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THIRD DIVISION

[G.R. No. 76281. September 30, 1991]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs.* **WYETH SUACO LABORATORIES, INC. and THE COURT OF TAX APPEALS,** *respondents*.

SYLLABUS

1. TAXATION; CIVIL REMEDIES FOR COLLECTION OF TAXES; INTERRUPTION OF PERIOD OF LIMITATION FOR COLLECTION BY DISTRAINT OR LEVY; RULE. — Settled is the rule that the prescriptive period provided by law to make a collection by distraint or levy or by a proceeding in court is interrupted once a taxpayer requests for reinvestigation or reconsideration of the assessment. In the case of *Commissioner of Internal Revenue vs. Capitol Subdivision, Inc.* (G.R. No. L-18993, April 30, 1964, 10 SCRA 773), this Court held: "The period of prescription of action to collect a taxpayer's deficiency income tax assessment is interrupted when the taxpayer requests for a review or reconsideration of said assessment, and starts to run again when said request is denied." In another case, this Court stated that the statutory period of limitation for collection may be interrupted if by the taxpayer's 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.

2. ID.; INCOME TAX; RETURN AND PAYMENT OF TAXES WITHHELD AT SOURCE; RULE. — It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it x x x It is the lifeblood of the government and so should be collected without unnecessary hindrance x x x In line with this principle, the Tax Code, particularly Section 54 (a) [now Section 51 (a)] provides that "the Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require the withholding agents to pay or deposit the taxes deducted and withheld at more frequent intervals when necessary to protect the interest of the government. The return

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shall be filed and the payment made within 25 days from the close of each calendar quarter." Presently, Revenue Regulation No. 6-85 effective July 1, 1985, requires the filing of monthly return and payment of taxes withheld at source within (10) days after the end of each month.

3. ID.; ID.; COLLECTION AND ASSESSMENT; EXAMINER'S ASSESSMENT; PRESUMED CORRECT AND MADE IN GOOD FAITH. — With regards to the accuracy of the assessment on deficiency sales tax, we rule that the examiner's assessment should be given full weight and credit, in the absence of proof submitted by Wyeth Suaco to the contrary. This is in line with our ruling in several cases wherein we said that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

D E C I S I O N

FERNAN, *C.J.*:

The sole issue in this petition for review on *certiorari* is whether or not petitioner's right to collect deficiency withholding tax at source and sales tax liabilities from private respondent is barred by prescription.

The antecedent facts are as follows:

Private respondent Wyeth Suaco Laboratories, Inc. (Wyeth Suaco for brevity) is a domestic corporation engaged in the manufacture and sale of assorted pharmaceutical and nutritional products. Its accounting period is on a fiscal year basis ending October 31 of every year.

By virtue of Letter of Authority No. 52415 dated June 17, 1974 issued by then Commissioner of Internal Revenue Misael P. Vera, Revenue Examiner Dante Kabigting conducted an investigation and examination of the books of accounts of Wyeth

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Suaco.[1] On October 15, 1974, he submitted a report containing the result of his investigation. The report disclosed that Wyeth Suaco was paying royalties to its foreign licensors as well as remuneration for technical services to Wyeth International Laboratories of London. Wyeth Suaco was also found to have declared cash dividends on September 27, 1973 and these were paid on October 31, 1973. However, it allegedly failed to remit withholding tax at source for the fourth (4th) quarter of 1973 on accrued royalties, remuneration for technical services and cash dividends, resulting in a deficiency withholding tax at source in the aggregate amount of ₱3,178,994.15.[2]

Moreover, it was reported that during the periods from November 1, 1972 to December 31, 1972 and January 1, 1973 to October 31, 1973, Wyeth Suaco deducted the cost of non-deductible raw materials, resulting in its alleged failure to pay the correct amount of advance sales tax. There was reportedly also a short payment of advance sales tax in its importation of "Mega Polymycin D" on October 3, 1972. All these resulted in a deficiency sales tax in the amount of ₱60,855.21 and compromise penalty in the amount of ₱300.00 or a total amount of ₱61,155.21.[3]

Consequently, the Bureau of Internal Revenue assessed Wyeth Suaco on the aforesaid tax liabilities in two (2) notices dated December 16, 1974 and December 17, 1974. These assessment notices were both received by Wyeth Suaco on December 19, 1974.[4]

Thereafter, Wyeth Suaco through its tax consultant SGV & Co., sent the Bureau of Internal Revenue two (2) letters dated January 17, 1975 and February 8, 1975, protesting the assessments and requesting their cancellation or withdrawal on the ground that said assessments lacked factual or legal basis.

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[1] Original Record, Volume II, p. 61.

[2] Original Record, Volume II, pp. 65-66; 62-63.

[3] Original Record, Volume I, pp. 9-10.

[4] Original Record, Volume I, pp. 7-10.

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Wyeth Suaco argued that it was not liable to pay withholding tax at source on the accrued royalties and dividends because they have yet to be remitted or paid abroad. It claimed that it was not able to remit the balance of fifty percent (50%) of the accrued royalties to its foreign licensors because of Central Bank Circular No. 289 allowing remittance of royalties up to fifty percent (50%) only. With regard to what the Bureau of Internal Revenue claimed as the amount of ₱2,952,391.00 forming part of the cash dividends declared in 1973, Wyeth Suaco alleged that the same was due its foreign stockholders. Again, Wyeth Suaco was not able to remit these dividends because of the restriction of the Central Bank in a memorandum implementing CB Circular No. 289 dated February 21, 1970. Thus, Wyeth Suaco's contention was that a withholding tax at source on royalties and dividends becomes due and payable only upon their actual payment or remittance.

On the matter of the withholding tax at source on remuneration for technical services, Wyeth Suaco insisted that it was up-to-date in remitting the corresponding withholding tax on this income to the Bureau of Internal Revenue.

As to the assessed deficiency sales tax, Wyeth Suaco maintained that the difference between its landed cost figure (which is the basis for computing the advance sales tax) and that of the revenue examiner, was due to the use of estimated amounts by the Bureau of Customs and to foreign exchange differential.

Wyeth Suaco however, admitted liability with respect to the short payment of advance sales tax in the amount of ₱1,000.00 on its importation of "Mega Polymycin D."[5]

On September 12, 1975, the Commissioner of Internal Revenue asked Wyeth Suaco to avail itself of the compromise settlement under LOI 308. In its answer, Wyeth Suaco manifested its conformity to a 10% compromise provided it be applied only to the basic sales tax, excluding surcharge and interest. As to

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[5] Original Record, Volume II, pp. 137-145.

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the deficiency withholding tax at source, Wyeth took exception on the ground that it involves purely a legal question and some of the amounts included in the assessment have already been paid.

On December 10, 1979, petitioner, thru then acting Commissioner of Internal Revenue Ruben B. Ancheta, rendered a decision reducing the assessment of the withholding tax at source for 1973 to ₱1,973,112.86. However, the amount of ₱61,155.21 as deficiency sales tax remained the same.[6]

Thereafter, Wyeth Suaco filed a petition for review in the Court of Tax Appeals on January 18, 1980, praying that petitioner be enjoined from enforcing the assessments by reason of prescription and that the assessments be declared null and void for lack of legal and factual basis.[7]

On February 7, 1980, petitioner issued a warrant of distraint of personal property and warrant of levy of real property against private respondent to enforce collection of the deficiency taxes. These were served on private respondent on March 12, 1980.[8] However, collection of the deficiency taxes by virtue of the warrants of distraint and levy was enjoined by respondent court upon motion of Wyeth Suaco in a resolution dated May 22, 1980.[9]

On May 30, 1980, petitioner filed his answer to Wyeth Suaco's petition for review praying, among others, that private respondent be declared liable to pay the amount of ₱61,155.21 as deficiency sales tax for the periods November 1, 1972 to December 31, 1972 and January 1, 1973 to October 31, 1973, plus 14% annual interest thereon from December 17, 1974 until full payment thereof pursuant to Section 183 (now Section 193) of the Tax Code, and the amount of ₱1,973,112.86 as deficiency withholding

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[6] Original Record, Volume I, pp. 11-12.

[7] *Rollo*, pp. 44-49; Original Record, Volume I, pp. 1-6.

[8] Original Record, Volume I, pp. 24-25.

[9] Original Record, Volume I, pp. 43-44.

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tax at source for the 4th quarter of 1973 plus 5% surcharge and 14% per annum interest thereon from December 16, 1974 to December 16, 1977, pursuant to Section 51 (e) of the Tax Code of 1977, as amended.[10]

On August 29, 1986, the Court of Tax Appeals rendered a decision enjoining the Commissioner of Internal Revenue from collecting the deficiency taxes, the dispositive portion of which reads as follows:

"WHEREFORE, the decision appealed from is hereby reversed and respondent Commissioner of Internal Revenue is hereby enjoined from collecting the deficiency withholding tax at source for the fourth quarter of 1973 as well as the deficiency sales tax assessed against petitioner (Wyeth Suaco). Without pronouncement as to costs.[11]

The basis of the above decision was the finding of the Tax Court that while the assessments for the deficiency taxes were made within the five-year period of limitation, the right of petitioner to collect the same has already prescribed, in accordance with Section 319 (c) of the Tax Code of 1977. The said law provides that an assessment of any internal revenue tax within the five-year period of limitation may be collected by distraint or levy or by a proceeding in court, but only if begun within five (5) years after the assessment of the tax.

Hence, this recourse by petitioner.

The applicable laws in the instant case are Sections 318 and 319 (c) of the National Internal Revenue Code of 1977 (now Sections 203 and 224 of the National Internal Revenue Code of 1986), to wit:

"SEC. 318. Period of limitation upon assessment and collection — Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed,

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[10] *Rollo*, pp. 50-53.

[11] *Rollo*, pp. 30-35. through Associate Judge Alex Z. Reyes, *ponente*, and Presiding Judge Amante Filler and Associate Judge Constante C. Roaquin, *concurring*.

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and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. x x x"

"SEC. 319. Exceptions as to period of limitation of assessment and collection of taxes. —

x x x x x x x x x

(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 or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to 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.*" (italics supplied).

The main thrust of petitioner for the allowance of this petition is that the five-year prescriptive period provided by law to make a collection by distraint or levy or by a proceeding in court has not yet prescribed. Although he admits that more than five (5) years have already lapsed from the time the assessment notices were received by private respondent on December 19, 1974 up to the time the warrants of distraint and levy were served on March 12, 1980, he avers that the running of the prescriptive period was stayed or interrupted when Wyeth Suaco protested the assessments. Petitioner argues that the protest letters sent by SGV & Co. in behalf of Wyeth Suaco dated January 17, 1975 and February 8, 1975, requesting for withdrawal and cancellation of the assessments were actually requests for reinvestigation or reconsideration, which could interrupt the running of the five-year prescriptive period.

Wyeth Suaco, on the other hand, maintains the position that it never asked for a reinvestigation nor reconsideration of the assessments. What it requested was the cancellation and withdrawal of the assessments for lack of legal and factual basis. Thus, its protest letters dated January 17, 1975 and February 8, 1975 did not suspend or interrupt the running of the five-year prescriptive period.

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Settled is the rule that the prescriptive period provided by law to make a collection by distraint or levy or by a proceeding in court is interrupted once a taxpayer requests for reinvestigation or reconsideration of the assessment. In the case of *Commissioner of Internal Revenue vs. Capitol Subdivision, Inc.*,[12] this Court held:

"The period of prescription of action to collect a taxpayer's deficiency income tax assessment is interrupted when the taxpayer requests for a review or reconsideration of said assessment, and starts to run again when said request is denied."

In another case, this Court stated that the statutory period of limitation for collection may be interrupted if by the taxpayer's 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.[13] Also in the case of *Cordero vs. Gonda*,[14] we held:

"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.' *This is the underlying reason behind the rule that the prescriptive period is arrested by the taxpayer's request for re-examination or reinvestigation — even if he 'has not previously waived it (prescription in writing)'* x x x" (italics supplied).

Thus, the pivotal issue in this case is whether or not Wyeth Suaco sought reinvestigation or reconsideration of the deficiency tax assessments issued by the Bureau of Internal Revenue.

After carefully examining the records of the case, we find that Wyeth Suaco admitted that it was seeking reconsideration

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[12] G.R. No. L-18993, April 30, 1964, 10 SCRA 773.

[13] *Commissioner of Internal Revenue v. Consolidated Mining Co.*, G.R. No. 11527, November 29, 1968.

[14] G.R. No. L-22369, October 15, 1966, 18 SCRA 331.

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of the tax assessments as shown in a letter of James A. Gump, its President and General Manager, dated April 28, 1975, the relevant portion of which is quoted hereunder, to wit:

"We submit this letter as a follow-up to our protest filed with your office, through our tax advisers, Sycip, Gorres, Velayo & Co., on January 20 and February 10, 1975 regarding alleged deficiency on withholding tax at source of ₱3,178,994.15 and on percentage tax of ₱60,855.21, including interest and surcharges, *on which we are seeking reconsideration.*"[15] (italics supplied)

Furthermore, when Wyeth Suaco thru its tax consultant SGV & Co. sent the letters protesting the assessments, the Bureau of Internal Revenue, Manufacturing Audit Division, conducted a review and reinvestigation of the assessments. This fact was admitted by Wyeth Suaco thru its Finance Manager in a letter dated July 1, 1975 addressed to the Chief, Tax Accounts Division. The pertinent portion of said letter reads as follows:

"This will acknowledge receipt of your letter dated May 22, 1975 regarding our alleged income and business tax deficiencies for fiscal year 1972/73.

x x x x x x x x x

Nevertheless, please be advised that the deficiency tax stated in your letter is what we are protesting on pursuant to the letters we filed with the Bureau of Internal Revenue on January 20, 1975 and on February 10, 1975.

x x x x x x x x x

As we understand, *the matter is now undergoing review and consideration by your Manufacturing Audit Division.* Pending the outcome of their decision, we regret our inability to make settlement. x x x"[16] (Italics supplied).

Although the protest letters prepared by SGV & Co. in behalf of private respondent did not categorically state or use the words "reinvestigation" and "reconsideration," the same are to be

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[15] Original Record, Volume II, pp. 116-117.

[16] Original Record, Volume II, p. 102.

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treated as letters of reinvestigation and reconsideration. By virtue of these letters, the Bureau of Internal Revenue ordered its Manufacturing Audit Division to review the assessments made. Furthermore, private respondent's claim that it did not seek reinvestigation or reconsideration of the assessments is belied by the subsequent correspondence or letters written by its officers, as shown above.

These letters of Wyeth Suaco interrupted the running of the five-year prescriptive period to collect the deficiency taxes. The Bureau of Internal Revenue, after having reviewed the records of Wyeth Suaco, in accordance with its request for reinvestigation, rendered a final assessment. This final assessment issued by then Acting Commissioner Ruben B. Ancheta was dated December 10, 1979 and received by private respondent on January 2, 1980, fixed its tax liability at ₱1,973,112.86 as deficiency withholding tax at source and ₱61,155.21 as deficiency sales tax. It was only upon receipt by Wyeth Suaco of this final assessment that the five-year prescriptive period started to run again.

Verily, the original assessments dated December 16 and 17, 1974 were both received by Wyeth Suaco on December 19, 1974. However, when Wyeth Suaco protested the assessments and sought its reconsideration in two (2) letters received by the Bureau of Internal-Revenue on January 20 and February 10, 1975, the prescriptive period was interrupted. This period started to run again when the Bureau of Internal Revenue served the final assessment to Wyeth Suaco on January 2, 1980. Since the warrants of distraint and levy were served on Wyeth Suaco on March 12, 1980, then, only about four (4) months of the five-year prescriptive period was used.

Having resolved the issue of prescription, we now come to the merits of the case.

Wyeth Suaco questions the legality of the regulation imposed by the Bureau of Internal Revenue of requiring a withholding agent or taxpayer to remit the taxes deducted and withheld at source on incomes which have not yet been paid. It maintains

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the stand that withholding tax at source should only be remitted to the Bureau of Internal Revenue once the incomes subject to withholding tax at source have actually been paid. Thus, private respondent avers that it was not liable to remit the taxes withheld at source on royalties and dividends unless these incomes have been actually paid to its foreign licensors and stockholders.

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it x x x It is the lifeblood of the government and so should be collected without unnecessary hindrance x x x.[17]

In line with this principle, the Tax Code, particularly Section 54 (a) [now Section 51 (a)] provides that "the Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require the withholding agents to pay or deposit the taxes deducted and withheld at more frequent intervals when necessary to protect the interest of the government. The return shall be filed and the payment made within 25 days from the close of each calendar quarter." Presently, Revenue Regulation No. 6-85 effective July 1, 1985, requires the filing of monthly return and payment of taxes withheld at source within (10) days after the end of each month.

Moreover, the records show that Wyeth Suaco adopted the accrual method of accounting wherein the effect of transactions and other events on assets and liabilities are recognized and reported in the time periods to which they relate rather than only when cash is received or paid. The "Report of Investigation" submitted by the tax examiner indicated that accrual was the basis of the taxpayer's return.[18] Thus, private respondent recorded accrued royalties and dividends payable as well as the withholding tax at source payable on these incomes. Having

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[17] *Commissioner of Internal Revenue v. Algue*, Inc., No. L-28896, February 17, 1988, 158 SCRA 9.

[18] Original Record, Volume II, p. 64.

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deducted and withheld the tax at source and having recorded the withholding tax at source payable in its books of accounts, private respondent was obligated to remit the same to the Bureau of Internal Revenue.

With regards to the accuracy of the assessment on deficiency sales tax, we rule that the examiner's assessment should be given full weight and credit, in the absence of proof submitted by Wyeth Suaco to the contrary. This is in line with our ruling in several cases wherein we said that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[19] The case of *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.*,[20] where this Court cited 51 Am. Jur. pp. 620-621, states the principle in detail, thus:

"All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the State in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law."

The final assessment issued by the Bureau of Internal Revenue declared the issuance of deficiency sales tax assessments to be legal and valid. It was ascertained that during the investigation, Wyeth Suaco deducted non-deductible raw materials which were not subjected to advance sales tax thereby resulting in its failure to pay the correct amount of sales tax under Section 183, in relation to Section 186 and 186-B of the Tax Code,

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[19] *Sy Po v. Court of Tax Appeals*, No. L-81446, August 18, 1988, 164 SCRA 524.

[20] No. 68230, November 25, 1986, 145 SCRA 671.

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prior to and after amendment by Presidential Decree No. 69. Wyeth Suaco was not able to refute this by submitting supporting documents.[21]

WHEREFORE, the petition is GRANTED. Wyeth Suaco Laboratories, Inc. is hereby ordered to pay the Bureau of Internal Revenue the amount of ₱1,973,112.86 as deficiency withholding tax at source, with interest and surcharge in accordance with law, without prejudice to any reduction brought about by payments or remittance made. Wyeth Suaco Laboratories, Inc. is also ordered to pay the Bureau of Internal Revenue the amount of ₱60,855.21 as deficiency sales tax with interest and surcharge in accordance with law. Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and *Davide, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 83583-84. September 30, 1991]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **RIO TUBA NICKEL MINING CORPORATION and COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. TAXATION; REFUND PRIVILEGE UNDER R.A. NO. 1435; IMPOSITION OF ADDITIONAL MUNICIPAL OR CITY ORDINANCE TAX, NOT A PRE-REQUISITE. — The proviso in Section 5 standing alone is enough basis for the grant of refund. The statutory grant of a partial exemption from the

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[21] Original Record, Vol. I, p. 11.