Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE,	**G.R. No. 224327**
Petitioner,	**Present:**
-versus-	CARPIO, *J.*, *Chairperson*, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
BANK OF THE PHILIPPINE ISLANDS,	**Promulgated:**
Respondent.	11 JUN 2018

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DECISION

PERALTA, *J.*:

For this Court's resolution is the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Civil Procedure assailing the Decision[2] dated September 16, 2015 and Resolution[3] dated April 21, 2016 of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB No. 1173 (CTA CASE No. 8350) on petitioner Commissioner of Internal Revenue's (*CIR*) tax assessment against respondent Bank of the Philippine Islands (*BPI*).

The facts follow.

Citytrust Banking Corporation (*CBC*) filed its Annual Income Tax Returns for its Regular Banking Unit, and Foreign Currency Deposit Unit, for taxable year 1986 on April 15, 1987.

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1 Dated June 16, 2016.

2 Penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, *rollo*, pp. 46-59.

3 *Rollo*, pp. 60-64.

Thereafter, on August 11, 1989, July 12, 1990 and November 8, 1990, CBC executed Waivers of the Statute of Limitations under the National Internal Revenue Code (*NIRC*).

On March 7, 1991, petitioner CIR issued a Pre-Assessment Notice (*PAN*) against CBC for deficiency taxes, among which is for deficiency Income Tax for taxable year 1986 in the total amount of ₱19,202,589.97. The counsel for CBC filed its protest against the PAN on April 22, 1991.

Petitioner, on May 6, 1991, issued a Letter, with attached Assessment Notices, demanding for the payment of the deficiency taxes within thirty (30) days from receipt thereof. The counsel for CBC filed its Protest against the assessments on May 27, 1991 and another Protest on February 17, 1992.

A Letter was again issued by petitioner on February 5, 1992 requesting for the payment of CBC's tax liabilities, within ten (10) days from receipt thereof.

The counsel for CBC, on March 29, 1994, issued a Letter addressed to petitioner offering a compromise settlement on its deficiency Income Tax assessment for Taxable year 1986, with an attached Application for Compromise Settlement/Abatement of Penalties under Revenue Memorandum Order (*RMO)* No. 45-93, in the amount of ₱1,721,503.40, or twenty percent (20%) of the subject assessment, which was received on March 30, 1994. On May 2, 1994, the counsel for CBC issued a Letter addressed to petitioner, reiterating its Letter of offer of compromise settlement dated March 29, 1994 and Application for Compromise Settlement/Abatement under RMO No. 45-93.

Petitioner, on October 12, 1994, approved the earlier mentioned Application for Compromise Settlement of CBC, provided that one hundred percent (100%) of its deficiency Income Tax assessment for the year 1986, or in the amount of ₱8,607,517.00, be paid within fifteen (15) days from receipt thereof.

The counsel for CBC, on November 28, 1994, issued a Letter addressed to petitioner, requesting for a reconsideration of the approved amount as compromise settlement, and offering to pay the amount of ₱1,600,000.00 as full and final settlement of the subject assessment. The same counsel for CBC issued a Letter on March 8, 1995 reiterating its request for reconsideration and offering to increase its full and final settlement in the amount of ₱3,200,000.00.

On March 28, 1995, petitioner approved the Application for Compromise Settlement of CBC dated March 30, 1994, provided that CBC pay the amount of ₱8,607,517.00 within fifteen (15) days from receipt thereof.

Later, on May 4, 1995, the counsel for CBC issued another Letter addressed to petitioner, requesting for a final reconsideration, and reiterating its offer of compromise in the amount of ₱3,200,000.00.

Petitioner, however, disapproved the Application for Compromise Settlement of CBC dated March 30, 1994. The counsel of CBC, on July 27, 1995, issued a Letter addressed to petitioner requesting for reconsideration and offering to pay the increased amount of ₱4,303,758.50.

Meanwhile, on October 4, 1996, the Securities and Exchange Commission approved the Articles of Merger between respondent BPI and CBC, with BPI as the surviving corporation.

Afterwards, on May 26, 2011, petitioner issued a Notice of Denial addressed to respondent, requesting for the payment of CBC's deficiency Income Tax for taxable year 1986, within fifteen (15) days from receipt thereof, and on July 28, 2011, petitioner issued another Letter addressed to respondent, denying the offer of compromise penalty, and requesting for the payment of the amount of ₱19,202,589.97, plus all increments incident to delinquency, pursuant to Sections 248 (A) (3) and 249 (C) (3) of the 1997 NIRC, as amended.

Consequently, on September 21, 2011, petitioner issued a Warrant of Distraint and/or Levy against respondent BPI which prompted the latter to file a Petition for Review with the CTA on October 7, 2011.

In a Decision[4] dated February 12, 2014, the CTA Special Third Division granted the petition for review, thus:

> WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, the Warrant of Distraint and/or Levy dated September 21, 2011 is hereby CANCELLED and SET ASIDE.
>
> SO ORDERED.[5]

According to the CTA Special Third Division, BPI can validly assail the Warrant of Distraint and/or Levy, as its appellate jurisdiction is not limited

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[4] Penned by Associate Justice Lovell R. Bautista, with the concurrence of Associate Justice Amelia R. Cotangco-Manalastas; *id.* at 65-81.

[5] *Rollo*, p. 80.

to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The Court further ruled that the Assessment Notices, being issued only on May 6, 1991, were already issued beyond the three-year period to assess, counting from April 15, 1987, when CBC filed its Annual Income Tax Returns for the taxable year 1986. The same Court also held that the Waivers of Statute of Limitations executed on July 12, 1990 and November 8, 1990 were not in accordance with the proper form of a valid waiver pursuant to RMO No. 20-90, thus, the waivers failed to extend the period given to petitioner to assess.

After the denial of petitioner's motion for reconsideration, a petition for review was filed with the CTA *En Banc*, in which the latter Court denied the said petition, thus:

> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. Accordingly, the Decision and the Resolution, dated February 12, 2014 and April 25, 2014, respectively, are hereby AFFIRMED.
>
> SO ORDERED.[6]

Hence, the present petition after the CTA *En Banc* denied petitioner's motion for reconsideration.

Petitioner raises the following grounds for the allowance of the present petition:

> THE CTA *EN BANC* ERRED IN AFFIRMING THE CTA SPECIAL THIRD DIVISION'S EXERCISE OF JURISDICTION OVER THE INSTANT CONTROVERSY.
>
> THE CTA *EN BANC* ERRED IN AFFIRMING THE ANNULMENT OF THE WARRANT OF DISTRAINT AND/OR LEVY AGAINST RESPONDENT GIVEN PETITIONER'S CLEAR RIGHT TO THE SAME.[7]

Petitioner argues that the CTA did not acquire jurisdiction over the case for respondent's failure to contest the assessments made against it by the Bureau of Internal Revenue (*BIR*) within the period prescribed by law. Petitioner also contends that by the principle of estoppel, respondent is not allowed to raise the defense of prescription against the efforts of the government to collect the tax assessed against it.

In its Comment[8] dated August 22, 2016, respondent claims that the assessment notice issued against it, is not yet final and executory and that the CTA has jurisdiction over the case. It further asserts that the right of petitioner

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6 *Id.* at 58.
7 *Id.* at 24.
8 *Id.* at 88-115.

to assess deficiency income tax for the taxable year 1986 had already prescribed pursuant to the Tax Code of 1977 and that the right of petitioner to collect the alleged deficiency income tax for the taxable year 1986 had already prescribed. Respondent also insists that it is not liable for the alleged deficiency income tax and increments for the taxable year 1986.

The petition lacks merit.

First of all, the CTA did not err in its ruling that it has jurisdiction over cases asking for the cancellation and withdrawal of a warrant of distraint and/or levy as provided under Section 7 of Republic Act *(R.A.)* No. 9282, thus:

> Sec. 7 Jurisdiction. – The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. x x x
>
> 2. Inaction by the Commissioner of the Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> x x x x

Anent the other grounds relied upon by petitioner, such are factual in nature. It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[9] We thus accord the findings of fact by the CTA with the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[10] Nevertheless, the factual findings of the CTA are supported by substantial evidence.

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[9] *CIR v. De La Salle University, Inc.* G.R. No. 196596, *De La Salle University, Inc. v. CIR*, G.R. No. 198841, *CIR v. De La Salle University, Inc.*, G.R. No. 198941, November 9, 2016, 808 SCRA 156, 192, citing *Commissioner of Internal Revenue v. Asian Transmission Corporation*, 655 Phil. 186, 196 (2011).

[10] *Id.*, citing *Commissioner of Internal Revenue v. Toledo Power, Inc.*, 725 Phil. 66, 82-83 (2014), citing *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 529 Phil. 785, 795 (2006).

An assessment becomes final and unappealable if within thirty (30) days from receipt of the assessment, the taxpayer fails to file his or her protest requesting for reconsideration or reinvestigation as provided in Section 229 of the NIRC, thus:

> SECTION 229. *Protesting of assessment.* – When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.**
>
> **If the protest is denied in whole and in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.**[11]

Petitioner insists that respondent failed to elevate the tax assessment against it to the CTA within the required period. Respondent, on the other hand, claims that it never received any final decision on the disputed assessment from petitioner granting or denying the same, whether in whole or in part.

The CTA was correct in ruling that petitioner failed to prove that it sent a notice of assessment and that it was received by respondent, thus:

> The February 5, 1992 Decision of the CIR which she insists to be the reckoning point to protest, was not proven to have been received by BPI when the latter denied its receipt. Thus, the assessment notice dated May 6, 1991 should be deemed as the final decision of the CIR on the matter, in which BPI timely protested on May 27, 1991. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. (Republic v. Court of Appeals, G.R. No. L-38540, April 30, 1987, 149 SCRA 351, 355.) In the instant case, BPI denies receiving the assessment notice, and the CIR was unable to present substantial evidence that such notice was, indeed, mailed or sent before the BIR's right to assess had prescribed and that said notice was received by BPI. As a matter of fact, there was an express admission on the part of the CIR that there was no proof that indeed the alleged Final Assessment Notice was ever sent to or received by BPI. As stated in the Transcript of stenographic Notes on the court hearing dated October 29, 2012:

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[11] Emphasis ours.

> Q: And you anchor your argument based on this document (Letter dated February 5, 1992) that this is the final decision of the BIR, is that correct?
> A: Yes.
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> Q: When was this received by the petitioner City Trust Banking Corporation?
> A: I think it was only mailed.
>
> Q: What is your proof that it was mailed?
> A: Because the BIR...(interrupted by Atty. Nidea)
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> Q: Do you have any proof that it was mailed?
> A: No, I don't have any proof.
>
> Q: So, you don't have any proof. So you don't have any proof that it was received by the petitioner?
> A: I don't have any idea.
>
> Q: You don't have any proof.
>
> Moreover, as correctly pointed out in the assailed Resolution, whether or not the Letter dated February 5, 1992 constitutes as the Final Decision on the Disputed Assessment appealable under Section 229 of the 1977 Tax Code, or whether the same was validly served and duly received by BPI, are immaterial matters which will not cure the nullity of the said Preliminary Assessment Notice and Assessment Notices, as they were clearly made beyond the prescriptive period.[12]

In the case of *Nava v. Commissioner of Internal Revenue*,[13] this Court stressed on the importance of proving the release, mailing or sending of the notice.

> While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.

Thus, the failure of petitioner to prove the receipt of the assessment by respondent would necessarily lead to the conclusion that no assessment was issued.

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12 *Rollo*, pp. 54-55.
13 121 Phil. 117, 123-124 (1965).

As to the contention of petitioner that through the principle of estoppel, respondent is not allowed to raise the defense of prescription against the efforts of the government to collect the tax assessed against it, such is misplaced. Its argument that respondent's belated assertions relative to the alleged defects and flaws in the waivers it signed in favor of the government should not be given merit, is also amiss.

Petitioner cannot implore the doctrine of estoppel just to compensate its failure to follow the proper procedure. As aptly ruled by the CTA:

> It is well established that issues raised for the first time on appeal are barred by estoppel. However, in the leading case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*, the Supreme Court held that:
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> > The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. xxx As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. xxx
> >
> > Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. xxx Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.
>
> Applying the said ruling in the case at bench, BPI is not estopped from raising the invalidity of the subject Waivers as the BIR in this case caused the defects thereof. As such, the invalid Waivers did not operate to toll or extend the period of prescription.[14]

From the above disquisitions, it is clear that the right of petitioner to assess respondent has already prescribed and respondent is not liable to pay the deficiency tax assessment. The period of collection has also prescribed. As held by the CTA:

> As to the period of collection, We uphold the ruling of the Division that such has already prescribed. Regardless if We will reckon the period to collect from May 6, 1991, or the alleged Final Demand Letter on February 5, 1992, counting the three-year period therein to collect in accordance with Section 223 (c) of the 1977 Tax Code, obviously, the mode of collection through the issuance of Warrant of Distraint and/or Levy on October 05, 2011 was made beyond the prescriptive period.[15]

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14 *Rollo*, p. 56.
15 *Id.* at 58.

It must be remembered that [T]he law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[16] Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."[17]

WHEREFORE, the Petition for Review on *Certiorari* dated June 16, 2016 of petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. Consequently, the Decision dated September 16, 2015 and the Resolution dated April 21, 2016 of the Court of Tax Appeals *En Banc* in CTA EB No. 1173 (CTA CASE No. 8350), are **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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16 *CIR v. Reyes*, 516 Phil. 176, 190 (2006), citing *Ang Tibay v. Court of Industrial Relations,* 69 Phil. 635 (1940).

17 *Marcos II v. CA*, 339 Phil. 253, 263 (1997).

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)