REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILEX MINING CORPORATION,
Respondent.

CTA EB NO. 578
(CTA Case No. 6780)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

JUN 28 2010 1:30 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue ("CIR") on January 14, 2010, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, and Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying that the Decision[2] promulgated

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[1] *Rollo*, CTA EB No. 578 (CTA Case No. 6780), pp. 5-51, with Annexes.
[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy, and Olga Palanca-Enriquez, concurring.

on July 31, 2009 and the Resolution dated December 10, 2009 issued by the Second Division of the Court ("Court in Division") be reversed and set aside, and a new one be rendered ordering the respondent Philex Mining Corporation ("PMC") to pay deficiency taxes for the taxable year 1998 in the amount of P549,513,286.94, plus interest and penalties pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code ("NIRC"), as amended.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated July 31, 2009 as follows:

> Petitioner [PMC] is a corporation duly organized and existing under the laws of the Philippines, with main office at No. 27 Brixton and Fairlane Streets, Pasig City. It is principally engaged in mining operations.
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> Respondent [CIR] is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including, among others, the power to cancel disputed internal revenue assessments. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.
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> On August 14, 2001, petitioner signed a Waiver of the Statute of Limitations under the National Internal Revenue Code (NIRC). Subsequently, in a letter dated January 2, 2002, Ms. Virginia L. Trinidad, Assistant Commissioner for the Large Taxpayers Service, invited petitioner for an informal conference regarding its various deficiency taxes found as a result of tax investigation.
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> On June 7, 2002, a Memorandum was submitted to Assistant Commissioner Virginia L. Trinidad by Revenue Officers Renato H. Garganera, Jonas P. Punzal, and Ma. Luisa M. Lim. The subject of the said Memorandum is the investigation report regarding petitioner's tax deficiencies for taxable year 1998.
>
> On June 24, 2002, petitioner signed a second Waiver of the Statute of Limitation, while pending resolution of its protest.

On November 27, 2002, petitioner received from respondent a Formal Letter of Demand, Assessment Notices, and Details of Discrepancies dated November 19, 2002, requiring petitioner to pay its alleged deficiency taxes for taxable year 1998 in the total amount of P777,203,814.81, inclusive of interests and penalties.

On December 26, 2002, petitioner protested the foregoing Formal Letter of Demand and Assessment Notices and requested that the same be canceled and withdrawn after reinvestigation.

On February 21 and 24, 2003, petitioner submitted all relevant documents and manifested additional arguments in support of its protest.

Due to respondent's inaction, petitioner appealed to this Court on September 22, 2003, pursuant to Section 228 of the NIRC.

On February 17, 2004, petitioner received from respondent his "Final Decision on Disputed Assessment" dated February 3, 2004, reducing the assessed deficiency taxes from P771,203,814.81 to P549,513,286.94, inclusive of increments.

In view of respondent's issuance of the Final Decision, petitioner manifested that it be given a period of thirty (30) days to file a Supplemental Petition for Review to reflect the reduction of the amount covered by the disputed assessment. This was granted by the Court and petitioner filed its Supplemental Petition for Review on March 22, 2004.

On May 17, 2004, respondent filed his Answer to the Supplemental Petition for Review and raised the following Special and Affirmative Defenses:

> "13. Unaccounted Depreciation Expense in the amount of P63,106,132.31 was disallowed pursuant to Section 34 F of the Tax Code.
>
> 14. Interest expense incurred in the amount of P72,179,276.00 relative to loans incurred but used by inter-related companies was disallowed for not being ordinary and necessary in the conduct of the business pursuant to Section 34 of the Tax Code.
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> 15. Expense on forex loss incurred from loans and extended to sister/related corporations in the amount

of P76,769,191.48 was disallowed pursuant to Section 34 of the Tax Code.

16. Provision for back wages charged to Miscellaneous Expense in the amount of P23,800,000.00 and P21,100,000.00 which were deducted from taxable revenue were disallowed pursuant to Section 34 of the Tax Code.

17. Miscellaneous Income earned from incentive granted by the BOI due to the construction of KIA's Road, not subjected to income tax but was not supported with the previous entries made to book the said construction in order to determine the correctness of the entries in the current year, was assessed pursuant to Section 32 of the Tax Code.

18. Salaries and wages not duly documented in the amount of P888,399,346.00 were disallowed pursuant to Section 34, 34K & 80 of the Tax Code. Section 6 of the Tax Code does not allow amending of returns if notice of audit or investigation has been actually served. Regrouping of accounts was, in effect, amending the return previously filed while the Letter or (sic)Authority was already served.

19. Condoned income from management fee resulted to the disallowance of the expenses relative to the services rendered. The gross profit ratio was applied to arrive at the value to be disallowed in the amount of P20,014,363.64 pursuant to Section 34 of the Tax Code.

20. Accelerated deductions which had exceeded the 25% limit set forth by the law pursuant to Presidential Decree 1353, in the amount of P114,161,945.68, was disallowed pursuant to Section 34(G)(2) of the Tax Code.

21. Unidentified revenue amounting to P9,394,158.80 in the Income Tax Return was subjected to value-added output tax pursuant to Section 106 of the Tax Code.

22. Revenue identified and accounted but not subjected to value-added tax in the amount of P94,566,243.80 was assessed pursuant to Section 106 of the Tax Code.

23. Disposal of assets not subjected to value-added tax in the amount of P3,344,436.30 was assessed pursuant to Section 106 of the Tax Code.

24. Value-added output tax on excise tax assessment in paragraph 21 hereof was assessed in the total amount of P164,304.73, or output tax of P16,430.47, pursuant to Section 106 of the Tax Code.

25. Input Tax pertaining to prior years in the amount of P9,203,814.21 was disallowed pursuant to Sections 110 and 113 of the Tax Code.

26. Income from Management Fee which was condoned resulted to disallowance of expenses arising from the services rendered amounting to P20,014,363.64, or input tax of P2,001,436.36, computed based on gross profit rate to determine the expenses for disallowance pursuant to Section 110 of the Tax Code.

27. Input Tax claimed per schedule in the amount of P10,227,079.87 was disallowed pursuant to Sections 110 and 113 of the Tax Code.

28. For failure to secure approved zero-rating on sale to PASAR pursuant to Revenue Regulations No. 2-88, input tax in the amount of P33,094,411.67 allocable thereto was disallowed pursuant to Section 110 of the Tax Code.

29. Sales of mineral products in the amount of P8,215,236.48 credited to other income is subject to Excise Tax pursuant to Section 151 of the Tax Code.

30. Ocean freight on sale to PASAR which amounted to P11,344,809.29 should be part of the taxable base of excise tax pursuant to Section 5(A) and (B) of Revenue Regulations 13-94.

31. Payment of professional fees made to Atty. Gayo and Molintas in the amount of P2,000,000.00 were not

subjected to the 10% expanded withholding tax, hence, assessed pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

32. Income payments amounting P473,725,023.85 were not subjected to one percent (1%) creditable withholding tax pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

33. Under-remittance of withholding taxes in the amount of P67,912.61 was assessed pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

34. Accrual of Professional Fee amounting to P8,482,308.66 was subjected to five percent (5%) expanded withholding tax pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

35. Rental Fee charged to the account of PADCAL amounting to P1,141,052.00 was subjected to five (5%) expanded withholding tax pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

36. Income payment on contracts charged to the account of PADCAL amounting to P4,362,052.00 was subjected to one (1%) expanded withholding tax pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

37. Director's Fee included in the reconciliation submitted to reconcile salaries and wages in the amount of P6,052,003.00 was subjected to Expanded Withholding Tax pursuant to the provisions of Revenue Regulations 2-98.

38. Payment of GEMCOM (NRFC) in the amount of P303,222.80 which was part of the submitted reconciliation for professional and consultancy fee was subjected to final withholding tax pursuant to Section 2.57-1(I) of Revenue Regulations 2-98.

39. Penalties for late remittance of Fringe Benefit Tax in the amount of P41,865.00 were imposed pursuant to Sections 248 and 249 of the Tax Code.

40. Petitioner failed to maintain the required Official Register Book (ORB) pursuant to Revenue Regulations No. 13-94, hence, compromise penalty in the amount of P12,000.00 was imposed pursuant to Section 250 of the Tax Code.

41. Finally, it is a well-settled rule in taxation that assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

Petitioner filed its Formal Offer of Evidence on May 18, 2006; while respondent filed his Formal Offer of Evidence on June 21, 2007.

Petitioner filed its Memorandum on December 17, 2007 and respondent filed his Memorandum on December 28, 2007. Thereafter, the case was submitted for decision on January 31, 2008.

Petitioner however filed a Manifestation and Motion on April 1, 2008, alleging that it availed of the tax amnesty program of the government, pursuant to Republic Act No. 9480. Finding merit in petitioner's availment of said tax amnesty, this Court granted the same on August 15, 2008, leaving the issues pertaining to the propriety of the assessments on expanded and final withholding taxes for resolution.[3]

The Ruling of the Court in Division

In view of PMC's availment of the tax amnesty program, the following were the remaining issues resolved by the Court in Division, *viz.*:

A. Whether or not the right of respondent [CIR] to issue the subject tax assessments against petitioner [PMC] had prescribed despite the execution of the Waiver of Statute of Limitations.

B. Expanded Withholding Tax

[3] *Rollo*, pp. 18-24.

1. Whether or not the professional fee to Atty. Gapo and Malintas in the amount of P2,000,000 should be subject to the 10% withholding tax.
2. Whether or not there were income payments not subjected to one percent (1%) creditable withholding tax.
3. Whether or not there was under-remittance of withholding taxes in the amount of P67,912.61.
4. Whether or not the professional fee in the amount of P8,482,308.66 was subjected to expanded withholding tax.
5. Whether or not petitioner failed to subject to 1% expanded withholding tax the amount of P4,362,052 relating to income payment on contracts charged to the account of PADCAL.
6. Whether or not it is proper to subject to expanded withholding tax the amount of P6,052,003.00, considering this is a new matter not included in the original assessment.

C. Final Withholding Tax

1. Whether or not payment to GENCOM in the amount of P303,222.00 should be subjected to Final Withholding Tax, considering that this is a new matter not included in the original assessment.

D. Whether or not there was regrouping of accounts. If there was regrouping of accounts, whether or not the same was, in effect, an amendment of the return within the meaning of Section 6(A) of the NIRC.

E. Whether or not the right of respondent to assess petitioner for alleged deficiency withholding tax for the months of January to August 1998 had already prescribed.

F. Whether or not petitioner is liable for deficiency expanded withholding and final withholding taxes for taxable year 1998.[4]

On July 31, 2009, the Court in Division granted the Petition for Review filed by PMC on September 22, 2003.[5]

[4] *Id.*, at pp. 24-25.
[5] *Id.*, at pp. 18-41, *Annex "A."*

In granting the Petition for Review, the Court in Division ruled that the Formal Letter of Demand and Assessment Notice received by PMC on November 27, 2002 were void for having been issued beyond the period allowed by law.

The Court in Division held that pursuant to Section 203 of the 1997 NIRC, the law allows the assessment of internal revenue taxes only within a period of three (3) years reckoned from the last day prescribed by law for the filing of a return or from the day when the return was actually filed, whichever is later. The purpose of the said provision is to protect taxpayers from unreasonable investigation and from indefinite issuance of assessments.

Nevertheless, it pointed out that the taxpayer and the BIR may stipulate in writing to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon in conformity with Section 222(b) of the 1997 NIRC.

The Court in Division further declared that pursuant to Revenue Memorandum Order ("R.M.O.") No. 20-90 dated April 4, 1990, the waiver must be in the form prescribed thereto and that there should be no deviation from the said form. It held as well that after the taxpayer has signed the waiver, the Commissioner or the revenue official authorized by him shall sign the waiver indicating that the BIR has accepted and agreed thereto, the date of the acceptance by the BIR should also be indicated. In addition, both the date of execution by the taxpayer and the date of acceptance by the BIR should be before the expiration of the prescriptive period.

Upon perusal of the subject waivers of the statute of limitations, it found the same to be defective and invalid, and thus, it failed to toll the running of the 3-year prescriptive period for the assessment of the subject tax liabilities of PMC.

Moreover, it ruled that Section 222 of the 1997 NIRC, which provides for the extension of the prescriptive period to ten (10) years, was not applicable in the case.

Thus, the Court in Division made the following pronouncement:

> A perusal of the Final Decision on Disputed Assessment received by petitioner [PMC] on February 17, 2004, shows that respondent [CIR] computed the deficiency expanded withholding tax and final withholding tax assessments, as follows:

EXPANDED WITHHOLDING TAX				
Total Amount of EWT during the year				P11,540,230.50
Add:				
1.	Professional Fee to Atty. Gayo	P 2,000,000.00	10%	P 200,000.00
2.	Income payment not subjected to EWT	473,725,023.85	1%	4,737,250.24
3.	Under-remittance of EWT Tax			67,912.61
4.	Accruals of Professional Fee	8,482,308.66	5%	424,115.43
5.	Rental Fee not subjected to EWT	1,141,052.00	5%	57,052.60
6.	Income payment at PORO point not subjected to EWT	4,362,052.00	1%	43,620.52
7.	Director's Fee not subjected to EWT	6,052,003.00	10%	605,200.30
				P 6,135,151.70
Total EWT due per investigation				P 17,675,382.20
Less: Paid per return				*11,540,230.50*
Deficiency EWT - Basic				P 6,135,151.70
Add:	Interest 1/25/99 - 12/25/03 (.9833)			6,032,694.67
	Compromise Penalty			25,000.00
Deficiency EWT				**P 12,192,846.37**
FINAL WITHHOLDING TAX				
Total Amount of FWT during the year				P 14,166,411.72
Add:				
	Payment to GEMCOM (NRFC) not subjected to final tax as per reconciliation submitted by the taxpayer during the protest	303,222.80	34%	103,095.75
Total FWT due per investigation				P 14,269,507.47
Less: Paid per return				*14,166,411.72*
Deficiency FWT - Basic				P 103,095.75
Add:	Interest 1/25/99 - 12/25/03 (.9833)			101,374.05
	Compromise Penalty			16,000.00
Deficiency FWT				**P 220,469.80**

Based on the above computations, respondent deducted the amounts of P11,540,230.50 and P14,166,411.72, representing expanded withholding tax (EWT) and final withholding tax (FWT) paid per Returns, respectively, in arriving at the deficiency EWT and FWT assessments of P12,192,846.37 and P220,469.80, respectively. This means that respondent recognized that petitioner filed Monthly Remittance Returns of Income Taxes Withheld covering its EWT and FWT liabilities for taxable year 1998 and correspondingly made payments in the respective amounts of P11,540,230.50 and P14,166,411.72, detailed as follows:

Page No. of BIR Records	Period Covered	Date of Remittance/ Filing of Return	Amount Remitted	
			EWT	FWT
236 to 238	Jan. 1998	2/25/1998	P 752,036.50	P -
233 to 235	Feb. 1998	3/25/1998	691,873.21	1,221,810.50
231, 232, 298, 299, 295, 296	March 1998	4/27/1998	944,150.29	1,714,437.96
288 to 293	April 1998	5/25/1998	1,374,504.53	922,436.90
279, 282, 285	May 1998	6/26/1998	1,086,529.13	1,725,584.33
270, 273, 276	June 1998	7/27/1998	1,112,592.48	1,058,092.43
261, 264 & 267	July 1998	8/25/1998	1,082,022.29	1,723,235.34
252, 255 & 258	Aug. 1998	9/25/1998	1,209,666.62	95,530.10
245, 247 & 249	Sept. 1998	10/26/1998	940,055.90	3,533,304.12
237, 240 & 242	Oct. 1998	11/25/1998	807,331.81	919,405.36
228, 231 & 234	Nov. 1998	12/28/1998	845,685.41	1,043,441.79
219 & 222	Dec. 1998	1/25/1999	693,782.33	209,132.89
			P11,540,230.50	**P14,166,411.72**

Moreover, respondent applied the three-year period when he asked petitioner to sign and accomplish the defective Waivers. If the prescriptive period for the said taxes was ten (10) years, then respondent should not have required a waiver when he made an assessment. Records likewise show that petitioner indeed filed its Returns for the said taxes and that respondent did not allege much less prove that the Returns were false or fraudulent as contemplated under Section 222 of the NIRC of 1997. Therefore, the applicable prescriptive period for the subject deficiency EWT and FWT assessments is three (3) years as provided under Section 203 of the NIRC of 1997.

Pursuant to the aforecited Section 203 of the NIRC of 1997, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. In the case of petitioner's EWT and FWT liabilities, the return is required to be filed and the payment is to be made within twenty-five (25) days after the end of each month. In other words, if the return was filed earlier than the last day allowed by law, the period

to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. Accordingly, respondent had until the following dates within which to assess petitioner for the subject deficiency EWT and FWT for taxable year 1998:

Period Covered	Amount Remitted		Date of Filing of Return	Last Day to File Return	Last Day to Assess
	EWT	FWT			
Jan. 1998	P 752,036.50	P -	2/25/1998	2/25/1998	02/26/2001
Feb. 1998	691,873.21	1,221,810.50	3/25/1998	3/25/1998	03/26/2001
March 1998	944,150.29	1,714,437.96	4/27/1998	4/27/1998	04/27/2001
April 1998	1,374,504.53	922,436.90	5/25/1998	05/25/1998	05/25/2001
May 1998	1,086,529.13	1,725,584.33	6/26/1998	06/25/1998	06/25/2001
June 1998	1,112,592.48	1,058,092.43	7/27/1998	07/27/1998	07/27/2001
July 1998	1,082,022.29	1,723,235.34	8/25/1998	08/25/1998	08/27/2001
Aug. 1998	1,209,666.62	95,530.10	9/25/1998	09/25/1998	09/25/2001
Sept. 1998	940,055.90	3,533,304.12	10/26/1998	10/26/1998	10/26/2001
Oct. 1998	807,331.81	919,405.36	11/25/1998	11/25/1998	11/26/2001
Nov. 1998	845,685.41	1,043,441.79	12/28/1998	12/28/1998	12/28/2001
Dec. 1998	693,782.33	209,132.89	1/25/1999	01/25/1999	01/25/2002
TOTAL	**P11,540,230.50**	**P14,166,411.72**			

Evidently, the Formal Letter of Demand and Assessment Notice received by petitioner on November 27, 2002 are beyond the three-year prescriptive period within which respondent could make an assessment for deficiency EWT and FWT for taxable year 1998.[6]

In view of the foregoing, the Court in Division deemed it unnecessary to resolve the other issues.

Accordingly, the Court in Division disposed of the case as follows:

WHEREFORE, considering that petitioner [PMC] has duly complied with the tax amnesty law under RA 9480 as to income, value-added, excise taxes and penalty; and prescription has set in with regards to expanded and final withholding taxes all covering taxable year 1998, the instant Petition for Review is hereby **GRANTED**. Accordingly, premises considered, the Formal Letter of Demand and Assessment Notices dated November 19, 2002 issued by respondent [CIR] against petitioner for said deficiency taxes in the total amount of P549,513,286.94 for taxable year 1998 are hereby **CANCELLED** and **WITHDRAWN**.

[6] *Id.*, at pp. 36-39.

SO ORDERED.[7]

Aggrieved, the CIR filed a Motion for Reconsideration on August 27, 2009, which was denied for lack of merit by the Court in Division in its Resolution promulgated on December 10, 2009.[8]

The Issues

Hence, the present Petition for Review wherein the CIR raises the following issues, *viz.*:

I. WHETHER OR NOT THE RIGHT OF PETITIONER TO ISSUE THE SUBJECT TAX ASSESSMENTS AGAINST PETITIONER (SIC) HAD PRESCRIBED.

II. WHETHER THE HONORABLE COURT HAS DISCRETIONARY POWERS TO DETERMINE THE VALIDITY OF RESPONDENT'S SALN.[9]

The CIR's Arguments

The CIR argues that his right to issue the subject deficiency assessment has not yet prescribed. He claims that since PMC failed to declare certain tax payments required to be withheld and remitted, the proper statutory period of limitation is that found in Section 222(a) of the 1997 NIRC. In the alternative, the CIR also avers that the amount sought to be collected from PMC is not the tax itself. The cause of action against the withholding agent is not for the collection of the tax but for the enforcement of the withholding tax provisions pursuant to Section 251 of the 1997 NIRC. The CIR posits then that the liability of PMC as a withholding agent is a

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[7] *Id.*, at pp. 39-40.
[8] *Id.*, at pp. 42-48, *Annex "B."*
[9] *Id.*, at pp. 7-8.

penalty, and thus, the period of limitation provided under Section 203 finds no application in the present case.

The CIR claims as well that PMC having availed of the tax amnesty under Republic Act ("R.A.") No. 9480 consequently admits the validity of the assessment and the waivers. He contends that the very same subject waivers cover the assessment PMC paid, and hence, it cannot now question the validity of its execution.

The CIR finally asserts that the Court has discretionary powers to determine the validity of PMC's SALN to determine its compliance with the tax amnesty law. He claims that in the case of *Tutuban Properties, Inc. v. Commissioner of Internal Revenue*,[10] the Court made a determination whether the tax amnesty applicant fully complied with the requirements of R.A. No. 9480. Also, a scrutiny of PMC's SALN shows that the columns for "Reference" and "Basis of Valuation" were not filled up nor accompanied by any statement or information, thus, the same does not contain a true and correct declaration of its assets, liabilities and networth as mandatorily required in availing the tax amnesty. He further contends that the one (1)-year period of limitation within which to file a contest on the correctness of the SALN applies only to administrative proceedings. Hence, this Court can inquire into the taxpayer's SALN and is not bound by any statutory period of limitation.

PMC's Counter-arguments

In its Comment/Memorandum, PMC counters that the CIR failed to justify the application of the ten (10)-year period provided under Section 222(a) of the 1997

[10] CTA Case No. 6570, April 21, 2008.

NIRC. It argues that from the three instances under the said provision, the CIR merely provided a general and sweeping statement that "PMC failed to declare certain tax payments required to be withheld and remitted." The subject assessment failed to indicate that the CIR in assessing PMC for withholding taxes had filed a false or fraudulent return or failed to file a return at all. It asserts as well that the CIR, by requiring the execution of the waivers of the statute of limitation and the issuance of the assessment on withholding taxes, negates his contentions that the amount sought to be collected from PMC is not the tax itself and that he is merely enforcing the withholding tax provisions of the Tax Code.

PMC further contends that the ruling in the case of *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[11] is not applicable to the present case. Unlike in the aforementioned case wherein the petitioner therein paid the disputed assessment thereby acceding to the validity of the waivers, PMC avers that it paid the amnesty tax based on its net worth. The source upon which the said payment is made is based on the Tax Amnesty Law, while the withholding taxes are derived from the NIRC, thus, the CIR cannot conclude that PMC's payment of the amnesty tax would contradict to its contest on the validity of the subject waivers. It also argues that the availment of the tax amnesty does not necessarily mean that a taxpayer admits the validity of any prior assessments or waivers, since the law covers even those without any assessment.

PMC finally claims that it has complied with the provisions of the Tax Amnesty Law. It asseverates that the Court in Division had thoroughly and

[11] CTA EB No. 83 (CTA Case No. 6201), July 27, 2005.

meticulously reviewed all the submitted documents when it allowed the partial withdrawal of the Petition for Review insofar as the issues involving the deficiency assessments for income taxes, value-added taxes, excise taxes and penalties are concerned. The CIR even failed to file a Motion for Reconsideration on any alleged non-compliance with the provisions of R.A. No. 9480. Further, a verification of the details and list attached to the SALN would show that it had fully complied with Section 3 of the law. Since the one-year period provided under Section 4 of R.A. No. 9480 had already lapsed without anyone challenging the correctness of its SALN, PMC is thus entitled to the immunities and privileges granted under the Tax Amnesty Law.

The Ruling of the Court En Banc

The Court *En Banc* finds the Petition for Review bereft of merit.

Section 203 of the 1997 NIRC provides for the period within which the government can issue an assessment, thus:

> **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. *(Boldfacing supplied)*

The afore-quoted provision mandates the BIR to assess internal revenue taxes within 3 years from the last day prescribed by law for the filing of the return or the actual

date of filing of such return, whichever comes later. Stated differently, an assessment issued after the 3-year period is deemed invalid.

Corollary thereto, the relevant provision in cases of withholding taxes is quoted as follows:

> **SEC. 58.** *Returns and Payment of Taxes Withheld at Source.* –
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
>
> The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.
>
> The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided,* **That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.** *(Boldfacing supplied)*

In relation thereto, Revenue Regulations ("R.R.") No. 2-98 dated April 17, 1998, as amended by R.R. No. 06-01 dated July 31, 2001, provides for the period for filing the required return, which states:

> **SECTION 2.58.** *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.* –
>
> (A) Monthly return and payment of taxes
>
> xxx xxx xxx

(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

Thus, the 3-year period within which the CIR can validly issue an assessment is reckoned from: (a) the last day required by law for filing a monthly remittance return, which is ten (10) days after the end of each calendar month, except for December, in which case the return shall be filed fifteen (15) days after the end of the said month; or (b) the date of actual filing of the return, whichever is later.

From the filing of the monthly remittance returns starting January 1998 and ending on December 1998, the CIR has 3 years within which to issue an assessment to PMC, or at the earliest, on February 26, 2001 up to the latest on January 25, 2002.[12]

Based on the records of the case, PMC received the Formal Letter of Demand, Assessment Notices and Details of Discrepancies on November 27, 2002.[13] Apparently, the same were issued beyond the 3-year prescriptive period. However, Waivers of the Statute of Limitations were executed dated August 14, 2001 and June 24, 2002.

Section 222(b) of the 1997 NIRC provides:

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

xxx xxx xxx

[12] *Rollo*, p. 39.
[13] *Exhibit "A."*

> (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.

Pursuant thereto, the waiver dated August 14, 2001 was executed to extend the period within which the BIR may assess any deficiency taxes until June 30, 2002, and the waiver dated June 24, 2002 was executed to extend the same period until December 31, 2002. However, as correctly found by the Court in Division, the subject waivers were defective and invalid, and thus, failed to toll the running of the 3-year prescriptive period for the assessment of the purported tax liabilities of PMC.

In the case of *Philippine Journalists, Inc., v. Commissioner of Internal Revenue*,[14] the Supreme Court discussed as follows:

> The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. As was held in *Republic of the Phils. v. Ablaza*:
>
> > 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 a legal defense taxpayers would furthermore

[14] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

> 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 beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.**

RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed, thus:

> In the execution of said waiver, the following procedures should be followed:
>
> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after _____ 19___" should be filled up...
>
> 2. ...
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated...
>
> 3. The following revenue officials are authorized to sign the waiver.
>
> A. In the National Office
>
> 1. Commissioner — For tax cases involving more than P1M
>
> B. In the Regional Offices

> 1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.
>
> ...
>
> 5. **The foregoing procedures shall be strictly followed.** Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with. *(Boldfacing supplied)*

Clearly, the CIR is mandated to faithfully observe the provisions of R.M.O. No. 20-90, which pertains to the proper execution of waivers of the period of limitation, considering that the CIR itself issued the said R.M.O.

However, the CIR alleges anew that PMC failed to declare certain tax payments required to be withheld and remitted. Thus, he posits that the proper statutory period of limitation is that found in Section 222(a) of the 1997 NIRC, which states:

> **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.
>
> xxx xxx xxx

In cases of (1) fraudulent returns; (2) false returns with intent to evade tax; and (3) failure to file a return, the period within which to assess the tax is 10 years from the discovery of the fraud, falsification or omission, as the case may be.

A "false return" is that which contains wrong information due to mistake, carelessness or ignorance.[15] A "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual.[16] As for "failure to file an income tax return," the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual.[17]

In the case at bench, there was no evidence showing that PMC filed a false or fraudulent return. In fact, it even filed a return which, as found by the Court in Division, was the basis in arriving at the deficiency EWT and FWT assessments in the amounts of P12,192,846.37 and P220,469.80, respectively.[18] The issue was neither alleged in the CIR's Answer dated May 17, 2004, and was merely raised in his Motion for Reconsideration dated August 27, 2009, and the present Petition for Review. Since fraud is a question of fact that must be alleged and proved by clear and convincing evidence,[19] the CIR's failure to prove actual fraud or any failure on the part of the PMC does not help his case.

In the same way the assertion made by the CIR that the present case is "not for the collection of the tax but for the enforcement of the withholding tax provisions of the 1997 NIRC" must fail.

Section 251 of the 1997 NIRC states:

> **SEC. 251.** *Failure of a Withholding Agent to Collect and Remit Tax.* – Any person required to withhold, account for, and remit any tax imposed

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[15] Aznar v. Court of Tax Appeals, No. L-20569, August 23, 2974, 58 SCRA 519.
[16] Republic of the Philippines v. Marcos II, G.R. Nos. 130371 & 130855, August 4, 2009, 595 SCRA 43.
[17] *Id.*
[18] *Rollo*, p. 37.
[19] Quitoriano v. Department of Agrarian Reform Adjudication Board, G.R. No. 171184, March 4, 2008, 547 SCRA 617.

> by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

In futility, the CIR posits that the liability of PMC as a withholding agent is a "penalty," and thus, the period of limitation provided under Section 203 finds no application in the present case.

However, a plain reading of Section 251 would show that the penalty of equal to the total amount of the tax not withheld and remitted is upon the *conviction* of the person who failed to perform the required acts. And in the present case, the Court *En Banc* cannot convict PMC considering that it requires a different quantum of evidence. Thus, the Court *En Banc* affirms the Court in Division's cancellation of the Formal Letter of Demand and Assessment Notice received by PMC on November 27, 2002 for having been issued beyond the period allowed by law.

Moreover, the Court *En Banc* finds merit in PMC's availment of the tax amnesty program on January 31, 2008.

In the case of *Commissioner of Internal Revenue v. Marubeni Corporation*,[20] the Supreme Court elucidated as follows:

> A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. If granted, the terms of the amnesty, like that of a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. For the right of taxation is inherent in government. The State cannot strip itself of the most essential power of

[20] G.R. No. 137377, December 18, 2001, 372 SCRA 576.

> taxation by doubtful words. He who claims an exemption (or an amnesty) from the common burden must justify his claim by the clearest grant of organic or state law. It cannot be allowed to exist upon a vague implication. If a doubt arises as to the intent of the legislature, that doubt must be resolved in favor of the state.

Section 1 of R.A. No. 9480,[21] entitled "An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years," as implemented by Section 3 of Department Order ("D.O.") No. 29-07 embodying the "Rules and Regulations to Implement Republic Act No. 9480," issued on August 15, 2007, expressly states that the Tax Amnesty Law of 2007 covers all national internal revenue taxes for the taxable year 2005 and prior years, *with or without assessments duly issued therefor*, that have remained unpaid as of December 31, 2009, with the only exceptions enumerated under Section 8 of R.A. No. 9480, and Section 5 of D.O. No. 29-07 of the Department of Finance.

Evidently, from the provisions of the Tax Amnesty Law and the Order issued by the Secretary of Finance, in coordination with the CIR itself,[22] the argument that PMC is estopped from assailing the validity of the waivers by availing of the tax amnesty program has no leg to stand on.

The Court *En Banc* quotes with approval the disquisition made by the Court in Division in the Resolution[23] dated December 19, 2009, to wit:

> Section 1 of R.A. No. 9480 provides that the tax amnesty covers all national internal revenue taxes for taxable year 2005 and prior years, with or without assessments, that have remained unpaid as of December 31, 2005. **Clearly, the availment of the said tax amnesty does not**

[21] Lapsed into law on May 24, 2007.
[22] Section 15 of R.A. No. 9480.
[23] *Rollo*, p. 46.

> **necessarily mean that a taxpayer admits the validity of any prior assessments and waivers, as argued by respondent; since the tax amnesty covers even those without any assessment. The law does not impose such conditions, save for the taxpayer to satisfy all the qualification requirements.** *(Boldfacing supplied)*

In addition, with the findings that the waivers were null and void which consequently failed to extend the period within which the CIR may assess PMC for any deficiency taxes, the assessment issued therefor was made outside of the prescribed period and is thus, void. Therefore, PMC's availment of the tax amnesty program would fall under those without any assessments required.

And to avail of the tax amnesty program, Sections 2 and 7 of the Tax Amnesty Law state:

> **SEC. 2.** *Availment of the Amnesty.* – Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall **file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005,** in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, **and pay the applicable amnesty tax** within six months from the effectivity of the IRR.
>
> xxx xxx xxx
>
> **SEC. 7.** *When and Where to File and Pay.* – The filing of the Tax Amnesty Return and the payment of the amnesty tax for those availing themselves of the tax amnesty shall be made within six months starting from the effectivity of the IRR. It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an **acceptance of payment form** authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, **to accept the amnesty tax payment.** *(Boldfacing supplied)*

It is clear from the foregoing that the BIR is primarily responsible for the implementation of the Tax Amnesty Law for it ought to know the tax records of all

the taxpayers.[24] Thus, the law presumes that the BIR had sufficiently passed upon the taxpayer's compliance, much more the details of the SALN, before the acceptance of the applicable amnesty tax payment.

In the case at bench, however, the CIR even failed to file a timely motion for reconsideration when the Court in Division resolved PMC's availment of the tax amnesty. Thus, he cannot raise at this point in time that this Court can inquire into the correctness of PMC's SALN, when the CIR itself could have easily denied the acceptance of PMC's availment of the tax amnesty.

Further, upon filing of the required documents and payment of the tax, Section 4 of the law provides for the presumption accorded to the SALN, to wit:

> **SEC. 4.** *Presumption of Correctness of the SALN.* – The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents: Provided, That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration.

While the Tax Amnesty Law explicitly confers a presumption of correctness on the SALN, the same provision of the law provides as well when the said presumption will not apply, *i.e.*, when the amount of the declared networth in the SALN is understated to the extent of thirty percent (30%) or more. However, the period within which such proceedings may be initiated must be within one year following the date of the filing of the tax amnesty return and the SALN.

[24] BPI Family Savings Bank v. Court of Appeals, G.R. No. 122480, April 12, 2000, 330 SCRA 507.

Hence, after the acceptance of the CIR of the tax amnesty documents of the taxpayer, the presumption of correctness of the SALN applies even against the CIR, for he is not the proper party to question the correctness of the SALN of the taxpayer.

Since PMC availed of the tax amnesty program on January 31, 2008, and that nothing in the records would show that proceedings have been filed under Section 4 to investigate or audit the documents and/or representations made in connection its availment of the tax amnesty, the Court in Division correctly ordered the withdrawal of the Assessment Notices for deficiency income, value-added, excise taxes and penalty for the taxable year 1998, solely in view of PMC's availment of the tax amnesty program. PMC therefore, is entitled to the benefits provided under Section 6 of R.A. No. 9480, which states:

> **SEC. 6.** *Immunities and Privileges.* – Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:
>
> > 1. The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

Taxpayers found to have fully complied with the documentation requirements of R.A. No. 9480 are entitled to the immunities under Section 6 thereof.[25] More importantly, in the case of *Philippine Banking Corporation (Now: Global*

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[25] Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue, CTA EB No. 354 (CTA Case No. 7154), August 29, 2008; Commissioner of Internal Revenue v. PILMICO Foods Corporation, CTA EB No. 430 (CTA Case No. 6868), March 31, 2009.

Business Bank, Inc.) v. Commissioner of Internal Revenue,[26] the Supreme Court declared that the completion of these requirements shall be deemed full compliance with the tax amnesty program, and the law mandates that the taxpayer shall thereafter be immune from the payment of taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. The Court *En Banc* sees no reason in this case to deviate from the said ruling.

In fine, since PMC duly complied with the requisites enumerated under R.A. No. 9480, and that the Assessment Notices were found to be issued beyond the prescriptive period, the Court *En Banc* finds no compelling reason to warrant a reversal of the assailed Decision and Resolution.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the impugned Decision of the Court in Division dated July 31, 2009 and its Resolution dated December 10, 2009, in CTA Case No. 6780 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[26] G.R. No. 170574, January 30, 2009, 597 SCRA 366.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice