REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FIRST PHILIPPINE ELECTRIC CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case NO. 9199

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA,[1]
and
MANAHAN, *JJ.*

Promulgated:

JUN 04 2019 2:03 PM

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RESOLUTION

CASTAÑEDA, JR., ***J.:***

For resolution of this Court is respondent Commissioner of Internal Revenue's (CIR) *Motion for Partial Reconsideration [re: Decision dated February 08, 2019]*[2] filed on February 27, 2019 with petitioner First Philippine Electric Corporation's *Comment (to the Motion for Partial Reconsideration dated February 27, 2019)*[3] filed on April 8, 2019.

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[1] Designated as a special member as per OPJ Memorandum dated January 18, 2019.
[2] Division Docket Vol. III, pp. 1270-1287.
[3] *Id.*, pp. 1295-1314.

Respondent assails the Decision dated February 8, 2019,[4] (the "Assailed Decision") of this Court partially granting petitioner's Petition for Review.

Respondent moves for partial reconsideration of the Assailed Decision based on the following grounds:[5]

I.

THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENT FOR DEFICIENCY VALUE-ADDED TAX (VAT) FOR THE FIRST TO THIRD QUARTERS OF TAXABLE YEAR 2009, DEFICIENCY WITHHOLDING TAX ON COMPENSATION (WTC) FOR THE MONTHS OF JANUARY TO NOVEMBER OF TAXABLE YEAR 2009 AND DEFICIENCY EWT FOR TAXABLE YEAR 2009 HAVE ALREADY PRESCRIBED.

II.

THE COURT ERRED IN CANCELLING THE COMPROMISE PENALTY.

III.

THE HONORABLE COURT ERRED IN USING AN EFFECTIVE RATE IN COMPUTING THE DEFI[CI]ENCY WITH[H]OLDING TAX ON COMPENSATION.

IV.

THE HONORABLE COURT ERRED IN RULING ON MATTERS THAT WERE NEVER SUBSTANTIATED IN THE ADMINISTRATIVE LEVEL. RESPONDENT RENDERED A FINAL DECISION ON DISPUTED ASSESSMENT, HENCE, THE HONORABLE COURT'S JURISDICTION BECOMES STRICTLY APPELLATE IN NATURE.

V.

THE HONORABLE COURT ERRED IN CANCELLING THE DEIFICNECY (sic) DOCUMENTARY STAMP TAX

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[4] *Id.*, pp. 1220-1262.
[5] *Id.*, pp. 1271-1272.

ASSESSMENT ARISING FROM NON-INTEREST BEARING DEBT INSTRUMENTS.

In its *Comment*, petitioner asserts that this Court has jurisdiction to rule on matters presented before it subject of the instant case.[6] Moreover, petitioner contends that respondent's right to assess the deficiency income tax, VAT, EWT, WC, and FBT has already prescribed.[7] Petitioner also maintains that the Assailed Decision rightly struck down the imposition of compromise penalties because it did not consent to the imposition of the same.[8] Petitioner likewise avers that respondent cannot belatedly question this Court's ruling with respect to the deficiency withholding tax on compensation upheld in the Assailed Decision by adopting a new theory.[9] Also, petitioner claims that this Court did not err in holding that petitioner is not liable for the assessed deficiency arising from unaccounted purchases and unaccounted sales and expenses not subjected to EWT.[10] By the same token, petitioner argues that this Court did not err in holding that the item on NOLCO, disallowed tax credits and input tax credits should be cancelled.[11] Lastly, petitioner asserts that this Court rightly held that petitioner is not liable for the assessed taxes arising from non-interest bearing advances.[12]

After judicious review of the arguments and counter-arguments raised by the parties as well as the relevant rules and jurisprudence on the matter, this Court finds no substantial matter much less any compelling reason that would warrant the modification let alone the reversal of the Assailed Decision. Respondent's *Motion for Partial Reconsideration* is utterly devoid of any merit and thus should be denied.

As stated earlier, respondent claims that this Court erred in ruling that the assessments for deficiency expanded withholding tax (EWT) and deficiency withholding tax on compensation (WTC) have prescribed. Respondent's theory is that assessments for deficiency EWT and WTC are imprescriptible.[13] He contends that withholding tax assessments are not in the nature of personal income tax liabilities but

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[6] *Id.*, pp. 1296-1297.
[7] *Id.*, pp. 1298-1303.
[8] *Id.*, pp. 1304-1305.
[9] *Id.*, pp. 1305-1306.
[10] *Id.*, pp. 1306-1311.
[11] *Id.*, pp. 1311-1312.
[12] *Id.*, pp. 1312-1313.
[13] *Id.*, pp. 1272-1276.

are in the nature of penalties for failure to duly withhold and remit the taxes to the government.[14] As such, they are not covered by the prescriptive period provided under Section 203 of the National Internal Revenue Code of 1997, as amended(1997 NIRC).[15]

Respondent is grievously mistaken.

The ruling of the Supreme Court in the recent case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[16] squarely addressed this particular issue as follows:

> "*Withholding taxes are internal revenue taxes covered by Section 203 of the NIRC.*
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> Section 203 of the NIRC provides for the ordinary prescriptive period for the assessment and collection of taxes, to wit:
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> > 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. (Emphasis supplied)
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> On the other hand, Section 222(a) of the NIRC provides for instances where the ordinary prescriptive period of three years for the assessment and collection of taxes is extended to 10 years, *i.e.*, false return, fraudulent returns, or failure to file a return. In short, the relevant

[14] *Id.*
[15] *Id.*
[16] G.R. No. 211289, January 14, 2019.

provisions in the NIRC concerning the prescriptive period for the assessment of internal revenue taxes provide for an ordinary and extraordinary period for assessment.

The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.

In *Chamber of Real Estate and Builders' Associations, Inc. v. Hon. Executive Secretary Romulo*, the Court had succinctly explained the withholding tax system observed in our jurisdiction, to wit:

> We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws. The withholding tax system was devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns and third, to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.

Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.

As a consequence of the withholding tax system, two distinct liabilities arise – one for the income earner/payee and another for the withholding agent. In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, the Court elaborated:

> It is, therefore, indisputable that the withholding agent is merely a tax collector and not a taxpayer, as elucidated by this Court in the case of *Commissioner of Internal Revenue v. Court of Appeals*, to wit:
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>> In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer – he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him – he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguish from its duty to pay tax since:
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>>> 'the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.'
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> Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him. (Citations omitted) ge

It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.

The CIR cites *National Development Company v. Commissioner of Internal Revenue* as basis that withholding taxes are only penalties imposed on the withholding agent, to wit:

> The petitioner also forgets that it is not the NDC that is being taxed. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold.
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> In effect, therefore, the imposition of the deficiency taxes on the NDC is a *penalty* for its failure to withhold the same from the Japanese shipbuilders. Such liability is imposed by Section 53(c) of the Tax Code, thus:
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>> Section 53(c). *Return and Payment.* – Every person required to deduct and withhold any tax under this section shall make return thereof, in duplicate, on or before the fifteenth day of April of each year, and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section (As amended by Section 9, R.A. No. 2343.)
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> In *Philippine Guaranty Co. v. The Commissioner of Internal Revenue and the Court of Tax Appeals*, the Court quoted with approval the following regulation of the BIR on the responsibilities of withholding agents:

> In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding, the withholding agent may thereupon remit the amount of tax withheld. (2nd par., Sec. 200, Income Tax Regulations).
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> 'Strict observance of said steps is required of a withholding agent before he could be released from liability,' so said Justice Jose P. Bengson, who wrote the decision. 'Generally, the law frowns upon exemption from taxation; hence, an exempting provision should be construed strictissimi juris.'
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> The petitioner was remiss in the discharge of its obligation as the withholding agent of the government and so should be held liable for its omission.

A careful analysis of the above-quoted decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word 'penalty' was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax and not of the withholding agent. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.

The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties. In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation* the Court explained: *ge*

> It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is 'required to deduct and withhold any tax' is made *'personally liable for such tax'* and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. **The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.**
>
> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made 'liable for tax' as *not* 'subject to tax.' By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him. (Emphasis supplied)

Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code.

In addition, Section 247(b) of the NIRC provides:

> SEC. 247. *General Provisions.* –
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> x x x x
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> (b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.

On the other hand, Section 251 of the Tax Code reads:

> SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* - Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

Based on the above-cited provisions, it is clear to see that the 'penalties' are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. <u>Thus, it was wrong for the CIR to restrict the EWT and WTC assessments against La Flor as only for the purpose of imposing penalties and not for the collection of internal revenue taxes</u>." *(Underscoring supplied and citations omitted)*

The Supreme Court had already spoken on the matter. Accordingly, this Court must abide by the same.

Respondent further asserts that deficiency assessment for value-added tax (VAT) has not prescribed because the 10-year prescriptive period provided by Section 222 of the 1997 NIRC for filing false returns applies in the present case.[17] As basis for the above assertion,

[17] Division Docket Vol. III, p. 1276.

respondent cited the case of *Commissioner of Internal Revenue v. Asalus Corporation*[18] where the Supreme Court ruled that mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the 10-year prescriptive period under Section 222 of the 1997 NIRC.

Respondent's argument lacks merit.

Petitioner correctly pointed out that respondent may not be allowed to put forward a new issue or theory that was never raised during trial. As the Supreme Court aptly held in *British American Tobacco v. Camacho*,[19] to wit:

> "The rule is that a party is bound by the theory he adopts and by the cause of action he stands on. He cannot be permitted after having lost thereon to repudiate his theory and cause of action, and thereafter, adopt another and seek to re-litigate the matter anew either in the same forum or on appeal. Having pursued one theory and lost thereon, petitioner may no longer pursue another inconsistent theory without thereby trifling with court processes and burdening the courts with endless litigation."

To allow respondent to change his theory at this stage will be unfair to petitioner because the latter was not given an opportunity to present evidence to properly meet the issue raised in the new theory, which it could have done had it been aware of it at the time of trial.

Moreover, respondent cannot take refuge in the Supreme Court's ruling in *Asalus* because a more careful reading thereof will show that it is not on all fours with the present case. For proper frame of reference, the relevant portions of *Asalus* are reproduced below:

> "Generally, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, or where the return is filed

[18] G.R. No. 221590, February 22, 2017, 818 SCRA 554.
[19] G.R. No. 163583, April 15, 2009 (Resolution), 585 SCRA 55.

beyond the period, from the day the return was actually filed. Section 222 of the NIRC, however, provides for exceptions to the general rule. It states that in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the assessment may be made within ten (10) years from the discovery of the falsity, fraud or omission.

In the oft-cited *Aznar v. CTA*, the Court compared a false return to a fraudulent return in relation to the applicable prescriptive periods for assessments, to wit:

> Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to evade tax, while respondent Commissioner of Internal Revenue insists contrariwise, with respondent Court of Tax Appeals concluding that the very 'substantial under declarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax.'
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> xxx xxx xxx
>
> xxx We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) 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 (1) falsity, (2) fraud, (3) omission. **Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission.' That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.**

> The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made. (Emphasis supplied)

Thus, a mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10)-year prescriptive period under Section 222 of the NIRC.

Presumption of Falsity of Returns

In the present case, the CTA opined that the CIR failed to substantiate with clear and convincing evidence its claim that Asalus filed a false return. As it noted that the CIR never presented any evidence to prove the falsity in the returns that Asalus filed, the CTA ruled that the assessment was subject to the three (3)-year ordinary prescriptive period.

The Court is of a different view.

Under Section 248 (B) of the NIRC, there is a *prima facie* evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.

In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.

Applied in this case, the audit investigation revealed that there were undeclared VATable sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.

Hence, the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248 (B) of the NIRC would render the said provision inutile." *(Underscoring supplied and citations omitted)*

As may be gathered from above, the Supreme Court allowed in *Asalus* the application of the 10-year prescriptive period under Section 222 of the 1997 NIRC because there was an audit finding of underdeclaration of VATable sales more than 30% of that declared in the VAT returns. This fact, according to the Supreme Court, had triggered the application of presumption of falsity of the returns as prescribed under Section 248(B) of the 1997 NIRC. Accordingly, it is incumbent upon the taxpayer to refute the presumption of falsity of its returns and its failure to do so warranted the application of the 10-year prescriptive period under Section 222.

In contrast to the foregoing, there is no presumption of falsity of the returns in the present case as there was no finding, let alone proof, of *substantial* underdeclaration of sales, receipts, or income allegedly made by the petitioner in its returns. Indeed, there is no showing that the returns filed by petitioner were false as in fact respondent never raised much less proved such particular issue either at the administrative level or even during trial.

There is also no merit to respondent's claim that petitioner shall be liable for compromise penalty. As previously discussed in the Assailed Decision, this Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties with respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[20] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[21] This Court thus stands firm on this position.

Respondent also claims that it is an error for this Court to impose an effective rate of withholding tax on compensation. Respondent contends that petitioner was given the opportunity to present the alphalist of its employees so that the correct tax can be computed.[22] Because petitioner failed to do so and that the employees to whom the compensation pertained to were not individually identified, the maximum rate of 32% must be used.[23] To buttress its stance, respondent invoked the presumption of correctness of an assessment.[24]

Respondent's argument is specious.

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[20] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962.
[21] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et al.,* G.R. No. L-35266, January 21, 1991.
[22] Division Docket Vol. III, pp. 1278-1279.
[23] *Id.*
[24] *Id.*

Section 80(A) of the 1997 NIRC states:

"SEC. 80. *Liability of Tax.* —

(A) *Employer* — The employer shall be liable for the withholding and remittance of the **correct amount of tax required to be deducted and withheld** under this Chapter. If the employer fails to withhold and remit the **correct amount of tax as required to be withheld** under the provision of this Chapter, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit." *(Emphasis supplied)*

The law requires the correct amount of tax to be collected. Accordingly, this Court cannot adhere to respondent's view that the maximum rate of 32% shall be used because of petitioner's failure to submit its alphalist of employees for taxable year 2009. There is simply no factual basis to presume that all of petitioner's employees belong to the maximum income tax bracket. It is true that as a general rule, tax assessments are presumed to be correct. However, assessments should not be based on presumption no matter how reasonable or logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[25] The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[26]

Respondent likewise raises a novel theory that since it rendered a Final Decision on Disputed Assessment, the jurisdiction of this Court shifts from a trial court to a "court exercising judicial review".[27] Thus, respondent posits that it was an error for this Court to rule on matters that was never substantiated in the administrative level.[28] According to respondent, this Court should have confined itself to the issues and documents raised in the administrative protest to the deficiency assessment.[29] To support his position, respondent cited as precedent the Supreme Court case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue.*[30] *Ǝ*

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[25] *Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182.
[26] *Id.*
[27] Division Docket Vol. III, pp. 1279-1285.
[28] *Id.*
[29] *Id.*
[30] G.R. No. 207112, December 8, 2015, 776 SCRA 395 ("*Pilipinas Total Gas*").

Respondent's position is untenable.

The doctrine of *stare decisis et non quieta movere* enjoins adherence by lower courts to doctrinal rules established by the Supreme Court in its decisions.[31] Questions of law that have been decided by the Supreme Court and applied in resolving earlier cases shall be deemed the prevailing rule which shall be binding on **future cases dealing on the same intricacies.**[32] Stated differently, when the Supreme Court has laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to all **future cases in which the facts are substantially the same.**[33] The said doctrine is embodied in Article 8 of the Civil Code.

Guided by the foregoing, this Court finds that *Pilipinas Total Gas* does not apply largely because the facts of the said case are materially different from the facts of the present case. This Court notes that in *Pilipinas Total Gas,* the Supreme Court held that when the taxpayer failed to prove that it had submitted the complete supporting documents in support of its administrative *claim for refund,* its Petition for Review before the CTA is dismissible not due to lack of jurisdiction but for failure to substantiate the claim at the administrative level. The relevant statements of the Supreme Court in *Pilipinas Total Gas* were clearly made within the context of a refund case. In contrast, the present case involves *assessments* for deficiency income tax, VAT, EWT, WTC, FBT, DST and compromise penalty concerning the issue of prescription, among others. Truth be told, the portions of *Pilipinas Total Gas* as quoted by respondent in his Motion do not, in any way, support his view that when an FDDA was issued, this Court should only confine itself to the issues and documents raised in the administrative protest to the assessment.

It must be remembered that under Section 8 of Republic Act (RA) No. 1125, as amended, this Court is categorically described as a court of record.[34] Cases filed before this Court are litigated *de novo* and as

[31] *Rep. Reynaldo Umali v. The Judicial and Bar Council,* G.R. No. 228628, July 25, 2017, 832 SCRA 227; *United Coconut Planters Bank v. Spouses Uy,* G.R. No. 204039, January 10, 2018.

[32] *Olympia Housing, Inc. v. Lapastora and Ubalubao,* G.R. No. 187691, January 13, 2016, 780 SCRA 465.

[33] *Commissioner of Internal Revenue v. The Insular Life Assurance Co. Ltd.,* G.R. No. 197192, June 4, 2014, 725 SCRA 96 citing *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation,* 573 Phil. 320, 337 (2008).

[34] *Dizon v. Court of Tax Appeals,* G.R. No. 140944, April 30, 2008, 553 SCRA 111, 126.

such, party-litigants are mandated to prove every minute aspect of their cases.[35]

WHEREFORE, respondent's *Motion for Partial Reconsideration [re: Decision dated February 08, 2019]* is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CIELITO N. MINDARO-GRULLA
Associate Justice

With due respect, I maintain my Concurring and Dissenting Opinion dated February 8, 2019
CATHERINE T. MANAHAN
Associate Justice

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[35] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014, 729 SCRA 113, 121.