REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MITSUBISHI CORPORATION-MANILA BRANCH,
Respondent.

CTA EB No. 640
(CTA Case No. 7040)

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

Promulgated:
SEP 16 2011 9:05 a.m.

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DECISION

CASTAÑEDA, JR., *J.* :

For review on appeal are the Decision[1] and the Resolution[2] of the Special First Division of the Court of Tax Appeals (CTA Special First Division) dated

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[1] Penned by Associate Justice Caesar A. Casanova (now a member of the CTA Second Division), and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista (now the Chairperson of the CTA Third Division); *Rollo*, pp. 29-49.

[2] *Rollo*, pp.50-54.

November 24, 2009 and May 20, 2010 in the case entitled *"Mitsubishi Corporation-Manila Branch vs. Commissioner of Internal Revenue"* docketed as CTA Case No. 7040. Petitioner Commissioner of Internal (CIR) prays that the assailed Decision ordering CIR to cancel the deficiency VAT assessment in the amount of P96,151,087.88 be reversed and set aside, and a new Decision be rendered ordering respondent Mitsubishi Corporation-Manila Branch (Mitsubishi) to pay CIR the said assessment plus surcharge and interest.

The dispositive portion of the assailed Decision provides, as follows:

> **WHEREFORE**, in view of the foregoing, the *Petition for Review* is hereby **GRANTED**. The following assessments are deemed **CANCELLED**:

Tax Type	Assessment Number	Amount (including increments)
Expanded Withholding Tax	TFD-98-WT-176-03	P1,743,965.62
	TFD-98-WT-177-03	
Value-Added Tax	TFD-98-VT-173-03	96,151,087.88
	TFD-98-VT-174-03	
Income Tax	TFD-98-IT-175-03	306,788.00
Grand Total		**P98,201,841.50**

> **SO ORDERED.**

The dispositive portion of the assailed Resolution reads, as follows:

> **WHEREFORE**, finding no cogent reason to reverse the previous ruling of this Court, the *Motion for Reconsideration* is hereby **DENIED** for lack of merit.
> **SO ORDERED.**

The Facts

We adopt the findings of fact of the CTA Special First Division, as follows: *gr*

Petitioner is the branch office of Mitsubishi Corporation, a corporation duly organized and existing under and by virtue of the laws of Japan, legally authorized by the Philippine Securities and Exchange Commission to operate as branch office in the Philippines with office address located at the 14th Floor, Locsin Building, Makati Avenue corner Ayala Avenue.[3]

While respondent is the Commissioner of Internal Revenue who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit of overpaid internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.[4]

Through an *Exchange of Notes*[5] between the Government of Japan and the Government of the Philippines dated June 11, 1987, it was agreed that a loan amounting to Y40,400,000,000 will be extended to the Republic of the Philippines by the then Overseas Economic Cooperation Fund (OECF), now the Japan Bank for International Cooperation for the implementation of the Calaca II Project. In paragraph 5(2) of the said Exchange of Notes, it was stated that:[6]

> "The Government of the Republic of the Philippines, will, itself or through its instrumentalities, assume all fiscal levies or taxes imposed in the Republic of the Philippines on Japanese firms and nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products of Japan and services of Japanese nationals to be provided under the Loan."

Subsequently, the OECF and the Government of the Republic of the Philippines entered into a *Loan Agreement (Loan Agreement No. PH-P76)*[7] dated September 25, 1987 for Y40,400,000,000.00 for the implementation of the "Calaca II Project".[8]

On June 21, 1991, the National Power Corporation (NPC) and Mitsubishi Corporation (MC), petitioner's head office in Japan, entered into a *Contract for the engineering, supply, construction, installation, testing and commissioning of one (1) x 300 MW Batangas Coal-Fired*

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[3] Joint Stipulation of Facts and Issues (JSFI), paragraph 1, Division Docket, page 142; respondent in this *en banc* case.
[4] JSFI, par. 2, Division Docket, p. 143; petitioner in this *en banc* case.
[5] Exhibit "EE".
[6] JSFI, par. 3, Division Docket, p. 143.
[7] Exhibit "FF".
[8] JSFI, par. 4, Division Docket, p. 143.

Thermal Power Project II at Calaca, Batangas (Calaca II Coal-Fired Thermal Power Project).[9] Article VI of the Contract provided that:[10]

> "The Foreign Currency Portion of the Contract Price for Phase I is funded by OECF Loan No. PH-P76. Any Foreign Currency Portion of the Contract which is not covered by OECF Loan No. PH-P76 shall constitute as Phase II of the Contract. Corporation (NPC) shall secure additional financing from OECF for Phase II within one (1) year after the date of Contract effectively."

Thus, a second *Loan Agreement (Loan Agreement No. PH-P141)*[11] dated December 20, 1994 for the amount of Y5,513,000,000.00 was entered into between the OECF and the Government of the Republic of the Philippines for the additional funding of the "Calaca II Project".[12]

From 1994 to 1998, during the construction of the project, petitioner incurred input Value-Added Taxes for its domestic purchases and importations of goods related to the construction and implementation of "Calaca II Project" reflected in the following Quarterly VAT Returns filed on the dates specified as follows:[13]

Quarter	Date Filed
3rd Quarter 1994	October 21, 1994
4th Quarter 1994	January 20, 1995
1st Quarter 1995	April 20, 1995
2nd Quarter 1995	July 19, 1995
3rd Quarter 1995	October 19, 1995
4th Quarter 1995	January 22, 1996
1st Quarter 1996	April 22, 1996
2nd Quarter 1996	July 22, 1996
3rd Quarter 1996	October 21, 1996
4th Quarter 1996	January 20, 1997
1st Quarter 1997	April 21, 1997
2nd Quarter 1997	July 17, 1997
3rd Quarter 1997	October 15, 1997
4th quarter 1997	January 16, 1998
1st Quarter 1998	April 27, 1998

Petitioner received on December 22, 2003, more than eight (8) years from the completion and turn-over of the "Calaca II Project", the Bureau of Internal Revenue's *Formal Letter of Demand*[14] dated November 28, 2003 and *Formal Assessment Notices* dated November 4, 2003 for

[9] Exhibit "DD".
[10] JSFI, par. 5, Division Docket, pp. 143-144.
[11] Exhibit "GG".
[12] JSFI, par. 6, Division Docket, p. 144.
[13] JSFI, par. 7, Division Docket, pp. 144-145.
[14] Exhibit "W".

fiscal year ending March 31, 1998 regarding the alleged internal revenue tax liabilities:[15]

Tax Type	Assessment Number	Amount (including increments)
Expanded Withholding Tax	TFD-98-WT-176-03	P1,743,965.62
	TFD-98-WT-177-03	
Value-Added Tax	TFD-98-VT-173-03	96,151,087.88
	TFD-98-VT-174-03	
Income Tax	TFD-98-IT-175-03	306,788.00
Grand Total		**P98,201,841.50**

Respondent's reasons for these assessments are as follows:

a) Expanded Withholding Tax (P1,743,965.62):

i) Failure to comply Sec. 2.57 of RR #2-98, per Sec. 57 of the NIRC, as amended, on certain income payments;

ii) Penalty for late remittance of taxes withheld for failure to remit taxes withheld from KTK Fujiwara arising from Visayas Project within time required by Sec. 58 of the Tax Code.

b) Value Added Tax (P96,151,087.88)

i) Failure to comply with Sec. 108 of the Tax Code, as amended on your receipts from Philippine Automotive Chemical;

ii) Failure to comply with Sec. 4.104.1, par. 2 RR No. 7-95 per Sec. 110 (A)(3)(b) on transactions involving Batangas Project, a certain portion of which is OECF funded, exempt from VAT under international agreement to which the Philippines is a signatory, as provided by Sec. 109 of the National Internal Revenue Code;

iii) Penalty for late payment of VAT on receipts from Batangas Project within the time required by Sec. 114 of the Tax Code.

c) Income tax (P306,788.00)

i) Failure to include income from Philippine Automotive Chemical as part of taxable income subject to tax per Sec. 31 of the Tax Code.

[15] JSFI, par. 8, Division Docket, p. 145.

On January 21, 2004, petitioner filed its *Formal Protest* to the aforementioned assessments to the Bureau of Internal Revenue. The protest cited the following grounds:[16]

a) *The assessments are barred by prescription since they were made beyond the period of three (3) years from the date the corresponding VAT returns were filed;*

b) *The total accumulated input VAT amount used as basis of the disallowance of the input VAT attributable to the OECF-funded portion of the Project by the examiner is incorrect;*

c) *OECF-funded projects are not exempt from VAT; and*

d) *The Philippine government has committed not to utilize the proceeds of the OECF loan for the payment of taxes.*

Despite the lapse of the 180-day period from its receipt on January 21, 2004 of the protest, the Bureau of Internal Revenue has not granted or denied petitioner's protest.[17] Hence, petitioner filed the *Petition for Review*[18] on August 18, 2004.

Respondent in its *Answer*[19] filed on October 26, 2004, interposed the following *Special and Affirmative Defenses*:

> "7. The assessment notices for Deficiency Income Tax in the amount of P306,788.00, Deficiency Withholding Tax in the amount of P1,743,965.62, and Deficiency VAT in the amount of P96,151,087.88 were issued in accordance with law and regulations;
>
> 8. Petitioner failed to comply with the provisions of Section 2.57.2 of Revenue Regulations No. 2-98 in relation to Section 57 of the Tax Code, as amended, on certain income payments. Thus, an assessment for Deficiency Expanded Withholding Tax in the amount of P1,743,965.62;
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> 9. Petitioner failed to remit taxes withheld from KTK Fujikura arising from Visayas Project within the period provided for by Section 58 of the Tax Code, as amended. Hence, a penalty for late remittance of taxes withheld was imposed.

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[16] JSFI, par. 9, Division Docket, p. 146.
[17] JSFI, par. 10, Division Docket, p. 146.
[18] Division Docket, pp. 1-10.
[19] Division Docket, pp. 93-97.

10. Petitioner's receipts from Philippine Automotive Chemical were not subjected to VAT in violation of Section 108 of the Tax Code, as amended;

11. Petitioner failed to comply with the provisions of Section 4.104.1, paragraph 2 of Revenue Regulations No. 7-95 in relation to Section 110 (A)(3)(b), on transactions involving Batangas Project, a certain portion of which is Overseas Economic Cooperation Fund (OECF) funded. The said transactions are exempt from VAT under international agreement to which the Philippine is a signatory, as provided by Section 109 (g) of the National Internal Revenue Code, as amended. Accordingly, a proportionate amount of input VAT applicable to the said transaction was disallowed;

12. A penalty for late payment of VAT on receipts from Batangas Project was imposed against the petitioner, pursuant to the provisions of Section 114 in relation to Section 248 of the National Internal Revenue Code, as amended;

13. Petitioner failed to include income from Philippine Automotive Chemical as part of taxable income subject to as provided by Section 31 of the Tax Code. Hence, an assessment for the Deficiency Income Tax in the amount of P306,788.00;

14. Petitioner's VAT returns being erroneous are deemed false returns. As such, the right to assess is ten (10) years from the discovery of the falsity of said returns pursuant to Section 222 of the Tax Code, as amended. The falsity of the returns was discovered when the BIR examiners submitted their report of investigation on July 16, 2001. Hence, the right to assess has not prescribed.

15. Finally, it is 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."

Notice of Pre-Trial Conference[20] issued on November 12, 2004, which set the Pre-trial Conference on January 14, 2005 was received by

[20] Division Docket, p. 99.

petitioner on November 17, 2004 and by respondent on November 22, 2004.

Petitioner filed its *Pre-Trial Brief*[21] on January 11, 2005, while Respondent's Pre-Trial Brief[22] was filed on March 1, 2005. Pre-Trial was held on March 4, 2005.[23]

In a *Resolution*[24] dated May 5, 2005, the parties' *Joint Stipulation of Facts and Issues*[25] filed on April 29, 2005 were approved. Hence, the parties were ordered to proceed with the trial on the merits.

On November 15, 2006, petitioner filed a *Motion for Judicial Notice*[26] which prayed that this Court take judicial notice of the records of CTA Case No. 6139.

After presentation of its evidence, petitioner filed its *Formal Offer of Evidence*[27] on April 27, 2007, which the Court resolved to admit in a *Resolution*[28] dated June 18, 2007.

While respondent's *Formal Offer of Evidence*[29] filed on April 3, 2008 was resolved in a *Resolution*[30] dated May 30, 2008.

Petitioner's *Memorandum*[31] was posted on July 9, 2008 and which was received on July 15, 2008.

However, on July 16, 2008, petitioner filed a *Motion for the Suspension of the Collection of Taxes.*[32] Respondent filed its *Comment/Opposition*[33] of August 7, 2008. Petitioner filed its *Reply (Re: Comment/Opposition dated 5 August 2008)*[34] on August 26, 2008

Respondent's *Memorandum*[35] was filed on August 5, 2008 and was received on August 11, 2008. ge

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[21] Division Docket, pp. 100-114.
[22] Division Docket, pp. 125-132.
[23] Division Docket, p. 135.
[24] Division Docket, p. 151.
[25] Division Docket, pp. 142-149.
[26] Division Docket, pp. 196-204.
[27] Division Docket, pp. 364-378.
[28] Division Docket, pp. 380-381.
[29] Division Docket, pp. 419-421.
[30] Division Docket, p. 426.
[31] Division Docket, pp. 483-522.
[32] Division Docket, pp. 524-534.
[33] Division Docket, pp. 550-559.
[34] Division Docket, pp. 581-595.
[35] Division Docket, pp. 561-578.

On September 3, 2008, petitioner filed a *Motion for Leave to File and Admit Reply (To Respondent's Memorandum)*[36], with attached *Reply (Re: Respondent's Memorandum dated 4 August 2008)*[37]. The Court in an *Order*[38] dated September 9, 2008, granted the same and accordingly admitted it to the records of the case.

In a *Resolution*[39] dated September 30, 2008, the Court granted petitioner's *Motion for the Suspension of the Collection of Taxes*, subject to the posting of a bond.

Hence, petitioner filed its *Compliance*[40] on October 27, 2008. In a *Resolution*[41] dated December 5, 2008, the Court approved the same.

Accordingly, on February 16, 2009, the case was submitted for decision.[42]

On November 24, 2009, the CTA Special First Division promulgated the assailed Decision which cancelled the assessments for expanded withholding tax (P1,743,965.62), value-added tax (P96,151,087.88), and income tax (P306,788.00).

On December 16, 2009, CIR moved for the reconsideration of the assailed Decision praying to reverse and set aside the assailed Decision which cancels the deficiency VAT assessment in the amount of P96,151,087.88. CIR alleges that there is falsity and/or omission in the filing of the VAT returns, so CIR's right to assess is within ten (10) years from the discovery of such falsity or omission.

On February 3, 2010, Mitsubishi filed its Comment.

[36] Division Docket, pp. 596-598.
[37] Division Docket, pp. 599-606.
[38] Division Docket, p. 607.
[39] Division Docket, pp. 608-610.
[40] Division Docket, pp. 612-614.
[41] Division Docket, pp. 642-643.
[42] Resolution dated February 16, 2009, Division Docket, p. 645.

On May 20, 2010, the CTA Special First Division denied the motion for lack of merit.

On June 11, 2010, CIR filed a Motion for Extension of Time to File Petition for Review. The Court *En Banc* granted a final and non-extendible period of fifteen (15) days from June 11, 2010 or until June 26, 2010. June 26, 2010 falls on a Saturday.

On June 28, 2010, CIR timely filed the Petition for Review.

In a Resolution dated July 7, 2010, the Court *En Banc* ordered respondent Mitsubishi to file Comment within ten (10) days from receipt of the said resolution.

On July 27, 2010, the Court *En Banc* granted Mitsubishi's "Motion for Additional Time to File Comment to Petitioner's Petition for Review" filed on July 26, 2010. Within the period given, on August 5, 2010, Mitsubishi filed its Comment (To Petitioner's Petition for Review dated 22 June 2010).

In a Resolution dated August 23, 2010, the Court *En Banc* ordered the parties to submit their respective Memorandum within a non-extendible period of thirty (30) days from receipt of the said resolution. After which period, the Court *En Banc* will consider the Petition for Review submitted for decision with or without such Memoranda.

On September 24, 2010, Mitsubishi filed its Memorandum.

On September 27, 2010, CIR filed a Manifestation that she intends to adopt the relevant facts, proceeding, issue, and discussion specifically declared in the Petition for Review filed on June 28, 2010 as her memorandum in this case.

Hence, this case was deemed submitted for decision on October 7, 2010.

Issue

WHETHER THE HONORABLE SPECIAL FIRST DIVISION ERRED IN RESOLVING THAT PETITIONER'S VALUE-ADDED TAX (VAT) ASSESSMENT AGAINST RESPONDENT IN THE AMOUNT OF P96,151,087.88 WAS ISSUED BEYOND THE PRESCRIPTIVE PERIOD UNDER SECTION 203 OF THE 1997 NATIONAL INTERNAL REVENUE CODE (NIRC).

This Court's Ruling

The petition is denied.

We find that the issue regarding the prescription of the VAT assessment for fiscal year ending March 1998 and the arguments raised by CIR have already been considered by the CTA Special First Division in its assailed decision and resolution. It is noteworthy to mention that the cancellation of the assessments for expanded withholding tax (P1,743,965.62) and for income tax (P306,788.00) was no longer appealed by CIR.

Considering that the National Internal Revenue Code of 1997 (NIRC of 1997), as amended, took effect on January 1, 1998, only the VAT Return for the quarter ending March 31, 1998 (Exhibit "O") shall be covered by NIRC of 1997. *gc*

The quarterly VAT returns for the 2nd, 3rd, and 4th quarters of 1997 (Exhibits "L, "M, and "O") shall be covered by the NIRC of 1977, as amended.

The NIRC of 1997 as well as the NIRC of 1977, as amended, both provide that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later.[43]

In this case, the VAT Return for the quarter ending March 31, 1998 (Exhibit "O") shall be covered by Section 114 (A) of the NIRC of 1997 which requires the filing of the quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer. The other quarterly VAT returns (Exhibits "L" to "N") which involve transactions prior to the NIRC of 1997 were required to be filed not later than twenty (20) days of the month following the close of each quarter.[44]

As correctly discussed by the CTA Special First Division, "VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year"[45], hence, each return has its own prescriptive period.[46]

Thus, We illustrate:

Exhibit	**Period covered**	**Due date of filing**	**Date of Filing**	**Last day of the 3-year period within**

gc

[43] The three-year prescriptive period for assessment is provided in Section 203 of the National Internal Revenue Code of 1977, as amended, and in Section 203 of the National Internal Revenue Code of 1997.
[44] Section 110 of the National Internal Revenue Code of 1977, as amended.
[45] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 141104 & 148763, June 8, 2007, 524 SCRA 73, 94.
[46] Assailed Decision, p. 10; Rollo, p. 38l.

				which to issue an assessment[47]
"L"	2nd Quarter 1997	July 20, 1997	July 17, 1997	July 20,2000
"M"	3rd Quarter 1997	October 20, 1997	October 15,1997	October 20,2000
"N"	4th Quarter 1997	January 20, 1998	January 16,1998	January 20, 2001
"O"	1st Quarter 1998	April 25, 1998	April 27, 1998	April 27, 2001

The Supreme Court ruled in the case of *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*[48] that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the Commissioner of Internal Revenue to the taxpayer within the said period, as follows:

> Under Section 203 of the National Internal Revenue Code (NIRC), respondent had three (3) years from the last day for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista*, this Court held that **an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period**. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent. *(Emphasis Supplied; Citation omitted).*

Based on the foregoing, We agree with the finding of the CTA Special First Division that CIR, on the latest, can issue an assessment only until April 27, 2001. In this case, however, the Formal Letter of Demand dated November 28, 2003 and Assessment Notice dated November 4, 2003 for the fiscal year ending

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[47] The illustration in the assailed Decision (p. 11) was amended with respect to the last day of the 3-year period within which to issue an assessment.
[48] G.R. No.157064, August 7, 2006, 498 SCRA 126, 136.

March 1998 was received by Mitsubishi on December 22, 2003. Indeed, the assessment for deficiency VAT was issued beyond the three-year prescriptive period. We reiterate the following findings of the CTA Special First Division as follows:

"Based on the records of the case, petitioner[49] received on December 22, 2003, the *Formal Letter of Demand*[50] dated November 28, 2003 and *Assessment Notice* dated November 4, 2003 for the fiscal year ending March 1998:

Value Added Tax

	Findings	Tax Due
Receipts not subjected to VAT	P 400,000.00	P 40,000.00
Disallowed Input on Exempt Activity	44,642,248.57	44,642,248.57
Total	P45,042,248.57	44,682,248.57
Add: 20% Interest (4/20/98 – 12/30/03)		50,887,272.43
Penalty for late remittance of VAT on Batangas Project		561,566.88
Compromise Penalty		20,000.00
Total Deficiency VAT		**P96,151,087.88**

From the *Details of Discrepancy*, petitioner's[51] deficiency VAT assessments were arrived as follows:

"a) Verification showed that you failed to comply with Section 108 of the Tax Code, as amended, on your receipts from Philippine Automotive Chemical;

b) Disallowed Input on exempt activities

Your records showed that you failed to comply with Sec. 4.104.1, par. 2, Rev. Reg. No. 7-95 in pursuance with the provisions of Section 110 (A)(3)(b) on transactions involving Batangas Project, a certain portion of which is OECF funded, exempt from VAT under international agreement to which the Philippines is a signatory, as provided by Section 109 (q) of the National Internal Revenue Code.

c) Penalty for late payment of VAT on receipts from Batangas Project

[49] Respondent in this *en banc* case.
[50] Exhibit "W".
[51] Respondent in this *en banc* case.

> Verification showed that you failed to pay VAT on receipts from Batangas Project within the time required by Section 114 of the Tax Code."

In this petition for review *en banc*, CIR reiterates its arguments, among others, that its right to assess Mitsubishi for deficiency VAT for fiscal year ending March 31, 1998 has not prescribed pursuant to Section 222(a) of the 1997 NIRC, alleging that there are instances of falsity or omission in VAT and other internal revenue tax returns that ought to be considered even though Mitsubishi paid portions of its internal revenue tax assessments; that Mitsubishi is barred from questioning the prescription of the issuance of CIR's deficiency VAT assessment although it partially paid the other deficiency tax assessments; and that CIR believes that the CTA Special First Division should not focus its findings on one (1) internal revenue tax assessment but also to consider other undisputed finding of CIR's revenue examiners.

CIR argues that even granting for the sake of argument that Mitsubishi did not commit falsehood in the filing of its returns, the filing of a false return, even without the intent to evade tax is likewise embraced by the 10-year statute of limitation.

CIR submits that Mitsubishi failed to rebut the presumption of the correctness of EWT, VAT, and IT assessments.

On the other hand, Mitsubishi counter argues that CIR's right to assess has already prescribed since the VAT returns and the other tax returns are not erroneous; that there are no instances of falsity and omission in other internal revenue tax returns that ought to be considered; and that it is not barred from questioning the prescription of the issuance of CIR's deficiency VAT assessment although it partially paid the other deficiency tax assessments.

The contentions of CIR are bereft of merit.

Though the statute of limitations on assessment and collection of national internal revenue taxes benefits both the Government and the taxpayer, it principally intends to afford protection to the taxpayer against unreasonable investigation.[52] To give effect to the legislative intent, these provisions on the statute of limitations on assessment and collection of taxes shall be construed and applied liberally in favor of the taxpayer and strictly against the Government.[53]

Pertinent to this case is the exception as to the period of limitation of assessment which is provided in Section 222(a) of the NIRC of 1997 (Section 223 of the NIRC of 1977, as amended) which reads, as follows:

> "SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> (a) In the case of a <u>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</u>: 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." (Underscoring Supplied) ge

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[52] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005, 473 SCRA 205, 225.
[53] *Ibid*, 226.

In this case, the CTA Special First Division ruled that there is no falsity, thus, the application of the ten-year period in the assessment of VAT deficiency for fiscal year ending March 31, 1998 does not apply.

After a careful review of the records, We agree that there is no falsity to speak of. As correctly found by the CTA Special First Division, Mitsubishi's Quarterly VAT return duly supported the amount of P65, 820,970.59 input VAT, as follows:

Period covered	Input VAT	Exhibit
3rd Quarter 1994	16,125,988.72	"A"
4th Quarter 1994	4,700,066.09	"B"
1st Quarter 1995	5,484,575.48	"C"
2nd Quarter 1995	5,258,586.12	"D"
3rd Quarter 1995	21,153,591.19	"E"
4th Quarter 1995	2,613,254.06	"F"
1st Quarter 1996	2,169,440.79	"G"
2nd Quarter 1996	2,535,189.22	"H"
3rd Quarter 1996	3,736957.67	"I"
4th Quarter 1996	634,391.53	"J"
1st Quarter 1997	373,171.10	"K"
2nd Quarter 1997	392,924.81	"L"
3rd Quarter 1997	287,703.51	"M"
4th Quarter 1997	282,275.47	"N"
1st Quarter 1998	72,854.83	"O"
TOTAL	**65,820,970.59**	

For like fraud, falsity (is also a question of fact) is never lightly to be presumed, and in order to be sustained must be supported by clear and convincing proof because it is a serious charge.[54]

As to the allegation of omission that based on records, Mitsubishi failed to file WT return and remit deficiency EWT in the amount of P1,743,965.62, and

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[54] *Commissioner of Internal Revenue vs. Avon Products Manufacturing Corporation, et al.*, CA-GR SP No. 28740, September 13, 1993 (CTA Case No. 4594).

failed to file VAT return and payment of P40,000.00 from VAT receipts from Batangas Project, thus, the alleged deficiency EWT and VAT may be assessed at any time within ten (10) years after the discovery of such omission pursuant to Section 222(a) of the 1997 NIRC is also bereft of merit. As correctly pointed out by Mitsubishi, these were never submitted for resolution of the Court as agreed by the parties in their Joint Stipulation of Facts and Issues.

It is noteworthy to mention that P601,566.88 out of the P96,151,087.88 total deficiency VAT assessment was undisputed, thus, already paid by Mitsubishi. The amount of P601, 566.88 pertains to the penalty for late remittance of VAT on Batangas Project in the amount of P561,566.88 (Exhibits "R" and "R-1") and to the receipts not subjected to VAT P40,000.00 (Exhibits "T" and "T-1"). Moreover, the payment of the undisputed portion of the Deficiency VAT assessment on December 23, 2003 and January 16, 2004 was admitted by CIR's witness, Ms. Ruby Ann B. Oradia, in her Affidavit[55] and We quote:

> "10. MC-Manila also paid the undisputed portion of the Deficiency VAT assessment on December 23, 2003 and January 16, 2004, broken down as follows:

PARTICULARS	Deficiency VAT (Basic)	Date Paid
1) Receipts Philippine Automotive Chemical not subjected to VAT	P 40,000.00	January 16, 2004
2) Disallowed Input on Exempt Activity of Calaca/Batangas Project	44,642,248.57	
3) Penalty for late remittance of VAT on Batangas Project	561,566.88	Dec. 23, 2004
Agreed and paid deficiency VAT portion	601,566.88	

> 11. The remaining deficiency VAT unpaid and disputed amounted to P95,549,521.00 shown hereunder:" *Je*

[55] Exhibit "1".

PARTICULARS	Deficiency VAT
Deficiency VAT per Final Assessment/Letter of Demand	P96,151,087.88
Deficiency VAT agreed and paid	601,566.88
Unpaid and disputed deficiency VAT	P95,549,521.00

It is apparent that the remaining unpaid and disputed deficiency VAT in the amount of P95,549,521.00 pertains to the Disallowed Input on Exempt Activity (P44,642,248.57), interest (P50,887,272.43), and compromise (P20,000.00). As regards to this disallowed input on exempt activity, the CTA Special First Division cited the case of *Commissioner of Internal Revenue vs. Mitsubishi Corporation- Manila Branch*[56] which discussed that the Exchange of Notes does not grant tax exemption. In effect, the CTA Special First Division ruled that there was no exempt activity to speak of and allowed the offsetting of the allowable input taxes. We quote pertinent portion of the assailed Decision, as follows:

> Considering that the amount intended for payment of the VAT has already been collected and received by the Japanese contractors or nationals, from the NPC as part of the total invoice price, the Japanese contractors, like herein petitioner, shall hence **file the prescribed VAT returns on gross receipts derived from OECF-funded projects, claim their input taxes from their purchases of goods, properties and services from their suppliers or sub-contractors, and shall pay the VAT thereon, after offsetting the allowable input taxes.**
>
> The consequent payment of petitioner does not violate any provision from the Exchange of Notes for it is only the Government of the Philippines who assumed the burden of the tax. Petitioner remains the person primarily and legally liable for the payment of the tax. **Nowhere in the foregoing did a tax exemption have been considered**. *(Emphasis Supplied).*

[56] CTA EB NO. 5, May 24, 2006.

CIR did not appeal the said ruling of the CTA Special First Division. Clearly, there is no falsity in this case.

As regards the partial payment of the assessment, We also agree with the ruling of the CTA Special First Division, pertinent portion of the assailed Resolution reads, as follows:

> "Inasmuch as the partial payment of an assessment is not one of the exceptions to the period of limitation of tax assessment and collection, this Court finds that the partial payment made by petitioner of the assessed amount of deficiency tax did not have the effect of extending the period of limitation or as an admission that the assessment was made within the period of limitation."

Based on the foregoing discussions, We find no reversible error to disturb the assailed decision and resolution of the CTA Special First Division.

WHEREFORE, premises considered, the petition for review is hereby **DENIED** for lack of merit. Accordingly, We **AFFIRM** the November 24, 2009 Decision and May 20, 2010 Resolution promulgated by the CTA Special First Division.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice