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FIRST DIVISION

[G.R. No. 172509, February 04, 2015]

CHINA BANKING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This Rule 45 Petition[1] requires this Court to address the question of prescription of the government's right to collect taxes. Petitioner China Banking Corporation (CBC) assails the Decision[2] and Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA *En Banc* Case No. 109. The CTA *En Banc* affirmed the Decision[4] in CTA Case No. 6379 of the CTA Second Division, which had also affirmed the validity of Assessment No. FAS-5-82/85-89-000586 and FAS-5-86-89-00587. The Assessment required petitioner CBC to pay the amount of P11,383,165.50, plus increments accruing thereto, as deficiency documentary stamp tax (DST) for the taxable years 1982 to 1986.

FACTS

Petitioner CBC is a universal bank duly organized and existing under the laws of the Philippines. For the taxable years 1982 to 1986, CBC was engaged in transactions involving sales of foreign exchange to the Central Bank of the Philippines (now *Bangko Sentral ng Pilipinas*), commonly known as SWAP transactions.[5] Petitioner did not file tax returns or pay tax on the SWAP transactions for those taxable years.

On 19 April 1989, petitioner CBC received an assessment from the Bureau of Internal Revenue (BIR) finding CBC liable for deficiency DST on the sales of foreign bills of exchange to the Central Bank. The deficiency DST was computed as follows:

Deficiency Documentary Stamp Tax

		Amount
For the years 1982 to 1985		P 8,280,696.00
For calendar year 1986	P 2,481 ,975.60	
Add : Surcharge	P 620,493.90	P 3,102.469.50
		P11 ,383,165.50[6]

On 8 May 1989, petitioner CBC, through its vice-president, sent a letter of protest to the BIR. CBC raised the following defenses: (1) *double taxation*, as the bank had previously paid the DST on all its transactions involving sales of foreign bills of

exchange to the Central Bank; (2) *absence of liability,* as the liability for the DST in a sale of foreign exchange through telegraphic transfers to the Central Bank falls on the buyer ? in this case, the Central Bank; (3) *due process violation*, as the bank's records were never formally examined by the BIR examiners; (4) *validity of the assessment*, as it did not include the factual basis therefore; (5) *exemption,* as neither the tax-exempt entity nor the other party was liable for the payment of DST before the effectivity of Presidential Decree Nos. (PD) 1177 and 1931 for the years 1982 to 1986.[7] In the protest, the taxpayer requested a reinvestigation so as to substantiate its assertions.[8]

On 6 December 2001, ***more than 12 years after the filing of the protest,*** the Commissioner of Internal Revenue (CIR) rendered a decision reiterating the deficiency DST assessment and ordered the payment thereof plus increments within 30 days from receipt of the Decision.[9]

On 18 January 2002, CBC filed a Petition for Review with the CTA. **On 11 March 2002, the CIR filed an Answer with a demand for CBC to pay the assessed DST.**[10]

On 23 February 2005, and after trial on the merits, the CTA Second Division denied the Petition of CBC. The CTA ruled that a SWAP arrangement should be treated as a telegraphic transfer subject to documentary stamp tax.[11]

On 30 March 2005, petitioner CBC filed a Motion for Reconsideration, but it was denied in a Resolution dated 14 July 2005.

On 5 August 2005, petitioner appealed to the CTA En Banc. The appellate tax court, however, dismissed the Petition for Review in a Decision dated 1 December 2005. CBC filed a Motion for Reconsideration on 21 December 2005, but it was denied in a 20 March 2006 Resolution.

The taxpayer now comes to this Court with a Rule 45 Petition, reiterating the arguments it raised at the CTA level and invoking for the first time the argument of prescription. Petitioner CBC states that the government has three years from 19 April 1989, the date the former received the assessment of the CIR, to collect the tax. Within that time frame, however, neither a warrant of distraint or levy was issued, nor a collection case filed in court.

On 17 October 2006, respondent CIR submitted its Comment in compliance with the Court's Resolution dated 26 June 2006.[12] The Comment did not have any discussion on the question of prescription.

On 21 February 2007, the Court issued a Resolution directing the parties to file their respective Memoranda. Petitioner CBC filed its Memorandum[13] on 26 April 2007. The CIR, on the other hand, filed on 17 April 2007 a Manifestation stating that it was adopting the allegations and authorities in its Comment in lieu of the required Memorandum.[14]

ISSUE

Given the facts and the arguments raised in this case, the resolution of this case hinges on this issue: whether the right of the BIR to collect the assessed DST from CBC is barred by prescription.[15]

RULING OF THE COURT

We grant the Petition on the ground that the right of the BIR to collect the assessed DST is barred by the statute of limitations.

Prescription Has Set In.

To recall, the Bureau of Internal Revenue (BIR) issued the assessment for deficiency DST on 19 April 1989, when the applicable rule was Section 319(c) of the National Internal Revenue Code of 1977, as amended.[16] In that provision, the time limit for the government to collect the assessed tax is set at three years, to be reckoned from the date when the BIR mails/releases/sends the assessment notice to the taxpayer. Further, Section 319(c) states that the assessed tax must be collected by distraint or levy and/or court proceeding within the three-year period.

With these rules in mind, we shall now determine whether the claim of the BIR is barred by time.

In this case, the records do not show when the assessment notice was mailed, released or sent to CBC. Nevertheless, the latest possible date that the BIR could have released, mailed or sent the assessment notice was on the same date that CBC received it, 19 April 1989. Assuming therefore that 19 April 1989 is the reckoning date, the BIR had three years to collect the assessed DST. However, the records of this case show that there was neither a warrant of distraint or levy served on CBC's properties nor a collection case filed in court by the BIR within the three-year period.

The attempt of the BIR to collect the tax through its Answer with a demand for CBC to pay the assessed DST in the CTA **on 11 March 2002** did not comply with Section 319(c) of the 1977 Tax Code, as amended. The demand was made **almost thirteen years from** the date from which the prescriptive period is to be reckoned. Thus, the attempt to collect the tax was made way beyond the three-year prescriptive period.

The BIR's Answer in the case filed before the CTA could not, by any means, have qualified as a collection case as required by law. Under the rule prevailing at the time the BIR filed its Answer, the regular courts, and not the CTA, had jurisdiction over judicial actions for collection of internal revenue taxes. It was only on 23 April 2004, when Republic Act Number 9282 took effect,[17] that the jurisdiction of the CTA was expanded to include, among others, original jurisdiction over collection cases in which the principal amount involved is one million pesos or more.

Consequently, the claim of the CIR for deficiency DST from petitioner is forever lost, as it is now barred by time. This Court has no other option but to dismiss the present case.

The running of the statute of

limitations was not suspended
by the request for reinvestigation.

The fact that the taxpayer in this case may have requested a reinvestigation did not toll the running of the three-year prescriptive period. Section 320 of the 1977 Tax Code states:

> Sec. 320. *Suspension of running of statute.*—The running of the statute of limitations provided in Sections 318 or 319 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 days thereafter; **when the taxpayer requests for a re-investigation 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 and 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**)

The provision is clear. A request for reinvestigation alone will not suspend the statute of limitations. Two things must concur: there must be a request for reinvestigation and the CIR must have granted it. *BPI v. Commissioner of Internal Revenue*[18] emphasized this rule by stating:

> In the case of *Republic of the Philippines v. Gancayco,* taxpayer Gancayco requested for a thorough reinvestigation of the assessment against him and placed at the disposal of the Collector of Internal Revenue all the [evidence] he had for such purpose; yet, the Collector ignored the request, and the records and documents were not at all examined. Considering the given facts, this Court pronounced that—
>
> > x x x. ***The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension***. (*Collector v. Suyoc Consolidated, supra; also Republic v. Ablaza, supra*). Moreover, the Collector gave appellee until April 1, 1949, within which to submit his evidence, which the latter did one day before. There were no impediments on the part of the Collector to file the collection case from April 1, 1949 x x x.
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> In *Republic of the Philippines v. Acebedo*, this Court similarly found that —
>
> > . . . *[T]he defendant, after receiving the assessment notice of September 24, 1949, asked for a reinvestigation thereof on*

> *October 11, 1949 (Exh. "A"). There is no evidence that this request was considered or acted upon. In fact, on October 23, 1950 the then Collector of Internal Revenue issued a warrant of distraint and levy for the full amount of the assessment (Exh. "D"), but there was follow-up of this warrant. Consequently, the request for reinvestigation did not suspend the running of the period for filing an action for collection.* (Emphasis in the original)

The Court went on to declare that the burden of proof that the request for reinvestigation had been actually granted shall be on the CIR. Such grant may be expressed in its communications with the taxpayer or implied from the action of the CIR or his authorized representative in response to the request for reinvestigation.

There is nothing in the records of this case which indicates, expressly or impliedly, that the CIR had granted the request for reinvestigation filed by BPI. What is reflected in the records is the piercing silence and inaction of the CIR on the request for reinvestigation, as he considered BPI's letters of protest to be.

In the present case, there is no showing from the records that the CIR ever granted the request for reinvestigation filed by CBC. That being the case, it cannot be said that the running of the three-year prescriptive period was effectively suspended.

Failure to raise prescription at the administrative level/lower court as a defense is of no moment.

> **When the pleadings or the evidence on record show that the claim is barred by prescription, the court must dismiss the claim even if prescription is not raised as a defense.**

We note that petitioner has raised the issue of prescription for the first time only before this Court. While we are mindful of the established rule of remedial law that the defense of prescription must be raised at the trial court that has also been applied for tax cases.[19] Thus, as a rule, the failure to raise the defense of prescription at the administrative level prevents the taxpayer from raising it at the appeal stage.

This rule, however, is not absolute.

The facts of the present case are substantially identical to those in the 2014 case, *Bank of the Philippine Islands (BPI) v. Commissioner of Internal Revenue.*[20] In that case, petitioner received an assessment notice from the BIR for deficiency DST based on petitioner's SWAP transactions for the year 1985 on 16 June 1989. On 23 June 1989, BPI, through its counsel, filed a protest requesting the reinvestigation and/or reconsideration of the assessment for lack of legal or factual bases. *Almost ten years later,* the CIR, in a letter dated 4 August 1998, denied the protest. On 4 January 1999, BPI filed a Petition for Review with the CTA. *On 23 February 1999*,