Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BANK OF THE PHILIPPINE ISLANDS,	**G. R. No. 181836**
Petitioner,	Present:
	CARPIO, *J.*, Chairperson,
	BRION,
	DEL CASTILLO,
- versus -	PEREZ, and
	PERLAS-BERNABE, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUL 09 2014

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D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Decision[2] promulgated on 29 May 2007 as well as the Resolution[3] promulgated on 12 February 2008 by the Court of Appeals (CA) in CA-G.R. SP No. 63640. The CA reversed the Decision[4] of the Court of Tax Appeals (CTA), dated 12 February 2001, and reinstated Assessment No. FAS-5-85-89-000988 requiring petitioner Bank of the Philippine Islands (BPI) to pay the amount of ₱1,259,884.50 as deficiency documentary stamp tax (DST) for the taxable year 1985, inclusive of the compromise penalty.

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1 Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo,* pp. 8-22.

2 Penned by Associate Justice Regalado E. Maambong, with Associate Justices Conrado M. Vasquez, Jr. and Jose L. Sabio, Jr., concurring. Id. at 26-34.

3 Id. at 35-36.

4 Penned by Presiding Justice Ernesto D. Acosta, with Associate Justice Amancio Q. Saga, concurring, and Associate Justice Ramon O. De Veyra, dissenting. Id. at 76-92.

The Facts

BPI, successor-in-interest of Citytrust Banking Corporation, is a commercial banking corporation organized and existing under the laws of the Philippines.

On 19 May 1989, the Bureau of Internal Revenue (BIR) issued Assessment No. FAS-5-85-89-000988[5] finding BPI liable for deficiency DST on its sales of foreign bills of exchange to the Central Bank, computed as follows:

1985 Deficiency Documentary Stamp Tax	
Foreign Bills of Exchange.....	₱ 839,723,000.00
Tax Due Thereon: ₱839,723,000.00 x ₱0.30 (Sec. 182 NIRC).. ₱200.00	₱ 1,259,584.50
Add: Suggested compromise penalty…….	300.00
TOTAL AMOUNT DUE.....	₱ 1,259,884.50

On 16 June 1989, BPI received the assessment notice and demand letter from the BIR.

On 23 June 1989, BPI, through its counsel, filed a protest letter[6] requesting for the reinvestigation and/or reconsideration of the assessment for lack of legal and factual bases. The BPI alleged that it should not be liable for the assessed DST because: (1) based on recognized business practice incorporated in the Bankers Association of the Philippines (BAP) Foreign Exchange Trading Center Rule 2(e), DST was for the account of the buyer; (2) BIR Ruling No. 135-87 stated that neither the tax-exempt entity nor the other party shall be liable for the payment of DST before the effectivity of Presidential Decree No. (PD) 1994 on 1 January 1986; (3) since the then law left the tax to be paid indifferently by either party and the party liable was exempt, the document was exempt from DST; and (4) the assessed DST was the same assessment made by the BIR for DST swap transaction covering taxable years 1982-1986.

In a letter dated 4 August 1998,[7] then Commissioner of Internal Revenue (CIR) Beethoven L. Rualo denied the "request for reconsideration." The CIR held that BPI's arguments were legally untenable. The CIR cited BIR Unnumbered Ruling dated 30 May 1977 and BIR Ruling No. 144-84 dated 3 September 1984, where the liability to pay DST was shifted to the other party, who was not exempt from the tax. As for being taxed twice, the CIR found that such allegation was unsubstantiated by BPI.

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5 Records, pp. 10-11.
6 Id. at 12-19.
7 Id. at 20-22.

On 4 January 1999, BPI filed a petition for review before the CTA. On 23 February 1999, the CIR filed his answer with a demand for BPI to pay the assessed DST.

The CTA Ruling

In a Decision dated 12 February 2001,[8] the CTA ordered the cancellation of the assessed DST on BPI. The CTA ruled that neither BPI nor Central Bank, which was tax-exempt, could be liable for the payment of the assessed DST. The CTA reasoned out that before PD 1994 took effect in 1986, there was no law that shifted the liability to the other party, in case the party liable to pay the DST was tax exempt.

The dispositive portion of the CTA decision reads:

> WHEREFORE, in view of the foregoing, the Court finds the instant Petition for Review MERITORIOUS. Respondent is hereby ORDERED to CANCEL the 1985 deficiency documentary stamp tax assessment issued to Bank of the Philippine Islands (as successor-in-interest of Citytrust [B]anking Corporation) in the amount of ₱1,259,884.50 covered by Assessment No. FAS-5-85-89-000988.
>
> SO ORDERED.[9]

Hence, the CIR appealed to the CA.

The CA Ruling

In a Decision dated 29 May 2007,[10] the CA reversed the CTA decision, and adopted the arguments of the CIR and CTA Associate Justice Ramon O. De Veyra, in his dissent. The CA held that BIR Unnumbered Ruling dated 30 May 1977 was more in accord with the general principles of law and the intent for the enactment of the provisions on DST. According to the CA, BPI further failed to justify its claim for exemption from tax.

Thus, the dispositive portion of the CA decision states:

> WHEREFORE, based on the foregoing, the instant Petition is GRANTED. The Decision of the Court of Tax Appeals in C. T. A. Case No. 5711, dated February 12, 2001, which [cancelled] the 1985 deficiency documentary stamp tax issued to the Bank of the Philippine Islands (as successor-in-interest of Citytrust Banking Corporation) in the amount of ₱1,259,884.50 covered by Assessment No. FAS-5-85-89-000988 is REVERSED and SET ASIDE. Assessment No. FAS-5-85-89-000988 is hereby ordered reinstated. Bank of the Philippine Islands is ordered to pay the amount of ₱1,259,884.50 plus 20% annual interest from the date

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8 *Rollo*, pp. 76-92.
9 Id. at 86-87.
10 Id. at 26-34.

> prescribed for its payment until fully paid pursuant to Section 249 (cc) (3) of the Tax Code.
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> SO ORDERED.[11]

On 12 February 2008, the CA denied the motion for reconsideration filed by BPI. Hence, BPI filed a petition for review before the Court.

In a Resolution dated 5 August 2013,[12] the Court, through the Third Division, found that the assailed tax assessment may be invalidated because the statute of limitations on the collection of the alleged deficiency DST had already expired, conformably with Section 1, Rule 9 of the Rules of Court and the *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[13] decision. However, to afford due process, the Court required both BPI and CIR to submit their respective comments on the issue of prescription.

Only the CIR filed his comment on 9 December 2013. In his Comment,[14] the CIR argues that the issue of prescription can not be raised for the first time on appeal. The CIR further alleges that even assuming that the issue of prescription can be raised, the protest letter interrupted the prescriptive period to collect the assessed DST, unlike in the *Bank of the Philippine Islands* case.[15]

The Issue

The issue boils down to whether or not BIR has a right to collect the assessed DST from BPI.

The Ruling of the Court

We deny the right of the BIR to collect the assessed DST on the ground of prescription.

Section 1, Rule 9 of the Rules of Court expressly provides that:

> Section 1. *Defenses and objections not pleaded*. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by prior judgment or **by the statute of limitations, the court shall dismiss the claim**. (Emphasis and underscoring supplied)

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11 Id. at 33-34.
12 Id. at 120-121.
13 510 Phil. 1 (2005).
14 *Rollo*, pp. 138-144.
15 Supra.

If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense. In *Heirs of Valientes v. Ramas*,[16] we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case.[17] More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.[18]

Thus, we proceed to determine whether the period to collect the assessed DST for the year 1985 has prescribed.

To determine prescription, what is essential only is that the facts demonstrating the lapse of the prescriptive period were sufficiently and satisfactorily apparent on the record either in the allegations of the plaintiff's complaint, or otherwise established by the evidence.[19] Under the then applicable Section 319(c) [now, 222(c)][20] of the National Internal Revenue Code (NIRC) of 1977, as amended, any internal revenue tax which has been assessed within the period of limitation may be collected by distraint or levy, and/or court proceeding within three years[21] following the assessment of the tax. 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.[22]

In the present case, although there was no allegation as to when the assessment notice had been released, mailed or sent to BPI, still, the latest date that the BIR could have released, mailed or sent the assessment notice was on the date BPI received the same on 16 June 1989. Counting the three-year prescriptive period from 16 June 1989, the BIR had until 15 June 1992 to collect the assessed DST. But despite the lapse of 15 June 1992, the

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16 G.R. No. 157852, 15 December 2010, 638 SCRA 444.

17 Id., *citing Heirs of Durano, Sr. v. Spouses Uy*, 398 Phil. 125 (2000).

18 *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*, 536 Phil. 1131 (2006); *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, 488 Phil. 218 (2004), *citing Republic of the Philippines v. Ablaza*, 108 Phil. 1105 (1960).

19 *D. B. T. Mar-Bay Construction, Inc. v. Panes*, 612 Phil. 93 (2009); *Dino v. Court of Appeals*, 411 Phil. 594 (2001), *citing Gicano v. Gegato*, 241 Phil. 139 (1988); *Chua Lamko v. Dioso*, 97 Phil. 821 (1955).

20 The National Internal Revenue Code of 1997, Section 222 provides:

> Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
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> x x x x
>
> (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.
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> x x x x

21 This period was reduced to three years by Batas Pambansa Blg. 700 (5 April 1984), amending Sections 318 and 319 of the NIRC of 1977.

22 *Bank of the Philippine Islands*, supra note 13, *citing Basilan Estates, Inc. v. Commissioner of Internal Revenue*, 128 Phil. 19 (1967).

evidence established that there was no warrant of distraint or levy served on BPI's properties, or any judicial proceedings initiated by the BIR.

The earliest attempt of the BIR to collect the tax was when it filed its answer in the CTA on 23 February 1999, which was several years beyond the three-year prescriptive period. However, the BIR's answer in the CTA was not the collection case contemplated by the law. Before 2004 or the year Republic Act No. 9282 took effect, the judicial action to collect internal revenue taxes fell under the jurisdiction of the regular trial courts, and not the CTA. Evidently, prescription has set in to bar the collection of the assessed DST.

The BIR nevertheless insists that the running of the prescriptive period to collect the tax was suspended by BPI's filing of a request for the reinvestigation and/or reconsideration on 23 June 1989. In the similar case of *Bank of the Philippine Islands,*[23] we already ruled on the matter as follows:

> Of particular importance to the present case is one of the circumstances enumerated in Section [320 (now, 223)] 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–
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> x x x x
>
> (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.
>
> x x x 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.

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[23] Supra note 13, at 23-25.

> x x x **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. 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. (Emphasis supplied)

In the present case, the protest letter of BPI essentially raises the same question of law, that is whether BPI was liable for DST on its sales of foreign bills of exchange to the Central Bank in the taxable year 1985. Although it raised the issue of being taxed twice, the BIR admitted that BPI did not present any new or additional evidence to substantiate its allegations.[24] In its letter dated 4 August 1998,[25] the BIR itself referred to the protest of BPI as a request for reconsideration, found the arguments in it legally untenable, and **denied the request**. Hence, we find that the protest letter of BPI was a request for reconsideration, which did not suspend the running of the prescriptive period to collect.

Even considering that BPI's protest was a request for reinvestigation, there was nothing in the records which showed that the BIR granted such request. On the other hand, the BIR only responded to BPI on 4 August 1998 or after nine years from the protest letter of BPI. In the *Bank of the Philippine Islands* case,[26] we clarified and qualified our ruling in *Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc.*,[27] such that the request for reinvestigation in that case was granted by the BIR. Thus, unlike in the present case, there was a proper ground for suspension of the prescriptive period in *Wyeth Suaco.*[28]

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24 Records, p. 22.
25 Id.
26 Supra note 13.
27 279 Phil. 132 (1991).
28 Id.

Considering that the dismissal of the present case due to prescription is imperative, there is no more need to determine the validity of the assessment.

WHEREFORE, we **GRANT** the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 63640, dated 29 May 2007, which reinstated Assessment No. FAS-5-85-89-000988 requiring petitioner BPI to pay the amount of ₱1,259,884.50 as deficiency documentary stamp tax for the taxable year 1985, inclusive of the compromise penalty, is **REVERSED and SET ASIDE**. Assessment No. FAS-5-85-89-000988 is hereby ordered **CANCELLED**.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice