REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

WPP MARKETING COMMUNICATIONS INC. (formerly known as J. Walter Thompson Company (Philippines) Inc.), *Petitioner,*	**CTA Case No. 9778**
	Members:
	DEL ROSARIO, *P.J., Chairperson*
	FABON-VICTORINO, *and*
-versus-	**MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 05 2019 ; 2:18 pm

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RESOLUTION

This resolves respondent's **Motion for Reconsideration Re: Resolution dated 19 October 2018**,[1] filed through registered mail on November 13, 2018 and received by this Court on November 20, 2018, with petitioner's **Comment/Opposition (to the Motion for Reconsideration filed by Respondent Commissioner of Internal Revenue)**[2] filed through registered mail on December 17, 2018 and received by this Court on January 3, 2019. The instant motion is seeking for the reversal and setting aside of this Court's *Resolution* dated October 19, 2018 which ruled not only the suspension of the alleged tax deficiency assessment but also on the prescription of respondent's right to collect the same.

Respondent argues that this Court erred in not deciding first the issue of jurisdiction prior to resolving the issue of prescription.

Respondent also argues that granting the denial of compromise is subject to judicial review, the petition for review is not timely filed and this Court erred in deciding his right to collect the subject tax assessment has already prescribed and

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[1] Docket, CTA Case No. 9778, pp. 458-473.
[2] *Id.* at 499-517.

considering that such was made even prior to receipt of evidence on the merits.

On the other hand, petitioner argues that this Court had already resolved the issue on jurisdiction in Resolution dated July 13, 2018 and that the judicial review of compromise offer is proper and was timely filed in accordance with law.

Petitioner also argues that this Court had properly and justly ruled that the period to collect taxes has already prescribed and did not err in ruling such prior to the receipt of evidence on the merits.

We deny the motion.

Petitioner is correct in pointing out that the issue of jurisdiction on the instant case was already passed upon by this Court in the Resolution dated July 13, 2018, to wit:

> "Section 7(a)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes" provides that:
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> > Sec. 7. Jurisdiction. - The CTA shall exercise:
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> > a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> > > 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)
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> Granting *arguendo* that the subject matter being raised by the petitioner is on its alleged application for compromise, this Court is still not precluded by law in taking cognizance of such subject matter.
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> In the case of *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[3], the Supreme Court ruled that this Court has jurisdiction on cases other than

[3] G.R. No 169225, November 17, 2010.

disputed assessments or refunds which involve the provisions of NIRC, to wit:

> We cannot countenance the CIRs assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term other matters referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:
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>> Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
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>> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)
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> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioners theory with regard to the parameters of the term other matters can be supported or even deduced. What is rather clearly apparent, however, is that the term other matters is limited only by the qualifying phrase that follows it.
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> Thus, on the strength of such observation, <u>we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).</u> (*Underline ours*)

Definitely, respondent's power to compromise and abate is part of the provisions of the 1997 NIRC, as amended. Thus, this Court has jurisdiction to entertain the instant petition."

As to respondent's allegation that the petition was not timely filed, the records of the instant case reveal otherwise. On January 15, 1996, respondent issued the Assessment Notice No. 34-14-00931-92 for income tax (IT) and value-added tax (VAT) assessments.[4] On February 6, 1996,

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[4] Docket, Paragraph 11 of the Petition for Review, p. 15; as admitted by the Respondent, Paragraph 1, Answer, p. 134.

petitioner filed its protest letter on said assessments.[5] There was no allegation as to the issuance of the Final Decision on Disputed Assessment (FDDA). On February 1, 2018[6], petitioner received a letter dated November 6, 2017[7] from the Bureau of Internal Revenue (BIR) as respondent's final action on petitioner's application for compromise. Petitioner filed the instant petition for review on March 2, 2018.[8]

The Supreme Court in its decision ruled that when taxpayers receive a notice or a letter other than the FDDA demanding payment of the alleged tax deficiency assessment after the latter filed its protest letter, the same is deemed a denial of such protest.[9]

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[10], the Supreme Court ruled that a taxpayer can wait for the final action of the respondent before it can elevate such action to this court, to wit:

> "It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate - the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other.**

Further, in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[11], the Supreme Court ruled that it is the decision and not the assessment made by the respondent that should be elevated to this Court as it is not only the FDDA that fixes the final tax liability of a taxpayer, to wit:

> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with

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[5] Docket, Paragraph 12 of the Petition for Review, p. 15.
[6] *Id.*, Paragraph 28 of the Petition for Review, p. 19.
[7] *Id.*, Paragraph 2, Answer, p. 134; Paragraph 5, Item II Summary of Admitted Fact, Respondent's Pre-Trial Brief, p. 199.
[8] *Id.*, Petition for Review, p. 12.
[9] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue et al.*, G.R. No. 148380, December 09, 2005; *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001; *Commissioner of Internal Revenue v. Algue, Inc. et al.*, G.R. No. L-28896 February 17, 1988.
[10] G.R. No. 171251, March 05, 2012.
[11] G.R. Nos. 215534 and 215557, April 18, 2016.

appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that **what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself**.

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, **the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer**. **Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA**.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other— unless the law or regulations otherwise provide. (*Emphasis supplied*)

Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision,** or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (*Emphasis supplied*)

Relative thereto, Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> xxx xxx xxx
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, **that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules**; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; (*Emphasis supplied*)

When petitioner received on February 1, 2018 the letter of Commissioner Caesar R. Dulay dated November 6, 2017, it was deemed as the final action or decision of the respondent, hence, petitioner had thirty (30) days from such receipt or until March 3, 2018 to appeal its case before this Court. Thus, the instant petition for review was timely filed on March 2, 2018.

Respondent posits that his right to collect the alleged deficiency taxes from the petitioner has not yet prescribed because the request for reinvestigation and offer of compromise filed by the petitioner had effectively suspended the running of the prescriptive period to collect and a waiver of its right to invoke prescription to collect the alleged deficiency taxes, respectively.[12] Respondent is totally mistaken. What petitioner filed was a request for reconsideration instead of a request for reinvestigation.[13]

Sections 203, 222, and 223 of the 1997 NIRC, as amended, provides for the statute of limitations on regular as well as special cases, and the suspension of such statute of limitations, to wit:

> **SEC. 203**. ***Period of Limitation Upon Assessment and Collection***. - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
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> **SEC. 222**. ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes***. -
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> > (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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> > (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

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[12] Docket, Motion for Reconsideration Re: Resolution dated 19 October 2018, p. 465.
[13] *Id.*, Petition for Review, Annex "H", pp. 74-80.

> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
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> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
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> (e) Provided, however, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

> **SEC. 223**. ***Suspension of Running of Statute of Limitations***. - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. (*Underscore ours*)

The law is categorical that the suspension of the statute of limitations shall only take effect when a taxpayer files a protest letter with a request for reinvestigation and the respondent granted the request for reinvestigation made by a taxpayer. In the instant case, petitioner's supplemental protest letter dated August 4, 1998[14] did not request for reinvestigation. Rather, it is asking the concerned BIR Revenue District Officer that the "examiner's findings be

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[14] *Supra.*, Note 13.

properly reconsidered." Thus, it is a request for reconsideration which was not among the circumstances in the above-mentioned provision that will suspend the running of the statute of limitations.

Further, the waiver of the taxpayer of the defense of prescription shall only be effective when there is a written agreement between both the taxpayer and the respondent. However, the facts and circumstances in the records of this case had no written agreement for such waiver of the defense of prescription. The running of the statute of limitations has not been effectively suspended. Hence, this Court did not err in declaring that respondent's right to collect the alleged deficiency taxes has already prescribed.

As to the argument that this Court decided the case prior to the reception of the evidence, petitioner argues that this Court should have resolved the case only after the parties had been given the chance to present their evidence and argue their defenses.

Respondent should be aware that this Court may resolve the case even without the conduct of trial proper if, based on the pleadings submitted by the parties, prescription or res judicata had already set in.

Section 1, Rule 9 of the Rules of Court provides:

> Rule 9
> EFFECT OF FAILURE TO PLEAD
>
> SECTION 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior judgment or **by statute of limitations, the court shall dismiss the claim**. (*Emphasis supplied*)

Relative thereto, Section 1, Rule 14 of RRCTA also provides:

> SECTION. 1. *Rendition of judgment.* - The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The

> conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
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> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** (*Emphasis supplied*)

In *China Banking Corporation v. Commissioner of Internal Revenue*[15], the Supreme Court ruled that if the evidence on record show that the claim is barred by prescription, there is nothing for the court to do but to dismiss the case outright, to wit:

> **If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense.** In *Heirs of Valientes v. Ramas*, we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.

Thus, we reiterate the disquisitions of this Court in the assailed resolution as to the facts and circumstances which were the basis for declaring that the respondent's claim is already barred by prescription, to wit:

> Considering that the taxable year involved in this case is 1992, the applicable period of prescription to collect is three (3) years pursuant to Presidential Decree (PD) No.

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[15] G.R. No. 172509, February 04, 2015.

> 1158, otherwise known as the NIRC of 1977, as amended by Batas Pambansa (BP) Blg. 700. Petitioner admitted that respondent had issued the FAN on January 15, 1996, hence, the latter had only until January 15, 1999 to enforce the collection of such alleged deficiency tax assessments against the former.
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> As case records will show, the first attempt to collect the deficiency IT and VAT assessments was on August 15, 2016, which was the date when petitioner received the first Notice of Denial by respondent of petitioner's offer of compromise. Other than this Notice of Denial which was followed by several more Notices of Denial, there was neither a warrant of distraint or levy issued nor an action for collection before any court filed to enforce the collection of the alleged deficiency IT and VAT for TY 1992. More so, no waivers of the statute of limitations were executed by petitioner in this case.
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> xxx xxx xxx
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> Given the length of time, i.e., 19 years, spanning the period between the date of final assessment notice and the first demand letter for the collection of alleged deficiency taxes, the court *a quo* will not only rule on the motion for the suspension of collection of taxes but on the merits of the petition proper. Thus, the right of the respondent to collect the alleged deficiency IT and VAT for TY 1992, either through administrative remedies or judicial action, has already prescribed. Any action to enforce collection after such date is considered null and void.

There being no other new issues or matters raised by the respondent in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration re: Resolution dated 19 October 2018 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice