REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

HERMANO (SAN) MIGUEL FEBRES CORDERO MEDICAL EDUCATION FOUNDATION (DE LA SALLE – HEALTH SCIENCE INSTITUTE), INC.,
Respondent.

CTA EB NO. 1151
(CTA Case No. 8095)

Present:

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

Promulgated:

FEB 17 2015

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue on April 24, 2014 seeking the reversal and setting aside of the Decision[1] dated December 18, 2013 and the Resolution[2] dated March 24, 2014 of the Third Division[3] of this Court in CTA Case No. 8095, entitled *Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Sciences Institute), Inc. herein represented by Br. Augustine Boquer FSC and Dr. Alvin Crudo vs. Commissioner of Internal Revenue Joel L. Tan-Torres.*

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[1] *Rollo*, pp. 31 to 49.
[2] *Rollo*, pp. 50 to 52.
[3] Composed of Associate Justice Lovell R. Bautista as Chairperson and Associate Justice Esperanza R. Fabon -Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as Members.

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> **WHEREFORE**, the *Petition for Review* filed by Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences Institute), Inc., is hereby **GRANTED**.
>
> Accordingly, the Formal Letter of Demand, Assessment Notice No. 54-2005, and Preliminary Collection Letter with respect to the deficiency expanded withholding tax covering fiscal year ending May 31, 2005 are hereby **CANCELLED** and **SET ASIDE** on the ground of prescription.
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, respondent's *Motion for Reconsideration* filed on January 22, 2014 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR) is sued in his official capacity, having been empowered by law, among others, to act on protest against tax assessments. Petitioner holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[4]

Respondent Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences Institute) is a non-stock, non-profit educational and medical institution duly organized and existing under the laws of the Philippines, with principal office address at Congressional East Avenue, Dasmariñas, Cavite. As an educational and medical institution, it engages the services of professionals such as doctors and dentist as consultants.[5]

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[4] *Rollo*, p. 8
[5] *Id.*

THE FACTS

On September 18, 2007, respondent received a Letter of Authority (LOA) and Request for Presentation of Records, both dated September 12, 2007, from the office of the Regional Director, Revenue Region 9, authorizing Revenue District Office (RDO) No. 54, to examine its accounting records. Respondent complied and delivered the documents requested to RDO No. 54 on February 11, 2008.[6]

On January 5, 2009, respondent received a Preliminary Assessment Notice (PAN) [7] dated December 12, 2008, assessing it for deficiency expanded withholding tax (EWT) in the aggregate amount of Php3,531,893.24, inclusive of interest and compromise penalty, for fiscal year ending May 31, 2005, broken down as follows:[8]

I. EXPANDED WITHHOLDING TAX		
Professional Services		**P29,608,004.40**
Medical/Dental Services		**14,503,860.20**
Total Income Payments Subject to EWT		**44,111,864.60**
Multiply by: Tax Rate		15%
Total Expanded Withholding Tax Due		6,616,779.69
Less: Tax Paid per BIR Form 1601E		4,411,186.46
Deficiency Expanded Withholding Tax		**2,205,593.23**
Add: Interest	P1,301,300.01	
Comprise Penalty	25,000.00	1,326,300.01
TOTAL AMOUNT DUE AND PAYABLE		**P3,531,893.24**

On January 20, 2009, respondent filed its protest against the PAN with the office of the Regional Director, Revenue Region No. 9.[9]

On January 21, 2009, respondent received from petitioner a Formal Letter of Demand and Audit Results/Assessment Notice No. 54-2005, both dated January 9, 2009,[10] assessing respondent for deficiency EWT in the aggregate amount of Php3,572,329.11, inclusive of interest and compromise penalty, for fiscal year ending May 31, 2005, computed as follows:

I. EXPANDED WITHHOLDING TAX		
Professional Services		**P29,608,004.40**
Medical/Dental Services		**14,503,860.20**
Total Income Payments Subject to EWT		**44,111,864.60**

[6] Annex "A", *Rollo*, p. 35.
[7] *Rollo*, p. 32.
[8] *Id.*
[9] *Id.*
[10] *Rollo*, pp. 32 and 33.

Multiply by: Tax Rate		15%
Total Expanded Withholding Tax Due		6,616,779.69
Less: Tax Paid per BIR Form 1601E		4,411,186.46
Deficiency Expanded Withholding Tax		**2,205,593.23**
Add: Interest	P1,341,735.88	
Comprise Penalty	25,000.00	1,366,735.88
TOTAL AMOUNT DUE AND PAYABLE		**P3,572,329.11**

On February 19, 2009, respondent filed its administrative protest to the Formal Letter of Demand dated January 9, 2009 and Assessment Notice No. 54-2005 with the Office of the Regional Director, Revenue Region No. 9. In said administrative protest, respondent sought the cancellation and termination of the deficiency EWT assessment on the ground that it is void for petitioner's failure to comply with Section 228 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, in relation to Section 3.1.4 of Revenue Regulations (RR) No. 12-99; and that the period to assess respondent for deficiency EWT for the period June 2004 to May 2005 had prescribed under Section 203 of the 1997 NIRC, as amended.[11]

Respondent's administrative protest against the Formal Letter of Demand dated January 9, 2009 and the Assessment Notice No. 54-2005 was denied by petitioner, through the letter dated August 18, 2009 issued by the Revenue District Officer of Revenue District Office No. 054, copy of which was received by respondent on September 4, 2009.[12]

On October 5, 2009, respondent elevated the matter to petitioner (Office of the Commissioner of Internal Revenue) through an *Appeal of the Denial of the Protest (to Formal Letter of Demand)* dated September 28, 2009.[13]

On March 23, 2010, respondent received a Preliminary Collection Letter dated March 4, 2010.[14]

Hence, on April 22, 2010, respondent (as the then petitioner) filed a Petition for Review with the Court in Division which was docketed as CTA Case No. 8095.[15]

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[11] *Rollo,* p. 33.
[12] *Id.*
[13] *Rollo*, pp. 33 to 34.
[14] *Rollo*, p. 34.
[15] Petition for Review dated October 11, 2004 docketed as CTA Case No. 7074, *Division Docket*, pp. 1 to 11.

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In her Answer, petitioner CIR (as the then respondent) raised the following Special and Affirmative Defenses: (1) the Formal Letter of Demand is valid and binding as it states the facts, law and regulations on which the assessment is based; (2) respondent failed to provide all the relevant and supporting documents to controvert the deficiency EWT assessment ; and (3) the issuance of the assessment notice was appropriate as petitioner failed to timely file the administrative protest to the PAN. [16]

In its Reply, respondent (as the then petitioner) argued that: (1) Section 222(a) of the NIRC of 1997, as amended, is not applicable to the present case; (2) the three-year prescriptive period was not tolled by its alleged failure to provide pertinent documents and books of accounts; (3) the Formal Letter of Demand did not comply with the mandatory requirements of Section 228 of the NIRC of 1997 and Section 3.1.4 of Revenue Regulations No. 12-99; and, (4) it timely filed its protest to the PAN on January 20, 2009. [17]

After trial, the Court in Division issued the assailed Decision granting herein respondent's petition, and cancelling and setting aside the Formal Letter of Demand dated January 9, 2009, Assessment Notice No. 54-2005 and Preliminary Collection Letter dated March 4, 2010, assessing and collecting from respondent deficiency EWT covering fiscal year ending May 31, 2005, on the ground of prescription.

Aggrieved, herein petitioner filed a Motion for Reconsideration on January 22, 2014 which was denied by the Court in Division in the assailed Resolution.

On April 24, 2014, petitioner filed the subject Petition for Review before the Court *En Banc* and raised the following errors, *viz.*:

> 1. The Court in Division erred in cancelling the Formal Letter of Demand, Assessment Notice No. 54-2005 and Preliminary Collection Letter with respect to deficiency EWT covering fiscal year ending May 31, 2005 on the ground of prescription. A withholding tax assessment is not a tax and therefore not covered by the prescriptive period to assess taxes;
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> 2. Assuming for the sake of argument that withholding tax is an internal revenue tax, petitioner has ten (10) years to assess respondent since the latter filed false/fraudulent return; and,

[16] *Rollo*, p. 34; *Division Docket*, pp. 190 to 206.
[17] Rollo, p. 34; *Division Docket*, pp. 219 to 225.

3. The Court in Division erred in not finding that respondent failed to withhold the correct amount of tax.[18]

After the filing of respondent's Comment[19] on July 7, 2014, the Court *En Banc* required both parties to submit their respective memoranda within thirty (30) days from notice.[20] Petitioner filed her Manifestation[21] on September 26, 2014 stating that she is adopting the present Petition for Review as her Memorandum while respondent filed its Memorandum[22] on October 2, 2014. On November 13, 2014, the Court *En Banc* submitted the case for decision.[23]

THE PARTIES' ARGUMENTS

Petitioner's Arguments

Petitioner contends that the Court erred in cancelling the Formal Letter of Demand dated January 9, 2009, Assessment Notice No. 54-2005 and Preliminary Collection Letter dated March 4, 2010, assessing and collecting from respondent deficiency EWT covering fiscal year ending May 31, 2005 on the ground of prescription. According to petitioner, a withholding tax assessment is not a tax but a penalty, and is therefore not covered by the three (3) year prescriptive period to assess taxes.

Petitioner also contends that assuming *argumenti* that withholding tax is an internal revenue tax, she has ten (10) years to assess respondent since the latter filed a false return by failing to withhold the correct amount of EWT in relation to the Professional/Medical and Dental Services for the taxable year May 31, 2005.

Petitioner also argues that the Court erred in not finding that respondent failed to withhold the correct amount of tax. Petitioner elaborates that a tax rate of 15% should have been withheld by respondent as the gross income of the income payees already exceeded Php720,000.00.

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[18] *Rollo*, pp. 14 to 15.
[19] *Rollo*, pp. 59 to 67.
[20] Resolution dated August 7, 2014, *Rollo*, pp. 70 to 71.
[21] Rollo, pp. 72 to 73.
[22] *Rollo*, pp. 75 to 88.
[23] *Rollo*, unpaginated.

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Respondent's Counter-Arguments

Respondent, on the other hand, counter-argues that the three-year period to assess it for deficiency EWT covering the taxable period June 2004 to May 2005 has already prescribed.

Contrary to petitioner's posture, respondent insists that it did not file a false or fraudulent return. Respondent claims that it did not conceal or alter any figures or amounts in its EWT returns and that it properly reported its income payments and withheld the correct taxes due thereon.

Respondent finally posits that it correctly remitted the EWT due on its income payments as supported by the pieces of evidence submitted to the Court in Division.

RULING OF THE COURT *EN BANC*

After carefully evaluating the records of the case, the Court *En Banc* finds sufficient basis to uphold the cancellation of the Formal Letter of Demand dated January 9, 2009, Assessment Notice No. 54-2005 and Preliminary Collection Letter dated March 4, 2010, assessing and collecting from respondent deficiency EWT covering fiscal year ending May 31, 2005.

At the outset, the Court *En Banc* finds that respondent was denied due process in the issuance of the assessment. As a consequence thereof, the Formal Letter of Demand dated January 9, 2009, Assessment Notice No. 54-2005 and Preliminary Collection Letter dated March 4, 2010 are considered void.

Section 228 of the NIRC of 1997, as amended, provides:

> "**SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases:
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> Xxx xxx xxx.
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
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> Xxx xxx xxx."

Corollary thereto, Section 3.1.2 of Revenue Regulations No. 12-99[24] provides:

> "3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based..... If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx"

Indubitably, a taxpayer is given an opportunity to respond to the PAN within fifteen (15) days <u>from receipt</u> thereof. Upon the lapse of the 15-day period, without any response from the taxpayer, the latter shall be considered in default and the BIR shall issue a formal letter of demand and assessment notices.

Here, **respondent received a copy of the PAN dated December 12, 2008 on <u>January 5, 2009</u>**. Pursuant to RR No. 12-99, respondent has fifteen (15) days or until **<u>January 20, 2009</u>** within which to file a reply or protest against the PAN.

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[24] dated September 6, 1999.

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Respondent filed its protest to the PAN on **January 20, 2009**. Barely a day after it filed its protest to the PAN or on January 21, 2009, respondent received the Formal Letter of Demand and Assessment Notice No. 54-2005 **which are both dated January 9, 2009**.

Evidently, petitioner did not wait for respondent to reply to the PAN nor considered the arguments raised in respondent's protest thereto. The Formal Letter of Demand and Assessment Notice No. 54-2005 were already prepared by petitioner as early as January 9, 2009 or way before the lapse of the fifteen-day period within which petitioner could file a reply or protest to the PAN.

As oft-repeated, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. It is well-settled that the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding respondent's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated respondent's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[25] the Supreme Court emphasized the importance of complying with the requirement to send a PAN to the taxpayer as an integral part of due process in the issuance of a deficiency tax assessment. It then declared in no uncertain terms that **the failure of the CIR to strictly comply with the requirements laid down by law and its own rules** is a denial of Metro Star's right to due process. Undeniably, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period would be ignored.

Although petitioner was given ample opportunity to contest the Formal Letter of Demand dated January 9, 2009 and Assessment Notice No. 54-2005, **the fatal infirmity that attended its issuance prior to the lapse of the period to respond to the PAN is not cured thereby**. In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,*[26] the Supreme Court categorically ruled that the non-compliance with statutory

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[25] G.R. No. 185371, December 8, 2010.
[26] G.R. No. 172598, December 21, 2007.

and procedural due process renders the final assessment notice as null and void, *viz*:

> "In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.** Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in Roxas v. Court of Tax Appeals:
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>> The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

It is worthy to note that, in a number of cases, the Court of Tax Appeals (CTA) has declared void any assessment that fails to comply with the due process requirement.

In *A Brown Co., Inc. vs. Commissioner of Internal Revenue*,[27] the CTA ruled that an assessment is void because of the multiple violations of due process committed by the BIR. The violations include, among others: (1) **issuance of the final assessment only four (4) days after the issuance of the PAN**; and, (2) **the lack of opportunity given to the taxpayer to reply to the PAN within fifteen (15) days from its receipt**.

Similarly, in *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue*,[28] the Court ruled that:

> "**Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC of 1997, as well as of the provisions of Revenue Regulations Nos. 12-85 and 12-99 and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of**

[27] CTA Case No. 6357, June 7, 2004, penned by Presiding Justice Ernesto P. Acosta and concurred by Justice Juanito C. Castañeda, Jr. and Justice Lovell R. Bautista.
[28] CTA Case No. 6980, October 4, 2010, penned by Associate Justice Lovell R. Bautista and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

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> **fifteen days within which to reply to the PAN**. Even assuming that there was an Informal Conference that took place between petitioner and respondent, and that during the conference and even thereafter, petitioner, through its counsel, requested a copy of the FAN, the fact remains that as indicated in the FAN, it was issued on the same day the PAN was received by petitioner. Clearly, petitioner was denied of its right to due process." *(Emphasis supplied)*

The above rulings were reiterated in *Yumex Philippines Corporation vs. Commissioner of Internal Revenue*[29] wherein the assessments were cancelled on the ground of non-observance by the CIR of the 15-day period granted to the taxpayer to respond to the PAN, *viz*:

> "Respondent violated Section 228 of the NIRC of 1997 and the provisions of Revenue Regulations No. 12-99, which give the taxpayer a period of fifteen days within which to reply to the PAN. **In view of respondent's violation of petitioner's right to due process, the assessment would thus be considered void**." *(Emphasis supplied)*

In view of the palpable violation of respondent's right to procedural due process pursuant to Section 228 of the NIRC of 1997, as amended, and the provisions of RR No. 12-99, the Formal Letter of Demand dated January 9, 2009 and Assessment Notice No. 54-2005- - being fatally infirm - - should be considered void.

Truth to tell, a void assessment bears no fruit and it cannot give rise to an obligation to pay deficiency taxes. In the absence of a valid assessment, there is no legal basis for petitioner to collect from respondent, through the Preliminary Collection Letter dated March 4, 2010, the deficiency EWT in the aggregate the amount of Php3,531,893.24 (inclusive of interest and compromise penalty) for fiscal year ending May 31, 2005.

Even assuming *arguendo* that there was no violation of respondent's right to due process in the issuance of the assessment, Formal Letter of Demand dated January 9, 2009 and Assessment Notice No. 54-2005 should nonetheless be cancelled and withdrawn as they were issued beyond the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended.

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[29] CTA Case No. 8331, 28 November 2013, penned by Associate Justice Cielito N. Mindaro-Grulla and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.

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The Court *En Banc* affirms the ruling of the Court in Division that the three-year prescriptive period provided in Section 203 of the NIRC of 1997, as amended, applies to deficiency EWT assessment. As aptly pointed out by the Court in Division, in a number of cases, the Supreme Court has consistently applied Section 203 of the NIRC of 1997, as amended, in cases involving deficiency EWT assessments.[30]

It is worth reiterating that the Supreme Court is the final arbiter of any justiceable controversy,[31] and its rulings on questions of law are conclusive and binding on all courts.[32] Thus, the Court *En Banc* is duty bound to adhere to and apply the ruling of the Supreme Court on the applicability of the three-year prescriptive period to deficiency EWT assessments.

The Court *En Banc* also agrees with the Court in Division that the ten-year prescriptive period provided under Section 222 of the NIRC of 1997, as amended, does not apply for petitioner's failure to adduce evidence to substantiate its claim that respondent filed false or fraudulent EWT returns.

The Court *En Banc* quotes with affirmation the pertinent disquisition of the Court in Division in the assailed Decision, *viz.*:

> "There is nothing in the PAN, FLD, Assessment Notice, and the Preliminary Collection Letter that would even hint the non-application of the three-year prescriptive period for purposes of assessment. There is no indication that petitioner (herein respondent) filed a false return, or a fraudulent return with intent to evade tax, or failed to file a return.
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> Moreover, while respondent (herein petitioner), in his Answer to the instant Petition for Review raised the applicability of the 10-year prescriptive period, no evidence was adduced to substantiate the same.
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> Respondent (herein petitioner) therefore had three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess petitioner's (herein respondent) internal revenue taxes.

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[30] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010; *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010; *Commissioner of Internal Revenue vs. FMF Development Corporation,* G.R. No. 167765, June 30, 2008; *Philippine National Oil Company vs. Court of Appeals, et al.*, G.R. No. 109976, April 26, 2005.

[31] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003.

[32] Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, Resolution dated September 21, 2007.

> Based on the table earlier provided, the last EWT Return for the taxable period June 2004 to May 2005 was filed by petitioner (herein respondent) on June 10, 2005. Counting three years from June 10, 2005, respondent (herein petitioner) had until June 10, 2008, at the latest, to issue an assessment for deficiency EWT for the taxable period June 2004 to May 2005.
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> However, record reveals that the FLD and the FAN were issued only on January 9, 2009 or seven (7) months late reckoned from June 10, 2008, the last day for issuing an assessment covering the May 2005 EWT.
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> Significantly, there were no attending circumstances that would prevent respondent (herein petitioner) from issuing an assessment and collecting the tax due within the period prescribed by law. Petitioner (herein respondent) did not request for a re-investigation nor did it execute a waiver of the statute of limitations. Evidently, the assessment issued on January 9, 2009 or after June 10, 2008 had prescribed effectively barring the collection of the alleged tax deficiency."

For all the foregoing, the Court *En Banc* holds that the cancellation of the subject Formal Letter of Demand dated January 9, 2009, Assessment Notice No. 54-2005 dated January 9, 2009, and Preliminary Collection Letter dated March 4, 2010, assessing and collecting from respondent deficiency EWT in the aggregate amount of Php3,572,329.11, inclusive of interest and compromise penalty, for the fiscal year ending May 31, 2005, is therefore warranted.

WHEREFORE, premises considered, petitioner Commissioner of Internal Revenue's *Petition for Review* filed on April 24, 2014 is hereby **DENIED**. Accordingly, the Formal Letter of Demand dated January 9, 2009, Assessment Notice No. 54-2005 dated January 9, 2009, and Preliminary Collection Letter dated March 4, 2010, assessing and collecting from respondent Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences Institute) deficiency expanded withholding tax in the aggregate amount of Php3,572,329.11, inclusive of interest and compromise penalty, for the fiscal year ending May 31, 2005, are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice