REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1173** (CTA CASE No. 8350)
	Present: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
-versus-	
BANK OF THE PHILIPPINES ISLANDS, *Respondent.*	Promulgated: SEP 16 2015 3:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4,* in relation to *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA),*[1] *as amended,* of the Decision dated

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[1] Rule 4, 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 Divisions 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;

x x x x x x x x x

Rule 8, SEC. 3. *Who may appeal; period to file petition.* – x x x

February 12, 2014[2] and the Resolution dated April 25, 2014[3] rendered by the Special Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated February 12, 2014:

"**WHEREFORE,** the Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy dated September 21, 2011 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."

Resolution dated April 25, 2014:

"**WHEREFORE,** respondent's "Motion for Reconsideration (Re: Decision dated 12 February 2014)" is hereby **DENIED** for lack of merit.

SO ORDERED."

The facts of the case, as recited by the Special Third Division in its Decision,[4] are as follows:

"[Respondent], Bank of the Philippine Islands ["BPI"], is a domestic corporation duly registered with the Securities and Exchange Commission ("SEC"). ℓ

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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[2] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Amelia R. Cotangco-Manalastas, *En Banc* Docket, pp. 35-51.
[3] Id., pp. 52-56.
[4] *Supra* note 2.

On the other hand, [petitioner] is the duly appointed Commissioner of Internal Revenue empowered under the National Internal Revenue Code to authorize the examination of any taxpayer and the assessment of the correct amount of tax as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue ("BIR"), with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 1987, Citytrust Banking Corporation ("CBC") filed its Annual Income Tax Returns for its Regular Banking Unit, and Foreign Currency Deposit Unit, for the taxable year 1986.

On August 11, 1989, July 12, 1990, and November 8, 1990, CBC executed Waivers of the Statute of Limitations under the National Internal Revenue Code.

On March 7, 1991, [petitioner] issued a Pre-Assessment Notice ("PAN") against CBC for deficiency taxes, among which is for deficiency Income Tax for taxable year 1986 in the total amount of ₱19,202,589.97; on April 22, 1991, counsel for CBC filed its Protest against the said PAN.

On May 6, 1991, [petitioner] issued a Letter, with attached Assessment Notices, demanding for the payment of the subject deficiency taxes within thirty (30) days from receipt thereof; on May 27, 1991, counsel for CBC filed its Protest against the said assessments, and on February 17, 1992, counsel for CBC filed another Protest thereto.

On February 5, 1992, [petitioner] issued a Letter addressed to CBC, requesting for the payment of its tax liabilities, within ten (10) days from receipt thereof.

On March 29, 1994, counsel for CBC issued a Letter addressed to [petitioner], offering a compromise settlement on its deficiency Income Tax assessment for taxable year 1986; with attached Application for Compromise Settlement/Abatement of Penalties under Revenue Memorandum Order ("RMO") No. 45-93, in the amount of ₱1,721,503.40, or twenty percent (20%) of the subject assessment, which was received on the next day, March 30, 1994.

On May 2, 1994, counsel for CBC issued a Letter addressed to [petitioner], reiterating its Letter of offer for compromise settlement dated March 29, 1994 and Application for Compromise Settlement/Abatement of Penalties under RMO No. 45-93.

On October 12, 1994, [petitioner] approved the earlier mentioned Application for Compromise Settlement of CBC, provided that one hundred percent (100%) of its deficiency Income Tax assessment for the year 1986, or in the amount of ₱8,607,517.00, be paid within fifteen (15) days from receipt thereof.

On November 28, 1994, counsel for CBC issued a Letter addressed to [petitioner], requesting for a reconsideration of the approved amount as compromise settlement, and offering to pay the amount of ₱1,600,000.00 as full and final settlement of the subject assessment.

On March 8, 1995, counsel for CBC issued a Letter addressed to [petitioner], reiterating its request for reconsideration in its Letter dated November 28, 1994, and offering to increase its full and final settlement in the amount of ₱3,200,000.00.

On March 28, 1995, [petitioner] again approved the Application for Compromise Settlement of CBC dated March 30, 1994, provided that the latter pays the amount of ₱8,607,517.00, within fifteen (15) days from receipt thereof.

On May 4, 1995, counsel for CBC issued another Letter addressed to [petitioner], requesting for a final reconsideration, and reiterating its offer of compromise in the amount of ₱3,200,000.00.

On July 14, 1995, [petitioner], however, disapproved the Application for Compromise Settlement of CBC dated March 30, 1994.

On July 27, 1995, CBC issued a Letter addressed to [petitioner], requesting for reconsideration and offering to pay the increased amount of ₱4,303,758.50.

On October 4, 1996, the SEC approved the Articles of Merger between [respondent] and CBC, with the former as the surviving corporation.

On May 26, 2011, [petitioner] issued a Notice of Denial addressed to [respondent], requesting for the payment of CBC's deficiency Income Tax for the taxable year 1986, within fifteen (15) days from receipt thereof.

On July 28, 2011, [petitioner] issued another Letter addressed to [respondent], denying the offer of compromise penalty, and requesting for the payment of the amount of ₱19,202,589.97, plus all increments incident to delinquency pursuant to Sections 248(A)(3) and 249(C)(3) of the 1997 National Internal Revenue Code, as amended.

On September 21, 2011, [petitioner] issued a Warrant of Distraint and/or Levy against [respondent].

And on October 7, 2011, [respondent] filed the [present] Petition for Review."

The Special Third Division held that BPI can validly assail the Warrant of Distraint and/or Levy, as its appellate jurisdiction is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. Citing the case of *Pantoja vs. David,*[5] the Supreme Court upheld the jurisdiction of this Court to act on a petition to invalidate and annul the

[5] G.R. No. 162852, December 15, 2004.

distraint orders of the Commissioner of Internal Revenue. Likewise, the Special Third Division ruled that the Assessment Notices, being issued only on May 6, 1991, were already issued beyond the three-year period to assess, counting from April 15, 1987, when CBC filed its Annual Income Tax Returns for the taxable year 1986. Moreover, the Waivers of Statute of Limitations executed on July 12, 1990, and November 8, 1990 were not in accordance with the proper form of a valid waiver pursuant to Revenue Memorandum Order ("RMO") No. 20-90. That being the case, these waivers failed to extend the period given to the CIR to assess. On the other hand, the Waiver of Statute of Limitations on August 11, 1989, having been executed before the effectivity of RMO No. 20-90, although it has effectively extended the period to assess until August 31, 1990, was rendered inutile as the assessment was issued beyond the said extended period.

The Special Third Division also took into consideration that even if assuming *arguendo* that the Waivers had effectively extended the period to assess, making the Assessment Notices issued within the prescribed period, the Warrant of Distraint and/or Levy was however issued beyond the prescriptive period to collect,[6] absent any proof that this is one of the exceptions to extend the said period in accordance with Section 233[7] of the 1977 National Internal Revenue Code or Section 222[8] of the 1997 Tax Code.

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[6] Three (3) years following the assessment during the effectivity of the 1977 Tax Code, or five (5) years in the 1997 NIRC, as amended.

[7] SEC. 223. Suspension of Running of Statute of Limitations. — The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

[8] SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

CIR's Motion for Reconsideration was denied for lack of merit, hence, this Petition was filed.

CIR argues in her Petition for Review that this Court has not acquired jurisdiction over the case as the assessment issued, being undisputed, has become final and unappealable. CIR insists that a Decision was rendered on February 5, 1992, asking BPI to settle the deficiency tax assessment and failure to do so will lead to enforcement of collection. Since the Decision was never disputed by BPI, such became final, thus, it can no longer be appealed before this Court.

Further, CIR contends that the government's right to assess and collect deficiency tax from BPI has not prescribed. Since BPI allowed several compromises on its manifestation to settle its tax liability, the government

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"(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.

"(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

"(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

"(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

"(e) Provided, however, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

should not be prejudiced by the said act of BPI. Lastly, BPI is now estopped to raise defects in the Waivers for prescription to set in.

We rule to DENY the Petition.

We reiterate the ruling of the Court in Division that this Court has jurisdiction over cases praying for the cancellation and withdrawal of the Warrant of Distraint and/or Levy, as already enunciated by the Supreme Court in the case of *Pantoja vs. David*,[9] citing the provisions of Section 7 of Republic Act 9282, which provides:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 1. xxx
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> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> xxx xxx xxx"

[9] 111 Phil. 197 (1961).

The February 05, 1992 Decision of the CIR, which she insists to be the reckoning point to protest, was not proven to have been received by BPI when the latter denied its receipt. Thus, the assessment notice dated May 6, 1991 should be deemed as the final decision of the CIR on the matter, in which BPI timely protested on May 27, 1991. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[10] In the instant case, BPI denies receiving the assessment notice, and the CIR was unable to present substantial evidence that such notice was, indeed, mailed or sent before the BIR's right to assess had prescribed and that said notice was received by BPI. As a matter of fact, there was an express admission on the part of the CIR that there was no proof that indeed the alleged Final Assessment Notice was ever sent to or received by BPI. As stated in the Transcript of Stenographic Notes[11] on the court hearing dated October 29, 2012:

> "Q: And you anchor your argument based on this document (Letter dated February 5, 1992) that this is the final decision of the BIR, is that correct?
>
> A: Yes.
>
> Q: When was this received by the petitioner City Trust Banking Corporation?
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> A: I think it was only mailed.
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> Q: What is your proof that it was mailed?
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> A: Because the BIR... (interrupted by Atty. Nidea)

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[10] Republic v. Court of Appeals, G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 355.
[11] pp. 30-32.

Q: Do you have any proof that it was mailed?

A: No, I don't have any proof.

Q: So, you don't have any proof. So you don't have any proof that it was received by the petitioner?

A: I don't have any idea.

Q: You don't have any proof. "

Moreover, as correctly pointed out in the assailed Resolution, whether or not the Letter dated February 5, 1992 constitutes as the Final Decision on the Disputed Assessment appealable under Section 229 of the 1977 Tax Code, or whether the same was validly served and duly received by BPI, are immaterial matters which will not cure the nullity of the said Preliminary Assessment Notice and Assessment Notices, as they were clearly made beyond the prescriptive period.

The case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*[12] cited by the CIR is misplaced. In the said case, the Supreme Court considered a demand letter making reference to the protest filed by the taxpayer as the final decision which may be subject to judicial appeal, but failed to do so by the taxpayer therein, making the said demand letter as final and unappealable. In the instant case however, after the demand letter dated May 6, 1991, BPI was able to protest on May 27, 1991. From thereon, no decision on the said protest was ever received by BPI. In fact, BPI reiterated its concern in another protest on February 17, 1992.

CIR argues that BPI is estopped from assailing the validity of the waivers with respect to the assessment of its deficiency taxes.

[12] G.R. No. 148380, December 09, 2005.

It is well established that issues raised for the first time on appeal are barred by estoppel.[13] However, in the leading case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[14] the Supreme Court held that:

> "The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. xxx As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. xxx
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> Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. xxx Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed."

Applying the said ruling in the case at bench, BPI is not estopped from raising the invalidity of the subject Waivers as the BIR in this case caused the defects thereof. As such, the invalid Waivers did not operate to toll or extend the period of prescription.

As stated by this Court in the case of *Commissioner of Internal Revenue vs. Union Cement Corporation:*[15]

> "xxx Although a factual issue was not raised in the trial court, such issue may still be considered and resolved by the Court in the interest of substantial justice, if it finds that to do so is necessary to arrive at a just decision, or when an issue is closely related to

[13] Ayala Land and Capitol Citifarms Inc., vs. Castillo, G.R. No. 178110, June 15, 2011.
[14] G.R. No. 178087, May 5, 2010.
[15] CTA EB Case No. 895, March 22, 2013.

an issue raised in the trial court and the Court of Appeals and is necessary for a just and complete resolution of the case. When the trial court decides a case in favor of a party on certain grounds, the Court may base its decision upon some other points, which the trial court or appellate court ignored or erroneously decided in favor of a party.

Likewise, in the case *of Robert Dino vs. Maria Luisa Judal-Loot, et al.*, it was held that the Court is clothed with ample authority to entertain issues or matters not raised in the lower courts in the interest of substantial justice, further citing the case of *Casa Filipina Realty Corporation vs. Office of the President, et al.*, which said:

> "[T]he trend in modern-day procedure is to accord the courts broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for resolution which the parties failed to raise or which the lower court ignored. Since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties."

Consequently, the principle relied upon by respondent is not without exception.

It must be emphasized that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration." (Citations Omitted)

Consequently, since the right of the CIR to assess BPI has already prescribed, it follows that BPI is not liable to pay the deficiency tax assessments.

As to the contention that by the repeated requests of BPI to compromise, such is already estopped to raise the defense of prescription, the several offers of compromise are rendered futile as these would no longer serve their purpose as the period for assessment has already prescribed in the first place. If there is no valid assessment, then there is nothing to compromise.

As to the period of collection, We uphold the ruling of the Division that such has already prescribed. Regardless if We will reckon the period to collect from May 6, 1991, or the alleged Final Demand Letter on February 5, 1992, counting the three-year period therein to collect in accordance with Section 223(c) of the 1977 Tax Code, obviously, the mode of collection through issuance of Warrant of Distraint and/or Levy on October 05, 2011 was made beyond the prescriptive period.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated February 12, 2014 and April 25, 2014, respectively, are hereby **AFFIRMED**.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

prior party represented as former ASG

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice