REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1204** (CTA Case No. 8376)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **COTANGCO-MANALASTAS RINGPIS-LIBAN,** *JJ.*
BANK OF THE PHILIPPINE ISLANDS, Respondent.	***Promulgated:***
	MAR 17 2016 2:51 p.m.

x - x

DECISION

UY, *J.*:

Before Us is a Petition for Review filed on August 27, 2014 by petitioner Commissioner of Internal Revenue against respondent Bank of the Philippine Islands, praying for the reconsideration and setting aside of the Decision dated April 16, 2014[1] and Resolution dated on July 23, 2014[2], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8376. The dispositive portions of which respectively read as follows:

Decision dated April 16, 2014:

> "**WHEREFORE**, the Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Distraint and/ or

[1] EB Docket, pp. 91 to 115.
[2] EB Docket, pp. 116 to 120.

Levy dated October 27, 2011 is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED."

<u>Resolution dated July 23, 2014</u>:

"**WHEREFORE**, in view of the foregoing, respondent's 'Motion for Reconsideration (Re: Decision dated 16 April 2014)' is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), empowered under the National Internal Revenue Code (NIRC) to authorize the examination of any taxpayer and the assessment of the correct amount of tax as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue (BIR). She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Bank of the Philippine Islands (BPI) is a domestic corporation duly registered with the Securities and Exchange Commission (SEC). It holds office at the 20th Floor, Chatham House, Rufino corner Valero St., Salcedo Village, Makati City.

Citytrust Banking Corporation (Citytrust) is a domestic corporation that is likewise duly registered with the SEC.

On August 11, 1989, July 12, 1990, and November 8, 1990, Citytrust executed Waivers of the Statute of Limitations under the NIRC.

On May 6, 1991, petitioner issued a Letter, with attached Assessment Notices against Citytrust, for various deficiency internal revenue taxes in the total amount of ₱20,865,320,29, for taxable year 1986. Included are the assessments for Expanded Withholding Taxes (EWT) in the amount of ₱1,582,815.03; Withholding Tax (WT) on Deposit Substitutes in the amount of ₱33,065.29; Real Estate Dealer's Fixed Tax in the amount of ₱7,175.00; and penalties for the late remittance of Withholding Tax on Compensation (WTC) in the amount of ₱39,675.00; or a total of ₱1,662,730.32, which is inclusive of basic taxes, surcharges, interests, and compromise penalties, for taxable year 1986.

On May 30, 1991, Citytrust filed its Protest dated May 27, 1991.

On February 17, 1992, Citytrust filed its second Letter-Protest to the assessment, with a request that the case docket be transmitted to the Appellate Division for administrative hearing.

On October 4, 1996, Citytrust entered into a merger agreement with respondent BPI, the latter being the surviving entity, as shown in the Certificate of Filing of the Articles of Merger, as approved by the SEC.

On November 4, 2011, respondent received the Warrant of Distraint and/or Levy dated October 27, 2011, stating that there is due from respondent BPI/Citytrust the sum of ₱1,624,930.32, as deficiency EWT, WT on Deposit Substitutes, Real Estate Dealer's Tax (fixed tax) and penalties for late remittance of WTC, plus all increments incident to delinquency, as well as a compromise penalty of ₱37,800.00, all for the year 1986.

On November 14, 2011, respondent filed a Petition for Review before the Court in Division, pursuant to Section 228 of the NIRC of 1997. The case was docketed as CTA Case No. 8376.

On December 28, 2011, petitioner CIR filed her Answer to the said Petition for Review, interposing the following arguments:

a. The Honorable Court has no jurisdiction to take cognizance of the instant case for failure of petitioner to file the judicial claim with the period prescribed by law;

b. Petitioner BPI is liable to pay deficiency EWT, WT on Deposit Substitutes and Real Estate Dealer's Tax plus penalties for taxable year 1986;

c. The assessments were issued within the prescriptive period provided by law. And that the issue on prescription was not raised in the administrative level, hence, cannot be raised for the first time on appeal; and

d. Petitioner BPI is estopped from questioning the validity of the waivers.

On March 8, 2012, the parties filed their Joint Stipulation of Facts and Issues.

Respondent BPI presented Atty. Alma Barcelo, as witness, and documentary evidence marked as Exhibits "A" to "TTT", inclusive of submarkings.

On the other hand, petitioner presented Revenue Officer Amelia A. Taron, and documentary evidence marked as Exhibits "1" to "12-a".

On May 30, 2013, the Court in Division resolved to submit the case for decision, taking into consideration the Memoranda filed by the parties on May 28, 2013.

In the assailed Decision,[3] the Court in Division ruled in favor of respondent BPI granting the Petition for Review, and cancelling and setting aside the Warrant of Distraint and/or Levy dated October 27, 2011.

Subsequently, petitioner CIR filed a Motion for Reconsideration on May 9, 2014.[4] In the assailed Resolution,[5] however, the Court in Division denied petitioner CIR's Motion for lack of merit.

On August 11, 2014, petitioner CIR filed, before the Court *En Banc*, a Motion for Extension of Time (to file Petition for Review),[6] praying that she be given an additional period of fifteen (15) days from August 12, 2014 or until August 27, 2014, within which to file her Petition for Review.

The Court *En Banc* granted the said Motion for Extension of Time and gave petitioner CIR a *final and non-extendible* period of fifteen (15) days from August 12, 2014 or until August 27, 2014, within which to file her Petition for Review.[7]

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[3] EB Docket, pages 91 to 115; Division Docket – Vol. 2, pp. 551 to 575.
[4] Division Docket – Vol. 2, pp. 577 to 595.
[5] EB Docket, pages 116 to 120; Division Docket – Vol. 2, pp. 625 to 629.
[6] EB Docket, pp. 1 to 5.
[7] Resolution dated August 14, 2014, EB Docket, p. 6.

On August 27, 2014, petitioner CIR filed the instant Petition for Review via registered mail.[8] Thereafter, the *Court En Banc*, in the Resolution dated October 15, 2014,[9] ordered respondent BPI to file a Comment to the said Petition for Review.

In compliance, respondent BPI filed on November 7, 2014 its Comment/Opposition (To Petition for Review dated August 16, 2014).[10]

In the Resolution dated January 6, 2015,[11] the *Court En Banc* directed the parties to file their respective memorandum, within thirty (30) days from receipt thereof.

Petitioner CIR filed on February 11, 2015, a Manifestation,[12] in lieu of her Memorandum, stating that she is adopting the arguments raised in her Petition for Review; while respondent BPI filed its Memorandum on March 23, 2015.[13] Thereafter, this case was submitted for decision on April 8, 2015.[14]

Hence, this Decision.

THE ISSUES

Based on petitioner's discussions/arguments stated in the instant Petition for Review, the issues for resolution of the *Court En Banc* are as follows:

I.
WHETHER OR NOT THE COURT IN DIVISION ACQUIRED JURISDICTION OVER THE CASE.

II.
WHETHER OR NOT THE RIGHT OF PETITIONER CIR TO ASSESS, AND COLLECT FROM, RESPONDENT BPI DEFICIENCY TAXES FOR TAXABLE YEAR 1986 HAS PRESCRIBED.

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[8] EB Docket, pp. 67 to 90.
[9] EB Docket, pp. 126 to 127.
[10] EB Docket, pp. 128 to 144.
[11] EB Docket, pp. 146 to 147.
[12] EB Docket, pp. 148 to 150.
[13] EB Docket, pp. 157 to 176.
[14] EB Docket, pp. 178 to 179.

III.
WHETHER OR NOT THE ASSESSMENTS ARE VALID AND LAWFUL.

Petitioner CIR's arguments:

Petitioner CIR argues that this Court did not acquire jurisdiction over the case for failure of respondent BPI to file the judicial claim within the period prescribed by law. According to petitioner CIR, in view of said failure, the assessment notice issued against respondent BPI is considered final and executory.

Moreover, petitioner CIR asserts that its right to assess and collect from respondent BPI its deficiency taxes has not prescribed. She points out that the Waivers of the Statute of Limitations under the NIRC executed by respondent on August 11, 1989, July 12, 1990, and November 8, 1990 were all valid and enforceable. Respondent BPI's failure to challenge the legality of the waivers at the administrative level operates as an estoppel on its part to question the same before the Court.

Lastly, petitioner CIR contends that assessments are presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; and that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

Respondent BPI's counter-arguments:

Respondent BPI contends that the Court has jurisdiction over the case as it its judicial claim within the period prescribed by law. According to respondent BPI, its predecessor, Citytrust, against whom the Final Assessment Notice was issued, filed its protest thereto on May 28, 1991; and since a protest was filed, the assessment did not attain finality and never became executory or unappealable, in accordance with Section 229 of the Tax Code of 1977.

Furthermore, respondent BPI avers that the right of petitioner to assess and collect from respondent of its deficiency taxes has prescribed because the second and third waivers executed by respondent BPI were defective so as to suspend the period of assessment and collection.

Finally, respondent BPI stresses that while it agrees that assessments are presumed correct and made in good faith, such presumption may be rebutted or contradicted by clear and convincing evidence to the contrary.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

The Court in Division has jurisdiction over the instant case.

Petitioner CIR contends as follows:

> "Here, on 5 February 1992, then Commissioner of the Internal Revenue, through the Office of the Accounting Receivable/Billing Section, rendered a Decision requesting petitioner to settle its tax liabilities for taxable year 1986 within a period of ten (10) days from its receipt. In the said Decision, **petitioner asked respondent to pay and settle the deficiency tax assessment, otherwise, she will have no other recourse left but to enforce the collection through the issuance of the Warrant of Distraint/Levy and/or institute judicial action against respondent**. Hence, respondent should have elevated this matter to the Honorable Court long before and **not** only on **07 October 2011**, when it filed its Petition with the Honorable Court of Tax Appeals."[15]

This contention is untenable.

Sections 7 paragraph (a)(1) and 11 of Republic Act (RA) No. 1125[16], as amended by RA No. 9282,[17] provides as follows:

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[15] EB Docket, pp. 71 to 72.
[16] AN ACT CREATING THE COURT OF TAX APPEALS.
[17] 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.

> "SEC. 7. *Jurisdiction.*— The CTA shall exercise:
>
> (a) 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 in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphasis supplied)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any part adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx."

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[18] the Supreme Court ruled as follows:

> "...we have previously ruled that the appellate jurisdiction of the CTA is **<u>not limited</u>** 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).
>
> In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223(c):
>
> > **Any internal revenue tax** which has been assessed within the period of limitation above-described may be collected by distraint or levy or by a

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

> proceeding in court **within three years following the assessment of the tax**. (Emphases supplied.)

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

> Sec. 3. Powers and duties of the Bureau. — The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied.)

Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term 'other matters' over which the CTA has appellate jurisdiction.

Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over 'other matters' arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an 'other matter' must not be a final and unappelable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.

To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.

> **However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**" *(Emphases and underscoring supplied)*

Moreover, in *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*,[19] the Supreme Court held:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. **In *Pantoja v. David*,[20] we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue.** xxx" *(Emphasis supplied)*

Thus, it is clear that the appellate jurisdiction of this Court is not limited only to decisions of the Commissioner of Internal Revenue involving disputed assessments or claims for refunds, but also those involving ***"other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue"***, which include the authority to determine the validity of a warrant of distraint and levy issued by the Commissioner of Internal Revenue, and whether the right to assess and the right to collect the subject taxes has prescribed.

In this case, what was questioned by respondent BPI in CTA Case No. 8376 is not the final decision of petitioner CIR on the disputed assessment; rather, it was the right of petitioner CIR to

[19] G.R. No. 162852, December 16, 2004.
[20] 111 Phil. 197 (1961).

assess and collect the subject taxes, as manifested in the prayer of respondent BPI, as petitioner, in its Petition for Review in the said case, to wit:

"***Prayer***

WHEREFORE, premises considered, petitioner most respectfully pray that this Honorable Court—

1. Issue an order suspending collection of the disputed tax assessment and/or enjoining respondent from enforcing the warrant of distraint and/or levy against petitioner, subject to the conditions as this Honorable Court may impose;

2. Issue a judgment declaring the assessment against petitioner for the alleged deficiency expanded withholding taxes, withholding tax on deposit substitute, deficiency real estate dealer's tax (fixed tax) and penalties for late remittance of withholding tax on compensation, plus all increments incident to delinquency or a total of P1,624,930.32 and compromise penalty of P37,800.00, all of the year 1986, as without merit since petitioner's[21] **right to assess and right to collect have already prescribed**; and

3. Issue a judgment declaring the assessment against petitioner for 1986 for the alleged deficiency expanded withholding taxes, withholding tax on deposit substitute, deficiency real estate dealer's tax (fixed tax) and penalties for late remittance of withholding tax on compensation, plus all increments incident to delinquency or a total of P1,624,930.32 and compromise penalty of P37,800.00, as void and without merit and thereby, ordering the respondent **to cancel the FAN and Assessment Notices, as well as the Warrant of Distraint and/or Levy dated October 27, 2011**."[22] *(Emphases supplied)*

Correspondingly, on the bases of the aforecited law and jurisprudence vis-à-vis respondent BPI's Petition for Review in CTA Case No. 8376, the Court in Division has jurisdiction to entertain the latter case.

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[21] This should be "respondent's".
[22] Division Docket – Vol. 1, pp. 14 to 15.

On whether the right to assess of petitioner CIR has prescribed.

Sections 203 and 223 of the NIRC of 1986, as amended—the law in force at the time the subject tax assessments were made,[23] provides the periods of limitation of assessment of taxes, as follows:

> "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."
>
> "SEC. 223. *Exceptions as to a 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 a 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: xxx.
>
> xxx xxx xxx."

Based on the foregoing 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.[24]

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[23] Presidential Decree No. 1158, as amended by Batas Pambansa Bilang 700.

[24] *Bank of the Philippine Island v. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

Since the running of the three-year period to assess is counted either from the date of actual filing of the tax return or from the last date prescribed by law for the filing thereof, the Court *En Banc* must clearly identify as to when the period to assess begins and ends for each of the type of tax that was assessed.

Period to assess EWT

The period within which the EWT should be remitted to the BIR and the filing of the corresponding return is governed by then Section 5(a) of Revenue Regulations (RR) No. 6-85,[25] as amended, to wit:

> "SEC. 5. *Monthly return and payment of taxes withheld at source.* — (a) The taxes herein deducted and withheld shall be paid upon filing a return in duplicate under BIR Form ______ with the Revenue District Officer or the Collection Agent of the City or duly authorized Treasurer of the Municipality where the withholding agent has his legal residence or principal place of business except in cases where the Commissioner of Internal Revenue allows otherwise. **The required return shall be filed within ten (10) days after the end of each month.**
>
> The taxes deducted and withheld by the withholding agents shall be considered trust funds and shall be maintained in a separate account and not commingled with any other fund of the withholding agent and held in trust for the government until paid to the collection officer." *(Emphasis supplied)*

Thus, following the above-stated provision and on the basis of respondent BPI's EWT returns, the periods within which petitioner CIR has the right to assess respondent BPI under the period of limitation under Section 203 for EWT for the months of taxable year 1986 are determined as follows:

Period Covered of 1986	Exhibit	Date of actual filing	Last day for filing as required by law	Last day to assess petitioner under Sec. 203	Date Assessed[26]
February	"O"	March 10, 1986	March 10, 1986	**March 10, 1989**	
March	"P", "P-1"	April 9, 1986	April 10, 1986	**April 10, 1989**	

[25] SUBJECT: Revised and Consolidated Expanded Withholding Tax Regulations.
[26] Exhibits "E", "E-1", "E-2", "E-3", "E-4", and "E-5", Division Docket – Vol. 1, pp. 241, and 242 to 243.

April	"Q"	May 13, 1986	May 10, 1986	**May 13, 1989**	**May 6, 1991**
July	"R"	August 12, 1986	August 10, 1986	**August 12, 1989**	
August	"U"	September 11, 1986	September 10, 1986	**September 11, 1989**	
November	"X"	December 10, 1986	December 10, 1986	**December 10, 1989**	

It is clear from the foregoing table that for the months of February, March, April, July, August, November, all of 1986, the corresponding assessments therefor have already prescribed, since it is already beyond the three-year period set forth by Section 203.

Upon the other hand, for the months of January, May, June, September, October, and December of the same year, the ten-year period of limitation for the assessment thereof under Section 223(a) applies. This must be so because respondent BPI failed to show in the proceedings *a quo* that it filed the corresponding tax returns for EWT. Correspondingly, the assessments for the said months are still within the prescriptive period to assess.

It must be emphasized that since the benefits of Section 203 is being availed of, it was incumbent upon respondent BPI to prove that it had submitted said returns, and that, having failed to do so, the conclusion must be that no such returns had been filed and that the Government had ten (10) years within which to make the corresponding assessments.[27]

<u>*Period to assess penalties for late remittance of WTC*</u>

Section 2 of Revenue Regulations (RR) No. 5-85,[28] as amended, to wit:

> "SECTION 2. *Monthly Return and Remittance of Taxes Withheld.* — Taxes deducted and withheld on:
>
> (i) **Compensation income**,
> (ii) income payments subject to the creditable (expanded) withholding taxes, and
> (iii) **income subject to final withholding taxes, shall be remitted within ten (10) days after the end of**

[27] Refer to *Taligaman Lumber Co., Inc. vs. The Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962.

[28] SUBJECT: Synchronization of the Time and Manner of Remitting Taxes Withheld under Sections 53, 54 and 93 of the National Internal Revenue Code.

each calendar month with the filing, of the appropriate returns as follows:

BIR FORM NO. W-1A -	For Taxes withheld on Compensation Income
BIR FORM NO. 1743-A1-	For Creditable (expanded) withholding Taxes
BIR FORM NO. -	For final income taxes withheld."

(Emphasis supplied)

The question of whether the right of petitioner CIR to assess respondent BPI under the period of limitation under Section 203 for the penalties for the late remittance of WTC for the months of taxable year 1986 is demonstrated in the following table:

Period Covered of 1986	**Exhibit**	**Date of actual filing**	**Last day for filing as required by law**	**Last day to assess petitioner under Sec. 203**	**Date Assessed**[29]
January	"L-1", "L-1-a"	February 10, 1986	February 10, 1986	**February 10, 1989**	**May 6, 1991**
February	"L-2"	March 7, 1986	March 10, 1986	**March 10, 1989**	
March	"L-3, "L-3-a"	April 8, 2001	April 10, 1986	**April 10, 1989**	
April	"L-4"	May 8, 2001	May 10, 1986	**May 10, 1989**	
May	"L-5"	June 10, 1986	June 10, 1986	**June 10, 1989**	
June	"L-6"	July 11, 1986	July 10, 1986	**July 11, 1989**	
July	"L-7"	August 11, 1986	August 10, 1986	**August 11, 1989**	
August	"L-8"	October 10, 1986	September 10, 1986	**October 10, 1989**	
September	"L-9"	October 13, 1986	September 10, 1986	**October 13, 1989**	
October	"L-10"	November 11, 1986	November 10, 1986	**November 11, 1989**	
November	"L-11"	December 16, 1986	December 10, 1986	**December 10, 1989**	
December	"L-12"	January 12, 1987	January 10, 1987	**March 10, 1990**	

Parenthetically, even though Section 203 speaks only of "internal revenue taxes" and not "penalties", said provision likewise applies to the latter, pursuant to Section 247(a) of the NIRC of 1986, to wit:

[29] Exhibits "E" and "E-8", Division Docket – Vol. 1, pp. 241 and 244.

> "SEC. 247. *General Provisions.*— (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. **The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.**" *(Emphasis supplied)*

Based on the immediately preceding table, it is without question that the assessment for the penalties for the late remittance of WTC for taxable year 1986 has likewise prescribed under Section 203, since the said assessment was issued beyond the three-year prescriptive period.

Period to assess WT for deposit substitutes

As for the WT for Deposit Substitutes, Section 5 of RR No. 17-84[30] (as restored by RR No. 3-85) provides the time frame within which the same is to be remitted to the BIR, viz:

> "SEC. 5. *Manner of filing returns and payment of taxes.* — **The taxes herein deducted and withheld shall be declared in a return which shall be filed in duplicate within twenty five (25) days after the end of each quarter of any calendar year** with the Revenue District Officer or Collection Agent or duly authorized Treasurer of the city or municipality where the withholding agent's principal office is located and where its books of accounts are kept except in cases where the Commissioner of Internal Revenue otherwise allows. Upon filing of the return payment of the taxes shall be made to accredited banks, or, in places where there are no such banks, to the Collection Agent or authorized Municipal Treasurer." *(Emphasis supplied)*

Thus, following the above-stated provision and on the basis of respondent BPI's evidence, the respective last day for petitioner CIR to assess respondent BPI under the period of limitation under Section 203 vis-à-vis the date of assessment for WT for Deposit Substitutes for all the quarters of taxable year 1986 is shown below:

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[30] SUBJECT: Income Taxation of Interest Income Derived from Deposits and Yield from Deposit Substitutes

Period Covered of 1986	Exhibit	Date of actual filing	Last day for filing as required by law	Last day to assess petitioner under Sec. 203	Date Assessed[31]
1st Quarter	"WW"	April 28, 1986	April 25, 1986	**April 28, 1989**	**May 6, 1991**
2nd Quarter	"XX"	July 29, 1986	July 25, 1986	**July 29, 1989**	
3rd Quarter	"YY"	October 27, 1986	October 25, 1986	**October 27, 1989**	
4th Quarter	"ZZ"	January 26, 1987	January 25, 1987	**January 26, 1990**	

It is likewise clear from the foregoing table the subject assessment for WT for Deposit Substitutes has prescribed for being issued outside of the three-year period of limitation under Section 203.

Period to assess Real Estate Dealer's Fixed Tax

As for the deadline for the filing of the return for the Real Estate Dealer's Fixed Tax, then Section 193 of the NIRC of 1977 reads:

> "Sec. 193. *Payment of percentage taxes.*
>
> (a) *In general.* — (1) *Declaration and payment of quarterly gross sales, receipts, etc.* — Unless otherwise specifically provided it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, to render a quarterly declaration on a cumulative basis of the amount of his, her or its gross sales, receipts or earnings or gross value of output actually removed from the factory or mill warehouse and to compute the tax due thereon.
>
> > (i) For each of the first three quarters of the taxable year, the tax so computed shall be decreased by the amount of tax previously paid and by the sum of the tax credits allowed under this Title for the preceding and current quarters. The tax due shall be paid not later than twenty days following the close of each of the first three quarters of the taxable year: xxx
> >
> > (ii) *Final Annual Percentage Tax Return.* — **On or before the twentieth day of the second month following the close of the taxable year,**

[31] Exhibits "E" and "E-6", Division Docket – Vol. 1, pp. 241 and 244.

> **every person liable to tax under this Section shall file a final percentage tax return covering the total gross sales, receipts or earnings or gross value of output actually removed from the factory or mill warehouse for the preceding calendar or fiscal year.** If the sum of the total quarterly percentage tax payments made for the first three quarters and the total tax credit allowed under this Title for the preceding taxable year are not equal to the total tax due on the entire gross sales, receipts or earnings or gross value of the output for that taxable year, the taxpayer shall either:
>
> (a) Pay the tax still due; or
>
> (b) Credit to the extent allowable under this Title, the amount exceeds tax credits shown on the final adjustment return against the quarterly percentage tax liabilities for the succeeding taxable years.
>
> For purposes of this Section, sales on consignment shall be considered actually sold on the day of sale or sixty days after the date consigned, whichever is earlier." *(Emphasis supplied)*

To establish that Citytrust has filed the tax return for the Real Estate Dealer's Fixed Tax for the taxable year ending 1986 and has paid the same, respondent BPI presented Exhibit "EEE"[32]. The said tax return, however, does not clearly indicate the day and the year when the same was filed. Thus, since the determination and assessments of the BIR are presumed correct and made in good faith, it follows that the subject assessment for the Real Estate Dealer's Fixed Tax was made within the prescriptive period to assess.

In fine, the Court *En Banc*'s determination of whether the period to assess by petitioner CIR has prescribed in the instant case is summarized as follows:

PRESCRIBED - The assessments which are issued <u>beyond</u> the period to assess	**NOT PRESCRIBED - The assessments which are issued <u>within</u> the period to assess**
• EWT for February, March, April, July, August, and November	• EWT for January, May, June, September, October, and

[32] Division Docket – Vol. 1, p. 318.

1986	December 1986
• Penalties for the late remittance of WTC	• Real Estate Dealer's Fixed Tax
• WT for deposit substitutes	

The Waiver of the Statute of Limitations executed on August 11, 1989, July 12, 1990, & November 8, 1990 are not binding.

It is the contention of petitioner CIR that the Waivers executed on August 11, 1989[33], July 12, 1990[34], and November 8, 1990[35] by respondent BPI are valid and enforceable and thus, the period to assess the subject deficiency taxes has not prescribed.

We disagree.

Section 223(b) and (d) of the NIRC of 1986, as amended, provides as follows:

> "SEC. 223. *Exceptions as to a period of limitation of assessment and collection of taxes.* —xxx.
>
> (b) If before the expiration of the time prescribed in the preceding section for the assessment of the tax, **both the Commissioner of Internal Revenue and the taxpayer have agreed in writing to its assessment after such time**, the tax may be assessed at any time prior to the expiration of 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.
>
> xxx xxx xxx."

[33] Exhibit "B", Division Docket – Vol. 1, p. 238; *cf.* BIR Records (CTA Case No. 8350), p. 211.
[34] Exhibit "C", Division Docket – Vol. 1, p. 239; *cf.* BIR Records (CTA Case No. 8350), p. 319.
[35] Exhibit "D", Division Docket – Vol. 1, p. 240; *cf.* BIR Records (CTA Case No. 8350), p. 322.

In *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*,[36] the Supreme Court held:

> "The agreements so described in the afore-quoted provisions are often referred to as waivers of the statute of limitations. The waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, **rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due**. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally.
>
> A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, **must be**: (1) **in writing**; (2) **agreed to by both the Commissioner and the taxpayer;** (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive period for assessment and collection. The period agreed upon can still be extended by **subsequent written agreement**, provided that it is executed prior to the expiration of the first period agreed upon. xxx." *(Emphases and underscoring supplied)*

Based on the foregoing law and jurisprudence, the period to assess and collect deficiency taxes may be extended only upon **a written agreement between the Commissioner and the taxpayer** prior to the expiration of the ordinary period of limitation set forth under the earlier-quoted Section 203 of the NIRC of 1986, as amended.

In the instant case, a perusal of the waiver of the statute of limitations executed on August 11, 1989 by respondent BPI (*i.e.*, the first supposed waiver of the statute of limitations) did not brought about an agreement contemplated under Section 223(b) of the NIRC of 1986. Thus, said waiver did not have the effect of extending the power of petitioner CIR to assess respondent BPI for taxable year 1986. This is simply because the said waiver is not signed by the petitioner CIR. Needless to state, since the assent of the latter to the

[36] G.R. No. 139736, October 17, 2005.

said waiver was not made, there was no agreement to speak of that extended the prescriptive period to assess respondent BPI.

In *Commissioner of Internal Revenue vs. Court of Appeals, et al.*,[37] the Supreme Court emphasized on the necessity of having the signature of the CIR to constitute a valid waiver, viz:

> "...**the waivers in question** reveal that they are in no wise unequivocal, and therefore **necessitates for its binding effect the concurrence of the Commissioner of Internal Revenue.** xxx. On this basis neither implied consent can be presumed nor can it be contended that the waiver required under Section 319 of the Tax Code[38] is one which is unilateral nor can it be said that concurrence to such an agreement is a mere formality because **it is the very signatures of both the Commissioner of Internal Revenue and the taxpayer which give birth to such a valid agreement.**" *(Emphases supplied)*

Petitioner CIR can no longer collect the unprescribed assessments.

While it is the Court *En Banc*'s finding that the following assessments have not prescribed: the EWT for January, May, June, September, October, and December 1986, and the Real Estate Dealer's Fixed Tax; the same, however, may no longer be collected by petitioner CIR under the law.

Section 223(c) of the NIRC of 1986, as amended, reads:

> "SEC. 223. *Exceptions as to a period of limitation of assessment and collection of taxes.* —xxx.
>
> xxx xxx xxx
>
> (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**.

[37] G.R. No. 115712, February 25, 1999.
[38] Later on, the aforecited Section 223 of the NIRC of 1986.

xxx xxx xxx." *(Emphasis supplied)*

In *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*,[39] the Supreme Court ruled as follows:

> "The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by Batas Pambansa Blg. 700. Thus, the CIR has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment.
>
> **When it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer." *(Emphasis supplied)*

In relation thereto, in *Palanca, et al. vs. Commissioner of Internal Revenue, et al.*,[40] the Supreme Court decreed when the tax collection process is considered begun, viz:

> "...A judicial action for the collection of a tax is begun by the filing of a complaint with the proper court of first instance, or where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for. **And the summary remedy of distraint and levy is begun by the issuance of a warrant of distraint and levy. This has been the practice long observed in the Bureau of Internal Revenue, and this practice had been taken cognizance of by this Court in a number of cases**, where it held that the right of the Commissioner of Internal Revenue to collect by summary method has the effect of stopping the running of prescription once a warrant of distraint and levy is issued. From such pronouncement it can be inferred that the

[39] G.R. No. 174942, March 7, 2008.
[40] G.R. No. L-16661, January 31, 1962

issuance of the warrant of distraint and levy begins the summary remedy of distraint and levy and that it is not necessary that it be actually executed to be made effective." *(Emphasis supplied and citations omitted)*

In the instant case, petitioner CIR had three (3) years from the time of issuance of the subject unprescribed tax assessments to respondent BPI on May 6, 1991 or until May 6, 1994 within which to collect the same. However, it was only on October 27, 2011 that petitioner CIR issued the subject Warrant of Distraint and/or Levy,[41] where the BIR begun the tax collection process. Such being the case, it is very clear that the right to collect of petitioner CIR has prescribed.

Hence, the Court *En Banc* finds no reversible error when the Court *a quo* cancelled and set aside the Warrant of Distraint and/or Levy dated October 27, 2011.

In light of the foregoing, We find it unnecessary to address the validity of the subject tax assessments.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated April 16, 2014 and the Resolution dated July 23, 2014, both of the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[41] Exhibit "H", Division Docket – Vol. 1, p. 251.

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 conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice