

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
Quezon City

EN BANC

COMMISSIONER OF  
INTERNAL REVENUE,  
Petitioner,

CTA EB NO. 2232  
(CTA Case No. 9421)

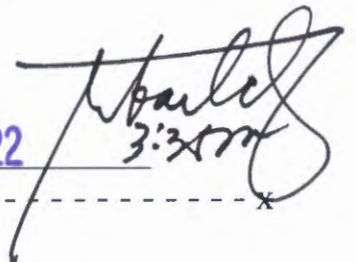
Present:

- versus -

DEL ROSARIO, *P.J.*,  
CASTAÑEDA, JR.,  
UY,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO, *and*,  
CUI-DAVID, *JJ.*

SUNNYPHIL INCORPORATED,  
Respondent.

Promulgated:  
**MAY 24 2022**



x-----x

**DECISION**

**BACORRO-VILLENA, J.:**

At bar is a Petition for Review<sup>1</sup> filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) against respondent Sunnyphil Incorporated (**respondent/SI**) pursuant to Section 2(a)<sup>2</sup>, Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). The petition seeks

<sup>1</sup> Filed on 12 March 2020, *Rollo*, pp. 9-18.

<sup>2</sup> **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 2 of 12

X-----X

the reversal of the Decision dated 09 October 2019<sup>3</sup> (**assailed Decision**) and Resolution dated 06 February 2020<sup>4</sup> (**assailed Resolution**) of the Court's Third Division in CTA Case No. 9421, entitled *Sunnyphil Incorporated v. Commissioner of Internal Revenue*.

Petitioner is the duly appointed CIR, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, inter alia, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates (TCCs), pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.

Respondent, on the other hand, is a corporation duly organized and existing under the Philippine Laws and is registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration (COR) No. 9RC0000190247 with Tax Identification No. (TIN) 226-852-389-000, with principal office at Lot 91, A. Bagsakan Road, FTI Complex, Western Bicutan, Taguig City.

**The antecedent facts follow.**

On 14 January 2010, petitioner issued a Formal Assessment Notice (FAN) IT-LA1154-06-10-0084, WE-LA1154-06-10-0084, IT-LA1154-06-10-0084 and MC-LA1154-06-10-0084<sup>5</sup> against respondent for deficiency income tax (IT), expanded withholding tax (EWT), improperly accumulated earning tax (IAET) and compromise penalty for the taxable year (TY) 2006.

On 27 January 2010, respondent filed its Formal Protest dated 26 January 2010<sup>6</sup> seeking reconsideration of the FAN. On 03 May 2016, respondent received a Preliminary Collection Letter (PCL) dated 27 April 2016.<sup>7</sup> ✍

---

<sup>3</sup> Penned by Associate Justice Erlinda P. Uy, with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring. Division Docket, pp. 339-353.

<sup>4</sup> Id., pp. 382-387.

<sup>5</sup> Exhibit "P-1", id., pp. 181-185.

<sup>6</sup> Exhibit "P-2", id., pp. 186-202.

<sup>7</sup> Exhibit "P-3", id., p. 203.

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 3 of 12

X ----- X

Later on 13 May 2016, respondent also received the Final Decision on Disputed Assessment (FDDA) dated 12 April 2016<sup>8</sup> that petitioner issued, affirming the assessment and demanding the payment of the total sum of ₱8,906,107.84 representing respondent's tax deficiencies. On 16 May 2016, respondent received a Final Notice Before Seizure<sup>9</sup> (FNBS).

On 25 May 2016, respondent paid its tax liabilities.<sup>10</sup> However, in its letters dated 26 May 2016<sup>11</sup> and 30 May 2016<sup>12</sup>, respectively, to Abilia S. Bentulan (**Chief Bentulan**), the BIR's Chief of Collection Division, Revenue Region No. 8, Makati City, respondent stated that its payment was made under protest.

On 01 August 2016, respondent filed before the BIR an administrative claim for refund<sup>13</sup> grounded on prescription of the BIR's right to collect the taxes (it paid previously under protest).

Nine days later or on 10 August 2016, respondent filed a Petition for Review<sup>14</sup> before this Court seeking judicial intervention over its claim for refund. The case was raffled to the First Division.

After the First Division issued summons<sup>15</sup>, petitioner filed his Motion for Additional Time to File Answer<sup>16</sup> which was granted in an Order dated 13 March 2017.<sup>17</sup> On 10 March 2017, petitioner filed his Answer.<sup>18</sup>

After the pre-trial<sup>19</sup>, petitioner filed his Pre-Trial Brief<sup>20</sup> on 11 May 2017, while respondent filed its own Pre-Trial Brief on 19 May 2017.<sup>21</sup> ↗

---

<sup>8</sup> Exhibit "P-4", id., pp. 204-212.

<sup>9</sup> Exhibit "P-5", id., p. 213.

<sup>10</sup> Paragraph 8, Joint Stipulation of Facts and Issues (JSFI), id., p. 142.

<sup>11</sup> Exhibit "P-10", id., p. 230.

<sup>12</sup> Exhibit "P-11", id., p. 231.

<sup>13</sup> Exhibit "P-12", id., pp. 232-240.

<sup>14</sup> Id., pp. 10-25.

<sup>15</sup> Dated 30 August 2016, id., p. 81.

<sup>16</sup> Id., pp. 105-107.

<sup>17</sup> Id., p. 109.

<sup>18</sup> Id., pp. 111-115.

<sup>19</sup> Notice of Pre-Trial Conference dated 29 March 2017, id., pp. 117-118.

<sup>20</sup> Id., pp. 119-122.

<sup>21</sup> Id., pp. 123-128.

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 4 of 12

X ----- X

On 02 June 2017, the parties submitted their Joint Stipulation of Facts and Issues<sup>22</sup> (JSFI) which the Court approved in its Resolution dated 13 June 2017.<sup>23</sup> On 18 July 2017, the First Division issued a Pre-Trial Order<sup>24</sup> thereby terminating the pre-trial.

In the trial that ensued thereafter, respondent presented its lone witness, Rosalie Tanguanco (**Tanguanco**), who testified by way of her judicial affidavit.<sup>25</sup> In addition to identifying and authenticating respondent's documentary evidence, Tanguanco's testimony was offered to prove the prescription of the BIR's right to collect, the illegality of the BIR's collection, respondent's entitlement to the refund, and the timeliness of respondent's claim for refund.

On 18 September 2017, respondent filed its Formal Offer of Evidence (FOE) offering Exhibits "P-1" to "P14-A".<sup>26</sup> In a Resolution

<sup>22</sup> Id., pp. 141-145.

<sup>23</sup> Id., p. 155.

<sup>24</sup> Id., pp. 157-163.

<sup>25</sup> Exhibit "P-14", id., pp. 131-140.

<sup>26</sup> Id., pp. 175-180.

Exhibit No.	Description
"P-1"	Formal Assessment Notice (FAN) IT-LA1154-06-10-0084, WE-LA1154-06-10-0084, IT-LA1154-05-0084 and MC-LA1154-06-0084 dated January 14, 2010.
"P-2"	Formal Protest dated January 26, 2010 seeking reconsideration against the FAN dated January 14, 2010.
"P-3"	Preliminary Collection Letter (PCL) dated April 27, 2016.
"P-4"	Decision dated April 12, 2016, issued by former Commissioner of Internal Revenue, Kim S. Jacinto-Henares.
"P-5"	Final Notice Before Seizure (FNBS) received on May 16, 2016.
"P-6"	BIR Forms 0605 for alleged Income Tax deficiency payment in the amount of ₱8,235,954.78.
"P-7"	BIR Forms 0605 for alleged Improperly Accumulated Earnings Tax deficiency payment in the amount of ₱637,217.77.
"P-8"	BIR Forms 0605 for alleged Expanded Withholding Tax deficiency payment in the amount of ₱16,935.32.
"P-9"	BIR Forms 0605 for alleged Compromise Penalty payment in the amount of ₱16,000.00.
"P-10"	Letter dated May 26, 2016 addressed to Ms. Abilia S. Bentulan, Chief Collection Division, Revenue Region No. 8.
"P-11"	Letter dated May 30, 2016, to Ms. Bentulan, reiterating that the payment made by Petitioner on May 25, 2016 was under protest.
"P-12"	Administrative claim for refund dated July 27, 2016, which was filed on August 1, 2016.
"P-13"	Letter dated September 1, 2016 issued by the BIR.
"P-14"	Judicial Affidavit of Ms. Rosalie Tanguanco dated May 19, 2017.
"P-14-A"	Signature of Ms. Rosalie Tanguanco.

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 5 of 12

X ----- X

dated 16 November 2017<sup>27</sup>, the First Division admitted all of respondent's exhibits.

*Per* its Petition for Review and the witnesses it presented, respondent mainly raised the issue of prescription of petitioner's right to collect the taxes. Although it paid the amount of tax assessed, it maintained that it did so under protest and that it is entitled to refund owing to the clear and indisputable fact that petitioner's right to collect it had prescribed.<sup>28</sup>

For his part, petitioner presented the testimony of Revenue Officer Aileen R. Sarreal (RO Sarreal). In her Judicial Affidavit<sup>29</sup>, she testified essentially that the BIR's collection of taxes from respondent was in accordance with the law and existing procedure.

On 12 February 2018, petitioner filed his FOE offering Exhibits "R-1" to "R-6, inclusive of their sub-markings.<sup>30</sup> The First Division admitted all of petitioner's exhibits in a Resolution dated 05 July 2018.<sup>31</sup>

Thereafter, as the First Division ordered, respondent filed its Memorandum<sup>32</sup> on 14 August 2018. Petitioner also filed his Memorandum<sup>33</sup> on 13 September 2018.

<sup>27</sup> Id., pp. 264-265.

<sup>28</sup> Petition, *supra*; see also Division Docket, Volume 1, pp. 302-319.

<sup>29</sup> Exhibit "R-6", *id.*, pp. 268-272.

<sup>30</sup> *Id.*, pp. 289-291.

Exhibit No.	Description
"R-1"	Memorandum of Assignment issued on April 27, 2016.
"R-1-a"	Name, signature and position of Abilia S. Bentulan.
"R-2"	BIR Form 2110 for the abatement of VAT Delinquency Surcharge and Interest liability filed by Sunnyphil Inc.
"R-3"	BIR Form 2110 for the abatement of Income Tax Delinquency Surcharge and Interest liability filed by Sunnyphil Inc.
"R-4"	BIR Form 2110 for the abatement of Improperly Accumulated Earnings Tax, Delinquency Surcharge and Interest liability filed by Sunnyphil Inc.
"R-5"	Report of Delinquent Account. Signature above the printed name of Aileen R. Sarreal.
"R-6"	Judicial Affidavit of Aileen S. Sarreal, Respondent's Witness.
"R-6-a"	Name and signature of Aileen S. Sarreal.

<sup>31</sup> *Id.*, pp. 300-301.

<sup>32</sup> *Id.*, pp. 302-319.

<sup>33</sup> *Id.*, pp. 325-332.

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 6 of 12

X ----- X

On 01 October 2018, the case was transferred to the Third Division<sup>34</sup> pursuant to CTA Administrative Circular No. 02-2018.<sup>35</sup> In a Resolution dated 08 November 2018<sup>36</sup>, the Third Division submitted the case for decision.

On 09 October 2019, the Third Division promulgated the assailed Decision.<sup>37</sup> The dispositive portion reads:

...

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. [Respondent] is entitled to the refund of taxes it paid for taxable year 2006, as the same was collected under a void assessment.

Accordingly, [petitioner] is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE**, in favor [of respondent], the aggregate amount of **P8,906,107.84**, representing its payment of assessed deficiency taxes, including penalties, for taxable year 2006.

**SO ORDERED.**

...

In resolving the *Petition for Review* before it, the Third Division invalidated petitioner's assessment of respondent on the ground that it was a Memorandum not a Letter of Authority (LOA) that was issued to the RO who conducted the audit investigation (of respondent). In light of such declaration of the assessment's invalidity, the Third Division no longer discussed the issue raised in respondent's petition, *i.e.*, whether the BIR's right to collect from respondent had indeed prescribed.

On 06 November 2019, petitioner filed a Motion for Reconsideration<sup>38</sup> (MR) of the assailed Decision. In the similarly assailed Resolution dated 06 February 2020<sup>39</sup>, the Third Division denied the same. The dispositive portion thereof reads: ↗

---

<sup>34</sup> See Order dated 01 October 2018, *id.*, p. 334.

<sup>35</sup> Reorganizing the Three (3) Divisions of the Court.

<sup>36</sup> Division Docket, p. 336.

<sup>37</sup> *Supra* at note 2.

<sup>38</sup> Division Docket, pp. 361-366.

<sup>39</sup> *Supra* at note 3.

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 7 of 12

X ----- X

...

**WHEREFORE**, in light of the foregoing considerations, [petitioner's] **MOTION FOR RECONSIDERATION** filed on November 6, 2019 is **DENIED** for lack of merit.

**SO ORDERED.**

...

Aggrieved by the Third Division's action, petitioner now comes before the Court *En Banc*<sup>40</sup> and raises this singular issue for resolution –

WHETHER THE HONORABLE THIRD DIVISION OF THE COURT OF TAX APPEALS (CTA) ERRED IN DENYING HEREIN PETITIONER COMMISSIONER OF INTERNAL REVENUE'S MOTION FOR RECONSIDERATION.<sup>41</sup>

On 02 March 2021<sup>42</sup>, the Court *En Banc* ordered respondent to file its comment on petitioner's Petition for Review. On 17 March 2021, respondent filed its Comment.<sup>43</sup> Subsequently, in a Resolution dated 26 May 2021<sup>44</sup>, the Court *En Banc* submitted the instant Petition for Review for decision.

In support of his present petition, petitioner argues that it was an error for the Third Division to grant respondent's claim for refund. He contends that despite the lack of a LOA authorizing the RO who conducted the assessment of respondent, the issuance of a Memorandum to such effect was nevertheless enough to clothe such RO with authority.

Respondent, on the other hand, agrees with the Third Division's findings.

**The Court *En Banc* resolves below.** 

---

<sup>40</sup> Supra at note 1.

<sup>41</sup> *Rollo*, p. 12.

<sup>42</sup> See Resolution dated 02 March 2011, *id.*, pp. 112-113.

<sup>43</sup> *Id.*, pp. 114-118.

<sup>44</sup> *Id.*, pp. 120-121.

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 8 of 12

X ----- X

Before the Court *En Banc* proceeds to the resolution of the sole issue raised, it is worthy to note that respondent's prior Petition for Review filed with the Court in Division was mainly grounded on petitioner's supposed prescribed action (of collection) against it. It did not raise any issue on the invalidity of petitioner's assessment but sought refund of the taxes it paid under protest on such ground. Conversely put, its case was not of disputed assessment but of refund. It is on this note that We shall essentially anchor the resolution of the present petition.

Section 203, in relation to Section 222 of the NIRC of 1997, as amended, provides for the periods within which the BIR may assess and collect taxes, to wit:

...

**SEC. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) 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 (3)-year period shall be counted from the day the return was filed. For 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.

...

**SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

(a) In the case of a false or fraudulent return with intent to evade tax 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 filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so



**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 9 of 12

X-----X

agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.


(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

...

The period of tax collection has remained a point of contention due to the vagueness of the statute, as a plain reading thereof would show that no period for collection is specified for assessments where no fraud is involved or where no extensions were agreed upon. However, it is this Court's view that a period of five (5) years should still be considered to apply to regular assessments given that Section 222 of the NIRC of 1997, as amended, has extended the applicability of the 5-year period even in circumstances where fraud is absent as evinced (more particularly) by Section 222(d) of the same Tax Code.

In the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue*<sup>45</sup> (BPI), the Supreme Court made reference to the fact that Section 222(c) of the NIRC of 1997, as amended, is but a recreation of Section 319(c) of the then 1977 Tax Code; except for the change in the prescriptive period to collect from three (3) years to 5 years. 

<sup>45</sup>

G.R. No. 181836, 09 July 2014; Citations omitted.

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 10 of 12

X ----- X


In *BPI*, the issue was about petitioner's authority to collect taxes pursuant to a regular assessment. Nonetheless, the Supreme Court applied the period provided under Section 319(c) [now Section 222(c)]. There, the Supreme Court held:

...

To determine prescription, what is essential only is that the facts demonstrating the lapse of the prescriptive period were sufficiently and satisfactorily apparent on the record either in the allegations of the plaintiff's complaint, or otherwise established by the evidence. Under the then applicable Section 319(c) [now, 222(c)] of the National Internal Revenue Code (NIRC) of 1977, as amended, any internal revenue tax which has been assessed within the period of limitation may be collected by distraint or levy, and/or court proceeding within three years [five years] following the assessment of the tax. The assessment of the tax is deemed made and the three-year [five-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>46</sup>

...

In *BPI*, the Supreme Court applied a 3-year prescriptive period only because the taxes involved were assessed in 1989 or prior to the 1977 Tax Code's amendment. In the present case, respondent was assessed for alleged deficiency taxes in 2010 thus, the 5-year period under Section 222(c) of the NIRC of 1997, as amended, would now apply.

The records show that respondent received the FAN on 14 January 2010. From then on, petitioner would have five (5) years or until 14 January 2015 to collect respondent's alleged tax deficiencies through distraint, levy, or a collection suit instituted before this Court. However, petitioner took no action to collect from respondent within the said 5-year period. As the records clearly show, respondent received the FDDA, PCL, and FNBS only on 13 May 2016, 03 May 2016, and 16 May 2016, respectively, or more than a year after the end of the 5-year prescribed period. 

**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)

CIR v. Sunnyphil Incorporated

Page 11 of 12

X ----- X


Lastly, even if the Court *En Banc* were to uphold the assessment as petitioner argued or deem that administrative *res judicata*<sup>47</sup> should preclude an inquiry into the validity of the assessment, still, a refund to respondent is in order as petitioner's right to collect had indubitably prescribed.

**WHEREFORE**, premises considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 12 March 2020 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 09 October 2019 and Resolution dated 06 February 2020, respectively, of the Third Division in CTA Case No. 9421 entitled *Sunnyphil Incorporated v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

**SO ORDERED.**

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

**WE CONCUR:**

  
(With due respect, see Concurring Opinion)  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

<sup>47</sup>

*Res judicata* is a concept applied in the review of lower court decisions in accordance with the hierarchy of courts. **But jurisprudence has also recognized the rule of administrative *res judicata***: "The rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial facts of public, executive or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers. . . It has been declared that whenever final adjudication of persons invested with power to decide on the property and rights of the citizen is examinable by the Supreme Court, upon a writ of error or a *certiorari*, such final adjudication may be pleaded as *res judicata*." To be sure, early jurisprudence was already mindful that the doctrine of *res judicata* cannot be said to apply exclusively to decisions rendered by what are usually understood as courts without unreasonably circumscribing the scope thereof; and that the more equitable attitude is to allow extension of the defense to decisions of bodies upon whom judicial powers have been conferred. (*Salazar v. De Leon*, G.R. No. 127965, 20 January 2009; Emphasis supplied).


**DECISION**

CTA EB NO. 2232 (CTA Case No. 9421)


CIR v. Sunnyphil Incorporated


Page 12 of 12


X-----X

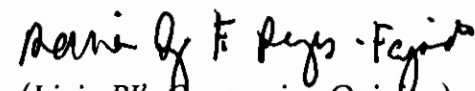
  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice

  
**ERLINDA P. UY**  
Associate Justice

  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

  
(I join PJ's Concurring Opinion)  
**CATHERINE T. MANAHAN**  
Associate Justice

  
(I join PJ's Concurring Opinion)  
**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

  
(I join PJ's Concurring Opinion)  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

  
**LANEE S. CUI-DAVID**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

REPUBLIC OF THE PHILIPPINES  
**Court of Tax Appeals**  
QUEZON CITY

**EN BANC**

COMMISSIONER OF INTERNAL  
REVENUE,

Petitioner,

CTA EB No. 2232  
(CTA Case No. 9421)

*Present:*

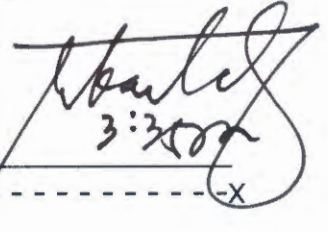
- versus -

DEL ROSARIO, P.J.,  
CASTAÑEDA, JR.,  
UY,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO, and  
CUI-DAVID, JJ.

SUNNYPHIL INCORPORATED,  
Respondent.

Promulgated:

MAY 24 2022

  
3:30pm  
-X

x-----

**CONCURRING OPINION**

***DEL ROSARIO, P.J.:***

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit. As aptly found by the Court in Division, which was affirmed by the *ponencia*, Sunnyphil Incorporated (Sunnyphil) is entitled to the refund of ₱8,906,107.84 representing its payment of assessed deficiency taxes for taxable year 2006, as the same was collected under a void assessment.

I likewise concur with the *ponencia* in finding that petitioner's right to collect respondent's alleged tax deficiencies for taxable year 2006 has already prescribed. I submit, however, that the three (3)-year prescriptive period to collect applies to this case, instead of the five (5)-year prescriptive period to collect as stated in the *ponencia*.



**CONCURRING OPINION**

CTA EB No. 2232 (CTA Case No. 9421)

Page 2 of 5

Under Section 203<sup>1</sup> of the National Internal Revenue Code (NIRC) of 1997, as amended, internal revenue taxes shall be assessed within three (3) 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. In cases where a return is filed beyond the period prescribed by law, the 3-year period shall be counted from the day the return was filed.

In *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, the Supreme Court clarified that when the Bureau of Internal Revenue (BIR) issues the assessment within the 3-year period, it has another 3 years, counted from the date the assessment notice had been released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding, viz.:

“The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.<sup>2</sup> (Boldfacing supplied)

On the other hand, Section 222 of the NIRC of 1997, provides the **exceptions to the 3-year period to assess and collect taxes**, to wit:

**“SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –**

**(a) In the case of a false or fraudulent return with intent to evade tax 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 filed without assessment, at any time within ten (10) years after**

---

<sup>1</sup> **SEC. 203. Period of Limitation Upon Assessment and Collection.** - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) 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 (3)-year period shall be counted from the day the return was filed. For 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.

<sup>2</sup> G.R. No. 197515, July 2, 2014.



**CONCURRING OPINION**

CTA EB No. 2232 (CTA Case No. 9421)

Page 3 of 5

the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

**(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.**

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.”  
(Boldfacing supplied)

Hence, if the CIR issued the assessment within the 10-year period under **Section 222 (a)**, the CIR may collect the deficiency tax by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax. The CIR may also institute a proceeding in court for the collection of such tax, without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission.

Meanwhile, Section 223 of the NIRC of 1997, as amended, suspends the running of the Statute of Limitations provided in Sections 203 and 222 of the NIRC of 1997, as amended, when the taxpayer requests for a reinvestigation which is granted by the CIR, to wit:

**“SEC. 223. Suspension of Running of Statute of Limitations.** - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a**





**CONCURRING OPINION**

CTA EB No. 2232 (CTA Case No. 9421)

Page 4 of 5

**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: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.” (Boldfacing supplied)

After carefully perusing the records of the case, Section 222 (a) and (c) of the NIRC of 1997, as amended, finds no application in the present case since there is no fraud assessment to speak of.

As borne by the records, the CIR issued the Formal Assessment Notice dated January 14, 2010<sup>3</sup> on even date.<sup>4</sup> Considering that Sunnyphil’s Formal Protest dated January 26, 2010<sup>5</sup> is a request for reconsideration and not a request for reinvestigation, the running of the period to collect was not suspended. **Thus, petitioner had three (3) years from January 14, 2010 or until January 14, 2013 to collect respondent’s alleged deficiency taxes. Since the Preliminary Collection Letter,<sup>6</sup> Final Decision on Disputed Assessment,<sup>7</sup> and Final Notice Before Seizure<sup>8</sup> were received by respondent on May 3, 2016, May 13, 2016 and May 16, 2016, respectively, the collection was clearly made beyond the three (3)-year prescription period.**

Consequently, the CIR may no longer enforce collection of the assessed deficiency taxes against Sunnyphil.

It must be stressed that while taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes.<sup>9</sup>

In sum, Sunnyphil is entitled to the refund of ₱8,906,107.84 representing its payment of the assessed deficiency taxes for taxable

<sup>3</sup> Exhibit “P-1”, CTA Case No. 9421 Docket, pp. 181-185.

<sup>4</sup> Par. 3, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 9421 Docket, p. 142.

<sup>5</sup> Exhibit “P-2”, CTA Case No. 9421 Docket, pp. 186-202.

<sup>6</sup> Exhibit “P-3”, CTA Case No. 9421 Docket, p. 203.

<sup>7</sup> Exhibit “P-4”, CTA Case No. 9421 Docket, pp. 204-212.

<sup>8</sup> Exhibit “P-5”, CTA Case No. 9421 Docket, p. 213.

<sup>9</sup> *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018.



**CONCURRING OPINION**

CTA EB No. 2232 (CTA Case No. 9421)

Page 5 of 5

year 2006 as the same was collected beyond the prescriptive period to collect and under a void assessment as explained in the assailed Decision dated October 9, 2019 of the Court in Division.

All told, I CONCUR in the denial of the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit.



**ROMAN G. DEL ROSARIO**  
Presiding Justice