

SECOND DIVISION

[G.R. No. 224327, June 11, 2018]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

DECISION

PERALTA, J.:

For this Court's resolution is the Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Civil Procedure assailing the Decision^[2] dated September 16, 2015 and Resolution^[3] dated April 21, 2016 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1173 (CTA CASE No. 8350) on petitioner Commissioner of Internal Revenue's (CIR) tax assessment against respondent Bank of the Philippine Islands (BPI).

The facts follow.

Citytrust Banking Corporation (CBC) filed its Annual Income Tax Returns for its Regular Banking Unit, and Foreign Currency Deposit Unit for taxable year 1986 on April 15, 1987.

Thereafter, on August 11, 1989, July 12, 1990 and November 8, 1990, CBC executed Waivers of the Statute of Limitations under the National Internal Revenue Code (NIRC).

On March 7, 1991, petitioner CIR issued a Pre-Assessment Notice (PAN) against CBC for deficiency taxes, among which is for deficiency Income Tax for taxable year 1986 in the total amount of P19,202,589.97. The counsel for CBC filed its protest against the PAN on April 22, 1991.

Petitioner, on May 6, 1991, issued a Letter, with attached Assessment Notices, demanding for the payment of the deficiency taxes within thirty (30) days from receipt thereof. The counsel for CBC filed its Protest against the assessments on May 27, 1991 and another Protest on February 17, 1992.

A Letter was again issued by petitioner on February 5, 1992 requesting for the payment of CBC's tax liabilities, within ten (10) days from receipt thereof.

The counsel for CBC, on March 29, 1994, issued a Letter addressed to petitioner offering a compromise settlement on its deficiency Income Tax assessment for Taxable year 1986, with an attached Application for Compromise Settlement/Abatement of Penalties under Revenue Memorandum Order (RMO) No. 45-93, in the amount of P1,721,503.40, or twenty percent (20%) of the subject assessment, which was received on March 30, 1994. On May 2, 1994, the counsel for CBC issued a Letter addressed to petitioner, reiterating its Letter of offer of compromise settlement dated March 29, 1994 and Application for Compromise Settlement/Abatement under RMO No. 45-93.

Petitioner, on October 12, 1994, approved the earlier mentioned Application for Compromise Settlement of CBC, provided that one hundred percent (100%) of its deficiency Income Tax assessment for the year 1986, or in the amount of P8,607,517.00, be paid within fifteen (15) days from receipt thereof.

The counsel for CBC, on November 28, 1994, issued a Letter addressed to petitioner, requesting for a reconsideration of the approved amount as compromise settlement, and offering to pay the amount of P1,600,000.00 as full and final settlement of the subject assessment. The same counsel for CBC issued a Letter on March 8, 1995 reiterating its request for reconsideration and offering to increase its full and final settlement in the amount P3,200,000.00.

On March 28, 1995, petitioner approved the Application for Compromise Settlement of CBC dated March 30, 1994, provided that CBC pay the amount of P8,607,517.00 within fifteen (15) days from receipt thereof.

Later, on May 4, 1995, the counsel for CBC issued another Letter addressed to petitioner, requesting for a final reconsideration, and reiterating its offer of compromise in the amount of P3,200,000.00.

Petitioner, however, disapproved the Application for Compromise Settlement of CBC dated March 30, 1994. The counsel of CBC, on July 27, 1995, issued a Letter addressed to petitioner requesting for reconsideration and offering to pay the increased amount of P4,303,758.50.

Meanwhile, on October 4, 1996, the Securities and Exchange Commission approved the Articles of Merger between respondent BPI and CBC, with BPI as the surviving corporation.

Afterwards, on May 26, 2011, petitioner issued a Notice of Denial addressed to respondent, requesting for the payment of CBC's deficiency Income Tax for taxable year 1986, within fifteen (15) days from receipt thereof, and on July 28, 2011, petitioner issued another Letter addressed to respondent, denying the offer of compromise penalty, and requesting for the payment of the amount of P19,202,589.97, plus all increments incident to delinquency, pursuant to Sections 248 (A) (3) and 249 (C) (3) of the 1997 NIRC, as amended.

Consequently, on September 21, 2011, petitioner issued a Warrant of Distrain and/or Levy against respondent BPI which prompted the latter to file a Petition for Review with the CTA on October 7, 2011.

In a Decision^[4] dated February 12, 2014, the CTA Special Third Division granted the petition for review, thus:

WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, the Warrant of Distrain and/or Levy dated September 21, 2011 is hereby CANCELLED and SET ASIDE.

SO ORDERED.^[5]

According to the CTA Special Third Division, BPI can validly assail the Warrant of Distrain and/or Levy, as its appellate jurisdiction is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The Court further ruled that the Assessment Notices, being

issued only on May 6, 1991, were already issued beyond the three-year period to assess, counting from April 15, 1987, when CBC filed its Annual Income Tax Returns for the taxable year 1986. The same Court also held that the Waivers of Statute of Limitations executed on July 12, 1990 and November 8, 1990 were not in accordance with the proper form of a valid waiver pursuant to RMO No. 20-90, thus, the waivers failed to extend the period given to petitioner to assess.

After the denial of petitioner's motion for reconsideration, a petition for review was filed with the CTA *En Banc*, in which the latter Court denied the said petition, thus:

WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. Accordingly, the Decision and the Resolution, dated February 12, 2014 and April 25, 2014, respectively, are hereby AFFIRMED.

SO ORDERED.^[6]

Hence, the present petition after the CTA *En Banc* denied petitioner's motion for reconsideration.

Petitioner raises the following grounds for the allowance of the present petition:

THE CTA *EN BANC* ERRED IN AFFIRMING THE CTA SPECIAL THIRD DIVISION'S EXERCISE OF JURISDICTION OVER THE INSTANT CONTROVERSY.

THE CTA *EN BANC* ERRED IN AFFIRMING THE ANNULMENT OF THE WARRANT OF DISTRAINT AND/OR LEVY AGAINST RESPONDENT GIVEN PETITIONER'S CLEAR RIGHT TO THE SAME.^[7]

Petitioner argues that the CTA did not acquire jurisdiction over the case for respondent's failure to contest the assessments made against it by the Bureau of Internal Revenue (*BIR*) within the period prescribed by law. Petitioner also contends that by the principle of estoppel, respondent is not allowed to raise the defense of prescription against the efforts of the government to collect the tax assessed against it.

In its Comment^[8] dated August 22, 2016, respondent claims that the assessment notice issued against it, is not yet final and executory and that the CTA has jurisdiction over the case. It further asserts that the right of petitioner to assess deficiency income tax for the taxable year 1986 had already prescribed pursuant to the Tax Code of 1977 and that the right of petitioner to collect the alleged deficiency income tax for the taxable year 1986 had already prescribed. Respondent also insists that it is not liable for the alleged deficiency income tax and increments for the taxable year 1986.

The petition lacks merit.

First of all, the CTA did not err in its ruling that it has jurisdiction over cases asking for the cancellation and withdrawal of a warrant of distraint and/or levy as provided under Section 7 of Republic Act (*R.A.*) No. 9282, thus:

Sec. 7 Jurisdiction. – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. x x x

2. Inaction by the Commissioner of the Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

x x x x

Anent the other grounds relied upon by petitioner, such are factual in nature. It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.^[9] We thus accord the findings of fact by the CTA with the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.^[10] Nevertheless, the factual findings of the CTA are supported by substantial evidence.

An assessment becomes final and unappealable if within thirty (30) days from receipt of the assessment, the taxpayer fails to file his or her protest requesting for reconsideration or reinvestigation as provided in Section 229 of the NIRC, thus:

SECTION 229. *Protesting of assessment.* – When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

If the protest is denied in whole and in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.^[11]

Petitioner insists that respondent failed to elevate the tax assessment against it to the CTA within the required period. Respondent, on the other hand, claims that it