REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SAN ROQUE POWER CORPORATION,
Respondent.

CTA EB NO. 626
(CTA Case No. 7787)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
AUG 3 1 2011 ArAApolinario 1:00 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue ("CIR") on May 6, 2010, pursuant to Rule 8 of the Revised Rules of the Court of Tax Appeals, praying that the Resolution[2] promulgated on November 13, 2009, and the Resolution[3] dated April 14, 2010, both issued by the Special Second Division of the Court ("Court in Division") be reversed

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[1] *Rollo*, CTA EB No. 626 (CTA Case No. 7787), pp. 1-32, with Annexes.
[2] *Ibid.*, pp. 16-26; *Annex "A."*
[3] *Ibid.*, pp. 27-29; *Annex "B."*

and set aside, and a new one be rendered ordering respondent San Roque Power Corporation ("SRPC") to pay the amount of ₱118,619,729.22, representing deficiency Withholding Tax on Compensation, Expanded Withholding Tax, Final Withholding Tax and Value-Added Tax for the taxable year 2004, plus twenty five per centum (25%) surcharge and twenty per centum (20%) annual interest for late payment until fully paid pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code ("NIRC"), as amended.

Antecedent Facts

The relevant antecedents as culled from the records of the case:

Petitioner is the duly appointed CIR vested with authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC, who holds office at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

On the other hand, respondent SRPC is a corporation duly registered with the Securities and Exchange Commission and existing under and by virtue of Philippine laws, with principal office at Barangay San Roque, San Manuel, Pangasinan. It is likewise registered with the Board of Investment on a preferred pioneer status as a new operator of hydroelectric power generating plant under Certificate of Registration No. 97-356 dated February 11, 1998.[4]

[4] *Records*, CTA Case No. 7787, p. 207; *Annex "G."*

Based on the parties' Joint Stipulation [of] Facts and Issues filed on July 1, 2009,[5] SRPC filed the following returns:

Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601E) for the taxable year 2004
(Expanded Withholding Tax)

PERIOD COVERED	DATE OF FILING
January	February 10, 2004
February	March 10, 2004
March	April 12, 2004
April	May 12, 2004
May	June 10, 2004
June	July 9, 2004
July	August 11, 2004
August	September 8, 2004
September	October 11, 2004
October	November 10, 2004
November	December 10, 2004
December	January 12, 2005

Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601F) for the taxable year 2004
(Final Tax)

PERIOD COVERED	DATE OF FILING
January	February 10, 2004
February	March 10, 2004
March	April 12, 2004
April	May 11, 2004
May	June 10, 2004
June	July 9, 2004
July	August 11, 2004
August	September 8, 2004
September	October 11, 2004
October	November 10, 2004
November	December 10, 2004
December	January 12, 2005

Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the taxable year 2004

[5] *Id.*, at pp. 1236-1237.

(Fringe Benefits Tax)

PERIOD COVERED	DATE OF FILING
1st Quarter	April 26, 2004
2nd Quarter	July 26, 2004
3rd Quarter	October 25, 2004
4th Quarter	January 12, 2005

On February 27, 2006, SRPC received a Letter of Authority No. 00027833 dated February 22, 2006,[6] issued by Revenue District Office ("RDO") No. 6 of the BIR, authorizing Revenue Officers Rodelio SJ Dacanay, Gregorio Z. Nipal, Almira Navarro, and Jinky Lim to examine the books of accounts and other accounting records relative to all internal revenue taxes covering the period from January 1, 2004 to December 31, 2004.

On April 4, 2007, SRPC received a Notice of Informal Conference dated April 3, 2007,[7] issued by the RDO No. 6 of the BIR, finding an alleged deficiency in withholding tax on compensation, expanded withholding tax, value-added tax and final withholding tax, inclusive of applicable increments, for the taxable year 2004 based on the aforesaid investigation, to wit:

Withholding Tax on Compensation	₱	4,287,333.80
Expanded Withholding Tax		3,625,338.56
Final Withholding Tax		98,234,867.07
Value-Added Tax		4,614,888.03
TOTAL	**₱**	**110,762,427.46**

In reply, SRPC filed a letter dated April 27, 2007,[8] asserting that the proposed assessment is untenable.

[6] *Id.*, at p. 213; *Annex "J."*
[7] *Id.*, at p. 214; *Annex "K."*
[8] *Id.*, at pp. 49-59.

As a response thereto, the RDO No. 6 of the BIR conducted a reinvestigation as contained in its letter dated August 6, 2007.[9]

On November 21, 2007, SRPC received a second Notice of Informal Conference dated November 15, 2007,[10] wherein RDO No. 6 of the BIR amended its previous assessment for the alleged deficiency taxes for the taxable year 2004.

Deficiency Expanded Withholding Tax	₱	3,241,714.71
Deficiency Fringe Benefits Tax		6,109,673.68
Deficiency Final Withholding Tax		106,688,374.79
TOTAL	**₱**	**116,039,763.18**

In a letter dated December 6, 2007,[11] SRPC asserted that the amended assessment for deficiency taxes due covering the period from January to November 2004 had already prescribed.

During the informal conference with the RDO No. 6 of the BIR on December 20, 2007, SRPC was requested to execute a Waiver of the Statute of Limitations.

In its letter dated December 21, 2007,[12] SRPC, in reply, informed the RDO No. 6 of the BIR that it can no longer execute a waiver to toll the running of the statute of limitation since the waiver should have been done before the expiration of the prescribed period of three (3) years.

On December 27, 2007, SRPC received a letter of even date, issued by the RDO No. 6 of the BIR, informing the former that it will pursue the assessments reflected on the Notice of Informal Conference dated November 15, 2007.

[9] *Id.*, at p. 60.
[10] *Id.*, at pp. 224-227; *Annex "L."*
[11] *Id.*, at pp. 127-135.
[12] *Id.*, at p. 188.

Thus, on January 2, 2008, SRPC received a copy of the Preliminary Assessment Notice ("PAN") dated December 28, 2007,[13] issued by the RDO No. 6 of the BIR, with the following tax deficiencies:

Expanded Withholding Tax	₱	3,530,629.68
Deficiency Final Withholding Tax		107,699,106.77
Deficiency Fringe Benefits Tax		6,167,554.80
TOTAL	**₱**	**117,397,291.25**

On January 17, 2008, SRPC issued a letter dated January 16, 2008,[14] stressing that the assessments for the period covering January to November 2004, as contained in the PAN, had already prescribed and had no factual and legal bases.

On January 24, 2008, SRPC received a Formal Letter of Demand dated January 14, 2008,[15] with Assessment Notice Nos. WE-04-06-005-017-501-000,[16] WF-04-06-005-017-501-000,[17] and FBT-04-06-005-017-501-000,[18] all dated January 15, 2008, which contain the following tax deficiencies for the taxable year 2004:

Expanded Withholding Tax	₱	3,565,719.78
Final Withholding Tax		108,822,142.29
Fringe Benefits Tax		6,231,867.15
TOTAL	**₱**	**118,619,729.22**

In a letter dated February 21, 2008,[19] SRPC assailed the foregoing assessments.

On April 22, 2008, SRPC received a letter dated April 3, 2008,[20] issued by the RDO No. 6 of the BIR, denying its request for the cancellation of the Formal Letter of Demand and the Assessment Notices.

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[13] *Id.*, at pp 258-263; *Annex "M."*
[14] *Id.*, at pp. 264-271; *Annex "N."*
[15] *Id.*, at pp. 33-38; *Annex "A."*
[16] *Id.*, at p. 40; *Annex "B."*
[17] *Id.*, at p. 41; *Annex "C."*
[18] *Id.*, at p. 42; *Annex "D."*
[19] *Id.*, at pp. 67-83; *Annex "F."*
[20] *Id.*, at pp. 43-48, *Annex "E."*

On even date, SRPC submitted additional documents in support of its letter-protest dated February 21, 2008.[21]

And on May 22, 2008, SRPC filed a Petition for Review before the Court in Division, seeking the cancellation of the aforementioned assessments.[22]

In his Answer filed on November 3, 2008,[23] the CIR interposed the following Special and Affirmative Defenses:

6. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses;

7. The assessments for Withholding Tax on Compensation, Expanded Withholding Tax, Final Withholding Tax and Value-Added Tax, respectively, were issued in accordance with law. In the Formal Letter of Demand, respondent clearly stated petitioner's tax liabilities, to wit:

> "Please be informed that after review of the investigation reports on your income, withholding and business tax liabilities [for] the taxable year 2004 submitted by Revenue Officers Jinky Lim, Rodelio Dacanay and Gregorio Nipal under Letter of Authority No. 00027833 dated February 22, 2006, there have been found still due from you deficiency taxes as shown thereunder:
>
> **Assessment No. WE-04-06-005-017-501-000**
> Deficiency Expanded Withholding Tax P3,565,719.78
>
> **Assessment No. WF-04-06-005-017-501-000**
> Deficiency Final Withholding Tax P108,822,142.29
>
> **Assessment No. FBT-04-06-005-017-501-000**
> Deficiency Fringe Benefits Tax P6,231,142.29
>
> **TOTAL** **P118,619,729.22**
>
> Please note that the interest will be adjusted if paid beyond February 12, 2008.

[21] *Id.*, at pp. 394-397; *Annex "P."*
[22] *Id.*, at pp. 1-640, with Annexes.
[23] *Id.*, at pp. 1085-1090.

> The twenty-five percent (25%) surcharge and twenty percent (20%) interest per annum [are] based on the provisions of Section 248(A) and Section 249(B) of the 1997 NIRC, [respectively,] while the compromise penalty [is] in accord with RMO 1-90 and Section 250 of the 1997 NIRC.
>
> The narrative details covering the aforementioned discrepancies and the detailed computation of the deficiency taxes are shown at the back hereof as Annex "A."

Based on the foregoing, the assessment issued against petitioner is valid being supported by factual and legal basis.

An assessment contains a computation of tax liabilities and a demand for payment of such liability within a prescribed period. It is worthy to note that assessment notices need not be a full narration of facts and laws on which the assessment is made. It is enough that the petitioner be **substantially informed** of the law and the facts on which the assessment for a tax liability is made. The Preliminary Assessment Notices received by petitioner indicated the amount of deficiency tax liability and a demand to pay within a prescribed period. The Supreme Court held that assessments simply required a computation of tax liabilities, the amount the taxpayer was to pay and a demand for payment within a prescribed period.

8. The right of respondent to assess petitioner for withholding taxes did not prescribed (*sic*) because the investigation upon petitioner's books and records has yet to conclude. That being the case, the right of respondent to assess petitioner is not barred by prescription and the filing of the Petition for Review premature (*sic*), pending the conclusion of the investigation.

In paragraph I(B) under the heading "DISCUSSION," petitioner ratiocinated that it did not ask for a reinvestigation and yet respondent's revenue officers conducted a reinvestigation anyway. The truth is, the claimed "reinvestigation" is a continuation of the investigation on petitioner's books and records. This fact is a highlighted (*sic*) when petitioner said that, "In sum, we respectfully object to the assessment for lack of factual and legal bases contrary to pertinent Bureau of Internal Revenue (BIR) rulings on the matter. We manifest that we reserve our right to submit additional documents should the need arises. Should you require the submission of additional documents, please let us know." By its own words, petitioner agreed that the investigation has not yet terminated, and that it shall comply with any request for the submission of documents should respondent's examiners deem it necessary. The use of the word "reinvestigation" in this case did not denote the usage (*sic*) of a technical or legal term. It simply means to study again by close examination and systematic inquiry. At most, it is but a misnomer for continuing the investigation. The offer of petitioner to give additional documents so requested is but part of the investigation. The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in whatever form they may be kept. Thus, contrary to petitioner's belief, assessment on its books and records is not barred by prescription (*sic*). The hurried resort to judicial remedy has only led to premature filing of the instant Petition for Review;

9. In the absence of evidence to the contrary, assessments are presumed correct. In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, the Supreme Court held:

> "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness if tax assessments."

The burden of [p]roof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but also that the taxpayer is right. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.[24] (*Citations omitted.*)

On July 16, 2009, SRPC filed a Motion to Set Case for Preliminary Hearing to Resolve Issue of Prescription.[25]

The parties then filed their respective Memoranda on September 28, 2009,[26] and October 1, 2009.[27]

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[24] *Id.*, at pp. 1086-1089.
[25] *Id.*, at pp. 1250-1254.
[26] *Id.*, at pp. 1272-1283; CIR's Memorandum.

The Ruling of the Court in Division

On November 13, 2009, the Court in Division issued a Resolution in favor of SRPC, ruling that:

> **WHEREFORE,** as prayed for, petitioner's motion to cancel the subject assessments on the ground of prescription is hereby **GRANTED**. Accordingly, Assessment Notice No. WE 04-06-005-017-501-000 and Assessment No. WF 04-06-005-017-501-000 for deficiency Expanded Withholding Tax and deficiency Final Withholding Tax, respectively, covering the period of January to November 2004 are hereby **CANCELLED** and **SET ASIDE** for having been issued beyond the prescriptive period. Likewise, Assessment No. FBT 04-06-005-017-501-000 for deficiency Fringe Benefits Tax for taxable year 2004 is hereby **CANCELLED** and **SET ASIDE** for having been issued beyond prescriptive period.
>
> As to the remaining assessment for deficiency Expanded Withholding Tax and deficiency Final Withholding Tax for December 2004, let the initial presentation of evidence be set on **January 20, 2010** at **9:00 a.m.**
>
> **SO ORDERED.**[28]

Aggrieved, the CIR filed a Motion for Reconsideration on December 8, 2009, which was denied for lack of merit by the Court in Division in its Resolution promulgated on April 14, 2010. The dispositive portion, to wit:

> **WHEREFORE,** respondent's **"Motion for Reconsideration"** is hereby **DENIED** for lack of merit. Petitioner's **"Manifestation"** filed on February 25, 2010 is hereby **NOTED**.
>
> **SO ORDERED.**[29]

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[27] *Id.*, at pp. 1285-1400; SRPC's Memorandum [Re: Issue of Prescription], with Annexes.
[28] *Rollo*, pp. 25-26, *Annex "A."*
[29] *Ibid.*, p. 29, *Annex "B."*

The Issue

Hence, the present Petition for Review wherein the CIR raises the lone issue of:

> WHETHER OR NOT THE SPECIAL SECOND DIVISION ERRED IN CANCELLING ASSESSMENT NOTICE NO. WE 04-06-005-017-501-000 AND ASSESSMENT NO. WF 04-06-005-017-501-00-1-86-90-001499 (*sic*) FOR DEFICIENCY EXPANDED WITHHOLDING TAX AND DEFICIENCY FINAL WITHHOLDING TAX, RESPECTIVELY, COVERING THE PERIOD JANUARY TO NOVEMBER 2004, AND ASSESSMENT NO. FBT 04-06-005-017-501-000 FOR DEFICIENCY FRINGE BENEFITS TAX FOR TAXABLE YEAR 2004 BECAUSE IT WAS CLEARLY DEMONSTRATED IN THE SERIES OF COMMUNICATIONS BETWEEN PETITIONER[30] AND RESPONDENT[31] THAT A REINVESTIGATION WAS REQUESTED AND SUBSEQUENTLY GRANTED WHICH SATISFIES SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC OF 1997).[32]

The CIR's Arguments

The CIR asserts that the present case falls under Section 223 of the 1997 NIRC. In support, he narrates as follows:

> xxx. In fact, an adjustment was made and a new Notice of Informal Conference dated 15 November 2007 was issued. Upon receipt of the said notice, respondent's representatives requested in their letter dated 3 December 2007 for an extension of time for the submission of comment/objection in writing on 17 December 2007. Said request was granted by the Revenue District Officer as per communication dated 6 December 2007. Again, in a letter dated 10 December 2007, respondent's representatives requested for a re-scheduling of the informal conference and submission of the comment/objection to the proposed assessment from 17 December 2007 to 20 December 2007 at 1:30 p.m.
>
> On 20 December 2007, a letter dated 6 December 2007 was submitted acknowledging the adjustments made and at the same time

[30] CIR.
[31] SRPC.
[32] *Rollo*, pp. 6-7.

disputing the revised findings. The protest was answered per letter dated 27 December 2007 stating therein the reasons for the denial.[33]

From the foregoing, he claims that since the reinvestigation was requested and was subsequently granted, the same satisfied the afore-mentioned provision, and hence, SRPC's allegation of prescription deserves scant consideration.

The CIR argues as well that the amount sought to be collected from SRPC is not the tax itself, but for the enforcement of the withholding tax provisions of the 1997 NIRC, specifically Section 251 thereof. He posits then that the liability of SRPC as a withholding agent is a penalty, and thus, the period of limitation provided under Section 203 finds no application in the case at bench.

SRPC's Counter-arguments

In its Comment, SRPC vehemently denies that it requested for a reinvestigation. To buttress its claim, SRPC states as follows:

> To be sure, as reply to the Notice of Informal Conference dated April 3, 2007, respondent submitted its letter dated April 27, 2007 asserting that the proposed assessment is untenable in that:
>
> xxx xxx xxx
>
> In response to the issues raised by respondent in its letter dated April 27, 2007, RDO No. 6 of the BIR, on its own volition and initiative, conducted a re-investigation as contained in its letter dated August 6, 2007.
>
> According to RDO No. 6, the reinvestigation was to verify and evaluate the issues raised in respondent's letter dated April 27, 2007 and was conducted upon their own initiative and was not requested by respondent. Thus:
>
> xxx xxx xxx

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[33] *Ibid.*, pp. 7-8.

> It is clear from the afore-quoted letter of the RDO No. 6 of the BIR that the supposed reinvestigation was clearly conducted at its own volition and initiative and was not upon the request of respondent as the latter never requested for a reinvestigation.
>
> Further, a close examination of the letter dated April 27, 2007 of respondent would clearly show that respondent was actually asking for a more detailed breakdown of the proposed assessments. Thus, with regard to the proposed assessment for EWT, respondent stated this on page 3 of its said letter:
>
> xxx xxx xxx
>
> And as regards the proposed assessment for FT, respondent had this to say on page 9 of its letter dated April 27, 2007:
>
> xxx xxx xxx
>
> That there was no reinvestigation was clearly and categorically admitted by petitioner in paragraph 8 of his Answer when he alleged that the claimed **"reinvestigation is a continuation of the investigation on petitioner's (respondent herein) books and records," and "the use of the word 'reinvestigation' in this case did not denote the usage of a technical or legal term" as it "simply means to study again by close examination and inquiry."** xxx.[34]

SRPC also contends that the CIR is now estopped from claiming that the period under Section 203 of the 1997 NIRC does not apply in the case at bench for the collection of the deficiency tax is but a penalty due to the alleged failure to comply with the withholding tax provisions. First, it argues that the CIR's argument is negated by the fact that it issued the assessment notices and formal demand letter for the alleged deficiency in expanded withholding tax, final tax and fringe benefit tax for the taxable year 2004, and not as a penalty for the alleged failure to withhold. Second, it claims that the CIR failed to raise the said issue in his Answer; thus, the CIR belatedly set up the said argument in its Memorandum and later in its Motion

[34] *Ibid.*, pp. 48-49.

for Reconsideration. Last, considering that there has been no finding that it willfully failed to withhold or account for and remit the alleged tax, nor a conviction for such alleged failure, SRPC posits then that Section 251 of the 1997 NIRC has no application in the present case; hence, the Petition for Review should be dismissed for lack of merit.

The Ruling of the Court En Banc

The Court *En Banc* finds the Petition for Review unmeritorious.

Section 203 of the 1997 NIRC, as amended, expressly provides for the period upon which the BIR can make an assessment, to wit:

> 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 law day.

As stated from the above-quoted provision, the BIR has three (3) years, counted from the date of actual filing of the return, or from the last day prescribed by law for the filing of the return, whichever comes later, to assess a national internal revenue tax, or to begin a court proceeding for the collection thereof without an assessment; except in cases falling within Section 222 of the same Code.

SRPC's alleged deficiency assessments consist of withholding taxes, the relevant provision of the 1997 NIRC, as amended, is hereby quoted:

SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –

(A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each taxable quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided*, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.

Pursuant thereto, Revenue Regulations ("RR") No. 2-98 dated April 17, 1998, as amended by RR No. 17-03 dated March 31, 2003, provides as follows:

SEC. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) *Monthly return and payment of taxes withheld at source.* –

(1) . . .

(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.

Nonetheless, in case of disposition of real property classified as capital asset by an individual to the government, the tax to be imposed shall be determined either under the normal income tax rate imposed in Sec. 24(A) or under a final capital gains tax of six percent (6%) imposed under Sec. 24(D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows that the seller filed income tax return reflecting the result of the subject real estate transaction.

And RR No. 04-2002 dated March 26, 2002 states:

SECTION 5. *Time for Filing of Quarterly Remittance Return of Final Income Taxes Withheld On Fringe Benefits Paid to Employees Other than Rank and File.* – The tax imposed under Sec. 33 of the Tax Code shall be treated as a final income tax on the employee that shall be withheld and paid by the employer, whether a large taxpayer or non-large taxpayer, on or before the 10th day of the month following the calendar quarter in which the fringe benefits were granted; *Provided, however,* that with respect to employers, whether Large or Non-Large Taxpayers, enrolled with the Electronic Filing and Payment System (EFPS), the deadline for e-filing the Quarterly Remittance Return of Final Income Taxes Withheld On Fringe Benefits Paid to Employees Other than Rank and File (BIR Form No. 1603) and e-paying the tax due thereon shall be five (5) days later than the deadline set herein.

Thus, for monthly returns, the three (3)-year period within which the CIR can validly issue an assessment is reckoned from: (a) the last day required by law for filing a monthly remittance return, *i.e.*, ten (10) days after the end of each calendar month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; or (b) the date of actual filing of the return, whichever is later. While for quarterly returns, the three (3)-year period is reckoned: (a) on or before the 10th day of the month following the calendar quarter; or (b) the date of actual filing of the return, whichever is later.

Consequently, the three (3)-year period within which the CIR can validly issue assessments are computed as follows:

Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601E) for the taxable year 2004

PERIOD COVERED	DATE OF FILING	END OF THE THREE-YEAR PERIOD
January	February 10, 2004	February 10, 2007
February	March 10, 2004	March 10, 2007
March	April 12, 2004	April 12, 2007
April	May 12, 2004	May 12, 2007
May	June 10, 2004	June 10, 2007
June	July 9, 2004	July 9, 2007
July	August 11, 2004	August 11, 2007
August	September 8, 2004	September 8, 2007
September	October 11, 2004	October 11, 2007
October	November 10, 2004	November 10, 2007
November	December 10, 2004	December 10, 2007
December	January 12, 2005	January 15, 2008

Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601F) for the taxable year 2004

PERIOD COVERED	DATE OF FILING	END OF THE THREE-YEAR PERIOD
January	February 10, 2004	February 10, 2007
February	March 10, 2004	March 10, 2007
March	April 12, 2004	April 12, 2007
April	May 11, 2004	May 11, 2007
May	June 10, 2004	June 10, 2007
June	July 9, 2004	July 9, 2007
July	August 11, 2004	August 11, 2007
August	September 8, 2004	September 8, 2007
September	October 11, 2004	October 11, 2007
October	November 10, 2004	November 10, 2007
November	December 10, 2004	December 10, 2007
December	January 12, 2005	January 15, 2008

Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the taxable year 2004

PERIOD COVERED	DATE OF FILING	END OF THE THREE-YEAR PERIOD
1st Quarter	April 26, 2004	April 26, 2007
2nd Quarter	July 26, 2004	July 26, 2007
3rd Quarter	October 25, 2004	October 25, 2007
4th Quarter	January 12, 2005	January 12, 2008

Therefore, from the filing of SRPC of its monthly return starting January 2004 and ending on December 2004, the CIR has three (3) years within which to issue an assessment, or at the earliest, on February 10, 2007, up to the latest on January 15, 2008.

Based on the records of the case, on January 24, 2008, SRPC received the Formal Letter of Demand dated January 14, 2008,[35] with Assessment Notice Nos. WE-04-06-005-017-501-000,[36] WF-04-06-005-017-501-000,[37] and FBT-04-06-005-017-501-000,[38] all dated January 15, 2008.

With the foregoing discussions, the Court *En Banc* finds Assessment Notice No. WE-04-06-005-017-501-000[39] for Expanded Withholding Tax, and Assessment Notice No. WF-04-06-005-017-501-000[40] for Final Withholding Tax, insofar as the period covering January 2004 to November 2004, issued beyond the three (3)-year period. As a result, only the assessments covering the period of December 2004 were made in accordance with Section 203 of the 1997 NIRC, as amended. Thus, the Court *En Banc* agrees with the Court in Division when it ruled for the cancellation and

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[35] *Records*, pp. 33-38; *Annex "A."*
[36] *Id.*, at p. 40; *Annex "B."*
[37] *Id.*, at p. 41; *Annex "C."*
[38] *Id.*, at p. 42; *Annex "D."*
[39] *Id.*, at p. 40; *Annex "B."*
[40] *Id.*, at p. 41; *Annex "C."*

setting aside of the assessment on the aforementioned period for having been issued beyond the prescriptive period.

And as to Assessment Notice No. FBT-04-06-005-017-501-000[41] for Fringe Benefits Tax, the Court *En Banc* likewise agrees with the pronouncement of the Court in Division.

In the assailed Resolution dated November 13, 2009, the Court in Division disposed of as follows:

> As petitioner filed its last return in December 10, 2004 for EWT and FT covering January to November 2004, assessment for deficiency EWT and FT due for January to November 2004 should be issued on or before **December 10, 2007**. Further, as petitioner filed its last return on January 12, 2005 for FBT due for the whole year of 2004, assessment for deficiency FBT should be issued on or before **January 12, 2008**.
>
> However, the Formal Letter of Demand for Assessment No. WE-04-06-005-017-501-000 with respect to Deficiency Expanded Withholding tax, and Assessment No. WF-04-06-005-017-501-000 for Deficiency Final Withholding Tax and Assessment No. FBT-04-06-005-017-501-000 for Deficiency Fringe Benefit Tax was issued on January 15, 2008, or more than a month after the last day the subject assessments for EWT and FT should have been issued; and three (3) days after the last day the subject assessment for FBT should have been made. Clearly therefore, applying the above-cited jurisprudence and based on the factual circumstances in this case, the aforesaid assessments were already barred by prescription.[42]

With this, the deficiency assessment for Fringe Benefits Tax covering the taxable year 2004 was issued beyond the prescriptive period.

By far, the Assessment Notice Nos. WE-04-06-005-017-501-000,[43] and WF-04-06-005-017-501-000,[44] covering the period of December 2004, were clearly made within the three (3)-year prescriptive period as mandated by law.

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[41] *Id.*, at p. 42; *Annex "D."*
[42] *Rollo*, p. 22.
[43] *Records*, p. 40; *Annex "B."*

However, the CIR insists that with the series of communication between him and SRPC, a reinvestigation was requested and subsequently granted. Further, additional documents not previously presented by SRPC were submitted and were considered for adjustment purposes, as acknowledged by it in its letter dated December 6, 2007. The foregoing circumstances satisfy Section 223 of the 1997 NIRC, as amended, thus, run counter to SRPC's allegation of prescription.

The Court *En Banc* is not convinced.

As exhaustively pointed out by the Court in Division, SRPC did not request for any reinvestigation that would prevent the CIR from making the assessment and pursue the collection thereof within the prescribed period provided by law, to wit:

> In the present case, a reading of the separate letters of petitioner's protest dated December 6, 2007 and February 21, 2008 reveal that these were requests for reconsideration, and not requests for re-investigation. The contention that the adjustment was made and a new Notice of Informal Conference dated 15 November 2007 was issued by respondent to the petitioner cannot be considered as a result of the investigation conducted. Even in his Answer, respondent alleged that "the truth is, the claimed 're-investigation' is a continuation of its investigation on petitioner's books and records."[45]

And in futility, the CIR impresses upon the Court *En Banc* that the amount sought to be collected from SRPC is "not for the collection of the tax but for the enforcement of the withholding tax provisions of the 1997 NIRC."

Still, the same contention must fail.

Section 251 of the 1997 NIRC states:

> **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

[44] *Id.*, at p. 41; *Annex "C."*
[45] *Rollo*, p. 24.

> 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.

A reading of the aforequoted provision would readily show that the penalty of "equal to the total amount of the tax not withheld and remitted" will only apply once a person is convicted for failure to perform the required acts. A conviction is necessary since Section 251 of the 1997 NIRC, as amended, pertains to criminal actions.[46]

Considering that herein case is not a criminal action, but a civil one, Section 251 of the 1997 NIRC will not apply.

Thus, the Court *En Banc* affirms the Court in Division's cancellation of Assessment Notice No. WE-04-06-005-017-501-000[47] for Expanded Withholding Tax, and Assessment Notice No. WF-04-06-005-017-501-000[48] for Final Withholding Tax, insofar as the period covering January 2004 to November 2004, and Assessment Notice No. FBT-04-06-005-017-501-000[49] for Fringe Benefits Tax for the taxable year 2004 for having been issued beyond the period allowed by law.

In fine, the Assessment Notice Nos. WE-04-06-005-017-501-000,[50] and WF-04-06-005-017-501-000,[51] covering the period of December 2004, were clearly made within the three (3)-year prescriptive period as mandated by law. The Court *En Banc* finds no other compelling reason to warrant a reversal of the assailed Resolutions.

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[46] Commissioner of Internal Revenue *v.* Chuayuco Steel Manufacturing Corporation, CTA EB No. 458 (CTA Case No. 6642), August 4, 2009.
[47] *Records*, p. 40; *Annex "B."*
[48] *Id.*, at p. 41; *Annex "C."*
[49] *Id.*, at p. 42; *Annex "D."*
[50] *Id.*, at p. 40; *Annex "B."*
[51] *Id.*, at p. 41; *Annex "C."*

WHEREFORE, the Petition for Review is hereby **DENIED.** Accordingly, the impugned Resolutions dated November 13, 2009, and April 14, 2010 are hereby **AFFIRMED** in *toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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.

ERNESTO D. ACOSTA
Presiding Justice