REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ISUZU PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1005
(CTA Case No. 8025)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

AUG 04 2014 8:30 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court En Banc is a Petition for Review under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Rule 43 of the Rules of Court, seeking the reversal of the Decision[1] of this Court's First Division dated December 11, 2012 in *Isuzu Philippines Corporation vs. Commissioner of Internal Revenue* (CTA Case No. 8025) cancelling the assessments made by the petitioner on the grounds of prescription and lack of legal basis, and the Resolution[2] dated March 22, 2013 denying the petitioner's motion for reconsideration for lack of merit.

The First Division ruled in its assailed Decision, thus:

> "**WHEREFORE**, the Petition for Review is hereby **GRANTED**. Accordingly the assessment for deficiency EWT, inclusive of interest and compromise penalty, in the amount of ₱6,464,280.71 covering taxable year 2005 is hereby

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[1] *Rollo*, CTA EB Case No. 1005, pp. 26-50.
[2] *Rollo*, CTA EB Case No. 1005, pp. 51-54.

CANCELLED and **WITHDRAWN** on the ground of prescription for the assessments pertaining to the months of January 2005 until November 2005, and for lack of legal basis, anent the month of December 2005.[3]

"**SO ORDERED**."

The assailed Resolution, on the other hand, disposed:

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

"**SO ORDERED**."

THE FACTS

The facts as found by the Court's First Division are as follows:

"Petitioner *(herein respondent)* Isuzu Philippines Corporation 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 114 Technology Avenue, Phase II, Laguna Technopark, Biñan, Laguna.[4] It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 004-834-871-000.[5]

On the other hand, respondent *(herein petitioner)* is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with the authority to carry out the function, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

On January 14, 2009, petitioner received the Formal Letter of Demand dated January 13, 2009,[7] together with the Audit Result/Final Assessment Notice Nos. LTAID II WE-05-00003 and LTAID II WC-05-00002, assessing petitioner for alleged EWT and withholding tax on

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[3] The petitioner inexplicably misquoted this in page 3 of the instant Petition for Review, by mentioning the cancellation and setting aside of "Formal Letter of Demand, with Final Assessment Notices LTEADI-WC-05-00038, LTEADI-WE-05-00062, LTEADI-CP-05-0007, LTEADI-CP-05-0008, all dated December 17, 2009," without stating the reasons therefor.

[4] Docket, CTA Case No. 8025, p. 113.

[5] Exhibit "A", Docket, p. 268.

[6] Docket, CTA Case No. 8025, pp. 113 to 114.

[7] Docket, CTA Case No. 8025, pp. 380 to 382; Exhibit "5", BIR Records, pp. 1385 to 1387.

compensation, respectively, for taxable year 2005, in aggregate amount of ₱20,129,406.70, broken down as follows:[8]

TAX TYPE	AMOUNT
EWT	₱18,832,530.98
Withholding Tax on Compensation	1,296,875.72
TOTAL	**₱ 20,129,406.70**

On February 13, 2009, petitioner protested the foregoing assessments by filing its letter dated February 12, 2009.[9] Subsequently, on April 8, 2009, petitioner filed another letter dated April 7, 2009, submitting to respondent the documents in support of its protest.[10]

On December 18, 2009 petitioner received respondent's Final Decision on Disputed Assessment (FDDA) dated December 1, 2009, together with the revised Audit Result/Assessment Notice and Schedule of Adjustment per Final Assessment Notice (FAN) and FDDA.[11] Based on the FDDA and revised Assessment Notice, petitioner is still liable to a deficiency EWT in the reduced and aggregate amount of ₱6,464,280.71 for taxable year 2005, computed as follows:

Basic Tax Due	₱3,598,569.75
Add: Interest (January 20, 2006 to December 31, 2009)	2,840,710.96
Compromise Penalty	25,000.00
TOTAL	**₱ 6,464,280.71**

The Basic Tax Due pertains to petitioner's payment for certain services which were subjected to the two percent (2%) withholding tax rate, detailed as follows:[12]

Manufacturing Overhead	
GA Canteen Expenses	₱ 3,737,028.23
GA Technical Assistance Expenses	18,573,897.00
Fire Insurance Expenses	2,925,164.32
Electricity Expenses	31,134,967.06
Water Supply Expenses	1,078,769.76
Shuttle Bus Expenses	4,930,104.68
Security Services	3,806,713.28
Janitorial Services	2,097,899.82
Repairs and Maintenance	23,310,763.22
Deductions per 1702	
Security Services	3,979,606.00
Janitorial Services	2,046,383.00

[8] Docket, CTA Case No. 8025, p. 114. It must be noted that the aggregate amount of assessment was erroneously stipulated by the parties as ₱20,116,351.03.
[9] Exhibit "V", Docket, CTA Case No. 8025, pp. 385 to 393.
[10] Exhibit "W", Docket, CTA Case No. 8025, pp. 394 to 398.
[11] Docket, CTA Case No. 8025, p. 114. Exhibits "X", "Y", and "Z", Docket, CTA Case No. 8025, pp. 399 to 403. Exhibit "7", BIR Records, pp. 1708 to 1709.
[12] Exhibit "Z", Docket, CTA Case No. 8025, pp. 402 to 403.

Other Outside Services	7,089,277.00
Advertising	135,688,144.00
Research Development	53,781.00
Interest	75,804,126.00
Insurance	3,253,270.00
Representation	7,302,250.16
Transportation	26,719,562.00
Communications, Light and Water	16,498,562.00
Miscellaneous	9,210,512.14
Warranties	69,516,518.00
Freight Storage	7,077,280.00
Professional Fees	20,469,326.50
Per BOC Data	
Freight	144,475,614.00
Insurance	16,921,225.00
Others	33,187.00
TOTAL	**₱ 637,733,931.17**
EWT Due (₱637,733,931.17 x 2%)	**₱ 12,754,678.62**
Less: EWT paid	**9,156,108.87**
Basic Deficiency EWT	**₱ 3,598,569.75**

Consequently, petitioner filed the instant Petition for Review on January 15, 2010.

Respondent filed her Answer[13] on March 17, 2010, alleging the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

"6. Petitioner's deficiency assessment for Expanded Withholding Tax (WT) in the amount of P6,464,280.71 was issued in accordance with law and regulations.

7. In the case at bar, petitioner miserably failed to discharge its duty to prove that respondent's deficiency EWT assessment is illegal and invalid.

It is a settle (sic) rule that the burden of proof is on the taxpayer contesting the validity or correctness of assessment to prove not only that the Commissioner of Internal Revenue (CIR) is wrong but petitioner is right (Tan Guan vs. CTA, 19 SCRA 903), otherwise, the presumption in favor of the correctness of tax assessment stands (Sy Po vs. CTA, 164 SCRA 524).

It is also a well settled rule that tax assessments by tax examiners are presumed correct and made in good faith. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the

[13] Docket, CTA Case No. 8025, pp. 55 to 62.

taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer; the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC (CIR vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005).

8. Petitioner argues that respondent's right to assess petitioner deficiency EWT assessment for taxable year 2005 has already been barred by prescription pursuant to Section 58(A) of the Tax Code of 1997 and Revenue Regulations No. 17-2003, in relation to Section 203 of the same Code.

Respondent begs to disagree.

The right of the respondent to assess petitioner for deficiency EWT for the taxable year 2005 has not prescribed pursuant to Section 222(a) of the 1997 Tax Code, thus:

> **'SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –**
>
> (a) In the case of a <u>false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission:</u> 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. (underscoring supplied)
>
> (b) xxx xxx xxx
>
> (c) xxx xxx xxx
>
> (d) xxx xxx xxx.'

The abovementioned provision finds application to the present case because respondent discovered that petitioner failed to remit and file Expanded Withholding Tax Returns for various income payments pursuant to Section 57(B) of the Tax Code of 1997, as amended, and Section 2.57.2 of Revenue Regulations No. 2-98. This was based on the result of the investigations made by respondent's revenue

> officers on the books of accounts and pertinent records and documents submitted by petitioner. Hence, for **failure to file EWT returns for taxable year 2005, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such failure to file returns** pursuant to Section 222(a) of the 1997 Tax Code.
>
> 10. Respondent further submits that Section 203 of the 1997 Tax Code does not apply to petitioner's deficiency EWT assessment because petitioner was not assessed for internal revenue taxes directly related in the operation of its business, but for its liability as withholding agent for failure to withhold, account for and remit the deficiency expanded withholding taxes as required by Revenue Regulations No. 2-98.
>
> Moreover, there is nothing under the 1997 Tax Code that provides for the period of limitation to assess withholding agents for failure to withhold, account for and remit any tax imposed by the said Tax Code.
>
> 11. The presumptions, therefore, that respondent's deficiency EWT assessment against petitioner is correct and made in good faith should apply and be given weight and consideration."

During trial, petitioner presented several witnesses.[14] Thereafter, petitioner filed its Formal Offer of Evidence[15] on August 22, 2011, submitting Exhibits "A" to "EE", "GG" to "CCC", and "III", inclusive of sub-markings, which, except for Exhibits "U", "U-1", "QQ-2", "QQ-3", and "RR", were admitted in the Resolution dated September 12, 2011.[16] On February 6, 2012, petitioner filed an Amended Formal Offer of Evidence,[17] through registered mail, offering in evidence, Exhibit "RR"; which was admitted in the Resolution dated February 21, 2012.[18]

On February 21, 2012, respondent presented Erlita Vergagra, Revenue Officer III of the BIR Large Taxpayers Audit Division, as her sole witness.[19] Thereafter, on March 7, 2012, respondent filed her Formal Offer

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[14] Namely: *Mary Grace B. Servañez*, Accounting Manager of petitioner (Refer to the Minutes of the Hearings held on July 20, 2010, September 23, 2010, October 14, 2010, and November 11, 2010, Docket, pp. 123, 143, 156, and 165, respectively); *Atty. Marlon Facun*, Securities Counsel III-Securities and Exchange Commission (SEC) (Refer to the Minutes of Hearing held on December 14, 2010, Docket, p.177); *Abbet Barce*, Partner, Tax Compliance Group of Tax Services, Reyes Tacandong & Co. (Refer to the Minutes of the Hearings held on January 25, 2011 and March 8, 2011, Docket, pp. 194 and 204, respectively); *Atty. Mary Ann V. Morales-Laguna*, Securities Counsel III-SEC, (Refer to the Minutes of Hearing held on April 12, 2011, Docket, p. 211); *Faith Panzo*, Accounting Supervisor of petitioner, (Refer to the Minutes of Hearing held on June 21, 2011, Docket, p. 230).
[15] Docket, pp. 252 to 267.
[16] Docket, CTA Case No. 8025, pp. 491 to 492.
[17] Docket, CTA Case No. 8025, pp. 565 to 567.
[18] Docket, CTA Case No. 8025, p. 580.
[19] Minutes of Hearing held on February 21, 2012, Docket, CTA Case No. 8025, p. 570.

of Evidence,[20] offering in evidence, Exhibits "1", "2", "4", "5", "6-D", "7", and "7-A", which were admitted in the Resolution dated April 3, 2012.[21]

On May 23, 2012, this case was submitted for decision, considering petitioner's Memorandum[22] filed on May 11, 2012, *sans* respondent's Memorandum."

THE ISSUES

The sole issue in this case is whether or not respondent is liable to pay deficiency withholding taxes for taxable year 2005.

During the trial, this case turned on the issue of whether the assessment for deficiency Expanded Withholding Tax (EWT) against Isuzu Philippines Corporation (Isuzu) had already prescribed under Sections 203 and 222 of the NIRC of 1997.

The First Division found that Isuzu had filed monthly remittance returns for the months of January to November 2005, each a day ahead of the 15th day of the succeeding month; thus, the last day for the petitioner to assess under Section 203 of the NIRC was December 15, 2008. Therefore, when the petitioner's Formal Letter of Demand dated January 13, 2009 was received by Isuzu on January 14, 2009, the three-year period for assessment allowed by Section 203 had already prescribed. The return for December 2005, however, having been filed only on March 1, 2006, gave the petitioner until March 1, 2009 within which to render the corresponding assessment; thus, the assessment for this return had not yet prescribed, but was nonetheless found after trial to be without legal basis.

In the instant Petition for Review, the petitioner once more assails the finding that prescription had set in, and argues that Section 203 of the NIRC applies only to income taxes but not to EWT. Petitioner, however, has not imputed error to the First Division's finding that the assessment for the December 2005 EWT return was without legal basis; that portion of the assailed Decision, accordingly, had attained finality, and will no longer be included in the discussion below.

In the herein Petition, the petitioner raises an issue not raised at the trial: whether it is the ten-year prescriptive period in Section 222 of the NIRC that should apply, rather than the three-year period under Section 203, because the case is allegedly one involving a "false or fraudulent return with intent to evade tax."

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[20] Docket, CTA Case No. 8025, pp. 573 to 577.
[21] Docket, CTA Case No. 8025, pp. 587 to 588.
[22] Docket, CTA Case No. 8025, p. 589 to 608.

The Court En Banc shall therefore discuss the applicability of Sections 203 and 222 to the petitioner's assessment for deficiency EWT.

RULING OF THE COURT EN BANC

The petitioner CIR does not dispute the First Division's factual findings. It opted to stake its case on the proposition that the withholding agent's liability for expanded withholding tax (EWT) never prescribes. In support of this thesis, it cited in its instant petition for review certain cases – *CIR vs. Court of Appeals, CTA, and A. Soriano Corporation*;[23] *National Development Company vs. CIR*;[24] and *Filipinas Synthetic Fiber Corporation vs. CA, CTA and CIR*.[25]

Section 203 Applicable to EWT

Petitioner's invocation of *CIR vs. Court of Appeals, CTA, and A. Soriano Corporation* is wholly misplaced, like fitting a square peg into a round hole. In that case, the issue was the inclusion of deficiency withholding tax in the tax amnesty application of A. Soriano Corporation as taxpayer. The tax amnesty law categorically provided that the amnesty does not cover withholding tax at source. There, the Supreme Court held that any doubt in the application of the amnesty law should be resolved in favor of the taxing authority, because amnesty, like tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. The opposite rule, however, applies in the matter of prescription under Section 203 of the NIRC, where it has been held that the statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor.[26]

National Development Company vs. CIR and *Filipinas Synthetic Fiber Corporation vs. CA, CTA and CIR*, on the other hand, had nothing to do at all with the issue of prescription of the period of assessment, whether of EWT or income taxes.

In complete contrast, the jurisprudential support cited by the First Division in its Decision are truly apropos.[27] In *Philippine Journalists, Inc. vs. CIR*,[28] the Supreme Court in 2004 applied Section 203 of the NIRC in ruling that prescription had set in against assessments for deficiency taxes on income tax, value-added tax, and expanded withholding tax. In *CIR vs. FMF Development*

[23] The petitioner failed to complete the citation in page 8 of the instant Petition. The case is G.R. No. 108576, where the decision was promulgated on January 20, 1999.
[24] G.R. No. L-53961, June 30, 1987.
[25] G.R. No. 118498 and 124377, October 12, 1999.
[26] *Bank of the Philippine Islands vs Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.
[27] See pages 11-12 of the Decision.
[28] G.R. No. 162852, December 16, 2004.

Corporation,[29] the Supreme Court in 2008 applied Section 203 of the NIRC in ruling that prescription had set in against assessments for deficiency taxes on income tax and withholding taxes. More recently in 2010, in *CIR vs. Kudos Metal Corporation*,[30] the Supreme Court, in reiterating that exceptions extending the period to assess must be strictly construed, also cited Section 203 in ruling that the assessment for deficiency taxes on income tax, VAT and EWT had prescribed.

Yet the petitioner insists that Section 203 applies exclusively to internal revenue taxes, to the exclusion of EWT. The said provision of the NIRC states:

> **Section 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Petitioner's literal and strict interpretation of Section 203 does not find support in jurisprudence. As pointed out earlier, the jurisprudence cited by the petitioner are off-tangent. The jurisprudence cited by the First Division in its Decision, on the other hand, included withholding taxes and EWT in the coverage of Section 203. In another case, the ambit of Section 203 was even extended to deficiency documentary stamp tax.[31]

The Court thus cannot give credence to the unsupported theory of the petitioner that the assessment and collection of deficiency EWT under Section 203 of the NIRC are "imprescriptible."[32]

The petitioner itself undermined its theory of imprescriptibility, by alternatively invoking Section 222(a) of the NIRC, in a bid to impress this Court that the proper prescriptive period should be the ten (10) years under Section 222 rather than merely three (3) years under Section 203. Section 222(a) of the NIRC provides:

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[29] G.R. No. 167765, June 30, 2008.
[30] G.R. No. 178087, May 5, 2010.
[31] *Bank of the Philippine Islands vs CIR*, G.R. No. 174942, March 7, 2008.
[32] *Rollo*, p.10.

> "**Section 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, 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. x x x"

Change of Theory Under Section 222

At the trial before the First Division, the petitioner anchored its resort to Section 222 on the allegation that Isuzu failed to file its EWT returns for 2005. Isuzu conclusively disproved that allegation with its evidence.

At the trial, needing to allege either a fraudulent return or the non-filing of a return, the CIR opted to impute the latter violation to Isuzu. Having alleged that these returns were not filed, the CIR could not and did not additionally claim during the trial that the returns filed were false or fraudulent.

It was only when it sought reconsideration by the First Division of its Decision that the CIR belatedly, as in the instant Petition for Review, *changed its theory*, from non-filing of returns, to discrepancy arising from failure to subject "certain income payments" to EWT. As Isuzu correctly pointed out in its Comment received by this Court on July 5, 2013, the filing of a false or fraudulent return with intent to evade tax or the filing of a false and insufficient return was not raised as an issue in the Joint Stipulation of Facts and Issues dated July 8, 2010, nor in the Answer of the petitioner.[33]

The petitioner alleged in the instant Petition for Review:

> "A careful perusal of the Formal Letter of Demand dated January 13, 2009, will show that assessments were issued not for failure to file the return but for failure to subject certain income payments to expanded withholding taxes and for discrepancy in the amount of P781,776.60 which was assessed pursuant to Section 24 (A) and 80 of the NIRC.[34]"

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[33] Page 3, Comment.
[34] Page 14, Petition for Review.

The CIR thereupon invoked anew Section 222 of the NIRC, implying this time around that the EWT returns filed were "false or fraudulent returns with intent to evade tax."

This change of theory on appeal, however, cannot be allowed.

> "It is a matter of law that when a party adopts a particular theory and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approached and resolved from a different point of view." (*Duty Free Philippines Services, Inc. vs. Manolito Q. Tria*)[35]

> "A party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal." (*Loreto Bote vs. Spouses Veloso*)[36]

Moreover, in the rest of its Petition for Review, petitioner was dismally unable to cite even an iota of evidence showing the respondent's "intent to evade tax." Indeed, in its last paragraph before its Prayer, the allegation of falsity or fraud becomes irreconcilable with its allegation of "inadequacy", *to wit:*

> "Hence for failure to file the correct and <u>sufficient</u> returns for taxable year 2005, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such <u>inadequacy</u>."

It is patently obvious that the foregoing allegations fail to measure up to the letter and spirit of Section 222 of the NIRC, quoted earlier.

In its Memorandum[37] received by this Court on September 6, 2013, petitioner clung to this change of theory, without adducing any additional evidentiary, statutory, or jurisprudential support therefor.

This Court thus finds that it cannot accord the petitioner the benefit of the ten-year prescriptive period under Section 222 of the NIRC. Raising mere doubts or unsubstantiated allegations against the respondent, whether as a

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[35] G.R. No. 174809, June 27, 2012, citing *Cocomangas Hotel Beach Resort vs Visca*, G.R. No. 167045, August 29, 2008, 563 SCRA 705, 718, and *Manila Electric Company vs Benamira*, G.R. No. 145271, July 14, 2005, 463 SCRA 331, 348-349.
[36] G.R. No. 194270, December 3, 2012, citing *Arroyo vs House of Representatives Electoral Tribunal*, 246 SCRA 384 (1995).
[37] *Rollo*, pp. 67-88.

taxpayer or as an agent for the withholding of taxes, would not do, where the taxpayer or agent invokes the defense of prescription. As the Supreme Court emphasized in *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*,[38] "The statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor."

> The law on prescription should be liberally construed in order to protect taxpayers and that, as a corollary, the exceptions to the law on prescription should be strictly construed. (*CIR vs Philippine Global Communication, Inc.*,[39] citing *Commissioner of Internal Revenue vs B.F. Goodrich*[40])

WHEREFORE, considering all of the foregoing premises, the instant Petition for Review is **DENIED** for lack of merit. The assailed Decision of the First Division promulgated on December 11, 2012 in *Isuzu Philippines Corporation vs Commissioner of Internal Revenue* (CTA Case No. 8025), and its Resolution dated March 22, 2013, are **AFFIRMED** *in toto.*

SO ORDERED.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[38] G.R. No. 139736, October 17, 2005.
[39] G.R. No. 167146, October 31, 2006.
[40] 363 Phil. 169, 178 [1999].

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice