REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1873** (CTA Case No. 8839)
	Present:
	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
- versus -	
MEINAN PHILIPPINES, INC., *Respondent.*	Promulgated: AUG 08 2019 3:30 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is petitioner Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration (Re: Decision promulgated 15 April 2019)*[1] filed on April 30, 2019, with respondent Meinan Philippines, Inc.'s *Comment or Opposition to the Motion for Reconsideration dated 29 April 2019*[2] filed on May 17, 2019. Petitioner's *Motion* seeks reconsideration of the Decision of the Court *En Banc* promulgated on April 15, 2019,[3] (the "Assailed Decision") denying his Petition for Review for lack of merit.

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[1] Court *En Banc*'s Docket, pp. 110-121.
[2] *Id.*, pp. 126-132.
[3] *Id.*, pp. 83-105.

In its *Motion*, petitioner argues that this Court should not rule on matters that were never substantiated in the administrative level and respondent may not be allowed to raise new issues on appeal given that petitioner had rendered a Final Decision on Disputed Assessment (FDDA).[4] Petitioner asserts this claim on the theory that this Court's power of judicial review over decisions rendered by petitioner is by nature exclusive and appellate.[5] Petitioner posits that because of the issuance of the FDDA, the jurisdiction of this Court shifts from a trial court to a court exercising judicial review.[6] Petitioner further contends that this "judicial review" is not a *de novo* trial but an inquiry into whether the findings of the administrative body are consistent with law, supported by evidence and fraud-free.[7] Accordingly, petitioner wants this Court to confine itself to the issues and documents raised in respondent's protest to the assessment.[8] Petitioner again cites *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[9] as authority for the foregoing claim.

Petitioner also maintains that this Court should not have ruled on the issue of validity of the waiver because the same is an undisputed issue and cannot be raised for the first time on appeal.[10]

Respondent, on the other hand, stated in its *Comment/Opposition* that petitioner's arguments are fatally defective and have no merit.[11] It submits that the defense of prescription may be raised for the first time on appeal.[12] Respondent states that while it is true that certain issues not raised in the administrative forum or lower courts cannot be raised for the first time on appeal, however, the Rules of Court as well as the various decisions of the Supreme Court and of this Court explicitly allows a number of defenses to be raised even for the first time on appeal, one of which is the defense of prescription.[13]

Respondent likewise avers that when this Court considered the defense of prescription, it is not acting as a trial court but is considering an issue allowed by the Rules of Court and Supreme Court decisions to be raised even for the first time on appeal.[14] That this Court does not need to repeat all the proceedings conducted by respondent but only needs to determine whether or not respondent's authority to assess petitioner for deficiency income tax has prescribed.[15]

[4] *Id.*, pp. 111-114.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] G.R. No. 207112, December 8, 2015, 776 SCRA 395 ("*Pilipinas Total Gas*").
[10] Court *En Banc*'s Docket, pp. 114-118.
[11] *Id.*, p. 126.
[12] *Id.*, p. 127.
[13] *Id.*, p. 130.
[14] *Id.*
[15] *Id.*

After judicious review of the arguments and counter-arguments raised by the parties as well as the relevant rules and jurisprudence on the matter, this Court finds no substantial matter much less any compelling reason that would warrant the modification let alone the reversal of the Assailed Decision. Respondent's *Motion for Reconsideration (Re: Decision promulgated 15 April 2019)* is utterly devoid of any merit and thus should be denied.

The Court *En Banc* maintains its ruling that *Pilipinas Total Gas* does not, in any way whatsoever, support petitioner's theory that when an FDDA is issued, this Court should only confine itself to the issues raised in the administrative protest to the assessment. Even a cursory reading of the facts of *Pilipinas Total Gas* will negate petitioner's assertions. Moreover, the legal provision applied in Pilipinas Total Gas (Section 112 of the National Internal Revenue Code of 1997, as amended) is different from the applicable legal provisions in the present case (Sections 203 and 222 of the National Internal Revenue Code of 1997, as amended). *Pilipinas Total Gas* involves a claim for refund of unutilized input Value-Added Tax (VAT) and, accordingly, the relevant statements made as well as the legal principles enunciated in the said case were clearly made within the context of a VAT refund case. It certainly cannot be applied to a case involving assessments for deficiency income tax, fringe benefits tax (FBT) and compromise penalty such as the present case.

As regards the second issue, the Court *En Banc* already gave an exhaustive discussion thereon in the Assailed Decision. But if only to give petitioner some peace of mind, the discussion of the Court *En Banc* on this particular point is reproduced below:

> "More importantly, in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, the Supreme Court emphatically held that this Court can resolve an issue which was not raised by the parties. It held that:
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> > **'On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
> >
> > **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:

> SECTION 1. *Rendition of judgment.* — x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.'

The deficiency assessment issued by petitioner was deemed void by the Court in Division because of prescription. In this regard, the Court *En Banc* holds that the Court in Division correctly resolved the issue of prescription of petitioner CIR's right to assess respondent as it clearly appears from the records that the deficiency assessment was issued more than three (3) years counted from the last day prescribed by law for the filing of the return, or the date of actual filing thereof, whichever comes later. Section 1, Rule 9 of the Rules of Court is applicable, *mutatis mutandis*, to the present case. The said provision states:

> 'SEC. 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that <u>the action is barred</u> by a prior judgment or <u>by statute of limitations</u>, the court shall dismiss the claim.**' *(Emphasis and underscoring supplied)*

As explained by the Supreme Court in the case of *Gicano v. Gegato*, to wit: ju

> '**[T]rial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred**; (Francisco v. Robles, Feb. 15, 1954; Sison v. McQuaid, 50 O.G. 97; Bambao v. Lednicky, Jan. 28, 1961; Cordova v. Cordova, Jan. 14, 1958; Convets, Inc. v. NDC, Feb. 28, 1958; 32 SCRA 529; Sinaon v. Sorongan, 136 SCRA 408); and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. **What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record: either in the averments of the plaintiff's complaint, or otherwise established by the evidence.**' *(Emphasis supplied and citations omitted)*

Given that the issue of the validity of the waiver executed by the parties is essentially intertwined with the resolution of the issue of prescription of the deficiency assessment, the Court in Division correctly took cognizance of the said matter.

With regard to the issue of the validity of the waiver, the Court *En Banc* finds the discussions of the Court in Division in the assailed Decision and Resolution to be in order and that the same had sufficiently addressed the matters raised by petitioner. There is simply no reason to disturb or modify the same. Along the same lines, the Court *En Banc* holds the doctrine laid down by the Supreme Court in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)* finds no application in the present case considering the substantial variance in their respective factual milieu. The *in pari delicto* rule necessarily applies only in each and every case where facts and circumstances akin to those in *Next Mobile* are present. The same thing goes with the application of the doctrine of estoppel." *(Citations omitted)*

WHEREFORE, petitioner's *Motion for Reconsideration (Re: Decision promulgated 15 April 2019)* is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

NO PART
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice