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, and Manahan, JJ.
- versus –	
MEINAN PHILIPPINES, INC., *Respondent.*	Promulgated: APR 15 2019 3:13 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review[1] which seeks the reversal of the Decision dated January 18, 2018,[2] (assailed Decision) as well as the Resolution dated May 29, 2018[3] (assailed Resolution) of the First Division (Court in Division)[4] of this Court in CTA Case No. 8839 entitled *Meinan Philippines, Inc. v. Commissioner of Internal Revenue.*

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[1] Court *En Banc's* Docket, pp.12-27.
[2] *Id.*, pp. 30-57.
[3] *Id.*, pp. 58-61.
[4] Composed of Presiding Justice Roman G. Del Rosario as Chairperson, Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla as members.

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

Assailed Decision:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the assessment and the Final Decision on Disputed Assessment dated April 1, 2014 for alleged deficiency income tax and fringe benefits tax in the respective amounts of ₱2,519,352.27 and ₱984,180.53 or in the aggregate amount of ₱3,503,532.80 for calendar year 2007 is **CANCELLED**.
>
> **SO ORDERED**."

Assailed Resolution:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 18 January 2018)** is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

As found by the Court in Division in its Decision dated January 18, 2018, the facts of the present case are as follows:[5]

> "Petitioner Meinan Philippines, Inc. is a corporation organized and existing under Philippine laws, with principal office address at 107 East Main Avenue, Laguna Techno Park, Biñan City, Laguna. It is registered with the Philippine Economic Zone Authority (PEZA) pursuant to the provisions of Republic Act (R.A.) No. 7916 as an Export Enterprise under Certificate of Registration No. 95-141 dated December 13, 1995. It is also registered with the Bureau of Internal Revenue (BIR), with Taxpayer's Identification Number (TIN) 004-826-435-000.

[5] Court *En Banc's* Docket, pp. 31-45 (Citations omitted).

Respondent is the duly appointed Commissioner of the BIR who has the power to decide 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 (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed with the BIR its Annual Corporate Income Tax Return (BIR Form No. 1702) and Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits (BIR Form No. 1603) for CY 2007 on the following dates:

Period Covered	Date of Filing of Annual Income Tax Return
Calendar Year 2007	April 15, 2008

Period Covered (Calendar Year 2007)	Date of Filing of Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits
First Quarter	April 10, 2007
Second Quarter	July 9, 2007
Third Quarter	October 10, 2007
Fourth Quarter	January 10, 2008

On September 5, 2008, petitioner received Letter of Authority (LOA) No. 2007-00032921 dated August 21, 2008, authorizing BIR Revenue Officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2007.

Respondent issued a Notice for Informal Conference on September 16, 2010, requesting petitioner to appear for an informal conference to present its side of the case.

On May 11, 2011, petitioner received a copy of the Preliminary Assessment Notice (PAN) dated May 3, 2011 with Details of Discrepancies issued by Regional Director Rodita B. Galanto, informing petitioner of its alleged tax deficiencies for income tax and fringe benefit tax in the total amount of P19,876,931.52. Due to the voluminous character of the documents, petitioner requested for a thirty (30)-day extension or until June 10, 2011 within which to file a reply to the PAN on May 18, 2011. On May 31, 2011, petitioner submitted a reply to the PAN.

On June 30, 2011, petitioner received a Formal Letter of Demand (FLD) dated June 23, 2011 with Assessment Notices and Details of Discrepancies for deficiency income tax and FBT for CY 2007 in the total amount of P20,085,116.76. On July 28, 2011, petitioner filed its Protest Letter to the FLD. On September 15, 2011, petitioner submitted voluminous documents in support of its protest.

On May 24, 2014, petitioner received the copy of the FDDA dated April 1, 2014 issued by Regional Director Jose N. Tan, finding petitioner liable for alleged deficiency income tax and fringe benefit tax for CY 2007 in the total amount of P3,503,532.80.

Petitioner then filed the instant Petition for Review on June 23, 2014.

Respondent filed his Answer on September 25, 2014, interposing the following Special and Affirmative Defenses:

'SPECIAL AND AFFIRMATIVE DEFENSES

5. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

6. The assessment for deficiency Income Tax in the amount of P2,519,352.27 and Fringe Benefits Tax in the amount of P984,180.53 for taxable year 2007 was made in accordance with law, rules and jurisprudence.

RESPONDENT OBSERVED BOTH AND SUBSTANTIAL (sic) DUE PROCESS IN ISSUING THE ASSESSMENT.

7. Respondent accorded procedural and substantial (sic) due process to petitioner in issuing the assessment

subject of this case. The Letter of Authority (LOA), Notice for Informal Conference, Preliminary Assessment Notice, Formal Letter of Demand with Audit Result/Assessment Notice and Final Decision on Disputed Assessment were issued in accordance with law, rules and jurisprudence.

8. Petitioner was also informed of the factual and legal basis of the assessment. The Preliminary Assessment Notice, Formal Letter of Demand with Audit Result/Assessment Notice and Final Decision on Disputed Assessment indicated not only the deficiency tax involved, surcharge and interest due thereon, but also sufficiently stated the facts, the law, rules and regulations on which the assessment is based.

9. Petitioner's allegation that the conduct of assessment is not covered by a valid LOA as the Revenue Officers failed to conduct and complete the audit within 120-day period is untenable. On the contrary, the validity of the LOA should not be put in issue as the LOA was revalidated on 20 November 2009 as found on page 554 of the BIR Records.

RESPONDENT['S] RIGHT TO ASSESS PETITIONER DEFICIENCY INCOME AND FRINGE BENEFIT TAX DID NOT LAPSE.

10. Anent petitioner's allegation that the assessment for deficiency income and fringe benefit tax has already prescribed; the same is manifestly misplaced.

10.1 First, petitioner alleged that it filed its Annual Income Tax Return for calendar year 2007 on 15 April 2008 and that respondent has until 15 April 2011 within which to assess for deficiency income tax; while the Formal Letter of Demand/Formal Assessment Notice was issued on 23 June 2011 and supposedly received on 30 June 2011.

10.2 Second, petitioner further alleged these dated pertaining to Fringe Benefit Tax, quoted herewith to wit: *9r*

Fringe Benefits Tax

Quarter	Date of Filing	Prescription	Date of Assessment
First Quarter	10 April 2007	25 April 2010	23 June 2011
Second Quarter	09 July 2007	25 July 2007	23 June 2011
Third Quarter	10 October 2007	25 October 2010	23 June 2011
Fourth Quarter	10 January 2008	25 January 2011	23 June 2011

10.3 However, a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code was executed extending the period to assess petitioner until 31 December 2011.

10.4 Assuming that the Formal Letter of Demand/Final Assessment Notice were issued on 23 June 2011 and supposedly received on 30 June 2011, the aforesaid assessment was clearly received before 31 December 2011.

10.5 Thus, the period of respondent to assess petitioner for deficiency income and fringe benefit tax did not lapse.

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL.

11. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals, G.R. No. 120880, June 5, 1997)**

12. The burden of proof 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 the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex**

Trading Co., Inc., G.R. No. 136975, March 31, 2005). The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

13. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of Tax Appeals, 164 SCRA 524).* Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

PETITIONER IS LIABLE TO PAY FOR DEFICIENCY INCOME TAX IN THE AMOUNT OF P2,519,352.27 AND FRINGE BENEFIT TAX IN THE AMOUNT OF P984,180.53 FOR TAXABLE YEAR 2007.

14. Respondent posits that the deficiency income tax assessment issued against petitioner must stand as supported by the following factual and legal basis as stated in the Final Decision on Disputed Assessment dated 01 April 2014, portion of which is incorporated hereunder, to wit:

I. INCOME TAX

Additional Taxable Income	P29,340,592.27
Tax Due	**P1,467,029.61**
Add: Interest from 04-16-08 to 10-15-11	P1,027,322.66
Compromise Penalty	25,000.00
Total Amount Payable	**P2,519,352.27**

II. FRINGE BENEFIT TAX

Grossed-up Monetary Value	P2,678,411.97
FBT Rate	32%
Fringe Benefit Tax Due Per Audit	P 857,091.83
Less: FBT Paid	306,174.65
Deficiency FBT	550,917.18
Add: interest from 01-16-08 to 10-15-11	413,263.35
Compromise Penalty	20,000.00
Total Amount Payable	**P 984,180.53**

The aforesaid assessments are premised on the following:

1. INCOME TAX

-Disallowed Cost of Sales (16,063,373.00) – In relation to Section 24 of R.A. 7916 'five percent (5%) of the gross income earned by all business and enterprises within the ECOZONE shall be remitted to the national government'. As implemented by Section 3 of RR No. 11-2005, *'gross income earned shall refer to gross sales or gross revenue derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus cost of the sales or direct costs but before any deduction is made for administrative, marketing, selling/or operating expenses incidental losses during a given taxable period.' (emphasis and italics supplied).* Audit disclosed that your various expenses were included in the aggregate amount of cost of sales, hence, disallowed pursuant to R.A. No. 7916 and RR No. 11-2005.

Employee Benefits	P 11,022,852.00
Rental Expenses	1,004,245.00
Repairs and Maintenance	1,758,902.00
Outside Services	1,709,415.00
Retirement Benefits	463,257.00
Transportation and Travel	104,702.00
Total Disallowed Expenses	**P16,063,373.00**

-Salaries and wages not subjected to withholding tax (P13,277,219.27). Verification disclosed that the portion of the salaries and wages (direst [sic] cost) were not subjected to withholding tax in violation of the provision of Section 34(k) of the National Internal Revenue Code, hence, disallowed.

Salaries and Wages Claimed per ITR	P 46,515,748.00
Less: Salaries and Wages per Alphalist	29,142,485.73
Discrepancy	17,373,262.27
Less: Allocated to Operating Expenses	4,096,043.00
Net Discrepancy	**13,277,219.27**

2. FRINGE BENEFIT TAX

- Verification disclosed that various expenses were not subjected to fringe benefit tax, hence, assessed pursuant to the provision of Section 33(B) and (C) of 1997 [National Internal Revenue Code].

Fringe Benefit Expenses (Per Return) Value of Benefits GMV Factor Grossed-up Monetary Value

Interest on	P 1,358.00	100%	P 1,358.00

9e

Loans			
Condo Rentals	1,109,052.64	50%	554,526.32
House Rentals	189,473.64	50%	94,736.82
	1,299,844.28		650,621.14

Additional Fringe Benefit per Audit

1/3/2007	PV	19812	Southern Sky Travel & Tours	24,093.00	100%	24,093.00
1/23/2007	PV	19089	Southern Sky Travel & Tours	43,671.50	100%	43,671.50
2/1/2007	PV	19173	Canlubang Golf & Country Club	2,600.00	100%	2,600.00
2/7/2007	PV	19214	Southern Sky Travel & Tours	33,623.50	100%	33,623.50
	x x x		x x x	x x x		
12/13/2007	PV	21709	Southern Sky Travel & Tours	5,490.00	100%	5,490.00
Total Additional				1,170,699.00		1,170,699.00
Total Value of Fringe Benefit per Audit						**1,821,320.14**

The records of this case disclosed that you have not introduced any evidence to overthrow the validity of our findings despite the notice/letter dated November 23, 2012 issued by our Revenue District Office No. 57-Binan City.

DEFICIENCY INCOME TAX

15. The enumeration of direct costs under Revenue Regulations No. 11-2005 is an exclusive list of expenses which can be deducted from the gross revenue for the purpose of computing the five percent (5%) of gross income earned.

16. Revenue Regulations No. 11-2005 (Regulations Defining 'Gross Income Earned' to Implement the Tax Incentive Provision in Section 24 of Republic Act No. 7916, otherwise known as 'The Special Economic Zone Act of 1995' Revoking Section 7 of Revenue Regulations No. 2-2005, and Suspending the Effectivity of Certain Provisions of Revenue Regulations No. 2-2005) provides, to wit:

'**Section 3. Gross Income Earned**- for purposes of implementing the tax incentive of registered Special Economic Zone (ECOZONE) enterprises in Section 24 of Republic Act No. 7916, the term 'gross income earned' shall refer to gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus cost of sales or direct cost but before any deduction is made for administrative, marketing, selling and/or operating expenses or incidental losses during a given taxable period.

For purposes of computing the total five percent (5%) tax rate imposed, the following direct costs are included in the allowable deductions to arrive at gross income earned for specific types of enterprise:

1. ECOZONE Export Enterprises, Free Trade Enterprises and Domestic Market Enterprises:

    - Direct salaries, wages or labor expenses
    - Production supervision salaries
    - Raw materials used in the manufacture of products
    - Decrease in Goods in Process Account (Intermediate goods)
    - Decrease in Finished Goods Account
    - Supplies and fuels used in production
    - Depreciation of machinery and equipment used in production, and of that portion of the building owned or constructed that is used exclusively in the production of goods
    - Rent and utility charges associates (sic) with building, equipment and warehouse used in production
    - Financing charges associated with fixed assets used in production the amount of which were not previously capitalized

2. ECOZONE Developer/Operator, Facilities, Utilities and Tourism Enterprises:

    - Direct salaries, wages or labor expense
    - Service supervision salaries
    - Direct materials, supplies used
    - Depreciation of machineries and equipment used in the rendition of registered services, and of that portion of the building owned or constructed that is used exclusively in the rendition of registered service
    - Rent and utility charges for building and capital equipment used in the rendition of registered services
    - Financing charges associated with fixed assets used in the registered service business the amount of which were not previously capitalized.'

17. The above stated statute is clear and categorical. To arrive at the Gross Income Earned subject to the preferential tax rate of five percent (5%), these are

explicitly enumerated direct costs which can be deducted from the gross sales or revenues of respondent. These enumerations are exclusive and cannot be enlarged or extended to include deductions not indicated therein.

18. Petitioner deducted expenses from its gross sales/revenues which were not enumerated as direct costs. As a result, the Revenue Officers disallowed expenses amounting to P16,063,373.00 pursuant to R.R. No. 11-2005.

19. It must be stressed that the BIR Rulings cited by petitioner do not apply in the instant case since these are based only on a set of facts as represented by a taxpayer and made applicable only to the facts and circumstances thereto. Thus, it is not a bar on the government to enforce its power to tax.

20. Likewise, Salaries and Wages amounting to P13,277,219.27 were also not subjected to the required withholding tax. Hence, it was disallowed as deduction pursuant to Section 34 (K) of the NIRC.

DEFICIENCY FRINGE BENEFIT TAX

21. With regard to the deficiency Fringe Benefit Tax, the total value per audit amounted to P1,821,320.14 divided by the grossed up monetary factor of 68% which is equivalent to P2,678,411.97 grossed up monetary value.

22. A more detailed computation of which is stated herewith, to wit:

FRINGE BENEFIT TAX	
Fringe Benefit per Schedule of Quarterly Returns	P 650,621.14
Add: Expenses per Audit	1,170,699.00
Value of Fringe Benefits	1,821,320.14
Divided by: Grossed up Monetary Factor	68%
Grossed-up Monetary Value	P 2,678,411.97
FBT Rate	32%
Fringe Benefit Tax Due Per Audit	P 857,091.83
Less: FBT Paid	306,174.65
Deficiency FBT	550,917.18
Add: interest from 01-16-08 to 10-15-11	413,263.35
Compromise Penalty	20,000.00

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Total Amount Payable	**P 984,180.53**

23. Various expenses not subjected to Fringe Benefit Tax were assessed pursuant to Section 33 (B) and (C) of the NIRC.

24. Thus, petitioner is liable to pay for deficiency income tax in the amount of P2,519,352.27 and Fringe Benefit Tax in the amount of P984,180.53 for taxable year 2007.

25. As decreed by the Honorable Supreme Court:

    '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 of tax assessments.'

26. Well settled in the field of taxation — the burden of proof is on the taxpayer to present evidence to show the incorrectness of the assessment. Petitioner miserably failed to provide any concrete proof to justify its claim in assailing the assessments issued against it.'

The case was scheduled for Pre-Trial Conference on May 7, 2015. Petitioner's Pre-Trial Brief was filed on January 22, 2015; while respondent's Pre-Trial Brief was filed on April 20, 2015.

The parties filed their Joint Stipulation of Facts and Issues on May 27, 2015, which was approved by the Court via Resolution dated June 8, 2015.

Petitioner presented witnesses Evelyn Villaroya and Loraine Padilla on October 20, 2015, Salvador Fontilo, Jr. on November 24, 2015, and Independent Certified Public Accountant George V. Villaruz on February 18, 2016.

On February 26, 2016, petitioner filed its Formal Offer of Exhibits, offering Exhibits 'P-1', 'P-2', 'P-4', 'P-4a', 'P-5', 'P-

6', 'P-7', 'P-9', 'P-10', 'P-11', 'P-12', 'P-13', 'P-14', 'P-16', 'P-17', 'P-18', 'P-19', 'P-19-a', 'P-19-b', 'P-20', 'P-21', 'P-22', 'P-23', 'P-24', 'P-25.1' to 'P-25.474', 'P-26.1', 'P-27.1' to 'P-27.88', 'P-28.1' to 'P-28.10', 'P-29.1', 'P-34', 'P-34-1', 'P-35', 'P-35-1', 'P-36', 'P-36-1', 'P-37', 'P-37-a', 'P-38', 'P-38-1', 'P-39', and 'P-39-1' as its documentary evidence. Respondent filed his Comment (Re: Formal Offer of Exhibits) on March 7, 2016.

In the Resolution dated April 14, 2016, the Court admitted Exhibits 'P-2', 'P-4', 'P-4a', 'P-5', 'P-6', 'P-7', 'P-9', 'P-10', 'P-11', 'P-12', 'P-13', 'P-14', 'P-16', 'P-17', 'P-18', 'P-19-b', 'P-20', 'P-21', 'P-24', 'P-25.1' to 'P-25.474', 'P-26.1', 'P-27.1' to 'P-27.88', 'P-28.1' to 'P-28.10', 'P-29.1', 'P-34', 'P-34-1', 'P-35', 'P-35-1', 'P-36', 'P-36-1', 'P-37', 'P-37-a', 'P-38', 'P-38-1', 'P-39', and 'P-39-1', but denied the admission of Exhibits 'P-1', 'P-19', 'P-19-a', 'P-22', and 'P-23'.

Petitioner filed a Motion for Reconsideration on May 4, 2016; while respondent filed his Comment/Opposition (Re: Motion for Reconsideration dated 03 May 2016) on May 24, 2016. The Court granted petitioner's Motion for Reconsideration and admitted Exhibits 'P-1', 'P-19', 'P-19-a', 'P-22', and 'P-23' in the Resolution dated June 22, 2016.

Petitioner's documentary exhibits are as follows:

Exhibit:	Description:
P-1	Secretary's Certificate duly notarized on 20 June 2014
P-2	Meinan Philippines, Inc.'s BIR Certificate of Registration No. 1RC0000505954
P-4	PEZA-ERD Form No. 97-01 dated 09 January 2007
P-4a	PEZA-ERD Form No. 03-01 dated 09 January 2007
P-5	BIR Form No. 1702Q electronically filed on 24 May 2007 covering the 1st Quarter of FY2007
P-6	BIR Form No. 1702Q electronically filed on 24 May 2007 covering the 2nd Quarter of FY2007
P-7	BIR Form No. 1702Q electronically filed on 26 November 2007 covering the 3rd Quarter of FY2007

P-9	BIR Form No. 1603 electronically filed on 10 April 2007 covering the 1st Quarter of FY2007
P-10	BIR Form No. 1603 electronically filed on 09 July 2007 covering the 2nd Quarter of FY2007
P-11	BIR Form No. 1603 electronically filed on 10 October 2007 covering the 3rd Quarter of FY2007
P-12	BIR Form No. 1603 electronically filed on 10 January 2008 covering the 4th Quarter of FY2007
P-13	Letter of Authority No. 2007 00032921 dated 21 August 2008
P-14	Notice of Informal Conference dated 16 September 2010
P-16	Preliminary Assessment Notice (PAN) dated 03 May 2011
P-17	Petitioner's Request Letter for extension of time to file PAN filed on 18 May 2011
P-18	Petitioner's Reply to PAN filed on 31 May 2011
P-19	Audit Results/Assessment Notice OCN No. A57-0190-0191-11 amounting to Php19,138,066.54
P-19-a	Audit Results/Assessment Notice OCN No. A57-0190-0191-11 amounting to Php947,050.22
P-19-b	Formal Letter of Demand dated 23 June 2011
P-20	Petitioner's Protest Letter to the Formal Letter of Demand (FLD/FAN) filed on 28 July 2011
P-21	Petitioner's Transmittal Letter of the supporting documents filed on 15 September 2011
P-22	Notice of Informal Conference dated 28 September 2011
P-23	Petitioner's Transmittal Letter filed on 02 January 2012
P-24	Final Decision on Disputed Assessment dated 01 April 2014
P-25.1 to P-25.474	Payment vouchers, request for payment, purchase orders, official receipts, payroll register, SSS, Pag-Ibig and PhilHealth remittance forms and debit advices related to the 'Employee Benefits' and/or 'Salaries/Wages'
P-26.1	Lease contracts/agreements
P-27.1 to P-27-88	Payment vouchers, request for payments, sales invoices, delivery receipts, official receipts related to 'Repairs and maintenance'
P-28.1 to P-28.10	Payment vouchers, accounts payable vouchers, sales invoices and fund transfer forms related to 'Outside services'

P-29.1	2003 actuarial report prepared by E.M. Zalamea Actuarial Services, Inc.
P-34	Amended Judicial Affidavit of Evelyn Villaroya
P-34-1	Signature of Evelyn Villaroya
P-35	Amended Judicial Affidavit of Loraine Padilla
P-35-1	Signature of Loraine Padilla
P-36	Amended Judicial Affidavit of Salvador Fontillo, Jr.
P-37	Judicial Affidavit of George V. Villaruz dated 26 October 2015
P-37-a	Signature of George V. Villaruz
P-38	Judicial Affidavit of George V. Villaruz dated 09 February 2016
P-38-a	Signature of George V. Villaruz
P-39	Report on Examination and Verification Documents Supporting the Company's Protest against BIR's Tax Assessments for the Period covered 01 January 2007 - 31 December 2007 per CTA Case No. 8839
P-39-1	Signature of George V. Villaruz

Respondent presented his witnesses Jimmy E. Belen, Jr. and Teresita D. Tibayan on July 26, 2016, Sonny Boy G. Lambarte on August 23, 2016, and May C. Gimeno on September 27, 2016.

On September 29, 2016, respondent filed his Formal Offer of Documentary Evidence offering Exhibits 'R-1', 'R-2', 'R-3', 'R-4', 'R-5', 'R-6', 'R-6-a', 'R-7', 'R-8', 'R-9', 'R-10", 'R-11', 'R-12', 'R-13', 'R-13-a', 'R-13-b', 'R-14', 'R-15', 'R-16', 'R-17', 'R-18', 'R-19', 'R-20', 'R-21', 'R-22', 'R-23', 'R-24', 'R-25', 'R-26', 'R-27', 'R-27-a', 'R-28', 'R-28-a', 'R-29', 'R-29-1', 'R-30', and 'R-30-1' as his documentary exhibits. Petitioner filed its Comments/Objections (To Respondent's Formal Offer of Evidence) on October 17, 2016.

In the Resolution dated December 13, 2016, the Court admitted Exhibits 'R-1', 'R-2', 'R-3', 'R-4', 'R-5', 'R-6', 'R-6-a', 'R-7', 'R-8', 'R-9', 'R-10', 'R-11', 'R-12', 'R-13', 'R-13-a', 'R-13-b', 'R-14', 'R-15', 'R-16', 'R-17', 'R-18', 'R-19', 'R-20', 'R-21', 'R-22', 'R-23', 'R-24', 'R-25', 'R-26', 'R-27', 'R-27-a', 'R-28', 'R-28-a', 'R-29', 'R-29-1', 'R-30', and 'R-30-1' as respondent's evidence.

The documentary evidence filed by the respondent are as follows:

Exhibit:	**Description:**
R-1	Letter of Authority dated 21 August 2008
R-2	Notice for Presentation of Records dated September 01, 2008
R-3	Checklist of Requirements
R-4	Second Notice for Presentation of Records and Documents
R-5	Memorandum dated October 26, 2009
R-6	Final Request for Presentation of Records dated April 21, 2010
R-6-a	Registry Receipt No. 2178
R-7	Notice for Informal Conference dated September 16, 2010 with attached Proposed Tax Assessments
R-8	Waiver of the Defense of Prescription under the Statute of Limitations
R-9	Memorandum dated October 21, 2010
R-10	Indorsement Letter dated October 21, 2010
R-11	Assignment Slip with No. OR-LA-57-11-004-10 dated November 10, 2010
R-12	Preliminary Assessment Notice dated May 03, 2011 with attached Details of Discrepancies
R-13	Formal Letter of Demand dated June 23, 2011 with attached Details of Discrepancies
R-13-a	Audit Result/Assessment Notice for deficiency Income Tax
R-13-b	Audit Result/Assessment Notice for deficiency Fringe Benefit Tax
R-14	Letter dated August 03, 2011
R-15	Memorandum dated August 03, 2011
R-16	Memorandum of Assignment No. 057-LA-00179-8/10/2011 dated August 10, 2011
R-17	Letter dated September 02, 2011
R-18	Revised Notice for Informal Conference dated September 28, 2011 with attached Summary of Audit Findings
R-19	Letter dated November 23, 2012

R-20	Memorandum Report dated November 29, 2012
R-21	2nd Indorsement dated November 29, 2012
R-22	Docket Information Sheet and Action Slip
R-23	Return Memorandum dated February 26, 2013
R-24	Indorsement Letter dated April 03, 2013
R-25	Final Decision on Disputed Assessment dated April 01, 2014
R-26	Letter dated July 01, 2014
R-27	Judicial Affidavit of Revenue Officer Jimmy E. Belen, Jr.
R-27-a	Signature of Affiant Revenue Officer Jimmy E. Belen, Jr.
R-28	Judicial Affidavit of Revenue Officer Teresita D. Tibayan
R-28-a	Signature of Affiant Revenue Officer Teresita D. Tibayan
R-29	Judicial Affidavit of Revenue Officer Sonny Boy M. Lambarte
R-29-1	Signature of Affiant Revenue Officer Sonny Boy M. Lambarte
R-30	Judicial Affidavit of Revenue Officer May C. Gimeno
R-30-1	Signature of Affiant Revenue Officer May C. Gimeno

The Memorandum (For Respondent) was filed on January 3, 2017; while the Memorandum [For the Petitioner] was filed on January 18, 2017. Hence, the case was declared submitted for decision."

On January 18, 2018, the Court in Division rendered the assailed Decision granting respondent's Petition for Review. The Court in Division had ruled that the waiver executed by the parties was defective as it did not indicate the date of acceptance by the BIR. As such, the said waiver did not validly extend the original three-year prescriptive period.

Aggrieved, petitioner filed a Motion for Partial Reconsideration on February 6, 2018 which the Court in Division denied in the assailed Resolution.

On June 29, 2018, petitioner filed the present Petition for Review.

On August 2, 2018, respondent filed its Comment/Opposition (To the Petition for Review dated 27 June 2018).[6]

In a Resolution dated August 16, 2018,[7] the Court *En Banc* gave due course to the present Petition for Review. In the same Resolution, the present case was submitted for decision.

THE ISSUES

Petitioner filed the present Petition for Review based on the following grounds: [8]

> "I
>
> THIS CASE INVOLVES THE APPEAL OF AN ADMINISTRATIVE DECISION. THUS, JUDICIAL REVIEW SAHOULD (sic) BE LIMITED TO THE ISSUES RAISED IN THE ADMINISTRATIVE PROCEEDINGS AND THE ASSIGNED ERRORS TO THE ADMINISTRATIVE DECISION.
>
> II
>
> THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY RESPONDENT. PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED.
>
> III
>
> ASSUMING THE COURT MAY SUDDENLY DECIDE THE CASE BASED ON AN ISSUE THAT WAS NEVER RAISED BY RESPONDENT, NEVER JOINED BY THE PLEADINGS, NEVER RAISED AT THE PRE-TRIAL ORDER, NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER AND NEVER TRIED BY THE PARTIES – STILL THE WAIVER WAS ACCORDED VALIDITY BY THE PARTIES."

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[6] *Id.*, pp. 68-78.
[7] *Id.*, pp. 80-81.
[8] *Id.*, pp. 14-15.

THE COURT *EN BANC*'S RULING

In his Petition, the CIR maintains that since it rendered a Final Decision on Disputed Assessment, the jurisdiction of the Court in Division shifts from a trial court to an appellate tribunal.[9] Thus, petitioner posits that it was an error for the Court in Division to rule on a matter that was never made an issue in the administrative level, *i.e.*, the validity of the waiver.[10] According to petitioner, the Court in Division should have confined itself to the issues raised in the administrative protest to the deficiency assessment.[11] On this matter, petitioner cited as legal basis the Supreme Court case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*.[12]

Petitioner also claims that its basic right to fair play and due process was violated when the Court in Division granted a relief that was never prayed for by respondent.[13] Considering that the said issue on the validity of the waiver was never joined in the pleadings nor raised by the parties during the pre-trial conference and the parties were never heard nor given the opportunity to be heard therefor, petitioner submits that he was denied of his procedural and substantive due process rights.[14]

Finally, petitioner argues that the waiver subject of the present case was validly executed to toll the running of the prescriptive period.[15]

The Petition for Review lacks merit.

After careful evaluation of the facts, issues, and arguments presented by the parties, the Court *En Banc* finds that petitioner CIR failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Assailed Division and Resolution. At any rate, if only to put petitioner's mind to rest as well as to reinforce the discussion in the Assailed Decision and Resolution, the Court *En Banc* will address the matters herein raised.

It bears stressing that *Pilipinas Total Gas* does not apply largely because the facts of the said case are different from the facts of the present case. The Court *En Banc* notes that in *Pilipinas Total Gas,* the Supreme Court held that when the taxpayer failed to prove that it had submitted the complete supporting documents in support of its administrative *claim for refund,* its Petition for Review before the CTA is dismissible not due to lack

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[9] *Id.*, pp. 15-16.
[10] *Id.*
[11] *Id.*
[12] G.R. No. 207112, December 8, 2015, 776 SCRA 395 ("*Pilipinas Total Gas*").
[13] *Id.*, pp. 18-21.
[14] *Id.*
[15] *Id.*, pp. 21-24.

of jurisdiction but for failure to substantiate the claim at the administrative level. The relevant statements of the Supreme Court in *Pilipinas Total Gas* were clearly made within the context of a refund case. In contrast, the present case involves an *assessment* for deficiency income tax, fringe benefits tax (FBT) and compromise penalty which was deemed prescribed by the Court in Division due to the failure of the defective waiver to validly extend the original three-year prescriptive period. Truth be told, the portions of *Pilipinas Total Gas* as quoted by petitioner CIR in his Petition do not, in any way, support his view that when an FDDA was issued, this Court should only confine itself to the issues raised in the administrative protest to the assessment.

It must be remembered that under Section 8 of Republic Act (RA) No. 1125, as amended, this Court is categorically described as a court of record.[16] Cases filed before this Court are litigated *de novo* and as such, party-litigants are mandated to prove every minute aspect of their cases.[17]

More importantly, in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[18] the Supreme Court emphatically held that this Court can resolve an issue which was not raised by the parties. It held that:

> **"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 9r

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

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

[18] G.R. No. 183408, July 12, 2017, 831 SCRA 18.

> 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*,[19] to wit:

> "**[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**

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[19] G.R. No. L-63575, January 20, 1988, 157 SCRA 140, 145-146.

> **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.)*[20] 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.

WHEREFORE, the present Petition for Review 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

[20] G.R. No. 212825, December 7, 2015, 776 SCRA 343 ("*Next Mobile*").

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice