536 Phil. 1131

FIRST DIVISION

[G. R. NO. 167146, October 31, 2006]

COMMISSIONER OF INTERNAL REVENUE PETITIONER, VS. PHILIPPINE GLOBAL COMMUNICATION, INC., RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, seeking to set aside the *en banc* Decision of the Court of Tax Appeals (CTA) in CTA EB No. 37 dated 22 February 2005,[1] ordering the petitioner to withdraw and cancel Assessment Notice No. 000688-80-7333 issued against respondent Philippine Global Communication, Inc. for its 1990 income tax deficiency. The CTA, in its assailed *en banc* Decision, affirmed the Decision of the First Division of the CTA dated 9 June 2004[2] and its Resolution dated 22 September 2004 in C.T.A. Case No. 6568.

Respondent, a corporation engaged in telecommunications, filed its Annual Income Tax Return for taxable year 1990 on 15 April 1991. On 13 April 1992, the Commissioner of Internal Revenue (CIR) issued Letter of Authority No. 0002307, authorizing the appropriate Bureau of Internal Revenue (BIR) officials to examine the books of account and other accounting records of respondent, in connection with the investigation of respondent's 1990 income tax liability. On 22 April 1992, the BIR sent a letter to respondent requesting the latter to present for examination certain records and documents, but respondent failed to present any document. On 21 April 1994, respondent received a Preliminary Assessment Notice dated 13 April 1994 for deficiency income tax in the amount of P118,271,672.00, inclusive of surcharge, interest, and compromise penalty, arising from deductions that were disallowed for failure to pay the withholding tax and interest expenses that were likewise disallowed. On the following day, 22 April 1994, respondent received a Formal Assessment Notice with Assessment Notice No. 000688-80-7333, dated 14 April 1994, for deficiency income tax in the total amount of P118,271,672.00.[3]

On 6 May 1994, respondent, through its counsel Ponce Enrile Cayetano Reyes and Manalastas Law Offices, filed a formal protest letter against Assessment Notice No. 000688-80-7333. Respondent filed another protest letter on 23 May 1994, through another counsel Siguion Reyna Montecillo & Ongsiako Law Offices. In both letters, respondent requested for the cancellation of the tax assessment, which they alleged was invalid for lack of factual and legal basis.[4]

On 16 October 2002, more than eight years after the assessment was presumably issued, the Ponce Enrile Cayetano Reyes and Manalastas Law Offices received from the CIR a Final Decision dated 8 October 2002 denying the respondent's protest against Assessment Notice No. 000688-80-7333, and affirming the said assessment in toto.[5]

On 15 November 2002, respondent filed a Petition for Review with the CTA. After due notice and hearing, the CTA rendered a Decision in favor of respondent on 9 June 2004.[6] The CTA ruled on the primary issue of prescription and found it unnecessary to decide the issues on the validity and propriety of the assessment. It decided that the protest letters filed by the respondent cannot constitute a request for reinvestigation, hence, they cannot toll the running of the prescriptive period to collect the assessed deficiency income tax.[7] Thus, since more than three years had lapsed from the time Assessment Notice No. 000688-80-7333 was issued in 1994, the CIR's right to collect the same has prescribed in conformity with Section 269 of the National Internal Revenue Code of 1977[8] (Tax Code of 1977). The dispositive portion of this decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioner. Accordingly, respondent's Final Decision dated October 8, 2002 is hereby REVERSED and SET ASIDE and respondent is hereby ORDERED to WITHDRAW and CANCEL Assessment Notice No. 000688-80-7333 issued against the petitioner for its 1990 income tax deficiency because respondent's right to collect the same has prescribed.[9]

The CIR moved for reconsideration of the aforesaid Decision but was denied by the CTA in a Resolution dated 22 September 2004.[10] Thereafter, the CIR filed a Petition for Review with the CTA *en banc*, questioning the aforesaid Decision and Resolution. In its *en banc* Decision, the CTA affirmed the Decision and Resolution in CTA Case No. 6568. The dispositive part reads:

> WHEREFORE, premises considered, the Petition for Review is hereby DISMISSED for lack of merit. Accordingly, the assailed Decision and Resolution in CTA Case No. 6568 are hereby AFFIRMED *in toto*.[11]

Hence, this Petition for Review on *Certiorari* raising the following grounds:

> THE COURT OF TAX APPEALS, SITTING *EN BANC*, COMMITTED REVERSIBLE ERROR IN AFFIRMING THE ASSAILED DECISION AND RESOLUTION IN CTA CASE NO. 6568 DECLARING THAT THE RIGHT OF THE GOVERNMENT TO COLLECT THE DEFICIENCY INCOME TAX FROM RESPONDENT FOR THE YEAR 1990 HAS PRESCRIBED
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> A. THE PRESCRIPTIVE PERIOD WAS INTERUPTED WHEN RESPONDENT FILED TWO LETTERS OF PROTEST DISPUTING IN DETAIL THE DEFICIENCY ASSESSMENT IN QUESTION AND REQUESTING THE CANCELLATION OF SAID ASSESSMENT. THE TWO LETTERS OF PROTEST ARE, BY NATURE, REQUESTS FOR REINVESTIGATION OF THE DISPUTED ASSESSMENT.
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> B. THE REQUESTS FOR REINVESTIGATION OF RESPONDENT WERE GRANTED BY THE BUREAU OF INTERNAL REVENUE.[12]

This Court finds no merit in this Petition.

The main issue in this case is whether or not CIR's right to collect respondent's

alleged deficiency income tax is barred by prescription under Section 269(c) of the Tax Code of 1977, which reads:

> Section 269. *Exceptions as to the period of limitation of assessment and collection of taxes*. - x x x
>
> x x x x
>
> c. Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

The law prescribed a period of three years from the date the return was actually filed or from the last date prescribed by law for the filing of such return, whichever came later, within which the BIR may assess a national internal revenue tax.[13] However, the law increased the prescriptive period to assess or to begin a court proceeding for the collection without an assessment to ten years when a false or fraudulent return was filed with the intent of evading the tax or when no return was filed at all.[14] In such cases, the ten-year period began to run only from the date of discovery by the BIR of the falsity, fraud or omission.

If the BIR issued this assessment within the three-year period or the ten-year period, whichever was applicable, the law provided another three years after the assessment for the collection of the tax due thereon through the administrative process of distraint and/or levy or through judicial proceedings.[15] The three-year period for collection of the assessed tax began to run on the date the assessment notice had been released, mailed or sent by the BIR.[16]

The assessment, in this case, was presumably issued on 14 April 1994 since the respondent did not dispute the CIR's claim. Therefore, the BIR had until 13 April 1997. However, as there was no Warrant of Distraint and/or Levy served on the respondents nor any judicial proceedings initiated by the BIR, the earliest attempt of the BIR to collect the tax due based on this assessment was when it filed its Answer in CTA Case No. 6568 on 9 January 2003, which was several years beyond the three-year prescriptive period. Thus, the CIR is now prescribed from collecting the assessed tax.

The provisions on prescription in the assessment and collection of national internal revenue taxes became law upon the recommendation of the tax commissioner of the Philippines. The report submitted by the tax commission clearly states that these provisions on prescription should be enacted to benefit and protect taxpayers:

> Under the former law, the right of the Government to collect the tax does not prescribe. However, in fairness to the taxpayer, the Government should be estopped from collecting the tax where it failed to make the necessary investigation and assessment within 5 years after the filing of the return and where it failed to collect the tax within 5 years from the date of assessment thereof. Just as the government is interested in the stability of its collections, so also are the taxpayers entitled to an assurance that they will not be subjected to further investigation for tax

> purposes after the expiration of a reasonable period of time. (Vol. II, Report of the Tax Commission of the Philippines, pp. 321-322).[17]

In a number of cases, this Court has also clarified that the statute of limitations on the collection of taxes should benefit both the Government and the taxpayers. In these cases, the Court further illustrated the harmful effects that the delay in the assessment and collection of taxes inflicts upon taxpayers. In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*,[18] Justice Montemayor, in his dissenting opinion, identified the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made.

> Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court x x x. It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay .

In *Republic of the Philippines v. Ablaza*,[19] this Court emphatically explained that the statute of limitations of actions for the collection of taxes is justified by the need to protect law-abiding citizens from possible harassment:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest, peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law.

And again in the recent case *Bank of the Philippine Islands v. Commissioner of Internal Revenue,*[20] this Court, in confirming these earlier rulings, pronounced that:

> Though the statute of limitations on assessment and collection of national internal revenue taxes benefits both the Government and the taxpayer, it principally intends to afford protection to the taxpayer against unreasonable investigation. The indefinite extension of the period for assessment is unreasonable because it deprives the said taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.

Thus, in *Commissioner of Internal Revenue v. B.F. Goodrich*,[21] this Court affirmed that the law on prescription should be liberally construed in order to protect taxpayers and that, as a corollary, the exceptions to the law on prescription should be strictly construed.

The Tax Code of 1977, as amended, provides instances when the running of the statute of limitations on the assessment and collection of national internal revenue taxes could be suspended, even in the absence of a waiver, under Section 271 thereof which reads:

> Section 224. *Suspension of running of statute*. - The running of the statute of limitation provided in Sections 268 and 269 on the making of assessments 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 reinvestigation 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 x x x. (Emphasis supplied.)

Among the exceptions provided by the aforecited section, and invoked by the CIR as a ground for this petition, is the instance when the taxpayer requests for a reinvestigation which is granted by the Commissioner. However, this exception does not apply to this case since the respondent never requested for a reinvestigation. More importantly, the CIR could not have conducted a reinvestigation where, as admitted by the CIR in its Petition, the respondent refused to submit any new evidence.

Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue, issued on 27 November 1985, defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:

> Section 6. Protest. - The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:
>
> x x x x
>
> For the purpose of protest herein-
>
> (a) *Request for reconsideration*-- refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional