SECOND DIVISION

BANK OF THE PHILIPPINE ISLANDS, Petitioner,	G.R. No. 139736 Present:
- *versus*-	PUNO, Chairman AUSTRIA-MARTINEZ, CALLEJO, SR., TINGA, and CHICO-NAZARIO, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: October 17, 2005

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D E C I S I O N

CHICO-NAZARIO, *J*.:

This Petition for Review on *Certiorari*, under Rule 45 of the 1997 Rules of Civil Procedure, assails the Decision of the Court of Appeals in CA-G.R. SP No. 51271, dated 11 August 1999,[1] which reversed and set aside the Decision of the Court of Tax Appeals (CTA), dated 02 February 1999,[2] and which reinstated Assessment No. FAS-5-85-89-002054 requiring petitioner Bank of the Philippine Islands (BPI) to pay the amount of

₱28,020.00 as deficiency documentary stamp tax (DST) for the taxable year 1985, inclusive of the compromise penalty.

There is hardly any controversy as to the factual antecedents of this Petition.

Petitioner BPI is a commercial banking corporation organized and existing under the laws of the Philippines. On two separate occasions, particularly on 06 June 1985 and 14 June 1985, it sold United States (US) $500,000.00 to the Central Bank of the Philippines (Central Bank), for the total sales amount of US$1,000,000.00.

On 10 October 1989, the Bureau of Internal Revenue (BIR) issued Assessment No. FAS-5-85-89-002054,[3] finding petitioner BPI liable for deficiency DST on its afore-mentioned sales of foreign bills of exchange to the Central Bank, computed as follows –

1985 Deficiency Documentary Stamp Tax

Foreign Bills of Exchange…………………………..	₱ 18,480,000.00
Tax Due Thereon:	
₱18,480,000.00 / ₱200.00 x ₱0.30 (Sec. 182 NIRC).	27,720.00
Add: Suggested compromise penalty……………….	300.00
TOTAL AMOUNT DUE AND COLLECTIBLE….	₱ 28,020.00

Petitioner BPI received the Assessment, together with the attached Assessment Notice,[4] on 20 October 1989.

Petitioner BPI, through its counsel, protested the Assessment in a letter dated 16 November 1989, and filed with the BIR on 17 November 1989. The said protest letter is reproduced in full below –

November 16, 1989

The Commissioner of Internal Revenue
Quezon City

Attention of: Mr. Pedro C. Aguillon
Asst. Commissioner for Collection

Sir:

On behalf of our client, Bank of the Philippine Islands (BPI), we have the honor to protest your assessment against it for deficiency documentary stamp tax for the year 1985 in the amount of ₱28,020.00, arising from its sale to the Central Bank of U.S. $500,000.00 on June 6, 1985 and another U.S. $500,000.00 on June 14, 1985.

1. Under established market practice, the documentary stamp tax on telegraphic transfers or sales of foreign exchange is paid by the buyer. Thus, when BPI sells to any party, the cost of documentary stamp tax is added to the total price or charge to the buyer and the seller affixes the corresponding documentary stamp on the document. Similarly, when the Central Bank sells foreign exchange to BPI, it charges BPI for the cost of the documentary stamp on the transaction.

2. In the two transactions subject of your assessment, no documentary stamps were affixed because the buyer,
Central Bank of the Philippines, was exempt from such tax. And while it is true that under P.D. 1994, a proviso was added to sec. 222 (now sec. 186) of the Tax Code "that whenever one party to a taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax," this proviso (and the other amendments of P.D. 1994) took effect only on January 1, 1986, according to sec. 49 of P.D. 1994. Hence, the liability for the documentary stamp tax could not be shifted to the seller.

In view of the foregoing, we request that the assessment be revoked and cancelled.

Very truly yours,

PADILLA LAW OFFICE
By:

(signed)

SABINO PADILLA, JR.[5]

Petitioner BPI did not receive any immediate reply to its protest letter. However, on 15 October 1992, the BIR issued a Warrant of Distraint and/or Levy[6] against petitioner BPI for the assessed deficiency DST for taxable year 1985, in the amount of ₱27,720.00 (excluding the compromise penalty of ₱300.00). It served the Warrant on petitioner BPI only on 23 October 1992.[7]

Then again, petitioner BPI did not hear from the BIR until 11 September 1997, when its counsel received a letter, dated 13 August 1997, signed by then BIR Commissioner Liwayway Vinzons-Chato, denying its "request for reconsideration," and addressing the points raised by petitioner BPI in its protest letter, dated 16 November 1989, thus –

> In reply, please be informed that after a thorough and careful study of the facts of the case as well as the law and jurisprudence pertinent thereto, this Office finds the above argument to be legally untenable. It is admitted that while industry practice or market convention has the force of law between the members of a particular industry, it is not binding with the BIR since it is not a party thereto. The same should, therefore, not be allowed to prejudice the Bureau of its lawful task of collecting revenues necessary to defray the expenses of the government. (Art. 11 in relation to Art. 1306 of the New Civil Code.)
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> Moreover, let it be stated that even before the amendment of Sec. 222 (now Sec. 173) of the Tax Code, as amended, the same was already interpreted to hold that the other party who is not exempt from the payment of documentary stamp tax liable from the tax. This interpretation was further strengthened by the following BIR Rulings which in substance state:
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> 1. BIR Unnumbered Ruling dated May 30, 1977 –
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> "x x x Documentary stamp taxes are payable by either person, signing,

issuing, accepting, or transferring the instrument, document or paper. It is now settled that where one party to the instrument is exempt from said taxes, the other party who is not exempt should be liable."

2. BIR Ruling No. 144-84 dated September 3, 1984 –

"x x x Thus, where one party to the contract is exempt from said tax, the other party, who is not exempt, shall be liable therefore. Accordingly, since A.J.L. Construction Corporation, the other party to the contract and the one assuming the payment of the expenses incidental to the registration in the vendee's name of the property sold, is not exempt from said tax, then it is the one liable therefore, pursuant to Sec. 245 (now Sec. 196), in relation to Sec. 222 (now Sec. 173), both of the Tax Code of 1977, as amended."

Premised on all the foregoing considerations, your request for reconsideration is hereby DENIED.[8]

Upon receipt of the above-cited letter from the BIR, petitioner BPI proceeded to file a Petition for Review with the CTA on 10 October 1997;[9] to which respondent BIR Commissioner, represented by the Office of the Solicitor General, filed an Answer on 08 December 1997.[10]

Petitioner BPI raised in its Petition for Review before the CTA, in addition to the arguments presented in its protest letter, dated 16 November 1989, the defense of prescription of the right of respondent BIR Commissioner to enforce collection of the assessed amount. It alleged that respondent BIR Commissioner only had three years to collect on Assessment No. FAS-5-85-89-002054, but she waited for seven years and nine months to deny the protest. In her Answer and subsequent Memorandum, respondent BIR Commissioner merely reiterated her position, as stated in her letter to petitioner BPI, dated 13 August 1997, which denied the latter's protest; and remained silent as to the expiration of the prescriptive period for

collection of the assessed deficiency DST.

After due trial, the CTA rendered a Decision on 02 February 1999, in which it identified two primary issues in the controversy between petitioner BPI and respondent BIR Commissioner: (1) whether or not the right of respondent BIR Commissioner to collect from petitioner BPI the alleged deficiency DST for taxable year 1985 had prescribed; and (2) whether or not the sales of US$1,000,000.00 on 06 June 1985 and 14 June 1985 by petitioner BPI to the Central Bank were subject to DST.

The CTA answered the first issue in the negative and held that the statute of limitations for respondent BIR Commissioner to collect on the Assessment had not yet prescribed. In resolving the issue of prescription, the CTA reasoned that –

> In the case of **Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., G.R. No. 76281, September 30, 1991, 202 SCRA 125,** the Supreme Court laid to rest the first issue. It categorically ruled that a "protest" is to be treated as request for reinvestigation or reconsideration and a mere request for reexamination or reinvestigation tolls the prescriptive period of the Commissioner to collect on an assessment. . .
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> . . .
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> In the case at bar, there being no dispute that petitioner filed its protest on the subject assessment on November 17, 1989, there can be no conclusion other than that said protest stopped the running of the prescriptive period of the Commissioner to collect.
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> Section 320 (now 223) of the Tax Code, clearly states that a request for reinvestigation which is granted by the Commissioner, shall suspend the prescriptive period to collect. The underscored portion above does not mean that the Commissioner will cancel the subject assessment but should be construed as when the same was entertained by the Commissioner by not issuing any warrant of distraint or levy on the properties of the taxpayer or any action prejudicial to the latter unless and until the request for reinvestigation is finally given due course. Taking into consideration this provision of law and the aforementioned ruling of the Supreme Court in *Wyeth Suaco* which specifically and categorically states that a protest could be considered as a request for reinvestigation, We rule that prescription has not set in against the government.[11]

The CTA had likewise resolved the second issue in the negative. Referring to its own decision in an earlier case, *Consolidated Bank & Trust Co. v. The Commissioner of Internal Revenue*,[12] the CTA reached the conclusion that the sales of foreign currency by petitioner BPI to the Central Bank in taxable year 1985 were not subject to DST –

> From the abovementioned decision of this Court, it can be gleaned that the Central Bank, during the period June 11, 1984 to March 9, 1987 enjoyed tax exemption privilege, including the payment of documentary stamp tax (DST) pursuant to Resolution No. 35-85 dated May 3, 1985 of the Fiscal Incentive Review Board. As such, the Central Bank, as buyer of the foreign currency, is exempt from paying the documentary stamp tax for the period above-mentioned. This Court further expounded that said tax exemption of the Central Bank was modified beginning January 1, 1986 when Presidential Decree (P.D.) 1994 took effect. Under this decree, the liability for DST on sales of foreign currency to the Central Bank is shifted to the seller.
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> Applying the above decision to the case at bar, petitioner cannot be held liable for DST on its 1985 sales of foreign currencies to the Central Bank, as the latter who is the purchaser of the subject currencies is the one liable thereof. However, since the Central Bank is exempt from all taxes during 1985 by virtue of Resolution No. 35-85 of the Fiscal Incentive Review Board dated March 3, 1985, neither the petitioner nor the Central Bank is liable for the payment of the documentary stamp tax for the former's 1985 sales of foreign currencies to the latter. This aforecited case of Consolidated Bank vs. Commissioner of Internal Revenue was affirmed by the Court of Appeals in its decision dated March 31, 1995, CA-GR Sp. No. 35930. Said decision was in turn affirmed by the Supreme Court in its resolution denying the petition filed by Consolidated Bank dated November 20, 1995 with the Supreme Court under Entry of Judgment dated March 1, 1996.[13]

In sum, the CTA decided that the statute of limitations for respondent BIR Commissioner to collect on Assessment No. FAS-5-85-89-002054 had not yet prescribed; nonetheless, it still ordered the cancellation of the said Assessment because the sales of foreign currency by petitioner BPI to the Central Bank in taxable year 1985 were tax-exempt.

Herein respondent BIR Commissioner appealed the Decision of the CTA to the Court of Appeals. In its Decision dated 11 August 1999,[14] the Court of Appeals sustained the finding of the CTA on the first issue, that the running of the prescriptive period for collection on Assessment No. FAS-5-85-89-002054 was suspended when herein petitioner BPI filed a protest on 17 November 1989 and, therefore, the prescriptive period for collection on the Assessment had not yet lapsed. In the same Decision, however, the Court of Appeals reversed the CTA on the second issue and basically adopted the position of the respondent BIR Commissioner that the sales of foreign currency by petitioner BPI to the Central Bank in taxable year 1985 were subject to DST. The Court of Appeals, thus, ordered the reinstatement of Assessment No. FAS-5-85-89-002054 which required petitioner BPI to pay the amount of ₱28,020.00 as deficiency DST for taxable year 1985, inclusive of the compromise penalty.

Comes now petitioner BPI before this Court in this Petition for Review on *Certiorari*, seeking resolution of the same two legal issues raised and discussed in the courts below, to reiterate: (1) whether or not the right of respondent BIR Commissioner to collect from petitioner BPI the alleged deficiency DST for taxable year 1985 had prescribed; and (2) whether or not the sales of US$1,000,000.00 on 06 June 1985 and 14 June 1985 by petitioner BPI to the Central Bank were subject to DST.

I

The efforts of respondent Commissioner to collect on Assessment No. FAS-5-85-89-002054 were already barred by prescription.

Anent the question of prescription, this Court disagrees in the Decisions of the CTA and

the Court of Appeals, and herein determines the statute of limitations on collection of the deficiency DST in Assessment No. FAS-5-85-89-002054 had already prescribed.

The period for the BIR to assess and collect an internal revenue tax is limited to three years by Section 203 of the Tax Code of 1977, as amended,[15] which provides that –

> SEC. 203. *Period of limitation upon assessment and collection.* – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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 in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the 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.[16]

The three-year period of limitations on the assessment and collection of national internal revenue taxes set by Section 203 of the Tax Code of 1977, as amended, can be affected, adjusted, or suspended, in accordance with the following provisions of the same Code –

> SEC. 223. – *Exceptions as to period of limitation of assessment and collection of taxes.* – (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
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> (b) If before the expiration of the time prescribed in the preceding section 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.

(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.

(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however,* That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree.[17]

SEC. 224. *Suspension of running of statute.* – The running of the statute of limitation provided in Section[s] 203 and 223 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 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: *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.[18]

As enunciated in these statutory provisions, the BIR has three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. In case of a false or fraudulent return with intent to evade tax or the failure to file any return at all, the prescriptive period for assessment of the tax due shall be 10 years from discovery by the BIR of the falsity, fraud, or omission. When the BIR validly issues an assessment, within either the three-year or ten-year

period, whichever is appropriate, then the BIR has another three years[19] after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. The assessment of the tax is deemed made and the three-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.[20]

In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. FAS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989. Counting the three-year prescriptive period, for a total of 1,095 days,[21] from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST.

The earliest attempt of the BIR to collect on Assessment No. FAS-5-85-89-002054 was its issuance and service of a Warrant of Distraint and/or Levy on petitioner BPI. Although the Warrant was issued on 15 October 1992, previous to the expiration of the period for collection on 19 October 1992, the same was served on petitioner BPI only on 23 October 1992.

Under Section 223(c) of the Tax Code of 1977, as amended, it is not essential that the

Warrant of Distraint and/or Levy be fully executed so that it can suspend the running of the statute of limitations on the collection of the tax. It is enough that the proceedings have validly began or commenced and that their execution has not been suspended by reason of the voluntary desistance of the respondent BIR Commissioner. Existing jurisprudence establishes that distraint and levy proceedings are validly begun or commenced by the issuance of the Warrant ***and*** service thereof on the taxpayer.[22] It is only logical to require that the Warrant of Distraint and/or Levy be, at the very least, served upon the taxpayer in order to suspend the running of the prescriptive period for collection of an assessed tax, because it may only be upon the service of the Warrant that the taxpayer is informed of the denial by the BIR of any pending protest of the said taxpayer, and the resolute intention of the BIR to collect the tax assessed.

If the service of the Warrant of Distraint and/or Levy on petitioner BPI on 23 October 1992 was already beyond the prescriptive period for collection of the deficiency DST, which had expired on 19 October 1992, then what more the letter of respondent BIR Commissioner, dated 13 August 1997 and received by the counsel of the petitioner BPI only on 11 September 1997, denying the protest of petitioner BPI and requesting payment of the deficiency DST? Even later and more unequivocally barred by prescription on collection was the demand made by respondent BIR Commissioner for payment of the deficiency DST in her Answer to the Petition for Review of petitioner BPI before the CTA, filed on 08 December 1997.[23]

II

There is no valid ground for the suspension of the running of the prescriptive period for collection of the assessed DST under the Tax Code of 1977, as amended.

In their Decisions, both the CTA and the Court of Appeals found that the filing by petitioner BPI of a protest letter suspended the running of the prescriptive period for collecting the assessed DST. This Court, however, takes the opposing view, and, based on the succeeding discussion, concludes that there is no valid ground for suspending the running of the prescriptive period for collection of the deficiency DST assessed against petitioner BPI.

A. The statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor.

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.[24] As aptly explained in *Republic of the Philippines v. Ablaza*[25] –

> 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 a 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 beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.

In order to provide even better protection to the taxpayer against unreasonable investigation, the Tax Code of 1977, as amended, identifies specifically in Sections 223 and 224[26] thereof the circumstances when the prescriptive periods for assessing and collecting taxes could be suspended or interrupted.

To give effect to the legislative intent, these provisions on the statute of limitations on assessment and collection of taxes shall be construed and applied liberally in favor of the taxpayer and strictly against the Government.

B. The statute of limitations on assessment and collection of national internal revenue taxes may be waived, subject to certain conditions, under paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, respectively. Petitioner BPI, however, did not execute any such waiver in the case at bar.

According to paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, the prescriptive periods for assessment and collection of national internal revenue taxes, respectively, could be waived by agreement, to wit –

> SEC. 223. – *Exceptions as to period of limitation of assessment and collection of taxes.* –
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> . . .
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> (b) If before the expiration of the time prescribed in the preceding section 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.
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> . . .
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> (d) Any internal revenue tax which has been assessed within the period agreed upon

> as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.[27]

The agreements so described in the afore-quoted provisions are often referred to as waivers of the statute of limitations. The waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally.[28]

A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. The BIR had issued Revenue Memorandum Order (RMO) No. 20-90 on 04 April 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be administratively dealt with.

This Court had consistently ruled in a number of cases that a request for reconsideration or reinvestigation by the taxpayer, without a valid waiver of the prescriptive periods for the assessment and collection of tax, as required by the Tax Code and implementing rules, will not suspend the running thereof.[29]

In the Petition at bar, petitioner BPI executed no such waiver of the statute of limitations on the collection of the deficiency DST per Assessment No. FAS-5-85-89-002054. In fact, an internal memorandum of the Chief of the Legislative, Ruling & Research Division of the BIR to her counterpart in the Collection Enforcement Division, dated 15 October 1992, expressly noted that, "The taxpayer fails to execute a Waiver of the Statute of Limitations extending the period of collection of the said tax up to December 31, 1993 pending reconsideration of its protest. . ."[30] Without a valid waiver, the statute of limitations on collection by the BIR of the deficiency DST could not have been suspended under paragraph (d) of Section 223 of the Tax Code of 1977, as amended.

C. *The protest filed by petitioner BPI did not constitute a request for reinvestigation, granted by the respondent BIR Commissioner, which could have suspended the running of the statute of limitations on collection of the assessed deficiency DST under Section 224 of the Tax Code of 1977, as amended.*

The Tax Code of 1977, as amended, also recognizes 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 224 thereof, which reads –

> SEC. 224. *Suspension of running of statute.* – The running of the statute of limitation provided in Section[s] 203 and 223 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 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: *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.[31]

Of particular importance to the present case is one of the circumstances enumerated in Section 224 of the Tax Code of 1977, as amended, wherein the running of the statute of limitations on assessment and collection of taxes is considered suspended "when the taxpayer requests for a reinvestigation which is granted by the Commissioner."

This Court gives credence to the argument of petitioner BPI that there is a distinction between a request for reconsideration and a request for reinvestigation. Revenue Regulations (RR) No. 12-85, issued on 27 November 1985 by the Secretary of Finance, upon the recommendation of the BIR Commissioner, governs the procedure for protesting an assessment and distinguishes between the two types of protest, as follows –

PROTEST TO ASSESSMENT

SEC. 6. *Protest.* The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation. . .

. . .

For the purpose of the 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 evidence. It may involve both a question of fact or of law or both.

(b) *Request for reinvestigation.* – refers to a plea for re-evaluation of an assessment ***on the basis of newly-discovered or additional evidence*** that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both.

With the issuance of RR No. 12-85 on 27 November 1985 providing the above-quoted distinctions between a request for reconsideration and a request for reinvestigation, the two types of protest can no longer be used interchangeably and their differences so lightly brushed aside. It bears to emphasize that under Section 224 of the Tax Code of 1977, as amended, the running of the prescriptive period for collection of taxes can only be suspended by a ***request for reinvestigation***, not a request for reconsideration. Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter can not.

The protest letter of petitioner BPI, dated 16 November 1989 and filed with the BIR the next day, on 17 November 1989, did not specifically request for either a reconsideration or reinvestigation. A close review of the contents thereof would reveal, however, that it protested Assessment No. FAS-5-85-89-002054 based on a question of law, in particular, whether or not petitioner BPI was liable for DST on its sales of foreign currency to the Central Bank in taxable year 1985. The same protest letter did not raise any question of fact; neither did it offer to present any new evidence. In its own letter to petitioner BPI, dated 10 September 1992, the BIR itself referred to the protest of petitioner BPI as a request for reconsideration.[32] These considerations would lead this Court to deduce that the protest

letter of petitioner BPI was in the nature of a request for reconsideration, rather than a request for reinvestigation and, consequently, Section 224 of the Tax Code of 1977, as amended, on the suspension of the running of the statute of limitations should not apply.

Even if, for the sake of argument, this Court glosses over the distinction between a request for reconsideration and a request for reinvestigation, and considers the protest of petitioner BPI as a request for reinvestigation, the filing thereof could not have suspended at once the running of the statute of limitations. Article 224 of the Tax Code of 1977, as amended, very plainly requires that the request for reinvestigation ***had been granted by the BIR Commissioner*** to suspend the running of the prescriptive periods for assessment and collection.

That the BIR Commissioner must first grant the request for reinvestigation as a requirement for suspension of the statute of limitations is even supported by existing jurisprudence.

In the case of *Republic of the Philippines v. Gancayco*,[33] 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 evidences 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 –

> ***. . .The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension.*** (Collector vs. Suyoc Consolidated, supra; also Republic vs. 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. . . .[34]

In *Republic of the Philippines v. Acebedo*,[35] 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 no follow-up of this warrant. Consequently, ***the request for reinvestigation did not suspend the running of the period for filing an action for collection.***

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The burden of proof that the taxpayer's request for reinvestigation had been actually granted shall be on respondent BIR Commissioner. The grant may be expressed in communications with the taxpayer or implied from the actions of the respondent BIR Commissioner or his authorized BIR representatives in response to the request for reinvestigation.

In *Querol v. Collector of Internal Revenue,*[36] the BIR, after receiving the protest letters of taxpayer Querol, sent a tax examiner to San Fernando, Pampanga, to conduct the reinvestigation; as a result of which, the original assessment against taxpayer Querol was revised by permitting him to deduct reasonable depreciation. In another case, *Republic of the Philippines v. Lopez*,[37] taxpayer Lopez filed a total of four petitions for reconsideration and reinvestigation. The first petition was denied by the BIR. The second and third petitions were

granted by the BIR and after each reinvestigation, the assessed amount was reduced. The fourth petition was again denied and, thereafter, the BIR filed a collection suit against taxpayer Lopez. When the taxpayers spouses Sison, in *Commissioner of Internal Revenue v. Sison*,[38] contested the assessment against them and asked for a reinvestigation, the BIR ordered the reinvestigation resulting in the issuance of an amended assessment. Lastly, in *Republic of the Philippines v. Oquias,*[39] the BIR granted taxpayer Oquias's request for reinvestigation and duly notified him of the date when such reinvestigation would be held; only, neither taxpayer Oquias nor his counsel appeared on the given date.

In all these cases, the request for reinvestigation of the assessment filed by the taxpayer was evidently granted and actual reinvestigation was conducted by the BIR, which eventually resulted in the issuance of an amended assessment. On the basis of these facts, this Court ruled in the same cases that the period between the request for reinvestigation and the revised assessment should be subtracted from the total prescriptive period for the assessment of the tax; and, once the assessment had been reconsidered at the taxpayer's instance, the period for collection should begin to run from the date of the reconsidered or modified assessment.[40]

The rulings of the foregoing cases do not apply to the present Petition because: (1) the protest filed by petitioner BPI was a request for reconsideration, not a reinvestigation, of the assessment against it; and (2) even granting that the protest of petitioner BPI was a request for reinvestigation, there was no showing that it was granted by respondent BIR Commissioner and that actual reinvestigation had been conducted.

Going back to the administrative records of the present case, it would seem that the BIR, after receiving a copy of the protest letter of petitioner BPI on 17 November 1989, did not attempt to communicate at all with the latter until 10 September 1992, less than a month before the prescriptive period for collection on Assessment No. FAS-5-85-89-002054 was due to expire. There were internal communications, mostly indorsements of the docket of the case from one BIR division to another; but these hardly fall within the same sort of acts in the previously discussed cases that satisfactorily demonstrated the grant of the taxpayer's request for reinvestigation. Petitioner BPI, in the meantime, was left in the dark as to the status of its protest in the absence of any word from the BIR. Besides, in its letter to petitioner BPI, dated 10 September 1992, the BIR unwittingly admitted that it had not yet acted on the protest of the former –

> This refers to your protest against and/or request for reconsideration of the assessment/s of this Office against you involving the amount of ₱28,020.00 under FAS-5-85-89-002054 dated October 23, 1989 as deficiency documentary stamp tax inclusive of compromise penalty for the year 1985.
>
> In this connection, it is requested that the enclosed waiver of the statute of limitations extending the period of collection of the said tax/es to December 31, 1993 be executed by you ***as a condition precedent*** of our giving due course to your protest…[41]

When the BIR stated in its letter, dated 10 September 1992, that the waiver of the statute of limitations on collection was a condition precedent to its giving due course to the request for reconsideration of petitioner BPI, then it was understood that the grant of such request for reconsideration was being held off until compliance with the given condition. When petitioner BPI failed to comply with the condition precedent, which was the execution of the waiver, the logical inference would be that the request was not granted and was not given due

course at all.

III

The suspension of the statute of limitations on collection of the assessed deficiency DST from petitioner BPI does not find support in jurisprudence.

It is the position of respondent BIR Commissioner, affirmed by the CTA and the Court of Appeals, that the three-year prescriptive period for collecting on Assessment No. FAS-5-85-89-002054 had not yet prescribed, because the said prescriptive period was suspended, invoking the case of *Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc.*[42] It was in this case in which this Court ruled that the prescriptive period provided by law to make a collection is interrupted once a taxpayer requests for reinvestigation or reconsideration of the assessment.

Petitioner BPI, on the other hand, is requesting this Court to revisit the *Wyeth Suaco* case contending that it had unjustifiably expanded the grounds for suspending the prescriptive period for collection of national internal revenue taxes.

This Court finds that although there is no compelling reason to abandon its decision in the *Wyeth Suaco* case, the said case cannot be applied to the particular facts of the Petition at bar.

A. The only exception to the statute of limitations on collection of taxes, other than those already provided in the Tax Code, was recognized in the Suyoc case.

As had been previously discussed herein, the statute of limitations on assessment and collection of national internal revenue taxes may be suspended if the taxpayer executes a valid waiver thereof, as provided in paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended; and in specific instances enumerated in Section 224 of the same Code, which include a request for reinvestigation granted by the BIR Commissioner. Outside of these statutory provisions, however, this Court also recognized one other exception to the statute of limitations on collection of taxes in the case of *Collector of Internal Revenue v. Suyoc Consolidated Mining Co.*[43]

In the said case, the Collector of Internal Revenue issued an assessment against taxpayer Suyoc Consolidated Mining Co. on 11 February 1947 for deficiency income tax for the taxable year 1941. Taxpayer Suyoc requested for at least a year within which to pay the amount assessed, but at the same time, reserving its right to question the correctness of the assessment before actual payment. The Collector granted taxpayer Suyoc an extension of only three months to pay the assessed tax. When taxpayer Suyoc failed to pay the assessed tax within the extended period, the Collector sent it a demand letter, dated 28 November 1950. Upon receipt of the demand letter, taxpayer Suyoc asked for a reinvestigation and reconsideration of the assessment, but the Collector denied the request. Taxpayer Suyoc reiterated its request for reconsideration on 25 April 1952, which was denied again by the Collector on 06 May 1953. Taxpayer Suyoc then appealed the denial to the Conference Staff. The Conference Staff heard the appeal from 02 September 1952 to 16 July 1955, and the negotiations resulted in the reduction of the assessment on 26 July 1955. It was the collection of the reduced assessment that was questioned before this Court for being enforced beyond the

prescriptive period.[44]

In resolving the issue on prescription, this Court ratiocinated thus –

> It is obvious from the foregoing that petitioner refrained from collecting the tax by distraint or levy or by proceeding in court within the 5-year period from the filing of the second amended final return due to the several requests of respondent for extension to which petitioner yielded to give it every opportunity to prove its claim regarding the correctness of the assessment. Because of such requests, several reinvestigations were made and a hearing was even held by the Conference Staff organized in the collection office to consider claims of such nature which, as the record shows, lasted for several months. After inducing petitioner to delay collection as he in fact did, it is most unfair for respondent to now take advantage of such desistance to elude his deficiency income tax liability to the prejudice of the Government invoking the technical ground of prescription.
>
> While we may agree with the Court of Tax Appeals that a mere request for reexamination or reinvestigation may not have the effect of suspending the running of the period of limitation for in such case there is need of a written agreement to extend the period between the Collector and the taxpayer, there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when ***by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government.*** And when such situation comes to pass there are authorities that hold, based on weighty reasons, that such an attitude or behavior should not be countenanced if only to protect the interest of the Government.[45]

By the principle of estoppel, taxpayer Suyoc was not allowed to raise the defense of prescription against the efforts of the Government to collect the tax assessed against it. This Court adopted the following principle from American jurisprudence: "He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him in effect 'this is your own act, and therefore you are not damnified.'"[46]

In the *Suyoc* case, this Court expressly conceded that a mere request for reconsideration or reinvestigation of an assessment may not suspend the running of the statute of limitations. It affirmed the need for a waiver of the prescriptive period in order to effect suspension thereof. However, even without such waiver, the taxpayer may be estopped from raising the defense of prescription because by his repeated requests or positive acts, he had induced Government authorities to delay collection of the assessed tax.

Based on the foregoing, petitioner BPI contends that the declaration made in the later case of *Wyeth Suaco,* that the statute of limitations on collection is suspended once the taxpayer files a request for reconsideration or reinvestigation, runs counter to the ruling made by this Court in the *Suyoc* case.

B. Although this Court is not compelled to abandon its decision in the Wyeth Suaco case, it finds that Wyeth Suaco is not applicable to the Petition at bar because of the distinct facts involved herein.

In the case of *Wyeth Suaco*, taxpayer Wyeth Suaco was assessed for failing to remit withholding taxes on royalties and dividend declarations, as well as, for deficiency sales tax. The BIR issued two assessments, dated 16 December 1974 and 17 December 1974, both received by taxpayer Wyeth Suaco on 19 December 1974. Taxpayer Wyeth Suaco, through its tax consultant, SGV & Co., sent to the BIR two letters, dated 17 January 1975 and 08 February 1975, protesting the assessments and requesting their cancellation or withdrawal on the ground that said assessments lacked factual or legal basis. On 12 September 1975, the BIR Commissioner advised taxpayer Wyeth Suaco to avail itself of the compromise settlement

being offered under Letter of Instruction No. 308. Taxpayer Wyeth Suaco manifested its conformity to paying a compromise amount, but subject to certain conditions; though, apparently, the said compromise amount was never paid. On 10 December 1979, the BIR Commissioner rendered a decision reducing the assessment for deficiency withholding tax against taxpayer Wyeth Suaco, but maintaining the assessment for deficiency sales tax. It was at this point when taxpayer Wyeth Suaco brought its case before the CTA to enjoin the BIR from enforcing the assessments by reason of prescription. Although the CTA decided in favor of taxpayer Wyeth Suaco, it was reversed by this Court when the case was brought before it on appeal. According to the decision of this Court –

> Settled is the rule that the prescriptive period provided by law to make a collection by distraint or levy or by a proceeding in court is interrupted once a taxpayer requests for reinvestigation or reconsideration of the assessment. . .
>
> . . .
>
> Although the protest letters prepared by SGV & Co. in behalf of private respondent did not categorically state or use the words "reinvestigation" and "reconsideration," the same are to be treated as letters of reinvestigation and reconsideration…
>
> These letters of Wyeth Suaco interrupted the running of the five-year prescriptive period to collect the deficiency taxes. ***The Bureau of Internal Revenue, after having reviewed the records of Wyeth Suaco, in accordance with its request for reinvestigation, rendered a final assessment…*** It was only upon receipt by Wyeth Suaco of this final assessment that the five-year prescriptive period started to run again.[47]

The foremost criticism of petitioner BPI of the *Wyeth Suaco* decision is directed at the statement made therein that, "settled is the rule that the prescriptive period provided by law to make a collection by distraint or levy or by a proceeding in court is interrupted once a taxpayer requests for reinvestigation or reconsideration of the assessment."[48] It would seem that both petitioner BPI and respondent BIR Commissioner, as well as, the CTA and Court of

Appeals, take the statement to mean that the filing alone of the request for reconsideration or reinvestigation can already interrupt or suspend the running of the prescriptive period on collection. This Court therefore takes this opportunity to clarify and qualify this statement made in the *Wyeth Suaco* case. While it is true that, by itself, such statement would appear to be a generalization of the exceptions to the statute of limitations on collection, it is best interpreted in consideration of the particular facts of the *Wyeth Suaco* case and previous jurisprudence.

The *Wyeth Suaco* case cannot be in conflict with the *Suyoc* case because there are substantial differences in the factual backgrounds of the two cases. The *Suyoc* case refers to a situation where there were repeated requests or positive acts performed by the taxpayer that convinced the BIR to delay collection of the assessed tax. This Court pronounced therein that the repeated requests or positive acts of the taxpayer prevented or estopped it from setting up the defense of prescription against the Government when the latter attempted to collect the assessed tax. In the *Wyeth Suaco* case, taxpayer Wyeth Suaco filed a request for reinvestigation, which was apparently granted by the BIR and, consequently, the prescriptive period was indeed suspended as provided under Section 224 of the Tax Code of 1977, as amended.[49]

To reiterate, Section 224 of the Tax Code of 1977, as amended, identifies specific circumstances when the statute of limitations on assessment and collection may be interrupted or suspended, among which is a request for reinvestigation that is granted by the BIR Commissioner. The act of filing a request for reinvestigation alone does not suspend the

period; such request must be granted.[50] The grant need not be express, but may be implied from the acts of the BIR Commissioner or authorized BIR officials in response to the request for reinvestigation.[51]

This Court found in the *Wyeth Suaco* case that the BIR actually conducted a reinvestigation, in accordance with the request of the taxpayer Wyeth Suaco, which resulted in the reduction of the assessment originally issued against it. Taxpayer Wyeth Suaco was also aware that its request for reinvestigation was granted, as written by its Finance Manager in a letter dated 01 July 1975, addressed to the Chief of the Tax Accounts Division, wherein he admitted that, "[a]s we understand, the matter is now undergoing review and consideration by your Manufacturing Audit Division…" The statute of limitations on collection, then, started to run only upon the issuance and release of the reduced assessment.

The *Wyeth Suaco* case, therefore, is correct in declaring that the prescriptive period for collection is interrupted or suspended when the taxpayer files a request for reinvestigation, provided that, as clarified and qualified herein, such request is granted by the BIR Commissioner.

Thus, this Court finds no compelling reason to abandon its decision in the *Wyeth Suaco* case. It also now rules that the said case is not applicable to the Petition at bar because of the distinct facts involved herein. As already heretofore determined by this Court, the protest filed by petitioner BPI was a request for reconsideration, which merely required a review of existing evidence and the legal basis for the assessment. Respondent BIR Commissioner did

not require, neither did petitioner BPI offer, additional evidence on the matter. After petitioner BPI filed its request for reconsideration, there was no other communication between it and respondent BIR Commissioner or any of the authorized representatives of the latter. There was no showing that petitioner BPI was informed or aware that its request for reconsideration was granted or acted upon by the BIR.

IV

Conclusion

To summarize all the foregoing discussion, this Court lays down the following rules on the exceptions to the statute of limitations on collection.

The statute of limitations on collection may only be interrupted or suspended by a valid waiver executed in accordance with paragraph (d) of Section 223 of the Tax Code of 1977, as amended, and the existence of the circumstances enumerated in Section 224 of the same Code, which include a request for reinvestigation granted by the BIR Commissioner.

Even when the request for reconsideration or reinvestigation is not accompanied by a valid waiver or there is no request for reinvestigation that had been granted by the BIR Commissioner, the taxpayer may still be held in estoppel and be prevented from setting up the defense of prescription of the statute of limitations on collection when, by his own repeated requests or positive acts, the Government had been, for good reasons, persuaded to postpone collection to make the taxpayer feel that the demand is not unreasonable or that no harassment or injustice is meant by the Government, as laid down by this Court in the *Suyoc* case.

Applying the given rules to the present Petition, this Court finds that –

(a) The statute of limitations for collection of the deficiency DST in Assessment No. FAS-5-85-89-002054, issued against petitioner BPI, had already expired; and

(b) None of the conditions and requirements for exception from the statute of limitations on collection exists herein: Petitioner BPI did not execute any waiver of the prescriptive period on collection as mandated by paragraph (d) of Section 223 of the Tax Code of 1977, as amended; the protest filed by petitioner BPI was a request for reconsideration, not a request for reinvestigation that was granted by respondent BIR Commissioner which could have suspended the prescriptive period for collection under Section 224 of the Tax Code of 1977, as amended; and, petitioner BPI, other than filing a request for reconsideration of Assessment No. FAS-5-85-89-002054, did not make repeated requests or performed positive acts that could have persuaded the respondent BIR Commissioner to delay collection, and that would have prevented or estopped petitioner BPI from setting up the defense of prescription against collection of the tax assessed, as required in the *Suyoc* case.

This is a simple case wherein respondent BIR Commissioner and other BIR officials failed to act promptly in resolving and denying the request for reconsideration filed by petitioner BPI and in enforcing collection on the assessment. They presented no reason or explanation as to why it took them almost eight years to address the protest of petitioner BPI. The statute on limitations imposed by the Tax Code precisely intends to protect the taxpayer from such prolonged and unreasonable assessment and investigation by the BIR.

Considering that the right of the respondent BIR Commissioner to collect from

petitioner BPI the deficiency DST in Assessment No. FAS-5-85-89-002054 had already prescribed, then, there is no more need for this Court to make a determination on the validity and correctness of the said Assessment for the latter would only be unenforceable.

WHEREFORE, based on the foregoing, the instant Petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 51271, dated 11 August 1999, which reinstated Assessment No. FAS-5-85-89-002054 requiring petitioner BPI to pay the amount of ₱28,020.00 as deficiency documentary stamp tax for the taxable year 1985, inclusive of the compromise penalty, is REVERSED and SET ASIDE. Assessment No. FAS-5-85-89-002054 is hereby ordered CANCELED.

SO ORDERED.

MINITA V. CHICO-NAZARIO
Associate Justice

WE CONCUR:

REYNATO S. PUNO
Associate Justice
Chairman

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

DANTE O. TINGA
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO
Associate Justice
Chairman, Second Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

HILARIO G. DAVIDE, JR.
Chief Justice

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[1] Penned by Associate Justice Artemio G. Tuquero with Associate Justices Eubulo G. Verzola and Elvi John S. Asuncion, concurring; Rollo, pp. 66-73.

[2] Penned by Presiding Judge Ernesto D. Acosta with Associate Judges Ramon O. De Veyra and Amancio Q. Saga, concurring; *Id.*, pp. 83-93.

[3] CTA Rollo, p. 32.

[4] *Id.*, p. 33.

[5] *Id.*, p. 34.

[6] BIR Records, p. 28.

[7] *Id.*, pp. 28-29.

[8] CTA Rollo, pp. 35-36.

[9] *Id.*, pp. 1-4.

[10] *Id.,* pp. 21-25.

[11] Rollo, pp. 88-90.

[12] CTA Case No. 4647, 21 November 1994.

[13] Rollo, pp. 91-93.

[14] *Ibid*.

[15] Batas Pambansa Blg. 700 (approved on 05 April 1984) amended the Tax Code of 1977 by shortening the period of limitations on assessment and collection of national internal revenue taxes from the original five years to three years. The shorter three-year prescriptive period shall apply to assessments made on or after 05 April 1984 covering taxable years beginning 01 January 1984.

[16] Now Section 203 of the Tax Code of 1997, as amended.

[17] Presently, Section 222 of the Tax Code of 1997, as amended, which reads –

SEC. 222. – *Exceptions as to period of limitation of assessment and collection of taxes.* – (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(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.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however,* That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

[18] Reproduced as Section 223 of the Tax Code of 1997, as amended.

[19] Now a five-year period, under Section 222(c) of the Tax Code of 1997, as amended, *supra*, note 17.

[20] Basilan Estates, Inc. v. Commissioner of Internal Revenue, 128 Phil 19 (1967).

[21] According to Article 13 of the Civil Code of the Philippines, when the law speaks of years, it shall be understood that the years are of 365 days each.

[22] Republic v. Hizon, G.R. No. 130430, 13 December 1999, 320 SCRA 574; Advertising Associates, Inc. v. Court of Appeals, G.R. No. L-59758, 26 December 1984, 133 SCRA 765; Palanca, et al. v. Commissioner of Internal Revenue, 114 Phil 203 (1962).

[23] A judicial action for the collection of a tax may be initiated by the filing of a complaint with the proper regular trial court; or where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for. (Philippine National Oil Company v. Court of Appeals, G.R. No. 109976, 26 April 2005; Fernandez Hermanos, Inc. v. Commissioner of Internal Revenue, G.R. No. L-21551, 30 September 1969, 29 SCRA 552; Palanca, et al. v. Commissioner of Internal Revenue, *Ibid*.)

[24] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, 16 December 2004, 447 SCRA 214.

[25] 108 Phil 1105, 1108 (1960).

[26] Currently Sections 222 and 223 of the Tax Code of 1997, as amended.

[27] *Supra*, note 17.

[28] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, *supra*, note 24.

[29] *Ibid.*; Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 115712, 25 February 1999, 303 SCRA 614; Cordero v. Conda, 124 Phil 926 (1966); Collector of Internal Revenue v. Pineda, 112 Phil 321 (1961); Collector of Internal Revenue v. Solano, G.R. No. L-11475, 31 July 1958.

[30] BIR Records, p. 27.

[31] Section 223 of the Tax Code of 1997, as amended, at present.

[32] BIR Records, p. 26.

[33] 120 Phil 376 (1964).

[34] *Id.*, p. 382.

[35] 131 Phil 469, 472 (1968).

[36] 116 Phil 615 (1962).

[37] 117 Phil 575 (1963).

[38] 117 Phil 892 (1963).

[39] 144 Phil 492 (1970).

[40] Republic of the Philippines v. Oquias, *ibid.*; Commissioner of Internal Revenue v. Sison, *supra*, note 38; Republic of the Philippines v. Lopez, *supra*, note 37; Querol v. Collector of Internal Revenue, *supra*, note 36.

[41] BIR Records, p. 26.

[42] G.R. No. 76281, 30 September 1991, 202 SCRA 125.

[43] 104 Phil 819 (1958).

[44] Collector of Internal Revenue v. Suyoc Consolidated Mining Co., *Ibid.*

[45] *Id.*, pp. 822-823.

[46] *Id.*, p. 823, quoting from R.H. Stearns Co. v. U.S., 78 L. ed., 647.

[47] Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc., *supra*, note 42, pp. 131, 133-134.

[48] *Ibid*.

[49] See the discussions in Part II-C of the present Decision on Section 224 of the Tax Code of 1977, as amended, and related jurisprudence.

[50] Republic v. Gancayco, *supra,* note 33; Republic v. Acebedo, *supra*, note 35.

[51] Also see the list of jurisprudence discussed in Part II-C of the present Decision, namely, Querol v. Collector of Internal Revenue, *supra,* note 36; Republic of the Philippines v. Lopez, *supra*, note 37; Commissioner of Internal Revenue v. Sison, *supra*, note 38; Republic of the Philippines v. Oquias, *supra*, note 39.