571 Phil. 535

SECOND DIVISION

[G.R. No. 174942, March 07, 2008]

BANK OF THE PHILIPPINE ISLANDS (Formerly: Far East Bank and Trust Company), Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.

D E C I S I O N

TINGA, J,:

The Bank of the Philippine Islands (BPI) seeks a review of the Decision[1] dated 15 August 2006 and the Resolution[2] dated 5 October 2006, both of the Court of Tax Appeals (CTA or tax court), which ruled that BPI is liable for the deficiency documentary stamp tax (DST) on its cabled instructions to its foreign correspondent bank and that prescription had not yet set in against the government.

The following undisputed facts are culled from the CTA decision:

> Petitioner, the surviving bank after its merger with Far East Bank and Trust Company, is a corporation duly created and existing under the laws of the Republic of the Philippines with principal office at Ayala Avenue corner Paseo de Roxas Ave., Makati City.
>
> Respondent thru then Revenue Service Chief Cesar M. Valdez, issued to the petitioner a pre-assessment notice (PAN) dated November 26, 1986.
>
> Petitioner, in a letter dated November 29, 1986, requested for the details of the amounts alleged as 1982-1986 deficiency taxes mentioned in the November 26, 1986 PAN.
>
> On April 7, 1989, respondent issued to the petitioner, assessment/demand notices FAS-1-82 to 86/89-000 and FAS 5-82 to 86/89-000 for deficiency withholding tax at source (Swap Transactions) and DST involving the amounts of P190,752,860.82 and P24,587,174.63, respectively, for the years 1982 to 1986.
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> On April 20, 1989, petitioner filed a protest on the demand/assessment notices. On May 8, 1989, petitioner filed a supplemental protest.
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> On March 12, 1993, petitioner requested for an opportunity to present or

submit additional documentation on the Swap Transactions with the then Central Bank (page 240, BIR Records). Attached to the letter dated June 17, 1994, in connection with the reinvestigation of the abovementioned assessment, petitioner submitted to the BIR, Swap Contracts with the Central Bank.

Petitioner executed several Waivers of the Statutes of Limitations, the last of which was effective until December 31, 1994.

On August 9, 2002, respondent issued a final decision on petitioner's protest ordering the withdrawal and cancellation of the deficiency withholding tax assessment in the amount of P190,752,860.82 and considered the same as closed and terminated. On the other hand, the deficiency DST assessment in the amount of P24,587,174.63 was reiterated and the petitioner was ordered to pay the said amount within thirty (30) days from receipt of such order. Petitioner received a copy of the said decision on January 15, 2003. Thereafter, on January 24, 2003, petitioner filed a Petition for Review before the Court.

On August 31, 2004, the Court rendered a Decision denying the petitioner's Petition for Review, the dispositive portion of which is quoted hereunder:

> **IN VIEW OF ALL THE FOREGOING,** the petition is hereby **DENIED** for lack of merit. Accordingly, petitioner is **ORDERED** to **PAY** the respondent the amount of P24,587,174.63 representing deficiency documentary stamp tax for the period 1982-1986, plus 20% interest starting February 14, 2003 until the amount is fully paid pursuant to Section 249 of the Tax Code.
>
> **SO ORDERED.**

On September 21, 2004, petitioner filed a Motion for Reconsideration of the abovementioned Decision which was denied for lack of merit in a Resolution dated February 14, 2005.

On March 9, 2005, petitioner filed with the Court En Banc a Motion for Extension of Time to File Petition for Review praying for an extension of fifteen (15) days from March 10, 2005 or until March 25, 2005. Petitioner's motion was granted in a Resolution dated March 16, 2005.

On March 28, 2005, (March 25 was Good Friday), petitioner filed the instant Petition for Review, advancing the following assignment of errors.

I. **THIS HONORABLE COURT OVERLOOKED THE**

SIGNIFICANCE OF THE WAIVER DULY AND VALIDLY AGREED UPON BY THE PARTIES AND EFFECTIVE UNTIL DECEMBER 31, 1994;

II. **THIS TAX COURT ERRED IN HOLDING THAT THE COLLECTION OF ALLEGED DEFICIENCY TAX HAS NOT PRESCRIBED.**

III. **THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT DID NOT VIOLATE PROCEDURAL DUE PROCESS IN THE ISSUANCE OF ASSESSMENT NOTICE RELATIVE TO DOCUMENTARY STAMP DEFICIENCY.**

IV. **THIS HONORABLE COURT ERRED IN HOLDING THAT THE 4 MARCH 1987 MEMORANDUM OF THE LEGAL SERVICE CHIEF DULY APPROVED BY THE BIR COMMISISONER VESTS NO RIGHTS TO PETITIONER.**

V. **THIS HONORABLE COURT ERRED IN HOLDING THAT PETITIONER IS LIABLE FOR DOCUMENTARY STAMP TAX ON SWAP LOANS TRANSACTIONS FROM 1982 TO 1986.**[3]

The CTA synthesized the foregoing issues into whether the collection of the deficiency DST is barred by prescription and whether BPI is liable for DST on its SWAP loan transactions.

On the first issue, the tax court, applying the case of *Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc.*,[4] (Wyeth Suaco case), ruled that BPI's protest and supplemental protest should be considered requests for reinvestigation which tolled the prescriptive period provided by law to collect a tax deficiency by distraint, levy, or court proceeding. It further held, as regards the second issue, that BPI's cabled instructions to its foreign correspondent bank to remit a specific sum in dollars to the Federal Reserve Bank, the same to be credited to the account of the Central Bank, are in the nature of a telegraphic transfer subject to DST under Section 195 of the Tax Code.

In its Petition for Review[5] dated 24 November 2006, BPI argues that the government's right to collect the DST had already prescribed because the Commissioner of Internal Revenue (CIR) failed to issue any reply granting BPI's request for reinvestigation manifested in the protest letters dated 20 April and 8 May 1989. It was only through the 9 August 2002 Decision ordering BPI to pay deficiency DST, or after the lapse of more than thirteen (13) years, that the CIR acted on the request for reinvestigation, warranting the conclusion that prescription had already set in. It further claims that the CIR was not precluded from collecting the deficiency within

three (3) years from the time the notice of assessment was issued on 7 April 1989, or even until the expiration on 31 December 1994 of the last waiver of the statute of limitations signed by BPI.

Moreover, BPI avers that the cabled instructions to its correspondent bank are not subject to DST because the National Internal Revenue Code of 1977 (Tax Code of 1977) does not contain a specific provision that cabled instructions on SWAP transactions are subject to DST.

The Office of the Solicitor General (OSG) filed a Comment[6] dated 1 June 2007, on behalf of the CIR, asserting that the prescriptive period was tolled by the protest letters filed by BPI which were granted and acted upon by the CIR. Such action was allegedly communicated to BPI as, in fact, the latter submitted additional documents pertaining to its SWAP transactions in support of its request for reinvestigation. Thus, it was only upon BPI's receipt on 13 January 2003 of the 9 August 2002 Decision that the period to collect commenced to run again.

The OSG cites the case of *Collector of Internal Revenue v. Suyoc Consolidated Mining Company, et al.*[7] (*Suyoc* case) in support of its argument that BPI is already estopped from raising the defense of prescription in view of its repeated requests for reinvestigation which allegedly induced the CIR to delay the collection of the assessed tax.

In its Reply[8] dated 30 August 2007, BPI argues against the application of the Suyoc case on two points: *first*, it never induced the CIR to postpone tax collection; *second*, its request for reinvestigation was not categorically acted upon by the CIR within the three-year collection period after assessment. BPI maintains that it did not receive any communication from the CIR in reply to its protest letters.

We grant the petition.

Section 318[9] of the Tax Code of 1977 provides:

> Sec. 318. *Period of limitation upon assessment and collection.*—Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. 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: *Provided,* That this limitation shall not apply to cases already investigated prior to the approval of this Code.

The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by Batas Pambansa Blg. 700.[10] Thus, the CIR has three (3) years from the date of actual filing of the tax

return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment.

When it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.[11]

As applied to the present case, the CIR had three (3) years from the time he issued assessment notices to BPI on 7 April 1989 or until 6 April 1992 within which to collect the deficiency DST. However, it was only on 9 August 2002 that the CIR ordered BPI to pay the deficiency.

In order to determine whether the prescriptive period for collecting the tax deficiency was effectively tolled by BPI's filing of the protest letters dated 20 April and 8 May 1989 as claimed by the CIR, we need to examine Section 320[12] of the Tax Code of 1977, which 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 above section is plainly worded. In order to suspend the running of the prescriptive periods for assessment and collection, the request for reinvestigation must be granted by the CIR.

In *BPI v. Commissioner of Internal Revenue*,[13] the Court emphasized the rule that the CIR must first grant the request for reinvestigation as a requirement for the suspension of the statute of limitations. The Court said:

> 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 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—

*x x x T**he 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…

In *Republic of the Philippines v. Acebedo*, this Court similarly found that—

x x x 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][14]

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 fact, it was only in his comment to the present petition that the CIR, through the OSG, argued for the first time that he had granted the request for reinvestigation. His consistent stance invoking the *Wyeth Suaco* case, as reflected in the records, is that the prescriptive period was tolled by BPI's request for reinvestigation, without any assertion that the same had been granted or at least acted upon.[15]

In the *Wyeth Suaco* case, private respondent Wyeth Suaco Laboratories, Inc. sent letters seeking the reinvestigation or reconsideration of the deficiency tax assessments issued by the BIR. The records of the case showed that as a result of these protest letters, the BIR Manufacturing Audit Division conducted a review and reinvestigation of the assessments. The records further showed that the company, thru its finance manager, communicated its inability to settle the tax deficiency assessment and

admitted that it knew of the ongoing review and consideration of its protest.

As differentiated from the *Wyeth Suaco* case, however, there is no evidence in this case that the CIR actually conducted a reinvestigation upon the request of BPI or that the latter was made aware of the action taken on its request. Hence, there is no basis for the tax court's ruling that the filing of the request for reinvestigation tolled the running of the prescriptive period for collecting the tax deficiency.

Neither did the waiver of the statute of limitations signed by BPI supposedly effective until 31 December 1994 suspend the prescriptive period. The CIR himself contends that the waiver is void as it shows no date of acceptance in violation of RMO No. 20-90. [16] At any rate, the records of this case do not disclose any effort on the part of the Bureau of Internal Revenue to collect the deficiency tax after the expiration of the waiver until eight (8) years thereafter when it finally issued a decision on the protest.

We also find the *Suyoc* case inapplicable. In that case, several requests for reinvestigation and reconsideration were filed by Suyoc Consolidated Mining Company purporting to question the correctness of tax assessments against it. As a result, the Collector of Internal Revenue refrained from collecting the tax by distraint, levy or court proceeding in order to give the company every opportunity to prove its claim. The Collector also conducted several reinvestigations which eventually led to a reduced assessment. The company, however, filed a petition with the CTA claiming that the right of the government to collect the tax had already prescribed.

When the case reached this Court, we ruled that Suyoc could not set up the defense of prescription since, by its own action, the government was induced to delay the collection of taxes to make the company feel that the demand was not unreasonable or that no harassment or injustice was meant by the government.

In this case, BPI's letters of protest and submission of additional documents pertaining to its SWAP transactions, which were never even acted upon, much less granted, cannot be said to have persuaded the CIR to postpone the collection of the deficiency DST.

The inordinate delay of the CIR in acting upon and resolving the request for reinvestigation filed by BPI and in collecting the DST allegedly due from the latter had resulted in the prescription of the government's right to collect the deficiency. As this Court declared in *Republic of the Philippines v. Ablaza*: [17]

> 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.[18]

Given the prescription of the government's claim, we no longer deem it necessary to pass upon the validity of the assessment.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Tax Appeals dated 15 August 2006 and its Resolution dated 5 October 2006, are hereby REVERSED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.

Carpio, (Acting Chairperson), Carpio Morales, Azcuna,[*] and *Velasco, Jr., JJ.*, concur.

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[*] As replacement of Justice Leonardo A. Quisumbing who is on official leave per Administrative Circular No. 84-2007.

[1] *Rollo*, pp. 36-47.

[2] Id. at 34-35.

[3] Id. at 37-39.

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

[5] *Rollo*, pp. 8-29.

[6] Id. at 106-121.

[7] 104 Phil. 819 (1958).

[8] *Rollo*, pp. 124-127.

[9] Now Sec. 203 of the Tax Reform Act of 1997.

[10] Approved on 5 April 1984. The shorter three-year prescriptive period shall apply to assessments made on or after 5 April 1984 covering taxable years beginning 1 January 1984.

[11] *BPI v. Commissioner of Internal Revenue*, G.R. No. 139736, 17 October 2005, 473 SCRA 205, 222-223.

[12] Now Sec. 223 of the Tax Reform Act of 1997.

[13] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 139736, 17 October 2005, 473 SCRA 205.

[14] Id. at 232.

[15] CTA Second Division Records, pp. 96-105; Memorandum of the CIR.

[16] CTA *En Banc* Records, pp. 103-111; Comment of the CIR.

[17] 108 Phil. 1105 (1960).

[18] Id. at 1108.