REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 848** (CTA Case No. 7878)
	Present:
-versus-	Acosta, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, Fabon-Victorino, Mindaro-Grulla, and Cotangco-Manalastas, *JJ.*
PLATINUM PLANS, PHIL. INC., Respondent.	Promulgated: NOV 21 2012 4:10pm

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks the reversal and setting aside of the September 7, 2011 Decision[1] and the November 18, 2011 Resolution[2] denying petitioner Commissioner of Internal Revenue's (CIR) Motion for Partial Reconsideration both rendered by the Court of Tax Appeals – First Division (CTA-

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[1] Division *Rollo*, pp. 260-281; Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino.
[2] *Id.*, pp. 312-314.

First Division) entitled, *Platinum Plans, Phil. Inc., vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 7878. The *fallo* of the assailed Decision provides:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the following withholding tax assessments are hereby **CANCELLED**: (1) the deficiency EWT on Commission in the amount of ₱ 3,359,706.41 and Rentals in the amount of ₱ 122,810.83 (including the corresponding interests imposed thereon), (2) the penalties on late remittances in the total amount of ₱ 87,767,06, (3) the deficiency withholding tax on compensation in the amount of ₱ 6,653,387.56, and (4) all compromise penalties.
>
> Likewise, the Warrant of Garnishment dated February 4, 2009 (No. 217) addressed to BDO, and the Warrant of Garnishment dated February 6, 2009 (No. 219) addressed to BPI, are both **LIFTED**.
>
> However, petitioner is hereby **ORDERED** to pay respondent the amount of **EIGHT HUNDRED TWENTY THREE THOUSAND FIVE HUNDRED FORTY FIVE PESOS AND FIFTY CENTAVOS (₱ 823,545.50)**, representing deficiency EWT, including the corresponding interests thereon, on the following income payments: Advertising Expense; Repairs and Maintenance; Security, Janitorial, Messengerial & Clerical Service; Director's Fees; and Prizes/Award; all for taxable year 2002.
>
> **SO ORDERED.**[3]

On the other hand, the dispositive portion of the assailed Resolution also provides:

> **WHEREFORE**, premises considered, respondent's **MOTION FOR PARTIAL RECONSIDERATION** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[4]

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[3] Division *Rollo*, pp. 280-281.
[4] *Id.*, p. 314.

THE FACTS

Pertinent are the following antecedent facts[5] and relevant proceedings:

> Petitioner Platinum Plans, Phil, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal business address at Unit 1005 Tektite West Tower, PSE Center, Exchange Road, Pasig City. It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 000-512-613-000 on June 27, 1994.
>
> Respondent is the Commissioner of the BIR, duly appointed and empowered to perform the duties of her office, including, among others, the power to decide, cancel and abate the tax liabilities, pursuant to Section 204(B) of the National Internal Revenue Code (NIRC) of 1997. She holds office at the BIR National Office Building, Diliman, Quezon City.
>
> On April 3, 2007, petitioner received from respondent a Preliminary Assessment Notice covering taxable year 2002, finding petitioner liable for the following:

DEFICIENCY	AMOUNT
Income Tax	₱ 52,627,861.17
Value-added Tax	₱ 367,557,600.00
Documentary Stamp Tax	₱ 3,728,271.97
Expanded Withholding Tax	₱ 7,012,004.87
Withholding Tax on Compensation	₱ 6,368,368.24
Penalties on Late Remittances	₱ 87,767.06
Compromise Penalty	₱ 75,000.00

> Subsequently, a Formal Letter of Demand dated April 4, 2007 was later issued by respondent against petitioner. The said Formal Letter of Demand which was received by petitioner on December 11, 2007, states the following tax liabilities:

A. DEFICIENCY INCOME TAX		

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[5] Division *Rollo,* pp. 260-269.

Taxable Income per FS				₱ 3,559,692.00
Add:	Disallowed expense			
	1.	Salaries & wages - not subjected to withholding tax (Note I)	₱ 61,827,480.00	
	2.	Income payments not subjected to EWT (Note VI)	52,110,467.50	
	3.	Transfer of revaluation increment in Property & equipment acquired from Trust Fund	32,068,659.00	
	4.	Donation - excess of limitation allowed by law (Note II)	36,502.60	
	5.	Professional Fee - (Note III)	624,133.25	146,667,242.35
Net Income per investigation				₱ 150,226,934.35
Rate of Tax				32%
Tax Due				₱ 48,072,618.09
Less:	Tax credit/paid			
	Tax Paid per tentative return		₱ 781,208.00	
	Excess carry over prior year		23,813.00	
	Quarterly Payment		65,634.00	
	Excess MCIT		246,067.00	1,116,722.00
Basic				₱ 46,955,896.09
Interest up to May 15, 2007				38,034,276.56
Compromise				25,000.00
Total Income Tax Deficiency				**₱ 85,015,173.56**
B. DEFICIENCY VALUE-ADDED TAX (VAT)				
Per FS				
	Gross Receipts for the year (Note V)		₱ 2,258,283,285.00	
	Less:	Trust Fund deposited/accrued Increase/decreas (ARL)-Trust Fund expense	152,307,136.00	
				₱ 2,105,976,149.00
	PPD Income		₱ 10,081,747.00	
	Amendment Fee		4,147,554.00	
	Other Income		816,749.00	15,046,050.00
	Other operating Income			
		Entrance processing fee		1,224,870.00
	Total VATable Transaction			₱ 2,122,247,069.00
	Less:	Income subjected to VAT per VAT Returns		80,399,291.22
	Income not subjected to VAT			₱ 2,041,847,777.78
	Rate of VAT			10%
	Income not subjected to VAT			₱ 204,184,777.78
	Interest up to May 20, 2007			179,682,604.44
	Compromise			25,000.00
	Total Deficiency VAT			**₱ 383,892,382.22**

C. DEFICIENCY DOCUMENTARY STAMP TAX (DST)			
	Per FS (Monthly Balances)		
	Installment Contract Receivable (DR) (Total Contract Amount for the Year) – Note IV		₱ 2,305,003,402.00
	DST Rate		.001
	DST Due		₱ 2,305,003.40
	DST paid per Forms 2000		224,513.53
	Basic DST Due		₱ 2,080,489.87
	Interest up to May 15, 2007		1,789,221.29
	Compromise		25,000.00
	Total Deficiency DST Due		**₱ 3,894,711.16**

D. DEFICIENCY WITHHOLDING TAX		
1. DEFICIENCY ON EXPANDED WITHHOLDING TAX (EWT)		
a. Per FS		
Commission	₱ 40,257,558.00	
Rate of Tax	10%	
Withholding Tax Due	₱ 4,025,755.80	
Per Alpha list		
Less w/holding tax on:		
Brokers & agents ₱ 115,751.96		
Insurance adjusters 550,297.43	666,049.39	
Basic		₱ 3,359,706.41
b. Per FS		
Advertising Expense	₱ 6,790,225.00	
Repairs & Maintenance	2,088,477.00	
Security, Janitorial, Messengerial & Clerical Service	6,286,123.00	
	₱ 15,164,825.00	
Rate	2%	
Withholding Tax Due		303,296.50
c. Per FS		
Rentals	₱ 16,040,244.00	
Rentals per Alpha list	13,584,027.50	
	₱ 2,456,216.50	
Rate	5%	
Withholding Tax Due		122,810.83
d. Per FS		
Director's Fee	₱ 390,025.00	
Rate	10%	
Withholding Tax Due		39,002.50
e. Per FS		

Prizes/Award Rate	₱ 502,337.00 20%	
Withholding Tax Due		100,467.40
Total Withholding Tax (Basic)		**₱ 3,925,283.64**
Interest up to May 10, 2007		3,375,743.93
Compromise		25,000.00
Total Deficiency EWT		**₱ 7,326,027.56**
2. DEFICIENCY WITHHOLDING TAX ON COMPENSATION		
Per Alpha list		
Total Amount of tax withheld on compensation		₱ 3,592,291.38
Tax consequences of taxable compensation per alpha list where no tax had been withheld		1,315,584.24
Total tax that should have been withheld		₱ 4,907,875.62
Per Withholding Tax Return (Form 1601C)		
Total Amount Paid		1,345,134.04
Basic		₱ 3,562,741.58
Interest up to May 10, 2007		3,074,645.98
Compromise		16,000.00
Total Deficiency Withholding tax on Compensation		**₱ 6,653,387.56**
3. PENALTIES ON LATE REMITTANCES		
1. Late Payment should be remitted October 10, 2002		
September withholding tax on compensation,		
paid on October 11, 2002	₱ 108,545.22	
Surcharge		₱ 27,136.31
Interest		60.30
Compromise		16,000.00
Total Amount Due		₱ 43,196.60
2. Late Payment should be remitted October 10, 2002		
September withholding tax on EWT,		
paid on October 11, 2002	₱ 114,028.48	
Surcharge		₱ 28,507.12
Interest		63.34
Compromise		16,000.00
Total Amount Due		₱ 44,570.46
TOTAL PENALTIES DUE		**₱ 87,767.06**
E. COMPROMISE PENALTY		
1. Late filing & payment 3rd quarter ITR		₱ 25,000.00
Non-filing of alpha list on compensation & EWT – Form 1604CF & 1604E		25,000.00

3. Schedule of Input & Output Taxes		25,000.00
Total		**₱ 75,000.00**

Thirty-one (31) days after said Formal Letter of Demand was received by petitioner, or on January 11, 2008, petitioner opposed the same by filing a Letter of Protest.

On February 13, 2008, petitioner availed of the tax amnesty pursuant to Republic Act (R.A.) No. 9480, and paid its tax amnesty liability with BDO-EPCI, Inc., Bel-Air-Gil Puyat Branch.

On February 4, 2009 and February 6, 2009, respondent respectively issued Warrants of Garnishment (Nos. 217 and 219) addressed to the Head Office and all branches of Banco de Oro (BDO) and of Bank of the Philippine Islands (BPI), stating that there is due from petitioner the sum of ₱ 486,944,448.83 as deficiency internal revenue taxes.

After being informed of respondent's Warrants of Garnishment, petitioner, on March 2, 2009, visited respondent's office and was informed that its protest letter dated January 8, 2008 over the Formal Letter of Demand was denied.

On March 6, 2009, petitioner filed the instant Petition for Review.

In her answer, respondent made the following Special and Affirmative Defenses:

> "6. The assessment for the year 2002 for deficiency Income Tax (IT), Value-Added Tax (VAT), Documentary Stamp Tax, and Withholding Tax (WT) were issued in accordance with law and regulations.
>
> 7. Respondents respectfully submits that this Honorable Court has no jurisdiction to entertain this instant case in view of petitioner's failure to comply with the period required by law in filing AN administrative protest pursuant to Revenue Regulation No. 12-99, implementing Section 228 of the 1997 Tax Code, specifically Section 3.1.5 of said regulation. The said rules provides that the 'taxpayer

or his duly authorized representative may protest administratively against the Formal Letter of Demand and Assessment Notices within thirty (30) days from the date of receipt thereof.

In this case, petitioner failed to file administrative protest within thirty (30) days from the date of receipt of respondent's Formal Letter of Demand (FLD) and Assessment Notices (FAN). Petitioner alleges in its petition for review that it had receipt of respondent's FAN and FLD on December 11, 2007 and filed its protest on January 11, 2008. Petitioner's admission shows that its administrative protest was filed thirty one (31) days after the receipt of respondent's FAN and FLD. Clearly, the 30 day reglementary period within which to file a protest had already lapsed. Petitioner should file its administrative protest **on or before January 10, 2008**, counting 30 days from receipt thereof on December 11, 2007. Hence, petitioner's deficiency internal revenue taxes become final, executory and demandable, and respondent had legal basis for the issuance of a Warrant of Garnishment against petitioner's bank accounts.

8. Petitioner's availment and full compliance with the conditions of tax amnesty pursuant to Republic Act No. 9480 have no effect on petitioner's deficiency internal revenue tax assessments where the same have become final, executory and demandable on January 11, 2008 prior to the filing of petitioner its application of tax amnesty program of the government on February 13, 2008. Respondent's deficiency tax assessments are already accounts receivable of respondent or assets of the government as provided under Question 4 and Answer 4 of Revenue Memorandum Order No. 69-2007, which provides basic questions and answers to clarify the issues concerning the Tax Amnesty Program under Republic Act No. 9480.

9. Petitioner argues that respondent's right to assess petitioner's deficiency internal revenue tax

assessment has already prescribed as provided for under Section 203 of the 1997 Tax Code.

Respondent begs to disagree.

The right the respondent to assess petitioner's deficiency Income Tax (IT), Value-Added Tax (VAT) Documentary Stamp Tax (DST) and Witholding Tax (WT) for the year 2002 has not prescribed pursuant to Section 222(a) of the 1997 Tax Code; 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 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. (underscoring supplied)

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx.'

The abovementioned provision finds application to the present case because respondent discovered that petitioner made a false return with intent to evade taxes and failure to file returns based on the result of the investigations made by respondent's revenue officers on the books of accounts and pertinent records and documents submitted by petitioner. Respondent's revenue officers audit findings are as follows:

A. Deficiency, Income Tax

1. Petitioner failed to withhold taxes on Salaries and Wages leads to respondent's revenue officers to disallow the amount of P61,827,480.00 in accordance with Section 34(K) of the 1997 Tax Code.

2. Portions of Donations in the amount P429,411.16 was disallowed in excess of the limitation allowed under Section 34 (H)(1) of the 1997 Tax Code.

3. Professional fees in the amount of P624,133.25 which was subjected to withholding taxes but was not declared as expense was considered as underdeclared income sales.

4. Transfer and revaluation increment in property & equipment which represents an increase in the value of the assets, was recognized in the Retained Earnings but not in the income account. Since no recognition was made in the income account, the property if later sold would be valued based on increase value since original value cannot be traced due to transfer of revaluation increment in property & equipment. Such being the case, Transfer of revaluation increment in property and equipment was disallowed to collect taxes on such increases, as this increase cannot be traceable if property is later sold.

B. Deficiency Value-Added Tax (VAT)

As non-life insurance company, petitioner is subject to value added taxes on its gross receipts pursuant to Section 108 (A) of the 1997 Tax Code. Verification disclosed that petitioner failed to subject all its income to value added taxes in the amount of P2,041,847,777.78.

C. Deficiency Documentary Stamp Taxes (DST)

On pre-need plans, the value or amount of plan is subjected to DST pursuant to Section 186 of the 1997 Tax Code. Respondent discovered petitioner has been deficient in paying DST in the amount of P2,080,489.87.

D. Deficiency Withholding Tax

Going over the tax compliance as withholding taxes concern, it was discovered that there are some income payments which petitioner failed to withhold in pursuant to Revenue Regulation No. 2-98 and Revenue Regulations No. 6-2001 as amended. Likewise, it was also discovered that petitioner failed to withhold taxes on compensation, such being the case taxes due together with the penalties shall be collected from the petitioner in accordance with Section 80(A) of the 1997 Tax Code.

<u>Based on the above findings, it was disclosed that petitioner's 2002 Income Tax Return (ITR) was false because petitioner did not present substantial documentary evidence to contest the disallowance of the abovementioned expenses. Respondent's findings indicate that petitioner had a manifest intent to evade its true taxable income in order to pay lesser income tax.</u> Respondent's investigation also disclosed that petitioner had undeclared taxable income <u>in the total amount of P98,509,375.41 as compared to taxable income declared in 2002 financial statements in the amount of P3,559,692.00</u>. Thus, for the year 2002, petitioner filed a false annual return **with intent to evade tax.** *Jr*

Likewise, petitioner evidently failed to file Value-Added Tax (VAT) Returns and report the amount of P2,258,283,285.00 as its gross sales for the year 2002. It is (sic) also failed to file DST returns and its payment amounting to P2,080,489,87, and WT returns and payment of its deficiency expanded withholding taxes in the amount of P3,925,283.64, and deficiency withholding tax on compensation in the amount of P3,562,741.58. Hence, for **<u>failure to file VAT, DST, and WT returns and for filing a false income tax return for the year 2002, the corresponding taxes may be assessed at any time within ten (10) years after the discovery</u> of such omission or fraud** pursuant to Section 222(a) of the 1997 Tax Code.

10. Respondent further submits that Section 203 of the 1997 Tax Code does not apply to petitioner's deficiency withholding tax assessments because petitioner was not assessed for internal revenue taxes directly related in the operation of its business, but for its liability as withholding agent for failure to withhold, account for and remit the deficiency expanded and compensation withholding taxes as required by Revenue Regulation No. 2-98 and Revenue Regulations No. 6-2001 as amended.

Moreover, there is nothing under the 1997 Tax Code that provides for the period of limitation to assess withholding agents for failure to withhold, account for and remit any tax imposed by the said tax code.

11. The presumptions, therefore, that respondent's deficiency internal revenue tax assessments against petitioner is correct and made in good faith should apply and be given weight and consideration."

In the proceedings before this Court, petitioner presented testimonial and documentary evidence in support of its petition, while respondent's counsel, Atty. Leo Mauricio, manifested that he will not present any evidence for respondent.

> Upon submission of petitioner['s] Memorandum on September 13, 2010 and respondent's Manifestation stating that respondent intends to adopt the relevant facts, proceedings, issue and discussion declared in her Answer, this case was submitted for Decision in the Resolution dated September 20, 2010.

Ruling on the petition, the CTA-First Division rendered its Decision[6] on September 7, 2011, partially granting the same.

Aggrieved, CIR filed her Motion for Partial Reconsideration on the Decision on September 29, 2011[7] with respondent Platinum Plans Phil, Inc's, (PLATINUM) "Urgent Motion to Admit Comment/Opposition" attaching its Comment/Opposition (To the Motion for Partial Reconsideration of the Respondent) on October 20, 2011[8] and was subsequently admitted by the CTA-First Division via a Resolution dated October 24, 2011.[9]

On November 18, 2011, the CTA-First Division denied the Motion for Partial Reconsideration for lack of merit, anchored on the ground that the arguments raised by the movant are already extensively discussed and settled in the assailed decision.[10]

Thus, on November 26, 2011, CIR filed this instant Petition for Review[11] before this Court.

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[6] Division *Rollo,* pp. 260-281.
[7] *Id.,* at pp. 282-292.
[8] *Id.,* at pp. 296-307.
[9] *Id.,* at pp. 309-310.
[10] *Id.,* at pp. 312-314.
[11] *Rollo,* pp. 7-19.

In compliance with the Resolution[12] of this Court dated January 17, 2012, PLATINUM filed its "Comment/Opposition (To the Petition for Review of Petitioner)"[13] on February 8, 2012.

Acting on the Petition with its corresponding comment/opposition, this Court in a Resolution dated February 20, 2012 gave due course to the instant Petition for Review and required both parties to submit their respective Memorandum within a period of thirty (30) days from receipt of the same.[14]

Considering that only PLATINUM filed its Memorandum within the prescribed period[15] on May 16, 2012, the Court considered this present controversy submitted for Decision.[16]

<u>THE ISSUE</u>

At this juncture, the CIR raises her sole assignment of error[17] for this Court's consideration to wit:

> **THE HONORABLE FIRST DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT'S PETITION FOR REVIEW AND ORDERING THE CANCELLATION OF (1) DEFICIENCY EXPANDED WITHHOLDING TAX (EWT) ON COMMISSION IN THE AMOUNT OF P3,359,706.41 AND RENTALS IN THE AMOUNT OF P122,810.83 (INCLUDING THE CORRESPONDING INTEREST IMPOSED THEREON), (2) THE PENALTIES ON LATE REMITTANCES IN THE AMOUNT OF P87,767.06, (3) THE DEFICIENCY WITHHOLDING TAX [O]N COMPENSATION (WTC) IN THE TOTAL**

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[12] *Id.,* at pp. 51-52.
[13] *Id.,* at pp. 58-67.
[14] *Rollo,* at pp. 69-70.
[15] *Id.,* p. 89.
[16] *Id.,* at pp. 91-92.
[17] *Id.,* at p. 11.

AMOUNT OF P6,653,687.56, AND (4) ALL COMPROMISE PENALTIES AND LIKEWISE BY ORDERING THE LIFTING OF THE WARRANTS OF GARNISHMENT ISSUED BY PETITIONER AGAINST RESPONDENT'S BANK ACCOUNTS.

THE COURT'S RULING

The Court finds no merit in the Petition.

Petitioner argues that this Court has no jurisdiction to entertain PLATINUM's Petition for Review on the ground that the subject assessments had become final, executory and enforceable for failure of PLATINUM to comply with the period required by law in filing an administrative protest pursuant to Sec. 3.1.5 of Revenue Regulations No. 12-99 implementing Section 228 of the NIRC which provides that a taxpayer may file an administrative protest against the formal letter of demand and assessment notice within a period of thirty (30) days from the date of receipt thereof and that the lapse of the 30-day period to file a protest would necessarily consider the assessment final, executory and demandable. CIR alleges that PLATINUM received a Formal Letter of Demand (FLD) and a Formal Assessment Notice (FAN) on December 11, 2007, thus, giving the petitioner until January 10, 2008. However, PLATINUM belatedly filed its administrative protest on the 31st day or on January 11, 2008, thus depriving this Court of jurisdiction considering that the FAN and FLD became final, executory and demandable.

In the meantime, in the promulgated decision, the CTA-First Division ruled, among others, that pursuant to Republic Act No. 9480, PLATINUM is entitled to avail of the tax amnesty for its tax liability for the year 2002, particularly with respect to PLATINUM's deficiency income tax, VAT and DST liabilities for the taxable year 2002 notwithstanding CIR's opposition that tax amnesty can no longer be availed of since the assessment in question attained finality and therefore were already part of the accounts receivable of the Government.

Sec. 203 of the NIRC provides for the period within which the government can issue an assessment to wit:

> 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 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 last day prescribed by law for the filing thereof shall be considered as filed on such last day. (emphasis supplied)

Sec. 222 of the NIRC likewise provides for the prescriptive period in case of false, fraudulent or in cases were the taxpayer failed to file a return:

> Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collections 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.
>
> xxx xxx xxx

Sec. 203 mandates the Bureau of Internal Revenue to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the return or the actual date of filing of such return, whichever is earlier. In other words, an assessment issued beyond the three (3)-year period loses its validity.

In relation to the withholding tax system, Sec. 58 of the NIRC[18] and Sec. 2.58 of Revenue Regulations No. 2-98, as amended by Revenue Regulations No.

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[18] SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –

(A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which the withholding was made: *Provided*, That the Commissioner, with the approval of the Secretary of Finance, 06-01 dated July 31, 2001[19] provide that the three year period within which the CIR can validly issue an assessment is counted from (1) the last day required by law for filing a monthly remittance return, which is ten days after the end of each calendar month, except for December, in which case the return shall be filed within fifteen (15) days after the end of the said month; or (2) the date of the actual filing of the return, whichever is later.

On the other hand, under Sec. 222, the prescriptive period of ten (10) years will set in if (1) there is a fraudulent return; (2) false return, with intent to evade tax; and (3) there is a failure to file a return, in which case the reckoning period is from the discovery of the fraud, falsification or omission, as the case may be.

A "false return" is that which contains wrong information due to mistake, carelessness or ignorance. A "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. As for "failure to file an income tax return," the mere

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may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.

[19] SECTION 2.58. *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.* –

(A) Monthly return and payment of taxes

xxx xxx xxx

(2) WHEN TO FILE. –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December each year, which shall be filed on or before January 15 of the following year.

omission is already a violation regardless of the fraudulent intent or wilfullness of the individual.[20]

In this case, CTA-First Division did not err in its findings that the withholding tax assessments were already issued beyond the three (3)-year prescriptive period since the same were issued only on April 4, 2007 and duly received by PLATINUM on December 11, 2007.[21] Moreover, the CIR cannot validly lay claim that PLATINUM failed to file its withholding tax returns under Sec. 222 of the NIRC. The CTA-First Division correctly held:

> Be that as it may, respondent does not deny that the withholding tax assessments were issued beyond the three-year prescriptive period, but she claims that:
>
> > xxx for ***failure to file*** *x x x* ***WT returns*** and for filing a false income tax return for the year 2002, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such omission or fraud pursuant to Section 222(a) of the 1997 Tax Code.
>
> Thus, according to respondent, since there was failure on the part of the petitioner to file the withholding tax returns for the year 2002, respondent's stance is that the 10-year period under Section 222(a) should be applied in issuing the subject deficiency withholding tax assessments. Correspondingly, said assessments are allegedly not yet time-barred.
>
> We do not entirely agree.

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[20] *Commissioner of Internal Revenue v. Philex Mining Corporation* CTA EB No. 578, June 28, 2010, citing *Jose B. Aznar v. Court of Tax Appeals,* No. L-20569, August 23, 1974, 58 SCRA 519 and *Republic of the Philippines v. Marcos II,* G.R. Nos. 130371 & 130855, August 4, 2009, 595 SCRA 43.
[21] Joint Stipulation of Facts and Issues, par. 4, Facts Admitted, Division *Rollo*, p. 154. Exhibit "D".

> In computing the deficiency EWT assessment, respondent deducted the amounts of ₱ 115,751.96 and ₱ 550,297.43 representing EWT per Alphalist on payments to brokers and agents as well as insurance adjusters, respectively, and the amount of ₱ 13,584,027.50 representing rentals per Alphalist. The same holds true as regards the subject deficiency withholding tax on compensation where the amount of ₱ 1,345,134.04 representing the total amount paid "*Per Withholding Tax Return (Form 1601)*" were likewise deducted to determine such deficiency withholding tax.

Thus, the existence of withholding tax return (Form 1601),[22] as found by the CTA-First Division already proves that PLATINUM indeed filed its withholding tax return. Therefore, the three (3)-year prescriptive period under Sec. 203 of the NIRC should perforce apply.

As to the compromise penalties, considering that this is not in the nature of settlement of a criminal liability and should not be imposed if the taxpayer refuses to pay, the same must be cancelled.[23] Hence, the withholding tax assessments on (1) deficiency EWT on Commission in the amount of ₱ 3,359,706.41 and Rentals in the amount of ₱ 122,810.83 (including the corresponding interests imposed thereon), (2) penalties on late remittances amounting to ₱ 87,767.06, (3) the deficiency withholding tax on compensation in the amount of ₱ 6,653,387.56 as well as the compromise penalties thereto should be cancelled.

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[22] Annex "Q-1" to Annex Q-12" BIR Records.
[23] Revenue Memorandum Order No. 1-90.

In sum, there being no reversible error committed by the CTA-First Division in this case, this Court finds no cogent reason to modify, much less, reverse the impugned Decision and Resolution of the CTA-First Division.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on September 7, 2011 and the impugned Resolution dated November 18, 2011 are hereby AFFIRMED *in toto.*

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.

ERNESTO D. ACOSTA
Presiding Justice