

SECOND DIVISION

[G.R. No. 227049, September 16, 2020]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

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) Decision^[2] dated March 17, 2016 and the Resolution^[3] dated September 1, 2016 in CTA EB No. 1204 (CTA Case No. 8376). In the assailed issuances, the CTA EB affirmed the Decision^[4] dated April 16, 2014 and the Resolution^[5] 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).

The Antecedents

Through a letter dated May 6, 1991, the CIR sent Assessment Notices^[6] to Citytrust Banking Corporation (Citytrust) in connection with its deficiency internal revenue taxes for the year 1986 in the aggregate amount of P20,865,320.29^[7] computed as follows:

Tax Type	Amount
Income tax (IT)	P19,202,589.97 ^[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 Lite remittance of withholding tax on compensation (WTC)	39,675.00
Total	P 20,865,320.29^[9]

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 (P20,865,320.29) became the subject of separate proceedings: *first*, the 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 P8,607,517.00, 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 P19,202,589.97. 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]

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 Distrainment and/or Levy (November 2011 Warrant),^[20] this time in relation to Citytrust's deficiency EWT, WTD, DFT, and WTC assessments amounting to P1,624,930.32.^[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.

Ruling of the CTA Division

In the Decision^[22] dated April 16, 2014, the CTA Division *cancelled* and *set aside* the subject Warrant of Distrainment 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 distrainment 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, 1990. The later waivers were executed during the

effectivity of RMO 2090. 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 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.

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 thereof^[35] 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 disposition^[38] was distinctly for the cancellation of the warrant and nothing else.

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 BIR^[39] 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.