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FIRST DIVISION

[G. R. No. 167146. October 31, 2006]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE GLOBAL COMMUNICATION, INC.,** *respondent.*

SYLLABUS

1. TAXATION; TAX CODE OF 1977; NATIONAL INTERNAL REVENUE TAXES; PERIOD OF ASSESSMENT AND COLLECTION; COMMISSIONER OF INTERNAL REVENUE'S RIGHT TO COLLECT THE ALLEGED DEFICIENCY INCOME TAX IS BARRED BY PRESCRIPTION; CASE AT BAR. — The main issue in this case is whether or not CIR's right to collect respondent's alleged deficiency income tax is barred by prescription under Section 269(c) of the Tax Code of 1977, which reads: Section 269. *Exceptions as to the period of limitation of assessment and collection of taxes.* – x x x c. Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax. The law prescribed a period of three years from the date the return was actually filed or from the last date prescribed by law for the filing of such return, whichever came later, within which the BIR may assess a national internal revenue tax. However, the law increased the prescriptive period to assess or to begin a court proceeding for the collection without an assessment to ten years when a false or fraudulent return was filed with the intent of evading the tax or when no return was filed at all. In such cases, the ten-year period began to run only from the date of discovery by the BIR of the falsity, fraud or omission. If the BIR issued this assessment within the three-year period or the ten-year period, whichever was applicable, the law provided another three years after the assessment for the collection of the tax due thereon through the administrative process of distraint and/or levy or through judicial proceedings. The three-year period for collection of the assessed tax began to run on the date the assessment notice had been released, mailed or sent by the BIR. The assessment,

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in this case, was presumably issued on 14 April 1994 since the respondent did not dispute the CIR's claim. Therefore, the BIR had until 13 April 1997. However, as there was no Warrant of Distraint and/or Levy served on the respondents nor any judicial proceedings initiated by the BIR, the earliest attempt of the BIR to collect the tax due based on this assessment was when it filed its Answer in CTA Case No. 6568 on 9 January 2003, which was several years beyond the three-year prescriptive period. Thus, the CIR is now prescribed from collecting the assessed tax.

2. **ID.; ID.; ID.; ID.; THE STATUTE OF LIMITATIONS SHOULD BENEFIT BOTH THE GOVERNMENT AND THE TAXPAYER; ELUCIDATED.** — In a number of cases, this Court has also clarified that the statute of limitations on the collection of taxes should benefit both the Government and the taxpayers. In these cases, the Court further illustrated the harmful effects that the delay in the assessment and collection of taxes inflicts upon taxpayers. In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*, Justice Montemayor, in his dissenting opinion, identified the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made. Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court x x x. It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer

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eventually has to pay. In *Republic of the Philippines v. Ablaza*, this Court emphatically explained that the statute of limitations of actions for the collection of taxes is justified by the need to protect law-abiding citizens from possible harassment: The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest, peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law. And again in the recent case *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, this Court, in confirming these earlier rulings, pronounced that: Though the statute of limitations on assessment and collection of national internal revenue taxes benefits both the Government and the taxpayer, it principally intends to afford protection to the taxpayer against unreasonable investigation. The indefinite extension of the period for assessment is unreasonable because it deprives the said taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.

3. **ID.; REVENUE REGULATIONS NO. 12-85; ADMINISTRATIVE PROTESTS OF ASSESSMENT; TWO TYPES OF PROTEST; DEFINED; DISTINGUISHED.** — Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue, issued on 27 November 1985, defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from

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the other in this manner: Section 6. Protest. – The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars: x x x For the purpose of protest herein– *(a) Request for reconsideration* – refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both. *(b) Request for reinvestigation*–refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both. The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence. A re-evaluation of existing records which results from a request for reconsideration does not toll the running of the prescription period for the collection of an assessed tax. Section 271 distinctly limits the suspension of the running of the statute of limitations to instances when **reinvestigation** is requested by a taxpayer and is granted by the CIR x x x.

4. ID.; ID.; ID.; ID.; REQUEST FOR INVESTIGATION INTERRUPTS THE RUNNING OF THE STATUTE OF LIMITATIONS; RATIONALE; INAPPLICABLE IN CASE AT BAR. — x x x The Court provided a clear-cut rationale in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue,* explaining why a request for reinvestigation, and not a request for reconsideration, interrupts the running of the statute of limitations on the collection of the assessed tax: Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter cannot. In the present case, the separate letters of protest dated 6 May 1994 and 23 May 1994 are requests for reconsideration. The CIR's allegation that there was a request for reinvestigation is inconceivable since

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respondent consistently and categorically refused to submit new evidence and cooperate in any reinvestigation proceedings.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Tan Acut & Lopez for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, seeking to set aside the *en banc* Decision of the Court of Tax Appeals (CTA) in CTA EB No. 37 dated 22 February 2005,[1] ordering the petitioner to withdraw and cancel Assessment Notice No. 000688-80-7333 issued against respondent Philippine Global Communication, Inc. for its 1990 income tax deficiency. The CTA, in its assailed *en banc* Decision, affirmed the Decision of the First Division of the CTA dated 9 June 2004[2] and its Resolution dated 22 September 2004 in C.T.A. Case No. 6568.

Respondent, a corporation engaged in telecommunications, filed its Annual Income Tax Return for taxable year 1990 on 15 April 1991. On 13 April 1992, the Commissioner of Internal Revenue (CIR) issued Letter of Authority No. 0002307, authorizing the appropriate Bureau of Internal Revenue (BIR) officials to examine the books of account and other accounting records of respondent, in connection with the investigation of respondent's 1990 income tax liability. On 22 April 1992, the BIR sent a letter to respondent requesting the latter to present for examination certain records and documents, but respondent

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr. with Presiding Justice Ernesto D. Acosta, Associate Justice Erlinda P. Uy, Associate Justice Lovell R. Baustista, Associate Justice Olga Palanca-Enriquez and Associate Justice Caesar A. Casanova, concurring. *Rollo*, pp. 29-36.

[2] *Id.* at 37-45.

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failed to present any document. On 21 April 1994, respondent received a Preliminary Assessment Notice dated 13 April 1994 for deficiency income tax in the amount of ₱118,271,672.00, inclusive of surcharge, interest, and compromise penalty, arising from deductions that were disallowed for failure to pay the withholding tax and interest expenses that were likewise disallowed. On the following day, 22 April 1994, respondent received a Formal Assessment Notice with Assessment Notice No. 000688-80-7333, dated 14 April 1994, for deficiency income tax in the total amount of ₱118,271,672.00.[3]

On 6 May 1994, respondent, through its counsel Ponce Enrile Cayetano Reyes and Manalastas Law Offices, filed a formal protest letter against Assessment Notice No. 000688-80-7333. Respondent filed another protest letter on 23 May 1994, through another counsel Siguion Reyna Montecillo & Ongsiako Law Offices. In both letters, respondent requested for the cancellation of the tax assessment, which they alleged was invalid for lack of factual and legal basis.[4]

On 16 October 2002, more than eight years after the assessment was presumably issued, the Ponce Enrile Cayetano Reyes and Manalastas Law Offices received from the CIR a Final Decision dated 8 October 2002 denying the respondent's protest against Assessment Notice No. 000688-80-7333, and affirming the said assessment *in toto*.[5]

On 15 November 2002, respondent filed a Petition for Review with the CTA. After due notice and hearing, the CTA rendered a Decision in favor of respondent on 9 June 2004.[6] The CTA ruled on the primary issue of prescription and found it unnecessary to decide the issues on the validity and propriety of the assessment. It decided that the protest letters filed by the respondent cannot constitute a request for reinvestigation, hence, they cannot toll the running of the prescriptive period to collect the assessed

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[3] *Id.* at 37-38.

[4] *Id.* at 38.

[5] *Id.* at 38.

[6] *Id.* at 37-45.

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deficiency income tax.[7] Thus, since more than three years had lapsed from the time Assessment Notice No. 000688-80-7333 was issued in 1994, the CIR's right to collect the same has prescribed in conformity with Section 269 of the National Internal Revenue Code of 1977[8] (Tax Code of 1977). The dispositive portion of this decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioner. Accordingly, respondent's Final Decision dated October 8, 2002 is hereby REVERSED and SET ASIDE and respondent is hereby ORDERED to WITHDRAW and CANCEL Assessment Notice No. 000688-80-7333 issued against the petitioner for its 1990 income tax deficiency because respondent's right to collect the same has prescribed.[9]

The CIR moved for reconsideration of the aforesaid Decision but was denied by the CTA in a Resolution dated 22 September 2004.[10] Thereafter, the CIR filed a Petition for Review with the CTA *en banc*, questioning the aforesaid Decision and Resolution. In its *en banc* Decision, the CTA affirmed the Decision and Resolution in CTA Case No. 6568. The dispositive part reads:

> WHEREFORE, premises considered, the Petition for Review is hereby DISMISSED for lack of merit. Accordingly, the assailed

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[7] *Id.* at 44.

[8] The CTA inadvertently referred to this provision as Section 223, which is the section where this provision falls under the present tax code, the National Internal Revenue Code of 1997. However, in the Tax Code of 1977, as amended, which was the law applicable to this case, this provision was under Section 269, which reads:

> Section 269. *Exceptions as to the period of limitation of assessment and collection of taxes.* – x x x
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> x x x x x x x x x
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> c. Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

[9] *Rollo*, p. 45.

[10] *Id.* at 47-53.

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Decision and Resolution in CTA Case No. 6568 are hereby AFFIRMED *in toto*.[11]

Hence, this Petition for Review on *Certiorari* raising the following grounds:

THE COURT OF TAX APPEALS, SITTING *EN BANC*, COMMITTED REVERSIBLE ERROR IN AFFIRMING THE ASSAILED DECISION AND RESOLUTION IN CTA CASE NO. 6568 DECLARING THAT THE RIGHT OF THE GOVERNMENT TO COLLECT THE DEFICIENCY INCOME TAX FROM RESPONDENT FOR THE YEAR 1990 HAS PRESCRIBED

A. THE PRESCRIPTIVE PERIOD WAS INTERUPTED WHEN RESPONDENT FILED TWO LETTERS OF PROTEST DISPUTING IN DETAIL THE DEFICIENCY ASSESSMENT IN QUESTION AND REQUESTING THE CANCELLATION OF SAID ASSESSMENT. THE TWO LETTERS OF PROTEST ARE, BY NATURE, REQUESTS FOR REINVESTIGATION OF THE DISPUTED ASSESSMENT.

B. THE REQUESTS FOR REINVESTIGATION OF RESPONDENT WERE GRANTED BY THE BUREAU OF INTERNAL REVENUE.[12]

This Court finds no merit in this Petition.

The main issue in this case is whether or not CIR's right to collect respondent's alleged deficiency income tax is barred by prescription under Section 269(c) of the Tax Code of 1977, which reads:

Section 269. *Exceptions as to the period of limitation of assessment and collection of taxes.* – x x x

x x x x x x x x x

c. Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

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[11] *Id.* at 35.

[12] *Id.* at 15.

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The law prescribed a period of three years from the date the return was actually filed or from the last date prescribed by law for the filing of such return, whichever came later, within which the BIR may assess a national internal revenue tax.[13] However, the law increased the prescriptive period to assess or to begin a court proceeding for the collection without an assessment to ten years when a false or fraudulent return was filed with the intent of evading the tax or when no return was filed at all.[14] In such cases, the ten-year period began to run only from the date of discovery by the BIR of the falsity, fraud or omission.

If the BIR issued this assessment within the three-year period or the ten-year period, whichever was applicable, the law provided another three years after the assessment for the collection of the tax due thereon through the administrative process of distraint and/or levy or through judicial proceedings.[15] The three-year period for collection of the assessed tax began to run on the

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[13] Section 268. *Period of limitation upon assessment and collection.* – Except as provided in the succeeding section, 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 be 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 the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[14] Section 269. *Exceptions as to period of limitations of assessment and collection of taxes.*—(a) In the case of a false or fraudulent return with intent to evade 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 begun without assessment, at any time within ten years after the discovery of the falsity, fraud or omission x x x.

[15] Section 269. *Exceptions as to the period of limitation of assessment and collection of taxes.* – x x x

x x x x x x x x x

(c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

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date the assessment notice had been released, mailed or sent by the BIR.[16]

The assessment, in this case, was presumably issued on 14 April 1994 since the respondent did not dispute the CIR's claim. Therefore, the BIR had until 13 April 1997. However, as there was no Warrant of Distraint and/or Levy served on the respondents nor any judicial proceedings initiated by the BIR, the earliest attempt of the BIR to collect the tax due based on this assessment was when it filed its Answer in CTA Case No. 6568 on 9 January 2003, which was several years beyond the three-year prescriptive period. Thus, the CIR is now prescribed from collecting the assessed tax.

The provisions on prescription in the assessment and collection of national internal revenue taxes became law upon the recommendation of the tax commissioner of the Philippines. The report submitted by the tax commission clearly states that these provisions on prescription should be enacted to benefit and protect taxpayers:

> Under the former law, the right of the Government to collect the tax does not prescribe. However, in fairness to the taxpayer, the Government should be estopped from collecting the tax where it failed to make the necessary investigation and assessment within 5 years after the filing of the return and where it failed to collect the tax within 5 years from the date of assessment thereof. Just as the government is interested in the stability of its collections, so also are the taxpayers entitled to an assurance that they will not be subjected to further investigation for tax purposes after the expiration of a reasonable period of time. (Vol. II, Report of the Tax Commission of the Philippines, pp. 321-322).[17]

In a number of cases, this Court has also clarified that the statute of limitations on the collection of taxes should benefit both the Government and the taxpayers. In these cases, the Court further illustrated the harmful effects that the delay in

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[16] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 139736, 17 October 2005, 473 SCRA 205, 223.

[17] *Republic of the Philippines v. Ablaza*, 108 Phil. 1105, 1107-1108 (1960).

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the assessment and collection of taxes inflicts upon taxpayers. In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*,[18] Justice Montemayor, in his dissenting opinion, identified the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made.

> Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court x x x. It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay.

In *Republic of the Philippines v. Ablaza*,[19] this Court emphatically explained that the statute of limitations of actions for the collection of taxes is justified by the need to protect law-abiding citizens from possible harassment:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest, peaceful, law-abiding citizens. Without such legal defense taxpayers

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[18] 104 Phil. 819, 833-834 (1958).

[19] 108 Phil. 1105, 1108 (1960).

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would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law.

And again in the recent case *Bank of the Philippine Islands v. Commissioner of Internal Revenue*,[20] this Court, in confirming these earlier rulings, pronounced that:

> Though the statute of limitations on assessment and collection of national internal revenue taxes benefits both the Government and the taxpayer, it principally intends to afford protection to the taxpayer against unreasonable investigation. The indefinite extension of the period for assessment is unreasonable because it deprives the said taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.

Thus, in *Commissioner of Internal Revenue v. B.F. Goodrich*,[21] this Court affirmed that the law on prescription should be liberally construed in order to protect taxpayers and that, as a corollary, the exceptions to the law on prescription should be strictly construed.

The Tax Code of 1977, as amended, provides instances when the running of the statute of limitations on the assessment and collection of national internal revenue taxes could be suspended, even in the absence of a waiver, under Section 271 thereof which reads:

> Section 224. *Suspension of running of statute.* – The running of the statute of limitation provided in Sections 268 and 269 on the making of assessments 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

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[20] G.R. No. 139736, 17 October 2005, 473 SCRA 205, 225.

[21] 363 Phil. 169, 178 (1999).

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or a proceeding in court and for sixty days thereafter; **when the taxpayer requests for a reinvestigation 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 x x x. (Emphasis supplied.)

Among the exceptions provided by the aforecited section, and invoked by the CIR as a ground for this petition, is the instance when the taxpayer requests for a reinvestigation which is granted by the Commissioner. However, this exception does not apply to this case since the respondent never requested for a reinvestigation. More importantly, the CIR could not have conducted a reinvestigation where, as admitted by the CIR in its Petition, the respondent refused to submit any new evidence.

Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue, issued on 27 November 1985, defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:

> Section 6. Protest. – The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:
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> x x x x x x x x x
>
> For the purpose of protest herein –
>
> *(a) Request for reconsideration* – refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
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> *(b) Request for reinvestigation*–refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both.

The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered

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or additional evidence. A re-evaluation of existing records which results from a request for reconsideration does not toll the running of the prescription period for the collection of an assessed tax. Section 271 distinctly limits the suspension of the running of the statute of limitations to instances when **reinvestigation** is requested by a taxpayer and is granted by the CIR. The Court provided a clear-cut rationale in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[22] explaining why a request for reinvestigation, and not a request for reconsideration, interrupts the running of the statute of limitations on the collection of the assessed tax:

> Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter cannot.

In the present case, the separate letters of protest dated 6 May 1994 and 23 May 1994 are requests for reconsideration. The CIR's allegation that there was a request for reinvestigation is inconceivable since respondent consistently and categorically refused to submit new evidence and cooperate in any reinvestigation proceedings. This much was admitted in the Decision dated 8 October 2002 issued by then CIR Guillermo Payarno, Jr.

> In the said conference-hearing, Revenue Officer Alameda basically testified that Philcom, despite repeated demands, failed to submit documentary evidences in support of its claimed deductible expenses. Hence, except for the item of interest expense which was disallowed for being not ordinary and necessary, the rest of the claimed expenses were disallowed for non-withholding. In the same token, Revenue Officer Escober testified that upon his assignment to conduct the re-investigation, he immediately requested the taxpayer to present various accounting records for the year 1990, in addition to other documents in relation to the disallowed items (p.171). This was followed by other requests for submission of documents (pp. 199 & 217) but these were not heeded by the taxpayer. Essentially, he stated that Philcom did not cooperate in his reinvestigation of the case.

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[22] G.R. No. 139736, 17 October 2005, 473 SCRA 205, 230-231.

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In response to the testimonies of the Revenue Officers, Philcom thru Atty. Consunji, emphasized that it was denied due process because of the issuance of the Pre-Assessment Notice and the Assessment Notice on successive dates. x x x Counsel for the taxpayer even questioned the propriety of the conference-hearing inasmuch as the only question to resolved (sic) is the legality of the issuance of the assessment. On the disallowed items, Philcom thru counsel manifested that it has no intention to present documents and/or evidences allegedly because of the pending legal question on the validity of the assessment.[23]

Prior to the issuance of Revenue Regulations No. 12-85, which distinguishes a request for reconsideration and a request for reinvestigation, there have been cases wherein these two terms were used interchangeably. But upon closer examination, these cases all involved a reinvestigation that was requested by the taxpayer and granted by the BIR.

In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*,[24] the Court weighed the considerable time spent by the BIR to actually conduct the reinvestigations requested by the taxpayer in deciding that the prescription period was suspended during this time.

Because of such requests, several reinvestigations were made and a hearing was even held by the Conference Staff organized in the collection office to consider claims of such nature which, as the record shows, lasted for several months. After inducing petitioner to delay collection as he in fact did, it is most unfair for respondent to now take advantage of such desistance to elude his deficiency income tax liability to the prejudice of the Government invoking the technical ground of prescription.

Although the Court used the term "requests for reconsideration" in reference to the letters sent by the taxpayer in the case of *Querol v. Collector of Internal Revenue*,[25] it took into account the reinvestigation conducted soon after these

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[23] *Rollo*, p. 104.

[24] 104 Phil. 819, 822-823 (1958).

[25] 116 Phil. 615, 618-619 (1962).

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letters were received and the revised assessment that resulted from the reinvestigations.

It is true that the Collector revised the original assessment on February 9, 1955; and appellant avers that this revision was invalid in that it was not made within the five-year prescriptive period provided by law (*Collector vs. Pineda,* 112 Phil. 321). But that fact is that the revised assessment was merely a result of petitioner Querol's requests for reconsideration of the original assessment, contained in his letters of December 14, 1951 and May 25, 1953. The records of the Bureau of Internal Revenue show that after receiving the letters, the Bureau conducted a reinvestigation of petitioner's tax liabilities, and, in fact, sent a tax examiner to San Fernando, La Union, for that purpose; that because of the examiner's report, the Bureau revised the original assessment, x x x. In other words, the reconsideration was granted in part, and the original assessment was altered. Consequently, the period between the petition for reconsideration and the revised assessment should be subtracted from the total prescriptive period (*Republic vs. Ablaza*, 108 Phil 1105).

The Court, in *Republic v. Lopez*,[26] even gave a detailed accounting of the time the BIR spent for each reinvestigation in order to deduct it from the five-year period set at that time in the statute of limitations:

It is now a settled ruled in our jurisdiction that the five-year prescriptive period fixed by Section 332(c) of the Internal Revenue Code within which the Government may sue to collect an assessed tax is to be computed from the last revised assessment resulting from a reinvestigation asked for by the taxpayer and (2) that where a taxpayer demands a reinvestigation, the time employed in reinvestigating should be deducted from the total period of limitation.

x x x x x x x x x

The first reinvestigation was granted, and a reduced assessment issued on 29 May 1954, from which date the Government had five years for bringing an action to collect.

The second reinvestigation was asked on 16 January 1956, and lasted until it was decided on 22 April 1960, or a period of 4 years, 3 months, and 6 days, during which the limitation period was interrupted.

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[26] 117 Phil. 575, 578 (1963).

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The Court reiterated the ruling in *Republic v. Lopez* in the case of *Commissioner of Internal Revenue v. Sison*,[27] "that where a taxpayer demands a reinvestigation, the time employed in reinvestigating should be deducted from the total period of limitation." Finally, in *Republic v. Arcache*,[28] the Court enumerated the reasons why the taxpayer is barred from invoking the defense of prescription, one of which was that, "In the first place, it appears obvious that the delay in the collection of his 1946 tax liability was due to his own repeated requests for reinvestigation and similarly repeated requests for extension of time to pay."

In this case, the BIR admitted that there was no new or additional evidence presented. Considering that the BIR issued its Preliminary Assessment Notice on 13 April 1994 and its Formal Assessment Notice on 14 April 1994, just one day before the three-year prescription period for issuing the assessment expired on 15 April 1994, it had ample time to make a factually and legally well-founded assessment. Added to the fact that the Final Decision that the CIR issued on 8 October 2002 merely affirmed its earlier findings, whatever examination that the BIR may have conducted cannot possibly outlast the entire three-year prescriptive period provided by law to collect the assessed tax, not to mention the eight years it actually took the BIR to decide the respondent's protest. The factual and legal issues involved in the assessment are relatively simple, that is, whether certain income tax deductions should be disallowed, mostly for failure to pay withholding taxes. Thus, there is no reason to suspend the running of the statute of limitations in this case.

The distinction between a request for reconsideration and a request for reinvestigation is significant. It bears repetition that a request for reconsideration, unlike a request for reinvestigation, cannot suspend the statute of limitations on the collection of an assessed tax. If both types of protest can effectively interrupt the running of the statute of limitations, an erroneous assessment may never prescribe. If the taxpayer fails to file a protest,

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[27] 117 Phil. 892, 895 (1963).

[28] 119 Phil. 604, 610 (1964).

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then the erroneous assessment would become final and unappealable.[29] On the other hand, if the taxpayer does file the protest on a patently erroneous assessment, the statute of limitations would automatically be suspended and the tax thereon may be collected long after it was assessed. Meanwhile the interest on the deficiencies and the surcharges continue to accumulate. And for an unrestricted number of years, the taxpayers remain uncertain and are burdened with the costs of preserving their books and records. This is the predicament that the law on the statute of limitations seeks to prevent.

The Court, in sustaining for the first time the suspension of the running of the statute of limitations in cases where the taxpayer requested for a reinvestigation, gave this justification:

> A taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection **to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government.**
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> This case has no precedent in this jurisdiction for it is the first time that such has risen, but there are several precedents that may be invoked in American jurisprudence. As Mr. Justice Cardozo has said: "The applicable principle is fundamental and unquestioned. **'He who prevents a thing from being done may not avail himself of the nonperformance which he himself occasioned, for the law says to him in effect "this is your own act, and therefore you are not damnified."'** (*R.H. Stearns Co. v. U.S.*, 78 L. ed., 647). (Emphasis supplied.)[30]

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[29] Revenue Regulations No. 12-85 provides that :

Section 7. *When to File Protest* – A protest must be filed within thirty (30) days from receipt of the assessment.

Section 9. *Finality of Assessments* – If a taxpayer who receives an assessment from the Bureau of Internal Revenue fails to file a protest within the period prescribed in Section 7 of these regulations, the said assessment shall become final and unappealable and the taxpayer is thereby precluded from disputing the assessment.

[30] *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*, 104 Phil. 819, 823 (1958).

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This rationale is not applicable to the present case where the respondent did nothing to prevent the BIR from collecting the tax. It did not present to the BIR any new evidence for its re-evaluation. At the earliest opportunity, respondent insisted that the assessment was invalid and made clear to the BIR its refusal to produce documents that the BIR requested. On the other hand, the BIR also communicated to the respondent its unwavering stance that its assessment is correct. Given that both parties were at a deadlock, the next logical step would have been for the BIR to issue a Decision denying the respondent's protest and to initiate proceedings for the collection of the assessed tax and, thus, allow the respondent, should it so choose, to contest the assessment before the CTA. Postponing the collection for eight long years could not possibly make the taxpayer feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. There was no legal, or even a moral, obligation preventing the CIR from collecting the assessed tax. In a similar case, *Cordero v. Conda*,[31] the Court did not suspend the running of the prescription period where the acts of the taxpayer did not prevent the government from collecting the tax.

The government also urges that partial payment is "acknowledgement of the tax obligation", hence a "waiver on the defense of prescription." But partial payment would not prevent the government from suing the taxpayer. Because, by such act of payment, the government is not thereby "persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant." Which, as stated in *Collector v. Suyoc Consolidated Mining Co., et al.,* L-11527, November 25, 1958, is the underlying reason behind the rule that prescriptive period is arrested by the taxpayer's request for reexamination or reinvestigation – even if "he has not previously waived it [prescription] in writing."

The Court reminds us, in the case of *Commissioner of Internal Revenue v. Algue, Inc.*,[32] of the need to balance the conflicting interests of the government and the taxpayers.

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[31] 124 Phil. 927, 932 (1966).

[32] G.R. No. L-18896, 17 February 1988, 158 SCRA 9, 11.

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Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interest of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of common good, may be achieved.

Thus, the three-year statute of limitations on the collection of an assessed tax provided under Section 269(c) of the Tax Code of 1977, a law enacted to protect the interests of the taxpayer, must be given effect. In providing for exceptions to such rule in Section 271, the law strictly limits the suspension of the running of the prescription period to, among other instances, protests wherein the taxpayer requests for a reinvestigation. In this case, where the taxpayer merely filed two protest letters requesting for a reconsideration, and where the BIR could not have conducted a reinvestigation because no new or additional evidence was submitted, the running of statute of limitations cannot be interrupted. The tax which is the subject of the Decision issued by the CIR on 8 October 2002 affirming the Formal Assessment issued on 14 April 1994 can no longer be the subject of any proceeding for its collection. Consequently, the right of the government to collect the alleged deficiency tax is barred by prescription.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED.* The assailed *en banc* Decision of the CTA in CTA EB No. 37 dated 22 February 2005, cancelling Assessment Notice No. 000688-80-7333 issued against Philippine Global Communication, Inc. for its 1990 income tax deficiency for the reason that it is barred by prescription, is hereby *AFFIRMED.* No costs.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.