

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE AND
BIR REGIONAL DIRECTOR,
REGION 12, BACOLOD
CITY,

Petitioners,

-versus-

ANAPI MULTI-PURPOSE
COOPERATIVE,

Respondent.

CTA EB No. 2543
(CTA Case No. 9787)

Present:

DEL ROSARIO, PJ,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

Promulgated:

MAY 11 2023

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DECISION

REYES-FAJARDO, J.:

Under consideration is the Petition for Review, filed on November 25, 2021,¹ impugning the Decision dated November 16, 2020,² and Resolution dated September 27, 2021,³ in CTA Case No. 9787. The impugned Decision, and Resolution cancelled the Warrant of Dstraint and/or Levy (WDL) dated March 8, 2018, and Warrants of Garnishment (WOG) dated March 16, 2018, issued against ANAPI Multi-Purpose Cooperative, on the ground of prescription of collection of tax.

¹ Rollo, pp. 1-12.

² *Id.* at pp. 20-33.

³ *Id.* at pp. 34-38.

The antecedents follow.

Petitioner Commissioner of Internal Revenue (CIR) is the Chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcements of all forfeitures, penalties and fines connected with such taxes. He may be served with summons, notices and other legal processes at Room 703, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner BIR Regional Director (RD), Region 12, Bacolod City, is holding office at the BIR Regional Office, Hernaez St., Brgy. Taculing, Bacolod City.

Respondent is a multi-purpose agricultural cooperative duly organized in accordance with Philippine laws, more particularly Republic Act (R.A.) No. 6938 (Cooperative Code), with license to transact business and sue in the Philippines in accordance with the Cooperative Code, having its principal office address at No. 22, 13th St., Bacolod City. It is represented by Freddie W. Zayco, of legal age, married, resident of Bacolod City and Chairperson of the Board of ANAPI Multi-Purpose Cooperative and authorized through a Board Resolution.

On February 28, 2008, respondent received Letter of Authority (LOA) No. 00024477 dated February 6, 2008, authorizing Revenue Officer Amor Leilani M. Tayo (RO Tayo) and Group Supervisor Richard R. Oquendo to examine respondent's books of accounts and other accounting records for income and all other internal revenue taxes for the period from January 1, 2006 to December 31, 2006.⁴

On July 16, 2009, a Preliminary Assessment Notice (PAN) was issued against respondent for taxable year (TY) 2006.⁵

On October 26, 2009, respondent received a Formal Letter of Demand, with Assessment Notices (FLD/FAN), all dated October 12, 2009, assessing it for deficiency Value-Added Tax (VAT), expanded

⁴ Exhibit "R-1." BIR Records, p. 53.

⁵ Exhibit "R-12." *Id.* at pp. 95-100.

withholding tax (EWT), and compromise penalties, covering TY 2006.⁶

In a Letter of Protest dated November 16, 2009, respondent assailed the findings in the FLD/FAN, based on the following grounds: *one*, it is exempt from the payment of all internal revenue taxes, including VAT on the sale of its refined sugar; *two*, the National Internal Revenue Code of 1997, as amended (NIRC, as amended), does not contain any provision imposing tax, before sale of its refined sugar occurs; *three*, the FLD/FAN was issued beyond the three (3)-year prescriptive period to assess internal revenue taxes; and *four*, it had remitted the amounts withheld from payments to management and other professional fees to various recipients to the BIR.⁷

On December 9, 2010, an Amended FLD/FAN⁸ were issued against respondent, demanding payment of the amount of ₱48,075,359.69, representing deficiency VAT and compromise penalty for TY 2006. The assessment for EWT was no longer included therein. The assessment was computed as follows:

VALUE-ADDED TAX			
No. of LKG per BIR data			232,533.36
Rate per LKG			850.00
Gross Value-Sugar Sales			<u>197,653,356.00</u>
Output Tax			
January	16,471,113.00	10%	1,647,111.30
February to December	181,182,243.00	12%	<u>21,741,869.16</u>
			23,388,980.46
Less: Input Tax			
VAT Payable			<u>23,388,980.46</u>
Less: Payments made			
Deficiency VAT			<u>23,388,980.46</u>
Add: Surcharge		5,847,245.12	
Interest (1/25/07 to 1/31/11)	0.80	<u>18,788,134.11</u>	<u>24,635,379.23</u>
TOTAL AMOUNT DUE			<u>48,024,359.69</u>

On March 6, 2013,⁹ respondent received petitioner RD's Final Decision dated February 27, 2013, stating that it was liable to pay advance VAT covering TY 2006 since: *one*, BIR Ruling No. 12-08-2001, granting petitioner tax-exempt status, is null and void, because it committed misrepresentation in obtaining said BIR Ruling; *two*, it

⁶ Docket (CTA Case No. 9787), p. 12. Existence was admitted in par. 8, Stipulation of Facts in the Pre-Trial Order, *id.* at p. 362.

⁷ BIR Records, pp. 119-122.

⁸ Exhibits "R-15," "R-15-a" to "R-15-b." *Id.* at pp. 239-248. See also par. 5, Stipulation of Facts in the Pre-Trial Order, docket (CTA Case No. 9787), p. 362.

⁹ Par. 14, Motion for Reconsideration dated April 2, 2013. BIR Records, p. 295.

was not the owner/producer of the refined sugar withdrawn from the sugar mill as shown in the sugar quedans; *three*, it failed to submit its books of accounts and other accounting records, warranting application of best evidence obtainable; and *four*, the rules and regulations (RR) issued by administrative authorities pursuant to the powers delegated to them have the force and effect of law, and are binding to all persons subject to them.

On April 2, 2013, respondent assailed before petitioner CIR, petitioner RD's Final Decision. It claimed: *one*, it is a duly registered multi-purpose cooperative which was exempt from paying internal revenue taxes, including VAT; and *two*, the assessment made was null and void, having been issued beyond the three-year prescriptive period under Section 203 of the NIRC, as amended.¹⁰ This was followed by a Supplement thereto, filed with petitioner CIR on May 3, 2013, together with attached Official Sugar Warehouse Receipt (Quedan), with serial numbers a. 004025, b. 005187, c. 006747, and d. 008855.¹¹

On January 30, 2018, petitioner CIR issued a Decision,¹² upholding petitioner RD's Final Decision, as follows:

IN VIEW OF ALL THE FOREGOING, the decision dated February 26, 2013 denying the protest of ANAPI against the Formal Letter of Demand and Assessment Notice with Assessment Numbers 00198-2010 and 00199-2010 both dated December 9, 2010 demanding payment of the total amount of Php48,075,359.69 as deficiency value-added tax and compromise penalties for taxable year 2006 is hereby affirmed in all respects. ...¹³

On March 22, 2018, respondent filed a Petition for Review before the Court in Division.

On November 16, 2020, the Court in Division rendered the impugned Decision,¹⁴ the *fallo* of which reads:

¹⁰ BIR Records, pp. 275-298.

¹¹ Par. 6, Stipulation of Facts in the Pre-Trial Order, docket (CTA Case No. 9787), p. 362.

¹² Respondent received petitioner CIR's Decision dated January 30, 2018, on February 22, 2018. See Docket (CTA Case No. 9787), p. 10.

¹³ Par. 7, Stipulation of Facts in the Pre-Trial Order, docket (CTA Case No. 9787), p. 362.

¹⁴ *Supra* note 2.

WHEREFORE, the instant Petition for Review is **GRANTED**. (Petitioners') right to collect the subject deficiency VAT has prescribed. Accordingly, the Warrant of Dstraint and/or Levy issued on March 8, 2018, and Warrants of Garnishment issued on March 16, 2018 are **CANCELLED**.

SO ORDERED.

Petitioners moved,¹⁵ but failed¹⁶ to secure affirmative relief with the Court in Division. Hence, the present recourse.

Petitioners argue that under Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, the Court has jurisdiction over petitioner CIR's decision on disputed assessments. Given that respondent failed to file an administrative protest to the FLD/FAN, said assessment attained immutability; hence, the Court in Division lacks jurisdiction over this case.

Petitioners, too, claim that for sale of refined sugar to be absolved from payment of advance VAT, said refined sugar must be under the name of the cooperative, duly registered with the Cooperative Development Authority (CDA). The quedans pertaining to such refined sugar were either: *one*, not named to respondent; or *two*, were named to respondent, but have different plantation audit number, or tax identification number; thus, respondent is not the owner of the refined sugar. Consequently, respondent must pay the advance VAT thereon.

Petitioners as well assert that the deficiency tax assessments issued against respondent for TY 2010 is not barred by prescription. Specifically, among the instances in Section 222(a) of the NIRC, as amended, where the ten (10)-year prescriptive period to assess internal revenue taxes may be applied, is when there was omission to file a tax return. As respondent failed to file its VAT Returns for TY 2006, they have ten (10) years from discovery of such omission on April 16, 2009, or until April 16, 2019, to assess taxes against respondent. Therefore, the Amended FLD/FAN dated December 9, 2010 was timely issued against respondent.

¹⁵ Motion for Reconsideration Re: Decision dated 16 November 2020. Docket (CTA Case No. 9787), pp. 484-493.

¹⁶ Impugned Resolution dated September 27, 2021. *Supra* note 3.

In refutation,¹⁷ respondent adopts the Court in Division's observation that the BIR's WDL and WOG, both issued in 2018, are barred by prescription on *collection* of taxes under the NIRC, as amended.

Respondent states that it presented the quedans under its name, pertaining to the refined sugar for 2006 before the BIR. As a result, it was able to obtain Authorization Allowing Release of Refined Sugar (AARRS) from the BIR, prior to withdrawal thereof from the sugar mill. This demonstrates its ownership of said refined sugar.

Being a tax-exempt agricultural cooperative, and the owner of said refined sugar, respondent declares that it is exempt from the advance VAT thereon. Thus, the deficiency VAT assessment issued against it, for TY 2006, must be invalidated.

RULING

We deny the Petition.

To be clear, the amended FLD/FAN dated December 9, 2010, superseded the original FLD/FAN dated October 12, 2009.¹⁸ Said amended FLD/FAN attained immutability because respondent failed to prove that it validly filed an administrative protest thereto, as ordained in Section 228¹⁹ of the NIRC, as amended. This means that the validity or correctness of the assessment may no longer be questioned on appeal.²⁰ Precisely, matters advanced by petitioners and respondent involving the propriety of the deficiency VAT

¹⁷ Respondent's Comment to the Petition for Review dated March 28, 2022. *Rollo*, pp. 51-53.

¹⁸ Exhibit "R-15." BIR Records, p. 245.

¹⁹ **SEC. 228. *Protesting of Assessment.*** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

...

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

²⁰ *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.* *Infra* note 21.

assessment, and compromise penalty covering TY 2006, as embodied in such amended FLD/FAN must entirely be ignored.

Yet, *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*²¹ (*Hambrecht*) clarified that the validity of the final assessment is a distinct matter from the issue of prescription of collection of taxes. For this reason, prescription of collection of taxes may be addressed separately, despite the incontestability of the final assessment:

To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.

...

A similar conclusion was reached in the recent case of *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc. (QLDI)*.²² There, it was found that QL Development, Inc. failed to file a valid administrative protest, despite its receipt of the FLD/FAN, resulting in the finality thereof. This notwithstanding, the Supreme Court held that the Court of Tax Appeals may independently address the issue involving prescription of collection of taxes.

Consistent with *Hambrecht* and *QLDI*, we have the authority to adjudicate the matter of prescription of collection of taxes in this case, despite the finality of the amended FLD/FAN dated December 9, 2010.

Can petitioners collect from respondent the deficiency VAT and compromise penalty embodied in the amended FLD/FAN dated December 9, 2010?

No.

²¹ G.R. No. 169225, November 17, 2010.

²² G.R. No. 258947, March 29, 2022.

*Bank of the Philippine Islands v. Commissioner of Internal Revenue*²³ (BPI) elucidated the prescriptive period for the collection of internal revenue taxes, in the event a final assessment, *sans* presence of intentional falsity, or fraud in the filing of tax returns, or omission to file a tax returns, was made by the BIR against the taxpayer, in the following fashion:

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

...

Taking our cue from *BPI*, petitioners lost their right to *collect* from respondent, the deficiency VAT and compromise penalties for TY 2006, under the amended FLD/FAN dated December 9, 2010. To be precise, the amended FLD/FAN were mailed²⁴ to respondent on December 22, 2010. Counting three (3) years from December 22, 2010, petitioners had until December 22, 2013 to collect the VAT and compromise penalty due under said amended FLD/FAN. Thus, the WDL,²⁵ and WOG,²⁶ respectively issued on March 8 and 16, 2018, are barred by prescription.

Assuming *arguendo* that the amended FLD/FAN dated December 9, 2010 was made due to respondent's supposed failure to file its VAT Returns for TY 2006, the same result would ensue.

Section 222(a), in relation to Section 222(c) of the NIRC, as amended, provides for the prescriptive period to collect internal revenue taxes in case there was an assessment made, which was attended by, among others, omission to file a tax return:

²³ G.R. No. 179942, March 7, 2008. This principle was likewise discussed in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, and *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, *supra* note 22.

²⁴ Exhibits "R-15," "R-15-a," and "R-15-b." BIR Records, pp. 239-248.

²⁵ Docket (CTA Case No. 9787), p. 82.

²⁶ *Id.* at pp. 83-84.

SEC. 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.

...

(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.²⁷

Indeed, when a final assessment was made within ten (10) years after discovery of intentional falsity, fraud with intent to evade tax, or omission to file a tax return, the BIR has another five (5) years from such assessment to collect the assessed internal revenue taxes.

Petitioners aver that respondent's omission to file VAT Returns was discovered on April 16, 2009, or the date when RO Tayo unearthed respondent's advance VAT liability.²⁸ The amended FLD/FAN dated December 9, 2010 were mailed to respondent on December 22, 2010.²⁹ Counting five (5) years from December 22, 2010, petitioners and their agents may collect the assessed VAT and compromise penalty for TY 2006 until December 22, 2015. *Ergo*, the WDL,³⁰ and WOG,³¹ respectively issued on March 8 and 16, 2018, may not be enforced against respondent.

In closing, the Court in Division found that petitioners forfeited their right to collect the assessed deficiency VAT and compromise penalty against respondent for TY 2006 by reason of prescription.

Rightfully so.

²⁷ Boldfacing supplied.

²⁸ Petition for Review dated November 22, 2021, pp. 8-9. *Rollo*, pp. 8-9.

²⁹ *Supra* note 24.

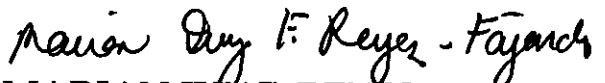
³⁰ *Supra* note 25.

³¹ *Supra* note 26.



WHEREFORE, the Petition for Review, filed on November 25, 2021, in CTA EB No. 2543, is **DENIED**. The Decision dated November 16, 2020, and Resolution dated September 27, 2021, in CTA Case No. 9787, are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

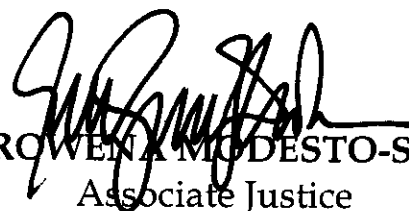

ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice

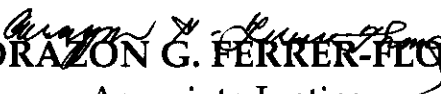
ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice