Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MIFFI LOGISTICS CO. INC.,
Respondent.

CTA EB NO. 1979
(CTA Case No. 9122)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
NOV 26 2019
4:12 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on May 22, 2019 is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

Decision[2] dated August 1, 2018, rendered by the Second Division of this Court in CTA Case No. 9122, and its Resolution[3] dated November 23, 2018. The Second Division of this Court granted the petition filed by respondent MIFFI Logistics Co. Inc. (MIFFI) and cancelled the Final Assessment Notice (FAN)/ Formal Letter of Demand (FLD) for deficiency income tax for fiscal year 2006 as well as the Warrant of Distraint and/or Levy (WDL) issued by petitioner Commissioner of Internal Revenue (CIR).

Petitioner CIR assails both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated August 1, 2018:

*"**WHEREFORE**, the instant Petition for Review filed by MIFFI Logistic Co., Inc. is hereby **GRANTED.***

*Accordingly, the FAN/FLD issued by respondent for alleged deficiency income taxes for FY 2006 as well as the WDL issued against petitioner as a result thereof are hereby **CANCELLED** and **SET ASIDE**.*

SO ORDERED."

Resolution dated November 23, 2018:

*"**WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 01 August 2018) filed on August 20, 2018, is hereby **DENIED** for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court in Division in its Decision read as follows:

(c) xxx.

[2] En Banc Docket, pp. 23-41.
[3] En Banc Docket, pp. 42-47.

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"Petitioner[4] is a domestic corporation organized and existing under the Republic of the Philippines with principal place of business at HICAP FG & VMI Warehouse Phase V, Special Export Processing Zone, Laguna Technopark, Binan, Laguna. It is engaged in the business of establishing a warehouse facility for the storage, deposit, safekeeping of goods, including raw materials used in the electronic or computer industry as well as various finished products for subsequent transfer or distribution directly to the ecozone plant of the PEZA registered export enterprise-owner or consignee thereof.

Respondent[5] is the duly appointed Commissioner of Internal Revenue (CIR) vested with the powers and duties, among others, to assess and collect all national internal revenue taxes and to decide, approve and grant tax protests. He holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS

As stated in the Joint Stipulation of Facts and Issues (JSFI) filed with this Court on February 29, 2016, the factual antecedents are as follows:

'4. Petitioner received a copy of respondent's Preliminary Assessment Notice (PAN) dated May 13, 2010 with attached Details of Discrepancies in which respondent through the Regional Director of RR No. 9, informed petitioner of the proposed assessment for deficiency income tax and compromise penalty for FY 2006 1n the aggregate amount of Php31,656,053.12.

5. On June 15, 2010 respondent, through the Regional Director of RR No.9, issued the Formal Letter of Demand (FLD) with attached Details of Discrepancies. In the FLD, respondent ordered petitioner to pay its alleged deficiency income tax liability and compromise penalty for FY 2006 in the total amount of Php 32,140,714.19, xxx:

xxx xxx xxx.

6. Petitioner received a Preliminary Collection Letter dated September 7, 2012, demanding payment of the alleged deficiency income tax and compromise penalty for FY 2006 in the total amount of Php 32,140,714.19.

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[4] MIFFI Logistics Co., Inc. was the petitioner before the Court in Division and thereafter the respondent before this Court *En Banc*.

[5] Commissioner of Internal Revenue (CIR) was the respondent before the Court in Division and thereafter the petitioner before this Court *En Banc*.

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7. On November 12, 2012, petitioner received a Final Notice Before Seizure demanding the payment of the alleged deficiency income tax and compromise penalty for FY 2006 in the total amount of Php 32,140,714.19, with a stern warning that failure to settle such will constrain respondent to enforce collection through summary remedies under the Tax Code.

8. On July 21, 2015, petitioner was served WDL No. 09-AMT-142-15 pertaining to the alleged deficiency income tax and compromise penalty for FY 2006 in the total amount of Php 32,140,714.19.'

On November 26, 2015, respondent filed his Answer wherein he interposed special and affirmative defenses against the Petition for Review.

On December 22, 2015, petitioner filed a Motion to Declare Respondent in Default (With Motion to Present Evidence Ex Parte) on the ground that respondent filed the Answer only on November 26, 2015 or five (5) days after the lapse of the deadline fixed by the Court. Petitioner avers that several extensions of time were granted by the Court in favor of respondent to file his Answer only to file it belatedly on November 26, 2015 without a Motion to Admit Answer that could have provided the justification for late filing.

On January 25, 2016, respondent filed his Comment to petitioner's Motion to Declare Respondent in Default (With Motion to Present Evidence Ex Parte).

On February 4, 2016, the Court denied petitioner's Motion to Declare Respondent in Default (With Motion to Present Evidence Ex Parte) on the ground that the ends of justice would be best served if there is proper determination of the merits of the case. Consequently, the Court admitted the Answer filed by respondent.

A pre-trial conference was held on February 4, 2016 where the Court directed both parties to file their respective JSFI within a period of fifteen (15) days from said pre-trial conference.

The parties filed their JSFI on February 29, 2016.

On March 7, 2016, the Court issued a Pre-Trial Order approving and adopting the parties' joint stipulations and terminating the pre-trial.

During trial, petitioner presented Atty. Myla S. Maralit for commissioning as Independent CPA and the

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Court consequently appointed her as the Independent CPA for this case. Petitioner then presented its Senior Finance Manager, Ms. Lucila C. Javina.

Petitioner formally offered the testimonies of Atty. Myla S. Maralit and Ms. Lucila C. Javina and Exhibits "P-1" to "P-305".

The Court, in a Resolution dated July 15, 2016, admitted the testimonies of Atty. Myla S. Maralit and Ms. Lucila C. Javina but denied the admission of Exhibits "P-15" to "P-26", inclusive of submarkings; "P-27", "P-28 to "P-39", inclusive of submarkings; "P-43'" "P-50" and "P-50-a"; "P-300"; "P-301", "P302", "P-303", "P-304" and "P-305".

On August 3, 2016, petitioner filed a Motion for Partial Reconsideration (Re: Resolution dated July 15, 2016), praying for the reconsideration of the resolution denying the aforesaid exhibits.

Pending the Resolution of the Court on petitioner's Motion for Partial Reconsideration, respondent filed a Motion to Dismiss assailing this Court's jurisdiction.

On January 31, 2017, the Court issued a Resolution, resolving petitioner's Partial Motion for Reconsideration and respondent's Motion to Dismiss. In this Resolution, the Court admitted Exhibits "P-45" "P-45-a" "P-50" P-50-a" and "P-300" to "P-305" but still denied the admission of Exhibit "P-43". This same Resolution denied respondent's Motion to Dismiss because the Court ruled that the issues raised in said Motion involve questions of fact as well as law that are best determined in a full blown trial.

On February 24, 2017, petitioner filed a Motion for Leave of Court to Present Supplemental Evidence which the Court granted in a Resolution dated April 11, 2017.

On May 22, 2017, petitioner filed its Supplemental Offer of Evidence and offered Exhibits "P-43", "P-306", "P-306-a", "P307", "P-307 -a". The Court admitted all the aforesaid exhibits in a Resolution dated August 1, 2017.

As trial continued, respondent presented Revenue Officer Sonny Boy M. Lambarte as his lone witness.

Respondent formally offered Exhibits "R-1" to "R-4", which were all admitted in evidence in the Resolution of this Court dated September 20, 2017.

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> *This case was declared submitted for decision on January 8, 2018, considering the filing of the petitioner's Memorandum on December 21, 2017 and respondent's Memorandum on November 2, 2017".*

On August 1, 2018, this Court in Division cancelled the Final Assessment Notice (FAN)/ Formal Letter of Demand (FLD) for deficiency income tax for fiscal year 2006 as well as the Warrant of Distraint and/or Levy (WDL) issued by petitioner Commissioner of Internal Revenue (CIR). The Court in Division finds that the three (3) year period of prescription to assess applies in this case and considering that the FLD/FAN issued on June 15, 2010 falls outside of the 3-year period, the assessment has prescribed and considered invalid.

Thereafter, on November 23, 2018, this Court in Division denied the Motion for Partial Reconsideration (Re: Decision promulgated 01 August 2018) filed by petitioner CIR. Hence, the present petition was filed.

On February 22, 2019, respondent HCMI filed a "Comment/Opposition (Re: CIR's Petition for Review dated January 3, 2019). In its comment, respondent MIFFI submits the following:

a. The Court has jurisdiction to review the validity of the collection procedure undertaken by petitioner;
b. Petitioner's right to assess deficiency tax against respondent MIFFI for FY 2006 has prescribed, and
c. The WDL is void as it was issued without legal basis and pursuant to an invalid assessment.

On April 17, 2019, the Court En Banc received "PMC-CTA Form 6 - No Agreement to Mediate" dated April 16, 2019. The parties decided not to have their case mediated by the Philippine Mediation Center Unit-CTA. Thus, in a Resolution dated May 22, 2019, the above-captioned case was submitted for decision.

Petitioner CIR' s Assignment of Error reads as follows:

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THE HONORABLE COURT ERRED IN CANCELLING AND WITHDRAWING THE ASSESSMENT AS WELL AS THE WARRANT OF DISTRAINT AND LEVY (WDL), AGAINST RESPONDENT FOR DEFICIENCY INCOME TAX AND COMPROMISE PENALTY IN THE AGGREGATE AMOUNT OF THIRTY -TWO MILLION ONE HUNDRED FORTY THOUSAND SEVEN HUNDRED FOURTEEN PESOS AND NINETEEN CENTS (PHP 32,140,714.19) FOR TAXABLE YEAR 2006.

Petitioner asserts the following arguments in support of the petition:

1. The jurisdiction of the Honorable Court is limited in the collection procedure post-assessment,

2. The assessment is already final, executory and demandable, and

3. The WDL was validly issued after the assessment has become delinquent.

We resolve to deny the petition.

The main issue is whether the Court can nullify an assessment on a petition for review as to the action of the CIR in the issuance of a warrant of distraint and/or levy.

Petitioner claims that the Court has no jurisdiction to determine the validity or invalidity (in this case the issue of prescription) of a final and executory assessment since the Court's jurisdiction is limited to collection procedure after the assessment. We are not persuaded.

In a petition for review as to the action of the CIR in the issuance of warrant of distraint and/or levy, the Court's jurisdiction is not limited to collection procedure after the assessment. The Supreme Court in the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[6], instructively ruled that the issuance of a valid formal assessment is a

[6] G.R. No. 215957, November 9, 2016.

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substantive prerequisite for collection of taxes and affirmed the cancellation of the Final Assessment Notice. Concomitantly, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect. The Supreme Court ruled as follows:

> *"The prescriptive period in making an assessment depends upon whether a tax return was filed or whether the tax return filed was either false or fraudulent. When a tax return that is neither false nor fraudulent has been filed, the Bureau of Internal Revenue may assess within three (3) years, reckoned from the date of actual filing or from the last day prescribed by law for filing. However, in case of a false or fraudulent return with intent to evade tax, Section 222(a) provides:*
>
> > *Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -*
> >
> > *(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Emphasis supplied)*
>
> *In Aznar v. Court of Tax Appeals, this Court interpreted Section 332 (now Section 222[a] of the National Internal Revenue Code) by dividing it in three (3) different cases: first, in case of false return; second, in case of a fraudulent return with intent to evade; and third, in case of failure to file a return. Thus:*
>
> > *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 aggregates the situations into three different classes, namely "falsity", "fraud" and "omission."*
>
> *This Court held that there is a difference between "false return" and a "fraudulent return." A false return simply involves a "deviation from the truth, whether intentional or not" while a fraudulent return "implies*

intentional or deceitful entry with intent to evade the taxes due."

Fraud is a question of fact that should be alleged and duly proven. "The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed." Fraud entails corresponding sanctions under the tax law. Therefore, it is indispensable for the Commissioner of Internal Revenue to include the basis for its allegations of fraud in the assessment notice.

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The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

A pre-assessment notice "do[es] not bear the gravity of a formal assessment notice." A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

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Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.

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> *The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the "alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest" for lack of due process. Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect.*
>
> *Taxes are the lifeblood of government and should be collected without hindrance. However, the collection of taxes should be exercised "reasonably and in accordance with the prescribed procedure."*
>
> *The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights."*

Clearly, the Court's jurisdiction is not limited to collection procedure after the assessment. The Court has jurisdiction to determine the validity or invalidity of an assessment to determine whether the right of the government to assess and collect taxes has prescribed.

In the case of *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[7], the Supreme Court ruled that this is not the first case where the Court of Tax Appeals (CTA) validly ruled on issues that did not relate directly to a disputed assessment. Further, the Supreme Court ruled that where a waiver document is incomplete and defective, the three-year prescriptive period was not tolled or extended and continued to run. Consequently, the assessment or demand issued beyond the three (3) year period is invalid. In the same manner, Warrant of Distraint and/or Levy issued was also null and void for having been issued pursuant to an invalid assessment. To wit:

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[7] G.R. No. 162852, December 16, 2004.

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"xxx. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:

> *SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -*
>
> *(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or* ***other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue****; (Emphasis supplied).*

The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.

This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In Pantoja v. David, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in Commissioner of Internal Revenue v. Court of Appeals, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court.

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The waiver document is incomplete and defective and thus the three-year prescriptive period was not tolled or extended and continued to run until April 17, 1998. Consequently, ***the Assessment/Demand No. 33-1-000757-94 issued on December 9, 1998 was invalid because it was issued beyond the three (3) year period. In the same manner, Warrant of Distraint and/or Levy No. 33-06-046 which petitioner***

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> ***received on March 28, 2000 is also null and void for having been issued pursuant to an invalid assessment***. *(Emphases supplied).*

Clearly, a WDL can be nullified if the assessment alleged to have been final and executory was proven to have been issued beyond the prescriptive period to assess. Thus, the conclusion that a WDL is also null and void for having been issued pursuant to an invalid assessment.

Moreover in the case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,* [8] the Supreme Court ruled that the issue of prescription of the CIR's right to collect taxes is covered by the term "other matters" over which the CTA has appellate jurisdiction and that the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. To wit:

> *"xxx. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:*
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> > *Section 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —*
> >
> > *1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto,* ***or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue****. (Emphasis supplied.)*
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> *Plainly, the assailed CTA En Banc Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.*
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> *Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is*

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[8] G.R. No. 169225, November 17, 2010.

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not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).

In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223(c):

> ***Any internal revenue tax*** *which has been assessed within the period of limitation above-prescribed* ***may be collected*** *by distraint or levy or by a proceeding in court* ***within three years following the assessment of the tax****. (Emphases supplied.)*

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

> *Sec. 3. Powers and duties of Bureau. - The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and* ***collection of all national internal revenue taxes, fees, and charges*** *and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied.)*

Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.

Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

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> *Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.*
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> ***To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.*** *(Emphases supplied.)*

In this case, the issue of prescription is the heart of the controversy. Other than an allegation that the assessment was made within the ten (10)-year period, petitioner did not contest nor offer proof, much less argue to debunk the findings of the Court in Division's conclusion on the application of the 3-year prescriptive period to assess. We find that the Court in Division was correct when it ruled as follows:

> *Based on the foregoing provisions, the regular prescriptive period for the assessment and collection of taxes is three (3) years. The exceptional ten (10) year prescriptive period is applicable only if the taxpayer a) fails to file a return; b) files a false or fraudulent return with the intent to evade tax; c) there is a waiver of the prescriptive period of assessment of the tax which is agreed upon in writing by the Commissioner and the taxpayer.*
>
> *There is nothing in the FAN/FLD nor the accompanying Details of Discrepancy that would suggest that there were findings of fraud nor falsity in the returns filed by petitioner, save for the sentence appearing in the FLD that a 50% surcharge was being imposed. xxx.*

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It is a well-entrenched rule that fraud is not lightly presumed; fraud must be proven by clear and convincing evidence, mere preponderance of evidence not even being adequate. Fraud is never imputed and the courts never sustain findings of fraud upon circumstances which, at most create only suspicion and the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.

A mere cursory review of the FLD/FAN and Details of Discrepancy do not show that petitioner intended to defraud the government. In fact, we believe that the FLD/FAN with the Details of Discrepancy issued by respondent do not pass the test of properly informing the taxpayer of the facts and the law on which the assessment is made in violation of the requirements under Section 228 of the 1997 NIRC and Section 3.1.4 of Revenue Regulations (RR) No. 12-99.

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The pleadings filed by respondent in Court do not even contain any allegations of fraud nor of any other circumstance that would justify the application of the exceptional period of ten years to assess the income tax liabilities of petitioner. In sum, respondent failed to prove by clear and convincing evidence that fraud was committed by the taxpayer.

We therefore find that the three-year period to assess the income tax liabilities of petitioner applies in the instant case, thus the FLD/FAN for FY 2006 issued on June 15, 2010 falls outside the three-year prescriptive period provided under the aforequoted Section 203 of the 1997 NIRC making such assessment void and without any effect. Conjoined with the issue of the validity of the WDL, we also find the WDL without any effect as it stems from a void assessment. Respondent is then mistaken in his notion that the determination of the validity of the WDL is separate from the issue of the validity of the assessment issued against petitioner. In fact, the issue of the legality of the WDL rests upon the validity of the tax assessment itself and we cannot but rule on both issues.

It is well established that a void assessment bears no fruit. Noteworthy is the provision in the 1997 NIRC which cites the three (3) instances where a collection case may be filed in court without a corresponding assessment, i.e., a) filing of a false return; b) filing of a fraudulent return and c) failure to file a return. Unfortunately, none of the

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three instances was established in this case, hence the validity of the mode of collection is intimately linked with the validity of the assessment."

Accordingly, finding no reversible error, the Court En Banc finds no cogent reason or justification to disturb the conclusions reached by the CTA Special Second Division as it is supported by jurisprudence and evidence on record.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated August 1, 2018, rendered by the Special Second Division of this Court in CTA Case No. 9122, and its Resolution dated November 23, 2018 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice