REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1940 (CTA Case No. 9263)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
PHILIPPINE POWER MC DISTRIBUTION, INC., *Respondent.*	Promulgated: OCT 16 2019 11:37 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 7, 2019, is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision, in the case

[1] SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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entitled *Philippine Power MC Distribution, Inc. vs. Commissioner of Internal Revenue,* docketed as CTA Case No. 9263, dated July 6, 2018,[2] and the Resolution dated September 3, 2018,[3] both rendered by the Former Second Division of this Court, the dispositive portions of which read as follows:

> <u>CTA Case No. 9263:</u>
> <u>Decision dated July 6, 2018:</u>
>
> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the Final Decision of the Commissioner of Internal Revenue dated January 7, 2016, holding petitioner liable for deficiency VAT and income tax for the fiscal year ending June 30, 2008 in the total amount of ₱110,945,462.44 is hereby **CANCELLED** and **WITHDRAWN** for lack of merit.
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> **SO ORDERED.**"
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> <u>CTA Case No. 9263:</u>
> <u>Resolution dated September 3, 2018:</u>
>
> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (Re: Decision Promulgated on July 6, 2018)**, is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The facts of the case, as recited by the former Second Division in its Decision, read as follows:

> "Petitioner [respondent herein] Philippine Power MC Distribution, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at NDI Building, A.S. Fortuna St. Mandaue City.

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[2] Penned by Former Associate Justice Cesar A. Casanova, concurred in by Associate Justice Juanito C. Castañeda and Associate Justice Catherin T. Manahan, *En Banc* Docket, pp. 49-53.
[3] *Ibid.,* pp. 55-63.

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Respondent [petitioner herein] is the duly appointed Commissioner of Internal Revenue (CIR) who is empowered to perform the duties of said office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law.

Letter of Authority (LOA) No. 00028485 dated March 10, 2010 was issued and duly served and received by petitioner on March 25, 2010.

On October 19, 2010 petitioner received a Formal Letter of Demand (FLD) dated September 29, 2010 with Assessment (FAN) Nos. 80-IT-13-fy06/30/08-2010-9-573 and 80-VT-13-fy06/30/08-2010-9572, representing alleged income tax and VAT deficiencies all dated September 29, 2010, for FY ending June 30, 2008.

On October 21, 2010, petitioner filed a Protest against FAN, where petitioner manifested its difficulties in reconciling the alleged deficiency taxes as assessed by respondent due to the fact that its documents were destroyed by fire on May 31, 2009.

In a letter dated November 18, 2010, respondent, through the Regional Director of Revenue Region No. 13, Jose N. Tan, informed petitioner that its protest letter did not conform with the requisites of a valid protest pursuant to Revenue Regulations (RR) No. 12-85, as amended by RR No. 12-99, in relation to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. Thus, petitioner was given a chance to comply with the correct format within 10 days from the receipt of the letter.

On January 19, 2012, petitioner received a Final Decision on Disputed Assessment (FDDA) dated January 2, 2012. Resolving petitioner's revised protest letter dated April 18, 2011, and demanding payment of deficiency VAT and income tax in the reduced amount of ₱110,945,462.44, after reinvestigation.

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On February 1, 2012, petitioner Filed a Motion for Reconsideration on the FDDA with the Office of the CIR, pursuant to RR No. 12-99, which provides that the taxpayer may elevate his protest to the CIR within 30 days from receipt of the Final decision of the CIR's duly authorized representative, in which case, the latter's decision shall not be considered Final, executory and demandable. The protest shall then be decided by the CIR.

On January 20, 2016, petitioner received the decision of the CIR dated January 7, 2016, signed by the CIR, denying the protest of petitioner against the FLD.

Petitioner filed the instant Petition for Review on February 19, 2016, where petitioner claims, that respondent's assessments were based on mere presumption when it used the cost-ratio method to impute the IT and VAT deficiencies of the petitioner. Moreover, it controverts respondent's claim that petitioner had under-declared purchases during the taxable year as allegedly sourced from third party suppliers, thus resulting an unreported and additional taxable sales. It further refutes the imposition of the 50% surcharge imposed by respondent in its assessment and, lastly, petitioner argues that the period to collect the alleged deficiency taxes pursuant to Section 222(c) of the NIRC of 1997, as amended, had already lapsed.

Respondent filed his Answer on May 16, 2016 interposing the following special and affirmative defense: xxx

xxx xxx xxx

The parties submit that the issues to be resolved in this case are:

1. Whether petitioner is liable to pay the aggregate amount of ₱110,945,462.44 as deficiency IT and VAT for taxable year 2008 plus 50% surcharge and 20% deficiency and delinquency interest for late payment

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pursuant to Sections 248 and 249 of the Tax Code, as amended; and

2. Whether the period to collect the alleged deficiency taxes of petitioner for the fiscal year ending June 30, 2007 has already prescribed in accordance with Section 222(c) of the 1997 National Internal Revenue Code, as amended." (Citations omitted.)

The Former Second Division ruled that since the sole basis of the Commissioner of Internal Revenue (CIR) is the under-declaration of purchases by Philippine Power MC Distribution, Inc. (PPMDI), this does not amount to an income received by it. In short, the under-declared purchases cannot be presumed to be an undeclared income. Moreover, the former Second Division ruled that the taxpayer is actually free to deduct from its gross income a lesser amount subject to limitations. Based on this mere presumption, since there is no definite undeclared income to speak of, as well as taxable sales as basis of the assessed value-added tax (VAT), both assessments for income tax and VAT were cancelled. Consequently, the 30% surcharge was also cancelled. Without any mutual agreement between the parties, the compromise penalty was also cancelled by the Former Second Division. Lastly, the Former Second Division ruled that the right of the CIR to collect against PPMDI in this case has prescribed.

The CIR filed his Motion for Reconsideration on July 24, 2018, which was denied in the assailed Resolution, hence, this Petition for Review[4] filed by the CIR on October 11, 2018.

In his Petition for Review, the CIR reiterates his argument in his Motion for Reconsideration that he has 5-years to collect against PPMDI. Moreover, he reckons the date of suspension of the Statute of Limitation from the time he received the request for reinvestigation of PPMDI on April 28, 2011 and continued to run again on the date of receipt of the FDDA by PPMDI on January 19, 2012. Since he had

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[4] *En Banc Docket*, pp. 7-29.

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until July 10, 2016 to collect, the issuance of the Warrant of Distraint and/or Levy (WDL) on May 16, 2016 was very well within the prescriptive period.

The CIR also repeats his argument that the income realized by PPMDI is not a mere presumption. The CIR argues that he was able to prove undeclared purchases based on the VAT returns, which has a discrepancy vis-à-vis the purchases made by PPMDI from Yamaha Philippines, Inc., as stated in the Summary List of Sales and Purchases of its suppliers. Having made this finding, the undeclared purchases must constitute undeclared revenue. Moreover, the argument of timing difference by PPMDI was not supported by any evidence, not even the alleged amended VAT returns for the 3rd and 4th quarters of fiscal year ending on June 30, 2008 that were not presented during trial. Lastly, the CIR reiterates that the assessment is presumed valid and presumptions shall be made in favor of its correctness and PPMDI has the burden to prove otherwise.

This Court rules.

Section 222 of the 1997 National Internal Revenue Code (NIRC), as amended, provides that the BIR has five (5) years following the assessment of tax within which to collect the said tax, *viz.*:

> "SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -
>
> (a) XXX XXX XXX
>
> (b) XXX XXX XXX
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> (c) Any internal 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.

xxx xxx xxx"

Clearly, internal revenue taxes which are assessed within the period of limitation may be collected within five (5) years following the assessment.

The 5-year period to collect should be reckoned from the date when the BIR mails, releases or sends the assessment notice to the taxpayer. The Supreme Court in the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*,[5] ruled as follows:

"xxx 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 [now five 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 [now five-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.

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xxx 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,

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

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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."

In this case, PPMDI filed its Annual Income Tax Return[6] for Fiscal Year ending June 30, 2008 on October 15, 2008, and its VAT returns for the said fiscal year all in 2008. Since the CIR had three years[7] to assess from the filing of the returns, the Final Assessment Notices (FANs)[8] received by PPMDI on October 19, 2010 was within the prescribed period.

While the FANs were dated on September 29, 2010, there is no allegation as to when the FANs were actually mailed, released or sent to PPMDI but the Court notes the acknowledgement made by PPMDI that it was able to receive the subject FANs on October 19, 2010. PPMDI even filed a protest thereon on October 21, 2010.[9] Consequently, the reckoning date from which the 5-year prescriptive period to collect is on October 19, 2010. Thus, the BIR had 5 years from such date, or until October 19, 2015 to collect the same.

Collection efforts were then made by the CIR by issuing a WDL on May 16, 2016, which was received by PPMDI on June 21, 2016. Thus, at the outset, the CIR's period to collect has already lapsed.

However, the CIR insists that the running of the aforementioned 5-year period to collect may nonetheless be suspended under Section 223 of the 1997 NIRC, as amended, *viz.*:

SEC. 223. Suspension of Running of Statute of Limitations. - The running of the Statute of Limitations

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[6] Exhibit "P-29", *Division Docket,* pp. 311-313.
[7] Section 222(a) of the National Internal Revenue Code of 1997.
[8] Exhibits "P-13" to "P-14", *Division Docket,* pp. 265-266.
[9] Exhibit "P-15", *Division Docket,* p. 267.

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> provided in Sections 203 and 222 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 (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." (Underlining supplied.)

The plain and unambiguous wording of the said provision dictates that two requisites must concur before the period to enforce collection may be suspended: (a) that the taxpayer requests for reinvestigation, and (b) that petitioner grants such request.[10]

The undisputed facts show that upon receipt of FAN on October 19, 2010, PPMDI filed a protest on October 21, 2010, in which Regional Director (RD) Jose N. Tan of Revenue Region No. 13 answered[11] for PPMDI to comply with the conformities of a valid protest. PPMDI then filed a request for reinvestigation on April 19, 2011, which was acknowledged and given due consideration by RD Tan through a letter[12] dated April 28, 2011. Thus, when RD Tan acknowledged and gave due course to the request for reinvestigation the period to collect by the CIR was suspended and continued to run again upon the receipt of the Final Decision on Disputed Assessment (FDDA)[13] by PPMDI on January 19, 2012. Thus, as correctly argued by

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[10] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010.
[11] Exhibit "P-16", *Division Docket,* p. 268.
[12] BIR Records, pp. 484-502.
[13] Exhibit "P-17", *Division Docket,* pp. 269-272.

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the CIR, it had until July 10, 2016 within which to issue the WDL, which he did on May 16, 2016.

Be that as it may, the alleged discrepancy/under-declared purchase cannot constitute an undeclared income. Consequently, the assessments for deficiency income tax should be cancelled.

Three elements are necessary to impose income tax, namely: (a) there must be gain or profit, (b) the gain or profit is realized or received, actually or constructively, and (c) it is not exempted by law or treaty.[14] Therefore, income tax is assessed on income, which is received from any property, activity or service and must be clearly established that the taxpayer received such income. This is clearly absent in this case. The CIR failed to establish by clear and convincing evidence other than his alleged under-declared purchases on the part of PPMDI that the latter received an income that it did not declare in its return.

The same is true for valued-added tax (VAT), which is based either on the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, or gross receipts derived from the sale or exchange of services.[15]

Section 108(A) of the 1997 NIRC defines "gross receipts" as the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding VAT.

In assessing VAT, it must be shown that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from the sale or exchange of services performed. VAT, like income tax,

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[14] *Commissioner of Internal Revenue vs. Court of Appeals, et. al.*, G.R. No. 108576, January 20, 1999.
[15] Section 106(A) of the National Internal Revenue Code of 1997.

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also cannot be assessed based on under-declared purchases, precisely because no sale, exchange or gross receipt is involved. As correctly ruled upon by the former Second Division, VAT is imposed when one sells, not when one purchases.

The under-declaration of purchase on the part of PPMDI is also of no consequence. As held in the case of *Commissioner of Internal Revenue vs. Agrinurture, Inc.,*[16] a finding of under-declaration of purchase does not by itself result in the imposition of income tax and VAT. An under-declaration of purchases does not, by itself, result in the imposition of income tax since no deficiency assessment can be made on account of undeclared purchases. To repeat, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the authorized amount, not an under-declaration of purchase or unaccounted expense.[17]

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[18]

WHEREFORE, premises considered, the Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED.** The assailed Decision and Resolution dated July 6, 2018 and September 3, 2018, respectively, in CTA Case No. 9263 are hereby **AFFIRMED.**

SO ORDERED.

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

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[16] CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.
[17] *Commissioner of Internal Revenue vs. Mt. Blanc Motors, Inc.,* CTA EB No. 1667, January 7, 2019; *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.,* G.R. No. L-19727, May 20, 1965.
[18] *Collector of Internal Revenue vs. Benipayo,* G.R. No. L-13656, January 31, 1962.

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join Presiding Justice Roman G. Del Rosario's Concurring Opinion)
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1940** (CTA Case No. 9263) Present:
-versus-	Del Rosario, P.J., Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ.
PHILIPPINE POWER MC DISTRIBUTION, INC., *Respondent.*	**Promulgated:** OCT 16 2019 11:37 a.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit. As aptly found by the Court in Division, which was affirmed by the *ponencia*, the assessments issued against Philippine Power MC Distribution, Inc. (PPMDI) are void for lack of legal and factual bases.

Anent the prescription of the right of the CIR to collect the alleged deficiency income tax and value added tax (VAT) assessments, I submit, however, that the same was already prescribed when the CIR issued the Warrant of Distraint and/or Levy dated May 6, 2016.

Under Section 203[1] of the National Internal Revenue Code (NIRC) of 1997, as amended, internal revenue taxes shall be assessed within 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. In cases where a return is filed beyond the period prescribed by law, the 3-year period shall be counted from the day the return was filed.

In *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, the Supreme Court clarified that when the Bureau of Internal Revenue (BIR) issues the assessment within the 3-year period, it has another 3 years, counted from the date the assessment notice had been released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding, *viz.*:

> "The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner 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. However, **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.[2] (Boldfacing supplied)

On the other hand, Section 222 of the NIRC of 1997, provides the exceptions to the 3-year period to assess and collect taxes, to wit:

> **"SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –**
>
> (a) In the case of a **false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed,**

[1] **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.
[2] G.R. No. 197515, July 2, 2014.

> **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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> **(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.**
>
> (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." (Boldfacing supplied)

Hence, if the CIR issued the assessment within the 10-year period under **Section 222 (a)**, the CIR may collect the deficiency tax by distraint or levy or by a proceeding in court within 5 years following the assessment of the tax. The CIR may also institute a proceeding in court for the collection of such tax, without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission.

Meanwhile, Section 223 of the NIRC of 1997, as amended, suspends the running of the Statute of Limitations provided in Sections 203 and 222 of the NIRC of 1997, as amended, when the taxpayer requests for a reinvestigation which is granted by the CIR, to wit:

> **"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." (Boldfacing supplied)

After carefully perusing the records of the case, I agree with the Court in Division in ruling that Section 222 (a) and (c) of the NIRC of 1997, as amended, finds no application in the present case since there is no fraud assessment to speak of; that the period to collect the deficiency assessments was suspended when PPMDI requested for a reinvestigation and the same was granted by the CIR; and, that the issuance of the Warrant of Distraint and/or Levy dated May 6, 2016 was beyond the 3-year prescriptive period to collect under Section 203 of the NIRC of 1997, as amended. **In other words, I submit that the 3-year prescriptive period to collect applies to this case, instead of the 5-year prescriptive period to collect as stated in the *ponencia*.**

As borne by the records, PPMDI received the Final Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices (FAN) all dated September 29, 2010[3] on October 19, 2010. Thus, *sans* any request for reinvestigation and the grant thereof, the CIR had 3 years from such receipt or until October 18, 2013 to collect the assessed deficiency income tax and VAT. Considering, however, that PPMDI requested reinvestigation of the FLD and FAN on April 19, 2011 which the CIR granted on April 28, 2011, the period to collect was suspended from April 28, 2011 to January 19, 2012, the date PPMDI received the Final Decision on Disputed Assessment with Amended Assessment Notices all dated January 2, 2012[4]. **As a result, the 3-year period to collect the deficiency assessments was extended until July 11, 2014. Since the Warrant of Distraint and/or Levy dated May 6, 2016[5] was received by PPMDI on June**

[3] Exhibit "R-5", BIR Records, pp. 348-351.
[4] BIR Records, pp. 851-855.
[5] BIR Records, p. 1303.

21, 2016, the collection was clearly made beyond the 3-year prescription period.[6]

Consequently, the CIR may no longer enforce collection of the assessed deficiency taxes against PPMDI. In any event, the assessments should be cancelled as it is not supported by the facts and the law as explained in the *ponencia* and the assailed Decision dated July 6, 2018 of the Court in Division.

All told, I CONCUR in the denial of the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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PPMDI received the FLD and FAN dated September 29, 2010	October 19, 2010	
PPMDI requested for reinvestigation	April 19, 2011	
PPMDI's request for reinvestigation was granted by the BIR	April 28, 2011	**Suspension of period to collect**
PPMDI received the Final Decision on Disputed Assessment with Amended Assessment Notices all dated Janaury 2, 2012	January 19, 2012	
Deadline of extended 3-year period to collect (365 days *3 (no. of years) less 191 days)	July 11, 2014	
PPMDI received the Warrant of Distraint and/or Levy dated May 6, 2016	June 21, 2016	