by law to file the tax return, or the actual date of filing of such return, whichever comes later:

SECTION 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Section 222(b) provides that the period to assess may be extended upon written agreement of the Commissioner and the taxpayer:

SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* - ...

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

To implement Section 222(b), the Bureau of Internal Revenue issued Revenue Memorandum Order No. 20-90, which stated in part:

In the execution of said waiver, the following procedures should be followed:

....

2. The waiver shall be signed by the taxpayer [himself/herself] or [his/her/its] duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the [CIR] or the revenue officer authorized by [him/her], as hereinafter provided, shall sign the waiver indicating that the [BIR] has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.<sup>[16]</sup>

Revenue Memorandum Order No. 20-90 was modified by Revenue Delegation Authority Order No. 05-01, which mandated that the authorized revenue official ensure that the waiver was duly accomplished by the taxpayer or their authorized representative, and that, if the authority to execute the waiver was delegated, the revenue official should make sure that the delegation was in writing and duly notarized.<sup>[17]</sup>

The Court of Tax Appeals found that the prescriptive periods for some of the

deficiency value-added taxes, withholding taxes on compensation, and expanded withholding taxes had elapsed. Lee signed the Waiver on July 10, 2014, and Officer-in-Charge-Assistant Commissioner-LTS Nestor S. Valeroso accepted it on July 25, 2014. Thus, the Court of Tax Appeals said, the following taxes could no longer be assessed:[18]

<b>TAX RETURNS</b>	<b>LAST DAY TO ASSESS</b>
<i>[Value Added Tax]</i> 1 <sup>st</sup> Quarter	April 25, 2014
<i>[Withholding Tax on Compensation]</i> January February March April May June	February 13, 2014 March 13, 2014 April 13, 2014 May 13, 2014 June 13, 2014 July 13, 2014
<i>[Expanded Withholding Tax]</i> January February March April May June	February 13, 2014 March 13, 2014 April 13, 2014 May 13, 2014 June 13, 2014 July 13, 2014 <sup>[19]</sup>

The following taxes remained:

<b>TAX RETURNS</b>	<b>LAST DAY TO ASSESS</b>
<i>Income Tax</i>	April 15, 2015
<i>[Value Added Tax]</i> 2 <sup>nd</sup> 3 <sup>rd</sup> 4 <sup>th</sup>	July 25, 2014 October 25, 2014 January 25, 2015
<i>[Withholding Tax on Compensation]</i> July August September October November December	August 13, 2014 September 13, 2014 October 13, 2014 November 13, 2014 December 13, 2014 January 30, 2015
<i>[Expanded Withholding Tax]</i> July August September October November December	August 13, 2014 September 13, 2014 October 13, 2014 November 13, 2014 December 13, 2014 January 15, 2015 <sup>[20]</sup>

However, the Court of Tax Appeals found that Lee was unauthorized to enter into the Waiver on Citysuper's behalf. It said that Lee's authority was never presented and properly identified. As such, the Court of Tax Appeals denied the letter when it was

formally offered, pursuant to Rule 132, Section 20 of the Rules of Court, under which only documents duly identified by a competent witness and formally offered in evidence would be admitted.<sup>[21]</sup>

Further, the Court of Tax Appeals found that the parties were not *in pari delicto* due to the Waiver. It found no showing that Citysuper itself knew of the Waiver or authorized someone to sign it. It also did not find that Citysuper dealt with revenue officers based on the Waiver. Citysuper was not deemed to have benefited from the Waiver as it had already forwarded some of the required documents to the Commissioner of Internal Revenue before the Waiver was signed.<sup>[22]</sup>

Finally, as to the documentary stamp tax, the Court of Tax Appeals ordered that a full-blown trial be conducted to determine if Citysuper should be made liable, as insufficient evidence was presented to determine if the Commissioner's right to assess had prescribed.<sup>[23]</sup>

In a Motion for Reconsideration, the Commissioner of Internal Revenue argued that the Court of Tax Appeals had no jurisdiction. It explained that Citysuper had admitted receiving the Final Letter of Demand and Assessment Notices on April 24, 2015, which meant that Citysuper had until May 24, 2015 to file its protest.<sup>[24]</sup> While it allegedly filed a protest on April 29, 2015, the Commissioner claimed that the protest letter only had the assessment notices attached, and stated that Citysuper was still compiling supporting documents.<sup>[25]</sup> With no protest, the Commissioner said, the assessment became final-depriving the Court of Tax Appeals of jurisdiction, which only pertained to disputed assessments.<sup>[26]</sup>

Second, the Commissioner claimed that the Court of Tax Appeals incorrectly computed the prescriptive periods for the deficiency taxes, as the period that should have applied was 10 years under Section 222(a) of the National Internal Revenue Code, due to the substantial under-declaration of income and sales, which constituted a false return.<sup>[27]</sup>

Finally, the Commissioner argued that the Waiver was valid. It argued that since Lee's authorization letter was notarized, it should be considered a public document without further proof of authentication.<sup>[28]</sup>

In its March 20, 2018 Resolution,<sup>[29]</sup> the Court of Tax Appeals denied the Motion for Reconsideration. It found that the defense of lack of jurisdiction was barred by laches, following *Tijam v. Sibonghanoy*.<sup>[30]</sup> Holding that the *Tijam* doctrine was the rule, not the exception, the Court of Tax Appeals found that the issue of prescription had never been raised until the December 15, 2017 Resolution was issued.<sup>[31]</sup>

On June 13, 2018, the Commissioner of Internal Revenue filed before this Court its Petition for Certiorari<sup>[32]</sup> against Citysuper.

Petitioner argues that the Court of Tax Appeals gravely abused its discretion in finding that they were barred by laches from raising the issue of jurisdiction. To petitioner, the Court of Tax Appeals deliberately made it appear that the *Tijam* doctrine was the rule, not the exception, on the issue of jurisdiction. Citing *Figuroa*