Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CHINA BANKING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G. R. No. 172509

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
FEB 04 2015

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DECISION

SERENO, *CJ:*

This Rule 45 Petition[1] requires this Court to address the question of prescription of the government's right to collect taxes. Petitioner China Banking Corporation (CBC) assails the Decision[2] and Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA *En Banc* Case No. 109. The CTA En Banc affirmed the Decision[4] in CTA Case No. 6379 of the CTA Second Division, which had also affirmed the validity of Assessment No. FAS-5-82/85-89-000586 and FAS-5-86-89-00587. The Assessment required petitioner CBC to pay the amount of ₱11,383,165.50, plus increments accruing thereto, as deficiency documentary stamp tax (DST) for the taxable years 1982 to 1986.

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[1] *Rollo,* pp. 16-53.
[2] Id. at 152-167; dated 1 December 2005, penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta, Juanito C. Castañeda, Associate Justices Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova, Jr.
[3] 20 March 2006.
[4] Id. at 112-124; dated 23 February 2005, penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

FACTS

Petitioner CBC is a universal bank duly organized and existing under the laws of the Philippines. For the taxable years 1982 to 1986, CBC was engaged in transactions involving sales of foreign exchange to the Central Bank of the Philippines (now *Bangko Sentral ng Pilipinas*), commonly known as SWAP transactions.[5] Petitioner did not file tax returns or pay tax on the SWAP transactions for those taxable years.

On 19 April 1989, petitioner CBC received an assessment from the Bureau of Internal Revenue (BIR) finding CBC liable for deficiency DST on the sales of foreign bills of exchange to the Central Bank. The deficiency DST was computed as follows:

Deficiency Documentary Stamp Tax

		Amount
For the years 1982 to 1985		□ 8,280,696.00
For calendar year 1986	□ 2,481 ,975.60	
Add : Surcharge	□ 620,493.90	□ 3,102.469.50
		□11 ,383,165.50[6]

On 8 May 1989, petitioner CBC, through its vice-president, sent a letter of protest to the BIR. CBC raised the following defenses: (1) *double taxation*, as the bank had previously paid the DST on all its transactions involving sales of foreign bills of exchange to the Central Bank; (2) *absence of liability*, as the liability for the DST in a sale of foreign exchange through telegraphic transfers to the Central Bank falls on the buyer — in this case, the Central Bank; (3) *due process violation*, as the bank's records were never formally examined by the BIR examiners; (4) *validity of the assessment*, as it did not include the factual basis therefore; (5) *exemption*, as neither the tax-exempt entity nor the other party was liable for the payment of DST before the effectivity of Presidential Decree Nos. (PD) 1177 and 1931 for the years 1982 to 1986.[7] In the protest, the taxpayer requested a reinvestigation so as to substantiate its assertions.[8]

On 6 December 2001, ***more than 12 years after the filing of the protest,*** the Commissioner of Internal Revenue (CIR) rendered a decision reiterating the deficiency DST assessment and ordered the payment thereof plus increments within 30 days from receipt of the Decision.[9]

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[5] *Rollo*, p. 113.
[6] Id.
[7] Id. at 91-93.
[8] Id. at p. 93.
[9] Id. at 114-115; *See also* CIR Decision on the protest dated 6 December 2001, pp. 94-99.

On 18 January 2002, CBC filed a Petition for Review with the CTA. **On 11 March 2002, the CIR filed an Answer with a demand for CBC to pay the assessed DST.**[10]

On 23 February 2005, and after trial on the merits, the CTA Second Division denied the Petition of CBC. The CTA ruled that a SWAP arrangement should be treated as a telegraphic transfer subject to documentary stamp tax.[11]

On 30 March 2005, petitioner CBC filed a Motion for Reconsideration, but it was denied in a Resolution dated 14 July 2005.

On 5 August 2005, petitioner appealed to the CTA En Banc. The appellate tax court, however, dismissed the Petition for Review in a Decision dated 1 December 2005. CBC filed a Motion for Reconsideration on 21 December 2005, but it was denied in a 20 March 2006 Resolution.

The taxpayer now comes to this Court with a Rule 45 Petition, reiterating the arguments it raised at the CTA level and invoking for the first time the argument of prescription. Petitioner CBC states that the government has three years from 19 April 1989, the date the former received the assessment of the CIR, to collect the tax. Within that time frame, however, neither a warrant of distraint or levy was issued, nor a collection case filed in court.

On 17 October 2006, respondent CIR submitted its Comment in compliance with the Court's Resolution dated 26 June 2006.[12] The Comment did not have any discussion on the question of prescription.

On 21 February 2007, the Court issued a Resolution directing the parties to file their respective Memoranda. Petitioner CBC filed its Memorandum[13] on 26 April 2007. The CIR, on the other hand, filed on 17 April 2007 a Manifestation stating that it was adopting the allegations and authorities in its Comment in lieu of the required Memorandum.[14]

ISSUE

Given the facts and the arguments raised in this case, the resolution of this case hinges on this issue: whether the right of the BIR to collect the assessed DST from CBC is barred by prescription.[15]

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[10] Id. at p. 115.
[11] Id. at 115-116.
[12] Id. at 218-242.
[13] Id. at 264-302.
[14] Id. at 261.
[15] Id. at 43-47.

RULING OF THE COURT

We grant the Petition on the ground that the right of the BIR to collect the assessed DST is barred by the statute of limitations.

Prescription Has Set In.

To recall, the Bureau of Internal Revenue (BIR) issued the assessment for deficiency DST on 19 April 1989, when the applicable rule was Section 319(c) of the National Internal Revenue Code of 1977, as amended.[16] In that provision, the time limit for the government to collect the assessed tax is set at three years, to be reckoned from the date when the BIR mails/releases/sends the assessment notice to the taxpayer. Further, Section 319(c) states that the assessed tax must be collected by distraint or levy and/or court proceeding within the three-year period.

With these rules in mind, we shall now determine whether the claim of the BIR is barred by time.

In this case, the records do not show when the assessment notice was mailed, released or sent to CBC. Nevertheless, the latest possible date that the BIR could have released, mailed or sent the assessment notice was on the same date that CBC received it, 19 April 1989. Assuming therefore that 19 April 1989 is the reckoning date, the BIR had three years to collect the assessed DST. However, the records of this case show that there was neither a warrant of distraint or levy served on CBC's properties nor a collection case filed in court by the BIR within the three-year period.

The attempt of the BIR to collect the tax through its Answer with a demand for CBC to pay the assessed DST in the CTA **on 11 March 2002** did not comply with Section 319(c) of the 1977 Tax Code, as amended. The demand was made **almost thirteen years from** the date from which the prescriptive period is to be reckoned. Thus, the attempt to collect the tax was made way beyond the three-year prescriptive period.

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[16] SEC. 319. *Exceptions as to period of limitations of assessment and collection of taxes.* —

> (c) Where the assessment of any internal revenue tax has been made within the period of limitation above-prescribed *such tax may be collected by distraint or levy by a proceeding in court, but only if began (1) within five years after the assessment of the tax, or (2) prior the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon*. (Emphasis supplied)

Batas Pambansa Blg. 700, which was approved on 5 April 1984, shortened the statute of limitations on the assessment and collection of national internal revenue taxes from 5 years to 3 years.

The BIR's Answer in the case filed before the CTA could not, by any means, have qualified as a collection case as required by law. Under the rule prevailing at the time the BIR filed its Answer, the regular courts, and not the CTA, had jurisdiction over judicial actions for collection of internal revenue taxes. It was only on 23 April 2004, when Republic Act Number 9282 took effect,[17] that the jurisdiction of the CTA was expanded to include, among others, original jurisdiction over collection cases in which the principal amount involved is one million pesos or more.

Consequently, the claim of the CIR for deficiency DST from petitioner is forever lost, as it is now barred by time. This Court has no other option but to dismiss the present case.

The running of the statute of limitations was not suspended by the request for reinvestigation.

The fact that the taxpayer in this case may have requested a reinvestigation did not toll the running of the three-year prescriptive period. Section 320 of the 1977 Tax Code states:

> Sec. 320. *Suspension of running of statute.*—The running of the statute of limitations provided in Sections 318 or 319 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; **when the taxpayer requests for a re-investigation which is granted by the Commissioner;** when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided,* That if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. **(Emphasis supplied)**

The provision is clear. A request for reinvestigation alone will not suspend the statute of limitations. Two things must concur: there must be a request for reinvestigation and the CIR must have granted it. *BPI v. Commissioner of Internal Revenue*[18] emphasized this rule by stating:

> In the case of *Republic of the Philippines v. Gancayco,* taxpayer Gancayco requested for a thorough reinvestigation of the assessment against him and placed at the disposal of the Collector of Internal Revenue all the [evidence] he had for such purpose; yet, the Collector ignored the

[17] < http://sc.judiciary.gov.ph/pio/annualreports/CTA2005.pdf. > (Last visited 23 November 2014).
[18] 571 Phil. 535.

request, and the records and documents were not at all examined. Considering the given facts, this Court pronounced that—

> x x x. ***The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension.*** (*Collector v. Suyoc Consolidated, supra;* also *Republic v. Ablaza, supra*). Moreover, the Collector gave appellee until April 1, 1949, within which to submit his evidence, which the latter did one day before. There were no impediments on the part of the Collector to file the collection case from April 1, 1949 x x x.

In *Republic of the Philippines v. Acebedo*, this Court similarly found that —

> *. . . [T]he defendant, after receiving the assessment notice of September 24, 1949, asked for a reinvestigation thereof on October 11, 1949 (Exh. "A"). There is no evidence that this request was considered or acted upon. In fact, on October 23, 1950 the then Collector of Internal Revenue issued a warrant of distraint and levy for the full amount of the assessment (Exh. "D"), but there was follow-up of this warrant. Consequently, the request for reinvestigation did not suspend the running of the period for filing an action for collection. (*Emphasis in the original)

The Court went on to declare that the burden of proof that the request for reinvestigation had been actually granted shall be on the CIR. Such grant may be expressed in its communications with the taxpayer or implied from the action of the CIR or his authorized representative in response to the request for reinvestigation.

There is nothing in the records of this case which indicates, expressly or impliedly, that the CIR had granted the request for reinvestigation filed by BPI. What is reflected in the records is the piercing silence and inaction of the CIR on the request for reinvestigation, as he considered BPI's letters of protest to be.

In the present case, there is no showing from the records that the CIR ever granted the request for reinvestigation filed by CBC. That being the case, it cannot be said that the running of the three-year prescriptive period was effectively suspended.

Failure to raise prescription at the administrative level/lower court as a defense is of no moment.

> **When the pleadings or the evidence on record show that the claim is barred by prescription, the court must dismiss the claim even if prescription is not raised as a defense.**

We note that petitioner has raised the issue of prescription for the first time only before this Court. While we are mindful of the established rule of remedial law that the defense of prescription must be raised at the trial court that has also been applied for tax cases.[19] Thus, as a rule, the failure to raise the defense of prescription at the administrative level prevents the taxpayer from raising it at the appeal stage.

This rule, however, is not absolute.

The facts of the present case are substantially identical to those in the 2014 case, *Bank of the Philippine Islands (BPI) v. Commissioner of Internal Revenue.*[20] In that case, petitioner received an assessment notice from the BIR for deficiency DST based on petitioner's SWAP transactions for the year 1985 on 16 June 1989. On 23 June 1989, BPI, through its counsel, filed a protest requesting the reinvestigation and/or reconsideration of the assessment for lack of legal or factual bases. *Almost ten years later,* the CIR, in a letter dated 4 August 1998, denied the protest. On 4 January 1999, BPI filed a Petition for Review with the CTA. *On 23 February 1999,* the CIR filed an Answer with a demand for BPI to pay the assessed DST. It was only when the case ultimately reached this Court that the issue of prescription was brought up. Nevertheless, the Court ruled that the CIR could no longer collect the assessed tax due to prescription. Basing its ruling on Section 1, Rule 9 of the Rules of Court and on jurisprudence, the Court held as follows:

> In a Resolution dated 5 August 2013, 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 decision. However, to afford due process, the Court required both BPI and CIR to submit their respective comments on the issue of prescription.
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> Only the CIR filed his comment on 9 December 2013. In his Comment, the CIR argues that the issue of prescription cannot 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.
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> x x x x
>
> We deny the right of the BIR to collect the assessed DST on the ground of prescription.
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> Section 1, Rule 9 of the Rules of Court expressly provides that:
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> > Section 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to

[19] *Aguinaldo Industries Corp. v. CIR,* 197 Phil. 822 (1982).
[20] G.R. No. 181836, 9 July 2014.

> 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.

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,* 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. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.

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. Under the then applicable Section 319(c) [now, 222(c)] 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 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.

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.

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. (Emphasis supplied)

BPI thus provides an exception to the rule against raising the defense of prescription for the first time on appeal: the exception arises **when the pleadings or the evidence on record show that the claim is barred by prescription.**

In this case, the fact that the claim of the government is time-barred is a matter of record. As can be seen from the previous discussion on the determination of the prescription of the right of the government to claim deficiency DST, the conclusion that prescription has set in was arrived at using the evidence on record. The date of receipt of the assessment notice was not disputed, and the date of the attempt to collect was determined by merely checking the records as to when the Answer of the CIR containing the demand to pay the tax was filed.

Estoppel or waiver prevents the government from invoking the rule against raising the issue of prescription for the first time on appeal.

In this case, petitioner may have raised the question of prescription only on appeal to this Court. The BIR could have crushed the defense by the mere invocation of the rule against setting up the defense of prescription only at the appeal stage. The government, however, failed to do so.

On the contrary, the BIR was silent despite having the opportunity to invoke the bar against the issue of prescription. It is worthy of note that the Court ordered the BIR to file a Comment. The government, however, did not offer any argument in its Comment about the issue of prescription, even if petitioner raised it in the latter's Petition. It merely fell silent on the issue. It was given another opportunity to meet the challenge when this Court ordered both parties to file their respective memoranda. The CIR, however, merely filed a Manifestation that it would no longer be filing a Memorandum and, in lieu thereof, it would be merely adopting the arguments raised in its Comment. Its silence spoke loudly of its intent to waive its right to object to the argument of prescription.

We are mindful of the rule in taxation that *estoppel* does not prevent the government from collecting taxes; it is not bound by the mistake or negligence of its agents. The rule is based on the political law concept "the king can do no wrong,"[21] which likens a state to a king: it does not commit mistakes, and it does not sleep on its rights. The analogy fosters inequality between the taxpayer and the government, with the balance tilting in favor of the latter. This concept finds justification in the theory and reality that government is necessary, and it must therefore collect taxes if it is to survive. Thus, the mistake or negligence of government officials should not

[21] Eric R. Recalde, A Treatise on Tax Principles and Remedies, p. 33 (2009).

bind the state, lest it bring harm to the government and ultimately the people, in whom sovereignty resides.[22]

Republic v. Ker & Co. Ltd.[23] involved a collection case for a *final and executory* assessment. The taxpayer nevertheless raised the prescription of the right to *assess* the tax as a defense before the Court of First Instance. The Republic, instead of objecting to the invocation of prescription as a defense by the taxpayer, litigated on the issue and thereafter submitted it for resolution. The Supreme Court ruled for the taxpayer, treating the actuations of the government as a waiver of the right to invoke the defense of prescription. *Ker* effectively applied to the government the rule of *estoppel*. Indeed, the no-estoppel rule is not absolute.

The same ingredients in *Ker* — procedural matter and injustice — obtain in this case. The procedural matter consists in the failure to raise the issue of prescription at the trial court/administrative level, and injustice in the fact that the BIR has unduly delayed the assessment and collection of the DST in this case. The fact is that it took ***more than 12 years*** for it to take steps to collect the assessed tax. The BIR definitely caused untold prejudice to petitioner, keeping the latter in the dark for so long, as to whether it is liable for DST and, if so, for how much.

CONCLUSION

Inasmuch as the government's claim for deficiency DST is barred by prescription, it is no longer necessary to dwell on the validity of the assessment.

WHEREFORE, the Petition is **GRANTED**. The Court of Tax Appeals *En Banc* Decision dated 1 December 2005 and its Resolution dated 20 March 2006 in CTA EB Case No. 109 are hereby **REVERSED** and **SET ASIDE**. A new ruling is entered DENYING respondent's claim for deficiency DST in the amount of ₱11,383,165.50.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

[22] Id., citing *Vera v. Fernandez*, id. at 33.
[23] *Republic v. Ker & Co.*, 124 Phil. 822 (1966).

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

MARIA LOURDES P. A. SERENO
Chief Justice