

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

**ROBERT CHRISTOPHER M.
CARMONA, doing business under
the name SAGA CASTING AND
PRODUCTIONS,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

CTA CASE NO. 8484

Members:

**DEL ROSARIO, Chairperson,
UY, and
MINDARO-GRULLA, JJ.**

Promulgated:

JAN 20 2015 ; 9:42a.m.



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DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed on May 7, 2012 by petitioner Robert Christopher M. Carmona, doing business under the name Saga Casting and Productions, seeking to set aside a decision (by inaction) of respondent Commissioner of Internal Revenue on petitioner's protest of the Final Assessment Notice (FAN) dated July 25, 2011 and the cancellation and withdrawal of alleged deficiency income tax and value-added tax (VAT) assessments for taxable year 2007 in the aggregate amount of **THIRTY TWO MILLION NINE HUNDRED EIGHTY ONE THOUSAND FOUR HUNDRED FIFTY EIGHT PESOS and 90/100 (₱32,981,458.90)**, as shown in the FAN.

THE PARTIES

Petitioner is the owner of Saga Casting and Productions, a sole proprietorship engaged in the business of managing corporate affairs and

DECISION

*Robert Christopher M. Carmona, doing business
under the name of Saga Casting and Productions
vs. Commissioner of Internal Revenue*
CTA Case No. 8484
Page 2 of 9

events, duly registered with the Department of Trade and Industry as such, with business address at Unit 305, No. 3 Brixton Street, Barangay Kapitolyo, Pasig City.¹

Respondent is the Commissioner of Internal Revenue (CIR), who is duly appointed and empowered to perform the duties of her office, including, among others, the duty to act upon protests against preliminary and final assessments, as provided by law.²

THE FACTS

On July 1, 2009, respondent issued a Letter Notice (LN) No. 041-RLF-07-00-00015³ to validate the discrepancies in the reported sales of petitioner with that of the purchases of his customers, as shown below:

Per Summary List of Purchases submitted by your customers	54, 047,436.36
Sales per Tax Returns filed	14,491,232.25
Under-declaration on Sales	39,556,204.11
Percentage (%) of Discrepancy	73.19

Attached to the said LN were the Details of Taxpayer’s Customer Records.⁴

On September 25, 2009, respondent issued Letter of Authority No. 00047206⁵ and a Notice of Informal Conference⁶ for petitioner’s failure to respond to the LN. As a result of said investigation, petitioner received on June 3, 2010 a Preliminary Assessment Notice (PAN) dated March 29, 2010, with attached annexes described as “Details of Discrepancies”⁷ and “Details of Taxpayer’s Customer’s Records”⁸ issued by respondent.⁹

¹ Par. 3, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI); p. 239, CTA Docket.
² Par.4, Summary of Admitted Facts, JSFI; p 239, CTA Docket.
³ Exhibit “A”.
⁴ CTA Docket, pp. 1275-1276.
⁵ CTA Docket, p. 1664.
⁶ CTA Docket, p. 1665.
⁷ CTA Docket, pp. 1282-1283.
⁸ CTA Docket, p. 1284.
⁹ Exhibit “C”, CTA Docket, pp. 1281-1283.

DECISION

*Robert Christopher M. Carmona, doing business
under the name of Saga Casting and Productions
vs. Commissioner of Internal Revenue*
CTA Case No. 8484
Page 3 of 9

On May 12, 2011, respondent issued an Amended PAN, with attached “Details of Discrepancies” which reduced the subject assessment.¹⁰

On August 11, 2011, petitioner received a FAN¹¹ dated July 25, 2011, assessing petitioner of the following deficiency taxes for the year 2007:

I.	Value-Added Tax	P18,106,645.69
II.	Income Tax	<u>14,874,813.21</u>
	Total amount due	<u>P32,981,458.90</u>

On September 9, 2011, petitioner, through counsel, filed his protest¹² against the said FAN, pursuant to Section 228 of the NIRC of 1997, as amended.

The CIR failed to act on petitioner’s protest within the 180-day period from November 8, 2011, the date when petitioner submitted the documents in support of his protest.¹³

On May 7, 2012, petitioner filed the instant Petition for Review.

In her Answer,¹⁴ respondent CIR raised the following special and affirmative defenses:

- a) The deficiency VAT assessment in the amount of P18,106,645.69 and deficiency Income Tax assessment in the amount of P14,874,813.21 were issued in accordance with law and suffers no infirmity;
- b) Verification disclosed that the discrepancy in the reported sales of petitioner and purchases of his customers was revealed by the Reconciliation of Listing for Enforcement and Third Party Matching – BOC Data Program as declared in petitioner’s tax returns; hence, assessed in accordance with Sections 31, 32, 106 and 108 of the NIRC of 1997, as amended. Revenue Memorandum Order No. 32-2007 and Third Party Matching-Bureau of Customs Data Program;
- c) Revenue Memorandum Order No. 17-2009 covers the income tax and VAT liabilities of individual and corporate taxpayers who were issued

¹⁰ CTA Docket, pp. 68-70.

¹¹ Exhibit “H”, CTA Docket, p. 1460.

¹² Exhibit “I”, CTA Docket, p. 1463.

¹³ Exhibit “J”, CTA Docket, p. 1533.

¹⁴ CTA Docket, pp.194 to 203.

DECISION

*Robert Christopher M. Carmona, doing business
under the name of Saga Casting and Productions
vs. Commissioner of Internal Revenue*
CTA Case No. 8484
Page 4 of 9

Letter Notices based on TRS and Consolidated RELIEF-SLSP and TPM-BOC Data Programs covering taxable years 2007;

- d) Contrary to petitioner's assertion, there is no forum-shopping in the instant case;
- e) All presumptions are in favor of the correctness of tax assessments; and,
- f) Failure to present proof of error in the assessment will justify judicial affirmation of said assessment.

After the Pre-Trial Conference on August 10, 2012,¹⁵ the parties filed their Joint Stipulations of Facts and Issues¹⁶ on August 30, 2012. After approving the parties' Joint Stipulations of Facts and Issues, the Court issued the Pre-Trial Order¹⁷ on October 12, 2012.

Trial ensued, wherein the parties presented their respective evidence. Petitioner presented Carmina L. Alba,¹⁸ Derwin D. Evangelista,¹⁹ and Robert Christopher M. Carmona,²⁰ as his witnesses, and his documentary evidence, which the Court admitted in its Resolution²¹ dated May 12, 2014, except for Exhibits "I", "J", "L", "O", "O-1", "O-2", "P", "P-1", "P-2", "Q", "Q-1", "Q-2", "R", "S", "T", "U", "U-1", "V", "V-1", "W", "W-1", "W-2", "X", "X-1", "Y", "Y-1", "Z", "Z-1", "AA", "AA-1", "CC", "CC-1", "CC-2", "DD", "DD-1", "DD-2", "EE", "EE-1", "FF" and "FF-1".

On June 3, 2014, respondent presented her witness, BIR Revenue Officer IV, Ma. Corazon P. de Jesus,²² and her documentary evidence, marked as Exhibits "1" to "24", inclusive of sub-markings, which were admitted in the Resolution²³ dated July 31, 2014.

The parties having filed their respective memoranda within the extended period granted by the Court,²⁴ the case was deemed submitted for decision on July 21, 2014.²⁵

¹⁵ CTA Docket, p. 236.

¹⁶ CTA Docket, p. 238.

¹⁷ CTA Docket, pp. 264 to 274.

¹⁸ Minutes of Hearing dated May 9, 2013, CTA Docket p. 499.

¹⁹ Minutes of Hearing dated January 30, 2014, CTA Docket p. 1233.

²⁰ Minutes of Hearing dated October 24, 2013, CTA Docket p. 1029.

²¹ CTA Docket, pp. 1729 to 1730.

²² Minutes of Hearing dated June 3, 2014, CTA Docket p. 1758.

²³ CTA Docket, p. 1778.

²⁴ CTA Docket, pp. 1796 to 1825 & 1827 to 1834.

²⁵ CTA Docket, p. 1836.

DECISION

*Robert Christopher M. Carmona, doing business
under the name of Saga Casting and Productions
vs. Commissioner of Internal Revenue*
CTA Case No. 8484
Page 5 of 9

ISSUES

As stipulated by the parties, the following are the issues²⁶ to be resolved:

1. Whether the second L.A/investigation against petitioner for the same taxable year is valid and legal?
2. Whether the assessment/s made against petitioner is valid and legal?
3. Whether the required investigation was conducted by the revenue examiners of the Bureau of Internal Revenue pursuant to its own relevant issuances?
4. Whether petitioner incurred any alleged VAT deficiency for taxable year 2007?
5. Whether or not petitioner is liable for deficiency Income Tax in the amount of ₱14,874,813.21 and deficiency VAT in the amount of ₱18,106,645.69 for the calendar year 2007?
6. Whether or not petitioner was informed of the law and the facts upon which the assessments were based?
7. Whether or not the assessments were made in accordance with law?

The foregoing issues boil down to the principal issue of:

“Whether or not petitioner may be held liable for deficiency income tax and VAT in the aggregate amount of ₱32,981,458.90, inclusive of surcharges, interest and penalties for taxable year 2007?”

THE COURT’S RULING

The Court shall first resolve the issue of whether or not respondent CIR issued the assailed FAN within the three-year prescriptive period.

²⁶ CTA Docket, p. 238. JSF1.

DECISION

*Robert Christopher M. Carmona, doing business
under the name of Saga Casting and Productions
vs. Commissioner of Internal Revenue*
CTA Case No. 8484
Page 6 of 9

Pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, respondent CIR has three (3) years to assess and collect an internal revenue tax, viz:

“**SEC. 203. Period of Limitation Upon Assessment and Collection.**
– Except as provided in Section 222, **internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this section, a return is filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.” (Emphasis supplied)

Clearly, the three-year period within which an assessment may be made shall be reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. The government is mandated to assess deficiency internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.²⁷

To determine the last day for respondent CIR to assess petitioner for deficiency income tax and VAT for calendar year ending December 31, 2007, the Court shall first ascertain the date when the three-year prescriptive period should be reckoned.

Pursuant to Section 74 of the NIRC of 1997, as amended,²⁸ petitioner filed his Annual Income Tax Return (ITR) for taxable year ending December 31, 2007 on April 11, 2008.²⁹

²⁷ Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008.

²⁸ Sec. 74. *Declaration of Income Tax for Individuals* –

(A) **In General.** Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25(A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. Xxx

(B) **Return and Payment of Estimated Income Tax by Individuals.** – xxx The fourth instalment shall be paid on or before April 15 of the following calendar year when the final adjusted income tax return is due to be filed.

DECISION

*Robert Christopher M. Carmona, doing business
under the name of Saga Casting and Productions
vs. Commissioner of Internal Revenue*
CTA Case No. 8484
Page 7 of 9

On the other hand, petitioner filed his Quarterly VAT Returns for taxable year 2007 pursuant to Section 114 of the NIRC of 1997, as amended,³⁰ on the following dates:

Taxable Quarter	Date of Filing
1 st Quarter, CY 2007	24 April 2007 ³¹
2 nd Quarter, CY 2007	31 July 2007 ³²
3 rd Quarter, CY 2007	24 October 2007 ³³
4 th Quarter, CY 2007	31 January 2008 ³⁴

Thus, applying Section 203 of the NIRC of 1997, as amended, and absent any waiver of the statute of limitations executed by petitioner, the BIR had the following dates within which to issue the FAN, Assessment Notice Nos. F-041-LNIF-07-VT-060 and F-041-LNTF-07-IT-060 and Details of Discrepancy for purposes of assessing petitioner for deficiency income tax and VAT for taxable year ending December 31, 2007:

Income Tax

Taxable Year	Due Date for Filing of Income Tax Return with BIR	Date of Filing of Petitioner's Income Tax Return	Last Day for Issuance of BIR's Deficiency Income Tax Assessment	Date of Issuance of FAN	Date of Petitioner's Receipt of the FAN
2007	15 April 2008	11 April 2008	15 April 2011	July 25, 2011	August 11, 2011

²⁹ Exhibit "GG", CTA Docket, p. 1660.

³⁰ SEC. 114. Return and Payment of Value-Added Tax. –

(A) In General. – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.

³¹ BIR Records, p. 194.

³² BIR Records, p. 150.

³³ BIR Records, p. 32.

³⁴ BIR Records, p. 30.

DECISION

*Robert Christopher M. Carmona, doing business
under the name of Saga Casting and Productions
vs. Commissioner of Internal Revenue*
CTA Case No. 8484
Page 8 of 9

Value-Added Tax

Taxable Quarter	Due Date for Filing of Quarterly VAT Return with BIR	Date of Filing of Petitioner's Quarterly VAT Return	Last Day for Issuance of BIR's Deficiency VAT Assessment	Date of Issuance of FAN	Date of Petitioner's Receipt of the FAN
1 st Quarter, CY 2007	25 April 2007	24 April 2007	25 April 2010	July 25, 2011	August 11, 2011
2 nd Quarter, CY 2007	25 July 2007	31 July 2007	31 July 2010		
3 rd Quarter, CY 2007	25 October 2007	22 October 2007	25 October 2010		
4 th Quarter, CY 2007	25 January 2008	31 January 2008	31 January 2011		

Based on the foregoing illustration, the three-year prescriptive period to assess petitioner for deficiency income tax and VAT for the year 2007 under Section 203 of the NIRC of 1997, as amended, had already prescribed. Having thus prescribed, respondent CIR had no more authority to assess petitioner for deficiency income tax and VAT for the year 2007. As a consequence, the FAN dated July 25, 2011, with attached Assessment Notice Nos. F-041-LNITF-07-VT-060 and F-041-LNITF-07-IT-060 and Details of Discrepancy are void for having been issued beyond the three-year prescriptive period provided by law.

With the above conclusion thus reached, the Court finds no need to discuss the other issues raised by the parties for being moot and academic.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice dated July 25, 2011 and the attached Assessment Notice Nos. F-041-LNITF-07-VT-060 and F-041-LNITF-07-IT-060 assessing and demanding from petitioner the payment of deficiency income tax and VAT in the total amount of P32,981,458.90 for the taxable year 2007 are hereby **CANCELLED** and **WITHDRAWN**.

DECISION

*Robert Christopher M. Carmona, doing business
under the name of Saga Casting and Productions
vs. Commissioner of Internal Revenue*
CTA Case No. 8484
Page 9 of 9

SO ORDERED.



ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:



ERLINDA P. UY
Associate Justice



CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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