REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1240
(CTA Case No. 8240)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

- versus –

BPI-PHILAM LIFE ASSURANCE CORPORATION (formerly AYALA LIFE ASSURANCE, INC.),
Respondent.

Promulgated:

AUG 24 2015
11:32 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

This is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue on November 12, 2014 under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). The Petition for Review seeks the partial reversal of the Decision dated May 14, 2014,[2] as well as the Resolution dated October 9, 2014[3] of the Third Division (Court in Division)[4] of this Court in CTA Case No. 8240, entitled *BPI-Philam Life*

[1] Court *En Banc's* Docket, pp. 50-60.
[2] *Ibid.*, pp. 64-83; *Annex "A"*.
[3] *Id.*, pp. 84-86; *Annex "B"*.
[4] Composed of Associate Justice Lovell R. Bautista as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as members.

Assurance Corporation (formerly Ayala Life Assurance, Inc.) vs. Commissioner of Internal Revenue.

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

<u>Assailed Decision</u>:

> "**WHEREFORE**, in the light of the foregoing, the petition is hereby **PARTIALLY GRANTED**.
>
> Assessment No. VT-2006-000-298 against petitioner for deficiency VAT but covering only the first, second and third quarter for the taxable year 2006, and assessment for deficiency premium tax for the same year, is hereby **CANCELLED**. On the other hand, petitioner is held liable for deficiency VAT covering the fourth quarter of the taxable year 2006.
>
> Accordingly, petitioner is **ORDERED** to **PAY** the respondent the amount of **ONE MILLION SEVEN HUNDRED THIRTY NINE THOUSAND SIX AND 60/100 PESOS (P1,739,006.60)** as deficiency VAT.
>
> In addition, petitioner is **ORDERED** to **PAY** deficiency interest at the rate of twenty percent (20%) per annum which will be assessed and collected from October 18, 2010 until the full payment of the deficiency VAT.
>
> **SO ORDERED.**"

<u>Assailed Resolution</u>:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is the duly-appointed Commissioner of Internal Revenue (CIR), vested with authority to, *inter alia*, decide disputed assessments of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997, as amended (1997 NIRC) and other laws administered by the Bureau of Internal Revenue, and holding office at the BIR National Office Building, Diliman, Quezon City.

Respondent BIR-Philam Life Assurance Corporation (formerly Ayala Life Assurance, Inc.) (hereinafter referred to as "BPI-Philam", for brevity) is a corporation duly organized and existing under Philippine laws and with principal place of business at 15th Floor Ayala Life-FGU Center, 6811 Ayala Avenue, Makati City. It is engaged in the business of insurance and its intermediary services, including but not limited to, lending money to its clients or customers without engaging in financing business as contemplated by Republic Act No. 5890.

THE FACTS

The factual antecedents of this case, as found by the Court in Division in the assailed Decision, are as follows:

> "On January 7, 2010, petitioner (respondent herein) received a Formal Letter of Demand ("FLD") from respondent (petitioner herein) dated December 28, 2009 for deficiency income tax amounting to P14,213,413.19 and deficiency VAT and amounting to P45,074,711.08, inclusive of penalty interests computed up to January 31, 2010, as follows:

Deficiency Income Tax

Gross Profit *per return*		P114,279,255.00
Add: Disallowed Direct Cost items pursuant to RMC No. 59-2008		
Other Manpower Cost	P7,849,915.17	
Anticipated Endowments	39,111,189.96	
Taxes and Licenses	82,808,508.57	
Dividends and Premium Credits	68,683,676.41	
Surrenders	108,058,512.08	306,511,802.19
Gross Profit *per audit*		420,791,057.19
Minimum Corporate Income Tax (MCIT) *per audit*		8,415,821.14
Less: MCIT *per return*		2,285,585.10
Discrepancy/Income Tax deficiency		6,130,236.04

Add: Unsupported claims of creditable income tax withheld at source:		
Creditable income tax withheld at source per return	6,293,250.36	
Amount supported per taxpayer's response letter to Letter Notice No. 116-WE-N-06-00-00019 dated 08-31-07	3,932,501.50	2,990,748.86
Income Tax Deficiency		9,120,984.90
Add: Interest - April 16, 2008 to January 31, 2010		5,092,428.29
Amount Payable		**P14,213,413.19**

Deficiency Value-added Tax

Income subject to VAT *per audit*:		P144,054,623.00
Interest income from loans and receivables		50,609,419.00
Rental income subject to VAT pursuant to Sec. 108 of the NIRC		
Proceeds of sale of assets, subject to VAT pursuant to Section 106 of the NIRC:		
Motor Vehicles (FS Note 1)	P4,388,929.00	
Investment properties (real properties, FS Note 12)	48,783,102.00	
Assets held for sale (FS Note 13)	22,946,762.00	76,118,793.00
Miscellaneous Income		11,782,601.41
Total		282,565,436.41
Less: Amount subjected per returns		45,726,342.59
Amount not subjected to VAT		236,839,093.82
Output Tax due thereon/Tax deficiency		28,025,959.44
Add: Interest - 1/26/07 to 10/18/10 (0.60832)		17,048,751.64
Amount payable		**P45,074,711.08**
Over-all tax deficiencies and increments		**P59,288,124.27**

On February 3, 2010, petitioner filed its Protest against the assessments. Subsequently, on March 30, 2010, petitioner filed additional supporting documents, in accordance with Section 228, Tax Code, as amended.

During a series of discussions with representatives from the BIR Large Taxpayer's Service Division, petitioner conceded that the following items were subject to deficiency income tax and deficiency VAT, respectively:

A. Income Tax

1. Direct cost items that may not be claimed:

1.1 A portion of "Other Manpower Cost"	P	2,015,221.78

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1.2 Taxes and Licenses	P	82,808,505.57
1.3 Dividends and Premium Credits	P	68,683,676.41
2. Unsubstantiated Creditable Tax	P	2,774,112.09
B. Value-added Tax ("VAT")		
1. Gross Receipts which were not subject to VAT		
1.1 Proceeds from sale of Motor Vehicle	P	4,388,929.00
1.2 Proceeds from sale of Real Properties used in business	P	48,783,102.00
1.3 Miscellaneous Income from scrap sales	P	189,190.42

In a letter dated October 14, 2010, petitioner formalized its offer to settle the conceded revenue and expense accounts. Accordingly, petitioner paid on October 18, 2010 the amount of ₱9,973,230.08 as full settlement of the deficiency income tax assessment and the amount of ₱11,304,371.62 as partial settlement of the deficiency VAT assessment.

Nevertheless, petitioner maintained its position that VAT liability should not be imposed on the interest income on policy loans and all revenue items aggregated under miscellaneous income with the exception of scrap sales which was already conceded.

On February 24, 2011, petitioner received the Final Decision on Disputed Assessment ("FDDA") from respondent with deficiency VAT liability amounting to P3,491,801.03, computed as follows:

Deficiency Value-added Tax

Income subject to VAT *per audit*		
Interest income from loans and receivables		P144,054,623.00
Rental income subject to VAT		50,609,419.00
Proceeds of sale of assets, subject to VAT:		
Motor Vehicles	P4,388,929.00	
Investment properties (real properties)	48,783,102.00	
Assets held for sale (ROPOA)	22,946,762.00	76,118,793.00
Miscellaneous income		11,782,601.41
Total income subject to VAT *per audit*		282,565,436.41
Less: Reinvestigation adjustments - income subsequently verified as not subject to VAT		
Interest Income from Loans and Receivables	144,054,623.00	
Assets held for sale (ROPOA)	22,946,762.00	167,001,385.00
Income subject to VAT *per reinvestigation*		115,564,051.41

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Less: Amount subject to VAT per returns	45,726,342.59
Amount not subject to VAT	69,837,708.82
Output Tax due thereon/Tax deficiency (12%)	8,380,525.06
Add: Interest - 1/26/07 to 10/18/10	6,249,805.26
Amount payable *per investigation*	14,630,330.32
Less: Payment made on October 18, 2010	11,304,371.62
Amount still due	3,325,958.70
Add: Interest - 10/19/10 to 01/19/11	165,642.32
Amount payable	**P3,491,801.03**

Apparently, the FDDA issued by respondent cancelled the original VAT assessment on the proceeds on assets held for sale (ROPOA) amounting to P22,946,762.00 and on interest income on policy loans amounting to P114,054,623.00.

Even so, in addition to the deficiency VAT assessment, the FDDA imposed a five percent (5%) deficiency premium tax on the cancelled interest income on policy loans in the amount of P13,201,179.71, inclusive of penalty interest computed as follows:

Deficiency Premium Tax

Interest Income from Loans and Receivables	P144,054,623.00
5% Premium Tax due thereon	7,202,731.15
Add: Interest - 01/26/07 to 10/18/10	5,371,461.42
Amount payable per investigation	12,564,192.57
Less: Payment made on October 18, 2010	-
Amount still due	12,564,192.57
Add: Interest - 10/19/10 to 01/18/11	626,987.14
Amount payable	**P13,201,179.71**

On March 23, 2011, petitioner filed the instant Petition for Review.

In her Answer, respondent averred the following special and affirmative defenses, as follows:

> '8. Petitioner BPI-Philam Life Assurance Corporation, is liable to pay its VAT assessment amounting to P3,491,801.03 and deficiency Premium Tax in the amount of P13,201,179.71 in the aggregate amount of P16,692,980.73 for the taxable year 2006 including penalties, surcharges and interest for the following reasons:

8.1 The instant petition should not be given due course by this Honorable Court for lack of merit.

8.2 Respondent respectfully avers that the VAT and Premium Tax Assessments for taxable year 2006 in the aggregate amount of P16,692,980.73 were issued in accordance with the law and regulations.

8.3 Comprehensive study of petitioner's books of accounts and pertinent accounting records disclosed that it is liable to pay the total deficiency Income Tax, VAT and Premium Tax assessments. xxx xxx xxx.'

On September 20, 2011, the parties submitted their Joint Stipulation of Facts and Issues presenting the issues of the case, enumerated as follows:

I. Whether or not petitioner is liable for deficiency VAT in the amount of P3,491,801.03 and deficiency Premium Tax in the amount of P13,201,179.71;

II. Whether or not the interest income on policy loans is subject to the five percent (5%) Premium Tax; and

III. Whether or not respondent's right to issue a deficiency VAT and Premium Tax assessment for the taxable year 2006 is already barred by prescription.

Thereafter, pre-trial was terminated and trial ensued.

On June 10, 2013, petitioner filed its Memorandum. On June 20, 2013, respondent filed her Manifestation that she is adopting the arguments raised in her Answer as Memorandum. Thereafter, this case was submitted for decision."[5]

On May 14, 2014, the Court in Division issued the assailed Decision partially granting respondent's petition, and cancelling the deficiency VAT assessments for the 1st, 2nd and 3rd quarters for the taxable year 2006 as well as the deficiency premium tax assessment for the same year. However, the

[5] Court *En Banc's* Docket, pp. 65-69. Citations omitted.

Court in Division ordered respondent to pay the deficiency VAT assessment for the 4th quarter of taxable year 2006.

Aggrieved, petitioner filed a Motion for Partial Reconsideration on June 4, 2014 which the Court in Division denied in the assailed Resolution.

On November 12, 2014, petitioner filed the subject Petition for Review before the Court *En Banc* and raised the following issues:

1. Whether or not petitioner (respondent herein) is liable for deficiency value-added tax in the amount of P3,491,801.03 and deficiency premium tax of P13,201,179.71;

2. Whether or not interest income on policy loans is subject to premium tax; and

3. Whether or not respondent's (petitioner herein) right to issue deficiency premium tax and VAT for CY 2006 is already barred by prescription.

After the filing of respondent's Comment on February 18, 2015, the Court *En Banc* directed both parties to submit their respective memoranda within thirty (30) days from notice. Petitioner filed her Manifestation[6] on May 12, 2015 stating that she is adopting the arguments she raised in her Petition for Review as her Memorandum while respondent filed its Memorandum on Appeal[7] on May 15, 2015. On May 28, 2015, the Court *En Banc* submitted the case for decision.

THE PARTIES' ARGUMENTS

Petitioner's Arguments

Petitioner contends that the Court in Division erred in holding that the assessment for deficiency VAT for the 1st, 2nd and 3rd quarters of taxable year 2006 has already prescribed. Petitioner asserts that respondent's failure to declare its rental income and income from scrap sales rendered the VAT returns the latter filed as false and therefore, not covered by the three-year prescriptive period under Section 203 of the 1997 NIRC. Accordingly, the ten-year prescriptive period under Section 222 of the 1997 NIRC shall apply. Petitioner argues that the respondent is estopped from invoking the

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[6] *Ibid.*, pp. 110-111.
[7] *Id.*, pp. 114-126.

defense of prescription when it partially paid a portion of the deficiency VAT assessment, citing *Rizal Commercial Banking Corporation v. CIR ("RCBC Case")*[8] in support of her view.

Petitioner likewise postulates that there was no due process violation when she imposed deficiency premium tax against the respondent in the FDDA and that she has the power to assess respondent deficiency premium tax on the basis of Section 6 of the 1997 NIRC. Furthermore, petitioner claims that the change of the assessment to premium tax was merely a result of the examination of the documents submitted by the respondent in support of the latter's administrative protest.

Finally, petitioner posits that the Court should uphold the presumption of correctness of the deficiency tax assessments that she issued.

Respondent's Counter-Arguments

Respondent, on the other hand, counter-argues that petitioner's right to issue deficiency VAT assessment covering the first three quarters of taxable year 2006 has already prescribed.

Contrary to petitioner's position, respondent maintains that it did not file false VAT returns. Respondent claims that the non-inclusion of a portion of rental income was due to the fact that such income was considered as VAT-exempt since the lessees that paid the same are VAT-exempt entities. With respect to miscellaneous income, respondent claims that it presented schedules showing that these miscellaneous income are not subject to VAT.

Respondent also counter-argues that petitioner's claim of falsity of the VAT returns thus triggering the application of the ten-year prescriptive period under Section 222 of the 1997 NIRC should be deemed waived since petitioner failed to raise and prove the same in the proceedings below.

Respondent likewise posits that Revenue Memorandum Circular (RMC) No. 49-2010, which was used by petitioner as basis for the imposition of the deficiency premium tax, cannot be given retroactive effect pursuant to Section 246 of the 1997 NIRC.

Respondent finally advances that the deficiency premium tax assessment has no legal basis and that the imposition thereof for the first time in the FDDA violates its right to due process. *gr*

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[8] G.R. No. 170257, September 7, 2011, 657 SCRA 70.

RULING OF THE COURT *EN BANC*

The Petition for Review is bereft of merit.

After a circumspect evaluation of the case records, the Court *En Banc* finds no compelling reason to deviate from the ruling of the Court in Division that the deficiency VAT assessment for the 1st to 3rd quarters of taxable year 2006 as well as deficiency premium tax assessment for the same year issued by petitioner against the respondent has already prescribed.

The Court in Division properly held that Section 203 of the 1997 NIRC limits the period for petitioner to issue an assessment within a period of 3 years, to wit:

> "Section 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."

In connection with the above-cited provision, Section 114 (A) of the 1997 NIRC requires that quarterly VAT returns shall be filed within twenty five (25) days following the close of the taxable quarter prescribed for each taxpayer. On the other hand, Section 2 of Revenue Regulations (RR) No. 4-2002 mandates as follows:

> "Section 2. Time for Filing of Monthly Percentage Tax Return. – <u>The Monthly Percentage Tax Returns (BIR Form No. 2551M) of taxpayers, whether large or non-large, shall be filed, and taxes paid, not later than the 20th day following the end of each month, provided, however, that with respect to taxpayers enrolled with the Electronic Filing and Payment System (EFPS), the deadline for e-filing the Monthly Percentage Tax Return and e-paying the tax due thereon shall be five (5) days later than the deadline set herein</u>, provided, further, that for percentage tax returns/other returns required to be filed under

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Sections 120, 125, 126 and 127 of the Tax Code, they shall be filed within the periods stated in those sections." *(Underscoring supplied.)*

Applying the foregoing to the present case, the Court in Division correctly ruled that the deficiency VAT assessment for the 1st to 3rd quarters of taxable year 2006 as well as deficiency premium tax assessment for the same year issued by petitioner against the respondent has already prescribed and hence, null and void.

As aptly found by the Court in Division:

"Based on the dates for filing of petitioner's VAT and percentage tax returns for the taxable year 2006, this Court has determined the period wherein respondent [petitioner herein] may validly issue an assessment against petitioner [respondent herein], as follows:

Deficiency Value-added Tax

Period Covered	Date of Filing	Last Day to File Return	Last Day to Issue Assessment
1st Quarter	April 24, 2006	April 25, 2006	April 25, 2009
2nd Quarter	July 25, 2006	July 25, 2006	July 25, 2009
3rd Quarter	October 23, 2006	October 25, 2006	October 25, 2009
4th Quarter	January 25, 2007	January 25, 2007	January 25, 2010

Deficiency Premium Tax

Period Covered	Date of Filing	Last Day to File Return	Last Day to Issue Assessment
January	February 23, 2006	February 25, 2006	February 25, 2009
February	March 23, 2006	March 25, 2006	March 25, 2009
March	April 24, 2006	April 25, 2006	April 25, 2009
April	May 23, 2006	May 25, 2006	May 25, 2009
May	June 22, 2006	June 25, 2006	June 25, 2009
June	July 21, 2006	July 25, 2006	July 25, 2009
July	August 23, 2006	August 25, 2006	August 25, 2009
August	September 21, 2006	September 25, 2006	September 25, 2009
September	October 20, 2006	October 25, 2006	October 25, 2009
October	November 23, 2006	November 25, 2006	November 25, 2009
November	December 21, 2006	December 25, 2006	December 25, 2009
December	January 25, 2007	January 25, 2007	January 25, 2010

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As determined from the foregoing results, respondent had until April 25, July 25, October 25, all in 2009 and January 25, 2010 to assess petitioner for deficiency VAT covering the first, second, third, and fourth quarters of the taxable year 2006.

Whereas, respondent had until February 25, March 25, April 25, May 25, June 25, [July 25], August 25, September 25, October 25, November 25, December 25, all in 2009 and January 25, 2010 to issue an assessment as to the deficiency Premium Tax.

An assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer. Due process requires at the very least that such notice must be served on and received by the taxpayer to enable him to determine his remedies thereon. Consequently, an assessment that has not been received by the person liable for the payment of the tax cannot become final and executory. In the instant petition, respondent's FLD dated December 28, 2009 was received by petitioner on January 7, 2010. Consequently, the assessment for deficiency tax made for the first, second and third quarters are well beyond the three-year prescriptive period. Therefore, respondent's assessment is made effective against the petitioner only as to the fourth quarter of the taxable year 2006.

On the other hand, the assessment for deficiency Premium Tax was made known to petitioner for the first time when respondent issued her FDDA dated January 5, 2011. x x x"[9]

To justify the issuance of the deficiency VAT assessment beyond the 3-year prescriptive period, however, petitioner now argues that respondent's VAT returns are false returns. Consequently, the ten (10) year prescriptive period under Section 222 of the 1997 NIRC should apply.

Petitioner's argument deserves scant consideration.

The Court *En Banc* notes that petitioner raised the foregoing issue only in her Motion for Partial Reconsideration filed before the Court in Division. Notably, the said issue was never raised in petitioner's Answer or Pre-trial Brief, or any other pleadings filed before the Court in Division.

[9] Court *En Banc's* Docket, pp. 71-72.

Neither did petitioner present any evidence to prove such allegation. It is a settled rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal because to allow the same would be offensive to the basic rules of fair play, justice and due process.[10] If petitioner sincerely believes that the tax returns filed by respondent are false, she should have raised the same at the earliest opportunity, *i.e.*, when she filed her Answer before the Court in Division, and not later on when the Court in Division had already ruled against her.

It must be borne in mind that Section 248 (B) of the 1997 NIRC mandates the imposition of surcharge at the rate of fifty percent (50%) of the amount of deficiency tax due in cases where there is a finding that a false return has been filed. Such surcharge shall be in addition to the amount of deficiency tax required to be paid by the taxpayer. In this case, however, the Court *En Banc* observed that neither the FLD nor the FDDA imposed the 50% surcharge on the amount of deficiency tax assessment required to be paid by respondent. Thus, it appears that petitioner's claim of falsity of respondent's tax returns is merely an afterthought.

The Court *En Banc* is also not persuaded by petitioner's argument that respondent is estopped from assailing the timeliness of the deficiency VAT assessment when respondent partially paid a portion thereof. Corollarily, the Court *En Banc* finds that petitioner's reliance on the *RCBC case* to be misplaced.

Similar to her claim of falsity of the VAT returns, the Court *En Banc* observed that petitioner raised the argument of estoppel for the first time only in her Motion for Partial Reconsideration. As discussed earlier, issues or arguments not raised during trial cannot be raised for the first time on appeal, more especially in a motion for reconsideration.[11] On the basis of this point alone, such argument must fail.

At any rate, the ruling in *RCBC case* is not on all fours with the present case. In *RCBC case*, at issue is the validity of the Waivers of the Statute of Limitations executed between the taxpayer and the then Commissioner of Internal Revenue which purportedly extended the period of assessment. In the said case, the taxpayer was deemed to have impliedly

[10] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, (Resolution) G.R. No. 168498, April 24, 2007, 522 SCRA 144; *Hubert Nuñez vs. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, April 12, 2010, 618 SCRA 134; *American Home Insurance Co. of New York vs. F. F. Cruz & Co.*, Inc., G.R. No. 174926, August 10, 2011, 655 SCRA 248; *Padilla Mercado et. al. vs. Sps. Espina*, G.R. No. 173987, February 25, 2013, 691 SCRA 545; *Ma. Consolacion M. Nahas vs. Juanita L. Olarte*, G.R. No. 169247, June 2, 2014, 724 SCRA 224; *Luzviminda Apran Canlas vs. Republic of the Philippines*, G.R. No. 200894, November 10, 2014; *Cheryll Santos Leus vs. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*, G.R. No. 187226, January 28, 2015.
[11] *Ibid.*

admitted the validity of the waivers when, after the assessment was considerably reduced, it immediately paid the uncontested taxes.

In contrast, the present case does not involve execution of waiver of statute of limitations and in fact, there is no showing that the parties have executed any such waiver. What the respondent assails in this case is the validity of the deficiency VAT assessment itself for having been issued beyond the 3-year prescriptive period.

What is applicable to the present case is the Supreme Court's ruling in *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[12] which provides:

> "The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. **As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.** It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied." *(Emphasis supplied)*

Consistent with the foregoing, respondent's act of partially paying a portion of the deficiency VAT assessment cannot be taken as an implied admission on its part of the timeliness of the issuance of the deficiency VAT assessment. Public policy considerations behind the law on prescription of assessment and collection of taxes should be held superior to petitioner's claim of estoppel. As the Supreme Court lucidly discussed in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[13] to wit:

> "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

[12] G.R. No. 178087, May 5, 2010, 620 SCRA 232, 246-247.
[13] G.R. No. 162852, December 16, 2004, 447 SCRA 214, 225-226.

> 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*:
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> > 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 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.** (Emphasis supplied)"

The Court *En Banc* also finds that respondent's due process right was not observed when petitioner changed the nature of the deficiency assessment on interest income on policy loans from deficiency VAT to deficiency premium tax only in the FDDA.

Section 228 of the 1997 NIRC and RR No. 12-99, as amended, particularly Section 3 thereof, specify the due process requirement to be observed in issuing deficiency tax assessments. Strict compliance with these requirements is necessary to make the assessment valid. Indeed, there are numerous cases where the Supreme Court had declared void any assessment that fails to strictly comply with the due process requirement. These cases include the following: *gr*

1. *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[14] where the Supreme Court held that failure to send a Preliminary Assessment Notice (PAN) stating the facts and the law on which the assessment was made as required by Section 228 of the 1997 NIRC rendered the assessment made by the CIR as void.

2. *Commissioner of Internal Revenue vs. Azucena T. Reyes*,[15] where the Supreme Court ruled as void an assessment for deficiency estate tax issued by the CIR for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the 1997 NIRC.

3. *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[16] where the Supreme Court ruled, among others, that the taxpayer was deprived of due process when the CIR failed to issue a notice of informal conference and a PAN as required by RR No. 12-99 in relation to Section 228 of the 1997 NIRC. Hence, the assessment is void.

It is the considered view of the Court *En Banc* that the change of the nature of the assessment from deficiency VAT to deficiency premium tax only upon the issuance of the FDDA unduly deprives respondent of an opportunity to be heard and to dispute the new assessment at the administrative level. It bears stressing that the FDDA constitutes as petitioner's final decision on respondent's administrative protest. To allow petitioner to change the nature of the assessment or to surprise the taxpayer with a new assessment at such very late stage would certainly render meaningless the protection afforded by Section 228 of the 1997 NIRC.

While it is true that under Section 6 of the 1997 NIRC, petitioner is vested with authority and duty to examine a taxpayer's return and assess him of the correct amount of tax due, the exercise of such authority must remain consistent with Sections 203 and 228 of the 1997 NIRC. In other words, the issuance of deficiency tax assessments by petitioner must be made in strict compliance with the due process requirements and shall be issued within the applicable prescriptive period.

The Court *En Banc* also agrees with the Court in Division that interest income on policy loans is not subject to deficiency premium tax because interest income is not the "premium collected" as provided for in Section 123 of the 1997 NIRC. *Jr*

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[14] G.R. No. 185371, December 8, 2010, 637 SCRA 632.
[15] G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 382.
[16] G.R. No. 172598, December 21, 2007, 541 SCRA 316.

The Court *En Banc* quotes with approval the pertinent disquisition by the Court in Division in the assailed Decision, to wit:

> "The Supreme Court in *Gulf Resorts, Inc. vs. Phil. Charter Insurance*, defined an insurance premium as the consideration paid by an insurer for undertaking to indemnify the insured against a specified peril. In Revenue Regulations No. 26, premium includes all that is received by the underwriter therefore and is in fact the total consideration receivable for undertaking the risk, whether in one sum or in installments, during the life of the policy.
>
> As provided under Section 123 of the Tax Code of 1997, Premium Tax is imposed on total premiums collected by the life insurance company excluding the premiums collected or received on variable contracts.
>
> In contrast, the term 'interest' is defined as income earned from debt claims of any kind. Therefore, interest income earned by petitioner is clearly not a consideration received for underwriting risk but rather income earned from loans and debt instruments of any kind extended to policyholders as mandated under Section 198 of the Insurance Code which provides:
>
>> 'SEC. 198. xxx xxx xxx A life insurance company, however, may lend to any of its policyholders upon the security of the value of its policy such sums as may be determined pursuant to the provisions of the policy. xxx xxx xxx.'
>
> In justifying the imposition of deficiency premium tax, respondent posited interest income on loans as 'akin to premiums' on the basis of RMC 49-2010, thus subject to premiums tax in accordance to Section 123 of the Tax Code, as amended.
>
> The pertinent provision of the circular, is quoted as follows:
>
>> '(2) Management Fees, Rental Income, Commission Income, Re-issuance Fees, Renewal Fees, Other Income/Fees. Management fees, rental

> income, or any other income earned by the life insurance company from services which can be pursued independently of the insurance business activity, are thus not subject to the 5% premium tax imposed under Section 123 above but, rather, the same are treated as income from services that are subject to the imposition of VAT pursuant to Section 108 of the Tax Code, as amended, or to the percentage tax imposed under Section 116 of the same Tax Code, as the case may be.
>
> Re-issuance fees, reinstatement fees, renewal fees as well as penalties paid to the life insurance company which are incidental to or in connection with the insurance policy contracts issued are considered akin to premiums, thus, such type of income are covered by Section 123 of the Tax Code and are subject to the five percent (5%) premium tax for the gross amount received on such fees and/or penalties.' *(Underscoring ours)*

The afore-quoted circular classified re-issuance fees, reinstatement fees and renewal fees as 'akin to premiums', and therefore, subject to premium tax.

We are not impressed.

Under the principle of *ejusdem generis*, interest income may be considered as 'akin to premiums' if it is of the same nature as re-issuance, reinstatement and renewal fees which are administrative charges paid in connection with the issuance of policy contracts. This Court is of the opinion that interest income is not an administrative charge related to the issuance of policy contracts but income earned from debt claims, and thus, not 'akin to premiums' subject to premiums tax.

Even assuming that RMC No. 49-2010 applies to petitioner's interest income on policy loans for the taxable year 2006, the following provision in the said RMC applies.

> '(3.a.) *Investment Income Realized from the Investment of Premiums Earned.* – Investment income earned by the life insurance companies from investing the premium received in marketable

> securities, bonds and other financial instruments is considered exempt from the further imposition of business tax since the premiums which have been the source of the funds invested has already been subject to the imposition of the five percent (5%) premium tax imposed by Section 123 of the Code, as amended.'

> In *Commissioner of Internal Revenue vs. The Philippine American Accident Insurance Company, Inc.*, the Supreme Court held that when a company is taxed on its main business, it is no longer taxable further for engaging in an activity or work which is merely part of, incidental to and is necessary to its main business. In the same case, the Supreme Court upheld the rulings of both the Court of Tax Appeals and the Court of Appeals which found that the investment of premiums and other funds received by therein respondents through the granting of mortgage and other loans was necessary to respondent's business and hence, should not be taxed separately."[17]

With respect to petitioner's claim that her deficiency tax assessments should be accorded the presumption of correctness, it is enough to state that *prima facie* correctness of a tax assessment does not apply upon proof that it is utterly without foundation, meaning it is arbitrary and capricious.[18] At this point, the pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation*,[19] is instructive:

> "An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.

> In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption."

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[17] Court *En Banc's* Docket, pp. 80-82. Citations omitted.
[18] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301, 330.
[19] G.R. No. L-46644, September 11, 1987, 153 SCRA 665, 676-677 citing *Collector of Internal Revenue vs. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182, 185.

In view of the foregoing, the Court *En Banc* holds that the cancellation of Assessment No. VT-2006-000-298 against respondent for deficiency VAT but covering only the 1st, 2nd and 3rd quarters of taxable year 2006, and assessment for deficiency premium tax for the same year, is therefore warranted.

WHEREFORE, premises considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on November 12, 2014 is hereby **DENIED**. Accordingly, the Decision and Resolution dated May 14, 2014 and October 9, 2014, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice