REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

THE MUNICIPAL TREASURER OF THE MUNICIPALITY OF CLAVER, represented by CARYL DEE LUKBAN, *Petitioner,*	**CTA *EB* NO. 2157** *(CTA AC No. 183)*
	Present:
-versus-	**DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
PLATINUM GROUP METALS CORPORATION, *Respondent.*	Promulgated: JAN 07 2021 3:46 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] asking the Court *En Banc* to set aside the Amended Decision, promulgated on 16 April 2019, and Resolution, dated 30 August 2019, rendered by the Court of Tax Appeals ("CTA") Special First Division; and to reinstate the Decision, promulgated on 9 August 2018, by the CTA First Division.

Likewise, petitioner prays for the Court *En Banc* to declare respondent liable for interests and surcharges in accordance with Ordinance No. 2012-02 or the Municipal Revenue Code of Claver, Surigao Del Norte.

[1] Petition for Review, *Rollo,* pp. 1-228, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

The Parties

Petitioner Municipal Treasurer of the Municipality of Claver represented by Ms. Caryl Dee C. Lukban is the local official in charge of the collection of local taxes, fees, and charges. She is also responsible for the examination of books of accounts and pertinent records of taxpayers in order to ascertain, assess and collect the correct amount of taxes, fees, or charges in the Municipality of Claver, Surigao del Norte. She is authorized to pursue the instant case by virtue of Resolution No. 210-2019 issued by the Sangguniang Bayan, Municipality of Claver, Surigao Del Norte.

Respondent Platinum Group Metals Corporation is a domestic corporation engaged in mining activities with office address at 7th Floor Corporate Business Center, 151 Paseo de Roxas corner Arnaiz Street, Makati City.

The Facts

On 18 April 2016, petitioner issued a Notice of Assessment requiring respondent to settle the assessed local business taxes for calendar years 2015 and 2016 in the amount of ₱83,981,477.43 and ₱61,833,811.88, respectively. The Notice of Assessment was received by respondent on 28 April 2016.[3]

On 22 June 2016, respondent sent a letter to petitioner protesting the assessed local business taxes on the ground that its supposed Income Tax Holiday ("ITH") was extended to cover certain "bonus years" including calendar years 2015 and 2016. On this basis respondent denied liability over the assessed local business taxes. Petitioner received the said letter on 15 July 2016.[4]

On 28 July 2016, respondent received a letter from petitioner of even date reiterating her demand to collect the assessed local business taxes.[5]

This prompted respondent to file a Petition for Review with the Regional Trial Court of Surigao City-Branch 29 ("RTC") on 26 August 2016. Respondent prayed for the RTC to cancel and declare null and void the Notice of Assessment. The case was docketed as Civil Case No. 8208, entitled "Platinum Group Metals Corporation, v. Municipal Treasurer of the Municipality of Claver.[6]

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[3] Decision, *Rollo*, pp. 50-61.
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

On 14 February 2017, the RTC issued a Decision, declaring the Notice of Assessment against respondent null and void.[7]

Aggrieved, petitioner filed the original Petition for Review before the CTA on 20 March 2017 asking for the annulment of the Decision rendered by the RTC.[8]

On 9 August 2018, the First Division promulgated a Decision, which granted petitioner's Petition for Review and cancelled and set aside the Decision of the RTC.[9]

Respondent filed its Motion for Reconsideration (of the Honorable Court's Decision dated 9 August 2018) on 6 September 2018. Petitioner responded with her Comment on 26 September 2018. Thereafter, respondent filed its Reply (to Comment dated 24 September 2018) on 17 October 2018.[10]

Before the Court in Division could rule on the Motion for Reconsideration, petitioner filed a Motion for Clarification on 12 September 2018, with respondent's Comment (on Motion for Clarification dated 12 September 2018) filed on 5 October 2018. On the other hand, respondent filed a Motion to Set Case for Oral Argument on 11 January 2019, with petitioner's Comment on 6 February 2019.[11]

On 16 April 2019, the Special First Division issued the assailed Amended Decision[12] which granted respondent's Motion for Reconsideration, and consequently reversed and set aside the Decision of the First Division. The dispositive portion is hereby quoted, to wit:

> "**WHEREFORE**, respondent's "Motion for Reconsideration (of the Honorable Court's Decision dated 9 August 2018)" filed on September 6, 2018 is **GRANTED**. Accordingly, the August 9, 2018 Decision of this Court is **REVERSED and SET ASIDE**. The Notice of Assessment issued against respondent for the years 2015 (based on its 2014 shipments) and 2016 (based on its 2015 shipments) is **CANCELLED**.
>
> With the foregoing declaration of the nullity of the present tax assessment and the cancellation of the Notice of Assessment issued against respondent for the years 2015 and 2016, petitioner's Motion for Clarification filed on September 12, 2018, and respondent's Motion to Set Case for Oral Argument filed on January 11, 2019 are considered **MOOT and ACADEMIC**.
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> **SO ORDERED.**"

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[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] Amended Decision, *Rollo*, pp. 33-42.
[11] *Ibid.*
[12] *Ibid.*

On 3 June 2019, petitioner filed her Motion for Reconsideration on the Amended Decision. Meanwhile, respondent filed its Opposition on 3 July 2019.[13]

On 30 August 2019, the Special First Division issued the assailed Resolution denying petitioner's Motion for Reconsideration for lack of merit.[14] Petitioner received the assailed Resolution on 2 October 2019.[15]

Dauntless, petitioner filed the instant Petition for Review on 16 October 2019.[16] Respondent posted its Comment/Opposition (To Petition for Review dated 15 October 2019) on 20 November 2019.[17]

On 10 December 2019, the Court *En Banc* issued a Resolution submitting the instant case for decision.[18] Hence, this Decision.

The Issues[19]

> WHETHER THE ASSAILED AMENDED DECISION AND RESOLUTION VIOLATED PETITIONER'S RIGHT TO DUE PROCESS AND FAIR PLAY;
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> WHETHER THE SPECIAL FIRST DIVISION ERRED IN RULING THAT THE GROSS RECEIPTS AND THEIR CORRESPONDING BASIS, AS SHOWN IN NUMEROUS BILLING STATEMENTS, WERE NOT CONCLUSIVELY ESTABLISHED; AND
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> WHETHER THE SPECIAL FIRST DIVISION ERRED IN RULING THAT THE NOTICE OF ASSESSMENT IS NULL AND VOID BECAUSE THE SAME IS NOT BASED ON RESPONDENT'S GROSS RECEIPTS.

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[13] Resolution, *Rollo*, pp. 62-68.
[14] *Ibid.*
[15] Return Card, Division Docket Vol. 3, p. 1416.
[16] Petition for Review, *Rollo*, pp. 1-228, with annexes.
[17] Comment/Opposition, *Rollo*, pp. 232-272.
[18] Resolution, *Rollo*, pp. 274-275.
[19] Petition for Review, *Rollo*, pp. 1-228, with annexes.

Arguments of the Parties

Petitioner's Arguments[20]

Petitioner faults the Special First Division for ruling over an issue that was only raised for the first time during respondent's Motion for Reconsideration filed with the CTA Court in Division. She stresses that the action of the Special First Division is contrary to the prohibition on "changing theory of the case or cause of action on appeal" since the issue raised by respondent is a question of fact that may only be established by presenting new evidence which is prohibited under the Rules of Court.

She stresses that respondent, in its protest letter and pleadings in the RTC, never questioned the basis she used in the Notice of Assessment. Apropos, she argues that respondent is already estopped from questioning the propriety of the said assessment.

Petitioner explains that the basis she used in the computation of the assessment which is the "respondent's gross value of shipment," as shown in the Summary of Shipments she obtained from the Mines and Geoscience Bureau ("MGB"), falls within the definition of "gross receipts" under Section 131(n) of the Local Government Code ("LGC").

She argues that there are instances, specifically, when a taxpayer uses the cash basis of accounting, when the gross value of shipment and gross receipts would be equal in amount. Hence, she insists that the gross value of shipment may validly be used as basis in the computation of respondent's tax liability.

Respondent's Counter-Arguments[21]

Respondent counters that the Special First Division correctly ruled on the issue pertaining to the validity of the Notice of Assessment. It argues that the RRCTA allows the CTA to rule on issues even if the same were not raised by the parties in their respective pleadings. Furthermore, it opines that the CTA is also empowered to conduct trial de novo in coming up with its decisions. As such, it is not bound by the issues passed upon by the RTC.

Respondent argues that the question as to the propriety of the tax base used in the Notice of Assessment is a legal and not a factual issue. It explains that the court need only consider and apply the definition of gross receipts under Section 131 of the LGC, Section 2(g) of the Local Finance Circular 02-09, and Section 1C.01(h) of Municipal Ordinance No. 2012-02 to this case in

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[20] *Ibid.*
[21] Comment/Opposition, *Rollo*, pp. 232-272.

order to determine that the tax base used is not equivalent to gross receipts rendering the assessment null and void.

Moreover, respondent opines that it cannot be considered in estoppel since none of its elements are present in this case, and that it was able to continuously contest the assessment's validity during the administrative protest and judicial proceedings.

Finally, respondent argues that petitioner was remiss in her duty when she issued the Notice of Assessment. It states that petitioner neither conducted an examination of the books of accounts and accounting records of respondent nor did it receive a letter of authority from her. For these reasons, respondent argues that the Notice of Assessment issued against it is all the more void.

The Ruling of the Court

After considering the issues raised by petitioner and the arguments propounded by respondent, the Court *En Banc* sees no cogent reason to reverse the assailed Amended Decision and Resolution of the Court in Division.

The facts of this case demonstrate an exception to the "prohibition against changing of theory on appeal" rule.

As a rule, questions raised for the first time on appeal or in a motion for reconsideration should no longer be entertained for to do so would plainly violate the basic rule of fair play, justice and due process.[22]

However, when the court finds that the consideration of such issue is necessary in order to arrive at a just decision, or that the change in legal theory would not require the presentation of any further evidence by the adverse party, then the court, in the interest of substantial justice, may relax the technical rules of procedure and rule over the said belatedly raised issue. The Supreme Court in the case of ***Heirs of Zambales v. Court of Appeals (hereinafter referred to "Zambales Case")***[23] highlighted this point, to wit:

> "We sustain that contention. **The fact that the issue was not raised in the Courts below is not a deterrent factor considering that the question affects the validity of the agreement between the parties.** The Supreme Court has the authority to review matters even if they are not assigned as errors in the appeal, if it is found that their consideration is necessary in arriving at a just decision of the case. Moreover, a party

[22] Buklod Nang Magbubukid sa Lupaing Ramos, Inc. v E. M. Ramos and Sons, Inc., G.R. Nos. 131481 & 131624, 16 March 2011.
[23] G.R. No. L-54070, 28 February 1983.

may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory. In the case at bar it is indisputable that Homestead Patent No. V-59502 was issued on September 6, 1955 as shown in Original Certificate of Title No. 1193 (Exhibit "A")."[24]

This was also reiterated in ***Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.***,[25] where the High Court ruled, to wit:

"The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.

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The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.

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Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance."[26]

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[24] Emphasis supplied.
[25] G.R. No. 163835, 7 July 2010.
[26] Emphasis supplied.

To recapitulate, the courts, in the interest of substantial justice and strong public importance, in addition to the requirement that the resolution of the issue will not demand the presentation of new evidence may, in its discretion, relax the technical rules of procedure and resolve the issue that was belatedly raised by any party.

In this case, the issue in contention is whether the tax base used by petitioner in coming up with the assessment is in accordance with the definition of "Gross Receipts" under ***Section 131(n) of the LGC, Section 2(g) of the Local Finance Circular 02-09***, and ***Section 1C.01(h) of Municipal Ordinance No. 2012-02.***

Applying the foregoing jurisprudence, it is clear that the issue under contention is legal in nature considering that the Court *En Banc* need not look into other pieces of evidence but need only apply the aforementioned pertinent laws in order to resolve the same. This observation is in line with the findings of the Supreme Court in the case of ***Ericsson Telecommunications, Inc. v. City of Pasig (hereinafter referred to as "Ericsson Case")***,[27] to wit:

> "Second, the CA should have dismissed the appeal of respondent as it has no jurisdiction over the case since the appeal involves a pure question of law. **The CA seriously erred in ruling that the appeal involves a mixed question of law and fact necessitating an examination and evaluation of the audited financial statements and other documents in order to determine petitioner's tax base**.
>
> There is a question of law when the doubt or difference is on what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference is on the truth or falsity of the facts alleged. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. **Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact**."[28]

Aside from being a legal question, the final determination of the correctness of the tax base used in the assessment has strong due process and substantial justice considerations that warrant the relaxation of the application of the rules of procedure.

[27] G.R. No. 176667, 22 November 2007.
[28] Emphasis supplied.

Here, the validity and enforceability of the Notice of Assessment is hinged on the correctness of the tax base used by petitioner. If the tax base is proven to be contrary to law, then the the petitioner may not enforce the Notice of Assessment on the ground that "a void assessment bears no valid fruit."

Therefore, not ruling on the issue will open the possibility of allowing the enforcement of a void Notice of Assessment, which is not only contrary to law but also runs counter to respondent's rights to due process.

The tax base used by petitioner is not in accordance with the LGC. Hence, the Notice of Assessment is void.

Section 3 of DOF Local Finance Circular No. 02-09[29] grants the local government units the power to tax local business tax on mining companies based on their gross receipts, to wit:

> "SECTION 3. Business Tax on Mining Companies. — **The tax on mining companies shall be levied on their gross receipts for the preceding calendar year**, as follows:
>
> a) Mining companies which exclusively operate for the extraction of minerals, metallic or non-metallic, the tax rate shall not exceed two percent (2%) of their gross receipts pursuant to Section 143 (h) of the LGC imposed under the ordinance of the local government unit (LGU) concerned.
>
> b) Mining companies whose operations include the processing of extracted minerals to finished products shall be taxed on their gross receipts pursuant to Section 143 (a) of the LGC imposed under the ordinance of the LGUs concerned."[30]

The same ***DOF Local Finance Circular*** defined Gross Receipts, as follows:

> "Section 2. Definition of Terms. – xxx
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> g) Gross Receipts include **the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable** at the time of sales, sales return, excise tax, and value-added tax (VAT)."[31]

[29] Prescribing the Guidelines Governing the Power of Provinces, Cities and Municipalities to Impose Local Taxes, Fees and Charges on Mining Companies Pursuant to the Pertinent Provisions of Republic Act No. 7160, Otherwise Known as the Local Government Code of 1991 and its Implementing Rules and Regulations (IRR), DOF Local Finance Circular No. 02-09, 20 August 2009.
[30] Emphasis supplied.
[31] Emphasis supplied.

The concept of Gross Receipts was further elaborated and differentiated with Gross Revenue by the Supreme Court in the ***Ericsson Case***, to wit:

> **"The law is clear. Gross receipts include money or its equivalent <u>actually or constructively received</u> in consideration of services rendered or articles sold, exchanged or leased, whether actual or constructive.**
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> Further elaboration was made by the Court in Commissioner of Internal Revenue v. Bank of the Philippine Islands, in this wise:
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> > Receipt of income may be actual or constructive. We have held that the withholding process results in the taxpayer's constructive receipt of the income withheld, to wit:
> >
> > By analogy, we apply to the receipt of income the rules on actual and constructive possession provided in Articles 531 and 532 of our Civil Code.
> >
> > Under Article 531:
> >
> > "Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right."
> >
> > Article 532 states:
> >
> > "Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever; but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of negotiorum gestio in a proper case."
> >
> > The last means of acquiring possession under Article 531 refers to juridical acts — the acquisition of possession by sufficient title — to which the law gives the force of acts of possession. Respondent argues that only items of income actually received should be included in its gross receipts. It claims that since the amount had already been withheld at source, it did not have actual receipt thereof.
> >
> > We clarify. Article 531 of the Civil Code clearly provides that the acquisition of the right of possession is through the proper acts and legal formalities established therefor. The withholding process is one such act. There may not be actual receipt of the income withheld; however, as provided for in Article 532, possession by any person without any power whatsoever shall be considered as acquired when ratified by the person in whose name the act of possession is executed.

> In our withholding tax system, possession is acquired by the payor as the withholding agent of the government, because the taxpayer ratifies the very act of possession for the government. There is thus constructive receipt. The processes of bookkeeping and accounting for interest on deposits and yield on deposit substitutes that are subjected to FWT are indeed — for legal purposes — tantamount to delivery, receipt or remittance.

Revenue Regulations No. 16-2005 dated September 1, 2005 defined and gave examples of "constructive receipt", to wit:

> SEC. 4. 108-4. Definition of Gross Receipts. — . . .
>
> **"Constructive receipt" occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor**. The following are examples of constructive receipts:
>
> (1) deposit in banks which are made available to the seller of services without restrictions;
>
> (2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and
>
> (3) transfer of the amounts retained by the payor to the account of the contractor.

<u>There is, therefore, constructive receipt, when the consideration for the articles sold, exchanged or leased, or the services rendered has already been placed under the control of the person who sold the goods or rendered the services without any restriction by the payor</u>.

<u>In contrast, gross revenue covers money or its equivalent actually or constructively received, including the value of services rendered or articles sold, exchanged or leased, the payment of which is yet to be received</u>. This is in consonance with the International Financial Reporting Standards, which defines revenue as the gross inflow of economic benefits (cash, receivables, and other assets) arising from the ordinary operating activities of an enterprise (such as sales of goods, sales of services, interest, royalties, and dividends), which is measured at the fair value of the consideration received or receivable.

As aptly stated by the RTC:

> "[R]evenue from services rendered is recognized when services have been performed and are billable." It is "recorded at the amount received or expected to be received." (Section E [17] of the Statements of Financial Accounting Standards No. 1).

In petitioner's case, its audited financial statements reflect income or revenue which accrued to it during the taxable period although not yet actually or constructively received or paid. This is because petitioner uses the accrual method of accounting, where

> **income is reportable when all the events have occurred that fix the taxpayer's right to receive the income, and the amount can be determined with reasonable accuracy; the right to receive income, and not the actual receipt, determines when to include the amount in gross income."**[32]

As discussed in the ***Ericsson Case***, in order for the tax base to be in accordance with the LGC, the same should be based on gross receipts or the amount of consideration actually or constructively received by respondent. In plain words, the consideration should be under the control of respondent without imposed restrictions as to its use.

In this case, the Notice of Assessment is based on the "total gross value of respondent's shipment" as prepared by MGB which, in turn, is based on the following data:

1. Ore Transport Permit for the actual volume shipped out;
2. Respondent's Individual Purchase and Sales Contract for the contract price agreed upon by the parties, including all the terms and conditions provided in the pertinent contract; and
3. Foreign Exchange Rate published by the Bangko Sentral ng Pilipinas during the last day of loading and completion of the ore shipment.

Clearly, the "total gross value of respondent's shipment" is based on the value of total ore transported by respondent regardless of whether the same has been paid by respondent's customers or not. Noticeably, the "total gross value of respondent's shipment" is not equivalent to Gross Receipts as contemplated under ***Section 131(n) of the LGC, Section 2(g) of the Local Finance Circular 02-09***, and ***Section 1C.01(h) of Municipal Ordinance No. 2012-02***.

As for the contention of petitioner that the "total gross value of respondent's shipment" may be equivalent to the amount of gross receipts in cases when a taxpayer uses the cash basis of accounting, the same is also of no moment.

SRC Rule 68, as amended[33] mandates corporations such as respondent to use the accrual method of accounting in accordance with the Philippine Financial Reporting Standards which respondent confirmed it follows in its Motion for Reconsideration. Hence, the theory of petitioner that the value of shipment is equivalent to gross receipts is incorrect and without basis.

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[32] Citations omitted, emphasis supplied.
[33] General Financial Reporting Requirements, 20 October 2011.

Considering that the tax base used by petitioner is not in accordance with the mandates of law, it follows that the Notice of Assessment issued against respondent for 2015 and 2016 is void. Therefore, and as correctly ruled by the Special First Division, the Notice of Assessment could not be a valid source of obligation to pay the deficiency local business taxes for the years 2015 and 2016 on the part of respondent.

Estoppel does not lie in this case.

Aside from the fact that petitioner failed to establish the legality of the tax base it used in issuing the Notice of Assessment, the Court *En Banc*, likewise, rules that estoppel does not lie in this case.

The Court *En Banc* recognize that as a rule, issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel.[34] However, this rule admits of certain exceptions.

In the case of ***Son v. University of Santo Tomas (hereinafter referred to as the "Son Case")***,[35] the Supreme Court ruled that the doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or ultra vires, to wit:

> "It cannot be said either that by agreeing to the tenure by default provision in the CBA, respondents are deemed to be in estoppel or have waived the application of the requirement under CHED Memorandum Order No. 40-08. Such a waiver is precisely contrary to law. Moreover, a waiver would prejudice the rights of the students and the public, who have a right to expect that UST is acting within the bounds of the law, and provides quality education by hiring only qualified teaching personnel. Under Article 6 of the Civil Code, "[r]ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law." On the other hand, there could be no acquiescence — amounting to estoppel — with respect to acts which constitute a violation of law. **"The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or ultra vires." "[N]o estoppel can be predicated on an illegal act.**"[36]

In this case, the Court *En Banc* has already declared the Notice of Assessment null and void. Therefore, in line with the ***Son Case*** the doctrine of estoppel is clearly inapplicable in this case.

[34] Mercado v. Spouses Espina, G.R. No. 173987, 25 February 2013.
[35] G.R. No. 211273, 18 April 2018.
[36] Emphasis supplied.

Hence, given the foregoing, the Court *En Banc* finds that the Special First Division committed no reversible error in rendering the assailed Amended Decision and Resolution which would warrant the modification, much less, their reversal thereof.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision promulgated on 16 April 2019, and Resolution, dated 30 August 2019, rendered by the Court of Tax Appeals, Special First Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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