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[G.R. No. 109976. April 26, 2005]

PHILIPPINE NATIONAL OIL COMPANY, *petitioner, vs.* **THE HON. COURT OF APPEALS, THE COMMISSIONER OF INTERNAL REVENUE and TIRSO SAVELLANO,** *respondents.*

[G.R. No. 112800. April 26, 2005]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **THE HON. COURT OF APPEALS, COURT OF TAX APPEALS, TIRSO B. SAVELLANO and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. **TAXATION; COURT OF TAX APPEALS; DEMAND LETTER OF BUREAU OF INTERNAL REVENUE DATED 16 JANUARY 1991 DID NOT CONSTITUTE A NEW ASSESSMENT AGAINST PHILIPPINE NATIONAL BANK THAT WILL GIVE RISE TO A NEW DISPUTE OR CONTROVERSY THAT WOULD REQUIRE ADMINISTRATIVE SETTLEMENT OR ADJUDICATION UNDER P.D. 242.**— The issuance by the BIR of the demand letter, dated 16 January 1991, was merely a development in the continuing effort of the BIR to collect the tax assessed against PNOC and PNB way back in 1986. BIR's first letter, dated 08 August 1986, was addressed to PNOC, requesting it to settle its tax liability. The BIR subsequently sent another letter, dated 08 October 1986, to PNB, as withholding agent, demanding payment of the tax it had failed to withhold on the interest earnings and/or yields from PNOC's money placements. PNOC wrote the BIR three succeeding letters offering to compromise its tax liability; PNB, on the other hand, did not act on the demand letter it received, dated 08 October 1986. The BIR and PNOC eventually reached a compromise agreement on 22 June 1987. Private respondent Savellano questioned the validity of the compromise agreement because the reduced amount of tax collected from PNOC, by virtue of the compromise agreement,

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also proportionately reduced his informer's reward. Private respondent Savellano then requested the BIR Commissioner to review and reconsider the compromise agreement. Acting on the request of private respondent Savellano, the new BIR Commissioner declared the compromise agreement to be without basis and issued the demand letter, dated 16 January 1991, against PNB, as the withholding agent for PNOC. It is clear from the foregoing that the BIR demand letter, dated 16 January 1991, could not stand alone as a new assessment. It should always be considered in the factual context summarized above. In fact, the demand letter, dated 16 January 1991, actually referred to the withholding tax assessment first issued in 1986 and its eventual settlement through a compromise agreement. In addition, the computation of the deficiency withholding tax was based on the figures from the 1986 assessments against PNOC and PNB, and BIR no longer conducted a new audit or investigation of either PNOC and PNB before it issued the demand letter on 16 January 1991. These constant references to past events and circumstances demonstrate that the demand letter, dated 16 January 1991, was not a new assessment, but rather, the latest action taken by the BIR to collect on the tax assessments issued against PNOC and PNB in 1986. PNB argues that the demand letter, dated 16 January 1991, introduced a new controversy. We see it differently as the said demand letter presented the resolution by BIR Commissioner Ong of the previous controversy involving the compromise of the 1986 tax assessments. BIR Commissioner Ong explicitly declared therein that the compromise agreement was without legal basis, and requested PNB, as the withholding agent, to pay the amount of withholding tax still due.

2. **ID.; ID.; ID.; THE COURT OF TAX APPEALS CORRECTLY RETAINED JURISDICTION OVER CTA CASE NO. 4249 BY VIRTUE OF REPUBLIC ACT NO. 1125; BETWEEN A GENERAL LAW AND A SPECIAL LAW, THE SPECIAL LAW PREVAILS.**— When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails – *Generalia specialibus non derogant*. Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general

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law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines. On the other hand, Rep. Act No. 1125 is a special law dealing with a specific subject matter – the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein. Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant.

3. **ID.; EXECUTIVE ORDER NO. 44; COMPROMISE AGREEMENTS ON DELINQUENT ACCOUNTS AND DISPUTED ASSESSMENTS; PETITIONER COULD NOT APPLY FOR A COMPROMISE BECAUSE ITS TAX LIABILITY WAS NOT A DELINQUENT ACCOUNT OR A DISPUTED ASSESSMENT AS OF 31 DECEMBER 1985.**— E.O. No. 44 granted the BIR Commissioner or his duly authorized representatives the power to compromise any disputed assessment or delinquent account pending as of 31 December 1985, upon the payment of an amount equal to 30% of the basic tax assessed; in which case, the corresponding interests and penalties shall be condoned. E.O. No. 44 took effect on 04 September 1986 and remained effective until 31 March 1987. The disputed assessments or delinquent accounts that the BIR Commissioner could compromise under E.O. No. 44 are defined under Revenue Regulation (RR) No. 17-86, as follows: a) Delinquent account – Refers to the amount of tax due on or before December 31, 1985 from a taxpayer who failed

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to pay the same within the time prescribed for its payment arising from (1) a self assessed tax, whether or not a tax return was filed, or (2) a deficiency assessment issued by the BIR which has become final and executory. Where no return was filed, the taxpayer shall be considered delinquent as of the time the tax on such return was due, and in availing of the compromise, a tax return shall be filed as a basis for computing the amount of compromise to be paid. b) Disputed assessment – refers to a tax assessment disputed or protested on or before December 31, 1985 under any of the following categories: 1) if the same is administratively protested within thirty (30) days from the date the taxpayer received the assessment, or 2.) if the decision of the BIR on the taxpayer's administrative protest is appealed by the taxpayer before an appropriate court. PNOC's tax liability could not be considered a delinquent account since (1) it was not self-assessed, because the BIR conducted an investigation and assessment of PNOC and PNB after obtaining information regarding the non-withholding of tax from private respondent Savellano; and (2) the demand letter, issued against it on 08 August 1986, could not have been a deficiency assessment that became final and executory by 31 December 1985.

4. **ID.; ID.; THE TAX LIABILITY OF PETITIONER DOES NOT CONSTITUTE A SELF-ASSESSED TAX, AND IS, THEREFORE, NOT A DELINQUENT ACCOUNT.**— Neither PNOC nor PNB, the taxpayer and the withholding agent, respectively, conducted self-assessment in this case. There is no showing that in the absence of the tax assessment issued by the BIR against them, that PNOC and/or PNB would have voluntarily admitted their tax liabilities, already amounting to ₱385,961,580.82, as of 15 November 1986, and would have offered to compromise the same. In fact, both PNOC and PNB were conspicuously silent about their tax liabilities until they were assessed thereon. Any attempt by PNOC and PNB to assess and declare by themselves their tax liabilities had already been overtaken by the BIR's conduct of its audit and investigation and subsequent issuance of the assessments, dated 08 August 1986 and 08 October 1986, against PNOC and PNB, respectively. The said tax assessments, uncontested and undisputed, presented the results of the BIR audit and investigation and the computation of the total amount of tax liabilities of PNOC and PNB. They should be controlling in

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this case, and should not be so easily and conveniently ignored and set aside. It would be a contradiction to claim that the tax liabilities of PNOC and PNB are self-assessed and, at the same time, BIR-assessed; when it is clear and simple that it had been the BIR that conducted the assessment and determined the tax liabilities of PNOC and PNB.

5. **ID.; ID.; THE DIFFERENT TYPES OF ASSESSEMENTS MENTIONED IN RMO NO. 39-86 WOULD STILL HAVE TO QUALIFY AS DELINQUENT ACCOUNTS OR DISPUTED ASSESSMENTS AS OF 31 DECEMBER 1985, SO THAT THEY COULD BE COMPROMISED UNDER E.O. NO. 44.**— That the BIR-assessed tax liability should be differentiated from a self-assessed one, is supported by the provisions of RR No. 17-86 on the basis for computing the amount of compromise payment. Note that where tax liabilities are self-assessed, the compromise payment shall be computed based on the tax return filed by the taxpayer. On the other hand, where the BIR already issued an assessment, the compromise payment shall be computed based on the tax due on the assessment notice. For instances where the BIR had already issued an assessment against the taxpayer, the tax liability could still be compromised under E.O. No. 44 only if: (1) the assessment had been final and executory on or before 31 December 1985 and, therefore, considered a delinquent account as of said date; or (2) the assessment had been disputed or protested on or before 31 December 1985. RMO No. 39-86, which provides the guidelines for the implementation of E.O. No. 44, does mention different types of assessments that may be compromised under said statute (*i.e.*, jeopardy assessments, arbitrary assessments, and tax assessments of doubtful validity). RMO No. 39-86 may not have expressly stated any qualification for these particular types of assessments; nonetheless, E.O. No. 44 specifically refers only to assessments that were delinquent or disputed *as of 31 December 1985*. E.O. No. 44 and all BIR issuances to implement said statute should be interpreted so that they are harmonized and consistent with each other. Accordingly, this Court finds that the different types of assessments mentioned in RMO No. 39-86 would still have to qualify as delinquent accounts or disputed assessments as of 31 Dcember 1985, so that they could be compromised under E.O. No. 44.

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6. ID.; ID.; PETITIONER'S TAX LIABILITY DID NOT CONSTITUTE A DELINQUENT ACCOUNT OR A DISPUTED ASSESSMENT THAT COULD BE COMPROMISED UNDER E.O. NO. 44.— The BIR had first written to PNOC on 08 August 1986, demanding payment of the income tax on the interest earnings and/or yields from PNOC's money placements with PNB from 15 October 1984 to 15 October 1986. This demand letter could be regarded as the first assessment notice against PNOC. Such an assessment, issued only on 08 August 1986, could not have been final and executory as of 31 December 1985 so as to constitute a delinquent account. Neither was the assessment against PNOC an assessment that could have been disputed or protested on or before 31 December 1985, having been issued on a later date. Given that PNOC's tax liability did not constitute a delinquent account or a disputed assessment as of 31 December 1985, then it could not be compromised under E.O. No. 44.

7. ID.; ID.; ASSESSMENT AGAINST PETITIONER COULD APPROPRIATELY BE THE SUBJECT OF REVENUE MEMORANDUM CIRCULAR NO. 31-86 WHICH CAN BE COMPROMISED BY PAYMENT OF 30% OF THE BASIC TAX ASSESSED, NOT PURSUANT TO E.O. NO. 44, BUT PURSUANT TO SECTION 246 OF THE NATIONAL INTERNAL REVENUE CODE OF 1977, AS AMENDED.— The assessment against PNOC, instead, was more appropriately covered by Revenue Memorandum Circular (RMC) No. 31-86. RMC No. 31-86 clarifies the scope of availment of the tax amnesty under E.O. No. 41 and compromise payments on delinquent accounts and disputed assessments under E.O. No. 44. The third paragraph of RMC No. 31-86 reads: [T]axpayers against whom assessments had been issued from January 1 to August 21, 1986 may settle their tax liabilities by way of compromise under Section 246 of the Tax Code as amended by paying 30% of the basic assessment excluding surcharge, interest, penalties and other increments thereto. The above-quoted paragraph supports the position that only assessments that were disputed or that were final and executory by 31 December 1985 could be the subject of a compromise under E.O. No. 44. Assessments issued between 01 January to 21 August 1986 could still be compromised by payment of 30% of the basic tax assessed, not anymore pursuant to E.O. No. 44, but pursuant to Section 246 of the NIRC of 1977, as amended. Section 246 of the NIRC of

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1977, as amended, granted the BIR Commissioner the authority to compromise the payment of any internal revenue tax under the following circumstances: (1) there exists a reasonable doubt as to the validity of the claim against the taxpayer; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax. There are substantial differences in circumstances under which compromises may be granted under Section 246 of the NIRC of 1977, as amended, and E.O. No. 44. Although PNOC and PNB have extensively argued their entitlement to compromise under E.O. No. 44, neither of them has alleged, much less, has presented any evidence to prove that it may compromise its tax liability under Section 246 of the NIRC of 1977, as amended.

8. **ID.; ID.; RMO NO. 39-86 EXPRESSLY ALLOWS A WITHHOLDING AGENT, WHO FAILED TO WITHHOLD THE REQUIRED TAX BECAUSE OF NEGLECT, IGNORANCE OF THE LAW, OR HIS BELIEF THAT HE WAS NOT REQUIRED BY LAW TO WITHHOLD TAX, TO APPLY FOR A COMPROMISE SETTLEMENT OF HIS TAX LIABILITY UNDER E.O. NO. 44.**— The Court reconsiders the conclusion made by BIR Commissioner Ong in his demand letter, dated 16 January 1991, that the compromise settlement executed between the BIR and PNOC was without legal basis because withholding taxes were not actually taxes that could be compromised, but a penalty for PNB's failure to withhold and for which it was made personally liable. E.O. No. 44 covers disputed or delinquency cases where the person assessed was himself the taxpayer rather than a mere agent. RMO No. 39-86 expressly allows a withholding agent, who failed to withhold the required tax because of neglect, ignorance of the law, or his belief that he was not required by law to withhold tax, to apply for a compromise settlement of his withholding tax liability under E.O. No. 44. A withholding agent, in such a situation, may compromise the withholding tax assessment against him precisely because he is being held directly accountable for the tax.

9. **ID.; ID.; PETITIONER PHILIPPINE NATIONAL BANK'S WITHHOLDING TAX LIABILITY COULD NOT BE CONSIDERED A DELINQUENT ACCOUNT OR DISPUTED ASSESSMENT AS DEFINED BY RR NO. 17-86, FOR THE SAME REASON THAT PETITIONER PHILIPPINE**

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NATIONAL OIL COMPANY'S TAX LIABILITY DID NOT CONSTITUTE AS SUCH.— The general requirement of E.O. No. 44 still applies to withholding agents – that the withholding tax liability must either be a delinquent account or a disputed assessment as of 31 December 1985 to qualify for compromise settlement. The demand letter against PNB, which also served as its assessment notice, had been issued on 08 October 1986 or two months later than PNOC's. PNB's withholding tax liability could not be considered a delinquent account or a disputed assessment, as defined under RR No. 17-86, for the same reasons that PNOC's tax liability did not constitute as such. The tax liability of PNB, therefore, was also not eligible for compromise settlement under E.O. No. 44.

10. **ID.; ID.; EVEN ASSUMING *ARGUENDO* THAT PNOC AND/OR PNB QUALIFIED UNDER E.O. NO. 44, THEIR APPLICATION FOR COMPROMISE WAS FILED BEYOND THE DEADLINE.**— This Court likewise cannot give credence to PNOC's allegation that beginning 25 September 1986, the date of its first letter to the BIR, there were continuing negotiations between PNOC and BIR that culminated in the compromise agreement on 22 June 1987. Aside from the exchange of letters recounted in the preceding paragraphs, both PNOC and PNB failed to present any other proof of the supposed negotiations. After the BIR denied the second offer of PNOC to set-off its tax liability against the claim for tax refund/credit of NAPOCOR in a letter, dated 11 November 1986, there is no other evidence of subsequent communication between PNOC and the BIR. It was only after almost seven months, or on 09 June 1987, that PNOC again wrote a letter to the BIR, this time offering to pay the compromise amount of 30% of the basic tax assessed against. This letter was already filed beyond 31 March 1987, after the lapse of the effectivity of E.O. No. 44 and the deadline for filing applications for compromise under the said statute. Evidence of meetings between PNOC and the BIR, or any other form of communication, wherein the parties presented their offer and counter-offer to the other, would have been very valuable in explaining and supporting BIR Commissioner Tan's decision to accept PNOC's third offer to compromise after denying the previous two. The absence of such evidence herein negates PNOC's claim of actual negotiations with the BIR. Therefore, even assuming *arguendo* that the tax liabilities of PNOC and PNB qualify as delinquent accounts or disputed

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assessments as of 31 December 1985, the application for compromise filed by PNOC on 09 June 1987, and accepted by then BIR Commissioner Tan on 22 June 1987, was still filed way beyond 31 March 1987, the expiration date of the effectivity of E.O. No. 44 and the deadline for filing of applications for compromise under RMO No. 39-86.

11. **ID.; COURT OF TAX APPEALS; POWERS; THE BUREAU OF INTERNAL REVENUE COMMISSIONER'S DISCRETIONARY AUTHORITY TO ENTER INTO A COMPROMISE AGREEMENT IS NOT ABSOLUTE AND THE COURT OF TAX APPEALS MAY INQUIRE INTO THE ALLEGATIONS OF ABUSE THEREOF.**— It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with this Court having the last say on the matter. The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of "grave abuse of discretion and/or whimsical exercise of jurisdiction." The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts. The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246 of the NIRC of 1977, as amended, can only be exercised under certain circumstances specifically identified in said statutes. The BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them.

12. **ID.; ID.; ID.; THE COURT OF TAX APPEALS MAY SET ASIDE A COMPROMISE AGREEMENT THAT IS CONTRARY TO LAW AND PUBLIC POLICY.**— Although the general rule is that compromises are to be favored, and that compromises entered into in good faith cannot be set aside, this rule is not without qualification. A court may still reject

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a compromise or settlement when it is repugnant to law, morals, good customs, public order, or public policy. The compromise agreement between the BIR and PNOC was contrary to law having been entered into by BIR Commissioner Tan in excess or in abuse of the authority granted to him by legislation. E.O. No. 44 and the NIRC of 1977, as amended, had identified the situations wherein the BIR Commissioner may compromise tax liabilities, and none of these situations existed in this case. The compromise, moreover, was contrary to public policy. The primary duty of the BIR is to collect taxes, since taxes are the lifeblood of the Government and their prompt and certain availability are imperious needs. In the present case, however, BIR Commissioner Tan, by entering into the compromise agreement that was bereft of any legal basis, would have caused the Government to lose almost ₱300 million in tax revenues and would have deprived the Government of much needed monetary resources. Allegations of good faith and previous execution of the terms of the compromise agreement on the part of PNOC would not be enough for this Court to disregard the demands of law and public policy. Compromise may be the favored method to settle disputes, but when it involves taxes, it may be subject to closer scrutiny by the courts. A compromise agreement involving taxes would affect not just the taxpayer and the BIR, but also the whole nation, the ultimate beneficiary of the tax revenues collected.

13. **ID.; COLLECTION OF TAXES; THE GOVERNMENT CANNOT BE ESTOPPED FROM COLLECTING TAXES BY THE MISTAKE, NEGLIGENCE, OR OMISSION OF ITS AGENTS.**— It had been declared by this Court in *Hilado v. Collector of Internal Revenue, et al.*, that an administrative officer, such as the BIR Commissioner, may revoke, repeal or abrogate the acts or previous rulings of his predecessor in office. The construction of a statute by those administering it is not binding on their successors if, thereafter, the latter becomes satisfied that a different construction should be given. It is evident in this case that the new BIR Commissioner, Commissioner Ong, construed E.O. No. 44 and its implementing rules and regulations differently from that of his predecessor, former Commissioner Tan, which led to Commissioner Ong's revocation of the BIR approval of the compromise agreement, dated 22 June 1987. Such a revocation was only proper considering that the former BIR Commissioner's decision to approve the said compromise

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agreement was based on the erroneous construction of the law (*i.e.*, E.O. No. 44 and its implementing rules and regulations) and should not give rise to any vested right on PNOC. Furthermore, approval of the compromise agreement and acceptance of the compromise payment by his predecessor cannot estop BIR Commissioner Ong from setting aside the compromise agreement, dated 22 June 1987, for lack of legal basis; and from demanding payment of the deficiency withholding tax from PNB. As a general rule, the Government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents because: . . . Upon taxation depends the Government ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel.

14. **ID.; EXECUTIVE ORDER NO. 44; ISSUE ON WHETHER THE BIR COMPLIED WITH THE NOTICE REQUIREMENTS UNDER RR NO. 12-85 IS RAISED FOR THE FIRST TIME ON APPEAL AND SHOULD NOT BE GIVEN DUE COURSE.**—Whether or not the BIR complied with the notice requirements of RR No. 12-85 is a new issue raised by PNB only before this Court. Such a question has not been ventilated before the lower courts. For an appellate tribunal to consider a legal question, it should have been raised in the court below. If raised earlier, the matter would have been seriously delved into by the CTA and the Court of Appeals.

15. **ID.; TAX ASSESSMENT; THE ASSESSMENT AGAINST PNB HAD BECOME FINAL AND UNAPPEALABLE, AND THEREFORE, ENFORCEABLE.**—The BIR issued on 08 October 1986 an assessment against PNB for its withholding tax liability on the interest earnings and/or yields from PNOC's money placements with the bank. It had 30 days from receipt to protest the BIR's assessment. PNB, however, did not take any action as to the said assessment so that upon the lapse of

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the period to protest, the withholding tax assessment against it, dated 8 October 1986, became final and unappealable, and could no longer be disputed. The courts may therefore order the enforcement of this assessment. It is the enforcement of this BIR assessment against PNB, dated 08 October 1986, that is in issue in the instant case. If the compromise agreement is valid, it would effectively bar the BIR from enforcing the assessment and collecting the assessed tax; on the other hand, if the compromise agreement is void, then the courts can order the BIR to enforce the assessment and collect the assessed tax.

16. **ID.; ASSESSMENT AND COLLECTION OF TAX LIABILITIES; THE DEFENSE OF PRESCRIPTION WAS NEVER RAISED BY PETITIONERS PNOC AND PNB AND SHOULD BE CONSIDERED WAIVED.**— The general rule enunciated in Section 1, Rule 9 of the Rules of Civil Procedure governs the present case, that is, the defense of prescription, not pleaded in a motion to dismiss or in the answer, is deemed waived. The exception in same provision cannot be applied herein because the pleadings and the evidence on record do not sufficiently show that the action is barred by prescription. It has been consistently held in earlier tax cases that the defense of prescription of the period for the assessment and collection of tax liabilities shall be deemed waived when such defense was not properly pleaded and the facts alleged and evidences submitted by the parties were not sufficient to support a finding by this Court on the matter.

17. **ID.; ID.; THE THREE-YEAR PRESCRIPTIVE PERIOD FOR COLLECTION OF TAX SHALL COMMENCE ONLY TO RUN AFTER THE PROMULGATION OF THE DECISION OF THE SUPREME COURT IN WHICH THE ISSUES ARE RESOLVED WITH FINALITY.**— That CTA Case No. 4249 was initiated by private respondent Savellano, the informer, instead of PNOC, the taxpayer, or PNB, the withholding agent, would not prevent the suspension of the running of the prescriptive period for collection of the tax. What is controlling herein is the fact that the BIR Commissioner cannot file a judicial action in any other court for the collection of the tax because such a case would necessarily involve the same parties and involve the same issues already being litigated before the CTA in CTA Case No. 4249. The three-year prescriptive period for collection of the tax shall commence to run only after the promulgation of

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the decision of this Court in which the issues of the present case are resolved with finality.

18. ID.; NATIONAL INTERNAL REVENUE CODE; PAYMENT OF ADDITIONAL INFORMER'S REWARD, UPHELD.— Section 316(1) of the NIRC of 1977, as amended, granted a reward to an informer equivalent to 15% of the revenues, surcharges, or fees recovered, plus, any fine or penalty imposed and collected. The provision was clear and uncomplicated – an informer was entitled to a reward of 15% of the total amount actually recovered or collected by the BIR based on his information. The provision did not make any distinction as to the manner the tax liability was collected – whether it was through voluntary payment by the taxpayer or through garnishment of the taxpayer's property. Applicable herein is another well-known maxim in statutory construction – *Ubi lex non distinguit nec nos distinguere debemos* – when the law does not distinguish, we should not distinguish. Pursuant to the writ of garnishment issued by the BIR, the Central Bank issued a debit advice against the demand deposit account of PNB with the Central Bank for the amount of ₱294,958,450.73, and credited the same amount to the demand deposit account of the Treasurer of the Republic of the Philippines. The Treasurer of the Republic, in turn, already issued a journal voucher transferring ₱294,958,450.73 to the account of the BIR. Since the BIR had already collected ₱294,958,450.73 from PNB through the execution of the writ of garnishment over PNB's deposit with the Central Bank, then private respondent Savellano should be awarded 15% thereof as reward since the said collection could still be traced to the information he had given.

CARPIO, *J., dissenting opinion:*

1. TAXATION; EXECUTIVE ORDER NO. 44 (E.O. NO. 44); COMPROMISE AGREEMENTS ON DELINQUENT ACCOUNTS AND DISPUTED ASSESSMENTS; PETITIONER PHILIPPINE NATIONAL BANK'S (PNB) FAILURE TO WITHHOLD TAX EXPRESSLY FALLS WITHIN THE COVERAGE OF EXECUTIVE ORDER NO. 44.— PNB, which at that time was a government-owned and controlled corporation, did not withhold because of an honest belief that there was no withholding tax on the interest income of a wholly owned government

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corporation like PNOC. PNOC's application for restoration of its tax-exempt status was then pending with the Fiscal Incentives Review Board. Under paragraph 3.2 of RMO No. 39-86, a mere failure to withhold by the withholding agent shall *"qualify for compromise settlement."* Thus, PNB's failure to withhold expressly falls within the coverage of EO No. 44. What is outside the coverage of EO No. 44 is the failure of a withholding agent to remit what it had withheld. In such a situation, the withholding agent absconds with trust funds in its possession. Such a situation is definitely not subject to a tax compromise under EO No. 44. RMO No. 39-86 provides that "a withholding tax assessment issued against a withholding agent (1) who withheld the tax (2) but did not remit the same to the Government, shall not qualify for compromise settlement." PNB's case, however, is not a failure to remit the withheld tax but a plain failure to withhold the tax. PNB did not withhold the tax and thus did not abscond with public or trust funds.

2. **ID.; ID.; ID.; DISTINCTION BETWEEN THE POWERS OF THE COMMISSIONER OF INTERNAL REVENUE TO COMPROMISE UNDER SECTION 204 OF THE TAX CODE AND UNDER E.O. NO. 44.**— EO No. 44, issued on 4 September 1986, is a special law enacted when then President Corazon C. Aquino exercised legislative powers. EO No. 44 is separate and distinct from the authority of the BIR Commissioner to compromise taxes under the Tax Code. EO No. 44 is a one-time tax compromise scheme, *"effective until March 31, 1987"* and covering only *"disputed assessment or delinquent account pending as of December 31, 1985."* EO No. 44 was issued to generate immediate revenues for the new government following the 1986 EDSA revolution, as well as to clear the tax dockets of the BIR as of 31 December 1985. The power of the BIR Commissioner to compromise under EO No. 44 is *broader* than his power to compromise under the Tax Code. Under Section 204 of the Tax Code, the BIR Commissioner can compromise a tax only if there is reasonable doubt as to its validity or if the taxpayer's financial position shows a clear inability to pay the tax. EO No. 44 does not require these conditions. A compromise under Section 204 requires an examination of the legal basis of the assessment or the financial capacity of the taxpayer to pay the assessment. EO No. 44 does not require such examination. The conditions in EO No. 44 are straightforward and require no examination of the legal basis

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of the assessment or financial capacity of the taxpayer. The conditions in EO No. 44 are plain and simple: *first, the disputed assessment or delinquent account is pending as of 31 December 1995; and second, the taxpayer is willing to pay thirty percent of the basic tax assessed.* EO No. 44 prescribed simple, plain and straightforward conditions precisely to encourage taxpayers to avail of the tax compromise program under EO No. 44. EO No. 44 is a special law that prevails over Section 204 of the Tax Code. Section 4 of EO No. 44 states: Section 4. Section 246 (now 204) of the National Internal Revenue Code, as amended, is hereby suspended with respect to the disputed assessments and delinquent accounts referred to herein for the duration of the effectivity hereof. The stringent standards prescribed in Section 204 of the Tax Code do not apply to compromise agreements under EO No. 44.

3. **ID.; ID.; ID.; EXECUTIVE ORDER NO. 44 EXPRESSLY SUSPENDED THE EFFECTIVITY OF SECTION 204 OF THE TAX CODE; THE BUREAU OF INTERNAL REVENUE HAD NO AUTHORITY TO ENTERTAIN ANY OTHER TAX COMPROMISE DURING THE EFFECTIVITY OF E.O. NO. 44.**— The law expressly *suspended the effectivity of Section 204 of the Tax Code* during the effectivity of EO No. 44. *Thus, during the effectivity of EO No. 44, the only tax compromise possible for delinquent accounts as of 31 December 1985 is under EO No. 44.* PNOC filed its application with the BIR for a tax compromise during the effectivity of EO No. 44. Obviously, PNOC's application for a tax compromise of its delinquent accounts as of 31 December 1985 meant a tax compromise under EO No. 44. The BIR had no authority to entertain any other tax compromise.

4. **ID.; ID.; ID.; THE MAJORITY OPINION'S THESIS IS CONTRARY TO THE VERY CONCEPT OF SELF-ASSESSED TAX.**— The majority opinion's thesis is *contrary to the very concept of a self-assessed tax. A self-assessed tax, as the term implies, is self-assessed by the taxpayer without the intervention of an assessment by the taxing authority to create the tax liability.* A self-assessed tax means a tax that the taxpayer himself assesses or computes and pays to the taxing authority. In *Tupaz v. Ulep*, this Court explained that a self-assessed tax is one where "*no further assessment by the government is required to create the tax liability.*" A self-assessed

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tax falls due without need of any prior assessment by the BIR, and non-payment of a self-assessed tax on the date prescribed by law results in penalties even in the absence of any assessment by the BIR. A clear example of a self-assessed tax is the annual income tax, which the taxpayer himself computes and pays without the intervention of any assessment by the BIR. The annual income tax becomes due and payable without need of any prior assessment by the BIR. The BIR may or may not investigate or audit the annual income tax return filed by the taxpayer. The taxpayer's liability for the income tax does not depend on whether or not the BIR conducts such subsequent investigation or audit. However, if the taxing authority is first required to investigate, and after such investigation to issue the tax assessment that creates the tax liability, then the tax is no longer self-assessed. This is not the case of the final withholding tax on interest income on money market placements. The computation of the amount of the final withholding tax on interest income does not require any assessment by the BIR. The taxpayer can easily determine the amount of the tax since it is a flat rate based on the interest paid. In fact, the bank automatically computes the amount of the final withholding tax, deducts the tax from the taxpayer's interest income, and remits the tax to the BIR. The BIR does not make any assessment. Plainly, the final withholding tax on interest payment is a self-assessed tax. The taxpayer's failure to pay when due a self-assessed tax, while it may result in a subsequent investigation and assessment by the BIR, does not remove the character of the tax as a self-assessed tax. The tax liability of the taxpayer arises on due date of the tax, and the non-payment of the self-assessed tax on due date does not prevent the tax liability from attaching. The tax liability is created by operation of law, even in the absence of an investigation and assessment by the BIR. The subsequent BIR investigation and assessment is for the purpose of collecting a past due tax, and not for the purpose of creating the tax liability. Of course, the computation by the taxpayer of his tax liability under a self-assessed tax is not conclusive on the BIR. After investigation or audit, the BIR can issue an assessment for any *deficiency* tax still due from the taxpayer.

5. ID.; ID.; ID.; PETITIONER PHILIPPINE NATIONAL OIL COMPANY'S (PNOC) TAX LIABILITY IS A DELINQUENT ACCOUNT WITHIN THE COVERAGE OF EXECUTIVE ORDER NO. 44 BECAUSE IT IS A SELF-ASSESSED TAX

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UNPAID AS OF 31 DECEMBER 1985; THE FINAL WITHHOLDING TAX ON INTEREST PAYMENTS BY PHILIPPINE NATIONAL BANK ON PNOC'S MONEY MARKET PLACEMENTS DOES NOT REQUIRE THE INTERVENTION OF THE BIR FOR ITS ASSESSMENT AND REMITTANCE.— The tax compromise under EO No. 44 applies to a self-assessed tax, *whether or not a return was filed*, because Revenue Regulations No. 17-86 expressly so provides. Revenue Regulations No. 17-86 even states, "*Where no return was filed*, the taxpayer shall be considered delinquent as of the time the tax on such return was due, *and in availing of the compromise, a tax return shall be filed as a basis for computing the amount of compromise to be paid.*" If the taxpayer failed to file the return, he can avail of the tax compromise by filing a return, which shall serve as basis for computing the compromise amount. Revenue Regulations No. 17-86 expressly applies to delinquent accounts of taxpayers who failed to file the returns. EO No. 44 and its implementing rules do not require that PNOC or PNB must have "complied with the system and conducted self-assessment" before they could avail of the tax compromise. The BIR could not have required the thousands of taxpayers who availed of the tax compromise under EO No. 44 to show proof that they filed their tax returns. There is no such requirement in EO No. 44 or in its implementing rules. On the contrary, Revenue Regulations No. 17-86 expressly states "*whether or not a return was filed*" – which means that the filing of a tax return is not a condition for the availment of the tax compromise. The BIR never required the thousands of taxpayers who availed of EO No. 44 to prove that they filed their tax returns. For the majority opinion to require now PNOC and PNB to prove that they filed the tax returns would constitute denial of equal protection of the law. The tax compromise under EO No. 44 and its implementing rules applies to self-assessed taxes, *whether or not the corresponding tax returns were filed.* The definition of a delinquent account that is subject to the tax compromise expressly includes a self-assessed tax "*whether or not a return was filed.*" There can be no clearer language than this to express that the taxpayer is not required to prove that he filed the tax return. There is absolutely no legal basis in requiring PNOC or PNB to show proof that they filed the proper tax returns before they could avail of the tax compromise. The majority opinion is patently wrong in holding that PNOC and PNB must

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prove that they filed the tax returns before they can avail of the tax compromise.

6. **ID.; ID.; ID.; WITH OR WITHOUT A BIR ASSESSMENT, A DELINQUENT ACCOUNT QUALIFIES FOR TAX COMPROMISE UNDER E.O. NO. 44 PROVIDED IT IS A SELF-ASSESSED TAX UNPAID AS OF 31 DECEMBER 1985.**— *With or without a BIR assessment,* a delinquent account qualifies for tax compromise under EO NO. 44 provided it is a self-assessed tax unpaid as of 31 December 1985. EO No. 44 and its implementing rules do not exclude delinquent accounts that were issued BIR assessments. On the contrary, Revenue Memorandum Order No. 39-86 expressly states that the BIR assessment shall serve as basis in applying the compromise settlement rate under EO No. 44. The majority opinion is mistaken in holding that EO No. 44 and its implementing rules exclude BIR-assessed delinquent accounts from the coverage of the tax compromise. Revenue Memorandum Order No. 39-86 even expressly includes within the coverage of EO No. 44 *jeopardy assessments, arbitrary assessments, and doubtful assessments* issued by the BIR. Clearly, a subsequent BIR assessment – indeed any kind of subsequent BIR assessment – does not remove a delinquent account from the coverage of EO No. 44. Thousands of taxpayers availed of the tax compromise under EO No. 44 although the BIR had issued them assessments, whether regular assessments, jeopardy assessments, arbitrary assessments or doubtful assessments. For the majority opinion to exclude PNOC or PNB from availing of the same tax compromise because the BIR issued PNOC an assessment would constitute a denial of equal protection of the law. PNOC's and PNB's withholding tax liability clearly falls within the coverage of EO No. 44 and its implementing rules.

7. **ID.; ID.; ID.; TO EXCLUDE UNPAID TAXES FALLING DUE IN 1985 JUST BECAUSE THE BIR ISSUED ASSESSMENTS ON THE SUBJECT ACCOUNTS FROM 1 JANUARY 1986 ONWARDS WOULD RENDER THE TAX COMPROMISE UNDER E.O. NO. 44 INUTILE.**— The majority opinion wants to deprive PNOC from availing of the tax compromise under EO No. 44 just because the BIR issued the assessment on 8 August 1986. There is nothing in EO No. 44 or in Revenue Regulations No. 17-86 that excludes from the tax compromise delinquent accounts as of 31 December 1985 that were the subject

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of assessments issued after 31 December 1985. *On the contrary, Revenue Regulations No. 17-86 expressly provides that the delinquent accounts may be covered by regular assessments, jeopardy assessments, arbitrary assessments and doubtful assessments. Revenue Regulations No. 17-86 does not state that these assessments should be issued before 1 January 1986.* In fact, taxes falling due in the fourth quarter of 1985 could never be issued assessments before 1 January 1986. *The assessments for most of the taxes falling due in tax year 1985 could only be issued from 1 January 1986 onwards.* To exclude unpaid taxes falling due in 1985 just because the BIR issued assessments on these accounts from 1 January 1986 onwards would render the tax compromise under EO No. 44 inutile.

8. **ID.; ID.; ID.; TAX COMPROMISE APPLICATION FILED ON TIME; REQUIREMENT THAT THE APPLICATION FOR TAX COMPROMISE UNDER E.O. NO. 44 SHOULD BE FILED ON OR BEFORE 31 MARCH 1987 WAS FAITHFULLY COMPLIED WITH.**— On 25 September 1986, *long before the 31 March 1987 deadline*, PNOC wrote the BIR submitting a compromise settlement *pursuant to EO No. 44* as well as Section 246 of the Tax Code. More than five months before the deadline of 31 March 1987, PNOC had already applied with the BIR for a tax compromise under EO No. 44 and Section 246 of the Tax Code. Apparently, PNOC invoked EO No. 44 for its delinquent tax liability from 15 October 1984 to 31 December 1985, and Section 246 of the Tax Code for its tax liability from 1 January 1986 onwards since EO No. 44 covered only delinquent accounts as of 31 December 1985. PNOC filed its application for tax compromise on 25 September 1986, during the effectivity of EO No. 44. EO No. 44 suspended during the effectivity of EO No. 44 the BIR Commissioner's power to enter into tax compromises under Section 204 of the Tax Code. This suspension refers to delinquent accounts as of 31 December 1985, the delinquencies covered under EO No. 44. *Thus, when PNOC applied for tax compromise of its delinquent accounts as of 31 December 1985, the application for tax compromise could only have referred to EO No. 44 and not to any other tax compromise law. During the effectivity of EO No. 44, the BIR Commissioner had no power to compromise tax delinquencies as of 31 December 1985 under any law except EO No. 44. PNOC's application for tax compromise of its delinquent accounts as 31 December 1985 was clearly based on EO No.*

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44 as the only law then governing tax compromises for such delinquencies. After the BIR received PNOC's letter of 26 September 1986, several meetings took place between the BIR and PNOC on PNOC's request to avail of the tax compromise under EO No. 44. On 14 October 1986, PNOC *reiterated* its compromise settlement proposal to the BIR. There were also several exchanges of communications between the BIR and PNOC. PNOC's letter of 9 June 1987 explains why the BIR could not immediately act on its 26 September 1986 request for tax compromise under EO No. 44. When PNOC wrote the 26 September 1986 letter, only EO No. 44 and Revenue Regulations No. 17-86 were in existence. The BIR Commissioner had not yet issued Revenue Memorandum Order No. 39-86 which clarified that the failure to withhold taxes did not prevent the taxpayer or withholding agent from availing of the tax compromise under EO No. 44, which was the situation of PNOC and PNB. It was only during the course of the negotiations between PNOC and the BIR that the BIR Commissioner issued Revenue Memorandum Order No. 39-86. As a result of the negotiations, PNOC reiterated its 26 September 1986 application for tax compromise under EO No. 44 by writing the 9 June 1987 letter to the BIR. In turn, the BIR Commissioner approved the tax compromise on 22 June 1987. Thereafter, *PNOC paid the full amount* of the tax compromise in three installments from June to October 1987. Revenue Regulations No. 17-86 authorized the instalment payment because the compromise amount was over ₱50,000. Clearly, PNOC's 26 September 1986 letter-request for tax compromise under EO No. 44 culminated successfully on 22 June 1987 in the approval of the tax compromise under EO No. 44. *This is actual compliance with the requirement that the application for tax compromise under EO No. 44 should be filed on or before 31 March 1987.*

9. **ID.; ID.; ID.; THE TAX COMPROMISE IS *RES JUDICATA*; LAW PROVIDES THAT A COMPROMISE AGREEMENT, EVEN IF NOT JUDICIALLY APPROVED, HAS THE EFFECT OF *RES JUDICATA* ON THE PARTIES.**— A compromise agreement constitutes a final and definite settlement of the controversy between the parties. A compromise agreement, even if not judicially approved, has *the effect of res judicata on the parties.* Article 2037 of the Civil Code provides: A compromise has upon *the parties the effect and authority of res judicata;* but there shall be no execution except in compliance

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with a judicial compromise. (Emphasis supplied) The compromise agreement has the force of law between the parties and no party may discard unilaterally the compromise agreement. Under Section 8.1 of RMO No. 39-86, upon payment of the compromise amount, the tax "*case is already closed.*" The Solicitor General, who withdrew as counsel for the BIR, maintains that the compromise agreement is valid. Where a party has received the consideration for the compromise agreement, such party is estopped from questioning its terms and asking for the reopening of the case on the ground of mistake. As explained in *McCarthy v. Barber Steamship Lines*: *Hence it is general rule in this country, that compromises are to be favored, without regard to the nature of the controversy compromised,* and that they cannot be set aside because the event shows all the gain to have been on one side, and all the sacrifice on the other, if the parties have acted in good faith, and with a belief of the actual existence of the rights which they have respectively waived or abandoned; and if a settlement be made in regard to such subject, free from fraud or mistake, whereby there is a surrender or satisfaction, in whole or in part, of a claim upon one side in exchange for or in consideration of a surrender or satisfaction of a claim in whole or in part, or of something of value, upon the other, however baseless may be the claim upon either side or harsh the terms as to either of the parties, the other cannot successfully impeach the agreement in a court of justice * * *. Where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctable as such in equity, cannot afford a basis for setting a compromise aside or defending against a suit brought thereon * * * xxx And whether one or the other party understood the law of the case more correctly than the other, cannot be material to the validity of the bargain. For if it were, then it would follow that contracts by the parties settling their own disputes, would at last be made to stand or fall, according to the opinion of the appellate court how the law would have determined it. (Emphasis supplied) In *People v. Magdaluyo*, the BIR Commissioner approved the agreement which compromised the taxpayer's violation of the Tax Code. The taxpayer paid the compromise amount before the filing of the criminal information in court. The Court ruled that the government could no longer prosecute the taxpayer for violation of the Tax Code.

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10. **ID.; ID.; ID.; THE NEW BIR COMMISSIONER CANNOT JUST ANNUL LEGITIMATE COMPROMISE AGREEMENTS MADE BY HIS PREDECESSORS IN THE PERFORMANCE OF THEIR REGULAR DUTIES WHERE PARTIES ENTERED INTO THE COMPROMISE AGREEMENT IN GOOD FAITH.**— The same principle holds true in the present case. The parties to the compromise agreement have voluntarily settled the tax liability arising from PNB's failure to withhold the final tax on PNOC's interest income. The parties have fully implemented in good faith the compromise agreement. The new BIR Commissioner cannot just annul the legitimate compromise agreements made by his predecessors in the performance of their regular duties where the parties entered into the compromise agreements in good faith and had already fully implemented the compromise agreements. To rule otherwise would subject the validity and finality of a tax compromise agreement to depend on the different interpretations of succeeding BIR Commissioners. Such lack of finality of tax compromises would discourage taxpayers from entering into tax compromises with the BIR, considering that compromises entail admissions by taxpayers of violations of tax laws. A tax compromise cannot be invalidated except in case of mistake, fraud, violence, undue influence, or falsity of documents. Article 2038 of the Civil Code provides: Article 2038. A compromise in which there is *mistake, fraud, violence, intimidation, undue influence, or falsity of documents*, is subject to the provisions of Article 1330 of this Code. x x x (Emphasis supplied)

11. **ID.; ID.; ID.; NO FRAUD OR BAD FAITH IS ASCRIBABLE TO PETITIONERS PNB AND PNOC IN THE EXECUTION OF THE COMPROMISE AGREEMENT.**— Article 1330 of the Civil Code makes compromises tainted with such circumstances voidable. In the present case, there is no mistake because PNOC's delinquent account clearly falls within the coverage of EO No. 44. Also, PNOC clearly filed its application for tax compromise before the deadline. Thus, none of the circumstances that make a compromise voidable is present in this case. PNB was a government-owned and controlled corporation when it failed to withhold the tax. PNOC, the taxpayer primarily liable for the tax, was then also a government owned and controlled corporation, and remains so until now. PNB did not abscond with any tax money because this is a case of failure to withhold the tax and not a failure to remit a withheld

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tax. No fraud or bad faith is ascribable to PNB or PNOC in the execution of the compromise agreement.

12. ID.; ID.; ID.; COLLECTION OF PETITIONER'S TAX LIABILITY IS BARRED BY PRESCRIPTION.— The law prescribes two conditions for the collection of internal revenue taxes. *First*, the BIR must assess the tax on the taxpayer within three years from the last day of filing of the tax return. *Second*, the BIR must collect judicially or administratively the tax also within three years from the last day of filing of the tax return. In short, the BIR must institute both the assessment and the collection case within three years from the last day of filing of the return, but the assessment must precede the collection case. One textbook writer put it succinctly in this manner: Since *more than four years* had lapsed since the filing of the last quarterly return on 25 January 1986, the BIR could no longer assess the foregone tax on PNOC when the BIR abrogated the compromise agreement on 16 January 1991. The reckoning date for the three-year prescriptive period for withholding taxes due before the last quarter of 1985 is even earlier than 25 January 1986. Even assuming that the BIR had assessed the tax within the three-year prescriptive period, the BIR could no longer collect the foregone tax when it demanded payment from PNOC and PNB on 16 January 1991, the date the BIR abrogated the compromise agreement. The BIR must issue the tax assessment, *and judicially collect the assessed tax*, within three years from the last day of filing of the last quarterly return. Of course, the BIR may also administratively collect the assessed tax by distraint of personal property or levy on real property. *However, the BIR must take these summary remedies within the three-year prescriptive period for collecting the assessed tax.* In the present case, the BIR issued the warrant of garnishment against PNB on 12 August 1991, *more than five years* from the last day of filing of the last quarterly return on 25 January 1986. Thus, the garnishment of PNB's account with the Central Bank on 23 August 1991 is void since the right of the BIR to collect the tax had already prescribed by then.

13. ID.; ID.; ID.; THE MAJORITY OPINION IS MISTAKEN IN STATING THAT THE THREE-YEAR PERIOD IS COUNTED FROM THE DATE OF ISSUANCE OF THE ASSESSMENT; SECTION 318 OF THE TAX CODE CLEARLY STATES THAT THE THREE-YEAR PERIOD

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IS COUNTED FROM THE DUE DATE OF FILING THE RETURN.— Section 318 (now 203) of the Tax Code clearly provides that the three-year prescriptive period is counted from the due date of the filing of the return. The BIR must assess and collect the tax within three years from the filing of the tax return. *In the present case, the majority opinion expressly admits that the BIR issued the assessment against PNB on 8 October 1986, and that the BIR had until 7 October 1989, or three years from the issuance of the assessment, to collect the tax.* The majority opinion declares: *Neither has the three-year prescriptive period for the collection of the tax prescribed. Considering that the assessment against PNB was issued on 8 October 1986, the BIR had until 7 October 1989 to enforce collection based thereon. (Emphasis and underscoring supplied)* The majority opinion is mistaken in stating that the three-year period is counted from the date of issuance of the assessment. Section 318 (now 203) of the Tax Code clearly states that the three-year period is counted from the due date of the filing of the return. *This means that the prescriptive period in the present case expired on 24 January 1989 since the last quarterly return was due on 25 January 1986. This is almost 9 months earlier than the 7 October 1989 expiry date that the majority opinion claims.*

14. **ID.; ID.; ID.; WHETHER THE BIR HAD ONLY UNTIL 24 JANUARY 1989, OR 7 OCTOBER 1989, OR EVEN UNTIL THE END OF JUNE 1990 TO COLLECT THE TAX WOULD NOT REALLY MATTER BECAUSE THE COLLECTION OF THE TAX WOULD STILL BE TIME-BARRED UNDER ANY OF THE THREE PRESCRIPTIVE PERIODS.**— Even assuming for the sake of argument that PNB failed to file the quarterly returns, PNOC filed an amended return when the BIR Commissioner approved on 22 June 1987 the tax compromise. Under Revenue Regulations No. 17-86, the taxpayer who avails of the tax compromise under EO No. 44 must file a tax return for the income covered by the delinquent account. Section 2 (a) of Revenue Regulations No. 17-86 provides: a) x x x Where no return was filed, the taxpayer shall be considered delinquent as of the time the tax on such return was due, *and in availing of the compromise, a return shall be filed as a basis for computing the amount of compromise to be paid.* (Emphasis and underscoring supplied) Thus, PNOC for sure filed a return in June 1987 even assuming its agent, PNB, failed to file the return on 25 January 1986. Under the worst-case

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scenario that PNB failed to file the return on 25 January 1986, the BIR still had *only until June 1990* to collect the tax from PNOC and PNB, applying the three-year period from PNOC's actual filing of the return in June 1987. This is the rule in Section 318 (now 203) of the Tax Code, which provides: Whether the BIR had only until 24 January 1989, or 7 October 1989, or even until the end of June 1990 to collect the tax would not really matter. The collection of the tax would still be time-barred in the present case under any of these three prescriptive periods.

15. **ID.; ID.; ID.; THE PLEADINGS AND THE EVIDENCE ON RECORD CLEARLY ESTABLISH THAT PRESCRIPTION HAD LONG SET IN TO BAR THE COLLECTION OF THE TAX AGAINST PNB AND PNOC.**— *The BIR garnished PNB's funds with the Central Bank on 2 September 1992, long after the prescriptive period had expired under any of the three prescriptive periods.* The garnishment was thus void since the BIR's right to collect the tax had already prescribed. The BIR did not also file any collection case in court against PNB within any of the three prescriptive periods. *The present case is not even a collection case against PNB or PNOC.* Before 2004, the year Republic Act No. 9282 took effect, the Court of Tax Appeals had no jurisdiction to enforce the collection of taxes. Prior to 2004, judicial action to collect internal revenue taxes fell under the jurisdiction of the regular trial courts. *In the case of PNOC, the BIR issued the assessment even earlier, on 8 August 1986.* If we follow the majority opinion's erroneous computation that the three-year period begins from the issuance of the assessment, *the BIR had only until 7 August 1989 to collect from PNOC the tax administratively or judicially.* If we assume, for the sake of argument, that there was a failure to file the return, *the BIR had also only until 7 August 1989, or three years after the issuance of the assessment, to collect the tax from PNOC.* This is pursuant to Section 319 (now 222) of the Tax Code. Until now, *after a lapse of more than 18 years,* the BIR has made no distraint or levy on PNOC's assets. Neither has the BIR filed any collection case in court against PNOC. *In short, the pleadings and the evidence on record clearly establish that prescription had long set in to bar the collection of the tax against PNB and PNOC.*

16. **ID.; ID.; ID.; IF THE PLEADINGS OR EVIDENCE ON RECORD SHOW THAT THE ACTION IS BARRED BY**

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PRESCRIPTION, COURTS ARE MANDATED TO DISMISS THE ACTION EVEN IF PRESCRIPTION IS NOT RAISED AS A DEFENSE.— The majority opinion, claims that prescription cannot bar the collection of PNOC's or PNB's withholding tax liability because neither PNOC nor PNB raised the defense of prescription. The majority opinion is clearly mistaken. While the rule is that prescription is waived if not raised as a defense, the present case falls under the *express exception* to this rule. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides: Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. *However, when it appears from the pleadings or the evidence on record* that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or *that the action is barred* by prior judgment or *by the statute of limitations, the court shall dismiss the claim.* (Emphasis and underscoring supplied) Thus, if the pleadings or evidence on record show that the action is barred by prescription, the court is *mandated* to dismiss the action even if prescription is not raised as a defense.

17. **ID.; ID.; ID.; THE BIR SHOULD HAVE FILED A COLLECTION CASE AGAINST PETITIONERS PNB OR PNOC BEFORE 7 OCTOBER 1989 IN ORDER TO SUSPEND THE RUNNING OF THE PRESCRIPTIVE PERIOD.**— The majority opinion further claims that the running of the prescriptive period was suspended when petitioner filed with the Court of Tax Appeals on 8 April 1988 the present petition to declare void the tax compromise between the BIR and PNOC. The majority opinion asserts that the running of the prescriptive period remains suspended up to now. The majority opinion's contention collides with the applicable provision of the Tax Code. Section 223 of the Tax Code governs the suspension of the running of the prescriptive period to assess and collect internal revenue taxes. Section 223 suspends the running of the prescriptive period if the BIR Commissioner "*is prohibited from x x x beginning distraint or levy or a proceeding in court*" to enforce collection of the tax assessed. In the present case, the Court of Tax Appeals, Court of Appeals and this Court *never prohibited* the BIR Commissioner from commencing a distraint, levy or civil suit against PNB or PNOC to collect the tax. *No court ever issued an order prohibiting the BIR from*

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collecting the tax from PNB or PNOC. The BIR could have filed a collection suit against PNB or PNOC with the proper regional trial court, which before 2004 had jurisdiction over tax collection cases. At the very least, the BIR should have filed with the proper regional trial court a collection case *ad cautelam* during the pendency of the present case in court. This would have suspended the running of the prescriptive period. However, the BIR neglected to file a collection case before 7 October 1989, the expiration of the prescriptive period to collect the tax from PNB.

18. **ID.; ID.; ID.; BIR SIMPLY SLEPT ON ITS RIGHTS; ITS FAILURE TO COLLECT THE TAX IS DUE TO ITS FAULT OR NEGLIGENCE AND NOT BECAUSE A COURT ORDER PREVENTED IT FROM COLLECTING THE TAX BEFORE THE EXPIRATION OF THE PRESCRIPTIVE PERIOD ON 7 OCTOBER 1989.**— The BIR could also have *administratively collected* the tax from PNB and PNOC. In fact, during the pendency of the case in the Court of Tax Appeals, the BIR Commissioner *administratively garnished PNB's funds with the Central Bank,* although the garnishment is void because the prescriptive period had already expired even by the majority opinion's own computation of the prescriptive period. *This only proves that nothing prevented the BIR from administratively garnishing PNB's or PNOC's accounts even during the pendency of the present case.* However, the BIR garnished PNB's funds only after the prescriptive period had expired on 7 October 1989. Obviously, the BIR failed to collect the tax before 7 October 1989 because of the *fault or negligence of the BIR,* and not because a court order prevented the BIR from collecting the tax before the expiration of the prescriptive period on 7 October 1989. The BIR was free at any time to distrain or levy on the assets of PNB or PNOC, as well as to file a collection suit before the regular courts against PNB or PNOC, even during the pendency of the present petition in the various courts. In particular, the BIR could have distrained or levied on the assets of PNB at any time because PNB was not even a party to the tax compromise between the BIR and PNOC. Indeed, the BIR did garnish the funds of PNB, but only after the expiration of the prescriptive period. The BIR simply slept on its rights. Neither PNOC nor PNB instituted the present case against the BIR to prevent the collection of the tax. Private respondent Tirso B. Savellano, who is not the taxpayer, originally filed this petition

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against the BIR Commissioner only, and later on impleaded PNOC and PNB. This Court has applied Section 223 of the Tax Code suspending the running of the prescriptive period in cases where the *taxpayer sued the BIR Commissioner to prevent the collection of a tax,* as when the taxpayer disputed the validity or amount of the assessment before the Court of Tax Appeals. This is not the situation in the present case since PNOC and PNB have not sued the BIR Commissioner to prevent the collection of the tax, and they do not dispute the validity or amount of the assessment issued against them. Nothing legally prevented the BIR from collecting the tax, administratively or judicially, from PNOC or PNB at any time before 7 October 1989. Thus, the BIR cannot invoke Section 223 of the Tax Code to claim the suspension of the running of the prescriptive period during the pendency of the present case in the courts.

TINGA, *J.*, *separate opinion*:

1. **TAXATION; EXECUTIVE ORDER NO. 44; COMPROMISE AGREEMENTS ON DELIQUENT ACCOUNTS AND DISPUTED ASSESSMENTS; NO VALID COMPROMISE AGREEMENT BETWEEN PETITIONER PHILIPPINE NATIONAL OIL COMPANY AND THE BUREAU OF INTERNAL REVENUE; PETITIONER'S TAX LIABILITY IS NOT WITHIN THE COVERAGE OF THE SPECIAL COMPROMISE TAX MEASURE.**— E.O. No. 44 applies only to "disputed assessment or delinquent account pending as of December 31, 1985." This is not an executive issuance meant to give blanket authority on the Commissioner of Internal Revenue to compromise away tax liabilities. In fact, the "cut-off" period stipulated in the executive order refers to a date nine months prior to the date of the promulgation of the issuance, 4 September 1986. The authority to compromise was delegated for a specific purpose, as stated in E.O. No. 44. Significantly in that regard, the Executive Order is not a mere executive issuance but a legislative edict in much the same fashion as an Act of Congress, issued as it was by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution. The perambulatory clauses of E.O. No. 44 state the need to clear the backlog of pending cases of disputed assessments and delinquent accounts in view of the fact that the records of Bureau of Internal Revenue show that over the

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past ten years, a great number of cases involving disputed assessments and delinquent accounts for internal revenue had accumulated. The interpretation of the provisions of E.O. No. 44 cannot be strained in order to cover taxes that accrued after 31 December 1985, since this would no longer be included in the "backlog" adverted to in the issuance. Parenthetically, the Executive Order is akin to a tax exemption statute which should be construed strictly against the taxpayer.

2. **ID.; ID.; ID.; THE COMPROMISE AGREEMENT IN QUESTION IS NULL AND VOID IN ITS ENTIRETY FOR BEING CONTRARY TO EXECUTIVE ORDER NO. 44.**— I maintain that even without need of ascertaining when exactly such interest income accrued, the compromise agreement in question is null and void in its entirety for being contrary to E.O. No. 44. While PNB failed to submit any application for compromise, PNOC submitted two offers – not applications for compromise settlement. PNOC's first proposal, contained in a letter dated 22 September 1986, offered to clear its basic tax liability through a set-off thereof against the claim for tax refund/credit of the National Power Corporation (NPC), which amount was also supposedly a receivable of PNOC from NPC. This proposal was reiterated in another letter dated 14 October 1986. Section 1 of E.O. No. 44 is explicit in declaring that the compromise of a disputed assessment or delinquent account is accomplished through *payment* of an amount equal to thirty percent (30%) of the basic tax assessed, a generous sum if I may add. Payment, as defined in this jurisdiction, means the delivery of money or the performance of an obligation. It institutes a totally different mode of extinguishment of an obligation from compensation and/or confusion or merger. PNOC invokes the concepts of compensation and/or confusion or merger as it seeks to have the NPC, which allegedly had outstanding payables due to PNOC, absorb PNOC's tax liabilities with its own outstanding tax credit due from the BIR. However, as noted by the BIR in its initial response to PNOC's proposal, NPC's claim was still under process. Hence, at the time PNOC offered its terms for compromise to the BIR, no extinguishment of PNOC's tax liability could have taken place — whether by compensation, confusion or merger. There was no mutual creditor-debtor relationship between PNOC and the BIR – the existence of which is one of the requisites for compensation to take place. Also, neither was there an outstanding creditor-debtor relationship between the

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NPC and the BIR. Moreover, the "credit" which PNOC proposed to use for the purpose of offsetting emanated from a segregate obligation than that due the BIR from PNOC; hence, there could be no confusion or merger which could lead to payment. In short, there was no legal basis for the NPC then to offset PNOC's tax liabilities through its own "tax credit," as the said "tax credit" had not, in the first place, yet ripened as an existing obligation. For that reason, PNOC cannot be deemed as having made payment, or even a valid offer of payment through its first two letters, as there was no legal basis to effect its proposed mode of payment. In the meantime, the outstanding tax liability had accrued and eventually, the deadline set forth in RMO No. 39-86 passed.

3. **ID.; ID.; ID.; THE TWO LETTERS OF PETITIONER PHILIPPINE NATIONAL OIL COMPANY IN 1986 ARE NOT IN THE FORM OF AN "APPLICATION FOR COMPROMISE SETTLEMENT"; ANY VALID FORM OF AN APPLICATION FOR COMPROMISE SHOULD CONCEDE THE LIABILITY FOR TAX, AND MAKE A VALID OFFER OF PAYMENT.**— The plain meaning of paragraph (2), in relation to Section 6, E.O. No. 44, is that the deadline for the submission of an application for compromise settlement shall be effective only until 31 March 1987. As of that point, had PNOC submitted an application for compromise settlement within the contemplation of law? Plainly, the two letters in 1986 of PNOC are not in the form of an "application for compromise settlement." Though the Court need not be strict in demanding obeisance with the formal requisites, I would consider any valid form of an application for compromise should concede the liability for tax, and make a valid offer of payment. To require otherwise would render a mockery of the offer of tax compromise. Owing to the legal implausibility of the initial offer of PNOC to the BIR, I could not consider the first two letters as a valid application for compromise settlement. Moreover, the BIR expressly rejected this application, if it could be construed as such, as early as November of 1986. If there was indeed a *bona fide* intent on the part of PNOC to comply with E.O. No. 44 and its attendant revenue issuances, it should have exerted efforts to comply with this deadline set forth under RMO No. 39-86, in light of the BIR's rejection of its earlier offer. Instead, the 31 March 1987 deadline passed without a word or renewed offer from the PNOC. Instead, on 09 June

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1987, *or two months after the deadline* had elapsed, PNOC made a second, different offer, proposing by way of compromise to pay thirty (30%) of its basic tax liability, specifically invoking Section 1 of E.O. 44. This new offer was subsequently accepted by the BIR.

4. **ID.; ID.; ID.; THE BUREAU OF INTERNAL REVENUE COMMISSIONER HAS NO AUTHORITY TO EXTEND THE EFFECTIVITY OF E.O. NO. 44; ONLY CONGRESS CAN VALIDLY EXTEND THE EFFECTIVITY OF THE SPECIAL COMPROMISE TAX MEASURE.**— However, E.O. No. 44 is explicit in declaring that its effectivity subsists only until 31 March 1987, a fact which is similarly demonstrated by paragraph (2) of RMO No. 39-86. The dissent relies on the fact that E.O. No. 44, issued in the exercise of legislative powers then vested in President Aquino, is a special law of more specific application in this case than the Tax Code. Yet the delegation of authority to the tax commissioner to effect compromises is limited by the confines of E.O. No. 44, which is explicit in stating that its effectivity runs only until 31 March 1987. Hence, contrary to the dissenting view, the BIR Commissioner had no authority to extend the effectivity of E.O. No. 44, or the deadline prescribed thereupon. RMO No. 39-86 properly recognizes such limitation, and assuming that the subsequent acts of the tax commissioner contravene the deadline set by law and regulation, those acts should be deemed as beyond the ambit of delegated power, and thus void. *Under the circumstances, only Congress could have validly extended the effectivity of the special compromise tax measure.* Thus, the *ponencia* correctly concludes that the compromise agreement entered into on 22 June 1987 is void. It was entered into after the lapse of the authority of BIR Commissioner to effect such compromise agreement, owing to the prescribed effectivity of E.O. No. 44, from which such authority was derived. Needless to say, much trouble would have been saved had the PNOC been timely in seeking a compromise agreement with the BIR, and prudent enough in proposing one that had basis under law. It cannot rely upon its status as a component of the government as basis for relief.

5. **ID.; ID.; ID.; THE COURT WILL NOT BE A PRIVY TO THE DIVESTITURE OF A HUGE TAX PAYMENT ALREADY REMITTED TO THE CASH-STRAPPED GOVERNMENT**

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IF THERE IS NO UNEQUIVOCAL BASIS FOR THE RETURN THEREOF, NOR THE COURT BE A PARTY TO THE FORFEITURE OF THE INFORMER'S REWARD TO WHICH PRIVATE RESPONDENT HAS A VESTED RIGHT AS MATTER OF LAW AND EQUITY.— We should not discount the damage inflicted by the void compromise agreement on the informer, Tirso Savellano. The financial remuneration to be obtained by the informer is designed to alleviate whatever socio-political stigma that may attach as a result of the information that is divulged. The informer's right is predicated on the amount actually paid, and if the amount paid is less than what is due as a result of an unauthorized compromise, then the informer indubitably has an interest to assail the said compromise. Finally, the dissent raises the argument that prescription had run to bar the annulment of the compromise agreement. Notably, this issue was not raised before any of the fora involved, by the Court of Tax Appeals, the Court of Appeals, or this Court. Neither was it discussed in any of the assailed rulings. The proper taxes due in this case have actually been paid to the government. Petitioners unfortunately seek the refund of what has been already collected, despite the fact that they have all along conceded, not denying at all, the basis for their tax liability. The Court should not be privy to the divestiture of the huge tax payment already remitted to the cash-strapped government if there is no unequivocal basis for the return thereof. More so, should it not be a party to the forfeiture of the informer's reward to which the private respondent has a vested right as a matter of law and equity.

APPEARANCES OF COUNSEL

The Solicitor General for PNOC.
Lucas R. Vidad for PNB.
Salvador David & Cesar A. Pangilinan for BIR.

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DECISION

CHICO-NAZARIO, *J.*:

This is a consolidation of two Petitions for Review on *Certiorari* filed by the Philippine National Oil Company (PNOC)[1] and the Philippine National Bank (PNB),[2] assailing the decisions of the Court of Appeals in CA-G.R. SP No. 29583[3] and CA-G.R. SP No. 29526,[4] respectively, which both affirmed the decision of the Court of Tax Appeals (CTA) in CTA Case No. 4249.[5]

The Petitions before this Court originated from a sworn statement submitted by private respondent Tirso B. Savellano (Savellano) to the Bureau of Internal Revenue (BIR) on 24 June 1986. Through his sworn statement, private respondent Savellano informed the BIR that PNB had failed to withhold the 15% final tax on interest earnings and/or yields from the money placements of PNOC with the said bank, in violation of Presidential Decree (P.D.) No. 1931. P.D. No. 1931, which took effect on 11 June 1984, withdrew all tax exemptions of government-owned and controlled corporations.

In a letter, dated 08 August 1986, the BIR requested PNOC to settle its liability for taxes on the interests earned by its money placements with PNB and which PNB did not withhold.[6]

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[1] *Rollo* (G.R. No. 109976), pp. 7-29.

[2] *Rollo* (G.R. No. 112800), pp. 7-27.

[3] Penned by Associate Justice Regina G. Ordonez-Benitez, with Associate Justices Arturo B. Buena and Eduardo G. Montenegro, concurring, on 23 April 1993.

[4] Penned by Associate Justice Oscar M. Herrera, with Associate Justices Consuelo Y. Santiago (now Supreme Court Associate Justice) and Corona I. Somera, concurring, on 23 November 1993.

[5] Penned by Associate Judge Constante C. Roaquin, with Presiding Judge Ernesto D. Acosta and Acting Associate Judge Stella Dadivas-Farrales, concurring, on 28 May 1992.

[6] CTA *Rollo*, p. 643.

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PNOC wrote the BIR on 25 September 1986, and made an offer to compromise its tax liability, which it estimated to be in the sum of ₱304,419,396.83, excluding interest and surcharges, as of 31 July 1986. PNOC proposed to set-off its tax liability against a claim for tax refund/credit of the National Power Corporation (NAPOCOR), then pending with the BIR, in the amount of ₱335,259,450.21. The amount of the claim for tax refund/credit was supposedly a receivable account of PNOC from NAPOCOR.[7]

On 08 October 1986, the BIR sent a demand letter to PNB, as withholding agent, for the payment of the final tax on the interest earnings and/or yields from PNOC's money placements with the bank, from 15 October 1984 to 15 October 1986, in the total amount of ₱376,301,133.33.[8] On the same date, the BIR also mailed a letter to PNOC informing it of the demand letter sent to PNB.[9]

PNOC, in another letter, dated 14 October 1986, reiterated its proposal to settle its tax liability through the set-off of the said tax liability against NAPOCOR'S pending claim for tax refund/credit.[10] The BIR replied on 11 November 1986 that the proposal for set-off was premature since NAPOCOR's claim was still under process. Once more, BIR requested PNOC to settle its tax liability in the total amount of ₱385,961,580.82, consisting of ₱303,343,765.32 final tax, plus ₱82,617,815.50 interest computed until 15 November 1986.[11]

On 09 June 1987, PNOC made another offer to the BIR to settle its tax liability. This time, however, PNOC proposed a compromise by paying ₱91,003,129.89, representing 30% of

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[7] *Ibid.*, pp. 199-200.

[8] *Ibid.*, pp. 17-18.

[9] *Ibid.*, p. 644.

[10] *Id.*

[11] *Ibid.*, pp. 19-20.

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the ₱303,343,766.29 basic tax, in accordance with the provisions of Executive Order (E.O.) No. 44.[12]

Then BIR Commissioner Bienvenido A. Tan, in a letter, dated 22 June 1987, accepted the compromise. The BIR received a total tax payment on the interest earnings and/or yields from PNOC's money placements with PNB in the amount of ₱93,955,479.12, broken down as follows:

Previous payment made by PNB	₱2,952,349.23
Add: Payment made by PNOC pursuant to the compromise agreement of June 22, 1987	₱91,003,129.89
Total tax payment	₱93,955,479.12[13]

Private respondent Savellano, through four installments, was paid the informer's reward in the total amount of ₱14,093,321.89, representing 15% of the ₱93,955,479.12 tax collected by the BIR from PNOC and PNB. He received the last installment on 01 December 1987.[14]

On 07 January 1988, p rivate respondent Savellano, through his legal counsel, wrote the BIR to demand payment of the balance of his informer's reward, computed as follows:

BIR tax assessment	₱385,961,580.82
Final tax rate	0.15
Informer's reward due (BIR deficiency tax assessment x Final tax rate)	₱57,894,237.12
Less: Payment received by private respondent Savellano	₱14,093,321.89
Outstanding balance	₱43,800,915.25[15]

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[12] *Ibid.*, pp. 196-198.

[13] *Ibid.*, p. 645.

[14] *Id.*

[15] *Ibid.* p. 21.

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BIR Commissioner Tan replied through a letter, dated 08 March 1988, that private respondent Savellano was already fully paid the informer's reward equivalent to 15% of the amount of tax actually collected by the BIR pursuant to its compromise agreement with PNOC. BIR Commissioner Tan further explained that the compromise was in accordance with the provisions of E.O. No. 44, Revenue Memorandum Order (RMO) No. 39-86, and RMO No. 4-87.[16]

Private respondent Savellano submitted another letter, dated 24 March 1988, to BIR Commissioner Tan, seeking reconsideration of his decision to compromise the tax liability of PNOC. In the same letter, private respondent Savellano questioned the legality of the compromise agreement entered into by the BIR and PNOC and claimed that the tax liability should have been collected in full.[17]

On 08 April 1988, while the aforesaid Motion for Reconsideration was still pending with the BIR, private respondent Savellano filed a Petition for Review *ad cautelam* with the CTA, docketed as CTA Case No. 4249. He claimed therein that BIR Commissioner Tan acted "with grave abuse of discretion and/or whimsical exercise of jurisdiction" in entering into a compromise agreement that resulted in "a gross and unconscionable diminution" of his reward. Private respondent Savellano prayed for the enforcement and collection of the total tax assessment against taxpayer PNOC and/or withholding agent PNB; and the payment to him by the BIR Commissioner of the 15% informer's reward on the total tax collected.[18] He would later amend his Petition to implead PNOC and PNB as necessary and indispensable parties since they were parties to the compromise agreement.[19]

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[16] *Ibid.*, p. 22.

[17] *Ibid.*, pp. 202-208.

[18] *Ibid.*, pp. 1-16.

[19] *Ibid.*, pp. 50-66.

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In his Answer filed with the CTA, BIR Commissioner Tan asserted that the Petition stated no cause of action against him, and that private respondent Savellano was already paid the informer's reward due him. Alleging that the Petition was baseless and malicious, BIR Commissioner Tan filed a counterclaim for exemplary damages against private respondent Savellano.[20]

PNOC and PNB filed separate Motions to Dismiss, both arguing that the CTA lacked jurisdiction to decide the case.[21] In its Resolution, dated 28 November 1988, the CTA denied the Motions to Dismiss since the question of lack of jurisdiction and/or cause of action do not appear to be indubitable.[22]

After their Motions to Dismiss were denied by the CTA, PNOC and PNB filed their respective Answers to the amended Petition. PNOC averred, among other things, that (1) it had no privity with private respondent Savellano; (2) the BIR Commissioner's discretionary act in entering into the compromise agreement had legal basis under E.O. No. 44 and RMO No. 39-86 and RMO No. 4-87; and (3) the CTA had no jurisdiction to resolve the case against it.[23] On the other hand, PNB asserted that (1) the CTA lacked jurisdiction over the case; and (2) the BIR Commissioner's decision to accept the compromise was discretionary on his part and, therefore, cannot be reviewed or interfered with by the courts.[24] PNOC and PNB later filed their amended Answer invoking an opinion of the Commission on Audit (COA) disallowing the payment by the BIR of informer's reward to private respondent Savellano.[25]

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[20] *Ibid.*, pp. 32-40.

[21] *Ibid.*, pp. 99-103, 106-112.

[22] Penned by Presiding Judge Amante Filler, with Associate Judges Alex Z. Reyes and Constante C. Roaquin, concurring; *Ibid.*, p. 141.

[23] *Ibid.*, pp. 158-164.

[24] *Ibid.*, pp. 168-172.

[25] This Court, in the case of *Commissioner of Internal Revenue v. Commission on Audit* (G.R. No. 101976, 29 January 1993, 218 SCRA 203,

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The CTA, thereafter, ordered the parties to submit their evidence,[26] to be followed by their respective Memoranda.[27]

On 23 November 1990, private respondent Savellano, filed a Manifestation with Motion for Suspension of Proceedings, claiming that his pending Motion for Reconsideration with the BIR Commissioner may soon be resolved.[28] Both PNOC and PNB opposed the said Motion.[29]

Subsequently, the new BIR Commissioner, Jose U. Ong, in a letter to PNB, dated 16 January 1991, demanded that PNB pay deficiency withholding tax on the interest earnings and/or yields from PNOC's money placements, in the amount of ₱294,958,450.73, computed as follows:

Withholding tax, plus interest under the letter of demand dated November 11, 1986	₱385,961,580.82

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214), set aside the disallowance in audit by the Commission on Audit (COA) and affirmed the payment by the BIR Commissioner of informer's reward to Savellano, private respondent in the present case, ruling thus:

> That the informer's reward was sought and given to tax delinquencies of government agencies provides no reason for disallowance. The law on the matter makes no distinction whatsoever between delinquent taxpayers in this regard, whether private persons or corporation, or public or quasi-public agencies, it being sufficient for its operation that the person or entity concerned is subject to, and violated, revenue laws. and the informer's report thereof resulted in the recovery of revenues.

[26] Resolution, dated 28 December 1989, penned by Presiding Judge Amante Filler, with Associate Judges Alex Z. Reyes and Constante C. Roaquin, concurring; CTA *Rollo*, pp. 233-234.

[27] Resolution, dated 17 May 1990, penned by Presiding Judge Amante Filler, with Associate Judge Alex Z. Reyes and Constante C. Roaquin, concurring; *Ibid.*, pp. 281-282.

[28] *Ibid.*, pp. 398-399.

[29] *Ibid.*, pp. 433-435, 439-442.

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Less: Amount paid under E.O. No. 44	₱ 91,003,129.89
Amount still due and collectible	₱294,958,450.73[30]

This BIR letter was received by PNB on 06 February 1991,[31] and was protested by it through a letter, dated 11 April 1991.[32] The BIR denied PNB's protest on the ground that it was filed out of time and, thus, the assessment had already become final.[33]

Private respondent Savellano, on 22 February 1991, filed an Omnibus Motion moving to withdraw his previous Motion for Suspension of Proceeding since BIR Commissioner Ong had finally resolved his Motion for Reconsideration, and submitting by way of supplemental offer of evidence (1) the letter of BIR Commissioner Ong, dated 13 February 1991, informing private respondent Savellano of the action on his Motion for Reconsideration; and (2) the demand-letter of BIR Commissioner Ong to PNB, dated 16 January 1991.[34]

Despite the oppositions of PNOC and PNB, the CTA, in a Resolution, dated 02 May 1991, resolved to allow private respondent Savellano to withdraw his previous Motion for Suspension of Proceeding and to admit the supplementary evidence being offered by the same party.[35]

In its Order, dated 03 June 1991, the CTA considered the case submitted for decision as of the following day, 04 June 1991.[36]

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[30] *Ibid.*, pp. 447-448.

[31] *Rollo* (G.R. No. 112800), p. 21.

[32] CA *Rollo* (CA-G.R. SP No. 29526), p. 11.

[33] CTA *Rollo*, pp. 538-541.

[34] *Ibid.*, pp. 449-458.

[35] Penned by Presiding Judge Alex Z. Reyes, with Associate Judges Ernesto D. Acosta and Constante C. Roaquin, concurring; *Ibid.*, pp. 484-485.

[36] Penned by Presiding Judge Alex Z. Reyes; CTA *Rollo*, p. 489.

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On 11 June 1991, PNB appealed to the Department of Justice (DOJ) the BIR assessment, dated 16 January 1991, for deficiency withholding tax in the sum of ₱294,958,450.73. PNB alleged that its appeal to the DOJ was sanctioned under P.D. No. 242, which provided for the administrative settlement of disputes between government offices, agencies, and instrumentalities, including government-owned and controlled corporations.[37]

Three days later, on 14 June 1991, PNB filed a Motion to Suspend Proceedings before the CTA since it had a pending appeal before the DOJ.[38] On 04 July 1991, PNB filed with the CTA a Motion for Reconsideration of its Order, dated 03 June 1991, submitting the case for decision as of 04 June 1991, and prayed that the CTA hold its resolution of the case in view of PNB's appeal pending before the DOJ.[39]

On 17 July 1991, PNB filed a Motion to Suspend the Collection of Tax by the BIR. It alleged that despite its request for reconsideration of the deficiency withholding tax assessment, dated 16 January 1991, BIR Commissioner Ong sent another letter, dated 23 April 1991, demanding payment of the ₱294,958,450.73 deficiency withholding tax on the interest earnings and/or yields from PNOC's money placements. The same letter informed PNB that this was the BIR Commissioner's final decision on the matter and that the BIR Commissioner was set to issue a warrant of distraint and/or levy against PNB's deposits with the Central Bank of the Philippines. PNB further alleged that the levy and distraint of PNB's deposits, unless restrained by the CTA, would cause great and irreparable prejudice not only to PNB, a government-owned and controlled corporation, but also to the Government itself.[40]

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[37] *Ibid.*, p. 490.

[38] *Ibid.*, pp. 490-493.

[39] *Ibid.*, pp. 523-527.

[40] *Ibid.*, pp. 528-543.

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Pursuant to the Order of the CTA, during the hearing on 19 July 1991,[41] the parties submitted their respective Memoranda on PNB's Motion to Suspend Proceedings.[42]

On 20 September 1991, private respondent Savellano filed another Omnibus Motion calling the attention of the CTA to the fact that the BIR already issued, on 12 August 1991, a warrant of garnishment addressed to the Central Bank Governor and against PNB. In compliance with the said warrant, the Central Bank issued, on 23 August 1991, a debit advice against the demand deposit account of PNB with the Central Bank for the amount of ₱294,958,450.73, with a corresponding transfer of the same amount to the demand deposit-in-trust of BIR with the Central Bank. Since the assessment had already been enforced, PNB's Motion to Suspend Proceedings became moot and academic. Private respondent Savellano, thus, moved for the denial of PNB's Motion to Suspend Proceedings and for an order requiring BIR to deposit with the CTA the amount of ₱44,243,767.00 as his informer's reward, representing 15% of the deficiency withholding tax collected.[43]

Both PNOC and PNB opposed private respondent Savellano's Omnibus Motion, dated 20 September 1991, arguing that the DOJ already ordered the suspension of the collection of the tax deficiency. There was therefore no basis for private respondent Savellano's Motion as the same was premised on the erroneous assumption that the tax deficiency had been collected. When the DOJ denied the BIR Commissioner's Motion to Dismiss and required him to file his answer, the DOJ assumed jurisdiction over PNB's appeal, and the CTA should first suspend its proceedings to give the DOJ the opportunity to decide the validity and propriety of the tax assessment against PNB.[44]

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[41] *Ibid.*, p. 565.

[42] *Ibid.*, pp. 566-571, 572-580.

[43] *Ibid.*, pp. 598-603.

[44] *Ibid.*, pp. 605-607, 608-610.

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The CTA, on 28 May 1992, rendered its decision, wherein it upheld its jurisdiction and disposed of the case as follows:

> WHEREFORE, judgment is rendered declaring the COMPROMISE AGREEMENT between the Bureau of Internal Revenue, on the one hand, and the Philippine National Oil Company and Philippine National Bank, on the other, as WITHOUT FORCE AND EFFECT;
>
> The Commissioner of Internal Revenue is hereby ordered to ENFORCE the ASSESSMENT of January 16, 1991 against Philippine National Bank which has become final and unappealable by collecting from Philippine National Bank the deficiency withholding tax, plus interest totalling (*sic*) ₱294,958,450.73;
>
> Petitioner may be paid, upon collection of the deficiency withholding tax, the balance of his entitlement to informer's reward based on fifteen percent (15%) of the deficiency withholding total tax collected in this case or ₱44,243,767.00 subject to existing rules and regulations governing payment of reward to informers.[45]

In a Resolution, dated 16 November 1992, the CTA denied the Motions for Reconsideration filed by PNOC and PNB since they substantially raised the same issues in their previous pleadings and which had already been passed upon and resolved adversely against them.[46]

PNOC and PNB filed separate appeals with the Court of Appeals seeking the reversal of the CTA decision in CTA Case No. 4249, dated 28 May 1992, and the CTA Resolution in the same case, dated 16 November 1992. PNOC's appeal was docketed as CA-G.R. SP No. 29583, while PNB's appeal was CA-G.R. SP No. 29526. In both cases, the Court of Appeals affirmed the decision of the CTA.

In the meantime, the Central Bank again issued on 02 September 1992 a debit advice against the demand deposit account of PNB with the Central Bank for the amount of

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[45] *Ibid.*, p. 800.

[46] Penned by Presiding Judge Ernesto D. Acosta, with Associate Judges Ramon O. De Veyra and Manuel K. Gruba, concurring; *Ibid.*, pp. 834-841.

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₱294,958,450.73,[47] and on 15 September 1992, credited the same amount to the demand deposit account of the Treasurer of the Republic of the Philippines.[48] On 04 November 1992, the Treasurer of the Republic issued a journal voucher transferring ₱294,958,450.73 to the account of the BIR.[49] PNB, in turn, debited ₱294,958,450.73 from the deposit account of PNOC with PNB.[50]

PNOC and PNB then filed separate Petitions for Review on *Certiorari* with this Court, praying that the decisions of the Court of Appeals in CA-G.R. SP No. 29583 and CA-G.R. SP No. 29526, respectively, both affirming the decision of the CTA in CTA Case No. 4249, be reversed and set aside. These two Petitions were consolidated since they involved identical parties and factual background, and the resolution of related, if not exactly, the same issues.

In its Petition for Review, PNOC alleged the following errors committed by the Court of Appeals in CA-G.R. SP No. 29583:

1. The Court of Appeals erred in holding that the deficiency taxes of PNOC could not be the subject of a compromise under Executive Order No. 44; and
2. The Court of Appeals erred in holding that Savellano is entitled to additional informer's reward.[51]

PNB, in its own Petition for Review, assailed the decision of the Court of Appeals in CA-G.R. SP No. 29526, assigning the following errors:

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[47] CA *Rollo* (CA-G.R. SP No. 29583), p. 83.

[48] *Ibid.*, p. 84.

[49] *Ibid.*, p. 124.

[50] *Ibid.*, p. 122.

[51] *Rollo* (G.R. No. 109976), pp. 7-29.

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1. Respondent Court erred in not finding that the Court of Tax Appeals lacks jurisdiction on the controversy involving BIR and PNB (both government instrumentalities) regarding the new assessment of BIR against PNB;

2. The respondent Court erred in not finding that the Court of Tax Appeals has no jurisdiction to question the compromise agreement entered into by the Commissioner of Internal Revenue; and

3. The respondent Court erred in not ruling that the Commissioner of Internal Revenue cannot unilaterally annul tax compromises validly entered into by his predecessor.[52]

The decisions of the Court of Appeals in CA-GR SP No. 29583 and CA-G.R. SP No. 29526, affirmed the decision of the CTA in CTA Case No. 4249. The resolution, therefore, of the assigned errors in the Court of Appeals' decisions essentially requires a review of the CTA decision itself.

In consolidating the present Petitions, this Court finds that PNOC and PNB are basically questioning the (1) Jurisdiction of the CTA in CTA Case No. 4249; (2) Declaration by the CTA that the compromise agreement was without force and effect; (3) Finding of the CTA that the deficiency withholding tax assessment against PNB had already become final and unappealable and, thus, enforceable; and (4) Order of the CTA directing payment of additional informer's reward to private respondent Savellano.

I

Jurisdiction of the CTA

A. The demand letter, dated 16 January 1991 did not constitute a new assessment against PNB.

The main argument of PNB in assailing the jurisdiction of the CTA in CTA Case No. 4249 is that the BIR demand letter,

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[52] *Rollo* (G.R. No. 112800), pp. 7-27.

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dated 16 January 1991,[53] should be considered as a new assessment against PNB. As a new assessment, it gave rise to a new dispute and controversy solely between the BIR and PNB that should be administratively settled or adjudicated, as provided in P.D. No. 242.

This argument is without merit. The issuance by the BIR of the demand letter, dated 16 January 1991, was merely a development in the continuing effort of the BIR to collect the tax assessed against PNOC and PNB way back in 1986.

BIR's first letter, dated 08 August 1986, was addressed to PNOC, requesting it to settle its tax liability. The BIR subsequently sent another letter, dated 08 October 1986, to PNB, as withholding agent, demanding payment of the tax it

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[53] The full text of the BIR demand letter reads as follows:

Lungsod ng Quezon

January 16, 1991

PHILIPPINE NATIONAL BANK

Escolta, Manila

Gentlemen:

This is in connection with the withholding taxes assessed against you in the amount of ₱303,343,765.32, plus interest of ₱82,617,815.50 or a total of ₱385,961,580.82 on the interest earnings on the money market placements of Philippine National Oil Company (PNOC) subject matter of our letter dated November 11, 1986, copy attached.

It appears that the aforesaid withholding taxes have been compromised in the amount of ₱91,003,129.83 representing 30% of ₱303,343,765.32 (basic tax) pursuant to E.O. 44.

After a circumspect study of the case, this Office has arrived at the conclusion that the compromise settlement is without legal basis considering that E.O. 44 contemplates disputed or delinquent taxes. The withholding taxes are actually not tax but penalty for your failure to withhold the same from PNOC (*National Development Corp. vs. Comm. Of Int. Rev.*, G.R. No. 539611, June 30, 1987.) Moreover, the obligation to withhold the tax is your personal liability as withholding agent (*Comm. Of Int. Rev. vs. Malayan Insurance Co.*, G.R. No. L-21913, November 18, 1967.) Such liability is imposed under Section 51(e) of the NIRC.

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had failed to withhold on the interest earnings and/or yields from PNOC's money placements. PNOC wrote the BIR three succeeding letters offering to compromise its tax liability; PNB, on the other hand, did not act on the demand letter it received, dated 08 October 1986. The BIR and PNOC eventually reached a compromise agreement on 22 June 1987. Private respondent Savellano questioned the validity of the compromise agreement because the reduced amount of tax collected from PNOC, by virtue of the compromise agreement, also proportionately reduced his informer's reward. Private respondent Savellano then requested the BIR Commissioner to review and reconsider the compromise agreement. Acting on the request of private respondent Savellano, the new BIR Commissioner declared the compromise agreement to be without basis and issued the demand letter, dated 16 January 1991, against PNB, as the withholding agent for PNOC.

It is clear from the foregoing that the BIR demand letter, dated 16 January 1991, could not stand alone as a new assessment. It should always be considered in the factual context summarized above.

Accordingly, there is still due from you the amount of ₱294,958,450.93 arrived at as follows:

Withholding tax, plus interest under letter of demand dated November 11, 1986	₱	385,961,580.82
Less: Amount paid under E.O. 44	₱	91,003,129.89
Amount still due and collectible	₱	294,958,450.73

IN VIEW THEREOF, it is requested that you cause to be paid to the Chief, Receivable Accounts/Billing Division, thru the Chief, Litigation Division, Room 703, BIR National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof in order that this case may be considered closed and terminated.

Very truly yours,
(SGD) JOSE U. ONG
Commissioner

(CTA *Rollo*, pp. 447-448).

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In fact, the demand letter, dated 16 January 1991, actually referred to the withholding tax assessment first issued in 1986 and its eventual settlement through a compromise agreement. In addition, the computation of the deficiency withholding tax was based on the figures from the 1986 assessments against PNOC and PNB, and BIR no longer conducted a new audit or investigation of either PNOC and PNB before it issued the demand letter on 16 January 1991.

These constant references to past events and circumstances demonstrate that the demand letter, dated 16 January 1991, was not a new assessment, but rather, the latest action taken by the BIR to collect on the tax assessments issued against PNOC and PNB in 1986.

PNB argues that the demand letter, dated 16 January 1991, introduced a new controversy. We see it differently as the said demand letter presented the resolution by BIR Commissioner Ong of the previous controversy involving the compromise of the 1986 tax assessments. BIR Commissioner Ong explicitly declared therein that the compromise agreement was without legal basis, and requested PNB, as the withholding agent, to pay the amount of withholding tax still due.

B. The CTA correctly retained jurisdiction over CTA Case No. 4249 by virtue of Republic Act No. 1125.

Having established that the BIR demand letter, dated 16 January 1991, did not constitute a new assessment, then, there could be no basis for PNB's claim that any dispute arising from the new assessment should only be between BIR and PNB.

Still proceeding from the argument that there was a new dispute between PNB and BIR, PNB sought the suspension of the proceedings in CTA Case No. 4249, after it contested the deficiency withholding tax assessment against it and the demand for payment thereof before the DOJ, pursuant to P.D. No. 242. The CTA, however, correctly sustained its jurisdiction and continued the proceedings in CTA Case No. 4249; and, in effect, rejected DOJ's claim of jurisdiction to administratively settle or adjudicate BIR's assessment against PNB.

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The CTA assumed jurisdiction over the Petition for Review filed by private respondent Savellano based on the following provision of Rep. Act No. 1125, the Act creating the Court of Tax Appeals:

> SECTION 7. *Jurisdiction.* — The Court of Tax Appeals shall exercise *exclusive appellate jurisdiction* to review by appeal, as herein provided —
>
> (1) Decisions of the Collector 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 or part of law administered by the Bureau of Internal Revenue;* . . . (Italics ours.)

In his Petition before the CTA, private respondent Savellano requested a review of the decisions of then BIR Commissioner Tan to enter into a compromise agreement with PNOC and to reject his claim for additional informer's reward. He submitted before the CTA questions of law involving the interpretation and application of (1) E.O. No. 44, and its implementing rules and regulations, which authorized the BIR Commissioner to compromise delinquent accounts and disputed assessments pending as of 31 December 1985; and (2) Section 316(1) of the National Internal Revenue Code of 1977 (NIRC of 1977), as amended, which granted to the informer a reward equivalent to 15% of the actual amount recovered or collected by the BIR.[54] These should undoubtedly be considered as matters arising from the NIRC and other laws being administered by the BIR, thus, appealable to the CTA under Section 7(1) of Rep. Act No. 1125.

PNB, however, insists on the jurisdiction of the DOJ over its appeal of the deficiency withholding tax assessment by virtue

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[54] Section 282(A) of the National Internal Revenue Code of 1997 still provide for informer's reward to persons instrumental in the discovery of violations of the Code, equivalent to ten percent (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or ₱1,000,000.00 per case, whichever is lower.

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of P.D. No. 242. Provisions on jurisdiction of P.D. No. 242 read:

SECTION 1. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations, but excluding constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter; *Provided*, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.

SECTION 2. In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice, as Attorney General and *ex officio* legal adviser of all government-owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.

SECTION 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(a) The Solicitor General, with respect to disputes or claims controversies between or among the departments, bureaus, offices and other agencies of the National Government;

(b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and

(c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b).

The PNB and DOJ are of the same position that P.D. No. 242, the more recent law, repealed Section 7(1) of Rep. Act No. 1125,[55] based on the pronouncement of this Court in

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[55] Rep. Act No. 1125 became effective on 16 June 1954, while P.D. No. 242 was promulgated on 09 July 1973.

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Development Bank of the Philippines v. Court of Appeals, et al.,[56] quoted below:

> The Court . . . expresses its entire agreement with the conclusion of the Court of Appeals — and the basic premises thereof — that there is an "irreconcilable repugnancy . . . between Section 7(2) of R.A. No. 1125 and P.D. No. 242," and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.

In the said case, it was expressly declared that P.D. No. 242 repealed Section 7(2) of Rep. Act No. 1125, which provides for the exclusive appellate jurisdiction of the CTA over decisions of the Commissioner of Customs. PNB contends that P.D. No. 242 should be deemed to have likewise repealed Section 7(1) of Rep. Act No. 1125, which provide for the exclusive appellate jurisdiction of the CTA over decisions of the BIR Commissioner.[57]

After re-examining the provisions on jurisdiction of Rep. Act No. 1125 and P.D. No. 242, this Court finds itself in

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[56] G.R. No. 86625, 22 December 1989, 180 SCRA 609, 617.

[57] Section 7 of Rep. Act No. 1125 provides that:

SECTION 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —

(1) Decisions of the Collector 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 or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

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disagreement with the pronouncement made in *Development Bank of the Philippines v. Court of Appeals, et al.*,[58] and refers to the earlier case of *Lichauco & Company, Inc. v. Apostol, et al.*,[59] for the guidelines in determining the relation between the two statutes in question, to wit:

> The cases relating to the subject of repeal by implication all proceed on the assumption that if the act of later date clearly reveals an intention on the part of the law making power to abrogate the prior law, this intention must be given effect; but there must always be a sufficient revelation of this intention, and it has become an unbending rule of statutory construction that *the intention to repeal a former law will not be imputed to the Legislature when it appears that the two statutes, or provisions, with reference to which the question arises bear to each other the relation of general to special.* (Italics ours.)

When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. The following rule should principally govern instead:

> Specific legislation upon a particular subject is not affected by a general law upon the same subject unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or repeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject and the other as the general law of the land. (*Ex Parte United States*, 226 U. S., 420; 57 L. ed., 281; *Ex Parte Crow Dog*, 109 U. S., 556; 27 L. ed., 1030; *Partee vs. St. Louis & S. F. R. Co.*, 204 Fed. Rep., 970.)
>
> Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions

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[58] *Supra*, note 56.

[59] 44 Phil. 138, 149 (1922).

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are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. (*Crane v. Reeder and Reeder*, 22 Mich., 322, 334; *University of Utah vs. Richards*, 77 Am. St. Rep., 928.)[60]

It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails — *Generalia specialibus non derogant.*[61]

Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines.[62] On the other hand, Rep. Act No. 1125 is a special law[63] dealing with a specific subject matter — the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.

Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and

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[60] *Lichauco & Company, Inc. v. Apostol, et al.*, 44 Phil. 138, 146-147 (1922).

[61] *Manila Railroad Co. v. Rafferty*, 40 Phil. 224 (1919).

[62] *National Power Corporation v. Hon. Presiding Judge, RTC, Br. XXV*, G.R. No. 72477, 16 October 1990, 190 SCRA 477.

[63] *Mison v. Natividad*, G.R. No. 82586, 11 September 1992, 213 SCRA 734; *Marubeni Corporation v. Commissioner of Internal Revenue*, G.R. No. 76573, 14 September 1989, 177 SCRA 500; *Papa, et al. v. Mago, et al.*, 130 Phil. 886 (1968).

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instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant.

Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the present dispute would still not be covered by P.D. No. 242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies ***solely*** between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, respondent Savellano is a private citizen. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review.

In *Bay View Hotel, Inc. v. Manila Hotel Workers' Union-PTGWO, et al.,*[64] this Court upheld the jurisdiction of the Court of Industrial Relations over the ordinary courts and justified its decision in the following manner:

> We are unprepared to break away from the teaching in the cases just adverted to. To draw a tenuous jurisdictional line is to undermine stability in labor litigations. A piecemeal resort to one court and another gives rise to multiplicity of suits. To force the employees to shuttle from one court to another to secure full redress is a situation gravely prejudicial. The time to be lost, effort wasted, anxiety augmented, additional expense incurred — these are considerations which weigh heavily against split jurisdiction. Indeed, it is more in keeping with orderly administration of justice that all the causes of action here

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[64] G.R. No. L-21803, 17 December 1966, 18 SCRA 946, 953.

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"be cognizable and heard by only one court: the Court of Industrial Relations."

The same justification is used in the present case to reject DOJ's jurisdiction over the BIR and PNB, to the exclusion of the other parties. The rights of all four parties in CTA Case No. 4249, namely the BIR, as the tax collector; PNOC, the taxpayer; PNB, the withholding agent; and private respondent Savellano, the informer claiming his reward; arose from the same factual background and were so closely interrelated, that a pronouncement as to one would definitely have repercussions on the others. The ends of justice were best served when the CTA continued to exercise its jurisdiction over CTA Case No. 4249. The CTA, which had assumed jurisdiction over all the parties to the controversy, could render a comprehensive resolution of the issues raised and grant complete relief to the parties.

II

Validity of the Compromise Agreement

A. PNOC could not apply for a compromise under E.O. No. 44 because its tax liability was not a delinquent account or a disputed assessment as of 31 December 1985.

PNOC and PNB, on different grounds, dispute the decision of the CTA in CTA Case No. 4249 declaring the compromise agreement between BIR and PNOC without force and effect.

PNOC asserts that the compromise agreement was in accordance with E.O. No. 44, and its implementing rules and regulations, and should be binding upon the parties thereto.

E.O. No. 44 granted the BIR Commissioner or his duly authorized representatives the power to compromise any disputed assessment or delinquent account pending as of 31 December 1985, upon the payment of an amount equal to 30% of the basic tax assessed; in which case, the corresponding interests and penalties shall be condoned. E.O. No. 44 took effect on 04 September 1986 and remained effective until 31 March 1987.

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The disputed assessments or delinquent accounts that the BIR Commissioner could compromise under E.O. No. 44 are defined under Revenue Regulation (RR) No. 17-86, as follows:

a) Delinquent account — Refers to the amount of tax due on or before December 31, 1985 from a taxpayer who failed to pay the same within the time prescribed for its payment arising from (1) a self assessed tax, whether or not a tax return was filed, or (2) a deficiency assessment issued by the BIR which has become final and executory.

   Where no return was filed, the taxpayer shall be considered delinquent as of the time the tax on such return was due, and in availing of the compromise, a tax return shall be filed as a basis for computing the amount of compromise to be paid.

b) Disputed assessment — refers to a tax assessment disputed or protested on or before December 31, 1985 under any of the following categories:

   1) if the same is administratively protested within thirty (30) days from the date the taxpayer received the assessment, or

   2) if the decision of the BIR on the taxpayer's administrative protest is appealed by the taxpayer before an appropriate court.

PNOC's tax liability could not be considered a delinquent account since (1) it was not self-assessed, because the BIR conducted an investigation and assessment of PNOC and PNB after obtaining information regarding the non-withholding of tax from private respondent Savellano; and (2) the demand letter, issued against it on 08 August 1986, could not have been a deficiency assessment that became final and executory by 31 December 1985.

The dissenting opinion contends, however, that the tax liability of PNOC constitutes a self-assessed tax, and is, therefore, a delinquent account as of 31 December 1985, qualifying for a compromise under E.O. No. 44. It anchors its argument on the

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declaration made by this Court in *Tupaz v. Ulep*,[65] that internal revenue taxes are self-assessing.

It is not denied herein that the self-assessing system governs Philippine internal revenue taxes. The dissenting opinion itself defines self-assessed tax as, "a tax that the taxpayer himself assesses or computes and pays to the taxing authority." Clearly, such a system imposes upon the taxpayer the obligation to conduct an assessment of himself so he could determine and declare the amount to be used as tax basis, any deductions therefrom, and finally, the tax due.

E.O. No. 44 covers self-assessed tax, whether or not a tax return was filed. The phrase "whether or not a tax return was filed" only refers to the compliance by the taxpayer with the obligation to file a return on the dates specified by law, but it does not do away with the requisite that the tax must be self-assessed in order for the taxpayer to avail of the compromise. The second paragraph of Section 2(a) of RR No. 17-86 expressly commands, and still imposes upon the taxpayer, who is availing of the compromise under E.O. No. 44, and who has not previously filed any return, the duty to conduct self-assessment by filing a tax return that would be used as the basis for computing the amount of compromise to be paid.

Section 2(a)(1) of RR No. 17-86 thus involves a situation wherein a taxpayer, after conducting a self-assessment, discovers or becomes aware that he had failed to pay a tax due on or before 31 December 1985, regardless of whether he had previously filed a return to reflect such tax; voluntarily comes forward and admits to the BIR his tax liability; and applies for a compromise thereof. In case the taxpayer has not previously filed any return, he must fill out such a return reflecting therein his own declaration of the taxable amount and computation of the tax due. The compromise payment shall be computed based on the amount reflected in the tax return submitted by the taxpayer himself.

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[65] G.R. No. 127777, 01 October 1999, 316 SCRA 118, citing Vitug and Acosta, *Tax Law and Jurisprudence, 1st Edition*, 1997, p. 267.

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Neither PNOC nor PNB, the taxpayer and the withholding agent, respectively, conducted self-assessment in this case. There is no showing that in the absence of the tax assessment issued by the BIR against them, that PNOC and/or PNB would have voluntarily admitted their tax liabilities, already amounting to ₱385,961,580.82, as of 15 November 1986, and would have offered to compromise the same. In fact, both PNOC and PNB were conspicuously silent about their tax liabilities until they were assessed thereon.

Any attempt by PNOC and PNB to assess and declare by themselves their tax liabilities had already been overtaken by the BIR's conduct of its audit and investigation and subsequent issuance of the assessments, dated 08 August 1986 and 08 October 1986, against PNOC and PNB, respectively. The said tax assessments, uncontested and undisputed, presented the results of the BIR audit and investigation and the computation of the total amount of tax liabilities of PNOC and PNB. They should be controlling in this case, and should not be so easily and conveniently ignored and set aside. It would be a contradiction to claim that the tax liabilities of PNOC and PNB are self-assessed and, at the same time, BIR-assessed; when it is clear and simple that it had been the BIR that conducted the assessment and determined the tax liabilities of PNOC and PNB.

That the BIR-assessed tax liability should be differentiated from a self-assessed one, is supported by the provisions of RR No. 17-86 on the basis for computing the amount of compromise payment. Note that where tax liabilities are self-assessed, the compromise payment shall be computed based on the tax return filed by the taxpayer.[66] On the other hand, where the BIR already issued an assessment, the compromise payment shall be computed based on the tax due on the assessment notice.[67]

For instances where the BIR had already issued an assessment against the taxpayer, the tax liability could still be compromised

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[66] Revenue Regulations No. 17-86, Section 2(a), paragraph 2.

[67] Revenue Regulations No. 17-86, Section 2(c)(4).

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under E.O. No. 44 only if: (1) the assessment had been final and executory on or before 31 December 1985 and, therefore, considered a delinquent account as of said date;[68] or (2) the assessment had been disputed or protested on or before 31 December 1985.[69]

RMO No. 39-86, which provides the guidelines for the implementation of E.O. No. 44, does mention different types of assessments that may be compromised under said statute (*i.e.*, jeopardy assessments, arbitrary assessments, and tax assessments of doubtful validity). RMO No. 39-86 may not have expressly stated any qualification for these particular types of assessments; nonetheless, E.O. No. 44 specifically refers only to assessments that were delinquent or disputed ***as of 31 December 1985***.

E.O. No. 44 and all BIR issuances to implement said statute should be interpreted so that they are harmonized and consistent with each other. Accordingly, this Court finds that the different types of assessments mentioned in RMO No. 39-86 would still have to qualify as delinquent accounts or disputed assessments as of 31 December 1985, so that they could be compromised under E.O. No. 44.

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[68] Revenue Regulations No. 17-86, Section 2(a)(2) defines delinquent accounts as:

> a) Delinquent Account — refers to the amount of tax due on or before December 31, 1985 from a taxpayer who failed to pay the same within the time prescribed for its payment, arising from . . . (2) a deficiency assessment issued by the BIR which has become final and executory.

[69] Revenue Regulations No. 17-86, Section 2(b) provides:

> b) Disputed Assessment — refers to a tax assessment disputed or protested on or before December 31, 1985 under any of the following categories:
>
> 1) if the same is administratively protested within thirty (30) days from the date the taxpayer received the assessment; or
>
> 2) if the decision of the BIR on the taxpayer's administrative protest is appealed by the taxpayer before an appropriate Court.

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The BIR had first written to PNOC on 08 August 1986, demanding payment of the income tax on the interest earnings and/or yields from PNOC's money placements with PNB from 15 October 1984 to 15 October 1986. This demand letter could be regarded as the first assessment notice against PNOC.

Such an assessment, issued only on 08 August 1986, could not have been final and executory as of 31 December 1985 so as to constitute a delinquent account. Neither was the assessment against PNOC an assessment that could have been disputed or protested on or before 31 December 1985, having been issued on a later date.

Given that PNOC's tax liability did not constitute a delinquent account or a disputed assessment as of 31 December 1985, then it could not be compromised under E.O. No. 44.

The assessment against PNOC, instead, was more appropriately covered by Revenue Memorandum Circular (RMC) No. 31-86. RMC No. 31-86 clarifies the scope of availment of the tax amnesty under E.O. No. 41[70] and compromise payments on delinquent accounts and disputed assessments under E.O. No. 44. The third paragraph of RMC No. 31-86 reads:

> [T]axpayers against whom assessments had been issued from January 1 to August 21, 1986 may settle their tax liabilities by way of compromise under Section 246 of the Tax Code as amended by paying 30% of the basic assessment excluding surcharge, interest, penalties and other increments thereto.

The above-quoted paragraph supports the position that only assessments that were disputed or that were final and executory by 31 December 1985 could be the subject of a compromise under E.O. No. 44. Assessments issued between 01 January to

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[70] E.O. No. 41 offers tax amnesty to taxpayers who failed to declare the correct amount of taxes from 01 January 1981 to 31 December 1985. To avail of said tax amnesty, the taxpayer must file a return and pay a tax equivalent to 10% of the increase in his/its net worth from 31 December 1980 to 31 December 1985, provided that in no case shall the tax.be less than ₱5,000 for individuals and ₱10,000 for juridical persons.

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21 August 1986 could still be compromised by payment of 30% of the basic tax assessed, not anymore pursuant to E.O. No. 44, but pursuant to Section 246 of the NIRC of 1977, as amended.

Section 246 of the NIRC of 1977, as amended, granted the BIR Commissioner the authority to compromise the payment of any internal revenue tax under the following circumstances: (1) there exists a reasonable doubt as to the validity of the claim against the taxpayer; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.[71]

There are substantial differences in circumstances under which compromises may be granted under Section 246 of the NIRC of 1977, as amended, and E.O. No. 44. Although PNOC and PNB have extensively argued their entitlement to compromise under E.O. No. 44, neither of them has alleged, much less, has presented any evidence to prove that it may compromise its tax liability under Section 246 of the NIRC of 1977, as amended.

B. The tax liability of PNB as withholding agent also did not qualify for compromise under E.O. No. 44.

Before proceeding any further, this Court reconsiders the conclusion made by BIR Commissioner Ong in his demand letter, dated 16 January 1991, that the compromise settlement executed between the BIR and PNOC was without legal basis because withholding taxes were not actually taxes that could be compromised, but a penalty for PNB's failure to withhold and for which it was made personally liable.

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[71] The exact text of Section 246(1) of the National Internal Revenue Code of 1977, as amended, is reproduced below:

SEC. 246. *Authority of the Commissioner to compromise, abate, and refund/credit taxes.* — The Commissioner may —

(1) Compromise the payment of any internal revenue tax when —

(a) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(b) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

x x x x x x x x x

Now Section 204(A) of the National Internal Revenue Code of 1997.

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E.O. No. 44 covers disputed or delinquency cases where the person assessed was himself the taxpayer rather than a mere agent.[72] RMO No. 39-86 expressly allows a withholding agent, who failed to withhold the required tax because of neglect, ignorance of the law, or his belief that he was not required by law to withhold tax, to apply for a compromise settlement of his withholding tax liability under E.O. No. 44. A withholding agent, in such a situation, may compromise the withholding tax assessment against him precisely because he is being held directly accountable for the tax.[73]

RMO No. 39-86 distinguishes between the withholding agent in the foregoing situation from the withholding agent who withheld the tax but failed to remit the amount to the Government. A withholding agent in the latter situation is the one disqualified from applying for a compromise settlement because he is being made accountable as an agent, who held funds in trust for the Government.[74]

Both situations, however, involve withholding agents. The right to compromise under these provisions should have been claimed by PNB, the withholding agent for PNOC. The BIR held PNB personally accountable for its failure to withhold the tax on the interest earnings and/or yields from PNOC's money placements with PNB. The BIR sent a demand letter, dated 08 October 1986, addressed directly to PNB, for payment of the withholding tax assessed against it, but PNB failed to take any action on the said demand letter. Yet, all the offers to compromise the withholding tax assessment came from PNOC and PNOC did not claim that it made the offers to compromise on behalf of PNB.

Moreover, the general requirement of E.O. No. 44 still applies to withholding agents — that the withholding tax liability must either be a delinquent account or a disputed assessment as of 31 December 1985 to qualify for compromise settlement. The

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[72] Revenue Memorandum Order No. 39-86, par. 3.1.

[73] Revenue Memorandum Order No. 39-86, par. 3.2.

[74] *Supra*, note 72.

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demand letter against PNB, which also served as its assessment notice, had been issued on 08 October 1986 or two months later than PNOC's. PNB's withholding tax liability could not be considered a delinquent account or a disputed assessment, as defined under RR No. 17-86, for the same reasons that PNOC's tax liability did not constitute as such. The tax liability of PNB, therefore, was also not eligible for compromise settlement under E.O. No. 44.

C. Even assuming arguendo that PNOC and/or PNB qualified under E.O. No. 44, their application for compromise was filed beyond the deadline.

Despite already ruling that the tax liabilities of PNOC and PNB could not be compromised under E.O. No. 44, this Court still deems it necessary to discuss the finding of the CTA that the compromise agreement had been filed beyond the effectivity of E.O. No. 44, since the CTA made a declaration in relation thereto that paragraph 2 of RMO No. 39-86 was null and void for unduly extending the effectivity of E.O. No. 44.

Paragraph 2 of RMO No. 39-86 provides that:

2. Period for availment. — Filing of application for compromise settlement under the said law shall be effective only until March 31, 1987. Applications filed on or before this date shall be valid even if the payment or payments of the compromise amount shall be made after the said date, subject, however, to the provisions of Executive Order No. 44 and its implementing Revenue Regulations No. 17-86.

It is well-settled in this jurisdiction that administrative authorities are vested with the power to make rules and regulations because it is impracticable for the lawmakers to provide general regulations for various and varying details of management. The interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the court construing such rule or regulation, and such interpretation will be followed unless it appears to be clearly unreasonable or arbitrary.[75]

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[75] *Geukeko v. Araneta*, 102 Phil. 706 (1957).

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RMO No. 39-86, particularly paragraph 2 thereof, does not appear to be unreasonable or arbitrary. It does not unduly expand the coverage of E.O. No. 44 by merely providing that applications for compromise filed until 31 March 1987 are still valid, even if payment of the compromised amount is made on a later date.

It cannot be expected that the compromise allowed under E.O. No. 44 can be automatically granted upon mere filing of the application by the taxpayer. Irrefutably, the applications would still have to be processed by the BIR to determine compliance with the requirements of E.O. No. 44. As it is uncontested that a taxpayer could still file an application for compromise on 31 March 1987, the very last day of effectivity of E.O. No. 44, it would be unreasonable to expect the BIR to process and approve the taxpayer's application within the same date considering the volume of applications filed and pending approval, plus the other matters the BIR personnel would also have to attend to. Thus, RMO No. 39-86 merely assures the taxpayers that their applications would still be processed and could be approved on a later date. Payment, of course, shall be made by the taxpayer only after his application had been approved and the compromised amount had been determined.

Given that paragraph 2 of RMO No. 39-86 is valid, the next question that needs to be addressed is whether PNOC had been able to submit an application for compromise on or before 31 March 1987 in compliance thereof. Although the compromise agreement was executed only on 22 June 1987, PNOC is claiming that it had already written a letter to the BIR, as early as 25 September 1986, offering to compromise its tax liability, and that the said letter should be considered as PNOC's application for compromise settlement.

A perusal of PNOC's letter, dated 25 September 1986, would reveal, however, that the terms of its proposed compromise did not conform to those authorized by E.O. No. 44. PNOC did not offer to pay outright 30% of the basic tax assessed against it as required by E.O. No. 44; and instead, made the following offer:

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(2) That PNOC be permitted to set-off its foregoing mentioned tax liability of ₱304,419,396.83 against the tax refund/credit claims of the National Power Corporation (NPC) for specific taxes on fuel oil sold to NPC totaling ₱335,259,450.21, which tax refunds/credits are actually receivable accounts of our Company from NPC.[76]

PNOC reiterated the offer in its letter to the BIR, dated 14 October 1986.[77] The BIR, in its letters to PNOC, dated 8 October 1986[78] and 11 November 1986,[79] consistently denied PNOC's offer because the claim for tax refund/credit of NAPOCOR was still under process, so that the offer to set-off such claim against PNOC's tax liability was premature.

Furthermore, E.O. No. 44 does not contemplate compromise payment by set-off of a tax liability against a claim for tax refund/credit. Compromise under E.O. No. 44 may be availed of only in the following circumstances:

SEC. 3. *Who may avail.* – Any person, natural or juridical, may settle thru a compromise any delinquent account or disputed assessment which has been due as of December 31, 1985, **by paying an amount equal to thirty percent (30%) of the basic tax assessed.**

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[76] *Supra.*, note 7.

[77] There is no copy in the records of PNOC's letter to the BIR, dated 14 October 1986. The second paragraph of BIR's letter to PNOC, dated 11 November 1986 (*Supra.*, note 11), however, made reference to PNOC's letter stating therein that:

In your letter to us dated October 14, 1986, you submitted a proposal to settle this tax liability by off-setting the outstanding claim for refund/credit of the National Power Corporation with this Bureau, in the total sum of ₱335,259,450.21, which you claim will ultimately be assigned to Petrophil Corporation, your subsidiary, against the unpaid basic withholding final tax liability; and you further requested this Office to reconsider the waiver of the deficiency interests due for the same reason that the 25% surcharge was waived by this Office.

[78] *Supra.*, note 8.

[79] *Supra.*, note 11.

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SEC. 6. *Mode of Payment.* – Upon acceptance of the proposed compromise, the amount offered as compromise in complete settlement of the delinquent account **shall be paid immediately in cash or manager's certified check.**

Deferred or staggered payments of compromise amounts over ₱50,000 may be considered on a case to case basis in accordance with the extant regulations of the Bureau upon approval of the Commissioner of Internal Revenue, his Deputy or Assistant as delineated in their respective jurisdictions.

If the Compromise amount is not paid as required herein, the compromise agreement is automatically nullified and the delinquent account reverted to the original amount plus the statutory increments, which shall be collected thru the summary and/or judicial processes provided by law.

E.O. No. 44 is not for the benefit of the taxpayer alone, who can extinguish his tax liability by paying the compromise amount equivalent to 30% of the basic tax. It also benefits the Government by making collection of delinquent accounts and disputed assessments simpler, easier, and faster. Payment of the compromise amount must be made immediately, in cash or in manager's check. Although deferred or staggered payments may be allowed on a case-to-case basis, the mode of payment remains unchanged, and must still be made either in cash or in manager's check.

PNOC's offer to set-off was obviously made to avoid actual cash-out by the company. The offer defeated the purpose of E.O. No. 44 because it would not only delay collection, but more importantly, it would not guarantee collection. *First of all*, BIR's collection was contingent on whether the claim for tax refund/credit of NAPOCOR would be subsequently granted. *Second*, collection could not be made immediately and would have to wait until the resolution of the claim for tax refund/credit of NAPOCOR. *Third*, there is no proof, other than the bare allegation of PNOC, that NAPOCOR's claim for tax refund/credit is an account receivable of PNOC. A possible dispute between NAPOCOR and PNOC as to the proceeds of the tax refund/credit would only delay collection by the BIR even further.

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It was only in its letter, dated 09 June 1987, that PNOC actually offered to compromise its tax liability in accordance with the terms and circumstances prescribed by E.O. No. 44 and its implementing rules and regulations, by stating that:

> Consequently, we reiterate our previous request for compromise under E.O. No. 44, and convey our preparedness to settle the subject tax assessment liability by payment of the compromise amount of ₱91,003,129.89, representing thirty percent (30%) of the basic tax assessment of ₱303,343,766.29, in accordance with E.O. No. 44 and its implementing BIR Revenue Memorandum Order No. 39-86.[80]

PNOC claimed in the same letter that it had previously requested for a compromise under the terms of E.O. No. 44, but this Court could not find evidence of such previous request. There are stark and substantial differences in the terms of PNOC's offer to compromise in its earlier letters, dated 25 September 1986 and 14 October 1986 (set-off of the entire amount of its tax liability against the claim for tax refund/credit of NAPOCOR), to those in its letter, dated 09 June 1987 (payment of the compromise amount representing 30% of the basic tax assessed against it), making it difficult for this Court to accept that the letter of 09 June 1987 merely reiterated PNOC's offer to compromise in its earlier letters.

This Court likewise cannot give credence to PNOC's allegation that beginning 25 September 1986, the date of its first letter to the BIR, there were continuing negotiations between PNOC and BIR that culminated in the compromise agreement on 22 June 1987. Aside from the exchange of letters recounted in the preceding paragraphs, both PNOC and PNB failed to present any other proof of the supposed negotiations.

After the BIR denied the second offer of PNOC to set-off its tax liability against the claim for tax refund/credit of NAPOCOR in a letter, dated 11 November 1986, there is no other evidence of subsequent communication between PNOC and the BIR. It was only after almost seven months, or on 09

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[80] *Supra.*, note 12.

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June 1987, that PNOC again wrote a letter to the BIR, this time offering to pay the compromise amount of 30% of the basic tax assessed against. This letter was already filed beyond 31 March 1987, after the lapse of the effectivity of E.O. No. 44 and the deadline for filing applications for compromise under the said statute.

Evidence of meetings between PNOC and the BIR, or any other form of communication, wherein the parties presented their offer and counter-offer to the other, would have been very valuable in explaining and supporting BIR Commissioner Tan's decision to accept PNOC's third offer to compromise after denying the previous two. The absence of such evidence herein negates PNOC's claim of actual negotiations with the BIR.

Therefore, even assuming *arguendo* that the tax liabilities of PNOC and PNB qualify as delinquent accounts or disputed assessments as of 31 December 1985, the application for compromise filed by PNOC on 09 June 1987, and accepted by then BIR Commissioner Tan on 22 June 1987, was still filed way beyond 31 March 1987, the expiration date of the effectivity of E.O. No. 44 and the deadline for filing of applications for compromise under RMO No. 39-86.

D. The BIR Commissioner's discretionary authority to enter into a compromise agreement is not absolute and the CTA may inquire into allegations of abuse thereof.

The foregoing discussion supports the CTA's conclusion that the compromise agreement between PNOC and the BIR was indeed without legal basis. Despite this lack of legal support for the execution of the said compromise agreement, PNB argues that the CTA still had no jurisdiction to review and set aside the compromise agreement. It contends that the authority to compromise is purely discretionary on the BIR Commissioner and the courts cannot interfere with his exercise thereof.

It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then

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it is incumbent on the courts to set matters right, with this Court having the last say on the matter.[81]

The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of "grave abuse of discretion and/or whimsical exercise of jurisdiction."[82] The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.

The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency.[83] In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246 of the NIRC of 1977, as amended, can only be exercised under certain circumstances specifically identified in said statutes. The BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them.[84]

Petitioners PNOC and PNB both contend that BIR Commissioner Tan merely exercised his authority to enter into a compromise specially granted by E.O. No. 44. Since this Court has already made a determination that the compromise agreement did not qualify under E.O. No. 44, BIR Commissioner Tan's decision to agree to the compromise should have been reviewed in the light of the general authority granted to the BIR Commissioner to compromise taxes under Section 246 of the NIRC of 1977, as amended. Then again, petitioners PNOC and

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[81] *Leongson, et al. v. Court of Appeals*, 151 Phil. 314 (1973).

[82] CTA *Rollo*, pp. 56-57.

[83] *Primicias v. Fugoso*, 80 Phil. 71 (1948).

[84] *Antiquera v. Baluyot*, 91 Phil. 213 (1952); *Gatmaitan v. Pascual*, 76 Phil. 315 (1946).

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PNB failed to allege, much less present evidence, that BIR Commissioner Tan acted in accordance with Section 246 of the NIRC of 1977, as amended, when he entered into the compromise agreement with PNOC.

E. The CTA may set aside a compromise agreement that is contrary to law and public policy.

PNB also asserts that the CTA had no jurisdiction to set aside a compromise agreement entered into in good faith. It relies on the decision of this Court in *Republic v. Sandiganbayan*[85] that a compromise agreement cannot be set aside merely because it is too one-sided. A compromise agreement should be respected by the courts as the *res judicata* between the parties thereto.

This Court, though, finds that there are substantial differences in the factual background of *Republic v. Sandiganbayan* and the present case.

The compromise agreement executed between the Presidential Commission on Good Government (PCGG) and Roberto S. Benedicto in *Republic v. Sandiganbayan* was judicially approved by the Sandiganbayan. The Sandiganbayan had ample opportunity to examine the validity of the compromise agreement since two years elapsed from the time the agreement was executed up to the time it was judicially approved. This Court even stated in the said case that, "We are not dealing with the usual compromise agreement perfunctorily submitted to a court and approved as a matter of course. The PCGG-Benedicto agreement was thoroughly and, at times, disputatiously discussed before the respondent court. There could be no deception or misrepresentation foisted on either the PCGG or the Sandiganbayan."[86]

In addition, the new PCGG Chairman originally prayed for the re-negotiation of the compromise agreement so that it could

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[85] G.R. No. 108292, 10 September 1993, 226 SCRA 314.

[86] *Ibid.*, p. 328.

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be more just, fair, and equitable, an action considered by this Court as an implied admission that the agreement was not contrary to law, public policy or morals nor was there any circumstance which had vitiated consent.[87]

The above-mentioned circumstances strongly supported the validity of the compromise agreement in *Republic v. Sandiganbayan*, which was why this Court refused to set it aside. Unfortunately for the petitioners in the present case, the same cannot be said herein.

The Court of Appeals, in upholding the jurisdiction of the CTA to set aside the compromise agreement, ruled that:

> We are unable to accept petitioner's submissions. Its formulation of the issues on CIR and CTA's lack of jurisdiction to disturb a compromise agreement presupposes a compromise agreement *validly* entered into by the CIR and not, when as in this case, it was indubitably shown that the supposed compromise agreement is without legal support. In case of arbitrary or capricious exercise by the Commissioner or if the proceedings were fatally defective, the compromise can be attacked and reversed through the judicial process (*Meralco Securities Corporation v. Savellano*, 117 SCRA 805, 812 [1982]; *Sarah E. Ramsay, et. al. v. U.S.* 21 Ct. C1 443, aff'd 120 U.S. 214, 30 L. Ed. 582; *Tyson v. U.S.*, 39 F. Supp. 135 cited in page 18 of decision) . . .[88]

Although the general rule is that compromises are to be favored, and that compromises entered into in good faith cannot be set aside,[89] this rule is not without qualification. A court may still reject a compromise or settlement when it is repugnant to law, morals, good customs, public order, or public policy.[90]

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[87] *Id.*

[88] *Rollo* (G.R. No. 112800), p. 58.

[89] *Mayuga, et al. v. Court of Appeals, et al.*, G.R. No. L-46953, 28 September 1987, 154 SCRA 309.

[90] *Republic of the Philippines v. Sandiganbayan, supra*, note 85; *First Philippine Holdings Corp. v. Sandiganbayan*, G.R. No. 95197, 30 September 1991, 202 SCRA 212.

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The compromise agreement between the BIR and PNOC was contrary to law having been entered into by BIR Commissioner Tan in excess or in abuse of the authority granted to him by legislation. E.O. No. 44 and the NIRC of 1977, as amended, had identified the situations wherein the BIR Commissioner may compromise tax liabilities, and none of these situations existed in this case.

The compromise, moreover, was contrary to public policy. The primary duty of the BIR is to collect taxes, since taxes are the lifeblood of the Government and their prompt and certain availability are imperious needs.[91] In the present case, however, BIR Commissioner Tan, by entering into the compromise agreement that was bereft of any legal basis, would have caused the Government to lose almost ₱300 million in tax revenues and would have deprived the Government of much needed monetary resources.

Allegations of good faith and previous execution of the terms of the compromise agreement on the part of PNOC would not be enough for this Court to disregard the demands of law and public policy. Compromise may be the favored method to settle disputes, but when it involves taxes, it may be subject to closer scrutiny by the courts. A compromise agreement involving taxes would affect not just the taxpayer and the BIR, but also the whole nation, the ultimate beneficiary of the tax revenues collected.

F. The Government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents.

The new BIR Commissioner, Commissioner Ong, had acted well within his powers when he set aside the compromise agreement, dated 22 June 1987, after finding that the said compromise agreement was without legal basis. When he took over from his predecessor, there was still a pending motion for reconsideration of the said compromise agreement, filed

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[91] *Commissioner of Internal Revenue v. Pineda*, G.R. No. L-22734, 15 September 1967, 21 SCRA 105.

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by private respondent Savellano on 24 March 1988. To resolve the said motion, he reviewed the compromise agreement and, thereafter, came upon the conclusion that it did not comply with E.O. No. 44 and its implementing rules and regulations.

It had been declared by this Court in *Hilado v. Collector of Internal Revenue, et al.*,[92] that an administrative officer, such as the BIR Commissioner, may revoke, repeal or abrogate the acts or previous rulings of his predecessor in office. The construction of a statute by those administering it is not binding on their successors if, thereafter, the latter becomes satisfied that a different construction should be given.

It is evident in this case that the new BIR Commissioner, Commissioner Ong, construed E.O. No. 44 and its implementing rules and regulations differently from that of his predecessor, former Commissioner Tan, which led to Commissioner Ong's revocation of the BIR approval of the compromise agreement, dated 22 June 1987. Such a revocation was only proper considering that the former BIR Commissioner's decision to approve the said compromise agreement was based on the erroneous construction of the law (*i.e.*, E.O. No. 44 and its implementing rules and regulations) and should not give rise to any vested right on PNOC.[93]

Furthermore, approval of the compromise agreement and acceptance of the compromise payment by his predecessor cannot estop BIR Commissioner Ong from setting aside the compromise agreement, dated 22 June 1987, for lack of legal basis; and from demanding payment of the deficiency withholding tax from PNB. As a general rule, the Government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents[94] because:

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[92] 100 Phil. 288 (1956).

[93] *Id.*

[94] *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. No. L-26911, 27 January 1981, 102 SCRA 246; *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue, et al.*, 121 Phil. 755 (1965).

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. . . Upon taxation depends the Government ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel. (*Republic vs. Caballero*, L-27437, September 30, 1977, 79 SCRA 177; *Manila Lodge No. 761, Benevolent and Protective Order of the Elks, Inc. vs. Court of Appeals*, L-41001, September 30, 1976, 73 SCRA 162; *Sy vs. Central Bank of the Philippines*, L-41480, April 30, 1976, 70 SCRA 571; *Balmaceda vs. Corominas & Co., Inc.*, 66 SCRA 553; *Auyong Hian vs. Court of Tax Appeals*, 59 SCRA 110; *Republic vs. Philippine Rabbit Bus Lines, Inc.*, 66 SCRA 553; *Republic vs. Philippine Long Distance Telephone Company*, L-18841, January 27, 1969, 26 SCRA 620; *Zamora vs. Court of Tax Appeals*, L-23272, November 26, 1970, 36 SCRA 77; *E. Rodriguez, Inc. vs. Collector of Internal Revenue*, L-23041, July 31, 1969, 28 SCRA 119).[95]

III

Finality of the Tax Assessment

A. The issue on whether the BIR complied with the notice requirements under RR No. 12-85 is raised for the first time on appeal and should not be given due course.

PNB, in another effort to block the collection of the deficiency withholding tax, this time raises doubts as to the validity of the deficiency withholding tax assessment issued against it on 16 January 1991. It submits that the BIR failed to comply with the notice requirements set forth in RR No. 12-85.[96]

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[95] *Vera, et al. v. Fernandez, et al.*, G.R. No. L-31364, 30 March 1979, 89 SCRA 199, 204.

[96] Revenue Regulations No. 12-85 provides the procedure for the issuance of an assessment by the BIR, as well as, the procedure for protesting an assessment. According to Revenue Regulations No. 12-85, when the BIR

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Whether or not the BIR complied with the notice requirements of RR No. 12-85 is a new issue raised by PNB only before this Court. Such a question has not been ventilated before the lower courts. For an appellate tribunal to consider a legal question, it should have been raised in the court below.[97] If raised earlier, the matter would have been seriously delved into by the CTA and the Court of Appeals.[98]

B. The assessment against PNB had become final and unappealable, and therefore, enforceable.

The CTA and the Court of Appeals declared as final and unappealable, and thus, enforceable, the assessment against PNB, dated 16 January 1991, since PNB failed to protest said assessment within the 30-day prescribed period. This Court, though, finds that the significant BIR assessment, as far as this case is concerned, should be the one issued by the BIR against PNB on 08 October 1986.

The BIR issued on 08 October 1986 an assessment against PNB for its withholding tax liability on the interest earnings and/or yields from PNOC's money placements with the bank. It had 30 days from receipt to protest the BIR's assessment.[99] PNB, however, did not take any action as to the said assessment so that upon the lapse of the period to protest, the withholding tax assessment against it, dated 8 October 1986, became final

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Commissioner or his duly authorized representative had found that taxes should be assessed, he should notify the taxpayer of the findings. The pre-assessment notice should be in writing and sent to the taxpayer's address as indicated in his returns or at his last known address. The BIR could proceed to issuing an assessment notice only in the event that the taxpayer failed to respond to the pre-assessment notice within the prescribed period, or when the taxpayer's response was unmeritorious.

[97] *Aguinaldo Industries Corporation v. Commissioner of Internal Revenue*, G.R. No. L-29790, 25 February 1982, 112 SCRA 136.

[98] *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue, supra*, note 94.

[99] Revenue Regulations No. 12-85, Section 7.

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and unappealable, and could no longer be disputed.[100] The courts may therefore order the enforcement of this assessment.

It is the enforcement of this BIR assessment against PNB, dated 08 October 1986, that is in issue in the instant case. If the compromise agreement is valid, it would effectively bar the BIR from enforcing the assessment and collecting the assessed tax; on the other hand, if the compromise agreement is void, then the courts can order the BIR to enforce the assessment and collect the assessed tax.

As has been previously discussed by this Court, the BIR demand letter, dated 16 January 1991, is not a new assessment against PNB. It only demanded from PNB the payment of the balance of the withholding tax assessed against it on 08 October 1986. The same demand letter also has no substantial effect or impact on the resolution of the present case. It is already unnecessary and superfluous, having been issued by the BIR when CTA Case No. 4249 was already pending before the CTA. At best, the demand letter, dated 16 January 1991, constitute a useful reference for the courts in computing the balance of PNB's tax liability, after applying as partial payment thereon the amount previously received by the BIR from PNOC pursuant to the compromise agreement.

IV

Prescription

A. The defense of prescription was never raised by petitioners PNOC and PNB, and should be considered waived.

The dissenting opinion takes the position that the right of the BIR to assess and collect income tax on the interest earnings and/or yields from PNOC's money placements with PNB, particularly for taxable year 1985, had already prescribed, based on Section 268 of the NIRC of 1977, as amended.

Section 268 of the NIRC of 1977, as amended, provides a three-year period of limitation for the assessment and collection

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[100] Revenue Regulations No. 12-85, Section 9.

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of internal revenue taxes, which begins to run after the last day prescribed for filing of the return.[101]

The dissenting opinion points out that more than four years have elapsed from 25 January 1986 (the last day prescribed by law for PNB to file its withholding tax return for the fourth quarter of 1985) to 16 January 1991 (the date when the alleged final assessment of PNB's tax liability was issued).

The issue of prescription, however, was brought up only in the dissenting opinion and was never raised by PNOC and PNB in the proceedings before the BIR nor in any of their pleadings submitted to the CTA and the Court of Appeals.

Section 1, Rule 9 of the Rules of Civil Procedure lays down the rule on defenses and objections not pleaded, and reads:

SECTION 1. *Defenses and Objections Not Pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the parties for the same cause, or that the action is barred by prior judgment or by the statute of limitations, the court shall dismiss the claim.

The general rule enunciated in the above-quoted provision governs the present case, that is, the defense of prescription, not pleaded in a motion to dismiss or in the answer, is deemed

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[101] Section 268 of the National Internal Revenue Code of 1977, as amended, reads in full as:

SEC. 268. *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 purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered filed on such last day.

Now Section 203 of the National Internal Revenue Code of 1997.

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waived. The exception in same provision cannot be applied herein because the pleadings and the evidence on record do not sufficiently show that the action is barred by prescription.

It has been consistently held in earlier tax cases that the defense of prescription of the period for the assessment and collection of tax liabilities shall be deemed waived when such defense was not properly pleaded and the facts alleged and evidences submitted by the parties were not sufficient to support a finding by this Court on the matter.[102] In *Querol v. Collector of Internal Revenue*,[103] this Court pronounced that prescription, being a matter of defense, imposes the burden on the taxpayer to prove that the full period of the limitation has expired; and this requires him to positively establish the date when the period started running and when the same was fully accomplished.

In making its conclusion that the assessment and collection in this case had prescribed, the dissenting opinion took liberties to assume the following facts even in the absence of allegations and evidences to the effect that: (1) PNB filed returns for its withholding tax obligations for taxable year 1985; (2) PNB reported in the said returns the interest earnings of PNOC's money placements with the bank; and (3) that the returns were filed on or before the prescribed date, which was 25 January 1986.

It is not safe to adopt the first and second assumptions in this case considering that Section 269 of the NIRC of 1977, as amended, provides for a different period of limitation for assessment and collection of taxes in case of false or fraudulent return or for failure to file a return. In such cases, the BIR is given 10 years after discovery of the falsity, fraud, or omission within which to make an assessment.[104]

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[102] *Navare v. Court of Appeals*, G.R. No. 56838, 26 April 1990, 184 SCRA 584; *Commissioner of Internal Revenue v. Yusay*, 124 Phil 1395 (1966); *Bollozos v. Court of Tax Appeals*, 121 Phil. 440 (1965); *Hodges v. Salas*, 63 Phil. 567 (1936).

[103] 116 Phil. 615 (1962).

[104] Section 269 (a) of the National Internal Revenue Code of 1977, as amended, reads:

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It is also not safe to accept the third assumption since there can be a possibility that PNB filed the withholding tax return later than the prescribed date, in which case, following the dictates of Section 268 of the NIRC of 1977, as amended, the three-year prescriptive period shall be counted from the date the return was actually filed.[105]

PNB's withholding tax returns for taxable year 1985, duly received by the BIR, would have been the best evidence to prove actual filing, the date of filing and the contents thereof. These facts are relevant in determining which prescriptive period should apply, and when such prescriptive period should begin to run and when it had lapsed. Yet, the pleadings did not refer to any return, and no return was made part of the records of the present case.

This Court could not make a proper ruling on the matter of prescription on the mere basis of assumptions; such an issue should have been properly raised, argued, and supported by evidences submitted by the parties themselves before the BIR and the courts below.

B. Granting that this Court can take cognizance of the defense of prescription, this Court finds that the assessment of the withholding tax liability against PNOC and collection of the tax assessed were done within the prescriptive period.

Assuming, for the sake of argument, that this Court can give due course to the defense of prescription, it finds that the assessment against PNB for its withholding tax liability for

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SEC. 269. *Exceptions as to period of limitation of assessment and collection of taxes.* — (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be 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.

Now Section 222(a) of the National Internal Revenue Code of 1997.

[105] *Supra.*, note 101.

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taxable year 1985 and the collection of the tax assessed therein were accomplished within the prescribed periods for assessment and collection under the NIRC of 1977, as amended.

If this Court adopts the assumption made by the dissenting opinion that PNB filed its withholding tax return for the last quarter of 1985 on 25 January 1986, then the BIR had until 24 January 1989 to assess PNB. The original assessment against PNB was issued as early as 08 October 1986, well-within the three-year prescriptive period for making the assessment as prescribed by the following provisions of the NIRC of 1977, as amended:

> SEC. 268. *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. . . .
>
> SEC. 269. *Exceptions as to period of limitation of assessment and collection of taxes.* —
>
> x x x x x x x x x
>
> (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.

Sections 268 and 269(c) of the NIRC of 1977, as amended, should be read in conjunction with one another. Section 268 requires that assessment be made within three years from the last day prescribed by law for the filing of the return. Section 269(c), on the other hand, provides that when an assessment is issued within the prescribed period provided in Section 268, the BIR has three years, counted from the date of the assessment, to collect the tax assessed either by distraint, levy or court action. Therefore, when an assessment is timely issued in accordance with Section 268, the BIR is given another three-year period, under Section 269(c), within which to collect the tax assessed, reckoned from the date of the assessment.

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In the case of PNB, an assessment was issued against it by the BIR on 08 October 1986, so that the BIR had until 07 October 1989 to enforce it and to collect the tax assessed. The filing, however, by private respondent Savellano of his Amended Petition for Review before the CTA on 02 July 1988 already constituted a judicial action for collection of the tax assessed which stops the running of the three-year prescriptive period for collection thereof.

A judicial action for the collection of a tax may be initiated by the filing of a complaint with the proper regular trial court; or where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.[106]

The present case is unique, however, because the Petition for Review was filed by private respondent Savellano, the informer, against the BIR, PNOC, and PNB. The BIR, the collecting government agency; PNOC, the taxpayer; and PNB, the withholding agent, initially found themselves on the same side. The prayer in the Amended Petition for Review of private respondent Savellano reads:

> WHEREFORE, in view of the foregoing, petitioner respectfully prays that the compromise agreement of June 22, 1987 be reviewed and declared null and void, and *that this Court directs*:
>
> a) *respondent Commissioner to enforce and collect and respondents PNB and/or PNOC to pay in a joint and several capacity, the total tax liability* of ₱387,987,785.73, plus interests from 31 October 1986; and
>
> b) respondent Commissioner to pay unto petitioner, as informer's reward, 15% of the tax liability collected under clause (a) hereof.

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[106] *Palanca, et al. v. Commissioner of Internal Revenue*, 114 Phil 203, citing the unreported case of *Alhambra Cigar and Cigarette Mfg. Co. v. Collector of Internal Revenue*, G.R. No. L-12026 and L-12131, 29 May 1959.

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Other equitable reliefs under the premises are likewise prayed for.[107] (Italics supplied.)

Private respondent Savellano, in his Amended Petition for Review in CTA Case No. 4249, prayed for (1) the CTA to direct the BIR Commissioner to enforce and collect the tax, and (2) PNB and/or PNOC to pay the tax — making CTA Case No. 4249 a collection case. That the Amended Petition for Review was filed by the informer and not the taxpayer; and that the prayer for the enforcement of the tax assessment and payment of the tax was also made by the informer, not the BIR, should not affect the nature of the case as a judicial action for collection. In case the CTA grants the Petition and the prayer therein, as what has happened in the present case, the ultimate result would be the collection of the tax assessed. Consequently, upon the filing of the Amended Petition for Review by private respondent Savellano, judicial action for collection of the tax had been initiated and the running of the prescriptive period for collection of the said tax was terminated.

Supposing that CTA Case No. 4249 is not a collection case which stops the running of the prescriptive period for the collection of the tax, CTA Case No. 4249, at the very least, suspends the running of the said prescriptive period. Under Section 271 of the NIRC of 1977, as amended, the running of the prescriptive period to collect deficiency taxes shall be suspended for the period during which the BIR Commissioner is prohibited from beginning a distraint or levy or instituting a proceeding in court, and for 60 days thereafter.[108] Just as in

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[107] CTA *Rollo*, p. 65.

[108] Section 271 of the National Internal Revenue Code of 1977, as amended, is reproduced in full below:

SEC. 271. *Suspension of running of statute.* — The running of the statute of limitations provided in Sections 268 and 269 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

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the cases of *Republic v. Ker & Co., Ltd.*[109] and *Protector's Services, Inc. v. Court of Appeals*,[110] this Court declares herein that the pendency of the present case before the CTA, the Court of Appeals and this Court, legally prevents the BIR Commissioner from instituting an action for collection of the same tax liabilities assessed against PNOC and PNB in the CTA or the regular trial courts. To rule otherwise would be to violate the judicial policy of avoiding multiplicity of suits and the rule on *lis pendens*.

Once again, that CTA Case No. 4249 was initiated by private respondent Savellano, the informer, instead of PNOC, the taxpayer, or PNB, the withholding agent, would not prevent the suspension of the running of the prescriptive period for collection of the tax. What is controlling herein is the fact that the BIR Commissioner cannot file a judicial action in any other court for the collection of the tax because such a case would necessarily involve the same parties and involve the same issues already being litigated before the CTA in CTA Case No. 4249. The three-year prescriptive period for collection of the tax shall commence to run only after the promulgation of the decision of this Court in which the issues of the present case are resolved with finality.

Whether the filing of the Amended Petition for Review by private respondent Savellano entirely stops or merely suspends the running of the prescriptive period for collection of the tax, it had been premature for the BIR Commissioner to issue a

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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.

Now Section 223 of the National Internal Revenue Code of 1997.

[109] G.R. No. L-21609, 29 September 1966, 18 SCRA 207.

[110] 386 Phil. 611 (2000).

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writ of garnishment against PNB on 12 August 1991 and for the Central Bank of the Philippines to debit the account of PNB on 02 September 1992 pursuant to the said writ, because the case was by then, pending review by the Court of Appeals. However, since this Court already finds that the compromise agreement is without force and effect and hereby orders the enforcement of the assessment against PNB, then, any issue or controversy arising from the premature garnishment of PNB's account and collection of the tax by the BIR has become moot and academic at this point.

V

Additional Informer's Reward

Private respondent Savellano is entitled to additional informer's reward since the BIR had already collected the full amount of the tax assessment against PNB.

PNOC insists that private respondent Savellano is not entitled to additional informer's reward because there was no voluntary payment of the withholding tax liability. PNOC, however, fails to state any legal basis for its argument.

Section 316(1) of the NIRC of 1977, as amended, granted a reward to an informer equivalent to 15% of the revenues, surcharges, or fees recovered, plus, any fine or penalty imposed and collected.[111] The provision was clear and uncomplicated

[111] Section 316(1) of the National Internal Revenue Code of 1977, as amended, reads:

SEC. 316. *Informer's reward to persons instrumental in the discovery of violations of the National Internal Revenue Code and in the discovery and seizure of smuggled goods.*

(1) *For violations of the National Internal Revenue Code.* — Any person, except an internal revenue official or employee, or other public official, or his relative within the sixth degree of consanguinity, who voluntarily gives definite and sworn information, not yet in the possession of the Bureau of Internal Revenue, leading to the discovery of frauds upon the internal revenue laws or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any fine or penalty shall be rewarded in a sum equivalent to fifteen *per centum* of the revenues, surcharges or fees

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— an informer was entitled to a reward of 15% of the total amount actually recovered or collected by the BIR based on his information. The provision did not make any distinction as to the manner the tax liability was collected — whether it was through voluntary payment by the taxpayer or through garnishment of the taxpayer's property. Applicable herein is another well-known maxim in statutory construction — *Ubi lex non distinguit nec nos distinguere debemos* — when the law does not distinguish, we should not distinguish.[112]

Pursuant to the writ of garnishment issued by the BIR, the Central Bank issued a debit advice against the demand deposit account of PNB with the Central Bank for the amount of ₱294,958,450.73, and credited the same amount to the demand deposit account of the Treasurer of the Republic of the Philippines. The Treasurer of the Republic, in turn, already issued a journal voucher transferring ₱294,958,450.73 to the account of the BIR.

Since the BIR had already collected ₱294,958,450.73 from PNB through the execution of the writ of garnishment over PNB's deposit with the Central Bank, then private respondent

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recovered and/or fine or penalty imposed and collected. The same amount of reward shall also be given to an informer where the offender has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner and in such a case, the fifteen *per centum* reward fixed herein shall be based on the amount agreed upon in the compromise and collected from the offender; *Provided*, That should no revenue, surcharges or fees be actually recovered or collected, such person shall not be entitled to a reward; *Provided, further*, That the information mentioned herein shall not refer to a case already pending or previously investigated or examined by the Commissioner or any of his deputies, agents or examiners, or the Minister of Finance or any of his deputies or agents; *Provided, finally*, That the reward provided herein shall be paid under regulations issued by the Commissioner of Internal Revenue with the approval of the Minister of Finance.

Now Section 282(A) of the National Internal Revenue Code of 1997, with modifications, *supra.*, note 54.

[112] *Philippine British Assurance Co., Inc. v. Intermediate Appellate Court*, G.R. No. 72005, 29 May 1987, 150 SCRA 520; *Loc Cham v. Ocampo*, 77 Phil. 636 (1946).

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Savellano should be awarded 15% thereof as reward since the said collection could still be traced to the information he had given.

WHEREFORE, in view of the foregoing, the Petitions of PNOC and PNB in G.R. No. 109976 and G.R. No. 112800, respectively, are hereby *DENIED*. This Court *AFFIRMS* the assailed Decisions of the Court of Appeals in CA-G.R. SP No. 29583 and CA-G.R. SP No. 29526, which affirmed the decision of the CTA in CTA Case No. 4249, with modifications, to wit:

(1) The compromise agreement between PNOC and the BIR, dated 22 June 1987, is declared void for being contrary to law and public policy, and is without force and effect;

(2) Paragraph 2 of RMO No. 39-86 remains a valid provision of the regulation;

(3) The withholding tax assessment against PNB, dated 08 October 1986, had become final and unappealable. The BIR Commissioner is ordered to enforce the said assessment and collect the amount of ₱294,958,450.73, the balance of tax assessed after crediting the previous payment made by PNOC pursuant to the compromise agreement, dated 22 June 1987; and

(4) Private respondent Savellano shall be paid the remainder of his informer's reward, equivalent to 15% of the deficiency withholding tax ordered collected herein, or ₱44,243,767.61.

SO ORDERED.

Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Callejo, Sr. and *Garcia, JJ.*, concur.

Davide, Jr., C.J., I join Justice Carpio in his dissenting opinion.

Puno, J., I concur with the majority and the separate opinion of J. Tinga.

Panganiban, J., I concur and also join Justice Tinga's opinion.

Ynares-Santiago, J., took no part.

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Carpio, J., see dissenting opinion.

Corona, J., I join the dissenting opinion of Mr. Justice Carpio.

Carpio Morales, J., I join the dissent of J. Carpio.

Azcuna, J., took no part. I was PWB Commissioner 1991.

Tinga, J., see separate concurring opinion.

SEPARATE OPINION

TINGA, *J.*:

I agree with the *ponencia* that no valid compromise agreement had been entered into between the Philippine National Oil Company (PNOC) and the Bureau of Internal Revenue (BIR).

First, the coverage of the governing special compromise tax measure.

Executive Order No. 44, on which the compromise agreement was predicated, explicitly delineates the parameters within which the amnesty provided therein may be availed of. Section 1 thereof allows the compromise of disputed assessments or delinquent accounts pending as of 31 December 1985, *viz.*:

> SECTION 1. The Commissioner of Internal Revenue or his duly authorized representatives may compromise any *disputed assessment or delinquent account pending as of December 31, 1985,* upon the payment of an amount equal to thirty percent (30%) of the basic tax assessed. In such cases, the Commissioner of Internal Revenue or his duly authorized representatives shall condone the corresponding interests and penalties. (Italics supplied)

The directive in Section 1 is reiterated in the first paragraph of Revenue Memorandum Circular No. 31-86,[1] Sections 2 and

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[1] REVENUE MEMORANDUM CIRCULAR NO. 31-86, 12 September 1986: . . . [U]nder Executive Order No. 44, the Commissioner of Internal Revenue or his duly authorized representatives shall accept compromise payments by taxpayers with outstanding delinquent accounts and disputed assessments (except withholding taxes whether final or creditable) pending as of December 31, 1985.

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3 of Revenue Regulation No. 17-86,[2] and Section 1 of Revenue Memorandum Order No. 39-86.[3]

Evidently, E.O. No. 44 applies only to "disputed assessment or delinquent account pending as of December 31, 1985". This is not an executive issuance meant to give blanket authority on the Commissioner of Internal Revenue to compromise away tax liabilities. In fact, the "cut-off" period stipulated in the executive order refers to a date nine months prior to the date of the promulgation of the issuance, 4 September 1986.

The authority to compromise was delegated for a specific purpose, as stated in E.O. No. 44. Significantly in that regard, the Executive Order is not a mere executive issuance but a legislative edict in much the same fashion as an Act of Congress, issued as it was by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom

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[2] REVENUE REGULATION NO. 17-86, 08 October 1986:

SECTION 2. Definition of terms. — In applying the provisions of these regulations the following terms shall have the meaning indicated below:

a) Delinquent account — Refers to the amount of tax due on or before December 31, 1985 from a taxpayer who failed to pay the same within the time prescribed for its payment arising from (1) a self assessed tax, whether or not a tax return was filed, or (2) a deficiency assessment issued by the BIR which has become final and executory.

Where no return was filed, the taxpayer shall be considered delinquent as of the time the tax on such return was due, and in availing of the compromise, a tax return shall be filed as a basis for computing the amount of compromise to be paid. x x x

SECTION 3. Who may avail. — Any person, natural or juridical, may settle thru a compromise, any delinquent account or disputed assessment which has been due as of December 31, 1985, by paying an amount equal to thirty (30%) per cent of the basic tax assessed.

[3] REVENUE MEMORANDUM ORDER NO. 39-86, 18 November 1986:

Par. 2. Period for availment. — Filing of application for compromise settlement under the said law shall be effective only until March 31, 1987. Applications filed on or before this date shall be valid even if the payment or payments of the compromise amount shall be made after the said date, subject, however, to the provisions of Executive Order No. 44 and its implementing Revenue Regulations No. 17-86.

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Constitution. The perambulatory clauses of E.O. No. 44 state the need to clear the backlog of pending cases of disputed assessments and delinquent accounts[4] in view of the fact that the records of Bureau of Internal Revenue show that over the past ten years, a great number of cases involving disputed assessments and delinquent accounts for internal revenue had accumulated.[5] The interpretation of the provisions of E.O. No. 44 cannot be strained in order to cover taxes that accrued after 31 December 1985, since this would no longer be included in the "backlog" adverted to in the issuance. Parenthetically, the Executive Order is akin to a tax exemption statute which should be construed strictly against the taxpayer.

The taxes sought to be compromised in this case concern the final tax on interest income representing the earnings and/or yield from PNOC's money placements with the Philippine National Bank (PNB) for the period from 15 October 1984 to 15 October 1986. Evidently, a cursory glance reveals that the PNOC cannot invoke E.O. No. 44 with reference to its entire tax liability, as the period covered under the Executive Order was only up to 31 December 1985. The withholding taxes due for the period of 01 January 1986 to 16 October 1986 are neither disputed assessments nor delinquent accounts pending as of 31 December 1985.

Moreover, these are taxes that accrue from the yield of interest income of money market placements, and clearly not at the time such placements were made by the PNOC. Even if the money market placements were made in 1984 or 1985, it would not necessarily mean that the interest yields on these placements were paid out or credited during those years. It is unclear when exactly between 1984 to 1986 did such interest incomes had accrued, but admittedly this is a question of fact that need not be reviewed by this Court.

Nonetheless, I maintain that even without need of ascertaining when exactly such interest income accrued, the compromise

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[4] E.O. No. 44, s. 1986, second whereas clause.

[5] E.O. No. 44, s. 1986, first whereas clause.

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agreement in question is null and void in its entirety for being contrary to E.O. No. 44.

While PNB failed to submit any application for compromise, PNOC submitted two offers — not applications for compromise settlement. PNOC's first proposal, contained in a letter dated 22 September 1986, offered to clear its basic[6] tax liability through a set-off thereof against the claim for tax refund/credit of the National Power Corporation (NPC), which amount was also supposedly a receivable of PNOC from NPC. This proposal was reiterated in another letter dated 14 October 1986. The operative portions of the first letter read:

> We would like to amicably settle this liability with the BIR. In this regard, we wish to invoke the authority vested by law in your office, particularly under Section 246 of the national Internal Revenue Code, as amended, and the spirit underlying Executive Order No. 44 dated September 4, 1986. Consequently, we hereby request for a compromise settlement and submit our offer for a compromise of the matter. x x x
>
> (2) That PNOC be permitted to set-off its foregoing mentioned tax liability of ₱304,419,396.83 against the tax refund/credit claims of the National Power Corporation (NPC) for specific taxes on fuel oil sold to NPC totaling ₱335,239,450.21, which tax refunds/credits are actually receivable accounts of our Company from NPC.[7]

Section 1 of E.O. No. 44 is explicit in declaring that the compromise of a disputed assessment or delinquent account is accomplished through *payment* of an amount equal to thirty percent (30%) of the basic tax assessed, a generous sum if I may add. Payment, as defined in this jurisdiction, means the delivery of money or the performance of an obligation.[8] It institutes a totally different mode of extinguishment of an obligation from compensation and/or confusion or merger.[9]

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[6] Excluding interest and surcharges as of 31 July 1986.

[7] *Rollo*, p. 19.

[8] Article 1232, Civil Code.

[9] Article 1231, Civil Code.

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PNOC invokes the concepts of compensation and/or confusion or merger as it seeks to have the NPC, which allegedly had outstanding payables due to PNOC, absorb PNOC's tax liabilities with its own outstanding tax credit due from the BIR.

However, as noted by the BIR in its initial response to PNOC's proposal, NPC's claim was still under process. Hence, at the time PNOC offered its terms for compromise to the BIR, no extinguishment of PNOC's tax liability could have taken place — whether by compensation, confusion or merger. There was no mutual creditor-debtor relationship between PNOC and the BIR — the existence of which is one of the requisites for compensation to take place.[10] Also, neither was there an outstanding creditor-debtor relationship between the NPC and the BIR. Moreover, the "credit" which PNOC proposed to use for the purpose of offsetting emanated from a segregate obligation than that due the BIR from PNOC; hence, there could be no confusion or merger[11] which could lead to payment.

In short, there was no legal basis for the NPC then to offset PNOC's tax liabilities through its own "tax credit," as the said "tax credit" had not, in the first place, yet ripened as an existing obligation.

For that reason, PNOC cannot be deemed as having made payment, or even a valid offer of payment through its first two letters, as there was no legal basis to effect its proposed mode of payment. In the meantime, the outstanding tax liability had accrued and eventually, the deadline set forth in RMO No. 39-86 passed.

So now, the prescribed period of availment and the effective duration of the special compromise tax measure.

RMO No. 39-86 pertains to "Guidelines for Implementation of Executive Order No. 44 re compromise settlement of (1) delinquent tax accounts; or (2) disputed tax assessments as of December 31, 1985". Paragraph 2 thereof is explicit as to the period for availment of the compromise settlement:

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[10] *See* Article 1278, Civil Code.

[11] *See* Article 1275, Civil Code, in relation to 1231(5), Civil Code.

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2. Period for availment. — Filing of application for compromise settlement under the said law shall be *effective only until March 31, 1987.* Applications filed on or before this date shall be valid even if the payment or payments of the compromise amount shall be made after the said date, subject, however, to the provisions of Executive Order No. 44 and its implementing Revenue Regulations No. 17-86. (emphasis supplied)

The deadline was occasioned by Section 6 of E.O. No. 44, which itself provides for the term of effectivity of the period for compromise:

Section 6. This Executive Order shall take effect immediately and shall remain effective until March 31, 1987.

The plain meaning of paragraph (2), in relation to Section 6, E.O. No. 44, is that the deadline for the submission of an application for compromise settlement shall be effective only until 31 March 1987. As of that point, had PNOC submitted an application for compromise settlement within the contemplation of law?

Plainly, the two letters in 1986 of PNOC are not in the form of an "application for compromise settlement". Though the Court need not be strict in demanding obeisance with the formal requisites, I would consider any valid form of an application for compromise should concede the liability for tax, and make a valid offer of payment. To require otherwise would render a mockery of the offer of tax compromise. Owing to the legal implausibility of the initial offer of PNOC to the BIR, I could not consider the first two letters as a valid application for compromise settlement. Moreover, the BIR expressly rejected this application, if it could be construed as such, as early as November of 1986. If there was indeed a *bona fide* intent on the part of PNOC to comply with E.O. No. 44 and its attendant revenue issuances, it should have exerted efforts to comply with this deadline set forth under RMO No. 39-86, in light of the BIR's rejection of its earlier offer. Instead, the 31 March 1987 deadline passed without a word or renewed offer from the PNOC.

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Instead, on 09 June 1987, *or two months after the deadline* had elapsed, PNOC made a second, different offer, proposing by way of compromise to pay thirty (30%) of its basic tax liability, specifically invoking Section 1 of E.O. 44. This new offer was subsequently accepted by the BIR.

The contrary view argues that owing to the administrative power of the tax commissioner, such subsequent acceptance can be deemed as an effective extension of the deadline set forth under RMO No. 39-86. However, E.O. No. 44 is explicit in declaring that its effectivity subsists only until 31 March 1987, a fact which is similarly demonstrated by paragraph (2) of RMO No. 39-86.

The dissent relies on the fact that E.O. No. 44, issued in the exercise of legislative powers then vested in President Aquino, is a special law of more specific application in this case than the Tax Code. Yet the delegation of authority to the tax commissioner to effect compromises is limited by the confines of E.O. No. 44, which is explicit in stating that its effectivity runs only until 31 March 1987. Hence, contrary to the dissenting view, the BIR Commissioner had no authority to extend the effectivity of E.O. No. 44, or the deadline prescribed thereupon. RMO No. 39-86 properly recognizes such limitation, and assuming that the subsequent acts of the tax commissioner contravene the deadline set by law and regulation, those acts should be deemed as beyond the ambit of delegated power, and thus void. *Under the circumstances, only Congress could have validly extended the effectivity of the special compromise tax measure.*

Thus, the *ponencia* correctly concludes that the compromise agreement entered into on 22 June 1987 is void. It was entered into after the lapse of the authority of BIR Commissioner to effect such compromise agreement, owing to the prescribed effectivity of E.O. No. 44, from which such authority was derived. Needless to say, much trouble would have been saved had the PNOC been timely in seeking a compromise agreement with the BIR, and prudent enough in proposing one that had basis

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under law. It cannot rely upon its status as a component of the government as basis for relief.

We should not discount the damage inflicted by the void compromise agreement on the informer, Tirso Savellano. The financial remuneration to be obtained by the informer is designed to alleviate whatever socio-political stigma that may attach as a result of the information that is divulged. The informer's right is predicated on the amount actually paid, and if the amount paid is less than what is due as a result of an unauthorized compromise, then the informer indubitably has an interest to assail the said compromise.

Finally, the dissent raises the argument that prescription had run to bar the annulment of the compromise agreement. Notably, this issue was not raised before any of the fora involved, by the Court of Tax Appeals, the Court of Appeals, or this Court. Neither was it discussed in any of the assailed rulings.

The proper taxes due in this case have actually been paid to the government. Petitioners unfortunately seek the refund of what has been already collected, despite the fact that they have all along conceded, not denying at all, the basis for their tax liability. The Court should not be privy to the divestiture of the huge tax payment already remitted to the cash-strapped government if there is no unequivocal basis for the return thereof. More so, should it not be a party to the forfeiture of the informer's reward to which the private respondent has a vested right as a matter of law and equity.

I vote to DENY the petitions.

DISSENTING OPINION

CARPIO, *J., dissenting*:

I dissent from the majority opinion penned by Justice Minita V. Chico-Nazario.

First, the withholding tax liability of Philippine National Oil Company ("PNOC") is a delinquent account that falls within

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the coverage of Executive Order No. 44 ("EO No. 44"), the tax compromise law.

Second, PNOC filed its application for tax compromise under EO No. 44 within the period prescribed by EO No. 44 and its implementing regulations.

Third, the tax compromise agreement made by PNOC with the Bureau of Internal Revenue ("BIR") is now *res judicata*. The parties to the compromise agreement have fully implemented the agreement in good faith.

Fourth, the BIR failed to collect the tax from within the three-year prescriptive period. Thus, the collection of the tax is now barred by prescription.

PNOC's Tax Liability Falls under EO No. 44

On 16 January 1991, BIR Commissioner Jose U. Ong declared void the tax compromise agreement that his predecessor Commissioner Bienvenido A. Tan made with PNOC *more than three years earlier*. The compromise agreement, dated 22 June 1987, settled the ₱385,961,580.82 tax liability of PNOC and the Philippine National Bank ("PNB") arising from PNB's failure to withhold the final tax on interest income on money market placements of PNOC covering the years 1984 to August 1986.[1] Under the compromise agreement, PNOC paid the BIR ₱93,955,479.12 in full settlement of the tax liability arising from PNB's failure to withhold the final tax.

Article 2028 of the Civil Code defines a compromise as "a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced." The purpose of compromise is to settle the claims of the parties and bar all future disputes and controversies.[2]

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[1] Executive Order No. 44 covers the tax liability from 1984 to 31 December 1985, while Revenue Memorandum Circular No. 31-86 covers the tax liability from 1 January 1986 to 21 August 1986.

[2] *Araneta v. Perez*, No. L-16187, 30 April 1963, 7 SCRA 923.

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In the present case, the BIR and PNOC entered into the tax compromise agreement in accordance with the provisions of Executive Order No. 44 ("EO No. 44"), Revenue Memorandum Order No. 39-86 ("RMO No. 39-86") and Revenue Memorandum Order No. 4-87 ("RMO No. 4-87"). The relevant provisions read:

Executive Order No. 44

SECTION 1. The Commissioner of Internal Revenue or his duly authorized representatives may compromise any disputed assessment or *delinquent account pending as of December 31, 1985,* upon the payment of an amount equal to thirty percent (30%) of the basic tax assessed. In such cases, the Commissioner of Internal Revenue or his duly authorized representatives shall condone the corresponding interests and penalties. (Italics supplied)

x x x x x x x x x

SECTION 4. Section 246 of the National Internal Revenue Code, as amended, is hereby suspended with respect to the disputed assessments and delinquent accounts referred to herein for the duration of the effectivity hereof.

SECTION 5. All laws, orders, issuances, rules and regulations or any part thereof inconsistent with this Executive Order is hereby repealed or modified accordingly.

SECTION 6. This Executive Order shall take effect immediately and shall remain effective until March 31, 1987.

Revenue Memorandum Order No. 39-86

1. Coverage. — This Order shall apply only to (1) *delinquent tax accounts;* or (2) disputed tax assessments pending *as of December 31, 1985 within the purview of Executive Order No. 44 and its implementing regulations.* (Italics supplied)

1. x x x

2. Disqualification. —

3.1. There are pending assessments for withholding taxes.

By operation of law, the relationship between the Government and the withholding agent is one of agency for which reason the withholding agent only holds the funds withheld by him in

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trust for the Government. Accordingly, a withholding tax assessment issued against a withholding agent (1) who withheld the tax (2) but did not remit the same to the Government, shall not qualify for compromise settlement herein prescribed, even if the assessment was issued as of December 31, 1985, because under this situation he is being made accountable not as a taxpayer but as an agent. The disputed or delinquency cases covered by Executive Order No. 44 refer only to those where the person assessed is himself the taxpayer rather than a mere agent.

3.2. *There is, however, another situation whereby a withholding agent did not withhold the tax either because of neglect, ignorance of law or his belief that he is not required by law to withhold a tax. Under this situation, such person is made directly accountable for the tax. This latter situation shall, however, qualify for compromise settlement, subject to the provisions of paragraph 1 hereof, in relation to implementing revenue regulations of Executive Order No. 44.* (Italics supplied)

x x x x x x x x x

8. Clearance. —

8.1. 30% compromise settlement rate. — If the compromise settlement rate is equivalent to 30% of the basic tax assessed, immediate action shall be taken on the taxpayer-applicant's application. *After payment of the compromise amount, the revenue office which passed upon the application as referred to in paragraph 5.2 hereof, shall issue to the taxpayer a letter, signed by the chief of the said revenue office, confirming the payment and advising that the case is already closed.* (Italics supplied)

x x x x x x x x x

Revenue Regulations No. 17-86

a) *Delinquent account — Refers to the amount of tax due on or before December 31, 1985 from a taxpayer who failed to pay the same within the time prescribed for its payment arising from (1) a self assessed tax, whether or not a return was filed,* or (2) a deficiency assessment issued by the BIR which has become final and executory. (Italics supplied)

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Revenue Memorandum Order No. 4-87

2.0 Notwithstanding the lapse of Executive Order No. 41 as amended, pre-assessment notices, assessment notices and letters of demand issued after August 21, 1986 which are not otherwise covered by the availment of the amnesty, may nevertheless be compromised under Sec. 246 of the Tax Code by paying 30% of the basic tax assessed or pre-assessed.

RMO No. 39-86 expressly provides that a compromise shall include a *"situation whereby a withholding agent did not withhold the tax either because of neglect, ignorance of law or his belief that he is not required by law to withhold a tax."* In the present case, the majority opinion states that the "BIR held the PNB personally accountable for its failure to withhold the tax on the interest earnings and/or yields from PNOCs money placements."

PNB did not withhold and keep the tax for itself. PNB's case is a failure to withhold, not a failure to remit to the BIR what it withheld for PNB withheld nothing. PNB is not the taxpayer here but merely a withholding agent, burdened by law with a public duty to collect the tax for the government. PNB is not only the withholding agent of the BIR, but also the *agent of the taxpayer in preparing the return and paying the tax.* In ***Philippine Guaranty Co., Inc. v. Commissioner of Internal Revenue,***[3] the Court held:

x x x Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. *In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer.* The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable by law. (Italics supplied)

For failure to withhold the tax, PNB is made directly liable to pay the tax, not because it is the taxpayer, but because it failed

[3] G.R. No. L-22074, 6 September 1965.

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to comply with the law.[4] PNB's legal duty is to withhold the tax, file the prescribed quarterly return, and remit the tax to the BIR.[5]

PNB, which at that time was a government-owned and controlled corporation, did not withhold because of an honest belief that there was no withholding tax on the interest income of a wholly owned government corporation like PNOC. PNOC's application for restoration of its tax-exempt status was then pending with the Fiscal Incentives Review Board.

Under paragraph 3.2 of RMO No. 39-86, a mere failure to withhold by the withholding agent shall *"qualify for compromise settlement."* Thus, PNB's failure to withhold expressly falls within the coverage of EO No. 44. What is outside the coverage of EO No. 44 is the failure of a withholding agent to remit what it had withheld. In such a situation, the withholding agent absconds with trust funds in its possession. Such a situation is definitely not subject to a tax compromise under EO No. 44. RMO No. 39-86 provides that "a withholding tax assessment issued against a withholding agent (1) who withheld the tax (2) but did not remit the same to the Government, shall not qualify for compromise settlement." PNB's case, however, is not a failure to remit the withheld tax but a plain failure to withhold the tax. PNB did not withhold the tax and thus did not abscond with public or trust funds.

EO No. 44, issued on 4 September 1986, is a special law enacted when then President Corazon C. Aquino exercised legislative powers. EO No. 44 is separate and distinct from the authority of the BIR Commissioner to compromise taxes under the Tax Code.[6] EO No. 44 is a one-time tax compromise scheme, *"effective until March 31, 1987"* and covering only *"disputed assessment or delinquent account pending as of December 31, 1985."* EO No. 44 was issued to generate

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[4] *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals and A. Soriano Corporation,* G.R. No. 108576, 20 January 1999.

[5] Sections 57 and 58, Tax Code.

[6] National Internal Revenue Code.

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immediate revenues for the new government following the 1986 EDSA revolution, as well as to clear the tax dockets of the BIR as of 31 December 1985. Thus, the whereas clauses of EO No. 44 state in part:

x x x x x x x x x

WHEREAS, there is a need to clear this backlog of pending cases of disputed assessments and delinquent accounts;

WHEREAS, there is a further need to raise revenues.

x x x x x x x x x.

The power of the BIR Commissioner to compromise under EO No. 44 is *broader* than his power to compromise under the Tax Code. Under Section 204 of the Tax Code,[7] the BIR Commissioner can compromise a tax only if there is reasonable doubt as to its validity or if the taxpayer's financial position shows a clear inability to pay the tax. EO No. 44 does not require these conditions. A compromise under Section 204 requires an examination of the legal basis of the assessment or the financial capacity of the taxpayer to pay the assessment. EO No. 44 does not require such examination.

The conditions in EO No. 44 are straightforward and require no examination of the legal basis of the assessment or financial capacity of the taxpayer. The conditions in EO No. 44 are plain and simple: *first, the disputed assessment or delinquent account is pending as of 31 December 1995; and second, the taxpayer is willing to pay thirty percent of the basic tax assessed.* EO No. 44 prescribed simple, plain and straightforward conditions

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[7] Section 204 of the Tax Code provides: "Authority of the Commissioner to compromise, abate, and refund/credit taxes. — The Commissioner may

(1) Compromise the payment of any internal revenue tax, when:

(a) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(b) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

x x x x x x x x x."

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precisely to encourage taxpayers to avail of the tax compromise program under EO No. 44.

EO No. 44 is a special law that prevails over Section 204 of the Tax Code. Section 4 of EO No. 44 states:

> Section 4. Section 246 (now 204) of the National Internal Revenue Code, as amended, is hereby suspended with respect to the disputed assessments and delinquent accounts referred to herein for the duration of the effectivity hereof.

The stringent standards prescribed in Section 204 of the Tax Code do not apply to compromise agreements under EO No. 44. The law expressly *suspended the effectivity of Section 204 of the Tax Code* during the effectivity of EO No. 44.

Thus, during the effectivity of EO No. 44, the only tax compromise possible for delinquent accounts as of 31 December 1985 is under EO No. 44. PNOC filed its application with the BIR for a tax compromise during the effectivity of EO No. 44. Obviously, PNOC's application for a tax compromise of its delinquent accounts as of 31 December 1985 meant a tax compromise under EO No. 44. The BIR had no authority to entertain any other tax compromise.

RR No. 17-86 defines a *"delinquent account"* to include a *"self-assessed tax."* The majority opinion adopts respondents' argument that PNOC's withholding tax liability is not a "self-assessed tax" because the BIR investigated the taxpayer and assessed the tax. *Here lies the fundamental error of the majority opinion.* The majority opinion states:

> PNOC's tax liability could not be considered a delinquent account since (1) *it was not self-assessed, because the BIR conducted an investigation and assessment of PNOC and PNB* after obtaining information regarding the non-withholding of tax from private respondent Savellano; x x x. (Italics supplied)

The majority opinion's thesis is *contrary to the very concept of a self-assessed tax.*

A self-assessed tax, as the term implies, is self-assessed by the taxpayer without the intervention of an assessment by the

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taxing authority to create the tax liability. A self-assessed tax means a tax that the taxpayer himself assesses or computes and pays to the taxing authority. In ***Tupaz v. Ulep***,[8] this Court explained that a self-assessed tax is one where *"no further assessment by the government is required to create the tax liability."* A self-assessed tax falls due without need of any prior assessment by the BIR, and non-payment of a self-assessed tax on the date prescribed by law results in penalties even in the absence of any assessment by the BIR.

A clear example of a self-assessed tax is the annual income tax, which the taxpayer himself computes and pays without the intervention of any assessment by the BIR. The annual income tax becomes due and payable without need of any prior assessment by the BIR. The BIR may or may not investigate or audit the annual income tax return filed by the taxpayer. The taxpayer's liability for the income tax does not depend on whether or not the BIR conducts such subsequent investigation or audit.

However, if the taxing authority is first required to investigate, and after such investigation to issue the tax assessment that creates the tax liability, then the tax is no longer self-assessed. This is not the case of the final withholding tax on interest income on money market placements.

The computation of the amount of the final withholding tax on interest income does not require any assessment by the BIR. The taxpayer can easily determine the amount of the tax since it is a flat rate based on the interest paid. In fact, the bank automatically computes the amount of the final withholding tax, deducts the tax from the taxpayer's interest income, and remits the tax to the BIR. The BIR does not make any assessment. Plainly, the final withholding tax on interest payment is a self-assessed tax.

The taxpayer's failure to pay when due a self-assessed tax, while it may result in a subsequent investigation and assessment

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[8] 316 SCRA 118 (1999), citing Vitug and Acosta, ***Tax Law and Jurisprudence***, 1st Edition, 1997, p. 267.

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by the BIR, does not remove the character of the tax as a self-assessed tax. The tax liability of the taxpayer arises on due date of the tax, and the non-payment of the self-assessed tax on due date does not prevent the tax liability from attaching. The tax liability is created by operation of law, even in the absence of an investigation and assessment by the BIR. The subsequent BIR investigation and assessment is for the purpose of collecting a past due tax, and not for the purpose of creating the tax liability. Of course, the computation by the taxpayer of his tax liability under a self-assessed tax is not conclusive on the BIR. After investigation or audit, the BIR can issue an assessment for any *deficiency* tax still due from the taxpayer.

In ***Tupaz v. Ulep,***[9] the Court declared that *"internal revenue taxes are self-assessing."* The final withholding tax on interest income is an internal revenue tax. Indeed, the Tax Code follows the pay-as-you-file system of taxation under which the taxpayer computes his own tax liability, prepares the return, and pays the tax as he files the return. *The pay-as-you-file system is a self-assessing tax system.*

EO No. 44 is a *general tax compromise program* covering all delinquent taxes and disputed assessments under the Tax Code as of 31 December 1985. *EO No. 44 does not distinguish between delinquent accounts that are or are not the subject of subsequent investigation and assessment by the BIR.* Where the law does not distinguish, courts should not distinguish. To remove from the coverage of EO No. 44 delinquent accounts that became the subject of subsequent investigation and assessment would severely limit the coverage of EO No. 44, a limitation that is not found in the language or intent of EO No. 44. Indeed, such a limitation would defeat the avowed purpose of EO No. 44 to clear the tax dockets of the BIR. The big delinquent accounts, such as PNOC's tax liability, which normally go through subsequent investigation and assessment, would not qualify for the general tax compromise program, preventing EO No. 44 from attaining its objectives.

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[9] *Ibid.*

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Clearly, PNOC's tax liability is a delinquent account within the coverage of EO No. 44 because it is a self-assessed tax unpaid as of 31 December 1985.[10] There can be no dispute that the final withholding tax on interest payments by PNB on PNOC's money market placements does not require the intervention of the BIR for its assessment and remittance to the BIR.

Thus, the compromise agreement between PNOC and BIR falls within the coverage of EO No. 44 and its implementing rules. The non-payment of the final withholding tax has resulted in a delinquent tax account of PNOC. In addition, the failure of PNB to withhold the tax falls within the coverage of RMO No. 39-86.

However, the majority opinion insists that PNOC's withholding tax liability is outside the coverage of EO 44 because *there is no proof that PNOC or PNB filed the tax return in compliance with the self-assessment system.* The majority opinion states:

Neither PNOC nor PNB, the taxpayer and the withholding agent, respectively, complied with the system and conducted self-assessment in this case. There is no showing that in the absence of tax assessment issued by the BIR against them, that PNOC and/or PNB would have voluntarily admitted their tax liabilities, already amounting to ₱385,961,580.82, as of 15 November 1986, and would have offered to compromise the same. In fact, both PNOC and PNB were conspicuously silent about their tax liabilities until they were assessed thereon. (Italics supplied)

The majority opinion conveniently forgets that the tax compromise under EO 44 and its implementing rules covers *"a self-assessed tax,* **whether or not a return was filed.**" Revenue Regulations No. 17-86 provides:

Delinquent account — Refers to the amount of tax due on or before December 31, 1985 from a taxpayer who failed to pay the same within

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[10] The withholding tax liability from 1 January 1986 to 21 August 1986 is not covered by EO No. 44 but by Revenue Memorandum Circular No. 31-86.

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the time prescribed for its payment arising from (1) *a self assessed tax, whether or not a return was filed,* or (2) a deficiency assessment issued by the BIR which has become final and executory.

Where no return was filed, the taxpayer shall be considered delinquent as of the time the tax on such return was due, *and in availing of the compromise, a tax return shall be filed as a basis for computing the amount of compromise to be paid.* (Italics supplied)

Clearly, the tax compromise under EO No. 44 applies to a self-assessed tax, *whether or not a return was filed,* because Revenue Regulations No. 17-86 expressly so provides.

Revenue Regulations No. 17-86 even states, *"Where no return was filed,* the taxpayer shall be considered delinquent as of the time the tax on such return was due, *and in availing of the compromise, a tax return shall be filed as a basis for computing the amount of compromise to be paid."* If the taxpayer failed to file the return, he can avail of the tax compromise by filing a return, which shall serve as basis for computing the compromise amount. Revenue Regulations No. 17-86 expressly applies to delinquent accounts of taxpayers who failed to file the returns.

EO No. 44 and its implementing rules do not require that PNOC or PNB must have "complied with the system and conducted self-assessment" before they could avail of the tax compromise. The BIR could not have required the thousands of taxpayers who availed of the tax compromise under EO No. 44 to show proof that they filed their tax returns. There is no such requirement in EO No. 44 or in its implementing rules. On the contrary, Revenue Regulations No. 17-86 expressly states *"whether or not a return was filed"* — which means that the filing of a tax return is not a condition for the availment of the tax compromise. The BIR never required the thousands of taxpayers who availed of EO No. 44 to prove that they filed their tax returns. For the majority opinion to require now PNOC and PNB to prove that they filed the tax returns would constitute denial of equal protection of the law.

The tax compromise under EO No. 44 and its implementing rules applies to self-assessed taxes, *whether or not the*

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corresponding tax returns were filed. The definition of a delinquent account that is subject to the tax compromise expressly includes a self-assessed tax *"whether or not a return was filed."* There can be no clearer language than this to express that the taxpayer is not required to prove that he filed the tax return. There is absolutely no legal basis in requiring PNOC or PNB to show proof that they filed the proper tax returns before they could avail of the tax compromise. The majority opinion is patently wrong in holding that PNOC and PNB must prove that they filed the tax returns before they can avail of the tax compromise.

The majority opinion also insists that PNOC's withholding tax liability is outside the coverage of EO No. 44 because the *BIR subsequently investigated and assessed PNOC for the withholding tax liability.* The majority opinion states:

> It is important to remember that, in this case, any attempt by PNOC and PNB to assess and declare by themselves their tax liabilities had already been overtaken by the BIR's conduct of its audit and investigation and subsequent issuance of the assessments, dated 8 August 1986 and 8 October 1986, against PNOC and PNB, respectively. *The said tax assessments, uncontested and undisputed, already presented the results of the BIR audit and investigation and the computation of the total amount of tax liabilities of PNOC and PNB, and should be controlling in this case.* They should not be so easily and conveniently ignored and set aside. *It would be a contradiction to claim that the tax liabilities of PNOC and PNB are self-assessed and, at the same time, BIR-assessed;* when it is clear and simple that it had been the BIR that conducted the assessment and determined the tax liabilities of PNOC and PNB.

The majority opinion theorizes that a taxpayer with a delinquent account consisting of a self-assessed tax cannot avail of EO No. 44 if the BIR issued an assessment against the taxpayer *because the BIR assessment is allegedly controlling.*

The majority opinion's theory that a subsequent BIR assessment removes a delinquent account from the coverage of EO No. 44 *collides directly* with Revenue Memorandum

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Order No. 39-86[11] which implements EO No. 44. Revenue Memorandum Order No. 39-86 *expressly recognizes* that the delinquent accounts subject to compromise under EO No. 44 may be *"covered by a letter of demand and assessment notice"* by the BIR. Revenue Memorandum Order No. 39-86 provides:

x x x x x x x x x

6. Base of the compromise settlement rate. — The compromise settlement rate shall be applied against the basic tax assessed referred to under paragraph 5.1 hereof. In no case may any revenue office passing upon cases covered hereunder cause any computational adjustment or adjustments in determining the basic tax before applying the compromise settlement rate, any error in the assessment and demand being compromised notwithstanding. In all instances, the compromise settlement rate shall be applied against the basic tax assessed. *If the assessment is covered by a letter of demand and assessment notice, the compromise settlement rate shall be applied against the basic tax assessed as shown in the said letter of demand and assessment notice.*

7. Allowable compromise settlement rates below thirty percent (30%). — The Evaluation Committee shall apply exclusively the compromise settlement rates prescribed hereunder:

7.1 *"Jeopardy" tax assessment as defined under RMO 17-85 (while RMO 17-85 speaks only of income tax assessments, this compromise settlement shall, however, apply to all internal revenue tax assessments in the nature of a "jeopardy" tax assessment) – 10%*

7.2 *Arbitrary assessments which have been issued only and primarily to forestall prescription – 10%*

7.3 *Tax assessments of doubtful validity whether as to law or as to facts – 15%*

x x x x x x x x x.

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[11] Guidelines for implementation of Executive Order No. 44 re compromise settlement of (1) delinquent accounts; or (2) disputed tax assessments, as of December 31, 1985.

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Paragraph 6 of Revenue Memorandum Order No. 39-86 expressly provides, *"If the assessment is covered by a letter of demand and assessment notice, the compromise settlement rate shall be applied against the basic tax assessed as shown in the said letter of demand and assessment notice."* The BIR assessment is even made the basis in applying the 30% settlement rate under EO No. 44. Indisputably, a subsequent BIR assessment does not remove a delinquent account from the coverage of EO No. 44.

With or without a BIR assessment, a delinquent account qualifies for tax compromise under EO NO. 44 provided it is a self-assessed tax unpaid as of 31 December 1985. EO No. 44 and its implementing rules do not exclude delinquent accounts that were issued BIR assessments. On the contrary, Revenue Memorandum Order No. 39-86 expressly states that the BIR assessment shall serve as basis in applying the compromise settlement rate under EO No. 44. The majority opinion is mistaken in holding that EO No. 44 and its implementing rules exclude BIR-assessed delinquent accounts from the coverage of the tax compromise. Revenue Memorandum Order No. 39-86 even expressly includes within the coverage of EO No. 44 *jeopardy assessments, arbitrary assessments, and doubtful assessments* issued by the BIR. Clearly, a subsequent BIR assessment — indeed any kind of subsequent BIR assessment — does not remove a delinquent account from the coverage of EO No. 44.

Thousands of taxpayers availed of the tax compromise under EO No. 44 although the BIR had issued them assessments, whether regular assessments, jeopardy assessments, arbitrary assessments or doubtful assessments. For the majority opinion to exclude PNOC or PNB from availing of the same tax compromise because the BIR issued PNOC an assessment would constitute a denial of equal protection of the law. PNOC's and PNB's withholding tax liability clearly falls within the coverage of EO No. 44 and its implementing rules.

The majority opinion further claims that PNOC does not fall under EO No. 44 but under Revenue Memorandum Circular

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No. 31-86 because the assessment against PNOC was issued on 8 August 1986. The majority opinion states:

As has already been discussed in the main opinion, the assessment against PNOC, issued on 08 August 1986, *is more appropriately covered* by the following provision of Revenue Memorandum Circular (RMC) No. 31-86:

> [T]axpayers against whom assessments had been issued from *January 1 to August 21, 1986* may settle their tax liabilities by way of compromise under Section 246 of the Tax Code as amended by paying 30% of the basic tax assessment excluding surcharge, interest, penalties and other increments thereto. (Italics supplied)

The majority opinion gratuitously states that PNOC is *"more appropriately covered"* by Revenue Memorandum Circular No. 31-86. However, the majority opinion then declares that PNOC is still not qualified for tax compromise under Revenue Memorandum Circular No. 31-86, thus:

However, even though the tax assessment against it was issued on 08 August 1986, PNOC would still not be entitled to compromise its tax liability under the above-quoted provision of RMC No. 31-86 because it failed to allege, must less present any evidence that: (1) there existed a reasonable doubt as to the validity of the claim against it; or (2) its financial position demonstrated a clear inability to pay the assessed tax, as required by Section 246 of the Tax Code of 1977, as amended.

The majority opinion wants to deprive PNOC from availing of the tax compromise under EO No. 44 just because the BIR issued the assessment on 8 August 1986. There is nothing in EO No. 44 or in Revenue Regulations No. 17-86 that excludes from the tax compromise delinquent accounts as of 31 December 1985 that were the subject of assessments issued after 31 December 1985. *On the contrary, Revenue Regulations No. 17-86 expressly provides that the delinquent accounts may be covered by regular assessments, jeopardy assessments, arbitrary assessments and doubtful assessments. Revenue Regulations No. 17-86 does not state that these assessments should be issued before 1 January 1986.*

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In fact, taxes falling due in the fourth quarter of 1985 could never be issued assessments before 1 January 1986. *The assessments for most of the taxes falling due in tax year 1985 could only be issued from 1 January 1986 onwards.* To exclude unpaid taxes falling due in 1985 just because the BIR issued assessments on these accounts from 1 January 1986 onwards would render the tax compromise under EO No. 44 inutile.

The period from 1 January to 21 August 1986 in Revenue Memorandum Circular No. 31-86 refers to those who could not avail of the **tax amnesty** *under Executive Order No. 41*[12] *which was issued on 22 August 1986.* **The cut-off date is 21 January 1986 because this is the day before EO No. 41 was issued**. However, this period has become *irrelevant* because EO No. 41, which originally covered only tax years 1981 to 1985, was amended by Executive Order No. 95[13] to extend the tax amnesty up to 31 January 1987.

Clearly, the reference to 1 January to 21 August 1986 has nothing to do with EO No. 44 which is different from EO No. 41. EO No. 44 is a tax compromise while EO No. 41 is a tax amnesty and they cover different taxable years. PNOC's tax delinquency for the period 1 January 1986 onwards is not covered by EO No. 44 which applies only to unpaid taxes as of 31 December 1985. This is why in its letter of 26 September 1986 to the BIR requesting for a tax compromise PNOC also invoked Section 246 of the Tax Code to cover the period from 1 January 1986 onwards.

Although PNB is not a signatory to the compromise agreement, the subject matter of the compromise falls expressly within the coverage of EO No. 44 and its implementing rules. The

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[12] Declaring A One-Time Tax Amnesty Covering Unpaid Income Taxes For The Years 1981 To 1985. The amnesty tax amount is 10% of the taxpayer's net worth from 31 December 1980 to 31 December 1985.

[13] Section 1 of Executive Order No. 95 dated 17 December 1986 provides: "The period within which taxpayers may avail themselves of the expanded tax amnesty under Executive Order No. 41, as amended, is hereby extended up to January 31, 1987."

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compromise agreement absolved PNOC from any tax liability after PNOC paid the compromise amount. The BIR can no longer recover the foregone tax, either from PNOC or from PNB. *Unless an express reservation is made in the compromise agreement and there is none here, the compromise amount stands in the place of the amount originally assessed against PNOC.*

PNOC Filed its Tax Compromise Application on Time

The majority opinion states that PNOC filed its application for tax compromise under EO No. 44 *out of time*. The majority opinion asserts:

> More importantly, even assuming *arguendo* that the liabilities of PNOC and PNB qualify as delinquent accounts, the application for compromise filed by PNOC on 09 June 1987, and accepted by then BIR Commissioner Tan on 22 June 1987, was *filed way beyond 31 March 1987, the expiration date of the effectivity of E.O. No. 44* and the deadline for filing of applications for compromise under Revenue Memorandum Order (RMO) No. 39-86. (Italics supplied)

Revenue Memorandum Order No. 39-86 fixes the period for availing of the tax compromise under EO No. 44. Paragraph 2 of Revenue Memorandum Order No. 39-86 provides:

> 2. Period for availment. — *Filing of application for compromise settlement under the said law shall be effective only until March 31, 1987. Applications filed on or before this date shall be valid even if the payment or payments of the compromise amount shall be made after the said date,* subject, however, to the provisions of Executive Order No. 44 and its implementing Revenue Regulations No. 17-86.

The deadline for *filing the application* is 31 March 1987. Applications filed on or before 31 March 1987 *"shall be valid"* even if the compromise amount is paid after 31 March 1987.

Contrary to the majority opinion's claim that the effectivity of EO No. 44 expires on 31 March 1987, Revenue Memorandum Order No. 39-86 provides that applications filed on or before 31 March 1987 shall be valid even if the payment is made after 31 March 1987. *Thus, the crucial issue is whether PNOC filed any application to avail of the tax compromise under EO No. 44 on or before the deadline of 31 March 1987.*

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On 25 September 1986, *long before the 31 March 1987 deadline,* PNOC wrote the BIR submitting a compromise settlement *pursuant to EO No. 44* as well as Section 246 of the Tax Code. PNOC's letter reads:

> We would like to amicably settle this liability with the BIR. In this regard, *we wish to invoke* the authority vested by law in your office, particularly under Section 246 of the National Internal Revenue Code, as amended, and the spirit underlying *Executive Order No. 44 dated September 4, 1986. Consequently, we hereby request for a compromise settlement and submit our offer for compromise of the matter, as follows: x x x.*[14]

More than five months before the deadline of 31 March 1987, PNOC had already applied with the BIR for a tax compromise under EO No. 44 and Section 246 of the Tax Code. Apparently, PNOC invoked EO No. 44 for its delinquent tax liability from 15 October 1984 to 31 December 1985, and Section 246 of the Tax Code for its tax liability from 1 January 1986 onwards since EO No. 44 covered only delinquent accounts as of 31 December 1985.

PNOC filed its application for tax compromise on 25 September 1986, during the effectivity of EO No. 44. EO No. 44 suspended during the effectivity of EO No. 44 the BIR Commissioner's power to enter into tax compromises under Section 204 of the Tax Code. This suspension refers to delinquent accounts as of 31 December 1985, the delinquencies covered under EO No. 44. *Thus, when PNOC applied for tax compromise of its delinquent accounts as of 31 December 1985, the application for tax compromise could only have referred to EO No. 44 and not to any other tax compromise law. During the effectivity of EO No. 44, the BIR Commissioner had no power to compromise tax delinquencies as of 31 December 1985 under any law except EO No. 44. PNOC's application for tax compromise of its delinquent accounts as 31 December 1985 was clearly based on EO No. 44 as the only law then governing tax compromises for such delinquencies.*

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[14] Exhibit "4", PNOC, CTA Records, p. 199.

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After the BIR received PNOC's letter of 26 September 1986, several meetings took place between the BIR and PNOC on PNOC's request to avail of the tax compromise under EO No. 44. On 14 October 1986, PNOC *reiterated* its compromise settlement proposal to the BIR. There were also several exchanges of communications between the BIR and PNOC. On 9 June 1987, the PNOC wrote again the BIR in this manner:

If your office will recall, our Company (even under the administration of then PNOC Chairman and President Vicente T. Paterno) *had originally requested in writing and negotiated for the compromise of the subject tax assessment pursuant to the beneficial provisions of E.O. No. 44, as early as September, 1986, shortly after the effectivity of Executive Order.*

It appears, however, that the provisions of BIR Revenue Memorandum Order No. 39-86 may not have been applied or considered at length in evaluating the legal basis and merits of our compromise request, in our favor, since *most of the negotiations and the earlier decisions of your office were made prior to the promulgation of BIR Revenue Memorandum Order No. 39-86 on November 18, 1986.* (In fact, the last letter in the 1986 series of correspondences between your office and our Company is dated November 11, 1986.)

We cite in particular the provisions of Section 3.2 of your Revenue Memorandum Order No. 39-86, by virtue of which the subject tax assessment is qualified for compromise settlement under E.O. No. 44. Under these provisions, the tax liability resulting from the situation "whereby a withholding agent did not withhold the tax either because of neglect, ignorance of law or his belief that he is not required by law to withhold a tax," is deemed qualified for compromise settlement under E.O. No. 44.

The case contemplated by the cited provisions of BIR Revenue Memorandum Order No. 39-86 squarely covers our present case, considering that the final withholding tax on the interest earnings of our Company's placements with PNB were not withheld by PNB because of PNB's honest belief then, that it was not required by law to commence withholding the tax. At that time, it was the clear impression and understanding of both PNB and our Company that PNOC's tax exemptions continued to subsist during the pendency of PNOC's tax exemption restoration application with the Fiscal Incentives Review Board (FIRB), until and unless the application is categorically

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denied or resolved to the contrary. In fact, it was only in the course of the subject BIR tax assessment that the effective loss of PNOC's tax exemptions was categorically raised by the BIR.

Consequently, we reiterate our previous request for compromise under E.O. No. 44, and convey our preparedness to settle the subject tax assessment liability by payment of the compromise amount of ₱91,003,129.89, representing thirty percent (30%) of the basic tax assessment of ₱303,343,766.29, in accordance with E.O. No. 44 and its implementing BIR Revenue Memorandum Order No. 39-86.[15] (Italics supplied)

PNOC's letter of 9 June 1987 explains why the BIR could not immediately act on its 26 September 1986 request for tax compromise under EO No. 44. When PNOC wrote the 26 September 1986 letter, only EO No. 44 and Revenue Regulations No. 17-86 were in existence. The BIR Commissioner had not yet issued Revenue Memorandum Order No. 39-86 which clarified that the failure to withhold taxes did not prevent the taxpayer or withholding agent from availing of the tax compromise under EO No. 44, which was the situation of PNOC and PNB. It was only during the course of the negotiations between PNOC and the BIR that the BIR Commissioner issued Revenue Memorandum Order No. 39-86.

As a result of the negotiations, PNOC reiterated its 26 September 1986 application for tax compromise under EO No. 44 by writing the 9 June 1987 letter to the BIR. In turn, the BIR Commissioner approved the tax compromise on 22 June 1987. Thereafter, *PNOC paid the full amount* of the tax compromise in three installments from June to October 1987. Revenue Regulations No. 17-86 authorized the installment payment because the compromise amount was over ₱50,000.[16]

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[15] Exhibit "1". PNOC, CTA Records, pp. 196-197.

[16] Section 5 of Revenue Regulations No. 17-86 provides: "Mode of Payment. — . . .

Deferred or staggered payments of compromise amounts over ₱50,000 may be considered on a case to case basis in accordance with the extant regulations of the Bureau upon approval of the Commissioner of Internal Revenue, his Deputy or Assistant as delineated in their respective jurisdictions.

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Clearly, PNOC's 26 September 1986 letter-request for tax compromise under EO No. 44 culminated successfully on 22 June 1987 in the approval of the tax compromise under EO No. 44. *This is actual compliance with the requirement that the application for tax compromise under EO No. 44 should be filed on or before 31 March 1987.*

Indeed, the BIR knew that PNOC filed its application for tax compromise "*under E.O. 44 as early as September 1986.*" The Memorandum dated 16 January 1991[17] submitted by Venancia M. Pangilinan, Chief of the BIR Litigation Division, and *approved by BIR Commissioner Ong*, states:

> PNOC, through the letter of its legal counsel dated June 9, 1987, offered to pay ₱91,003,129.89 representing 30% of the basic withholding tax of ₱303,343,766.29 pursuant to E.O. 44 which took effect on September 4, 1986, to be paid on installment basis, *viz*:
>
> x x x x x x x x x
>
> x x x From the tenor of the above letter, *it appears PNOC has made a previous offer of settlement of this case under E.O. 44 as early as September 1986, shortly after the effectivity of said E.O.* (Italics supplied)

The Tax Compromise is now Res Judicata

A compromise agreement constitutes a final and definite settlement of the controversy between the parties.[18] A compromise agreement, even if not judicially approved, has *the effect of* ***res judicata*** *on the parties.* Article 2037 of the Civil Code provides:

> A compromise has upon the parties *the effect and authority of* ***res judicata***; but there shall be no execution except in compliance with a judicial compromise. (Emphasis supplied)

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[17] Annex "Y" of Omnibus Motion dated 21 February 1991 submitted by Tirso B. Savellano with the Court of Tax Appeals, CTA Records, pp. 449-450.

[18] *Republic of the Philippines v. Hon. Estenzo*, 134 Phil. 139 (1968).

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The compromise agreement has the force of law between the parties and no party may discard unilaterally the compromise agreement.[19] Under Section 8.1 of RMO No. 39-86, upon payment of the compromise amount, the tax "*case is already closed.*" The Solicitor General, who withdrew as counsel for the BIR, maintains that the compromise agreement is valid.

Where a party has received the consideration for the compromise agreement, such party is estopped from questioning its terms and asking for the reopening of the case on the ground of mistake.[20] As explained in ***McCarthy v. Barber Steamship Lines***:[21]

> *Hence it is general rule in this country, that compromises are to be favored, without regard to the nature of the controversy compromised*, and that they cannot be set aside because the event shows all the gain to have been on one side, and all the sacrifice on the other, if the parties have acted in good faith, and with a belief of the actual existence of the rights which they have respectively waived or abandoned; and if a settlement be made in regard to such subject, free from fraud or mistake, whereby there is a surrender or satisfaction, in whole or in part, of a claim upon one side in exchange for or in consideration of a surrender or satisfaction of a claim in whole or in part, or of something of value, upon the other, however baseless may be the claim upon either side or harsh the terms as to either of the parties, the other cannot successfully impeach the agreement in a court of justice ***. Where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctable as such in equity, cannot afford a basis for setting a compromise aside or defending against a suit brought thereon ***
>
> x x x x x x x x x
>
> And whether one or the other party understood the law of the case more correctly than the other, cannot be material to the validity of the bargain. For if it were, then it would follow that contracts by the

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[19] *Hernaez v. Yan Kao*, 123 Phil. 1147 (1966).

[20] *Sabino v. Cuba*, 125 Phil. 140 (1966).

[21] 45 Phil. 488 (1923).

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parties settling their own disputes, would at last be made to stand or fall, according to the opinion of the appellate court how the law would have determined it. (Italics supplied)

In ***People v. Magdaluyo***,[22] the BIR Commissioner approved the agreement which compromised the taxpayer's violation of the Tax Code. The taxpayer paid the compromise amount before the filing of the criminal information in court. The Court ruled that the government could no longer prosecute the taxpayer for violation of the Tax Code.

The same principle holds true in the present case. The parties to the compromise agreement have voluntarily settled the tax liability arising from PNB's failure to withhold the final tax on PNOC's interest income. The parties have fully implemented in good faith the compromise agreement. The new BIR Commissioner cannot just annul the legitimate compromise agreements made by his predecessors in the performance of their regular duties where the parties entered into the compromise agreements in good faith and had already fully implemented the compromise agreements.[23]

To rule otherwise would subject the validity and finality of a tax compromise agreement to depend on the different interpretations of succeeding BIR Commissioners. Such lack of finality of tax compromises would discourage taxpayers from entering into tax compromises with the BIR, considering that compromises entail admissions by taxpayers of violations of tax laws. A tax compromise cannot be invalidated except in case of mistake, fraud, violence, undue influence, or falsity of documents. Article 2038 of the Civil Code provides:

Article 2038. A compromise in which there is *mistake, fraud, violence, intimidation, undue influence, or falsity of documents,* is subject to the provisions of Article 1330 of this Code.

x x x (Italics supplied)

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[22] 111 Phil. 609 (1961).

[23] See *Republic v. Sandiganbayan*, G.R. No. 108292, 10 September 1993, 226 SCRA 314.

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Article 1330 of the Civil Code makes compromises tainted with such circumstances voidable.[24] In the present case, there is no mistake because PNOC's delinquent account clearly falls within the coverage of EO No. 44. Also, PNOC clearly filed its application for tax compromise before the deadline. Thus, none of the circumstances that make a compromise voidable is present in this case.

PNB was a government-owned and controlled corporation when it failed to withhold the tax. PNOC, the taxpayer primarily liable for the tax, was then also a government-owned and controlled corporation, and remains so until now. PNB did not abscond with any tax money because this is a case of failure to withhold the tax and not a failure to remit a withheld tax. No fraud or bad faith is ascribable to PNB or PNOC in the execution of the compromise agreement.

Collection of Tax is Barred by Prescription

PNB regularly filed its quarterly returns covering the final withholding tax on all money market placements with PNB for the years 1984 to 1985.[25] Under Revenue Regulations No. 12-80, PNB prepared its quarterly returns using BIR Form No. 1745,[26] as follows:

> SECTION 4. Manner of Computation of Tax Base. — For purposes of Section 3 above, tax bases of the following taxes shall be computed in the following manner:
>
> (a) Final withholding tax on savings deposits. — x x x
>
> x x x x x x x x x

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[24] Article 1330 of the Civil Code states: "A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable."

[25] Section 58(A) of the Tax Code provides in part: "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, x x x."

[26] Revenue Regulations No. 1-84.

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(c) *Final withholding tax on yield of deposit substitutes.- The final withholding tax on yield of deposit substitute shall be based on the adjusted gross interest or yield paid or accrued by banks or non-bank financial intermediaries on all of its deposit substitute debt instruments issued.*

The adjusted gross interest or yield paid or accrued is arrived at after deducting from the total interest or yield paid or accrued on deposit substitutes, the sum of —

(1) *All interest and/or yield paid or accrued on deposit substitute earned by tax-exempt entities;*

(2) All interest and/or yield paid or accrued on inter-bank loans, including those between or among quasi-banks;

(3) All interest and/or yield paid or accrued on borrowings from World Bank, Asian Development Bank, International Finance Corporation and similar institutions; and

(4) *All interest and/or yield paid or accrued on deposit substitutes exempt from withholding tax.*

The adjusted gross interest and/or yield paid or accrued on deposit substitute debt instruments shall further be detailed as to amount subjected in full to the twenty per centum (20%) final withholding tax and amount subjected to preferential final withholding tax rates in the prescribed form (B.I.R. Form No. _____). (Italics supplied)

Thus, the computation for the quarterly returns already took into account "[A]ll interest and/or yield paid or accrued on deposit substitute earned by tax-exempt entities," including interest income of PNOC on its money market placements since PNB believed in good faith that PNOC was exempt from the withholding tax. After filing of the quarterly returns, the BIR had every opportunity to investigate and audit the correctness of the PNB's computation.

The last day for filing the quarterly return for the last quarter of 1985 was 25 January 1986. The BIR and PNOC signed the compromise agreement on 22 June 1987. BIR Commissioner Ong abrogated the compromise agreement on 16 January 1991, the same day the BIR issued the final assessment against PNOC and PNB for the ₱294,958,450.73 foregone tax. From 25 January

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1986, the last day for PNB to file the fourth quarter return for 1985, to the issuance of the final assessment for the foregone tax on 16 January 1991, more than four years had lapsed. The Tax Code requires the BIR to assess and collect the tax within three years from the last day of filing of the tax return.

In the present case, the BIR had until 25 January 1990 to assess and collect the tax. Otherwise, the right of the government to assess or collect the tax would prescribe. Section 318 of the Tax Code, the section governing prescription during the taxable years 1984 and 1985, then provided as Section 203[27] of the Tax Code now similarly provides:

> Sec. 318. 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 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.

The law prescribes two conditions for the collection of internal revenue taxes. ***First***, the BIR must assess the tax on the taxpayer within three years from the last day of filing of the tax return. ***Second***, the BIR must collect judicially or administratively the tax also within three years from the last day of filing of the tax return. In short, the BIR must institute both the assessment and the collection case within three years from the last day of

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[27] Section 203 of the Tax Code provides: "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-year prescriptive 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."

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filing of the return, but the assessment must precede the collection case. One textbook writer put it succinctly in this manner:

> As mandated by law (Sec. 203, 1997 NIRC), the Government must assess on time, that is to say, not later than three years counted from and after the period fixed by law for the filing of the tax return or the actual date of filing, whichever is the later date.
>
> x x x x x x x x x
>
> In the case of *self-assessed taxes* like the income tax that the taxpayer himself assesses and reflects on his return, *the collection thereof may proceed without any further assessment; in which case, therefore, the prescriptive period of collection applies.* Hence, *the BIR must collect such tax, either by summary or judicial remedies, within three (3) years from the date of filing of the tax return.* This is so because the date of assessment in the case of self-assessed taxes would be the date of the actual filing of the return as it is on such date when the tax is said to have been assessed *(Sec. 222[c], 1997 NIRC)*.[28] (Italics supplied)

Since *more than four years* had lapsed since the filing of the last quarterly return on 25 January 1986, the BIR could no longer assess the foregone tax on PNOC when the BIR abrogated the compromise agreement on 16 January 1991. The reckoning date for the three-year prescriptive period for withholding taxes due before the last quarter of 1985 is even earlier than 25 January 1986. Even assuming that the BIR had assessed the tax within the three-year prescriptive period, the BIR could no longer collect the foregone tax when it demanded payment from PNOC and PNB on 16 January 1991, the date the BIR abrogated the compromise agreement. The BIR must issue the tax assessment, *and judicially collect the assessed tax*, within three years from the last day of filing of the last quarterly return.

Of course, the BIR may also administratively collect the assessed tax by distraint of personal property or levy on real property.[29] *However, the BIR must take these summary remedies*

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[28] Benjamin B. Aban, *The Law of Basic Taxation in the Philippines*, pp. 267-268 (2001).

[29] Section 207, Tax Code.

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within the three-year prescriptive period for collecting the assessed tax. In the present case, the BIR issued the warrant of garnishment against PNB on 12 August 1991, *more than five years* from the last day of filing of the last quarterly return on 25 January 1986. Thus, the garnishment of PNB's account with the Central Bank on 23 August 1991 is void since the right of the BIR to collect the tax had already prescribed by then.

Section 318 (now 203) of the Tax Code clearly provides that the three-year prescriptive period is counted from the due date of the filing of the return. The BIR must assess and collect the tax within three years from the filing of the tax return.

In the present case, the majority opinion expressly admits that the BIR issued the assessment against PNB on 8 October 1986, and that the BIR had until 7 October 1989, or three years from the issuance of the assessment, to collect the tax. The majority opinion declares:

> *Neither has the three-year prescriptive period for the collection of the tax prescribed. Considering that the assessment against PNB was issued on 8 October 1986,* **the BIR had until 7 October 1989 to enforce collection based thereon**. *(Emphasis and underscoring supplied)*

The majority opinion is mistaken in stating that the three-year period is counted from the date of issuance of the assessment. Section 318 (now 203) of the Tax Code clearly states that the three-year period is counted from the due date of the filing of the return. *This means that the prescriptive period in the present case expired on 24 January 1989 since the last quarterly return was due on 25 January 1986. This is almost 9 months earlier than the 7 October 1989 expiry date that the majority opinion claims.*

The majority opinion further claims that there is no proof that PNB filed its quarterly withholding tax returns. The majority opinion asserts:

> In making its conclusions that the assessment and collection in this case has prescribed, the dissenting opinion has taken liberties to assume

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the following facts even in the absence of allegations and evidences to the effect that: (1) PNB filed returns for its withholding tax obligations for taxable year 1985; (2) PNB reported in the said returns the interest earnings of PNOC's money placements with the bank; and (3) that the returns were filed on or before the prescribed date, which was 25 January 1986.

Contrary to the majority opinion's claim, the BIR audit report on PNB's failure to withhold the tax from 1984 to 1985 does not state that PNB failed to file its quarterly return. Had PNB failed to file its quarterly return, the tax assessment against PNB would have been increased by a penalty equivalent to either 25% or 50% of the tax due as *mandated* by Section 248 of the Tax Code, thus:

SEC. 248. Civil Penalties. — (A) There *shall be imposed,* in addition to the tax required to be paid, *a penalty equivalent to twenty-five percent (25%) of the amount due,* in the following cases:

(1) *Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed;* or

x x x x x x x x x

(B) *In case of willful neglect to file the return within the period prescribed by the Code or by the rules and regulations, x x x the penalty to be imposed shall be fifty percent (50%) of the tax x x x.*

The tax assessment against PNB, made after the investigation and audit of PNB's failure to withhold the tax for the years 1984 and 1985, does not include the 25% or 50% penalty for failure to file the return. The assessment letter to PNB dated 8 October 1986 states:

Please be informed that *upon investigation*, there was found due from you as a withholding agent within the provisions of Section 31 of the National Internal Revenue Code, the total sum of ₱376,301,133.23, representing deficiency withholding final tax inclusive of interests, as the yield of the deposit substitutes placed with your Bank by the Philippine National Oil Company, as shown below:

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Deficiency withholding final Tax on the total yield of ₱1,960,881,332.25 covering the period from October 15, 1984 to July 31, 1986	–	₱298,863,332.51
Interests due — computed up to October 15, 1986	–	₱77,455,580.72
Total Deficiency Amount		₱376,301,133.23

As you will note the interest due on the deficiency withholding final tax was computed up to October 15, 1986. Should you fail to pay the total deficiency amount on due date, the provisions of Section 283, NIRC, provide that in case of failure to pay "a deficiency tax, or any surcharge or interest therein, on due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected, on the unpaid amount, interest at the rate prescribed in paragraph (a) hereof until the amount is fully paid, which amount shall form part of the tax."x x x.[30]

Nowhere in the assessment letter does it state that PNB failed to file the returns and thus should be liable for the *mandatory 25% or even 50% penalty.* This only means that PNB did not fail to file the quarterly returns.

Even assuming for the sake of argument that PNB failed to file the quarterly returns, PNOC filed an amended return when the BIR Commissioner approved on 22 June 1987 the tax compromise. Under Revenue Regulations No. 17-86, the taxpayer who avails of the tax compromise under EO No. 44 must file a tax return for the income covered by the delinquent account. Section 2 (a) of Revenue Regulations No. 17-86 provides:

a) x x x x x x x x x

Where no return was filed, the taxpayer shall be considered delinquent as of the time the tax on such return was due, *and in availing of the compromise,* **a return shall be filed** *as a basis for computing*

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[30] Annex "A" of Petition for Review dated 5 April 1988 filed by Tirso B. Savellana with the Court of Tax Appeals, CTA Records, pp. 1-16.

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the amount of compromise to be paid. (Emphasis and underscoring supplied)

Thus, PNOC for sure filed a return in June 1987 even assuming its agent, PNB, failed to file the return on 25 January 1986. Under the worst-case scenario that PNB failed to file the return on 25 January 1986, the BIR still had *only until June 1990* to collect the tax from PNOC and PNB, applying the three-year period from PNOC's actual filing of the return in June 1987. This is the rule in Section 318 (now 203) of the Tax Code, which provides:

x x x *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.*x x x. (Italics supplied)

Whether the BIR had only until 24 January 1989, or 7 October 1989, or even until the end of June 1990 to collect the tax would not really matter. The collection of the tax would still be time-barred in the present case under any of these three prescriptive periods.

The BIR garnished PNB's funds with the Central Bank on 2 September 1992, long after the prescriptive period had expired under any of the three prescriptive periods. The garnishment was thus void since the BIR's right to collect the tax had already prescribed. The BIR did not also file any collection case in court against PNB within any of the three prescriptive periods. *The present case is not even a collection case against PNB or PNOC.* Before 2004, the year Republic Act No. 9282 took effect, the Court of Tax Appeals had no jurisdiction to enforce the collection of taxes. Prior to 2004, judicial action to collect internal revenue taxes fell under the jurisdiction of the regular trial courts.

In the case of PNOC, the BIR issued the assessment even earlier, on 8 August 1986. If we follow the majority opinion's erroneous computation that the three-year period begins from the issuance of the assessment, *the BIR had only until 7 August 1989 to collect from PNOC the tax administratively or judicially.* If we assume, for the sake of argument, that there was a failure

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to file the return, *the BIR had also only until 7 August 1989, or three years after the issuance of the assessment, to collect the tax from PNOC.* This is pursuant to Section 319 (now 222) of the Tax Code, which provided:

> Sec. 319. Exceptions as to period of limitation of assessment and collection of taxes — (a) In the case of x x x 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 discovery of the x x x omission: x x x
>
> x x x x x x x x x
>
> (a) *Any internal revenue tax which has been assessed within the period of limitation above-specified may be collected within three years following the assessment of the tax.*[31] (Italics supplied)

Until now, *after a lapse of more than 18 years,* the BIR has made no distraint or levy on PNOC's assets. Neither has the BIR filed any collection case in court against PNOC. *In short, the pleadings and the evidence on record clearly establish that prescription had long set in to bar the collection of the tax against PNB and PNOC.*

The majority opinion, however, claims that prescription cannot bar the collection of PNOC's or PNB's withholding tax liability because neither PNOC nor PNB raised the defense of prescription. The majority opinion contends:

> The undersigned believes that the *defense of prescription* of the period for the assessment and collection of tax liabilities should be considered *waived since it was not raised in the answers or any other pleadings filed by PNOC and PNB.* Such a defense had not been properly pleaded and the facts alleged and evidences submitted by the parties were not sufficient to support a finding by the Court on the matter. In *Querol v. Collector of Internal Revenue*, this Court ruled that prescription, being a matter of defense, imposes *on the taxpayer to prove that the*

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[31] Under the present Section 222(c) of the Tax Code as amended by RA No. 8424 which took effect on 1 January 1998, this period has been increased to five years.

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full period of the limitation has expired, and this requires him to positively establish the date when the period started running and when the same was fully accomplished.

The majority opinion is clearly mistaken.

While the rule is that prescription is waived if not raised as a defense, the present case falls under the *express exception* to this rule. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. *However, when it appears from the pleadings or the evidence on record* that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or *that the action is barred* by prior judgment or *by the statute of limitations, the court* **shall** *dismiss the claim.* (Emphasis and underscoring supplied)

Thus, if the pleadings or evidence on record show that the action is barred by prescription, the court is *mandated* to dismiss the action even if prescription is not raised as a defense.

Justice Florence D. Regalado, in Volume I of his Remedial law Compendium,[32] explains this exception as follows:

Under the amended provision, *the following defenses are not waived even if not raised in a motion to dismiss or in the answer:* (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) *prescription of the action.*

x x x x x x x x x

Res judicata and prescription of the claim have also been added as exceptions since they are grounds for extinguishment of the claim. It would appear to be unduly technical, if not contrary to the rule on unjust enrichment, to have the defending party respond all over again for the same claim which has already been resolved or is no longer recoverable under the law. It is worth mentioning in this connection that, in Sec. 5 of Rule 16 as amended, an order granting a motion to

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[32] 7th Edition, 1999.

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dismiss on the grounds, *inter alia,* of *res judicata* or prescription shall bar the refiling of the same action or claim.

The presence of any of these four grounds authorizes the court to ***motu proprio*** *dismiss the claim,* that is, the claims asserted in the complaint, counterclaim, crossclaim, third (fourth, *etc.*) — party complaint or complaint-in-intervention (see *Sec. 2, Rule 6*). In order that it may do so, it is necessary, however, that such grounds be raised in a motion to dismiss or in the answer with evidence duly adduced to prove the same, or where such grounds appear in the other pleadings filed or in the evidence of record in the case.

Specifically with respect to the defense of prescription, the present provision is similar to the rule adopted in civil cases, but dissimilar to the rule and rationale in criminal cases. In civil cases, it has been held that the defense of prescription may be considered only if the same is invoked in the answer, *except where the fact of prescription appears in the allegations in the complaint or the evidence presented by the plaintiff, in which case such defense is not deemed waived* ***(Ferrer vs. Ericta, et al., L-41767, Aug. 23, 1978; Garcia vs. Mathis, et al., L-48577, Sept. 30, 1980).*** It would thus appear that the non-waiver is dependent on the timeliness of the invocation of the defense, or where such defense is a matter of record or evidence. (Italics supplied)

The ruling of this Court in *Gicano, et al. v. Gegato, et al.,*[33] decided in January 1988, became the basis of the present Section 1 of Rule 9. In ***Gicano*** this Court ruled:

x x x We have ruled that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; (*Francisco v. Robles*, Feb. 15, 1954; *Sison v. McQuaid*, 50 O.G. 97; *Bambao v. Lednicky*, Jan. 28, 1961; *Cordova v. Cordova*, Jan. 14, 1958; *Convets, Inc. v. NDC*, Feb. 28, 1958; 32 SCRA 529; *Sinaon v. Sorongan*, 136 SCRA 408); and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; *or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. What is essential only, to repeat, is that the facts demonstrating the*

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[33] G.R. No. L-63575, 20 January 1988, 157 SCRA 140.

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lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record: either in the averments of the plaintiffs complaint, or otherwise established by the evidence. (Italics supplied)

Thus, even before the adoption of the present Section 1 of Rule 9, prevailing jurisprudence had already recognized the exceptions laid down in Section 1 of Rule 9.

The majority opinion further claims that the running of the prescriptive period was suspended when petitioner filed with the Court of Tax Appeals on 8 April 1988 the present petition to declare void the tax compromise between the BIR and PNOC. The majority opinion asserts that the running of the prescriptive period remains suspended up to now. The majority opinion contends:

x x x *However, the running of the prescriptive period for the collection of the assessment against PNB is for the meantime suspended during the pendency of the case before the CTA, then before the Court of Appeals, and finally before this Court, because the issue for resolution by the courts is whether or not the assessment should actually be enforced.*

The majority opinion's contention collides with the applicable provision of the Tax Code. Section 223 of the Tax Code governs the suspension of the running of the prescriptive period to assess and collect internal revenue taxes. Section 223 provides:

SEC. 223. Suspension of Running of Statute of Limitations. — *The running of the Statute of Limitations* provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, *shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter;* when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly

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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. (Italics supplied)

Section 223 suspends the running of the prescriptive period if the BIR Commissioner *"is prohibited from x x x beginning distraint or levy or a proceeding in court"* to enforce collection of the tax assessed. In the present case, the Court of Tax Appeals, Court of Appeals and this Court *never prohibited* the BIR Commissioner from commencing a distraint, levy or civil suit against PNB or PNOC to collect the tax. *No court ever issued an order prohibiting the BIR from collecting the tax from PNB or PNOC.* In ***Republic v. Ret,***[34] this Court ruled:

As heretofore stated, the plaintiff-appellant made the assessment on January 20, 1951 and had up to January 20, 1956 to file the necessary action. It was only on September 5, 1957, that an action was filed in Court for the collection of alleged deficiency income tax — far beyond the 5 year period. This notwithstanding, plaintiff-appellant argues that during the pendency of the criminal cases, it was prohibited from instituting the civil action for the collection of the deficiency taxes. This contention is untenable. The present complaint against the defendant-appellee is not for the recovery of civil liability arising from the offense of falsification; it is for the collection of deficiency income tax. The provisions of Section 1, Rule 107 (*supra*) that "after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted," is not applicable. The said criminal cases would not affect, one way or another, the running of the prescriptive period for the commencement of the civil suit. The criminal actions are entirely separate and distinct from the present civil suit. *There is nothing in the law which would have stopped the plaintiff-appellant from filing this civil suit simultaneously with or during the pendency of the criminal cases.* Assuming the applicability of the rule, at most, the prosecution of the civil action would be suspended but not its filing within the prescribed period. Section 332 of the Tax Code provides: "the running of the statutory limitation . . . shall be suspended for the period during which the Collector of Internal Revenue is prohibited from making the assessment, or beginning distraint or levy or a proceeding in court, and for sixty days thereafter". *As*

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[34] G.R. No. L-13754, 31 March 1962, 4 SCRA 783.

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heretofore stated, the plaintiff-appellant was not prohibited by any order of the court or by any law from commencing or filing a proceeding in court. x x x (Italics supplied)

The BIR could have filed a collection suit against PNB or PNOC with the proper regional trial court, which before 2004 had jurisdiction over tax collection cases. At the very least, the BIR should have filed with the proper regional trial court a collection case *ad cautelam* during the pendency of the present case in court. This would have suspended the running of the prescriptive period. However, the BIR neglected to file a collection case before 7 October 1989, the expiration of the prescriptive period to collect the tax from PNB.

The BIR could also have *administratively collected* the tax from PNB and PNOC. In fact, during the pendency of the case in the Court of Tax Appeals, the BIR Commissioner *administratively garnished PNB's funds with the Central Bank,* although the garnishment is void because the prescriptive period had already expired even by the majority opinion's own computation of the prescriptive period. *This only proves that nothing prevented the BIR from administratively garnishing PNB's or PNOC's accounts even during the pendency of the present case.* However, the BIR garnished PNB's funds only after the prescriptive period had expired on 7 October 1989.

Obviously, the BIR failed to collect the tax before 7 October 1989 because of the *fault or negligence of the BIR,* and not because a court order prevented the BIR from collecting the tax before the expiration of the prescriptive period on 7 October 1989. The BIR was free at any time to distrain or levy on the assets of PNB or PNOC, as well as to file a collection suit before the regular courts against PNB or PNOC, even during the pendency of the present petition in the various courts.

In particular, the BIR could have distrained or levied on the assets of PNB at any time because PNB was not even a party to the tax compromise between the BIR and PNOC. Indeed, the BIR did garnish the funds of PNB, but only after the expiration of the prescriptive period. The BIR simply slept on its rights.

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Neither PNOC nor PNB instituted the present case against the BIR to prevent the collection of the tax. Private respondent Tirso B. Savellano, who is not the taxpayer, originally filed this petition against the BIR Commissioner only, and later on impleaded PNOC and PNB. This Court has applied Section 223 of the Tax Code suspending the running of the prescriptive period in cases where the *taxpayer sued the BIR Commissioner to prevent the collection of a tax,* as when the taxpayer disputed the validity or amount of the assessment before the Court of Tax Appeals.[35] This is not the situation in the present case since PNOC and PNB have not sued the BIR Commissioner to prevent the collection of the tax, and they do not dispute the validity or amount of the assessment issued against them.

Nothing legally prevented the BIR from collecting the tax, administratively or judicially, from PNOC or PNB at any time before 7 October 1989. Thus, the BIR cannot invoke Section 223 of the Tax Code to claim the suspension of the running of the prescriptive period during the pendency of the present case in the courts.

Conclusion

To conclude, the compromise agreement between the BIR and PNOC falls within the coverage of EO No. No. 44 and its implementing rules. The compromise agreement is not contrary to law, morals, good customs, public order, or public policy.[36] Thus, the compromise agreement is valid, and has the effect of ***res judicata*** on the BIR and PNOC. In any event, the collection of the foregone tax is *barred by prescription.*

Accordingly, I dissent from the majority opinion. I vote to grant the petition, to declare valid the 22 June 1987 tax compromise between PNOC and the BIR, and to deny the claim of private respondent Tirso B. Savellano for an additional informer's reward of ₱43,800,915.25.

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[35] *Protector's Services v. Court of Appeals*, 386 Phil. 611 (2000); *Republic v. Ker & Company*, 124 Phil. 822 (1966).

[36] Article 1306 of the Civil Code.