REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **WPP MARKETING COMMUNICATIONS INC. (formerly known as J. Walter Thompson Company (Philippines) Inc.),** Respondent.	**CTA EB NO. 2034** **(CTA CASE NO. 9778)** **Present:** Del Rosario, *P.J.,* Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto-San Pedro, *JJ.* **Promulgated:** SEP 23 2020 3:50p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is the Petition for Review filed by the Commissioner of Internal Revenue (CIR) under Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court which seeks to reverse the following:

1. October 19, 2018 Resolution[1] of the CTA First Division,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's Partial Motion for Reconsideration (on the denial of the Motion to Suspend Collection of Taxes) is hereby **GRANTED**. Furthermore, based on the findings of this Court that the right of the respondent to collect the alleged deficiency taxes had already prescribed, the Petition for Review is hereby **GRANTED**.

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[1] Annex A, Petition for Review, *Rollo*, pp. 32-37.
[2] The Court in Division was *unanimous*, composed of Presiding Justice Roman G. Del Rosario and Associate Justices Esperanza R. Fabon-Victorino and Catherine T. Manahan.

Accordingly, any collection of the alleged deficiency tax assessment for TY 1992 is **DECLARED NULL AND VOID.**

SO ORDERED."

2. March 5, 2019 Resolution[3] denying the CIR's Motion for Reconsideration re: Resolution dated 19 October 2018 for lack of merit.

THE FACTS

The facts are condensed from the records, as follows:

WPP Marketing Communications Inc. (*formerly known as* J. Walter Thompson Company (Philippines) Inc.) [WMCI/taxpayer] is a domestic corporation duly organized and existing under Philippine laws, with principal office address at 7th Floor, Equitable Bank Tower, 8751 Paseo de Roxas, Makati City, Philippines. It is duly registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 126-Large Taxpayer under Taxpayer Identification Number (TIN) 000-346-929-000.[4]

The CIR is charged with the assessment and collection of all internal revenue taxes, fees and charges, and enforcement of all forfeitures, penalties and fines connected therewith including approval of compromise settlement.[5]

WMCI is engaged in the business of general advertising, both as principals and agents including the preparation and arrangement of advertisements and the manufacture and construction of advertising devices and novelties.[6] As an advertising agency, WMCI "produces commercials and arranges media placements for its client-advertisers, and in return, receives a service fee or commission. It collects from its client-advertisers amounts representing reimbursements for pass-through costs."[7]

In 1995, the BIR issued pre-assessment notice dated December 19, 1995 to petitioner WMCI for Income Tax and Value-Added Tax (VAT).[8]

Thereafter, the BIR issued Assessment Notice No. 34-14-000931-92 dated January 15, 1996 for Income and VAT Assessment for the taxable year (TY) 1992, aggregating in the amount of ₱57,542,562.56 inclusive of increments computed as of January 15, 1996, broken down as follows: Jc

[3] Annex B, Petition for Review, *Rollo*, pp. 38-48.
[4] Joint Stipulation of Facts and Issues, Division Docket, p. 423.
[5] *Id.*
[6] Petition for Review, Division Docket, p. 14.
[7] Supplementary Motion for Reconsideration, Annex M, Petition for Review, Division Docket, p. 93.
[8] Joint Stipulation of Facts and Issues, Division Docket, p. 423.

Income Tax	₱ 29,978,494.75
Value-Added Tax	27,564,067.81
Total	₱ 57,542,562.56

On November 15, 2000, the taxpayer filed an application for Compromise Settlement for Deficiency Income and VAT under Revenue Memorandum Order No. (RMO) 42-2000 on the ground of *doubtful validity*. The RMO prescribed minimum percentages of offers of compromise for outstanding delinquent accounts and disputed assessments as of June 30, 2000.[9] However, no payment of the compromise offer was made by WMCI.[10]

On November 15, 2001, the offer of compromise settlement was refiled[11] under Revenue Regulations No. (RR) 7-2001 and Section 10.2 of RMO 22-2001,[12] which states:

> "SECTION 10. Transitory Provisions. —
>
> 10.1 Offers of compromise made in accordance with previous compromise settlements programs of the Bureau which applications are still pending with any BIR office despite full payment of the compromise offer and full compliance with the conditions and requirements set forth thereunder shall be subjected to evaluation and processing in accordance with the provisions of this Order, but in no case shall a refund, TCC or tax credit be granted to the taxpayer out of the payment previously made.
>
> 10.2 <u>Offers of compromise which have been made pursuant to previous compromise settlement programs of the Bureau for which no full payments have yet been made and are still pending with any BIR office shall have to be re-filed in accordance with the provisions of this Order</u>."

On August 15, 2016, the taxpayer received a Notice of Denial No. C2016-0112 from the CIR.[13] The Notice of Denial stated that after careful review and evaluation of the application, the same has been disapproved by the National Evaluation Board. Accordingly, WMCI was requested to pay the amount of ₱57,542,562.56, plus all increments incident to delinquency with any authorized agent banks within fifteen (15) days from receipt.[14]

On August 30, 2016, a request for reconsideration was filed questioning the finality and validity of the Notice of Denial.[15]

[9] *Id.*, at pp. 423-424. *See* Annexes I and L, Petition for Review, Division Docket, pp. 81-83, 89.
[10] Letter dated August 30, 2016, Annex L, Petition for Review, Division Docket, p. 90.
[11] Joint Stipulation of Facts and Issues, Division Docket, p. 424.
[12] Petition for Review, Division Docket, p. 15.
[13] Joint Stipulation of Facts and Issues, Division Docket, p. 423.
[14] Annex K, Petition for Review, Division Docket, p. 86.
[15] Joint Stipulation of Facts and Issues, Division Docket, p. 424.

On October 27, 2016, further to the meeting between the taxpayer and the Large Taxpayer Collection and Enforcement Division (LTCED), a Supplementary Motion for Reconsideration was filed.[16]

As a result of the discussion with the Assistant Commissioner of Internal Revenue – Large Taxpayers Service (ACIR-LTS) on November 11, 2016, another Supplementary Motion for Reconsideration was filed on December 2, 2016.[17]

Accordingly, on December 2, 2016, the taxpayer filed the documentary requirements and proof of payment of the increased offer (from 20% to 40%), with details as follows:[18]

Tax Type	Basic Deficiency Tax	Compromise Rate	Compromise Amount
Income Tax	₱ 15,390,358.86	40%	₱ 6,156,143.54
Value-Added Tax	13,782,033.91	40%	5,512,813.56
Total	₱ 29,172,392.77		₱ 11,668,957.11

On June 8, 2017, the *second* Notice of Denial dated May 30, 2017 was received by the taxpayer.

On June 23, 2017, a Second Motion for Reconsideration on the 2nd Notice of Denial was filed.[19]

On September 6, 2017, a Supplementary Motion for Reconsideration was also filed.[20]

On January 8, 2018, another Supplementary Request for Reconsideration was filed.[21]

The taxpayer, thereafter, received a letter from the BIR signed by the CIR stating the denial on the applications for compromise with finality.[22]

Proceedings Before the Court A Quo

On March 2, 2018, the taxpayer filed a Petition for Review with Urgent Motion to Suspend Collection of Taxes with the Court *a quo* and sought to cancel and nullify the Assessment No. 34-14-000931-92 and the Notice of Denial of the Compromise issued by the CIR against the taxpayer for alleged

[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*, at p. 425.
[21] *Id.*
[22] *Id.*

deficiency income tax and VAT for TY 1992 in the aggregate amount of ₱57,542,562.56, inclusive of increments as of January 15, 1996.[23]

On May 15, 2018, the CIR filed his Answer interposing the following defenses:

1. The CTA has no jurisdiction over the assessment. The assessment has become final, executory and demandable.[24]

2. The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[25]

3. The CTA has no jurisdiction over the instant petition. The decision appealable to the court is a decision on disputed assessment and not a decision denying the application for compromise. Hence, the taxpayer does not have any cause of action against the CIR.[26]

4. The petition states no cause of action.[27]

5. The court has no jurisdiction over the subject matter.[28]

6. Jurisdiction over the subject matter of the action is determined by the allegations of the complaint and the character of the relief sought.[29]

7. The assessment has not prescribed and has basis in fact and in law.[30]

8. The assessment issued against the taxpayer is valid and lawful.[31]

Thereafter, the pre-trial conference was set on June 7, 2018.[32]

On June 1, 2018, the taxpayer filed its Pre-Trial Brief[33] and Judicial Affidavit of Meinrado D. Sabayle.[34]

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[23] Petition for Review, Division Docket, pp. 12-37.
[24] Answer, Division Docket, p. 135.
[25] *Id.*, at p. 138.
[26] *Id.*, at p. 139-140.
[27] *Id.*, at p. 142.
[28] *Id.*, at p. 143.
[29] *Id.*, at p. 147.
[30] *Id.*, at p. 148.
[31] *Id.*, at p. 150.
[32] Notice of Pre-Trial Conference, Division Docket, pp. 154-155.
[33] Division Docket, pp. 156-167.
[34] *Id.*, at pp. 168-183.

On even date, the CIR also filed a Motion to Dismiss[35] and his Pre-Trial Brief.[36]

On June 7, 2018, the pre-trial conference was cancelled and reset to August 16, 2018.[37]

On June 27, 2018, WMCI filed its Comment/Opposition On The Motion To Dismiss Filed By Respondent.[38]

On July 6, 2018, the CIR filed his Reply (Re: Petitioner's Comment/Opposition on the Motion to Dismiss filed by Respondent).[39]

In a Resolution dated July 13, 2018, the Court *a quo* denied both WMCI's Urgent to Suspend Collection of Taxes and the CIR's Motion to Dismiss for lack of merit.[40]

On August 3, 2018, taxpayer WMCI filed a Partial Motion for Reconsideration (on the denial of the Motion to Suspend Collection of Taxes).[41]

In an August 16, 2018 Order, the pre-trial conference was reset to August 30, 2018 upon the manifestation of WMCI's counsel that a Partial Motion for Reconsideration (on the denial of the Motion to Suspend Collection of Taxes) and that the CIR was directed to file a comment within ten (10) days from receipt thereof.[42]

On August 28, 2018, respondent CIR filed his Opposition (Re: Petitioner's Partial Motion for Reconsideration dated 03 August 2018).[43]

In the Manifestation filed on August 28, 2018, WMCI stated that it filed the Judicial Affidavit of Mr. Meinrado Sabayle on August 24, 2018 or six (6) days before the hearing on the Motion to Suspend Collection of Taxes.[44]

During the August 30, 2018 pre-trial hearing, the parties agreed to submit the Joint Stipulation of Facts and Issues on or before September 14, 2018. Petitioner was given until September 14, 2018 to file its motion to commission an Independent Certified Public Accountant (ICPA). Also, the presentation of petitioner's witnesses was set on October 10, 2018 and on November 19, 2018. Finally, petitioner orally offered Exhibit P-1 (Audited Financial Statements) in support of its Partial Motion for Reconsideration (on

[35] *Id.*, at pp. 186-196.
[36] *Id.*, at pp. 198-202.
[37] Minutes of Hearing on June 7, 2018, Division Docket, p. 208.
[38] Division Docket, pp. 213-227.
[39] *Id.*, at pp. 229-236.
[40] *Id.*, at pp. 239-243.
[41] *Id.*, at pp. 244-253.
[42] *Id.*, at p. 316.
[43] *Id.*, at pp. 317-326.
[44] *Id.*, at pp. 328-329.

the denial of the Motion to Suspend Collection of Taxes), which was admitted by Court.[45]

On September 4, 2018, respondent CIR filed his Memorandum (Re: Opposition to Petitioner's Urgent Motion to Suspend Collection of Taxes dated 02 March 2018).[46] On even date, WMCI also filed its Memorandum (of WPP Marketing Communications Inc.) by registered mail.[47]

On September 14, 2018, petitioner filed its Motion for Commissioning Independent Certified Public Accountant by registered mail.[48] In said motion, the Judicial Affidavit of Ms. Krista V. Bambao, the ICPA, was attached.[49]

On September 14, 2018, the parties filed by registered mail their Joint Stipulation of Facts and Issues (Between WPP Marketing Communications Inc. (formerly known as J. Walter Thompson Company (Philippines) Inc.) and Commissioner of Internal Revenue.[50]

In an Order dated September 24, 2018, the case was transferred to the First Division pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, "Reorganizing the Three (3) Divisions of the Court".[51]

In a Resolution dated October 19, 2018, the Court *a quo* granted WMCI's Partial Motion for Reconsideration (on the denial of the Motion to Suspend Collection of Taxes). Furthermore, the Resolution stated that based on the findings of the Court the right of the respondent CIR to collect the alleged deficiency taxes had already prescribed and, accordingly granted WMCI's Petition for Review. Finally, the Resolution stated that any collection of the alleged deficiency tax assessment for TY 1992 is declared null and void.[52]

On November 13, 2018, respondent CIR filed his Motion for Reconsideration (Re: Resolution dated 19 October 2018) where he argued that:

- The Court *a quo* erred in not deciding the issue of jurisdiction prior to resolving the issue of prescription;

- Assuming judicial review of denials of compromise offers is proper, the petition was not timely filed in accordance with the law;

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[45] Order, Division Docket, pp. 342-a – 342-b.
[46] Division Docket, pp. 356-365.
[47] *Id.*, at pp. 368-396.
[48] *Id.*, at pp. 405-409.
[49] *Id.*, at pp. 411-420.
[50] *Id.*, at pp. 422-428.
[51] *Id.*, at p.430.
[52] *Id.*, at pp.433-437.

- Assuming that the denial of compromise is subject to judicial review and further assuming that the petition was timely filed, the Court *a quo* erroneously ruled that the prescriptive period to collect has prescribed; and,

- Alternatively, the Court *a quo* erred in ruling that the assessment has already prescribed even prior to the receipt of evidence on the merits.[53]

On December 17, 2018, WMCI filed its Comment/Opposition (to the Motion for Reconsideration filed by Respondent Commissioner of Internal Revenue).[54]

In a Resolution dated March 5, 2019, the Court *a quo* denied respondent CIR's Motion for Reconsideration (Re: Resolution dated 19 October 2018) for lack of merit.[55]

CTA En Banc Proceedings

Accordingly, on April 8, 2019, the CIR filed a Petition for Review before the Court *En Banc*.[56]

In a Resolution dated May 6, 2019, the Court *En Banc* directed WMCI to file its comment, not a motion to dismiss, within ten (10) days from notice.[57]

On May 24, 2019, WMCI filed its Comment/Opposition through registered mail.[58]

In a Resolution dated July 1, 2019, the Court *En Banc* resolved to give due course to the Petition for Review and directed the parties to file their memoranda within thirty (30) days from notice.[59]

On August 5, 2019, respondent WMCI filed its Memorandum.[60]

On September 5, 2019, petitioner CIR filed his Memorandum.[61]

Accordingly, in a Resolution dated September 25, 2019, the Court *En Banc* submitted the case for decision.[62]

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[53] *Id.*, at pp. 458-471.
[54] *Id.*, at pp. 499-516.
[55] *Id.*, at pp. 522-532.
[56] *Rollo*, pp. 7-25.
[57] *Rollo*, pp. 50-51.
[58] *Rollo*, pp. 53-68.
[59] *Rollo*, pp. 72-73.
[60] *Rollo*, pp. 74-104.
[61] *Rollo*, pp. 110-129.
[62] *Rollo*, pp. 131-132.

THE ISSUES

In assailing the October 19, 2018 and March 5, 2019 Resolutions of the Court *a quo*, petitioner reiterated the following grounds previously raised in its Motion for Reconsideration (Re: Resolution dated 19 October 2018)[63] filed before the Court *a quo*:

- The Court *a quo* erred in not deciding the issue of jurisdiction *prior* to resolving the issue of prescription;

- Assuming judicial review of denials of compromise offers is proper, WMCI's petition was not timely filed in accordance with the law;

- Assuming that the denial of compromise is subject to judicial review and further assuming that the petition was timely filed, the Court *a quo* erroneously ruled that the prescriptive period to collect has prescribed; and,

- Alternatively, the Court *a quo* erred in ruling that the assessment has already prescribed even prior to the receipt of evidence on the merits.

THIS COURT'S RULING

We resolve to *deny* the petition.

First, the issue of jurisdiction, contrary to the CIR's position, was already discussed by the Court *a quo* in its July 13, 2018 Resolution,[64] thus:

> "A perusal of petitioner's petition for review reveals that the matter being sought for is the declaration of nullity of the collection of deficiency taxes against petitioner on the basis of prescription, among others.
>
> 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:

[63] Division Docket, pp. 458-471.
[64] *Id.* at pp. 239-243.

> **(a)** Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Collector 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 or part of law administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

Granting *arguendo* that that 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.

In the case of *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, the Supreme Court ruled that this Court has jurisdiction on cases other than disputed assessments or refunds which involve the provisions on the NIRC, to wit:

> 'We cannot countenance the CIR's 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:
>
>> Section 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided
>>
>> 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.)
>
> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's 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.
>
> Thus, on the strength of such observation, 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).'

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." (*Underscoring supplied*)

Second, in the consolidated cases of *Philippine National Oil Company v. The Honorable Court of Appeals, et al.*,[65] the Supreme Court *En Banc* has decided on issues very similar to this case before the Court. In *Philippine National Oil Company*, Savellano filed a Petition for Review *ad cautelam* with the CTA in 1988, docketed as CTA Case No. 4249. He claimed that BIR Commissioner Tan acted "with grave abuse of discretion and/or whimsical exercise of jurisdiction" in entering into a compromise agreement that resulted in "a gross and unconscionable diminution" of his informer's reward. Savellano prayed for the enforcement and collection of the total tax assessment against taxpayer Philippine National Oil Company (PNB) and/or withholding agent Philippine National Bank (PNB); and the payment to him by the BIR Commissioner of the 15% informer's reward on the total tax collected. He would later amend his Petition to implead PNOC and PNB as necessary and indispensable parties since they were parties to the compromise agreement. The PNOC and PNB questioned the jurisdiction of the CTA in CTA Case No. 4249 and the declaration by the CTA that the compromise agreement was without force and effect. The Supreme Court *En Banc* held that the CTA correctly retained jurisdiction over CTA Case No. 4249 by virtue of Republic Act No. 1125:

"The CTA assumed jurisdiction over the Petition for Review filed by private respondent Savellano based on the following provision of Rep. Act No. 1125, the Act creating the Court of Tax Appeals:

> SECTION 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —
>
> (1) Decisions of the Collector 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 or part of law administered by the Bureau of Internal Revenue; ... (Underscoring ours.)

In his Petition before the CTA, private respondent Savellano requested a review of the decisions of then BIR Commissioner Tan to enter into a compromise agreement with PNOC and to reject his claim for additional informer's reward. He submitted before the CTA questions of law involving the interpretation and application of (1) E.O. No. 44, and its

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[65] G.R. No. 109976 and G.R. No. 112800, April 26, 2005.

implementing rules and regulations, which authorized the BIR Commissioner to compromise delinquent accounts and disputed assessments pending as of 31 December 1985; and (2) Section 316(1) of the National Internal Revenue Code of 1977 (NIRC of 1977), as amended, which granted to the informer a reward equivalent to 15% of the actual amount recovered or collected by the BIR. These should undoubtedly be considered as matters arising from the NIRC and other laws being administered by the BIR, thus, appealable to the CTA under Section 7(1) of Rep. Act No. 1125.

PNB, however, insists on the jurisdiction of the DOJ over its appeal of the deficiency withholding tax assessment by virtue of P.D. No. 242. Provisions on jurisdiction of P.D. No. 242 read:

xxx xxx xxx

The PNB and DOJ are of the same position that P.D. No. 242, the more recent law, repealed Section 7(1) of Rep. Act No. 1125, based on the pronouncement of this Court in Development Bank of the Philippines v. Court of Appeals, et al., quoted below:

> The Court... expresses its entire agreement with the conclusion of the Court of Appeals — and the basic premises thereof — that there is an 'irreconcilable repugnancy . . . between Section 7(2) of R.A. No. 1125 and P.D. No. 242,' and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.

In the said case, it was expressly declared that P.D. No. 242 repealed Section 7(2) of Rep. Act No. 1125, which provides for the exclusive appellate jurisdiction of the CTA over decisions of the Commissioner of Customs. PNB contends that P.D. No. 242 should be deemed to have likewise repealed Section 7(1) of Rep. Act No. 1125, which provide for the exclusive appellate jurisdiction of the CTA over decisions of the BIR Commissioner.

After re-examining the provisions on jurisdiction of Rep. Act No. 1125 and P.D. No. 242, this Court finds itself in disagreement with the pronouncement made in *Development Bank of the Philippines v. Court of Appeals, et al.*, and refers to the earlier case of *Lichauco & Company, Inc. v. Apostol, et al.*, for the guidelines in determining the relation between the two statutes in question, to wit:

> The cases relating to the subject of repeal by implication all proceed on the assumption that if the act of later date clearly reveals an intention on the part of the law making power to abrogate the prior law, this intention must be given effect; but there must always be a sufficient revelation of this intention, and it has become an unbending rule of statutory construction that <u>the intention to repeal a former law will not be imputed to the Legislature when it appears that the two statutes, or provisions, with reference to which the question arises bear to each other the relation of general to special</u>. (Underscoring ours.)

When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. xxx

xxx xxx xxx

It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails — *Generalia specialibus non derogant*.

Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines. On the other hand, Rep. Act No. 1125 is a special law dealing with a specific subject matter — the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.

Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant.

Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the present dispute would still not be covered by P.D. No. 242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies solely between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, respondent Savellano is a private citizen. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review." (*Underscoring supplied and citations omitted*)

Accordingly, the CTA has jurisdiction over the CIR's decisions on compromise settlements under the National Internal Revenue Code of 1997

(1997 NIRC) by virtue of Section 7(a)(1) of R.A. 1125, as amended by R.A. 9282 and R.A. 9503.

Third, WMCI, as petitioner *a quo*, is not compelled to adduce evidence to show that the CTA has jurisdiction over the subject matter of the case it filed. The court's jurisdiction is determined from the averments in the initiatory pleading WMCI filed which invoked the same. A reading of the allegations of WMCI's petition reveals the sufficiency of the statement of matters under Section 7 (a)(1) of R.A. 1125, as amended.[66] The Court also finds no rule that directs the petitioner to *first* prove the subject matter jurisdiction of the court before which the petition is filed.[67] The Supreme Court *En Banc* reiterated this principle in the consolidated cases of *Department of Agrarian Reform v. Trinidad Valley Realty & Development Corporation, et al.*,[68] thus:

> "It is a cardinal principle in remedial law that the jurisdiction of a court over the subject matter of an action is determined by the law in force at the time of the filing of the complaint and the allegations of the complaint. Jurisdiction is determined exclusively by the Constitution and the law and cannot be conferred by the voluntary act or agreement of the parties. It cannot also be acquired through or waived, enlarged or diminished by their act or omission, nor conferred by the acquiescence of the court. It is neither for the court nor the parties to violate or disregard the rule, this matter being legislative in character. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein." (*Underscoring supplied and citations omitted.*)

Finally, the following allegations on the issuance of the assessment against WMCI were admitted by the CIR in the Answer and were subsequently stipulated upon:

- In 1995, the BIR issued pre-assessment notice (PAN) dated December 19, 1995 for income tax and VAT[69] to petitioner WMCI.

- Thereafter, the BIR issued Assessment Notice No. 34-14-000931-92 dated January 15, 1996 for Income and VAT Assessment for the TY 1992, aggregating in the amount of

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[66] Petition for Review, Division Docket, pp. 19-20.
[67] *Philippine Coconut Producers Federation, Inc. (Cocofed), et al. v. Republic of the Philippines*, G.R. Nos. 177857-58 and G.R. No. 178193, January 24, 2012.
[68] G.R. Nos. 1773386, 174162 and 183191, February 11, 2014.
[69] Joint Stipulation of Facts and Issues, Division Docket, p. 423.

₱57,542,562.56 inclusive of increments computed as of January 15, 1996, broken down as follows:

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Total	₱ 57,542,562.56

- On November 15, 2000, the taxpayer filed an application for Compromise Settlement for Deficiency Income and VAT under Revenue Memorandum Order No. (RMO) 42-2000 on the ground of *doubtful validity*. The RMO prescribed minimum percentages of offers of compromise for outstanding delinquent accounts and disputed assessments as of June 30, 2000.[70] However, no payment of the compromise offer was made by WMCI.[71]

- On November 15, 2001, the offer of compromise settlement was refiled[72] under Revenue Regulations No. (RR) 7-2001 and Section 10.2 of RMO 22-2001.[73]

- On August 15, 2016, the taxpayer received a Notice of Denial No. C2016-0112 from the CIR.[74]

As the Court *a quo* observed,[75] it is worth noting that there was a lapse of more than twenty (20) years from the issuance of the assessment in 1996 to the Notice of Denial in 2016.

Based on the stipulated facts, after the issuance of the assessment, it is clear that the CIR took no further action.[76] After a careful reading of the CIR's Answer, the Court takes notice that the CIR failed to allege any facts that would explain this *inaction* during this lengthy gap. The CIR merely insisted that, citing Revenue Regulations No. 12-99, WMCI "should have appealed to the Honorable Court within 30 days from the lapse of the 180-day period, instead, an application for compromise was made."[77] In fact, as correctly held by the Court *a quo*, it was only after a lapse of nineteen (19) years from the date of the final assessment when the CIR made the first demand to collect on the assessment.[78]

[70] *Id.*, at pp. 423-424. *See* Annexes I and L, Petition for Review, Division Docket, pp. 81-83, 89.
[71] Letter dated August 30, 2016, Annex L, Petition for Review, Division Docket, p. 90.
[72] Joint Stipulation of Facts and Issues, Division Docket, p. 424.
[73] Petition for Review, Division Docket, p. 15.
[74] Joint Stipulation of Facts and Issues, Division Docket, p. 423.
[75] Annex A, October 19, 2018 Resolution, *Rollo*, p. 34.
[76] *Id.*
[77] Answer, Division Docket, pp. 135-139.
[78] Annex A, October 19, 2018 Resolution, *Rollo*, p. 36.

The Supreme Court has consistently recognized and applied the statute of limitations to preclude the government from exercising its power to assess and collect taxes beyond the prescribed period, and the Court intends to abide by the case law on prescription and to strictly apply the same in the case of WMCI. After all, prescription is a substantive defense that may be invoked to prevent stale claims from being resurrected causing inconvenience and uncertainty to a person who has long enjoyed the exercise.

On the concept of prescription, the Supreme Court has held that 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 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 beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.[79]

In the case at bench, the taxable period involved is 1992 and the assessment was issued in 1996, *prior* to the effectivity of the National Internal Revenue Code of 1997 (1997 NIRC). Accordingly, the applicable provision on prescription is Section 203 of the 1977 NIRC, as amended, which provides that the collection of national internal revenue taxes due shall be made within a period of only three (3) years from the time the assessment is issued.

In *Bank of the Philippine Islands v. Commissioner of Internal Revenue*,[80] the Supreme Court held that the CIR's right to collect on the DST assessment issued on 1989 was barred by prescription by applying the three-year period of limitation under Section 203 of the 1977 NIRC, thus:

> *"The efforts of respondent Commissioner to collect on Assessment No. FAS-5-85-89-002054 were already barred by prescription.*
>
> Anent the question of prescription, this Court disagrees in the Decisions of the CTA and the Court of Appeals, and herein determines the statute of limitations on collection of the deficiency DST in Assessment No. FAS-5-85-89-002054 had already prescribed.

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[79] *Commissioner of Internal Revenue v. Stanley Works Sales (Phils.), Incorporated*, G.R. No. 187589, December 3, 2014.
[80] G.R. No. 139736, October 17, 2005.

<u>The period for the BIR to assess and collect an internal revenue tax is limited to three years by Section 203 of the Tax Code of 1977, as amended, which provides that</u> –

> SEC. 203. Period of limitation upon assessment and collection. – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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-year period shall be counted from the day the return was filed. For the 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.

The three-year period of limitations on the assessment and collection of national internal revenue taxes set by Section 203 of the Tax Code of 1977, as amended, can be affected, adjusted, or suspended, in accordance with the following provisions of the same Code –

> SEC. 223. – *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 begun without assessment, at any time within ten 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.
>
> (b) If before the expiration of the time prescribed in the preceding section 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.
>
> (c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.
>
> (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 three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon. *ge*

> (e) *Provided, however*, That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree.
>
> SEC. *224. Suspension of running of statute.* – The running of the statute of limitation provided in Section[s] 203 and 223 on the making of assessment and the beginning of distraint or levy or 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 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 and 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.

As enunciated in these statutory provisions, the BIR has three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. In case of a false or fraudulent return with intent to evade tax or the failure to file any return at all, the prescriptive period for assessment of the tax due shall be 10 years from discovery by the BIR of the falsity, fraud, or omission. When the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. The assessment of the tax is deemed made and the three-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.

In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. FAS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989. Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST. *gr*

> The earliest attempt of the BIR to collect on Assessment No. FAS-5-85-89-002054 was its issuance and service of a Warrant of Distraint and/or Levy on petitioner BPI. Although the Warrant was issued on 15 October 1992, previous to the expiration of the period for collection on 19 October 1992, the same was served on petitioner BPI only on 23 October 1992.
>
> Under Section 223(c) of the Tax Code of 1977, as amended, it is not essential that the Warrant of Distraint and/or Levy be fully executed so that it can suspend the running of the statute of limitations on the collection of the tax. It is enough that the proceedings have validly began or commenced and that their execution has not been suspended by reason of the voluntary desistance of the respondent BIR Commissioner. Existing jurisprudence establishes that distraint and levy proceedings are validly begun or commenced by the issuance of the Warrant and service thereof on the taxpayer. It is only logical to require that the Warrant of Distraint and/or Levy be, at the very least, served upon the taxpayer in order to suspend the running of the prescriptive period for collection of an assessed tax, because it may only be upon the service of the Warrant that the taxpayer is informed of the denial by the BIR of any pending protest of the said taxpayer, and the resolute intention of the BIR to collect the tax assessed.
>
> <u>If the service of the Warrant of Distraint and/or Levy on petitioner BPI on 23 October 1992 was already beyond the prescriptive period for collection of the deficiency DST, which had expired on 19 October 1992, then what more the letter of respondent BIR Commissioner, dated 13 August 1997 and received by the counsel of the petitioner BPI only on 11 September 1997, denying the protest of petitioner BPI and requesting payment of the deficiency DST? Even later and more unequivocally barred by prescription on collection was the demand made by respondent BIR Commissioner for payment of the deficiency DST in her Answer to the Petition for Review of petitioner BPI before the CTA, filed on 08 December 1997</u>." (*Underscoring supplied and citations omitted*)

The facts of this case follow the pattern of those in the *Bank of the Philippine Islands*. Thus, applying the doctrine to this case, the Court *a quo* is correct in holding that since the assessment was issued on January 15, 1996, the CIR had only three (3) years from said date or until January 15, 1999 to enforce collection of the alleged deficiency taxes against WMCI.[81] However, insofar as the first attempt to collect the alleged deficiency assessment was made only on August 15, 2016, the date when WMCI received the first Notice of Denial of the offer of compromise,[82] the CIR's right to collect has clearly prescribed. *gr*

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[81] Annex A, October 19, 2018 Resolution, *Rollo*, p. 35.
[82] Joint Stipulation of Facts and Issues, Division Docket, p. 423.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the October 19, 2018 and March 5, 2019 Resolutions are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(I concur in the result) PD 242 is applicable in proper cases
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Ma. Belen
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

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