REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PET PLANS, INC.
Respondent.

CTA EB No. 2857
(CTA Case No. 10002)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
SEP 0 2 2025 4:30 pm

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DECISION

REYES-FAJARDO, ***J.*:**

For action is the Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR), challenging the Decision[2] dated March 23, 2023 and the Resolution[3] dated January 5, 2024 in CTA Case No. 10002. The Special Third Division of the Court (Court in Division) nullified the Preliminary Assessment Notice (PAN), Formal Letter of Demand/Final Assessment Notices (FLD/FAN), Final Decision on Disputed Assessment (FDDA) dated March 21, 2013, and the Decision dated November 19, 2018, which pertain to deficiency

1 *Rollo*, pp. 7-23.
2 *Id.* at pp. 31-54.
3 *Id.* at pp. 77-80.

Value-Added Tax (VAT), Expanded Withholding Taxes (EWT) and Withholding Tax on Compensation (WTC) assessments issued against Pet Plans, Inc. for Taxable Year (TY) 2005 in the amount of ₱140,721,049.42.

PARTIES

Petitioner is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with, among other duties, collecting all national internal revenue taxes. Petitioner has the authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, as well as penalties imposed in relation thereto, and other matters arising under the National Internal Revenue Code of 1997, as amended (NIRC), other tax laws, and rules and regulations.[4]

Respondent is a corporation duly organized and existing under Philippine laws. It is primarily engaged in the marketing and selling of securities such as educational plans, pension plans, life plans and others.[5]

FACTS

On July 11, 2006, respondent received a Letter of Authority ("LOA") dated July 5, 2006 issued by the Officer-in-Charge ("OIC") of the Large Taxpayer Service ("LTS"), Merlinda L. Ordoyo, authorizing Revenue Officers ("RO") Matias Fadri III, Rene De Veyra, Romualdo Plocios and Josephine Gaerlan, and Group Supervisor ("GS") Juvy S. Dela Pena, to audit and examine respondent's books of accounts and other accounting records for all internal revenue taxes covering the period starting January 1, 2005 to December 31, 2005.[6]

On December 3, 2008, the BIR issued a Notice of Informal Conference.[7]

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4 Statement of Facts and Issue in the Pre-Trial Order, Docket-Volume II, p. 554.
5 *Ibid.*
6 Exhibit "R-1," BIR Records, Exhibit "R-15," Folder No. 2, p. 1.
7 Exhibits "R-4" and "P-3," BIR Records, Exhibit "R-15," Folder No. 2, pp. 354-359.

On January 22, 2009, respondent received the undated PAN, finding respondent liable for deficiency taxes in the total amount of ₱113,471,908.41, inclusive of interest and penalties.[8] Respondent failed to file a reply to the PAN within the period prescribed.

On June 23, 2009, respondent received an undated FLD/FAN, assessing it for deficiency taxes in the amount of ₱118,826,991.91, inclusive of interest and penalties.[9]

On July 8, 2009, respondent protested the FLD/FAN.[10]

On March 25, 2013, respondent received petitioner's FDDA dated March 21, 2013, assessing it for deficiency taxes in the amount of ₱140,721,049.42, inclusive of interest and penalties.[11]

On April 24, 2013, respondent filed a Motion for Reconsideration to the FDDA,[12] which was denied by petitioner in his Decision dated November 19, 2018. Respondent received petitioner's Decision on December 3, 2018.[13]

On December 28, 2018, respondent filed a Petition for Review, docketed as CTA Case No. 10002, before the Court in Division.

On March 23, 2023, the Court in Division rendered the challenged Decision, the dispositive portion of which reads:

> **WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The PAN, FLD/FAN, FDDA, and the Assailed Decision issued against petitioner are declared **NULL AND VOID**. The deficiency VAT, EWT and WTC

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8 Statement of Facts and Issue in the Pre-Trial Order, Docket- Volume II, p. 555; Exhibits "R-6" and "P-4," BIR Records, Exhibit "R-15," Folder No. 2, pp. 385-390.

9 Statement of Facts and Issue in the Pre-Trial Order, Docket- Volume II, p. 555; Exhibits "R-8" and "P-6," BIR Records, Exhibit "R-15," Folder No. 2, pp. 414-419; See TSN, dated 11 March 2020, pp. 7-8.

10 Statement of Facts and Issue in the Pre-Trial Order, Docket- Volume II, p. 555; Exhibit "P-7," BIR Records, Exhibit "R-15," Folder No. 2, pp. 420-421.

11 Statement of Facts and Issue in the Pre-Trial Order, Docket- Volume II, p. 555; Exhibits "R-11" and "P-8," BIR Records, Exhibit "R-15," Folder No. 2, pp. 679-688.

12 Statement of Facts and Issue in the Pre-Trial Order, Docket- Volume II, p. 556; Exhibit "P-9," BIR Records, Exhibit "R-15," Folder No. 1, pp. 1-314.

13 BIR Records, Folder No. 1, pp. 700-712.

> assessments issued against petitioner for TY 2005, in the aggregate amount of Php140,721,049.42, are hereby **CANCELLED** and **SET ASIDE**. Respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.
>
> **SO ORDERED.**

On May 2, 2023, petitioner filed a Motion for Reconsideration Re: Decision dated 23 March 2023 with the Court in Division.

On January 5, 2024, the Court in Division rendered the equally challenged Resolution, denying petitioner's Motion for Reconsideration, the dispositive portion of which states:

> **WHEREFORE**, the instant Motion for Reconsideration Re: Decision dated 23 March 2023 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

On February 16, 2024, petitioner, within the extended period granted,[14] filed a Petition for Review with the Court *En Banc*,[15] to which respondent filed its Comment/Opposition (To Respondent's Petition for Review dated February 13, 2024).[16]

Under Resolution dated July 4, 2024, CTA EB No. 2857 was submitted for decision.[17]

ISSUE

Did the Court in Division err in invalidating petitioner's FDDA dated March 21, 2013, Decision dated November 19, 2018, and the assessments for deficiency VAT, EWT and WTC in the amount of ₱140,721,049.42, inclusive of interest and penalties, for TY 2005 issued against respondent?

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14 *Rollo*, p. 6.
15 *Id.* at pp. 7-24.
16 *Id.* at pp. 63-94.
17 *Id.* at p. 98.

ARGUMENTS

Petitioner maintains that his right to assess respondent has not prescribed. He explains that respondent's substantial under-declaration of its taxable receipts, income payments, and compensation payments on its VAT returns in an amount more than 30% of that declared in the VAT return warranted the use of the ten (10)-year period to assess under Section 222 (a) of the NIRC, as amended.

Petitioner also asserts that the Court in Division erred in relying on BIR Ruling No. DA-027-06, which excludes Trust Fund Contributions from gross receipts subject to VAT, arguing that said BIR ruling was not issued at the instance of respondent.

Lastly, petitioner contends that the assessment of withholding taxes is imprescriptible.

On the other hand, respondent argues that petitioner merely reiterated its previous arguments in its Motion for Reconsideration regarding the Decision dated 23 March 2023, which had already been addressed in the challenged Decision and Resolution.

Respondent contends that it successfully disproved the presumption of falsity or fraud in its returns under Section 248(B) of the NIRC, as amended, making the ten (10)-year assessment period inapplicable. Additionally, respondent did not execute any waiver of the defense of prescription, which could have extended the period granted to the BIR for issuing an assessment for TY 2005.

As a result, the deficiency VAT, EWT and WTC assessments are void for being issued beyond the three-year prescriptive period under Section 203 of the NIRC, as amended. Therefore, the Court in Division correctly nullified petitioner's FDDA dated March 21, 2013, along with the assessments for deficiency VAT, EWT and WTC, including the corresponding interest and penalties for TY 2005.

RULING

The Petition lacks merit.

To recall, the Court in Division applied the three (3)-year prescriptive period under Section 203 of the NIRC, as amended,[18] which led to the finding that the BIR's right to assess respondent for deficiency VAT, EWT, and WTC for TY 2005 is barred by prescription.[19] Yet, petitioner ascribes fault to said finding because: (1) the present circumstances warrant the application of the ten (10)-year prescriptive period under Section 222(a) of the same Code with respect to the VAT assessment; and (2) the EWT and WTC assessments are imprescriptible.

Petitioner is mistaken on both points.

First. Indeed, one of the exceptions to the three (3)-year prescriptive period under Section 203 of the NIRC, as amended, is found in Section 222(a) thereof, which provides:

> 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.

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18 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.

19 See pages 18-24 of the challenged Decision dated March 23, 2023. Rollo, pp. 31-46.

Section 222(a) of the NIRC, as amended, extends the BIR's right to assess internal revenue taxes to ten (10) years when the taxpayer's filing of a tax return is attended by: (1) intentional falsity; or (2) fraud, among others. To aid the BIR in establishing the presence of either circumstance, Section 248(B) of the same Code provides that substantial under-declaration of taxable sales, receipts, or income by more than 30% of the amount reported in the tax return constitutes *prima facie* evidence of falsity or fraud:

> **SECTION 248.** ***Civil Penalties.*** **–**
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> ...
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: ***Provided,*** **That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return:** ***Provided, further,*** **That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.**[20]

Relevantly, *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr. (Villanueva, Jr.)*[21] clarified the application of the 30% threshold in determining *prima facie* evidence of a false or fraudulent return. If the 30% threshold is satisfied, *prima facie* evidence of falsity or fraud arises, shifting the burden of proof to the taxpayer. If the taxpayer fails to overcome this presumption, the *prima facie* evidence is sufficient to justify the application of the 10-year period for assessment and collection. However, if the taxpayer successfully overturns the presumption by demonstrating that the misstatement as ascertained by the CIR was inadvertent or attributable to a

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20 Boldfacing supplied.

21 G.R. No. 249540, February 28, 2024.

mistake, the CIR cannot rely on the presumption to prove the taxpayer's intent to evade taxes.

Here, petitioner based his *prima facie* evidence of intentional falsity or fraud in respondent's filing of its Quarterly VAT Returns, after comparing the latter's taxable receipts per BIR audit, amounting to ₱536,659,951.04, with the taxable receipts reported per its Quarterly VAT Returns amounting to ₱242,600,271.90. According to him, the resulting variance of ₱294,061,679.14 constitutes a 121% discrepancy, thereby warranting the application of the ten (10)-year prescriptive period. Petitioner presented the breakdown of ₱294,061,679.14, as follows:[22]

Premium Collection		₱506,829,611.00
Add: Other income subject to value-added tax:		
Handling Fee	₱64,886,238.00	
Management Fee	9,000,000.00	
Commission Fee	5,192,069.00	
Others	4,346,494.00	
Sale of Property and Equipment	609,583.04	84,034,384.04
Total		590,863,995.04
Less[:] Trust Fund Contribution (Note 12, FS)		54,204,044.00
Taxable Receipts subject to VAT		536,659,951.04
Less[:] Receipts reported per VAT returns		242,598,271.90
Unreported taxable receipts		₱294,061,679.14

This should be corrected. Specifically, petitioner erred in considering only ₱54,204,044.00 as respondent's trust fund contributions that are not subject to VAT.[23]

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22 Per Details of Discrepancies appended to the FDDA (Exhibit "P-8" and "R-11"). BIR Records, p. 685.

23 *Ibid.*

Respondent is a corporation primarily engaged in the marketing and selling of securities such as educational plans, pension plans, life plans, and others.[24] It was also licensed to sell pre-need products until June 30, 2006.[25] Being so, it is classified as a pre-need company pursuant to Section 4(c) of Republic Act (RA) No. 9829.[26]

In this regard, Section 31(a)[27] of RA No. 9829 expressly states that contributions to the trust fund shall **not** form part of the gross receipts of the pre-need company. Meanwhile, Section 108(A)[28] of the NIRC, as amended, imposes a 12% VAT on a taxpayer's gross receipts derived from the sales of services, among others. Since trust fund contributions are excluded from a pre-need company's gross receipts, they are not subject to VAT.

Following the above discussion, while petitioner aptly excluded the trust fund contributions from respondent's taxable receipts in the amount of ₱54,204,044.00, found under Note 12 of its 2005 AFS,[29] he failed to account for the contributions to investments in trust funds, found on the same AFS,[30] in the amount of ₱246,145,074.00, which *likewise should have been* excluded from its taxable receipts.

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24 See par. 1, Admitted Facts, Pre-Trial Order dated December 4, 2019. Docket- Volume II, p. 554.

25 See Note 1, with heading General Information, respondent's 2005 AFS (Exhibit "P-14"). Docket- Volume III, p. 1038.

26 SEC. 4. Definition of Terms. - Whenever used in this Code, the following terms shall have their respective meanings:

...

(c) "Pre-need company" refers to any corporation registered with the Commission and authorized/licensed to sell or offer to sell pre-need plans. The term "pre-need company" also refers to schools, memorial chapels, banks, nonbank financial institutions and other entities which have also been authorized/licensed to sell or offer to sell pre-need plans insofar as their pre-need activities or business are concerned.

27 SEC. 31. Deposits to the Trust Fund. - (a) ...

...

Contributions to the trust fund shall not form part of the income or **gross receipts** of **the pre-need company** and, therefore, shall not be available for dividend declaration or payment to creditors. (Boldfacing ours).

28 Section 108. Value-added Tax on Sale of Services and Use or Lease of Properties. - (A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

...

The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

29 Exhibit "P-14," Docket- Volume III, p. 1037; and Exhibit "P-14-B," *id.*, p. 1051.

30 *Ibid.*

Specifically, as clarified by witness Ester L. Reyes,[31] respondent *initially* infused trust fund contributions amounting to ₱246,145,074.00. However, the Securities and Exchange Commission (SEC) found said sum to be deficient, prompting respondent to make *additional* trust fund contribution of ₱54,204,044.00. Said clarification is supported by respondent's 2005 AFS,[32] which reflect the following particulars:

AFS Portion	*Description*	*Amounts*
Statements of Cash Flows[33]	Contributions to investments in trust funds	Php246,145,074.00
Note 8. Trust Funds[34]	Equity Additional contributions during the year	
Note 12. Actuarial Reserve Liabilities[35]	Subsequent deposits	Php54,204,044.00
	Total	Php300,349,118.00

By adding the *additional* trust fund contributions of ₱54,204,044.00, to the *original* trust fund contributions amounting to ₱246,145,074.00, respondent's *total* trust fund contributions for TY 2005 amount to ₱300,349,118.00. This amount should have been excluded from respondent's taxable receipts for VAT purposes. Accordingly, the table below reflects respondent's *adjusted* trust fund contributions:

Premium Collection		₱506,829,611.00
Add: Other income subject to value-added tax:		
Handling Fee	₱64,886,238.00	
Management Fee	9,000,000.00	
Commission Fee	5,192,069.00	
Others	4,346,494.00	
Sale of Property and Equipment	609,583.04	84,034,384.04

31 Exhibit "P-18," pp. 14-16. Docket- Volume II, pp. 604-606.
32 Exhibit "P-14," Docket- Volume III, pp. 1031-1061
33 *Id.*, p.1037
34 Exhibit "P-14-B," *id.*, p. 1051.
35 Exhibit "P-14-A," *id.*, p. 1054.

Total		590,863,995.04
Less[:] ***Adjusted*** Trust Fund Contributions[36]		300,349,118.00
Taxable Receipts subject to VAT		290,514,877.04
Less[:] Receipts reported per VAT returns		242,598,271.90
Unreported taxable receipts		₱47,916,605.14

A comparison between respondent's unreported taxable receipts for 2005, amounting to ₱47,916,605.14, and its declared taxable receipts per VAT Returns of ₱242,598,271.90, reveals an under-declaration rate of 19.75%. This percentage falls below the threshold for *substantial* under-declaration under Section 248(B) of the NIRC, as amended. Therefore, there is *no prima facie* evidence of falsity or fraud in the filing of respondent's 2005 VAT Returns.

Sans actual proof that there has been intentional falsity or fraud in the filing of respondent's 2005 VAT Returns, as it is here, the ten (10)-year extraordinary prescriptive period for tax assessment under Section 222(a) of the NIRC, as amended, does not apply. Accordingly, the Court in Division correctly ruled that the BIR's right to assess deficiency VAT for TY 2005, is barred by the statute of limitations under Section 203 of the same Code.

Second. Contrary to petitioner's position, jurisprudence[37] is definitive that assessments for withholding taxes, such as his 2005 EWT and WTC assessments, issued against respondent, are likewise subject to the prescriptive periods provided under the NIRC, as amended.

Finally. *Villanueva*[38] underscored the *rationale* behind the restricted application of the ten (10)-year prescriptive period under Section 222(a) of the NIRC, as amended, a point worth reiterating in closing:

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36 This comprised the ₱54,204,044.00 allowed deduction by petitioner and the amount of ₱246,145,074.00 which was respondent's actual original Trust Fund Contribution for TY 2005.

37 See *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019.

38 *Supra* note 21.

> ... Restricting the application of the ten (10)-year prescriptive period, as the law plainly indicates, compels the BIR to promptly and thoroughly examine the records of the taxpayer, verify the correctness of their returns, assess and collect deficiency internal revenue taxes. To allow the invocation of the ten (10)-year period, without any restriction, runs counter to this impetus and leads only to situations of unscrupulous tax examiners continuing to shag innocent, peaceful, and law-abiding taxpayers.

WHEREFORE, the Petition for Review, filed by the Commissioner of Internal Revenue on February 16, 2024 in CTA EB No. 2857, is **DENIED** for lack of merit. The Decision dated March 23, 2023 and the Resolution dated January 5, 2024 in CTA Case No.10002 are **AFFIRMED.**

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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