



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, G.R. No. 227049

Petitioner, Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS,
 BALTAZAR-PADILLA * JJ.

- versus -

BANK OF THE PHILIPPINE ISLANDS,

Respondent.

Promulgated:
 16 SEP 2020

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DECISION

INTING, J.:

This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (CIR) assailing the Court of Tax Appeals *En Banc*'s (CTA EB) Decision² dated March 17, 2015 and the Resolution³ dated September 1, 2016 in CTA EB No. 1204 (CTA Case No. 8376). In the assailed issuances, the CTA EB affirmed the Decision⁴ dated April 16, 2014 and the Resolution⁵ dated July 23, 2014 of the CTA Third Division (CTA Division) in CTA Case No. 8376 that cancelled the Warrant of Dstraint and/or Levy dated October 27, 2011 issued against Bank of the Philippine Islands (BPI).

* On leave.

¹ *Rollo*, pp. 13-34.

² *Id.* at 38-61; penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring; and Presiding Justice Roman G. Del Rosario, inhibited.

³ *Id.* at 62-65.

⁴ *Id.* at 65-90; penned by Associate Justice Lovell R. Bautista with Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, concurring.

⁵ *Id.* at 91-95.

The Antecedents

Through a letter dated May 6, 1991, the CIR sent Assessment Notices⁶ to Citytrust Banking Corporation (Citytrust) in connection with its deficiency internal revenue taxes for the year 1986 in the aggregate amount of ₱20,865,320.29⁷ computed as follows:

Tax Type	Amount
Income tax (IT)	₱ 19,202,589.97 ⁸
Expanded withholding tax (EWT)	1,582,815.03
Withholding tax on deposit substitutes (WTD)	33,065.29
Real estate dealer's fixed tax (DFT)	7,175.00
Penalties for the late remittance of withholding tax on compensation (WTC)	39,675.00
Total	₱ 20,865,320.29⁹

The assessments came after Citytrust's execution of three Waivers of the Statute of Limitations (Waivers) under the National Internal Revenue Code (NIRC) dated August 11, 1989, July 12, 1990, and November 8, 1990 extending the prescriptive period for the CIR to issue an assessment.¹⁰

Citytrust protested the assessments on May 30, 1991 and, again, on February 17, 1992.¹¹ In the interim, through the Bureau of Internal Revenue (BIR) Office of the Accounting Receivable/Billing Section letter dated February 5, 1992, the CIR demanded the payment of the subject deficiency taxes within 10 days from receipt thereof.¹²

At this juncture, two portions of the total assessment (₱20,865,320.29) became the subject of separate proceedings: *first*, the

⁶ The Assessment Notices had the following reference numbers: FAS-1-86-91-001847, FAS-1-86-91-001848, FAS-1-86-91-001849, FAS-1-86-91-00-1850, FAS-1-86-91-00185, FAS-1-86-91-001854, FAS-8-86-91-001854, *id.* at 80.

⁷ *Id.* at 39.

⁸ See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018, 866 SCRA 104, 108.

⁹ Inclusive of basic taxes, surcharges, interests, and compromise penalties, for taxable year 1986. *Rollo*, pp. 39-40.

¹⁰ *Id.* at 39.

¹¹ *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, *supra* note 8.

¹² *Rollo*, p. 21. See also *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, *supra* note 8.

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compromise and collection of the deficiency IT portion that led to another Supreme Court case of the same title, docketed as G.R. No. 224327—the case was decided on November 16, 2018 (2018 Case); and *second*, the collection of deficiency EWT, WTD, DFT, and WTC portion is the subject of the present petition.

A) *Deficiency IT and G.R. No. 224327*

1. *Compromise*

The deficiency IT portion of the assessment became the subject of a compromise settlement, pursuant to Revenue Memorandum Order No. (RMO) 45-93.¹³ However, the parties failed to reach an agreement. The CIR, which initially agreed to a settlement amount of ₱8,607,517.00, eventually denied Citytrust's application for compromise settlement. On July 27, 1995, Citytrust requested reconsideration.

On October 4, 1996, Citytrust and BPI entered into a merger agreement, wherein the latter emerged as the surviving corporation.¹⁴

Subsequently, the CIR issued a Notice of Denial dated May 26, 2011 addressed to BPI and requested for the payment of Citytrust's deficiency IT for 1986 amounting to ₱19,202,589.97. CIR reiterated the request on July 28, 2011 in another letter.

2. *Collection*

The CIR sought to collect the above-mentioned amount and issued a Warrant of Dstraint and/or Levy on September 21, 2011 (September 21, 2011 Warrant) against BPI.

BPI questioned the warrant before the CTA (First CTA Petition). The CTA Special Third Division cancelled and set aside the September 21, 2011 Warrant (CTA Case No. 8350) which the CTA *En Banc* affirmed (CTA EB No. 1173). The CIR appealed the case to the Court (G.R. No. 224327).¹⁵

¹³ *Compromise Settlement of Certain Deficiency Tax Assessment and Abatement of the Penalties Arising from Certain Late Payment of Taxes*, [September 29, 1993].

¹⁴ *Rollo*, p. 40.

¹⁵ *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, *supra* note 8.

In the 2018 Case, the CIR argued as follows: *first*, the letter dated February 5, 1992 was a “final decision” on the assessment. Under the law, Citytrust had 30 days from the time of the letter’s issuance to appeal it to the CTA. However, BPI only went to the CTA on October 7, 2011. Having been filed out of time, CTA did not acquire jurisdiction over BPI’s petition in CTA Case No. 8350. *Second*, BPI’s allegations on the waivers’ defects were also made belatedly. Thus, they are estopped from invoking the defense of prescription (*i.e.*, CIR’s right to assess) on the basis of these flaws.¹⁶

However, in the Decision dated November 16, 2018, the Court upheld the September 21, 2011 Warrant’s cancellation. The Court explained that: *first*, the CIR did not offer proof that Citytrust received the letter dated February 5, 1992. This failure “lead[s] to the conclusion that no assessment was issued.”¹⁷ *Second*, estoppel does not lie against BPI. It was the tax authorities who had caused the aforementioned defects. The flawed waivers did not extend the prescriptive periods for assessment.¹⁸ Thus, CIR’s right to assess Citytrust/BPI “already prescribed and [BPI] is not liable to pay the deficiency tax assessment.”¹⁹

B) Collection of Deficiency EWT, WTD, DFT, and WTC, and the present petition

Meanwhile, on November 4, 2011, BPI received a separate Warrant of Dstraint and/or Levy (November 2011 Warrant),²⁰ this time in relation to Citytrust’s deficiency EWT, WTD, DFT, and WTC assessments amounting to ₱1,624,930.32.²¹

Similarly, BPI assailed the November 2011 Warrant before the CTA through a petition for review (Second CTA Petition) asking the tax court to *suspend* the collection of the alleged deficiency taxes, *cancel* the November 2011 Warrant, and *enjoin* the CIR from further implementing it. It also prayed for the CTA to declare the assessments as prescribed and to cancel the assessments related thereto.

¹⁶ *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, *supra* note 8 at 117.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 118.

²⁰ See Warrant of Dstraint and/or Levy dated October 27, 2011, *rollo*, p. 40.

²¹ *Id.* at 68-69.

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Ruling of the CTA Division

In the Decision²² dated April 16, 2014, the CTA Division *cancelled* and *set aside* the subject Warrant of Dstraint and/or Levy.²³ It ruled as follows:

First, the CTA can take cognizance of BPI's petition. The questions surrounding the CIR's right to assess and collect deficiency taxes which stemmed from the CIR's issuance of the warrant of dstraint and/or levy falls within the CTA's exclusive appellate jurisdiction to review by appeal "other matters arising under the [NIRC] or other laws administered by the [BIR]."²⁴

Second, the CIR's issuance of the above-mentioned Assessment Notices on May 6, 1991 was beyond the three-year prescriptive period to assess deficiency EWT, WTD, and WTC against Citytrust, pursuant to the National Internal Revenue Code of 1977 (1977 Tax Code) and relevant tax regulations.²⁵ On the other hand, the assessment for deficiency DFT was issued within the 10-year prescriptive period to assess taxes for which no return was filed.²⁶

Third, there was no showing that Citytrust's request for reinvestigation/reconsideration was ever granted by the CIR. Thus, the prescriptive periods to assess *and* collect the alleged deficiency taxes were not suspended.²⁷

Fourth, RMO No. 20-90 dated April 4, 1990 prescribed a specific form by which all waivers of the statutes of limitations shall be executed. In turn, Citytrust executed three waivers dated August 11, 1989, July 12, 1990, and November 8, 1990, respectively. However, only the first waiver was valid and extended the period for assessment to August 31,

²² *Id.* at 66-90.

²³ *Id.* at 89.

²⁴ *Id.* at 71-73, citing Section 7 of Republic Act No. (RA) 1125, as amended by RA 9282 and RA 9503, as well as *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippine, Inc.*, 649 Phil. 446, 455-456 (2010).

²⁵ *Id.* at 75-77. Revenue Regulation No. (RR) 06-85, 42, RR No. 05-85, 43 and RR No. 17-84, 44, as amended by RR No. 03-85

²⁶ *Id.* at 80-81.

²⁷ *Id.* at 81-82, citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, 488 Phil. 218, 235 (2004).

1990. The later waivers were executed during the effectivity of RMO 20-90. Since the other waivers did not conform with the RMO's formal requirements, they were invalid and did not extend the prescriptive period.²⁸

Fifth, the CIR issued the Assessment Notices against Citytrust on May 6, 1991. However, it issued the subject warrant of distraint and/or levy to collect the taxes so assessed only in 2011, which was beyond the three-year prescriptive period to collect assessed taxes.²⁹

The CTA Division also denied the CIR's subsequent motion for reconsideration. This prompted the CIR to elevate the case to the CTA EB.

Ruling of the CTA EB

In the assailed Decision, the CTA EB affirmed the CTA Division's ruling.

In upholding the tax court's jurisdiction over the Second CTA Petition, the court *a quo* added that BPI did not initiate an action before the CTA to assail a final decision rendered by the CIR on the subject assessments. BPI's petition primarily questioned the CIR's right to assess and collect, an issue cognizable by the CTA in the exercise of its appellate jurisdiction over "other matters" arising from tax laws.³⁰

The court *a quo* then proceeded to invalidate *all three* waivers discussed above. It found that the waiver dated August 11, 1989 was not an agreement between the CIR and the taxpayer, as contemplated under the 1977 Tax Code,³¹ because the CIR did not sign it. It could not have validly extended the prescriptive period for tax assessment.

Further, the CTA EB echoed the CTA Division's ruling that the CIR's letter dated May 6, 1991 and the accompanying assessment notices were issued past the general three-year prescriptive period to assess Citytrust for deficiency EWT, WTC, and WTD. However, it

²⁸ *Id.* at 87-88.

²⁹ *Id.* at 88-89.

³⁰ *Id.* at 47.

³¹ *Id.* at 49, citing Section 223 of the 1977 Tax Code.

explained that, by exception, the 10-year prescriptive period for assessment shall apply not only to the subject deficiency DFT, but also to deficiency EWT pertaining to selected months,³² for which BPI likewise failed to present the corresponding returns to establish the fact of filing.³³

Nevertheless, just as the CTA Division did, the court *a quo* ruled that the CIR could no longer enforce payment for the aforementioned deficiency DFT and EWT, despite having issued the corresponding assessments within the 10-year period. By the time the subject distraint and/or levy was issued in 2011, the CIR's right to collect any of these taxes had already prescribed.

The CIR moved to reconsider the Decision, but the court *a quo* denied it.

Hence, the CIR, represented by the Office of the Solicitor General (OSG), filed the present petition.

Issue

The Court shall resolve three issues:

- (1) Did the CTA have jurisdiction over BPI's Second CTA Petition?
- (2) Did the CIR timely issue assessments against Citytrust for deficiency EWT, WTD, DFT, and WTC pertaining to the taxable year 1986?
- (3) May the CIR still collect the unpaid taxes?

The Court's Ruling

The petition lacks merit.

³² *Id.* at 55-56. EWT for January, May, June, September, October, and December 1986.

³³ *Id.*

The CTA properly exercised its jurisdiction over BPI's petition for review.

The OSG relies heavily on the letter dated February 5, 1992—that it was a “final decision” denying Citytrust’s protest.³⁴ Citytrust’s failure to appeal the “final decision” within 30 days from receipt thereof³⁵ rendered the tax assessment final, executory, and unappealable.³⁶ Thus, BPI’s Second CTA petition in 2011 was filed out of time, over which the court below did not acquire jurisdiction.

Petitioner’s reasoning is specious and misplaced.

First, this was the CIR’s same argument in the 2018 Case. To recall, the Court did not give evidentiary weight to the letter dated February 5, 1992 due to the CIR’s failure to prove Citytrust’s receipt thereof. In the present case, not only is there still no proof of receipt. The CIR did not even attach a copy of the letter relied upon to the present petition. Notably, failure to append “material portions of the record as would support the petition” is a ground for dismissal thereof.³⁷

Second, the aforementioned letter is irrelevant in ascertaining whether or not the tax court properly took cognizance of BPI’s Second CTA Petition. As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust’s assessments. They went before the CTA primarily to assail the November 2011 Warrant’s issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA’s disposition³⁸ was distinctly for the cancellation of the warrant and nothing else.

³⁴ *Rollo*, p. 22. The letter also demanded “BPI to pay the subject deficiency taxes within 10 days from its receipt, with a warning that failure to do so would leave no other recourse to the BIR but to enforce collection through the issuance of a warrant of distraint/levy.”

³⁵ *Id.* at 21, citing Section 229 of the 1977 Tax Code. *Rollo*, p. 21.

³⁶ *Id.* at 22.

³⁷ Section 5, in relation to Section 4(d) of the Rules of Court.

³⁸ *Rollo*, p. 89. The dispositive portion of the CTA Division’s Decision follows:

“WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, the Warrant of Distraint and/or Levy dated October 27, 2011 is hereby CANCELLED and SET ASIDE.

SO ORDERED.”



The law expressly vests the CTA the authority to take cognizance of “other matters” arising from the 1977 Tax Code and other laws administered by the BIR³⁹ which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR’s power to make assessments and prescribe additional requirements for tax administration and enforcement.⁴⁰

Thus, the CTA properly exercised jurisdiction over BPI’s Second Petition.

The CIR’s right to assess has already prescribed.

The OSG insists that the CIR’s right to assess the subject taxes did not prescribe because the waivers of the statute of limitations were valid and binding. BPI is estopped from assailing the documents’ validity because they did not do so in the administrative level.⁴¹

On the other hand, both the CTA Division and CTA EB carefully reviewed and examined the records (*i.e.*, tax returns for each tax type, waivers of the statutes of limitations, etc.) to precisely ascertain whether the period to assess each tax type has prescribed. The court *a quo* ultimately invalidated the waivers of the statutes of limitations due to the absence of the CIR’s signature and found that only the assessments for EWT⁴² and DFT have not prescribed.

The Court shall no longer disturb the afore-cited findings.

Verily, the 1977 Tax Code, as amended,⁴³ allowed the parties to execute an agreement waiving the three-year statute of limitation for tax assessment.⁴⁴ However, it is already established that, to be valid, waivers

³⁹ Section 7(a)(1), RA 1125. Also see *Coll. of Internal Rev. v. Reyes and Court Tax Appeals*, 100 Phil. 822, 829-830 (1957).

⁴⁰ See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. Nos. 197945 & 204119-20, July 9, 2018, citing Section 6, 1997 Tax Code.

⁴¹ *Rollo*, p. 26.

⁴² *Id.* at 55-56. For January, May, June, September, October and December 1986.

⁴³ Section 318, Presidential Decree No. (PD) 1158, as amended by Batas Pambansa Blg. (BP) 700, [April 5, 1984].

⁴⁴ Section 319(b), PD 1158, as amended by BP 700.

of this nature must be in the form as prescribed by the applicable tax regulations.⁴⁵ That both parties must signify their assent in extending the assessment period is not merely a formal requisite under tax rules, but one that is essential to the validity of a contract under the Civil Code.

Furthermore, the Court already ruled that BPI is not estopped from raising questions on the waivers' validity. That the fundamental defect that invalidated the subject waivers were caused by the CIR gives more reason to the taxpayer to seek redress for this inadvertence,

Be that as it may, even if the Court excuses these flaws, the CIR is still barred from collecting the subject taxes from BPI.

The BIR may no longer collect the alleged deficiency taxes.

The authorities in the present case sought to collect the subject deficiency EWT, WTD, DFT, and WTC through the November 2011 Warrant. The distraint and/or levy of the taxpayer's property is a summary administrative remedy to enforce the collection of taxes, as provided under the 1977 Tax Code.⁴⁶

Verily, the lifeblood doctrine enables the BIR "to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible."⁴⁷ However, to temper the wide latitude of discretion accorded to the tax authorities, "[t]he law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation."⁴⁸

Under the 1977 Tax Code, as amended, "[a]ny internal revenue tax which has been assessed within the period of limitation above-prescribed

⁴⁵ See *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*, 749 Phil. 280, 290-291 (2014) and *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, *supra* note 27.

⁴⁶ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, *supra* note 40, citing Section 207, 1997 Tax Code. Formerly Section 304 and 310 of the 1977 Tax Code.

⁴⁷ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, *supra* note 40, citing *Commissioner of Internal Revenue v. Pineda*, 128 Phil. 146, 150 (1967) and *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 927 (1999).

⁴⁸ *Id.*, citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, *supra* note 27 at 229-230 (2004).

may be *collected* by distraint or levy or by a proceeding in court within three years following the assessment of the tax.” Stated differently, the three-year prescriptive period for the BIR *to collect taxes via summary administrative processes* shall be reckoned from “the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.”⁴⁹

This reckoning point is not clear from the facts of the present case. However, the parties no longer dispute: (a) that the CIR issued a letter dated May 6, 1991, to which the subject assessment notices were appended; (b) that Citytrust filed its protest (dated May 27, 1991) on May 30, 1991; and that (c) the first instance the CIR proceeded to administratively collect the assessed taxes was through the issuance of the November 2011 Warrant.

With only these considerations,⁵⁰ the latest possible time the CIR could have released the assessment was the same day Citytrust protested the same or on May 30, 1991. From this time, the CIR had three years to collect the taxes assessed or until May 30, 1994.

No matter how the CIR frames the arguments, it is glaring from the 20-year gap between the issuance/release of the assessment (1991) and the enforcement of collection through distraint and/or levy (2011) that prescription had already set in.

To be sure, aside from summary administrative remedies, the law also allows the collection of unpaid taxes through the institution of a collection case in court within the same three-year period. However, even the CIR’s answer to BPI’s Second CTA Petition, which could have been considered as a judicial action for the collection of tax, was filed belatedly (2011).⁵¹

⁴⁹ *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, 738 Phil. 577, 586 (2014), citing *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, 510 Phil. 1, 17 (2005).

⁵⁰ The reckoning date was also not apparent in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, *supra*. However, the Court ratiocinated as follows: “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 evidence established that there was no warrant of distraint or levy served on BPI’s properties, or any judicial proceedings initiated by the BIR.”

⁵¹ *Rollo*, p. 69.

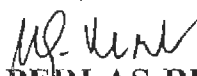
It is clear that the tax authorities had been remiss in the performance of their duties. The Court must bar the CIR from collecting the taxes in the present case because, “[w]hile taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes.”⁵²

WHEREFORE, the petition is **DENIED**. The Decision dated March 17, 2016 and the Resolution dated September 1, 2016 of the Court of Tax Appeals *En Banc* in CTA EB No. 1204 (CTA Case No. 8376) are **AFFIRMED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

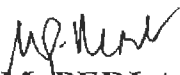
⁵² *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, *supra* note 40.

(On leave)

PRISCILLA J. BALTAZAR-PADILLA
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.


ESTELA M. PERLAS-BERNABE
Senior 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.


DIOSDADO M. PERALTA
Chief Justice