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SECOND DIVISION

[G.R. No. 185568, March 21, 2012]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PETRON CORPORATION, RESPONDENT.

D E C I S I O N

SERENO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure filed by the Commissioner of Internal Revenue (CIR) assailing the Decision[1] dated 03 December 2008 of the Court of Tax Appeals En Banc (CTA En Banc) in CTA EB No. 311. The assailed Decision reversed and set aside the Decision[2] dated 04 May 2007 of the Court of Tax Appeals Second Division (CTA Second Division) in CTA Case No. 6423, which ordered respondent Petron Corporation (Petron) to pay deficiency excise taxes for the taxable years 1995 to 1998, together with surcharges and delinquency interests imposed thereon.

Respondent Petron is a corporation engaged in the production of petroleum products and is a Board of Investment (BOI) – registered enterprise in accordance with the provisions of the Omnibus Investments Code of 1987 (E.O. 226) under Certificate of Registration Nos. 89-1037 and D95-136.[3]

The Facts

The CTA En Banc in CTA EB Case No. 311 adopted the findings of fact by the CTA Second Division in CTA Case No. 6423. Considering that there are no factual issues in this case, we likewise adopt the findings of fact by the CTA En Banc, as follows:

> As culled from the records and as agreed upon by the parties in their Joint Stipulation of Facts and Issues, these are the facts of the case.
>
> During the period covering the taxable years 1995 to 1998, petitioner (herein respondent Petron) had been an assignee of several Tax Credit Certificates (TCCs) from various BOI-registered entities for which petitioner utilized in the payment of its excise tax liabilities for the taxable years 1995 to 1998. The transfers and assignments of the said TCCs were approved by the Department of Finance's One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF Center), composed of representatives from the appropriate government agencies, namely, the Department of Finance (DOF), the Board of Investments (BOI), the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR).
>
> Taking ground on a BOI letter issued on 15 May 1998 which states that 'hydraulic oil, penetrating oil, diesel fuels and industrial gases are classified as supplies and considered the suppliers thereof as qualified transferees of tax credit,' petitioner acknowledged and accepted the transfers of the TCCs from the various BOI-registered entities.

Petitioner's acceptance and use of the TCCs as payment of its excise tax liabilities for the taxable years 1995 to 1998, had been continuously approved by the DOF as well as the BIR's Collection Program Division through its surrender and subsequent issuance by the Assistant Commissioner of the Collection Service of the BIR of the Tax Debit Memos (TDMs).

On January 30, 2002, respondent [herein petitioner CIR] issued the assailed Assessment against petitioner for deficiency excise taxes for the taxable years 1995 to 1998, in the total amount of P739,003,036.32, inclusive of surcharges and interests, based on the ground that the TCCs utilized by petitioner in its payment of excise taxes have been cancelled by the DOF for having been fraudulently issued and transferred, pursuant to its EXCOM Resolution No. 03-05-99. Thus, petitioner, through letters dated August 31, 1999 and September 1, 1999, was required by the DOF Center to submit copies of its sales invoices and delivery receipts showing the consummation of the sale transaction to certain TCC transferors.

Instead of submitting the documents required by the respondent, on February 27, 2002, petitioner filed its protest letter to the 'Assessment' on the grounds, among others, that:

> a. The BIR did not comply with the requirements of Revenue Regulations 12-99 in issuing the "assessment" letter dated January 30, 2002, hence, the assessment made against it is void;
>
> b. The assignment/transfer of the TCCs to petitioner by the TCC holders was submitted to, examined and approved by the concerned government agencies which processed the assignment in accordance with law and revenue regulations;
>
> c. There is no basis for the imposition of the 50% surcharge in the amount of P159,460,900.00 and interest penalties in the amount of P260,620,335.32 against it;
>
> d. Some of the items included in the 'assessment' are already pending litigation and are subject of the case entitled 'Commissioner of Internal Revenue vs. Petron Corporation,' C.A. GR SP No. 55330 (CTA Case No. 5657) and hence, should no longer be included in the 'assessment'; and
>
> e. The assessment and collection of alleged excise tax deficiencies sought to be collected by the BIR against petitioner through the January 30, 2002 letter are already barred by prescription under Section 203 of the National Internal Revenue Code.

On 27 March 2002, respondent, through Assistant Commissioner Edwin R. Abella served a Warrant of Distraint and/or Levy on petitioner to enforce payment of the P739,003,036.32 tax deficiencies.

Respondent allegedly served the Warrant of Distraint and/or Levy against petitioner without first acting on its letter-protest. Thus, construing the Warrant of Distraint and/or Levy as the final adverse decision of the BIR on its protest of the assessment, petitioner filed the instant petition before this Honorable Court [referring to the CTA Second Division]

on April 2, 2002.

On April 30, 2002, respondent filed his Answer, raising the following as his Special Affirmative Defenses:

> 6. In a post-audit conducted by the One-Stop Inter-Agency Tax Credit and Duty Drawback Center (Center) of the Department of Finance (DOF), pursuant to the Center's Excom Resolution No. 03-05-99, it was found that TCCs issued to Alliance Thread Co., Inc., Allstar Spinning, Inc., Diamond Knitting Corp., Fiber Technology Corp., Filstar Textile Industrial Corp., FLB International Fiber Corp., Jantex Philippines, Inc., Jibtex Industrial Corp., Master Colour System Corp. and Spintex International, Inc. were fraudulently obtained and were fraudulently transferred to petitioner. As a result of said findings, the TCCs and the Tax Debit Memos (TDMs) issued by the Center to petitioner against said TCCs were cancelled by the DOF;
>
> 7. Prior to the cancellation of the aforesaid TCCs and TDMs, petitioner had utilized the same in the payment of its excise tax liabilities. With such cancellation, the TCCs and TDMs have no value in money or money's worth and, therefore, the excise taxes for which they were used as payment are now deemed unpaid;
>
> 8. The cancellation by the DOF of the aforesaid TCCs and TDMs has the presumption of regularity upon which respondent may validly rely;
>
> 9. Petitioner was informed by the DOF of the post-audit conducted on the TCCs and was given the opportunity to submit documents showing that the TCCs were transferred to it in payment of petroleum products allegedly delivered by it to the TCC transferors upon which the TCC transfers were approved, with the admonition that failure to submit the required documents would result in the cancellation of the transfers. Petitioner was also informed of the cancellation of the TCCs and TDMs and the reason for their cancellation;
>
> 10. Since petitioner is deemed not to have paid its excise tax liabilities, a pre-assessment notice is not required under Section 228 of the Tax Code;
>
> 11. The letter dated January 20, 2002 (should be January 30, 2002), demanding payment of petitioner's excise tax liabilities explicitly states the basis for said demand, i.e., the cancellation of the TCCs and TDMs;
> 12. The government is never estopped from collecting legitimate taxes due to the error committed by its agents (Visayas Cebu Terminal Inc., vs. Commissioner of Internal Revenue, 13 SCRA 257; Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 102 SCRA 246). The acceptance by the Bureau of Internal Revenue of the TCCs fraudulently obtained and fraudulently transferred to petitioner as payment of its excise tax liabilities turned out to be a mistake after the post-audit was conducted. Hence, said payments were void and the excise taxes may be validly collected from petitioner.
>
> 13. As found in the post-audit, petitioner and the TCC transferors committed fraud in the transfer of the TCCs when they made appear (sic) that the transfers were in consideration for the delivery of petroleum products by

petitioner to the TCCs transferors, for which reason said transfers were approved by the Center, when in fact there were no such deliveries;

14. Petitioner used the TCCs fraudulently obtained and fraudulently transferred in the payment of excise taxes declared in its excise tax returns with intent to evade tax to the extent of the value represented by the TCCs, thereby rendering the returns fraudulent;

15. Since petitioner wilfully filed fraudulent returns, it is liable for the 50% surcharge and 20% annual interest imposed under Sections 248 and 249 of the Tax Code;

16. Since petitioner wilfully filed fraudulent returns with intent to evade tax, the prescriptive period to collect the tax is ten (10) years from the discovery of the fraud pursuant to Section 222 of the Tax Code; and

17. The case pending in the Court of Appeals (CA-G.R. Sp. No. 55330 [CTA Case No. 5657]), and the case at bar have distinct causes of action. The former involves the invalid transfers of the TCCs to petitioner on the theory that it is not a qualified transferee thereof, while the latter involves the fraudulent procurement of said TCCs and the fraudulent transfers thereof to petitioner.

However, on November 12, 2002, respondent filed a Manifestation informing this Court that on May 29, 2002, it had reduced the amount of deficiency excise taxes to P720,923,224.74 as a result of its verification that some of the TCCs which formed part of the original "Assessment" were already included in a case previously filed with this Court. In effect, the amount of deficiency excise taxes is recomputed as follows:

Transferor	Basic Tax	Surcharge	Interest	Total
Alliance Thread Co. Inc.	P12,078,823.00	P 6,039,411.50	P 16,147,293.21	P 34,265,527.21
Allstar Spinning, Inc.	37,265,310.00	18,632,655.00	49,781,486.95	105,679,451.95
Diamond Knitting Corporation	36,764,587.00	18,382,293.50	49,264,758.35	104,411,638.85
Fiber Technology Corp.	25,300,911.00	12,650,455.50	34,295,655.90	72,247,022.40
Filstar Textile Corp.	40,767,783.00	20,383,891.50	54,802,550.16	115,954,224.66
FLB International Fiber Corp.	25,934,695.00	12,967,347.50	34,977,257.14	73,879,299.64
Jantex Philippines, Inc.	12,036,192.00	6,018,096.00	15,812,547.24	33,866,835.24
Jibtex	15,506,302.00	7,753,151.00	20,610,319.52	43,869,772.52

Industrial Corp.				
Master Colour system Corp.	33,333,536.00	16,666,768.00	44,822,167.06	94,822,471.06
Spintex International Inc.	14,912,408.00	7,456,204.00	19,558,368.71	41,926,980.71
Total	**P253,900,547.00**	**P126,950,273.50**	**P340,072,404.24**	**P720,923,224.74**

During the pendency of the case, but after respondent had already submitted his Formal Offer of Evidence for this Court's consideration, he filed an 'Urgent Motion to Reopen Case' on August 24, 2004 on the ground that additional evidence consisting of documents presented to the Center in support of the TCC transferor's claims for tax credit as well as document supporting the applications for approval of the transfer of the TCCs to petitioner, must be presented to prove the fraudulent issuance and transfer of the subject TCCs. Respondent submits that it is imperative on his part to do so considering that, without necessarily admitting that the evidence presented in the case of Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, to prove fraud is not clear and convincing, he may suffer the same fate that had befallen upon therein respondent when this Court held, among others, that 'there is no clear and convincing evidence that the Tax Credit Certificates (TCCs) transferred to Shell (for brevity) and used by it in the payment of excise taxes, were fraudulently issued to the TCC transferors and were fraudulently transferred to Shell.'

An 'Opposition to Urgent Motion to Reopen Case' was filed by petitioner on September 3, 2004 contending that to sustain respondent's motion would 'smack of procedural disorder and spawn a reversion of the proceedings. While litigation is not a game of technicalities, it is a truism that every case must be presented in accordance with the prescribed procedure to insure an orderly administration of justice.'

On October 4, 2004, this Court resolved to grant respondent's Motion and allowed respondent to present additional evidence in support of his arguments, but deferred the resolution of respondent's original Formal Offer of Evidence until after the respondent has terminated his presentation of evidence. Subsequent to this Court's Resolution, respondent then filed on October 20, 2004, a Request for the Issuance of Subpoena Duces Tecum to the Executive Director of the Center or his duly authorized representative, and on October 21, 2004, a Subpoena Ad Testificandum to Ms. Elizabeth R. Cruz, also of the Center.

Petitioner filed a 'Motion for Reconsideration (Re: Resolution dated October 4, 2004)' on October 27, 2004, with respondent filing his 'Opposition' on November 4, 2004, and petitioner subsequently filing its 'Reply to Opposition' on December 20, 2004. Petitioner's motion was denied by this Court in a Resolution dated February 28, 2005 for lack of merit.

On March 18, 2005, petitioner filed an 'Urgent Motion to Revert Case to the First Division' with respondent's 'Manifestation' filed on April 6, 2005 stating that 'the question of which Division of this Honorable Court shall hear the instant case is an internal matter which is better left to the sound discretion of this Honorable Court without interference by a party litigant'. On April 28, 2005, this Court denied the Motion of petitioner for lack of merit.

On November 7, 2005, the Court finally resolved respondent's 'Formal Offer of Evidence' filed on May 7, 2004 and 'Supplemental Formal Offer of Evidence' filed on August 25, 2005. On November 22, 2005, respondent filed a 'Motion for Partial Reconsideration' of the Court's Resolution to admit Exhibits 31 and 31-A on the ground that he already submitted and offered certified true copies of said exhibits, which the Court granted in its Resolution on January 19, 2006.

However, on February 10, 2006, respondent filed a 'Motion to Amend Formal Offer of Evidence' praying that he be allowed to amend his formal offer since some exhibits although attached thereto were inadvertently not mentioned in the Formal Offer of Evidence. Petitioner's 'Opposition' was filed on March 14, 2006. This Court granted respondent's motion in the Resolution dated April 24, 2006 and considering that the parties already filed their respective Memoranda, this case was then considered submitted for decision.

On May 16, 2006, however, respondent filed an 'Omnibus Motion' praying that this Court take judicial notice of the fact that the TCCs issued by the Center, including the TCCs in this instant case, contained the standard 'Liability Clause' and that the case be consolidated with CTA Case No. 6136, on the ground that both cases involve the same parties and common questions of law or fact. An 'Opposition/Comment on Omnibus Motion' was filed by petitioner on June 26, 2006, and 'Reply to Opposition/Comment' was filed by respondent on July 17, 2006.

In a Resolution promulgated on September 1, 2006, this Court granted respondent's motion only insofar as taking judicial notice of the fact that each of the dorsal side of the TCCs contains the subject 'liability clause', but denied respondent's motion to consolidate considering that C.T.A. Case No. 6136 was already submitted for decision on April 24, 2006.[4]

The Ruling of the Court of Tax Appeals–Second Division
(CTA Case No. 6423)

On 04 May 2007, the CTA Second Division promulgated a Decision in CTA Case No. 6423, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED for lack of merit. Accordingly, petitioner is **ORDERED TO PAY** the respondent the reduced amount of **SIX HUNDRED MILLION SEVEN HUNDRED SIXTY NINE THOUSAND THREE HUNDRED FIFTY THREE AND 95/100 PESOS (P600,769,353.95)**, representing petitioner's deficiency excise taxes for the taxable years 1995 to 1998, recomputed as follows:

Transferor	Basic Tax	25% Surcharge	20% Interest	Total
Alliance Thread Co. Inc.	P12,078,823.00	P3,019,705.75	P13,456,077.68	P28,554,606.43
Allstar Spinning, Inc.	37,265,310.00	9,316,327.50	41,484,572.46	88,066,209.96
Diamond	36,764,587.00	9,191,146.75	41,053,965.29	87,009,699.04

Knitting Corporation				
Fiber Technology Corp.	25,300,911.00	6,325,227.75	28,579,713.25	60,205,852.00
Filstar Textile Corp.	40,767,783.00	10,191,945.75	45,668,791.80	96,628,520.55
FLB International Fiber Corp.	25,934,695.00	6,483,673.75	29,147,714.28	61,566,083.03
Jantex Philippines, Inc.	12,036,192.00	3,009,048.00	13,177,122.70	28,222,362.70
Jibtex Industrial Corp.	15,506,302.00	3,876,575.50	17,175,266.27	36,558,143.77
Master Colour system Corp.	33,333,536.00	8,333,384.00	37,351,805.88	79,018,725.88
Spintex International Inc.	14,912,408.00	3,728,102.00	16,298,640.59	34,939,150.59
Total	**P253,900,547.00**	**P63,475,136.75**	**P283,393,670.20**	**P600,769,353.95**

In addition, petitioner is **ORDERED TO PAY** the respondent **TWENTY FIVE PERCENT (25%) LATE PAYMENT SURCHARGE AND TWENTY PERCENT (20%) DELIQUENCY INTEREST** per annum on the amount of **SIX HUNDRED MILLION SEVEN HUNDRED SIXTY NINE THOUSAND THREE HUNDRED FIFTY THREE & 95/100 PESOS (P600,769,353.95)**, computed from June 27, 2002 until the amount is fully paid.

SO ORDERED.[5]

The CTA Second Division held Petron liable for deficiency excise taxes on the ground that the cancellation by the DOF of the TCCs previously issued to and utilized by respondent to settle its tax liabilities had the effect of nonpayment of the latter's excise taxes. These taxes corresponded to the value of the TCCs Petron used for payment. The CTA Second Division ruled that payment can only occur if the instrument used to discharge an obligation represents its stated value.[6] It further ruled that Petron's acceptance of the TCCs was considered a contract entered into by respondent with the CIR and subject to post-audit,[7] which was considered a suspensive condition governed by Article 1181 of the Civil Code.[8]

Further, the CTA Second Division found that the circumstances pertaining to the issuance of the subject TCCs and their transfer to Petron "brim with fraud."[9] Hence, the said court concluded that since the TCCs used by Petron were found to be spurious, respondent was deemed to have not paid its excise taxes and ought to be liable to the CIR in the amount of P600,769,353.95 plus 25% interests and 20% surcharges.[10]

Petron filed a Motion for Reconsideration[11] of the Decision of the CTA Second Division, which denied the motion in a Resolution dated 14 August 2007.[12] The court reiterated its conclusion that the

TCCs utilized by Petron to pay the latter's excise tax liabilities did not result in payment after these TCCs were found to be fraudulent in the post-audit by the DOF. The CTA Second Division also affirmed its ruling that Petron was liable for a 25% late payment surcharge and 20% surcharges under Section 248[13] of the National Internal Revenue Code (NIRC) of 1997.[14]

Aggrieved, Petron appealed the Decision to the CTA En Banc through a Petition for Review, which was docketed as CTA EB No. 311. In its Petition, Petron alleged that the Second Division erred in holding respondent liable to pay the amount of ?600,769,353.95 in deficiency excise taxes with penalties and interests covering the taxable years 1995-1998. Petron prayed that the said Decision be reversed and set aside, and that CIR be enjoined from collecting the contested excise tax deficiency assessment. [15]

The CTA En Banc summed up into one issue the grounds relied upon by Petron in its Petition for Review, as follows:

> Whether or not the Second Division erred in holding petitioner liable for the amount of P600,769,353.95 as deficiency excise taxes for the years 1995-1998, including surcharges and interest, plus 25% surcharge and 20% delinquency interest per annum from June 27, 2002 until the amount is fully paid.[16]

The Ruling of the Court of Tax Appeals En Banc
(CTA EB Case No. 311)

On 03 December 2008, the CTA En Banc promulgated a Decision, which reversed and set aside the CTA Second Division on 04 May 2007. The former absolved Petron from any deficiency excise tax liability for taxable years 1995 to 1998. Its ruling in favor of Petron was anchored on this Court's pronouncements in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue (Shell),*[17] which found that the factual background and legal issues therein were similar to those in the present case.

In resolving the issues, the CTA En Banc adopted the main points in *Shell*, which it quoted at length as basis for deciding the appeal in favor of Petron. The gist of the main points of *Shell* cited by the said court is as follows:

> a) The issued TCCs are immediately valid and effective and are not subject to a post-audit as a suspensive condition[18]
>
> b) A TCC is subject only to the following conditions:
>
> i) Post-audit in the event of a computational discrepancy
> ii) A reduction for any outstanding account with the BIR and/or BOC
> iii) A revalidation of the TCC if not utilized within one year from issuance or date of utilization[19]
>
> c) A transferee of a TCC should only be a BOI-registered firm under the Implementing Rules and Regulations of Executive Order (E.O.) No. 226.[20]
>
> d) The liability clause in the TCCs provides only for the solidary liability of the transferee relative to its transfer in the event it is a party to the fraud.[21]

e) A transferee can rely on the Center's approval of the TCCs' transfer and subsequent acceptance as payment of the transferee's excise tax liability.[22]

f) A TCC cannot be cancelled by the Center, as it was already cancelled after the transferee had applied it as payment for the latter's excise tax liabilities.[23]

The CTA En Banc also found that Petron had no participation in or knowledge of the fraudulent issuance and transfer of the subject TCCs. In fact, the parties made a joint stipulation on this matter in CTA Case No. 6423 before the CTA Second Division.[24]

In resolving the issue of whether the government is estopped from collecting taxes due to the fault of its agents, the CTA En Banc quoted Shell as follows:

> While we agree with respondent that the State in the performance of government function is not estopped by the neglect or omission of its agents, and nowhere is this truer than in the field of taxation, **yet this principle cannot be applied to work injustice against an innocent party**.[25] (Emphasis supplied.)

Finally, the CTA En Banc ruled that Petron was considered an innocent transferee of the subject TCCs and may not be prejudiced by a re-assessment of excise tax liabilities that respondent has already settled, when due, with the use of the TCCs.[26] Petron is thus considered to have not fraudulently filed its excise tax returns. Consequently, the assessment issued by the CIR against it had no legal basis.[27] The dispositive portion of the assailed 03 December 2008 Decision of the CTA En Banc reads:

> **WHEREFORE**, the instant petition for Review is hereby **GRANTED**. Accordingly, the May 4, 2007 Decision and August 14, 2007 Resolution of the CTA Second Division in CTA Case No. 6423 entitled, "*Petron Corporation, petitioner vs. Commissioner of Internal Revenue, respondent*", are hereby **REVERSED** and **SET ASIDE**. In addition, the demand and collection of the deficiency excise taxes of **PETRON** in the amount of P600,769,353.95 excluding penalties and interest covering the taxable years 1995 to 1998 are hereby **CANCELLED** and **SET ASIDE**, and respondent-Commissioner of Internal Revenue is hereby **ENJOINED** from collecting the said amount from **PETRON**.
>
> **SO ORDERED.**[28]

The CIR moved for the reconsideration of the CTA En Banc Decision, but the motion was denied in a Resolution dated 14 August 2007.[29]

The Issues

The CIR appealed the Decision of the CTA En Banc by filing a Petition for Review on Certiorari under Rule 45 of the Rules of Court.[30] Petitioner assails the Decision by raising the following issues:

> THE COURT OF TAX APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT

RESPONDENT PETRON IS NOT LIABLE FOR ITS EXCISE TAX LIABILITIES FROM 1995 TO 1998.

ARGUMENTS

I

THE CTA EN BANC ERRED IN FINDING THAT RESPONDENT PETRON WAS NOT SHOWN TO HAVE PARTICIPATED IN THE FRAUDULENT ACTS. THE FINDING OF THE CTA SECOND DIVISION THAT THE TAX CREDIT CERTIFICATES WERE FRAUDULENTLY TRANSFERRED BY THE TRANSFEROR-COMPANIES TO RESPONDENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE. RESPONDENT WAS INVOLVED IN THE PERPETRATION OF FRAUD IN THE TCCS' TRANSFER AND UTILIZATION.

II

RESPONDENT CANNOT VALIDLY CLAIM THE RIGHT OF INNOCENT TRANSFEREE FOR VALUE. AS ASSIGNEE/TRANSFEREE OF THE TCCS, RESPONDENT MERELY SUCCEEDED TO THE RIGHTS OF THE TCC ASSIGNORS/TRANSFERORS. ACCORDINGLY, IF THE TCCS ASSIGNED TO RESPONDENT WERE VOID, IT DID NOT ACQUIRE ANY VALID TITLE OVER THE TCCS.

III

THE GOVERNMENT IS NOT ESTOPPED FROM COLLECTING TAXES DUE TO THE MISTAKES OF ITS AGENTS.

IV

RESPONDENT IS LIABLE FOR 25% SURCHARGE AND 20% INTEREST PER ANNUM PURSUANT TO THE PROVISIONS OF SECTIONS 248 AND 249 OF THE NIRC. MOREOVER, SINCE RESPONDENT'S RETURNS WERE FALSE, THE ASSESSMENT PRESCRIBES IN TEN (10) YEARS FROM THE DISCOVERY OF THE FALSITY THEREOF PURSUANT TO SECTION 22 OF THE SAME CODE.[31]

The Court's Ruling

We **DENY** the CIR's Petition for lack of merit.

Article 21 of E.O. 226 defines a tax credit as follows:

ARTICLE 21. "Tax credit" shall mean any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board, if so delegated by the Secretary of Finance. The tax credit certificates including those issued by the Board pursuant to laws repealed by this Code but without in any way diminishing the scope of negotiability under their laws of issue are transferable under such conditions as may be determined by the Board after consultation with the Department of Finance. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the National Government; Provided, That the tax credits issued under this Code shall not form

> part of the gross income of the grantee/transferee for income tax purposes under Section 29 of the National Internal Revenue Code and are therefore not taxable: Provided, further, That such tax credits shall be valid only for a period of ten (10) years from date of issuance.

Under Article 39 (j) of the Omnibus Investment Code of 1987,[32] tax credits are granted to entities registered with the Bureau of Investment (BOI) and are given for taxes and duties paid on raw materials used for the manufacture of their export products.

A TCC is defined under Section 1 of Revenue Regulation (RR) No. 5-2000, issued by the BIR on 15 August 2000, as follows:

> B. Tax Credit Certificate — means a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations.

RR 5-2000 prescribes the regulations governing the manner of issuance of TCCs and the conditions for their use, revalidation and transfer. Under the said regulation, a TCC may be used by the grantee or its assignee in the payment of its direct internal revenue tax liability.[33] It may be transferred in favor of an assignee subject to the following conditions: 1) the TCC transfer must be with prior approval of the Commissioner or the duly authorized representative; 2) the transfer of a TCC should be limited to one transfer only; and 3) the transferee shall strictly use the TCC for the payment of the assignee's direct internal revenue tax liability and shall not be convertible to cash.[34] A TCC is valid only for 10 years subject to the following rules: (1) it must be utilized within five (5) years from the date of issue; and (2) it must be revalidated thereafter or be otherwise considered invalid.[35]

The processing of a TCC is entrusted to a specialized agency called the "One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center" ("Center"), created on 07 February 1992 under Administrative Order (A.O.) No. 226. Its purpose is to expedite the processing and approval of tax credits and duty drawbacks.[36] The Center is composed of a representative from the DOF as its chairperson; and the members thereof are representatives of the Bureau of Investment (BOI), Bureau of Customs (BOC) and Bureau of Internal Revenue (BIR), who are tasked to process the TCC and approve its application as payment of an assignee's tax liability.[37]

A TCC may be assigned through a Deed of Assignment, which the assignee submits to the Center for its approval. Upon approval of the deed, the Center will issue a DOF Tax Debit Memo (DOF-TDM),[38] which will be utilized by the assignee to pay the latter's tax liabilities for a specified period. Upon surrender of the TCC and the DOF-TDM, the corresponding Authority to Accept Payment of Excise Taxes (ATAPET) will be issued by the BIR Collection Program Division and will be submitted to the issuing office of the BIR for acceptance by the Assistant Commissioner of Collection Service. This act of the BIR signifies its acceptance of the TCC as payment of the assignee's excise taxes.

Thus, it is apparent that a TCC undergoes a stringent process of verification by various specialized

government agencies before it is accepted as payment of an assignee's tax liability.

In the case at bar, the CIR disputes the ruling of the CTA En Banc, which found Petron to have had no participation in the fraudulent procurement and transfer of the TCCs. Petitioner believes that there was substantial evidence to support its allegation of a fraudulent transfer of the TCCs to Petron.[39] The CIR further contends that respondent was not a qualified transferee of the TCCs, because the latter did not supply petroleum products to the companies that were the assignors of the subject TCCs.[40]

The CIR bases its contentions on the DOF's post-audit findings stating that, for the periods covering 1995 to 1998, Petron did not deliver fuel and other petroleum products to the companies (the transferor companies) that had assigned the subject TCCs to respondent. Petitioner further alleges that the findings indicate that the transferor companies could not have had such a high volume of export sales declared to the Center and made the basis for the issuance of the TCCs assigned to Petron.[41] Thus, the CIR impugns the CTA En Banc ruling that respondent was a transferee in good faith and for value of the subject TCCs.[42]

Not finding merit in the CIR's contention, we affirm the ruling of the CTA En Banc finding that Petron is a transferee in good faith and for value of the subject TCCs.

From the records, we observe that the CIR had no allegation that there was a deviation from the process for the approval of the TCCs, which Petron used as payment to settle its excise tax liabilities for the years 1995 to 1998.

The CIR quotes the CTA Second Division and urges us to affirm the latter's Decision, which found Petron to have participated in the fraudulent issuance and transfer of the TCCs. However, any merit in the position of petitioner on this issue is negated by the Joint Stipulation it entered into with Petron in the proceedings before the said Division. As correctly noted by the CTA En Banc, herein parties jointly stipulated before the Second Division in CTA Case No. 6423 as follows:

> 13. That petitioner (Petron) did not participate in the procurement and issuance of the TCCs, which TCCs were transferred to Petron and later utilized by Petron in payment of its excise taxes.[43]

This stipulation of fact by the CIR amounts to an admission and, having been made by the parties in a stipulation of facts at pretrial, is treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof.[44] The Court cannot lightly set it aside, especially when the opposing party relies upon it and accordingly dispenses with further proof of the fact already admitted. The exception provided in Rule 129, Section 4 is that an admission may be contradicted only by a showing that it was made through a palpable mistake, or that no such admission was made. In this case, however, exception to the rule does not exist.

We agree with the pronouncement of the CTA En Banc that Petron has not been shown or proven to have participated in the alleged fraudulent acts involved in the transfer and utilization of the subject TCCs. Petron had the right to rely on the joint stipulation that absolved it from any participation in the alleged fraud pertaining to the issuance and procurement of the subject TCCs. The joint stipulation made by the parties consequently obviated the opportunity of the CIR to present evidence on this matter, as no proof is required for an admission made by a party in the course of the proceedings.[45] Thus, the CIR cannot now be allowed to change its stand and renege on that admission.

Moreover, a close examination of the arguments proffered by the CIR in their Petition calls for a reevaluation of the sufficiency of evidence in the case. The CIR seeks to persuade this Court to believe that there is substantial evidence to prove that Petron committed a misrepresentation, because the petroleum products were delivered not to the transferor but to other companies.[46] Thus, the TCCs assigned by the transferor companies to Petron were fraudulent. Clearly, a recalibration of the sufficiency of evidence presented by the CIR is needed for a different conclusion to be reached.

The fundamental rule is that the scope of our judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact.[47] It is basic that where it is the sufficiency of evidence that is being questioned, there is a question of fact.[48] Evidently, the CIR does not point out any specific provision of law that was wrongly interpreted by the CTA En Banc in the latter's assailed Decision. Petitioner anchors it contention on the alleged existence of the sufficiency of evidence it had proffered to prove that Petron was involved in the perpetration of fraud in the transfer and utilization of the subject TCCs, an allegation that the CTA En Banc failed to consider. We have consistently held that it is not the function of this Court to analyze or weigh the evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.[49] Such an exception does not obtain in the circumstances of this case.

The CIR claims that Petron was not an innocent transferee for value, because the TCCs assigned to respondent were void. Petitioner based its allegations on the post-audit report of the DOF, which declared that the subject TCCs were obtained through fraud and, thus, had no monetary value.[50] The CIR adds that the TCCs were subject to a post-audit by the Center to complete the payment of the excise tax liability to which they were applied. Petitioner further contends that the Liability Clause of the TCCs makes the transferee or assignee solidarily liable with the original grantee for any fraudulent act pertinent to their procurement and transfer. The CIR assails the contrary ruling of the CTA En Banc, which confined the solidary liability only to the original grantee of the TCCs. Thus, petitioner believes that the correct interpretation of the Liability Clause in the TCCs makes Petron and the transferor companies or the original grantee solidarily liable for any fraudulent act or violation of the pertinent laws relating to the transfers of the TCCs. [51]

We are not persuaded by the CIR's position on this matter.

The Liability Clause of the TCCs reads:

> Both the TRANSFEROR and the TRANSFEREE shall be jointly and severally liable for any fraudulent act or violation of the pertinent laws, rules and regulations relating to the transfer of this TAX CREDIT CERTIFICATE.

The scope of this solidary liability, as stated in the TCCs, was clarified by this Court in *Shell*, as follows:

> The above clause to our mind clearly provides only for the solidary liability relative to the transfer of the TCCs from the original grantee to a transferee. There is nothing in the above clause that provides for the liability of the transferee in the event that the validity of the TCC issued to the original grantee by the Center is impugned or where the TCC is declared to have been fraudulently procured by the said original grantee. **Thus, the**

solidary liability, if any, applies only to the sale of the TCC to the transferee by the original grantee. Any fraud or breach of law or rule relating to the issuance of the TCC by the Center to the transferor or the original grantee is the latter's responsibility and liability. The transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center. It is not only unjust but well-nigh violative of the constitutional right not to be deprived of one's property without due process of law. Thus, a re-assessment of tax liabilities previously paid through TCCs by a transferee in good faith and for value is utterly confiscatory, more so when surcharges and interests are likewise assessed.

A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law.[52] (Emphasis supplied.)

We also find that the post-audit report, on which the CIR based its allegations, does not have the effect of a suspensive condition that would determine the validity of the TCCs.

We held in *Petron v. CIR (Petron)*,[53] which is on all fours with the instant case, that TCCs are valid and effective from their issuance and are not subject to a post-audit as a suspensive condition for their validity. Our ruling in *Petron* finds guidance from our earlier ruling in *Shell*, which categorically states that a TCC is valid and effective upon its issuance and is not subject to a post-audit. The implication on the instant case of the said earlier ruling is that Petron has the right to rely on the validity and effectivity of the TCCs that were assigned to it. In finally determining their effectivity in the settlement of respondent’s excise tax liabilities, the validity of those TCCs should not depend on the results of the DOF’s post-audit findings. We held thus in *Petron*:

As correctly pointed out by Petron, however, the issue about the immediate validity of TCCs and the use thereof in payment of tax liabilities and duties are not matters of first impression for this Court. Taking into consideration the definition and nature of tax credits and TCCs, this Court's Second Division definitively ruled in the aforesaid Pilipinas Shell case that the post audit is not a suspensive condition for the validity of TCCs, thus:

Art. 1181 tells us that the condition is suspensive when the acquisition of rights or demandability of the obligation must await the occurrence of the condition. However, Art. 1181 does not apply to the present case since the parties did NOT agree to a suspensive condition. Rather, specific laws, rules, and regulations govern the subject TCCs, not the general provisions of the Civil Code. Among the applicable laws that cover the TCCs are EO 226 or the Omnibus Investments Code, Letter of Instructions No. 1355, EO 765, RP-US Military Agreement, Sec. 106 (c) of the Tariff and Customs Code, Sec. 106 of the NIRC, BIR Revenue Regulations (RRs), and others. Nowhere in the aforementioned laws does the post-audit become necessary for the validity or effectivity of the TCCs. Nowhere in the aforementioned laws is it provided that a TCC is issued subject to a suspensive condition.

xxx xxx xxx

> . . . (T)he TCCs are immediately valid and effective after their issuance. As aptly pointed out in the dissent of Justice Lovell Bautista in CTA EB No. 64, this is clear from the Guidelines and instructions found at the back of each TCC, which provide:
>
> 1. This Tax Credit Certificate (TCC) shall entitle the grantee to apply the tax credit against taxes and duties until the amount is fully utilized, in accordance with the pertinent tax and customs laws, rules and regulations.
>
> xxx xxx xxx
>
> 4. To acknowledge application of payment, the One-Stop-Shop Tax Credit Center shall issue the corresponding Tax Debit Memo (TDM) to the grantee.
>
> The authorized Revenue Officer/Customs Collector to which payment/utilization was made shall accomplish the Application of Tax Credit at the back of the certificate and affix his signature on the column provided."

> The foregoing guidelines cannot be clearer on the validity and effectivity of the TCC to pay or settle tax liabilities of the grantee or transferee, as they do not make the effectivity and validity of the TCC dependent on the outcome of a post-audit. In fact, if we are to sustain the appellate tax court, it would be absurd to make the effectivity of the payment of a TCC dependent on a post-audit since there is no contemplation of the situation wherein there is no post-audit. Does the payment made become effective if no post-audit is conducted? Or does the so-called suspensive condition still apply as no law, rule, or regulation specifies a period when a post-audit should or could be conducted with a prescriptive period? Clearly, a tax payment through a TCC cannot be both effective when made and dependent on a future event for its effectivity. Our system of laws and procedures abhors ambiguity.
>
> Moreover, if the TCCs are considered to be subject to post-audit as a suspensive condition, the very purpose of the TCC would be defeated as there would be no guarantee that the TCC would be honored by the government as payment for taxes. No investor would take the risk of utilizing TCCs if these were subject to a post-audit that may invalidate them, without prescribed grounds or limits as to the exercise of said post-audit.
>
> The inescapable conclusion is that the TCCs are not subject to post-audit as a suspensive condition, and are thus valid and effective from their issuance.[54]

In addition, *Shell* and *Petron* recognized an exception that holds the transferee/assignee liable if proven to have been a party to the fraud or to have had knowledge of the fraudulent issuance of the subject TCCs. As earlier mentioned, the parties entered into a joint stipulation of facts stating that Petron did not participate in the procurement or issuance of those TCCs. Thus, we affirm the CTA En Banc's ruling that respondent was an innocent transferee for value thereof.

On the issue of estoppel, petitioner contends that the TCCs, which the Center had continually approved as payment for respondent's excise tax liabilities, were subsequently found to be void. Thus, the CIR insists that the government is not estopped from collecting from Petron the excise tax liabilities that had accrued to the latter as a result of the voidance of these TCCs. Petitioner argues that the State should not be prejudiced by the neglect or omission of government employees entrusted with the collection of taxes.[55]

We are not persuaded by the CIR's argument.

We recognize the well-entrenched principle that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.[56] As an exception, however, this general rule cannot be applied if it would work injustice against an innocent party.[57]

Petron, in this case, was not proven to have had any participation in or knowledge of the CIR's allegation of the fraudulent transfer and utilization of the subject TCCs. Respondent's status as a transferee in good faith and for value of these TCCs has been established and even stipulated upon by petitioner.[58] Respondent was thereby provided ample protection from the adverse findings subsequently made by the Center.[59] Given the circumstances, the CIR's invocation of the non-applicability of estoppel in this case is misplaced.

On the final issue it raised, the CIR contends that a 25% surcharge and a 20% interest per annum must be imposed upon Petron for respondent's excise tax liabilities as mandated under Sections 248 and 249 of the National Internal Revenue Code (NIRC).[60] Petitioner considers the tax returns filed by respondent for the years 1995 to 1998 as fraudulent on the basis of the post-audit finding that the TCCs were void. It argues that the prescriptive period within which to lawfully assess Petron for its tax liabilities has not prescribed under Section 222 (a)[61] of the Tax Code. The CIR explains that respondent's assessment on 30 January 2002 of respondent's deficiency excise tax for the years 1995 to 1998 was well within the ten-year prescription period.[62]

In the light of the main ruling in this case, we affirm the CTA En Banc Decision finding Petron to be an innocent transferee for value of the subject TCCs. Consequently, the Tax Returns it filed for the years 1995 to 1998 are not considered fraudulent. Hence, the CIR had no legal basis to assess the excise taxes or any penalty surcharge or interest thereon, as respondent had already paid the appropriate excise taxes using the subject TCCs.

WHEREFORE, the CIR's Petition is **DENIED** for lack of merit. The CTA En Banc Decision dated 03 December 2008 in CTA EB No. 311 is hereby **AFFIRMED** *in toto*. No pronouncement as to costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and *Reyes, JJ.*, concur.

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[1] *Rollo*, pp. 47-80. The CTA En Banc Decision dated 03 December 2008 in CTA EB No. 311 penned by CTA Associate Justice Caesar A. Casanova and concurred in by CTA Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista, Erlinda P. Uy and Olga Palanca-Enriquez.

[2] *Rollo*, pp. 81-107. The CTA Second Division Decision dated 04 May 2007 in CTA Case No. 6423 was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castaneda, Jr., and Olga Palanca-Enriquez.

[3] *Rollo*, p. 48.

[4] *Rollo*, pp. 48-54.

[5] Id. at 106-107.

[6] Id. at 97.

[7] Id. at 98.

[8] Civil Code of the Philippines, Art. 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

[9] *Rollo*, p. 102.

[10] Id. at 104.

[11] Id. at 108.

[12] Id. at 140.

[13] The 1997 National Internal Revenue Code–Section 248 - Civil Penalties. -

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
>
> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%)

of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[14] *Rollo*, p. 145.

[15] Id. at 151.

[16] Id. at 59.

[17] G.R. No. 172598, 21 December 2007, 541 SCRA 316.

[18] *Rollo*, p. 62.

[19] Id. at 66.

[20] Id.

[21] Id. at 69.

[22] Id. at 70.

[23] Id. at 71.

[24] Id. at 76.

[25] Id. at 77.

[26] Supra note 25.

[27] Id. at 78.

[28] Id. at 79-80.

[29] Id. at 12.

[30] Id. at 11.

[31] *Rollo*, pp. 25-26.

[32] E. O. 226 – The Ominbus Investment Code of 1987:

ARTICLE 39. *Incentives to Registered Enterprises*. — All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:

xxx xxx xxx

(j) Tax Credit for Taxes and Duties on Raw Materials. — Every registered enterprise shall enjoy a tax credit equivalent to the national internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof; Provided, however, That the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as a separate item in the sales invoice.

Nothing herein shall be construed as to preclude the Board from setting a fixed percentage of exports sales as the approximate tax credit for taxes and duties of raw materials based on an average or standard usage for such materials in the industry.

[33] RR 5-2000, Sec. 3.

[34] Id. at Sec. 4 (a) & (b).

[35] Id. at Sec. 5 (a), (b), (c) & (d).

[36] A.O. 226, Sec. 3.

[37] Id. at Sec. 2.

[38] http://taxcredit.dof.gov.ph/services_hatdm.htm (last visited on 27 February 2012).

[39] *Rollo*, p. 27.

[40] Id. at 28-29.

[41] Id. at 100.

[42] Supra note 25.

[43] *Rollo*, p. 76.

[44] 1997 Rules of Court, Rule 129. What Need be Proven:

Section 4. *Judicial admissions*. — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[45] *Toshiba v. CIR,* G.R. No. 157594, 09 March 2010, 614 SCRA 526.

[46] *Rollo*, p. 28.

[47] *Republic v. Javier*, G.R. No. 179905, 19August 2009, 596 SCRA 481.

[48] *Land Bank of the Philippines v. Court of Appeals,* 416 Phil. 774 (2001).

[49] *FGU Insurance Corporation v. Court of Appeals*, 494 Phil. 342 (2005).

[50] *Rollo*, p. 32.

[51] Id. at 31.

[52] G.R. No. 172598, 21 December 2007, 541 SCRA 316.

[53] G.R. No. 180385, 28 July 2010, 626 SCRA 100.

[54] Supra note 52.

[55] *Rollo*, pp. 34-35.

[56] *Secretary of Finance v. Oro,* G.R. No. 156946, 15 July 2009, 593 SCRA 14.

[57] Supra note 52.

[58] *Rollo*, p. 76.

[59] Supra note 53.

[60] National Internal Revenue Code:

> Section 248. - Civil Penalties. –
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> Section 249. Interest. –
>
> (A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. - In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

[61] National Internal Revenue Code:

Section 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.

[62] *Rollo,* p. 40.