REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1710** (CTA Case No. 8803)
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
BANFF REALTY & DEVELOPMENT CORP., Respondent.	Promulgated: JUN 10 2019 4:10 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) under Section 18 of Republic Act No. (RA) 1125, as amended, in relation to Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA)[1] in relation to Rule 43 of the Rules of Court seeking the reversal of the following:

1. May 23, 2017 Decision[2] of the CTA First Division[3] the dispositive portion of which reads:

> "Considering that petitioner received the FLD No. 39-B08-0 dated March 11, 2013 only on March 12, 2013, the subject deficiency income tax and deficiency expanded withholding tax assessments have prescribed. Correspondingly, the Petition for Review must necessarily be granted.

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[1] Petition for Review, *Rollo*, p. 2.
[2] Compliance, *Rollo*, pp. 37-51.
[3] Penned by J. Erlinda P. Uy with the concurrence of J. Roman G. Del Rosario and J. Cielito N. Mindaro-Grulla.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED** on the ground of prescription. Accordingly, the Final Assessment Notice/Demand Letter No. 39-B08-07 dated March 11, 2013 issued by respondent is hereby declared **VOID**, and thereby, **CANCELLED** and **SET ASIDE**.

SO ORDERED."

2. September 6, 2017 Resolution[4] denying the CIR's Motion for Reconsideration and the Omnibus Motion of Banff Realty Development Corporation (Banff) for lack of merit.

THE FACTS

The facts, culled from the appealed decision and the records, are as follows:

The Parties

Petitioner CIR is the head of agency of the BIR, with official address at the BIR National Office Building, BIR Road, Diliman, Quezon City. He is authorized by law to issue deficiency tax assessments, as well as to decide and act on protests thereto, and was the one who actually issued the questioned Final Assessment against petitioner.[5]

Respondent taxpayer Banff is a company duly-organized and existing under and by virtue of Philippine laws, with principal office address at No. 34 Esteban Abada St., Loyola Heights, Quezon City. It is primarily engaged in the business of real estate development, and is a duly-registered taxpayer with the Bureau of Internal Revenue (BIR) under Tax Identification No. 002-831-897-000.[6]

Relevant Facts

On April 15, 2008, Banff filed before the BIR its Income Tax Return, together with its corresponding Financial Statements, for fiscal year 2007.[7]

On July 25, 2008, Banff was thereafter served with a Letter of Authority No. 00039537 by the BIR, whereby it was formally informed of the latter's intention to examine petitioner's books of accounts for the year 2007.

[4] Compliance, *Rollo*, pp. 54-62.
[5] Decision, *Rollo*, p. 38.
[6] *Id.* at pp. 37-38.
[7] *Id.* at p. 38.

Sometime in February 2011, the BIR filed a criminal complaint for alleged violation of Sections 5[8] and 11[9] of the National Internal Revenue Code of 1997 (1997 NIRC) against Banff's President, Ramon A. Syhunliong, for the latter's supposed failure to comply with the *subpoena duces tecum*, which case was filed before the Office of the City Prosecutor of Quezon City and docketed as XV-03-INV-11C-01993.[10]

In a June 30, 2011 Notice of Informal Conference, received by Banff on July 5, 2011, Revenue District Officer Clavelina S. Nacar informed the taxpayer that Revenue Officer (RO) Flordeliza Reyes has submitted her report of investigation conducted on the internal revenue tax liabilities for calendar year (CY) ended December 31, 2007 and that she has found deficiency taxes. The letter invited Banff to an informal conference to discuss the findings as

[8] **SEC. 5.** *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and

(E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.

The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code.

[9] **SEC. 11.** *Duties of Revenue District Officers and Other Internal Revenue Officers.* - It shall be the duty of every Revenue District Officer or other internal revenue officers and employees to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with, and to aid in the prevention, detection and punishment of frauds of delinquencies in connection therewith.

It shall be the duty of every Revenue District Officer to examine the efficiency of all officers and employees of the Bureau of Internal Revenue under his supervision, and to report in writing to the Commissioner, through the Regional Director, any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts and any evidence sustaining each case.

[10] Decision, *Rollo*, p. 38

well as submit documentary evidence to support its objections against the proposed assessment.[11]

In an *undated* Memorandum, RO Flordeliza Reyes recommended that the report on the tax investigation conducted on Banff be forwarded to the Assessment Division of Revenue Region No. 7.[12]

In a Resolution dated July 12, 2011, the Office of the City Prosecutor of Quezon City dismissed the criminal complaint against Banff's President finding that Banff had fully complied with the *subpoena duces tecum* of the BIR.[13]

Subsequently, on March 12, 2013, respondent Banff received a Preliminary Assessment Notice (PAN) and, thereafter, a Formal Letter of Demand (FLD) No. 39-B08-07 dated March 11, 2013 issued by the petitioner CIR.[14] Based on this FLD, petitioner was assessed of deficiency income tax in the aggregate amount of ₱18,855,340.68 and of deficiency expanded withholding tax in the aggregate amount of ₱2,587,623.71, respectively computed as follows:[15]

I. DEFICIENCY INCOME TAX			
Taxable income per Income Tax Return (ITR)			₱ 32,064,192.12
Add: Adjustments per investigation:		₱ 546,814.40	
Salaries and wages not subjected to withholding tax			
Income payments not subjected to withholding tax		3,075,530.10	
Unaccounted source of cash		682,286.47	
Disallowed personal expenses		15,417,156.36	
Disallowed expenses		341,351.94	
Unsupported representation and entertainment expense		1,500,000.00	21,563,139.27
Taxable Income per Investigation			**₱ 53,627,331.39**
Income tax due thereon			₱ 18,769,565.99
Less: Tax credits/payments:			
Unexpired excess of prior year's MCIT over NIT		₱ 49,146.27	
Prior years' excess credits		554,682.48	
Creditable withholding tax		10,569,133.05	
Payments		49,505.44	11,222,467.24
Deficiency Income Tax			₱ 7,547,098.75
Add: 50% Surcharge		₱ 3,773,549.37	
20% Interest p.a. (04.16.2008 to 04.11.13)		7,534,692.56	11,308,241.93
TOTAL AMOUNT DUE			**₱18,855,340.68**
II. DEFICIENCY EXPANDED WITHHOLDING TAX			
	Amount	EWT Rate	Amount Due
Payments by top 20,000 Corp. to reg. supplier of services/contractors/subcontractors	₱ 3,015,530.10	2%	₱ 60,310.60
Payments by top 20,000 Corp. to reg. supplier of goods	82,360,714.85	1%	823,607.15
Professional fees	60,000.00	15%	9,000.00
Additions to property, plant and equipment	12,254,580.50	1%	122,545.81
Deficiency Expanded Withholding Tax			₱ 1,015,463.56

[11] Exhibit R-5, BIR Records, pp. 513-518.
[12] Exhibit R-6, BIR Records, p. 526.
[13] Decision, *Rollo*, p. 38.
[14] *Id.* at p. 39.
[15] *Id.*

Add: 50% Surcharge		₱ 507,731.78	
20% Interest p.a. (01.16.2008 to 04.11.13)		1,064,428.37	1,572,160.15
TOTAL AMOUNT DUE			**₱ 2,587,623.71**

On April 11, 2013, Banff filed its Letter-Protest dated April 11, 2013, questioning the FLD on the ground of prescription.[16]

In a letter with a stamp mark dated May 15, 2013, Regional Director Jonas DP. Amora referred to the April 11, 2013 letter and stated that the request for reinvestigation was granted. Furthermore, the letter stated that the case will be forwarded to the Revenue District Office No. 39, South Quezon City, for appropriate action.[17]

In a June 17, 2013 Memorandum of Assignment addressed to Group Supervisor (GS) Grace P. Olasiman and RO Lili E. Bautista, Assistant Revenue District Officer Shirley A. Calapatia referred the Banff's case docket to the examiners for reinvestigation, inviting attention to the attached undated memorandum from Regional Director Jonas DP. Amora.[18]

In a July 3, 2013 letter, Revenue District Officer Shirley A. Calapatia informed Banff that its letter protest/request for reinvestigation on the formal letter of demand issued by the Assessment Division of the region was assigned to RO Lili E. Bautista under GS Grace P. Olasiman.[19]

In a November 20, 2013 Memorandum written by RO Lili E. Bautista, noted by GS Grace P. Olasiman and approved by RDO Florante R. Aninag, stated that Banff submitted no supporting documents to refute the findings made and, thus, recommended that the assessment based on the Formal Letter of Demand be reiterated.[20]

In a March 7, 2014 letter, which was received by Banff on March 15, 2014, Regional Director Jonas DP. Amora reiterated the assessments issued against Banff and requested the payment of its tax liability per Final Assessment Notice / Demand Letter No. 39-B018-07 dated March 11, 2013. The letter further stated that it is the final decision and the taxpayer may appeal this decision with the CTA within thirty (30) days from receipt.[21]

[16] Decision, *Rollo*, p. 40.
[17] BIR Records, p. 611.
[18] BIR Records, p. 614.
[19] BIR Records, p. 615.
[20] BIR Records, p. 621.
[21] Exhibit R-8 and P-10, BIR Records, p. 638.

CTA First Division Proceedings

On April 14, 2014, after the BIR denied its Letter-Protest dated April 11, 2013, Banff was constrained to file a Petition for Review before the Court *a quo*.

The CIR filed his Answer on June 24, 2014, interposing the following defenses, to wit:

> "3. Herein petitioner is presumed to have received the Final Assessment Notice, Formal Demand Letter and Details of Discrepancies. As such he is presumed to have been fully appraised [sic] of the facts and the Law upon the Final Assessment was based.
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> 4. Records disclosed that a Letter of Authority dated July 18, 2008 has been duly issued for the investigation of the petitioner's internal revenue tax liabilities for the calendar year ending December 31, 2007; that the same has been duly served to and received by each authorized representative on June 25, 2008; that, pursuant thereto, you were requested to proceed for tax audit purposes, your books of accounts and other pertinent underlying accounting records, in order that your correct tax liability for the aforesaid taxable year may be determined; that, however, despite repeated requests for the presentation of the said records, you continuously failed to present the same for audit purposes, in violation of Sec. 235 of the National Internal Revenue Code of 1997, which provides that 'The said books and records shall be subject to examination and inspection by internal revenue officers;' that, in view of the continued refusal to present the said books and records for the aforesaid purpose, a subpoena duces tecum was issued by this office, dated March 11, 2010, pursuant to Sec. 5 of the Tax Code requiring that the aforesaid records be presented for audit purpose and advising that any violation thereof shall be punishable under 266 of the Code; that the said subpoena was duly served to and received by you or your duly authorized representative on March 18, 2010; that, however, despite thereof, the aforesaid books and records have not been presented for audit purposes, in violation of law; that, in view of the foregoing, this office was constrained to institute criminal action against you for violation of summons.
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> 5. In the Supreme Court decision, in the case of Mariano Zamora vs. Collector of Internal Revenue, held that it is the legal obligation of the taxpayer to support his tax return filed with corresponding accounting records, otherwise, the Commissioner of Internal Revenue or his authorized representative may assess the proper tax based on best evidence obtainable, in which case, the examination may be made through estimate or approximation, bearing heavily if he chooses, upon the taxpayer whose inexactitude is of his own making.
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> 6. Finally, settled in the rule that the tax assessments by tax examiners are presumed correct and made in good faith (Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671). It is the taxpayer and not the Bureau of Internal Revenue who has the duty of providing otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not

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> be disturbed. All presumptions are in favor of tax assessments. 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 notices."[22]

Pre-Trial Conference was initially set on September 4, 2014.[23] After several motions filed by the parties, however, Pre-Trial Conference was finally held on June 18, 2015. The CIR filed his Pre-Trial Brief on October 21, 2014 while Banff filed its Pre-Trial Brief on November 24, 2014.[24]

On August 18, 2015, by agreement of the counsels, the parties filed their Joint Stipulation of Facts and Issues (JSFI).[25]

In a September 7, 2015 Resolution, the Court ordered the parties to file a Supplemental JSFI in order that the parties may comply with the Court's directive to state the complete list of the parties' exhibits with the correct mode of markings, the hearing dates, and the witnesses to be presented on the dates agreed upon for their presentation, pursuant to the Resolution dated June 18, 2015.[26]

Thus, on November 9, 2015, a Supplemental JSFI was filed by the parties. In the Resolution dated November 13, 2015, the Court approved the parties' JSFI and Supplemental JSFI, and the Pre-Trial was terminated. On December 1, 2015, the Court issued its Pre-Trial Order on the basis thereof.[27]

Subsequently, the CIR submitted the BIR Records for taxable year 2007, consisting of 642 pages contained in one (1) folder.[28]

During trial, the parties presented their respective testimonial and documentary evidence. Banff presented two (2) witnesses: Emmanuel R. Garcia, external auditor, and Revenue Officer Flordeliza B. Reyes, as hostile witness.[29] The CIR, on the other hand, recalled Revenue Officer Flordeliza B. Reyes and presented her as his witness.[30]

After the CIR rested his case, the parties were given a period of thirty (30) days from receipt of the Resolution dated September 26, 2016 within which to file their respective memoranda. Petitioner filed its Memorandum on November 7, 2016, while respondent filed his Memorandum on November 28, 2016.[31] ge

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[22] *Id.* at pp. 40-41.
[23] Notice of Pre-Trial Conference, Division Docket, p. 66.
[24] Decision, *Rollo*, p. 41.
[25] *Id.* at p. 42.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Minutes of February 9, 2016 Hearing, Division Docket, pp. 297-298.
[30] Decision, *Rollo*, p. 42.
[31] *Id.*

In the Resolution dated December 2, 2016, the case was deemed submitted for decision.[32]

On May 23, 2017, the Court *a quo* promulgated a decision which granted Banff's petition and declared as void the FLD No. 39-B08-07dated March 11, 2013.[33]

On September 6, 2017, the CTA First Division issued a Resolution which denied both the Motion for Reconsideration of the CIR and the Omnibus Motion of Banff.[34]

CTA En Banc Proceedings

On September 20, 2017, the CIR filed the instant petition seeking relief from the adverse decision below.[35]

On October 10, 2017, the Court issued a Resolution requiring petitioner CIR to submit the following documents:

- Certified true copy of the appealed May 23, 2017 Decision;
- Certified true copy of the September 6, 2017 Resolution;
- Verification/Certification Against Forum Shopping; and,
- Affidavit of Filing and Service of the Petition for Review with attached Registry Receipts.[36]

On November 2, 2017, petitioner CIR filed his Compliance[37] with attached documents as required.

In a November 27, 2017 Resolution, the Court noted petitioner's compliance and ordered respondent Banff to file its comment on the petition.[38]

On February 12, 2018, respondent Banff filed a Comment/Opposition (Re: Petition for Review dated 19 September 2017).[39]

In a March 14, 2018 Resolution, the Court gave due course to the petition and granted the parties thirty (30) days from notice to file their memoranda.[40] *fr*

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[32] *Id.* at p. 43.
[33] *Id.* at p. 50.
[34] *Id.* at p. 62.
[35] *Id.* at pp. 1-13.
[36] *Id.* at pp. 26-27.
[37] *Id.* at pp. 28-62.
[38] *Id.* at pp. 64-65.
[39] *Id.* at pp. 69-83.
[40] *Id.* at pp. 129-130.

On May 3, 2018, petitioner CIR filed his Memorandum[41] whereas respondent Banff failed to file any, per May 31, 2018 Records Verification.[42]

Accordingly, on June 28, 2018, the Court issued a resolution submitting the case for decision.[43]

THE ISSUES

The petitioner CIR prays that the Court *En Banc* uphold the deficiency income tax and expanded withholding tax assessments plus interest and reverse and set aside the assailed decision of the First Division on the sole ground that:

> "Petitioner's right to assess respondent for its deficiency income tax and deficiency expanded withholding tax for the taxable year 2007 in the amount of ₱21,442,964.39 plus increments has not yet prescribed."[44]

THIS COURT'S RULING

We deny the CIR's petition for lack of merit.

Petitioner CIR prays for the reversal of the assailed decision stating that in view of the substantial overstatement of deductions based on the schedule of expenses submitted by Banff resulting in the underdeclaration of sales, receipts or income constitute *prima facie* evidence of false or fraudulent return which calls for the application of the extended ten (10)-year period of limitation under Section 222(a) of the 1997 NIRC instead of the regular three (3) years under Section 203.[45]

As a general rule, the law placed a three (3)-year period of limitation on the right of the petitioner to assess a taxpayer. This is found in Section 203 of the 1997 NIRC, as amended:

> "**SEC. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the

[41] *Id.* at pp. 131-144.
[42] *Id.* at p. 146.
[43] *Id.* at pp. 148-149.
[44] Petition for Review, *Rollo*, p. 3.
[45] *Id.* at pp. 3-10.

last day prescribed by law for the filing thereof shall be considered as filed on such last day."

By way of exception, the Tax Code grants petitioner the extended ten (10)-year period in the cases of "a false or fraudulent return with intent to evade tax or of failure to file a return", thus:

"**SEC. 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.

(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." (*underscoring supplied*)

In this case, when the respondent Banff received the FAN and FLD on March 12, 2013, it was undoubtedly beyond the three (3)-year period which expired almost two (2) years earlier, on April 15, 2011, as discussed by the Court *a quo*:

"Thus, considering that fraud is not duly proven in this case, the period of limitation is three (3) years from the filing of the return, pursuant to Section 203 of the NIRC of 1997.

Correspondingly, anent the subject deficiency income tax, respondent's right to assess the same is only up to April 15, 2011, i.e., the end of the three-year period from the filing of petitioner's Income Tax Return for fiscal year 2007 on April 15, 2008.

And as for the deficiency expanded withholding tax, the period of limitation on respondent's right to assess is respectively shown below:

Period covered	Date of actual filing of BIR Form 1601-E	Last day prescribed by law to file the return	Last day to assess under Section 203 of the NIRC of 1997
January 2007	February 3, 2007	February 10, 2007	February 10, 2010
February 2007	March 10, 2007	March 10, 2007	March 10, 2010
March 2007	April 12, 2007	April 10, 2007	April 12, 2010
April 2007	May 10, 2007	May 10, 2007	May 10, 2010
May 2007	June 9, 2007	June 10, 2007	June 10, 2010
June 2007	July 6, 2007	July 10, 2007	July 10, 2010
July 2007	August 10, 2007	August 10, 2007	August 10, 2010
August 2007	September 13, 2007	September 10, 2007	September 13, 2010
September 2007	October 11, 2007	October 10, 2007	October 11, 2010
October 2007	November 3, 2007	November 10, 2007	November 10, 2010
November 2007	December 10, 2007	December 10, 2007	December 10, 2010
December 2007	January 10, 2008	January 25, 2008	January 25, 2011

Considering that petitioner received the FLD No. 39-B08-07 dated March 11, 2013 **only on March 12, 2013**, the subject deficiency income tax and deficiency expanded withholding tax assessments have prescribed. Correspondingly, the Petition for Review must necessarily be granted." (*citations omitted*)

In asking the Court *En Banc* to revisit the assailed decision, the petitioner insists on the application of the extended ten (10)-year prescription on the ground of fraud and/or false return because of the alleged "substantial overstatement of deductions as evidenced by the schedule of expenses".[46] Petitioner further adds that under Section 248(B) of the 1997 NIRC, substantial underdeclaration of sales, receipts or income, or overstatement of deductions constitute *prima facie* evidence of false or fraudulent return.[47]

It bears stressing that this is an almost verbatim repetition of the points raised in petitioner's Memorandum[48] and Motion for Reconsideration[49] filed in the court below.

In the September 6, 2017 Resolution of the Court *a quo*, J. Uy squarely addressed the crucial issue of whether the thirty percent (30%) threshold was breached in this case and, thus, would anchor the *prima facie* evidence of false

[46] Petition for Review, *Rollo*, p. 9.
[47] *Id.*
[48] Division Docket, pp. 383-390.
[49] Division Docket, pp. 417-423.

or fraudulent return under Section 248(B). Finding that the factual allegation of underdeclaration was *without* basis, the court *a quo* ruled in this wise:

> "Based on the foregoing provisions, what is constitutive of a *prima facie* evidence of a false or fraudulent return is either a substantial underdeclaration of sales, receipts or income, or a substantial overstatement of deductions. In turn, there is a substantial underdeclaration of sales, receipts or income, when there is failure to report sales, receipts or income exceeding 30% of that declared per return; and there is a substantial overstatement of deductions when a claim of deductions exceeds 30% of the actual deductions.
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> In this case, there is neither substantial underdeclaration of sales, receipts or income, nor a substantial overstatement of deductions, based on the respective 30%-threshold established by law.
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> And while it may be true that respondent disallowed the amount of ₱21,563,139.27 as petitioner's deductions, the same falls short of the more than 30%-threshold on the actual deductions claimed by petitioner. Evidence show that petitioner claimed a total deduction of ₱335,136,868.76 (composed of ₱278,792,183.37 as 'Cost of Sales/Services', and P56,344,685.39 as Deductions'). Clearly, the amount of disallowed deductions (i.e., ₱21,563,139.27) is only 6.43% of the said total deductions declared by petitioner.
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> Thus, petitioner is not guilty of a substantial overstatement of deductions, which would constitute a finding of *prima facie* evidence of a false or fraudulent return under the law." (*underscoring supplied; citations omitted*)

Finally, petitioner should note that the Court adheres to the principle of *stare decisis et non quieta movere*.[50] This principle has not lost its luster and continues to guide the bench in keeping the need to maintain stability in the law.[51] This principle finds application in this case because the Supreme Court has already spoken and has settled this issue being presented by petitioner. *Stare decisis* is a maxim of precedent to ensure fairness and requires the Court to apply the reasoning from earlier decisions so that later cases reach the same result as earlier cases with similar facts.[52]

In the cases of *Commissioner of Internal Revenue v. Philippine Daily Inquirer*[53] and *Commissioner of Internal Revenue v. Fitness by Design*[54] quoted at length in the decision by the court below, the Supreme Court has stated clearly that *fraud is a question of fact that should not only be alleged but duly proven* and that a *mere understatement of tax is not itself proof of*

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[50] "To stand by and adhere to decisions and not disturb what is settled."
[51] *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 132051, June 25, 2001.
[52] BOUVIER LAW DICTIONARY, Compact Edition (2011), p. 1049.
[53] G.R. No. 213943, March 22, 2017.
[54] G.R. Nos. 215957, November 9, 2016.

fraud. In these rulings, the Supreme Court has consistently upheld the standard that must be hurdled in order to apply the extended ten (10)-year prescription in Section 222(a).

Absent any powerful countervailing considerations, like cases ought to be decided alike.[55] Indeed, the doctrine of *stare decisis* compels this Court to abide by the Supreme Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.[56]

In this case, petitioner has failed to highlight any set of facts that would justify the Court's departure from the application of these established and cited precedents.

Accordingly, the Court is unconvinced, based on the foregoing rehashed arguments, that there is any reversible error in the finding that the assessment issued by the petitioner is barred by the three (3)-year prescriptive period.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The May 23, 2017 Decision and the September 6, 2017 Resolution are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[55] *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*, G.R. No. 203514, February 13, 2017.
[56] *Commissioner of Internal Revenue v. Secretary of Justice, et al.*, G.R. No. 177387, November 9, 2016.

Erlinda
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice