REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1766** *(CTA Case No. 8862)*
-versus-	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
NORKIS TRADING COMPANY, INC., *Respondent.*	Promulgated: JUN 13 2025

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D E C I S I O N

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW *AD CAUTELAM* ("Petition")**, filed on February 7, 2018,[1] with respondents' **COMMENT (on the *Petition for Review* dated February 7, 2018) ("Comment")**, filed on April 27, 2018.[2]

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1 Records, pp. 9-52.
2 *Id.*, pp. 62-375.

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** ("CIR") is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the power to decide 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, as amended* ("*NIRC*"), or other laws or portions thereof administered by the BIR. He may be served summons, pleadings, and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent **NORKIS TRADING COMPANY, INC.** is a duly registered domestic corporation with principal address at A.S. Fortuna St., Baklilid, Mandaue City.

The Facts

The following are the undisputed facts as found by the Court in Division:[3]

On March 17, 2014, respondent received a Preliminary Assessment Notice ("PAN"), dated March 6, 2014, with a proposed assessment of Php284,253,514.52.

On April 11, 2014, respondent then received the Formal Letter of Demand ("FLD"), dated April 10, 2014, with Final Assessment Notice ("FAN") No. IT-123-LA0057-07-14-21 from petitioner, wherein respondent was assessed for alleged deficiency income taxes in the amount of Php285,927,070.68, inclusive of interest and penalties, for its fiscal year ending June 30, 2007.

On May 7, 2014, respondent filed a protest-letter dated May 2, 2014, as a request for reconsideration, against the FLD/FAN.

On July 14, 2014, respondent received the Final Decision on Disputed Assessment ("FDDA"), dated July 9, 2014, upholding the deficiency income tax assessment against respondent.

Thus, on August 11, 2014, respondent filed the Petition for Review before the Court in Division.

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[3] Assailed Decision, dated August 16, 2017, Annex "A", Petition, *id.*, pp. 28-29.

On August 16, 2017, the Court in Division rendered the Assailed Decision, the dispositive portion of which provides:[4]

> **WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED.** Accordingly, respondent's Final Decision on Disputed Assessment dated July 9, 2014 is hereby **REVERSED** and **SET ASIDE,** and the assessment under FAN No. IT-123-LA0057-07-14-21 in the amount of Php285,927,070.68, inclusive of interest and penalties, is hereby **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**

On August 31, 2017, petitioner filed his Motion for Reconsideration Re: Decision dated 16 August 2017, which was denied for lack of merit by the Court in Division in the Assailed Resolution, dated December 12, 2017.[5]

On January 22, 2018, petitioner filed a Motion for Extension of Time to File Petition for Review,[6] which this Court *En Banc* granted through a Resolution, dated January 23, 2018.[7]

On February 7, 2018, petitioner filed the instant **Petition.**

Afterwards, this Court *En Banc* issued a Resolution, dated March 20, 2018, requiring respondent to file a Comment on the Petition,[8] which was complied with by respondent when it filed the **Comment** on April 27, 2018.

On May 31, 2018, this Court *En Banc* issued a Resolution consolidating CTA *En Banc* Case No. 1845 with the present case, as the latter bears the lower docket number.[9]

On March 27, 2019, respondent filed a Motion for Leave to File and to Admit Attached Comment on the Petition for Review in CTA *EB* No. 1845. In the said Motion, respondent alleged that while it was given the opportunity to file a Comment on the instant **Petition**, it was, however, not given a chance to file a Comment on the Petition for Review in CTA *EB* No. 1845. In the attached Comment (on the *Petition for Review* in CTA *EB* No. 1845), respondent alleged that the Petition for Review in CTA *EB* No. 1845 is similar with the present **Petition** which likewise appealed the Assailed Decision, dated August 16, 2017. Respondent insisted that there can be no multiple appeals on one Assailed Decision. Further, respondent insisted that petitioner

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4 Annex "A", Petition, *id.*, p. 38.
5 Assailed Resolution, dated December 12, 2017, Annex "B", Petition, *id.*, pp. 40-44.
6 *Id.*, pp. 1-4.
7 *Id.*, p. 5.
8 *Id.*, pp. 54-56.
9 *Id.*, p. 379.

admitted through the allegations in the present **Petition** that petitioner only had until February 7, 2018, which is 15 days from receipt of the copy of the Assailed Resolution, dated August 16, 2017, within which to file an appeal on the Assailed Decision and Assailed Resolution. Accordingly, per respondent, the filing of the Petition for Review in CTA *EB* No. 1845 on May 11, 2018 is already time barred.[10]

In a Resolution, dated May 29, 2019, the Court *En Banc* denied the Motion for Leave to File and to Admit Attached Comment on the Petition for Review in CTA *EB* No. 1845. However, it likewise dismissed the instant **Petition** and the Petition for Review in CTA *EB* No. 1845.[11]

On June 25, 2019, petitioner filed his Motion for Reconsideration Re: Resolution dated 29 May 2019. He alleged that the filing of the second Petition for Review under CTA *EB* No. 1845 was not forum shopping but was done merely to elevate to the same court the denial of the Motion which substantially sought admission of the attachment to the BIR Records as public document or in the alternative, to reopen the case for identification of the same. Moreover, petitioner argued that he did not commit forum shopping considering that he filed the second Petition for Review under CTA *EB* No. 1845 with the same forum and with clear disclosure of the pending **Petition** (*i.e.,* CTA *EB* No. 1766). Likewise, petitioner argued that even if he committed forum shopping, the Court erroneously ruled to dismiss both Petitions for Review in CTA *EB* Nos. 1766 and 1845. At most, only the Petition for Review in CTA *EB* No. 1845 should have been dismissed.[12]

On August 7, 2019, respondent filed a Comment on petitioner's Motion for Reconsideration. In said Comment, respondent alleged that petitioner was guilty of forum shopping when it split its cause of action in two actions (*i.e.,* the **Petition** under CTA *EB* No. 1766 and the Petition for Review under CTA *EB* No. 1845).[13]

On January 16, 2020, this Court *En Banc* issued a Resolution denying petitioner's Motion for Reconsideration for lack of merit.[14]

On March 6, 2020, petitioner filed a Petition for Review on Certiorari before the Supreme Court.[15] He alleged that there is no forum shopping where the cases were filed in the same Court or forum. Further, he posited that the elements of *Litis Pendentia* are not present in this case. He likewise argued that even assuming that forum shopping was committed, only the Petition for

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[10] *Id.*, pp. 386-393.
[11] *Id.*, pp. 396-402.
[12] *Id.*, pp. 417-427.
[13] *Id.*, pp. 434-445.
[14] *Id.*, pp. 455-458.
[15] *Id.*, pp. 469-581.

Review under CTA *EB* No. 1845 was dismissible since petitioner's acts did not constitute willful and deliberate forum shopping.

On September 23, 2020, respondent filed its Comment to the Petition for Review on Certiorari interposing the following arguments: a) the CIR committed forum shopping even if he made disclosures when he filed the present **Petition** and the Petition for Review under CTA *EB* No. 1845, and even if both Petitions for Review were filed with the same Court; b) the CIR committed forum shopping because the elements of *litis pendentia* are present; and c) the CIR's commission of forum shopping is willful and deliberate; thus, the Court *En Banc* correctly dismissed both Petitions for Review.[16]

On June 16, 2021, the Supreme Court promulgated a Decision finding petitioner to have committed forum shopping. However, it only dismissed the Petition for Review under CTA *EB* No. 1845 considering that dismissing both the said Petition for Review and the instant **Petition** was too harsh a penalty against petitioner. It likewise directed the Court *En Banc* to reinstate the present **Petition** under CTA *EB* No. 1766 and to proceed in deciding the same.[17] On March 9, 2022, respondent filed a Motion for Reconsideration against such Decision[18] but this was denied by the Supreme Court through a Resolution, dated July 18, 2022.[19] On July 18, 2022, the Decision, dated June 16, 2021, had become final and executory as certified by an Entry of Judgment.[20]

On May 15, 2024, the Court *En Banc* issued a Resolution submitting the instant case for Decision.[21]

Hence, this Decision.

The Assigned Errors

The ultimate assigned error in the **Petition** to be resolved by the Court *En Banc* is whether the Court in Division erred in ruling that the instant subject assessment has already prescribed.[22]

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16 *Id.*, pp. 597-613.
17 *Id.*, pp. 616-627.
18 *Id.*, pp. 628-636.
19 *Id.*, p. 637-644.
20 *Id.*, pp. 659-661.
21 Records.
22 *Id.*, p. 11.

Arguments of the Parties

Petitioner argues as follows:[23]

1. The factual basis of the assessment is a duly executed Indemnity Agreement deposited by respondent itself and Yamaha Motor Company, Inc. with the Japanese Government. This factual basis remained unrebutted during the administrative stage as well as the judicial proceedings.

2. The Indemnity Agreement attached to the Memorandum from the National Tax Agency of Japan is a public document and being as such, its authentication may be dispensed with.

3. There was an improper and erroneous response to the request for admission. There was no complete and sufficient denial of the Indemnity Agreement. Consequently, the due execution and authenticity of the Indemnity Agreement was deemed uncontroverted.

4. The three-year prescriptive period is inapplicable since respondent filed a false return which allowed the application of the 10-year prescriptive period under *Section 222 of the NIRC.*

In its **Comment,** respondent counter-alleges as follows:[24]

1. The assessment is without any basis. Petitioner failed to adduce any evidence that respondent indeed received $6,000,000.00 as indemnity from Yamaha Motors Company, Inc. The alleged copy of the Indemnity Agreement cannot, by any stretch of imagination, be considered a public document. Respondent properly answered to petitioner's Request for Admission of the genuineness and due execution of the alleged Indemnity Agreement.

2. Assuming arguendo that any indemnity may have been received by respondent, there would have still been no income arising from such receipt because of the nature of an indemnity (which is merely a form of compensation for losses actually suffered) and the expenses incurred and the losses suffered by respondent and Norkis Industrial Engineering, Inc. ("NIECO") as a result of the termination of the Technical Collaboration Agreement exceeded the alleged amount of indemnity.

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[23] *Id.*, pp. 11-22.
[24] *Id.*, pp. 71-85.

3. The period to assess has undoubtedly expired considering that petitioner failed to establish the propriety of the application of the 10-year prescriptive period.

The Ruling of the Court *En Banc*

This Court resolves to **DENY** the **Petition** for lack of merit.

The application of the extraordinary 10-year prescriptive period.

In *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*,[25] the Supreme Court was finally able to settle the issue as to when the extraordinary 10-year prescriptive period for issuing deficiency tax assessment can be properly invoked and applied by the CIR. The Supreme Court ruled that pursuant to *Section 222 (a) of the NIRC*, the 10-year prescriptive period may be applied in case a taxpayer: a) filed a false return; b) filed a fraudulent return; or c) failed to file a return.

A fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due," while a false return simply "implies deviation from the truth, whether intentional or not."[26]

The Supreme Court further ruled that a false return referred to under *Section 222 (a) of the NIRC* does not pertain to false returns in general. To be sure, the extraordinary 10-year prescriptive period applies to a false return when a) such return contains an error or misstatement, and b) the error or misstatement was deliberate or willful. Thus, the extraordinary prescriptive period does not apply to all cases of errors or misstatements but only to intentional ones. More importantly, the burden of proving that the errors or misstatements in a taxpayer's tax returns are indeed deliberate or willful lies with the CIR. However, this burden shifts to the taxpayer when there is *prima facie* evidence of falsity or fraud under *Section 248 (B) of the NIRC* such as when (1) there is an understatement/underdeclaration of sales, receipts, or income or overstatement/overdeclaration of expenses or other deductions, and (2) the misstatement is substantial, such that it exceeds the corresponding amount declared in the return by 30%. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the 10-year period. On the other hand, if the taxpayer is successful in overturning the presumption (*e.g.*, demonstrating that the misstatement as ascertained by the CIR had been inadvertent or attributable to a mistake or was not deliberate or willful on the part of the taxpayer), the

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[25] G.R. No. 247737, March 28, 2023.
[26] *Ibid.*

CIR cannot rely on the presumption in proving the taxpayer's intent to evade.[27]

The High Court further stressed that the assessment notice issued to the taxpayer must comply with two sets of due process requirements. Under the first due process requirement, the notice must clearly state that (a) the extraordinary prescriptive period is being applied and (b) the bases for the allegations of falsity or fraud. Under the second due process requirement, the tax authorities must not have acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied.[28]

The general three-year prescriptive period applies in the case at bar.

In the case at bar, petitioner seeks to establish *prima facie* evidence that respondents' tax returns are false on the ground of a substantial understatement of its income (*i.e.*, more than the 30% threshold) emanating from its failure to declare an alleged indemnity (in the amount of $6,000,000.00) paid by Yamaha Motors Company, Inc. to respondent. And following such falsity of respondent's tax returns, petitioner is of the view that the extraordinary 10-year prescriptive period applies.

We are not convinced. The Court *En Banc* finds that petitioner failed to prove that there was a substantial understatement of respondent's income.

The main document which petitioner insists would be sufficient to prove that respondent indeed received an indemnity from Yamaha Motors Company, Inc. is an alleged Indemnity Agreement. However, as duly found by the Court in Division, this document was never offered in evidence by petitioner.[29] While petitioner filed a Motion to Re-Open Proceedings in order to introduce and identify the alleged Indemnity Agreement as evidence, the same was properly denied by the Court in Division through the Assailed Resolution as there were no compelling reasons adduced by petitioner to re-open the proceedings in accordance with *Rule 130, Section 5 (f) of the Rules of Court*.[30] Accordingly, without formally offering such document as evidence, the Court in Division appropriately disregarded the same in deciding the present case. In fact, as duly ruled upon by the Court in Division, the Indemnity Agreement is forgotten evidence, defined as follows:

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27 *Ibid.*
28 *Ibid.*
29 Assailed Decision, dated August 16, 2017, CTA, Case No. 8862, pp. 10-12.
30 Assailed Resolution, dated December 12, 2017, CTA Case No. 8862, pp. 3-4.

> Forgotten evidence refer to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or a new trial, in the guise of newly discovered evidence.[31]

Moreover, such Indemnity Agreement cannot be considered a public document under *Rule 132, Section 19 of the Rules of Court.* Even assuming for the sake of argument that the alleged copy of the Indemnity Agreement was transmitted to the BIR by the National Tax Agency of Japan, the said transmittal did not convert said Indemnity Agreement into a public document. *Rule 132, Section 19 of the Rules of Court* provides, as follows:

> Section 19. Classes of Documents. — For the purpose of their presentation evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
>
> (b) Documents acknowledge before a notary public except last wills and testaments; and
>
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
>
> All other writings are private.

The Indemnity Agreement does not fall under any of the above. *First,* it is not an official act of a sovereign authority, official bodies and tribunals, or public officers since it was allegedly executed by respondent and Yamaha Motor Company, Inc., which are private entities. *Second,* as shown by the records, the Indemnity Agreement does not contain any acknowledgment by a notary public of the Philippines. *Third,* while petitioner claims that the Indemnity Agreement was transmitted by the National Tax Agency of Japan to the BIR, still, the Indemnity Agreement was not transformed into a public document because the BIR is not mandated by law to be a public repository of private documents such as the aforesaid Indemnity Agreement.

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[31] Assailed Resolution, *citing* Office of the Ombudsman v. Coronel, G.R. No. 164460, June 27, 2006.

More importantly, even if the said Indemnity Agreement is considered a public document, *Rule 132, Section 27 of the Rules of Court* still provides that "an authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody." In this case, such required attestations were not provided by petitioner. Thus, the Indemnity Agreement is not admissible in evidence as a public document.

Further, there is no merit in petitioner's allegations that since respondent inappropriately responded to petitioner's request for admission of the Indemnity Agreement, the same was impliedly admitted. Respondent's answer to petitioner's request for admission was made through the Sworn Statement of Ms. Mae Elaine T. Bathan, who is the corporate secretary of respondent.[32] While the request for admission of the Indemnity Agreement was directed to Dr. Norberto D. Quisumbing, Jr., the reply made therein by Ms. Bathan is still valid considering that, as corporate secretary of respondent, she is the keeper of all the documents pertaining to respondent, and as such, is the proper party to answer any request for admission of the genuineness and due execution of a document to which respondent is a party to. The fact that Ms. Bathan replied that she cannot truthfully either admit or deny the genuineness and existence of the said Indemnity Agreement considering that respondents' records were destroyed by fire does not make the answer to the request for admission invalid. It does not result in an implied admission of the genuineness and existence of such Indemnity Agreement.

Thus, this Court *En Banc* cannot take cognizance of such Indemnity Agreement. While this Court is not strictly bound by technical rules of evidence and there are instances wherein a justification for the relaxing of the rules may be allowed, still, in this case, petitioner has not demonstrated any convincing reason for this Court to apply the technical rules liberally.

More importantly, even if this Court *En Banc* admits in evidence the aforesaid Indemnity Agreement, such document along with the bank remittances do not prove that respondent earned income from such receipts that should be declared in its tax returns. As the name of the document connotes, respondent is simply receiving an "indemnity" from Yamaha Motor Company, Inc. which means that respondent is simply receiving an amount as compensation for loss or damage. By its very nature, an indemnity should be excluded from taxable income unless the amount received is greater than the loss or damage incurred. An indemnity is a return of capital and, as such, is not a taxable income.[33]

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[32] Comment, pp. 78-79.

[33] Ramnani v. Commissioner of Internal Revenue, CTA Case No. 5108, September 13, 1996; Producers Bank of the Philippines v. Commissioner of Internal Revenue, CA-G.R. SP No. 48937, August 28, 2003; BIR Ruling DA-489-05, dated December 6, 2005; ITAD Ruling No. 66-00, dated April 6, 2000; Chamber of Real Estate and Builders' Associations, Inc. v. Romulo, G.R. No. 160756, March 9, 2010; Clark v. Commissioner of Internal Revenue, 40 B.T.A. 333.

Without evidence for petitioner's allegation that respondent substantially underdeclared its income by failing to declare in its tax returns a $6,000,000.00 indemnity supposedly received from Yamaha Motor Company, Inc., the *prima facie* evidence that respondent made a false return necessarily falters. The extraordinary 10-year prescriptive period thus has no application in the present case. Instead, it is the general three-year prescriptive period under *Section 203 of the NIRC* which applies. Under said provision, "internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return."

In the case at bar, respondent filed its income tax return for fiscal year ending June 30, 2007 on October 13, 2007.[34] Considering that respondent adopts a fiscal year which ends on June 30, the last day to file its income tax return for fiscal year ending June 30, 2007 is on October 15, 2007. Hence, counting three years from respondent's last day to file the income tax return, the BIR had until October 14, 2010 within which to issue a deficiency income tax assessment. However, petitioner issued the FAN/FLD only on April 11, 2014,[35] which is clearly beyond the prescriptive period given to assess. Considering that the assessment was made beyond the prescriptive period, the assessment is void.

ACCORDINGLY, the instant Petition is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision, dated August 16, 2017, and Assailed Resolution, dated December 12, 2017, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Inhibited
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[34] Exhibit "P-14".
[35] Assailed Decision, p. 12.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice