

**SECOND DIVISION**

**[ G.R. No. 181836, July 09, 2014 ]**

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

**D E C I S I O N**

**CARPIO, J.:**

**The Case**

This petition for review<sup>[1]</sup> assails the Decision<sup>[2]</sup> promulgated on 29 May 2007 as well as the Resolution<sup>[3]</sup> promulgated on 12 February 2008 by the Court of Appeals (CA) in CA-G.R. SP No. 63640. The CA reversed the Decision<sup>[4]</sup> of the Court of Tax Appeals (CTA), dated 12 February 2001, and reinstated Assessment No. FAS-5-85-89-000988 requiring petitioner Bank of the Philippine Islands (BPI) to pay the amount of P1,259,884.50 as deficiency documentary stamp tax (DST) for the taxable year 1985, inclusive of the compromise penalty.

**The Facts**

BPI, successor-in-interest of Citytrust Banking Corporation, is a commercial banking corporation organized and existing under the laws of the Philippines.

On 19 May 1989, the Bureau of Internal Revenue (BIR) issued Assessment No. FAS-5-85-89-000988<sup>[5]</sup> finding BPI liable for deficiency DST on its sales of foreign bills of exchange to the Central Bank, computed as follows:

1985 Deficiency Documentary Stamp Tax		
Foreign Bills of Exchange.....	of	P 839,723,000.00
Tax Due Thereon:		
P839,723,000.00 x P0.30 (Sec. 182 NIRC)..		P 1,259,584.50
P200.00		
Add: Suggested penalty.....	compromise	300.00
TOTAL AMOUNT DUE.....		P 1,259,884.50

On 16 June 1989, BPI received the assessment notice and demand letter from the BIR.

On 23 June 1989, BPI, through its counsel, filed a protest letter<sup>[6]</sup> requesting for the reinvestigation and/or reconsideration of the assessment for lack of legal and factual bases. The BPI alleged that it should not be liable for the assessed DST because: (1) based on recognized business practice incorporated in the Bankers Association of the Philippines (BAP) Foreign Exchange Trading Center Rule 2(e), DST was for the account of the buyer; (2) BIR Ruling No. 135-87 stated that neither the tax-exempt entity nor the other party shall be liable for the payment of DST before the effectivity of Presidential Decree No. (PD) 1994 on 1 January 1986; (3) since the then law left the tax to be paid indifferently by either party and the party liable was exempt, the document was exempt from DST; and (4) the assessed DST was the same assessment made by the BIR for DST swap transaction covering taxable years 1982-1986.

In a letter dated 4 August 1998,<sup>[7]</sup> then Commissioner of Internal Revenue (CIR) Beethoven L. Rualo denied the "request for reconsideration." The CIR held that BPI's arguments were legally untenable. The CIR cited BIR Unnumbered Ruling dated 30 May 1977 and BIR Ruling No. 144-84 dated 3 September 1984, where the liability to pay DST was shifted to the other party, who was not exempt from the tax. As for being taxed twice, the CIR found that such allegation was unsubstantiated by BPI.

On 4 January 1999, BPI filed a petition for review before the CTA. On 23 February 1999, the CIR filed his answer with a demand for BPI to pay the assessed DST.

### **The CTA Ruling**

In a Decision dated 12 February 2001,<sup>[8]</sup> the CTA ordered the cancellation of the assessed DST on BPI. The CTA ruled that neither BPI nor Central Bank, which was tax-exempt, could be liable for the payment of the assessed DST. The CTA reasoned out that before PD 1994 took effect in 1986, there was no law that shifted the liability to the other party, in case the party liable to pay the DST was tax exempt.

The dispositive portion of the CTA decision reads:

WHEREFORE, in view of the foregoing, the Court finds the instant Petition for Review MERITORIOUS. Respondent is hereby ORDERED to CANCEL the 1985 deficiency documentary stamp tax assessment issued to Bank of the Philippine Islands (as successor-in-interest of Citytrust [B]anking Corporation) in the amount of P1,259,884.50 covered by Assessment No. FAS-5-85-89-000988.

SO ORDERED.<sup>[9]</sup>

Hence, the CIR appealed to the CA.

### **The CA Ruling**

In a Decision dated 29 May 2007,<sup>[10]</sup> the CA reversed the CTA decision, and adopted the arguments of the CIR and CTA Associate Justice Ramon O. De Veyra, in his dissent. The CA held that BIR Unnumbered Ruling dated 30 May 1977 was more

in accord with the general principles of law and the intent for the enactment of the provisions on DST. According to the CA, BPI further failed to justify its claim for exemption from tax.

Thus, the dispositive portion of the CA decision states:

WHEREFORE, based on the foregoing, the instant Petition is GRANTED. The Decision of the Court of Tax Appeals in C. T. A. Case No. 5711, dated February 12, 2001, which [cancelled] the 1985 deficiency documentary stamp tax issued to the Bank of the Philippine Islands (as successor-in-interest of Citytrust Banking Corporation) in the amount of P1,259,884.50 covered by Assessment No. FAS-5-85-89-000988 is REVERSED and SET ASIDE. Assessment No. FAS-5-85-89-000988 is hereby ordered reinstated. Bank of the Philippine Islands is ordered to pay the amount of P1,259,884.50 plus 20% annual interest from the date prescribed for its payment until fully paid pursuant to Section 249 (cc) (3) of the Tax Code.

SO ORDERED.<sup>[11]</sup>

On 12 February 2008, the CA denied the motion for reconsideration filed by BPI. Hence, BPI filed a petition for review before the Court.

In a Resolution dated 5 August 2013,<sup>[12]</sup> 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*<sup>[13]</sup> decision. However, to afford due process, the Court required both BPI and CIR to submit their respective comments on the issue of prescription.

Only the CIR filed his comment on 9 December 2013. In his Comment,<sup>[14]</sup> the CIR argues that the issue of prescription can not 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.<sup>[15]</sup>

### **The Issue**

The issue boils down to whether or not BIR has a right to collect the assessed DST from BPI.

### **The Ruling of the Court**

We deny the right of the BIR to collect the assessed DST on the ground of prescription.

Section 1, Rule 9 of the Rules of Court expressly provides that:

Section 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to 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.** (Emphasis and underscoring supplied)

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*,<sup>[16]</sup> 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.<sup>[17]</sup> More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.<sup>[18]</sup>

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.<sup>[19]</sup> Under the then applicable Section 319(c) [now, 222(c)]<sup>[20]</sup> 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<sup>[21]</sup> 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.<sup>[22]</sup>

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.