REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ISLAND QUARRY AND AGGREGATES CORPORATION,
Respondent.

CTA *EB* NO. 1750
(CTA Case No. 8710)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
APR 0 5 2019 11:38 am

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D E C I S I O N

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) on December 27, 2017 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which pray for the reversal and setting aside of the June 19, 2017 *Decision*[3] and November 20, 2017 *Resolution*[4] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8710, entitled "*Island Quarry and Aggregates Corporation. vs. Commissioner of Internal Revenue,*" and the issuance of a new decision instead.

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[1] *Rollo*, CTA EB No. 1750, pp. 6-19.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 23-38.
[4] *Id.*, pp. 39-41.

The dispositive portions of the assailed *Decision* and *Resolution* read:

Decision[5] dated June 19, 2017:

> "**WHEREFORE**, the Petition for Review filed by Island Quarry and Aggregates Corporation is hereby **GRANTED**. Accordingly, the tax deficiency assessments issued against petitioner for Income Tax, Value-Added Tax, and Withholding Tax in the aggregate amount of ₱48,462,807.59, for taxable years 1995, 1996, and 1997 are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

Resolution[6] dated November 20, 2017:

> "**WHEREFORE,** respondent's *Motion for Reconsideration [Re: Decision promulgated on 19 June 2017]* is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**."

The Facts

As culled from the assailed decision, petitioner CIR is the head of the Bureau of Internal Revenue (BIR) vested with the authority to administer and enforce national internal revenue laws. He holds office at the BIR National Building, Agham Road, Diliman, Quezon City.[7]

On the other hand, respondent Island Quarry and Aggregates Corporation (IQAC) is a domestic corporation, with principal address at Sitio Tagbac, Barangay San Jose, Antipolo City.[8]

On January 18, 2000, respondent IQAC received a Final Assessment Notice (FAN) and Formal Letters of Demand (FLD), finding it liable for deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), and other withholding taxes, including surcharges, interests and

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Rollo*, Decision dated June 19, 2017, p. 24.
[8] *Id.* at p. 23.

penalties for taxable years 1995, 1996, and 1997, in the aggregate amount of ₱48,462,807.64, broken down as follows:[9]

FAN NO.	PERIOD	TAX TYPE	TOTAL AMOUNT
ST-WC-95-0167-2000	1995	Withholding Tax on Compensation	₱ 3,600,180.17
ST-LP-95-0106-2000	1995	Penalties on Late Remittance of Withholding Tax	2,882,693.51
ST-INC-96-0183-2000	1996	IT	10,968,493.90
ST-WT-96-0184-2000	1996	Withholding Tax	1,835,448.12
ST-VAT-96-0185-2000	1996	VAT	15,934,885.30
ST-VAT-97-0112-2000	1997	VAT	11,395,702.17
ST-CP-97-044-2000	1997	Penalties on Late Remittance of Withholding Tax	1,845,404.47
TOTAL			**₱ 48,462,807.64**

Respondent protested the assessment for each taxable year on February 17, 2000, with Supplement thereon filed on April 17, 2000 together with documents in support of its protest.[10]

On September 29, 2000, respondent received from petitioner a letter dated September 18, 2000 stating that a reinvestigation of all its internal revenue tax liabilities for the years 1995, 1996, and 1997 had been assigned to Revenue Officers Marivic S.P. Andres, Evangeline M. Casipe, Enrique C. Pinos, and Ma. Theresa A. Raagas.[11]

On November 6, 2001, respondent received a collection letter dated October 25, 2001, demanding payment of all its deficiency tax assessments for taxable years 1995, 1996, and 1997, within ten (10) days from notice.[12]

On September 16, 2002, petitioner issued a Warrant of Distraint and/or Levy (WDL) for the satisfaction of petitioner's deficiency withholding taxes, inclusive of surcharges, interests, and penalties for the year 1995, in the amount of ₱3,600,180.17, which petitioner paid on October 16, 2002.[13]

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[9] *Rollo*, Decision dated June 19, 2017, p. 24.
[10] *Id.*
[11] *Id.*
[12] *Id.* at p. 25.
[13] *Id.*

On February 4, 2008, respondent filed a letter with the Large Taxpayers Audit and Investigation Division (LTAID), stating its intention to avail of the benefits under the tax amnesty law. On even date, respondent paid the amount of ₱500,000.00 as amnesty tax and submitted to petitioner the required documents as follows: (1) Notice of Availment of Tax Amnesty; (2) Statement of assets, Liabilities and Networth (SALN) as of December 31, 2005; (3) Tax Amnesty Return (BIR Form No. 2116); (4) Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617); and (5) BIR Tax Payment Deposit Slip dated February 4, 2008.[14]

Several years thereafter, or on March 7, 2013, respondent received a letter dated February 21, 2013 from the Large Taxpayers Collection Enforcement Division for petitioner's immediate submission of documents for the purpose of post evaluation of its Tax Amnesty Return under Republic Act (RA) No. 9480. The same letter indicated that non-compliance thereof shall be construed as lack of interest to avail of the benefits under the Tax Amnesty Law and petitioner shall be constrained to enforce the collection of the total assessment amounting to ₱48,462,807.59.[15]

On September 10, 2013, respondent received a Final Notice Before Seizure (FNBS) dated September 2, 2013, for the payment of the deficiency tax assessments referred to in the letter of February 21, 2013, amounting to ₱48,462,807.59.[16]

On September 20, 2013, respondent filed a Petition for Review (With Motion to Suspend Collection of Income, Value-Added Tax, Withholding Taxes and Surcharges, Interests and Penalties Subject of this Petition), assailing the validity of the collection letter and the FNBS.[17]

After the trial of the case, the Court in Division ruled against the petitioner stating that the right of the petitioner to collect the subject deficiency tax assessments for the years 1995, 1996, and 1997 had prescribed.[18]

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[14] *Rollo*, Decision dated June 19, 2017, p. 25.
[15] *Id.*
[16] *Id.* at pp. 25-26.
[17] *Id.* at p. 26.
[18] *Id.* at pp. 33-37.

Petitioner, not satisfied with the assailed decision, moved for the reconsideration of said ruling which the Court in Division subsequently denied for lack of merit.[19]

Thus, petitioner filed the instant *Petition for Review* on December 27, 2017 praying for the reversal and setting aside of the said assailed decision and resolution.

On January 23, 2018, respondent was ordered by this Court to file its comment on the said petition for review.[20]

Respondent filed its *Comment/ Opposition (To Petitioner's Petition for Review dated 27 December 2017)*[21] on February 27, 2018 after this Court granted[22] its *Motion for Extension of Time to File Comment (To the Petition for Review dated 27 December 2017)*[23].

On March 21, 2018, this Court had given due course to the instant petition and ordered the parties to file their respective Memoranda.[24]

On May 2, 2018, petitioner filed his *Memorandum*[25] while respondent filed its *Memorandum*[26] on May 15, 2018 through registered mail which was received by this Court on May 23, 2018 after its *Motion for Extension of Time to File Memorandum*[27] was granted[28]. The submission by the parties of their respective memoranda has render the case deemed submitted for decision.[29]

The Issue

Whether or not petitioner's right to collect the alleged deficiency tax assessments for taxable years 1995, 1996, and 1997 has already prescribed.

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[19] *Supra*, Note 4.
[20] *Rollo*, Resolution dated January 23, 2018, pp. 46-47.
[21] *Id.* at pp. 54-74.
[22] *Id.*, Minute Resolution dated February 19, 2018, p. 53.
[23] *Id.* at pp. 48-52.
[24] *Id.*, Resolution dated March 21, 2018, pp. 84-85.
[25] *Id.* at pp. 86-103.
[26] *Id.* at pp. 109-159.
[27] *Id.* at pp. 104-107.
[28] *Id.*, Minute Resolution dated May 4, 2018, p. 108.
[29] *Id.*, Resolution dated June 7, 2018, pp. 162-163.

Arguments of Petitioner[30]

Petitioner CIR argues that his right to collect respondent's deficiency tax assessments for taxable years 1995, 1996, and 1997 has not yet prescribed.

Petitioner also argues that the FNBS is admissible even if not formally offered and that respondent is not entitled to avail of the tax amnesty program under Republic Act (RA) No. 9480.

Arguments of Respondent[31]

Respondent, in its comment, argues that it is not liable for the alleged deficiency taxes since petitioner's right of collection is already barred by prescription.

Respondent further argues that it is not liable for such deficiency taxes because it had already settled its deficiency taxes for the taxable years 1995, 1996, and 1997, and that the alleged deficiency taxes have already been covered under the tax amnesty program of RA No. 9480 which respondent availed of.

Ruling of the Court *En Banc*

The Court has jurisdiction on the instant case

Although the issue on jurisdiction was already discussed in the assailed decision, this Court shall emphasize further the disquisition therein.

The jurisdiction of the CTA regarding internal revenue taxes is provided under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[30] *Supra*, Notes 1 and 2.
[31] *Supra*, Note 21 and 24.

> (1) Decisions of 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** or other laws administered by the Bureau of Internal Revenue;" (*Emphasis supplied*)

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> (1) Decisions of 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;" (*Emphasis supplied*)

The abovementioned provisions provide that it is not only the respondent's decision on disputed assessments that is appealable before this Court but also other matters arising under the NIRC or other laws administered by the BIR.

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*,[32] which was also cited in the assailed decision, the Supreme Court ruled:

> "Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. v. Court of Appeals*,[6] the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide "other matters" related to the tax assessment such as the issue on

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

the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over "other matters," it presupposes that the tax assessment has not become final and unappealable.

We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)

Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR)."

In the instant case, the basis for respondent's filing of its petition for review was petitioner's issuance of the FNBS. The purpose of the issuance of said FNBS was for the enforcement of collection on the alleged deficiency tax assessments still pending against the respondent. Thus, it is classified under Section 7(a)(1) of RA No. 1125, as amended, on "other matters arising under the NIRC or other laws administered by the BIR." The Court has therefore jurisdiction on the instant case.

Issue raised for the first time on appeal is not allowed

Petitioner, in arguing that the alleged assessments were not yet prescribed, had faulted the Court in Division for not having considered the FNBS dated March 7, 2002 which would prove that it initiated the collection of said deficiency taxes as early as 2002.

However, upon scrutiny of petitioner's (then respondent) Memorandum[33] and Motion for Reconsideration[34] (MR) for the assailed decision, the issue of the alleged FNBS dated March 7, 2002 was never raised or even discussed in passing. Thus, such is a newly-raised issue on appeal.

In *Spouses Jesus Dycoco and Joela E. Dycoco v. The Honorable Court of Appeals et al.*[35], the Supreme Court ruled that such newly-raised issue is not allowed, to wit:

> "There is no question that petitioner-spouses are entitled under the law to receive just compensation for the property taken from them and transferred to private respondents by virtue of Presidential Decree No. 27. Due process guarantees that taking of private property by the State for public use should be with payment of just compensation. Unfortunately, petitioner-spouses themselves did not consider the issue of just compensation as compelling enough because they did not raise it in the complaint or in the position paper which they filed in the Office of the Provincial Adjudicator. They only claimed just compensation for the first time on appeal, that is, when they filed their petition for review with the Court of Appeals. **The settled rule that issues not raised in the proceedings below cannot be raised for the first time on appeal** bursts the bubble that is the alleged compelling nature of petitioner-spouses' claim. Petitioner- spouses ask for due process, but **fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal.**" (*Emphasis supplied*)

In *China Trust (Phils.) Commercial Bank v. Philip Turner*,[36] the Supreme Court ruled:

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[33] Docket, CTA Case No. 8710, Vol. 3, pp. 1091-1100.
[34] *Id.*, Vol. 3, Motion for Reconsideration (Re: Decision promulgated on 19 June 2017), pp. 1147-1156.
[35] G.R. No. 147257, July 31, 2013.
[36] G.R. No. 191458, July 3, 2017.

> Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.
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> In *Philippine Ports Authority v. City of Iloilo:*
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> > As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process. (Citations omitted)
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> There is more reason for a reviewing court to refrain from resolving *motu proprio* an issue that was not even raised by a party. This Court has previously declared that:
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> > "[C]ourts of justice have no jurisdiction or power to decide a question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid. (Citations omitted)

Hence, the alleged FNBS dated March 7, 2002 shall not be considered in this decision.

Evidence not formally offered has no probative value

Petitioner also posits that even if the alleged FNBS dated March 7, 2002 is not formally offered, it should be admissible because it is part of the BIR Records which became part of the judicial records of this case. Petitioner is totally mistaken.

The records of the case particularly in petitioner's (then respondent) Formal Offer of Evidence[37] reveal that said FNBS or even the BIR Records as a whole were not among those

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[37] Docket, CTA Case No. 8710, Vol. 3, pp. 1091-1100.

offered as his evidence but only the FNBS dated September 2, 2013.

In *Republic of the Philippines v. Fe Roa Jimenez and Ignacio B. Gimenez,*[38] the Supreme Court ruled that evidence not formally offered should be excluded in the determination of the case or deemed as a waiver to submit it, to wit:

> More importantly, the Rules specifically provides that evidence must be formally offered to be considered by the court. Evidence not offered is excluded in the determination of the case. "Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it."
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> Rule 132, Section 34 provides:
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> > SEC. 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
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> The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case. Hence, any document or object that was marked for identification is not evidence unless it was "formally offered and the opposing counsel [was] given an opportunity to object to it or cross-examine the witness called upon to prove or identify it."
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> This court explained further the reason for the rule:
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> > The Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. *On the other hand, this allows opposing parties to examine the evidence and object to its admissibility.* Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court. (Emphasis supplied, citations omitted)
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> To consider a party's evidence which was not formally offered during trial would deprive the other party of due process.

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[38] G.R. No. 174673, January 11, 2016.

> Evidence not formally offered has no probative value and must be excluded by the court.

Thus, the FNBS dated March 7, 2002 not having been formally offered during the trial of the case should be excluded in the proper disposition of this case for having no probative value.

Petitioner's right to collect the alleged deficiency tax assessments for the years 1995, 1996, and 1997 has already prescribed

Petitioner argues that his right to collect the alleged deficiency tax assessments has not yet prescribed since from the time the Collection Letter was received by the respondent on November 6, 2001, said assessments became final, executory, and demandable because respondent failed to exercise its remedy of filing an MR or appealing the case to this Court within thirty (30) days from receipt thereof.

Sections 203, 223, and 224 of the 1977 National Internal Revenue Code (NIRC), as amended[39], provide for the statute of limitations (SOL) for assessment and collection of deficiency taxes on regular as well as special cases, and the suspension of such SOL, to wit:

> Sec. 203. *Period of limitation upon assessment and collection.* — Except as provided in the succeeding section, **internal revenue taxes shall be assessed within three 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-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
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> xxx xxx xxx
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> Sec. 223. *Exceptions as to period of limitation of assessment and collection of taxes.* — (a) In the case of a

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[39] As amended by Batas Pambansa Blg. 700, Presidential Decree No. 1994, and Executive Order No. 273 series of 1987; *The National Internal Revenue Code of the Philippines Annotated,* Jose N Nolledo and Mercedita S Nolledo, 1993, 16th and Revised Edition.

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 begun without assessment, at any time within ten 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 the preceding section 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 agreements made before the expiration of the period previously agreed upon.

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

(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 three-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 returns filed in accordance with the provisions of any tax amnesty law** or decree.

Sec. 224. *Suspension of running of statute.* — The running of the statute of limitations provided in Section 203 and 223 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 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 and 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.
> (*Emphasis supplied*)

The above-mentioned provisions of the 1977 NIRC, as amended, provide a SOL or prescription for assessment and collection of internal revenue taxes on regular as well as special cases.

Considering that the instant case had no allegation of either false or fraudulent return with intent to evade tax or of failure to file a return, the applicable prescriptive period for assessment is three (3) years. Thus, petitioner had until 1999, 2000, and 2001 to assess the respondent for any deficiency taxes for the taxable years 1995, 1996, and 1997, respectively.

The factual antecedents of the case reveal that the FAN/FLD for the alleged deficiency taxes was only issued on January 18, 2000. Thus, such assessment was valid only for deficiency taxes in taxable years 1996 and 1997 as the assessment for taxable year 1995 had already prescribed in the year 1999. Hence, the assessment for taxable year 1995 was null and void for having been issued beyond the prescriptive period.

Case records also reveal that after respondent filed its protest on February 17, 2000 with Supplement thereon filed on April 17, 2000, petitioner issued a collection letter dated October 25, 2001 which was received by the respondent on November 6, 2001 without the latter filing a motion for reconsideration or elevating the case on appeal.

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue et al.*[40], the Supreme Court ruled that when taxpayers receive a notice or a letter other than the Final Decision on Disputed Assessment (FDDA) demanding payment of the alleged tax deficiency assessment after the latter filed its protest letter, the same is deemed a denial of such protest, to wit:

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[40] G.R. NO. 148380, December 09, 2005.

> A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.
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> xxx xxx xxx
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> The demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, "while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as [his] final decision."

The protest was deemed denied by the issuance of said collection letter and the available remedy of the respondent was to elevate the case before this Court which it failed to do so. Hence, the assessment for the alleged deficiency taxes for the years 1996 and 1997 became final and executory. Petitioner then can enforce the collection of said deficiency taxes.

Now, the question is: when will the prescriptive period on petitioner's right to collect start?

In *Commissioner of Internal Revenue v. Philippine Global Communication, Inc*,[41] the Supreme Court ruled that the prescriptive period of petitioner's right to collect any deficiency taxes starts from the date the assessment is released, mailed or sent by the BIR, to wit:

> If the BIR issued this assessment within the three-year period or the ten-year period, whichever was applicable, the law provided another three years after the assessment for the collection of the tax due thereon through the administrative process of distraint and/or levy or through judicial proceedings. **The three-year period for collection of the assessed tax began to run on the date the assessment notice had been released, mailed or sent by the BIR.**
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> xxx xxx xxx
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> In a number of cases, this Court has also clarified that the statute of limitations on the collection of taxes should benefit both the Government and the taxpayers. In these cases, the Court further illustrated the harmful effects that

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[41] G. R. No. 167146, October 31, 2006.

the delay in the assessment and collection of taxes inflicts upon taxpayers. In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company,* Justice Montemayor, in his dissenting opinion, identified the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made.

> Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court x x x. It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay .
> (*Emphasis supplied*)

Considering that the FAN and FLD were received by the respondent on January18, 2000, petitioner had three (3) years or until January 18, 2003 to collect the assessment for the alleged deficiency taxes for the years 1996 and 1997 unless there was a probable cause to suspend the SOL as specified under Section 224 of the 1977 NIRC, as amended.

However, the factual antecedents of the case reveal otherwise. Not one of the instances cited in Section 224 of the 1977 NIRC, as amended, was present in this case except for the issuance of the WDL on September 16, 2002 covering the deficiency withholding taxes for taxable year 1995 which were subsequently settled on October 16, 2002 by respondent.

Absent any waiver of the SOL, the issuance of FNBS on September 2, 2013 was already barred by prescription and any effort to collect respondent's alleged deficiency taxes for the year 1995, 1996, and 1997 after January 18, 2003 was already null and void.

Respondent was not entitled to the benefits under RA No. 9480

Petitioner insists that respondent did not qualify to avail of the tax amnesty program under RA No. 9480 or the Tax Amnesty Law (TAL) based on the following grounds: (1) that the alleged tax assessments became final and executory prior to its application for tax amnesty; (2) that it is not covered because its withholding tax liability is excluded under Section 8(1) of the TAL; and (3) that respondent did not make a full and complete payment of the required amnesty tax due.

On the other hand, respondent argues that the submission and subsequent acceptance of Payment Form, the Notice of Availment, the Statement of Assets, Liabilities and Networth (SALN), and the Tax Amnesty Return submitted to the RDO after complete payment were deemed full compliance with the TAL.

The TAL was the law that granted a tax amnesty to qualified taxpayers for all national internal revenue taxes for taxable year 2005 and prior years, with or without assessments duly issued that have remained unpaid as of December 31, 2005. The significant provisions pertaining to the availment and grant of tax amnesty under the said law were as follows:

> "SECTION 1. *Coverage.* – There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: Provided, however, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.
>
> SECTION 2. *Availment of the Amnesty.* – Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules

and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.

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SECTION 4. *Presumption of Correctness of the SALN.* – The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents: *Provided,* That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration.

SECTION 5. *Grant of Tax Amnesty.* – Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and **pay the amnesty tax due thereon, based on his networth as of December 31, 2005 as declared in the SALN** as of said period xxx

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SECTION 6. *Immunities and Privileges.* – Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

(a) The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

(b) The taxpayer's Tax Amnesty Returns and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.

(c) The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: *Provided*, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof.

SECTION 7. *When and Where to File and Pay.* – The filing of the Tax Amnesty Return and the payment of the amnesty tax for those availing themselves of the tax amnesty shall be made within six months starting from the effectivity of the IRR. It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an acceptance of payment form authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, to accept the amnesty tax payment

SECTION 8. *Exceptions.* – The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

1. Withholding agents with respect to their withholding tax liabilities;

2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

3. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

5. Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the

felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

6. Tax cases subject of final and executory judgment by the courts."

(*Emphasis supplied*)

On August 15, 2007, the Department of Finance issued Department Order No. 29-07 (DO No. 29-07) serving as the Rules and Regulations (RR) to implement the TAL which was disseminated by the petitioner under Revenue Memorandum Circular (RMC) No. 55-2007.

The relevant provisions of DO No. 29-07 provide:

"SECTION 6. *Method of Availment of Tax Amnesty.* –

1. *Forms/Documents to be filed.* – To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

   a. Notice of Availment in such form as may be prescribed by the BIR.

   b. Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR;

   c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. *Place of Filing of Amnesty Tax Return.* – The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:

   a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.

   b. Non-residents shall file with the office of the Commissioner of the BIR, or with the RDO.

   c. At the option of the taxpayer, the RDO may assist the taxpayer in

> accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, Statement of Assets, Liabilities and Networth, or such other documents submitted by the taxpayer.
>
> 3. *Payment of Amnesty Tax and Full Compliance.* – Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2), the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.
>
> The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of - or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.
>
> <u>The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance</u> with the provisions of RA 9480. (*Underscoring supplied*)

As discussed above, petitioner's allegation that the alleged deficiency taxes for the years 1996 and 1997 became final and executory prior to respondent's application for tax amnesty is baseless since the exception under Section 8 of the TAL pertains to tax cases subject of "final and executory judgments by the courts." Furthermore, Section 1 of the TAL on Coverage also provides that the same applies also to tax deficiency with or without assessments issued by the petitioner. Hence, respondent's alleged deficiency taxes for the years 1996 and 1997 which became final and executory were separate and independent and will not impair such application for tax amnesty.

Respondent, in proving its entitlement to the said tax amnesty, submitted to petitioner the following documents: (1) Notice of Availment of Tax Amnesty; (2) Statement of assets, Liabilities and Networth (SALN) as of December 31, 2005; (3) Tax Amnesty Return (BIR Form No. 2116); (4) Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617); and (5) BIR Tax Payment Deposit Slip dated February 4, 2008. Hence, said documents apparently had complied with the requisite documents under Section 6 of DOF DO No. 29-07.

Further, the FAN included other internal revenue taxes aside from withholding taxes. Under Section 8(1) of RA No. 9480, the exception applies only to "withholding agents with respect to their withholding tax liabilities" and not to other internal revenue taxes and considering that the alleged deficiency taxes were lumped in a single assessment, the inclusion of the withholding tax liabilities will not invalidate the availment of said tax amnesty program by the respondent.

However, as to the payment of the correct amnesty tax under Section 5 of RA No. 9480, petitioner may have a point in his argument. A closer look at respondent's SALN as of December 31, 2005 [42] reveals that its declared networth amounted to ₱620,972,167.79.

Section 5 of RA No. 9480 as implemented by Section 7(2) of DO No. 29-07 provides for the required tax amnesty rate that should be paid by the respondent, to wit:

> SEC. 7. Tax Amnesty Rates. – **In order to enjoy the benefits of the tax amnesty program**, the qualified **taxpayers are required to pay an amnesty tax equivalent to five percent (5%) of their total declared networth as of December 31, 2005, as declared in the SALN** as of the said period, or resulting increase in networth by amending such previously filed statements for purposes of this tax amnesty, thereby including still undeclared assets and/or liabilities, as the case may be, as of December 31, 2005, **or the absolute minimum amnesty payment, whichever is higher**, in accordance with the following schedule:

1. Individuals (whether resident or nonresident citizens, including resident or nonresident aliens), Estates	5% or P50,000, whichever is higher

[42] Docket, CTA Case No. 8710, Vol. 2, Exhibit "P-31", p. 621.

and Trusts	
2. Corporations	
(a) With subscribed capital of above P50 Million	5% or P500,000, whichever is higher

(*Emphasis supplied*)

Taking into consideration respondent's declared networth and the above-mentioned amnesty rate, the latter should have paid the amount of ₱31,048,608.39 as the amnesty tax due, which is the higher amount between the minimum amount due of ₱500,000.00 and the 5% of ₱620,972,167.79 or petitioner's total declared networth as of its December 31, 2005 SALN.

It is true that under Section 6 of DO No. 29-07, the submission of the required documents and payment of the amnesty tax shall be considered as deemed full compliance with the provisions of the TAL.[43]

However, under Section 5 of the same law, in order for the respondent to avail of the immunities and privileges under the said law, it is required that it must pay the correct amnesty tax based on the tax rate provided under Section 5(b)(1) of the law as implemented by Section 7(2)(a) of DO No. 29-07.

Thus, the full compliance stated in the last paragraph of Section 6 of DO No. 29-07 is conditioned upon the payment of the correct amnesty tax due under the TAL as implemented by its IRR. Respondent failed on this aspect, hence, not fully compliant with the requirements of RA No. 9480.

In *Commissioner of Internal Revenue vs. Philippine-Aluminum Wheels, Inc.*,[44] the Supreme Court ruled that a tax amnesty is in the nature of a tax exemption, hence, must be construed strictly against the taxpayer and liberally in favor of the taxing authority, to wit:

> A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties

[43] *Commissioner of Internal Revenue v. Covanta Energy Philippine Holdings, Inc.*, January 24, 2018; *Commissioner of Internal Revenue v. Apo Cement Corporation*, G.R. No. 193381, February 08, 2017.
[44] G.R. No. 216161, August 9, 2017.

> on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. **A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority**. (*Emphasis supplied*)

Be that as it may, considering that petitioner's right to collect the alleged deficiency tax assessment was already barred by prescription since January 18, 2003, the non-entitlement of respondent to the benefits of the tax amnesty law is no longer relevant and material to the disposition of the instant case by this Court.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed June 19, 2017 *Decision*[45] and November 20, 2017 *Resolution*[46] are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[45] *Supra*, Note 3.
[46] *Supra*, Note 4.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice