REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL THIRD DIVISION

IBMS TECHNOLOGY PHILS. CORPORATION,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10177

Present:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

MAR 15 2024
1:46 p.m.

x - x

DECISION

FERRER-FLORES, J.:

Before the Court is a *Petition for Review*[1] filed by **IBMS Technology Phils. Corporation** (petitioner) on October 2, 2019, with Amended Petition for Review filed on March 6, 2020, praying for the following:

1. The examination, audit, and assessment based on the original *Letter of Authority* (LOA) No. 201200035915 dated October 24, 2016 be declared void;

2. The examination, audit and assessment, if any, based on the new LOA dated October 23, 2019 be barred by prescription; and,

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[1] Republic Act No. 1125, as amended
SEC. 7. *Jurisdiction.* – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or some other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial; xxx

3. The *Formal Assessment Notice* (FAN) dated December 07, 2018, covering deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), documentary stamp tax (DST), improperly accumulated earnings tax, and compromise penalty, in the amounts of **₱3,036,576.84, ₱27,463,392.05, ₱513,979.54, ₱15,449.44, ₱706,378.09, ₱45,702.75, ₱4,496,007.03,** and **₱70,000.00**, respectively, inclusive of increments for taxable period 2015 issued by the respondent Commissioner of Internal Revenue (CIR) through Glen A. Geraldino, Regional Director of Revenue Region No. 8, Makati City, be cancelled and withdrawn.[2]

THE PARTIES

Petitioner is a domestic corporation, with principal office address located at Unit 29-C Chatham House Condominium, 116 Valero corner V. A. Rufino Streets, Salcedo Village, Makati City.[3]

Respondent is the duly appointed CIR, with principal office address at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Respondent issued LOA No. eLA201200035915 dated October 24, 2016,[5] authorizing Revenue Officer (RO) Marife Mactal and Group Supervisor (GS) Bernadette Redimano to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year (TY) 2015, covering the period January 1 to December 31, 2015.

On October 30, 2018, respondent issued the *Preliminary Assessment Notice* (PAN) Parts 1 and 2 with *Details of Discrepancies,*[6] assessing for deficiency taxes, inclusive of interests, for TY 2015 as follows:

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[2] Statement of the Case, Pre-Trial Order dated February 17, 2022, Docket – Vol. 1, p. 292.

[3] Par. 1, Parties, *Amended Petition for Review*, Docket – Vol. 1, p. 96 vis-à-vis Par. 1, The Parties, *Supplemental Answer (On the Amended Petition for Review dated March 5, 2020)*, Docket – Vol. 1, p. 168.

[4] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 264.

[5] Par. 2, Admitted Facts, JSFI, Docket – Vol. 1, p. 264; Exhibit "P-1", Docket – Vol. 2, p. 972; Exhibit "R-1", BIR Records, p. 37.

[6] Exhibit "P-2", Docket – Vol. 2, pp. 973 to 978; Exhibits "R-9" to "R-11" (inclusive of sub-markings), BIR Records, pp. 499 to 504.

Tax Type	Amount
Income Tax (IT)	₱2,997,762.77
Value-added Tax (VAT)	27,122,665.07
Expanded Withholding Tax (EWT)	507,625.85
Withholding Tax on Compensation (WTC)	15,258.46
Documentary Stamp Tax (DST)	45,219.27
Improperly Accumulated Earnings Tax (IAET)	4,442,372.05
Final Withholding Tax (FWT)	698,882.19
Compromise Penalty	70,000.00
TOTAL	₱35,899,785.66

On December 13, 2018, petitioner received FAN Parts 1 and 2 with *Details of Discrepancies*[7] dated December 7, 2018, assessing it for deficiency IT, VAT, EWT, WTC, DST, IAET, FWT, and compromise penalty, inclusive of interests and penalties, for TY 2015, summarized below:

Tax Type	Amount
Income Tax (IT)	₱3,036,576.84
Value-added Tax (VAT)	27,463,392.05
Expanded Withholding Tax (EWT)	513,979.54
Withholding Tax on Compensation (WTC)	15,449.44
Documentary Stamp Tax (DST)	45,702.75
Improperly Accumulated Earnings Tax (IAET)	4,496,007.03
Final Withholding Tax (FWT)	706,378.09
Compromise Penalty	70,000.00
TOTAL	₱36,347,485.74

Petitioner then filed with respondent its *Request for Reinvestigation*[8] (Protest), dated January 4, 2019, against the FAN on January 7, 2019. Within sixty (60) days therefrom, or on March 7, 2019, petitioner submitted to the BIR the documents in support of its protest.[9] This was acknowledged by respondent in the letter dated March 29, 2019.[10]

Pending decision on its protest, petitioner received on July 8, 2019 a *Notice of Reassignment of case/docket of IBMS Technology Phils. Corporation for Taxable Year 2015*.[11]

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7 Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, p. 264; Exhibit "P-3", Docket – Vol. 1, pp. 17 to 31; Exhibits "R-12" to R-22 (inclusive of sub-markings), BIR Records, pp. 539 to 553.
8 Exhibit "P-4", Docket – Vol. 2, pp. 979 to 993.
9 Exhibit "P-5", Docket – Vol. 2, pp. 994 to 995.
10 Exhibit "P-6", Docket – Vol. 2, p. 996.
11 Exhibit "P7", Docket – Vol. 2, p. 997.

Pursuant thereto, respondent issued a new LOA No. eLA201600069316,[12] dated October 23, 2019, authorizing RO Precious P. Viray and GS (then RO) Mactal to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2015, covering the period January 1 to December 31, 2015. This new LOA is a replacement for LOA No. No. eLA201200035915, dated October 24, 2016, for the continuation of audit of petitioner's tax liabilities for the same period.

PROCEEDINGS BEFORE THIS COURT

Undeterred by respondent's inaction on its Request for Reinvestigation, petitioner filed the instant *Petition for Review*[13] on October 2, 2019.

On November 29, 2019, respondent filed *Omnibus Motion to Dismiss or in the Alternative, to Direct Petitioner to Comply with Rule 7, Section 2 (A) of the 1997 Rules of Court, and to Extend Time to File Answer*,[14] to which petitioner filed its *Comment/Opposition with Motion*[15] on December 20, 2019.

Respondent posted his *Motion to Admit Answer*[16] with attached *Answer*[17] on January 21, 2020. Thereafter, on January 31, 2020, he transmitted the *BIR Records* for this case.[18]

In the Resolution[19] dated February 5, 2020, the Court partially granted respondent's *Omnibus Motion*, and directed petitioner to file an *Amended Petition for Review* with each paragraph duly numbered in accordance with Section 2(a), Rule 7 of the Rules of Court. In the same Resolution, the Court granted respondent a fresh period of fifteen (15) days from receipt of the *Amended Petition for Review* to file his *Answer*.

The *Amended Petition for Review*[20] was then filed on March 6, 2020.

On June 24, 2020, respondent posted his *Supplemental Answer (On the Amended Petition for Review dated March 5, 2020)*,[21] interposing

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12 Par. 2, Admitted Facts, JSFI, Docket – Vol. 1, p. 264; Exhibit "P-8", Docket – Vol. 2, p. 998.
13 Docket – Vol. 1, pp. 6 to 16.
14 *Id.* at 63 to 66.
15 *Id.* at 70 to 73.
16 *Id.* at 76 to 78.
17 *Id.* at 79 to 85.
18 Respondent's *Compliance* dated January 30, 2020, Docket – Vol. 1, p. 88.
19 *Id.* at 91 to 94.
20 *Id.* at 95 to 108.
21 *Id.* at 168 to 182.

essentially the same special and affirmative defenses he raised in his *Answer* dated January 21, 2020.

In the Resolution[22] dated January 12, 2021, the case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.* On June 15, 2021, however, the PMC-CTA filed the *No Agreement to Mediate*[23] stating that the parties decided not to have their case mediated.

The Pre-Trial Conference[24] was held *via* video conference on October 12, 2021, with respondent's *Pre-Trial Brief*[25] filed on October 12, 2021, and petitioner's *Pre-Trial Brief*[26] filed on and October 15, 2021.

On November 11, 2021, the parties filed their *Joint Stipulation of Facts and Issues*[27], which was admitted and approved in the Resolution[28] dated December 4, 2021, thereby deeming the termination of the Pre-Trial. The Court then issued the Pre-Trial Order[29] dated February 17, 2022.

As trial then ensued on February 24, 2022,[30] petitioner's counsel manifested that he will no longer present RO Marife P. Mactal as petitioner's hostile witness. Hence, the Court recalled the order for the issuance of *Subpoena Ad Testificandum* indicated in the Resolution dated February 24, 2022. In the same proceeding, petitioner's counsel further manifested that he will dispense with the presentation of Dolores I. Miranda and/or Engr. Ornan S. Vicente, the proposed witness/es.

Thereafter, petitioner presented its documentary and testimonial evidence. It offered the testimony[31] of its Finance Associate, Ms. Regine F. Nonato.

Petitioner filed its *Formal Offer of Evidence with Manifestation*[32] on April 22, 2022. Respondent posted his *Comment and Opposition (To*

22 *Id.* at 191 to 192.
23 Docket – Vol. 1, p. 193.
24 Resolution dated June 23, 2021, Docket – Vol. 1, pp. 195 to 196; Minutes of the hearing held on, and Order dated, October 12, 2021, Docket – Vol. I, pp. 200 to 203.
25 Docket – Vol. 1, pp. 205 to 212.
26 *Id.* at 218 to 222.
27 *Id.* at 264 to 266.
28 *Id.* at 282.
29 *Id.* at 292 to 299.
30 Minutes of the hearing held on, and Order dated, February 24, 2022, Docket – Vol. 1, pp. 306 to 308.
31 Exhibit "P-290", Docket – Vol. 1, pp. 377 to 391; Minutes of hearing held on, and Order dated, March 22, 2022, Docket – Vol. 1, pp. 393 to 395.
32 Docket – Vol. 2, pp. 962 to 971.

Petitioner's Formal Offer of Evidence dated April 21, 2022 with Manifestation) [33] on May 23, 2022. In the Resolution[34] dated July 22, 2022, the Court admitted all of petitioner's offered exhibits.

For his part, respondent presented his testimonial and documentary evidence. Respondent's witness was GS (then RO) Mactal,[35] assigned at BIR Revenue District Office (RDO) No. 50 of RR No. 8 – Makati City.

On October 28, 2022, *Respondent's Formal Offer of Evidence*[36] was filed, to which petitioner filed its *Comment/Opposition (To respondent's Formal Offer of Evidence)* [37] on November 8, 2022. In the Resolution[38] dated January 16, 2023, the Court admitted respondent's offered evidence.

On February 22, 2023, petitioner filed its *Memorandum,*[39] whereas *Respondent's Memorandum*[40] was posted on February 27, 2023.

The case was submitted for decision on March 17, 2023.[41]

THE ISSUES

The issues raised for the Court's resolution, as defined in the Pre-Trial Order,[42] are as follows:

4. Whether or not the petitioner is liable to pay the assessed deficiency income tax in the amount of Php3,036,576.84, VAT in the amount of Php27,463,392.05, EWT in the amount of Php513,979.54, WTC in the amount of Php15,449.44, FWT in the amount of Php706,378.09, DST in the amount of php45,702.75, IAET in the amount of Php4,496,007.03, and compromise penalty in the amount of Php70,000.00, for the period from January 1, 2015 to December 31, 2015.

2. Whether or not the letters of authority dated October 24, 2016 and October 23, 2019 are valid; and

33 Docket – Vol. 3, pp. 1224 to 1228.
34 Docket – Vol. 3, pp. 1234 to 1236.
35 Exhibit "R-26", Docket – Vol. 1, pp. 155 to 166; Minutes of the hearing held on, and Order dated October 20, 2022, Docket – Vol. 3, pp. 1237 and 1239 to 1240, respectively.
36 Docket – Vol. 3, pp. 1241 to 1247.
37 *Id.* at 1253 to 1258.
38 *Id.* at 1264 to 1265.
39 *Id.* at 1266 to 1278.
40 *Id.* at 1282 to 1290.
41 Resolution dated March 17, 2023, Docket – Vol. 3, p. 1305.
42 B. Issues, Pre-Trial Order dated February 17, 2022, Docket – Vol. 1, p. 293.

5. Whether or not the period to assess and collect the subject deficiency taxes has already prescribed.

Petitioner's arguments:

Petitioner's contentions are anchored on – *first*, that the LOA dated October 24, 2016 as well as the examination, audit and assessment are void; *second*, that the period of limitation for assessment and collection have already prescribed; *third*, that even granting, for the sake of argument, that the original and/or new LOA is/are valid, petitioner is not liable for the deficiency taxes as enumerated in the FAN; and *lastly*, there being no legally valid assessment, there is no basis to settle the compromise penalty.

Respondent's counter-arguments:

Respondent counters that the LOA dated October 24, 2016 is valid and the subsequent issuance of a new LOA does not invalidate the original LOA and the assessment/audit conducted; that the period to assess and collect have not yet prescribed; and, that petitioner has the burden of proof to overcome the validity of the assessment.

THE COURT'S RULING

The *Petition for Review* is meritorious.

For an orderly disposition of this case, the Court shall first discuss the second and third issues raised by the parties, followed by the first and central issue in this case.

The issuance of a new LOA to continue the audit does not invalidate the prior audit conducted and the resulting deficiency tax assessments

Petitioner claims that the original LOA, dated October 24, 2016, from which the examination, audit and assessment emanates is void. It further maintains that since the original LOA was replaced, superseded, and deemed inexistent, the PAN, dated October 30, 2018, as well as the FAN, dated December 7, 2018, are void and ineffectual and bear no valid fruit.

Petitioner's argument is specious.

The Supreme Court in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[43] laid out the purpose of the issuance of a LOA, to wit:

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

Indeed, the power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him.[44] Under the law, only respondent or his duly authorized representative may *authorize the examination of any taxpayer* and issue an assessment against him.[45] That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.[46] To be sure, in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[47]

A perusal of the records reveals that the authority to examine and assess petitioner's books of accounts emanated from LOA No. eLA201200035915[48] dated October 24, 2016 issued by Regional Director Jonas DP. Amora of Revenue Region No. 8-Makati City. The said LOA authorized then RO (now GS) Mactal and GS Redimano of RDO No. 50-South Makati to perform an audit of petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2015.

Pursuant thereto, RO Mactal and GS Redimano conducted the examination of petitioner's books of accounts and subsequently recommended the issuance of the PAN,[49] dated October 30, 2018, and

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[43] G.R. No. 242670, May 10, 2021.
[44] *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Exhibit "P-1", Docket – Vol. 2, p. 972; Exhibit "R-1", BIR Records, p. 37.
[49] Exhibit "P-2", Docket – Vol. 2, pp. 973 to 978; Exhibits "R-9" to "R-11" (inclusive of sub-markings), BIR Records, pp. 499 to 504.

FAN[50] with *Details of Discrepancies* dated December 7, 2018. Petitioner protested the FAN and requested reinvestigation in its letter dated January 4, 2019,[51] and submitted the documents in support thereof on March 7, 2019.[52]

As mentioned above, petitioner received on July 8, 2019 an undated letter *Notice of Reassignment*[53] from respondent, informing it that the tax audit investigation was re-assigned to RO Viray and GS Mactal. Respondent thereafter issued LOA No. 201600069316[54] dated October 23, 2019.

It is apparent from the sequence of events that the audit and examination, which gave rise to the issuance of the deficiency tax assessments against petitioner, was conducted by RO Mactal and GS Redimano. It was through their investigation and subsequent recommendation that the PAN, dated October 30, 2018, and FAN, dated December 7, 2018, were issued by the BIR. As earlier found, both RO Mactal and GS Redimano were duly authorized to perform such audit and investigation under LOA No. eLA201200035915.

With respect to the new LOA, it should be noted that under Revenue Memorandum Order (RMO) No. 69-2010,[55] a Memorandum of Assignment shall be issued for protested cases/cases for reinvestigation. Further, RMO No. 08-06[56] provides that protested cases under re-investigation shall not be assigned to the same revenue officer who handled the original investigation.

The issuance of *Notice of Reassignment* and LOA No. 201600069316 dated October 23, 2019 in favor of RO Viray and GS (then RO) Mactal was for the purpose of examining petitioner's request for re-investigation. Contrary to petitioner's theory, the issuance of the new LOA did not in any way invalidate the PAN and FAN, which were both issued prior to the re-assignment of officers. To hold otherwise would render nugatory the investigation conducted pursuant to the first LOA, which was duly authorized under the law.

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[50] Exhibit "P-3", Docket – Vol. 1, pp. 17 to 31; Exhibits "R-12" to R-22 (inclusive of sub-markings), BIR Records, pp. 539 to 553.

[51] Par. 2, Statement of the Facts and of the Case, *Amended Petition for Review*, Docket – Vol. 1, p. 96; Exhibit "P-4", Docket – Voo. 2, pp. 979 to 993.

[52] Exhibits "P-5" and "P-6", Docket – Vol. 2, pp. 994 to 996.

[53] Exhibit "P7", Docket – Vol. 2, p. 997.

[54] Exhibit "P-8", Docket – Vol. 2, p. 998.

[55] SUBJECT: Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment, August 11, 2010.

[56] SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), February 1, 2006.

The period to assess and collect deficiency taxes had prescribed in part

Petitioner further contends that considering that the new LOA was issued more than three (3) years from the day the return was filed on April 14, 2016, the period of assessment and collection had already prescribed, pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides as follows:

> SEC. 203. *Period of Limitation upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. **For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.** *(Emphasis supplied)*

Petitioner is mistaken to reckon the date of issuance of the new LOA as the date of assessment that must be made within the three-year prescriptive period, pursuant to Section 203 above. Applying the foregoing, the timeline for assessment of deficiency income tax is shown below:

Annual ITR Due	Annual ITR Filed[57]	End of 3 years	Receipt of FAN[58]
April 15, 2016	April 14, 2016	April 15, 2019	December 13, 2018

Respondent's right to assess and collect deficiency income tax is, therefore, not yet barred by prescription.

Although prescription of assessment and collection was raised as an issue, petitioner only referred to the deficiency income tax. The Court, however, finds it propitious to address the timeliness of respondent's assessment with respect to the other tax types included in the assessment.

In *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue*[59], the Supreme Court, citing *Commissioner of Internal Revenue vs. Eastern Telecommunications Phils., Inc.*, affirmed the Court's discretion to rule on matters although not specifically raised as issues by the pleadings, to wit:

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[57] Exhibit "P-13", Docket – Vol. 3, pp. 1034 to 1041.

[58] I(3). Admitted Facts, *Joint Stipulation of Facts and Issues*, Docket – Vol. 1, p. 264, and II(A)(3). Admitted Facts, *Pre-Trial Order* dated February 17, 2022, Docket – Vol. 1, p. 293.

[59] G.R. No. 249153, September 12, 2022.

> For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that "[t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case **matters of record** having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. *(Emphasis and italics in the original)*
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> Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.

Accordingly, considering that the reckoning points of the three (3)-year prescriptive period vary depending on the tax type, the Court will delve into the same below *in seriatim*.

Value-Added Tax

Respondent's right to assess deficiency VAT for the first three (3) quarters of TY 2015 had prescribed. Section 114(A) of the NIRC of 1997, as amended, mandates the time of filing of quarterly VAT returns:

> SEC. 114. *Return and Payment of Value-Added Tax.*—
>
> (A) *In General.*—**Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis. *(Emphasis supplied)*

Petitioner filed its Quarterly VAT Returns for the TY 2015 as shown below, *vis-à-vis* the date when the FAN was received:

Quarter	Quarterly Return Due	Quarterly Return Filed	End of 3 years	Receipt of FAN[60]
1st	25 Apr 2015	24 Apr 2015[61]	25 Apr 2018	13 Dec 2018
2nd	25 Jul 2015	24 Jul 2015[62]	25 Jul 2018	13 Dec 2018
3rd	25 Oct 2015	23 Oct 2015[63]	25 Oct 2018	13 Dec 2018
4th	25 Jan 2016	25 Jan 2016[64]	25 Jan 2019	13 Dec 2018

Expanded Withholding Tax and Withholding Tax on Compensation

Similarly, respondent's right to assess petitioner's EWT for the months of January to June and August to October of the TY 2015 had prescribed. Section 58(A) of the 1997 NIRC of 1997, as amended, provides:

> SEC. 58. *Returns and Payment of Taxes Withheld at Source.*—
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* — Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
>
> The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.
>
> **The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided,* That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.** *(Emphasis supplied)*

Corollary thereto, Section 5 of Revenue Regulations (RR) No. 17-2003, which amended Section 2.58 of RR 02-98, provides:

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60 I(3). Admitted Facts, *Joint Stipulation of Facts and Issues*, Docket – Vol. 1, p. 264, and II(A)(3). Admitted Facts, *Pre-Trial Order* dated February 17, 2022, Docket – Vol. 1, p. 293.
61 Exhibit "P-18", Docket – Vol. 3, pp. 1051 to 1053.
62 Exhibit "P-19", Docket – Vol. 3, pp. 1054 to 1056.
63 Exhibit "P-20", Docket – Vol. 3, pp. 1057 to 1059.
64 Exhibit "P-21", Docket – Vol. 3, pp. 1060 to 1062.

SECTION 5. *Returns And Payments Of Taxes Withheld at Source.*— Section 2.58 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHLED AT SOURCE.

(A) *Monthly return and payment of taxes withheld at source.*

xxx xxx xxx

(2) WHEN TO FILE —

(a) For both large and non-large taxpayers, **the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; *and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.*

Nonetheless, in case of disposition of real property classified as capital asset by an individual to the government, the tax to be imposed shall be determined either under the normal income tax rate imposed in Sec. 24(A) or under a final capital gains tax of six percent (6%) imposed under Sec. 24(D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows the seller's filed income tax return reflecting the result of the subject real estate transaction.

(b) **With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above**, *unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof." (Emphasis supplied)*

Pursuant to the foregoing, petitioner filed its Monthly Remittance Returns for TY 2015[65] as shown below, *vis-à-vis* the date when the FAN was received:

Month	Monthly Return Due	BIR Form No. 1601-E Filed/Paid	End of 3 years	FAN Received[66]
Jan 2015	15 Feb 2015	16 Feb 2015[67]	16 Feb 2018	13 Dec 2018
Feb 2015	15 Mar 2015	17 Mar 2015[68]	17 Mar 2018	13 Dec 2018
Mar 2015	15 Apr 2015	16 Apr 2015[69]	16 Apr 2018	13 Dec 2018
Apr 2015	15 May 2015	14 May 2015[70]	15 May 2018	13 Dec 2018
May 2015	15 Jun 2015	15 Jun 2015[71]	15 Jun 2018	13 Dec 2018
Jun 2015	15 Jul 2015	15 Jul 2015[72]	15 Jul 2018	13 Dec 2018
Jul 2015	15 Aug 2015	-	-	13 Dec 2018
Aug 2015	15 Sep 2015	15 Sep 2015[73]	15 Sep 2018	13 Dec 2018
Sep 2015	15 Oct 2015	15 Oct 2015[74]	15 Oct 2018	13 Dec 2018
Oct 2015	15 Nov 2015	16 Nov 2015[75]	16 Nov 2018	13 Dec 2018
Nov 2015	15 Dec 2015	15 Dec 2015[76]	15 Dec 2018	13 Dec 2018
Dec 2015	20 Jan 2016	15 Jan 2016[77]	20 Jan 2019	13 Dec 2018

In the same manner, respondent's right to assess petitioner of deficiency WTC for the months January to October 2015 had prescribed as shown below:

Month[78]	Monthly Return Due	BIR Form No. 1601-C Filed/Paid	End of 3 years	FAN Received[79]
Jan 2015	15 Feb 2015	16 Feb 2015[80]	16 Feb 2018	13 Dec 2018
Feb 2015	15 Mar 2015	17 Mar 2015[81]	17 Mar 2018	13 Dec 2018
Mar 2015	15 Apr 2015	12 May 2015[82]	12 May 2018	13 Dec 2018
Apr 2015	15 May 2015	12 May 2015[83]	15 May 2018	13 Dec 2018
May 2015	15 Jun 2015	15 Jun 2015[84]	15 Jun 2018	13 Dec 2018

65 Monthly Remittances for the taxable year 2015 were filed and paid through eFPS.
66 I(3). Admitted Facts, *Joint Stipulation of Facts and Issues*, Docket – Vol. 1, p. 264, and II(A)(3). Admitted Facts, *Pre-Trial Order* dated February 17, 2022, Docket – Vol. 1, p. 293.
67 Exhibit "P-34", Docket – Vol. 3, pp. 1091 to 1093.
68 Exhibit "P-35", Docket – Vol. 3, pp. 1094 to 1096.
69 Exhibit "P-36", Docket – Vol. 3, pp. 1097 to 1099.
70 Exhibit "P-37", Docket – Vol. 3, pp. 1100 to 1102.
71 Exhibit "P-38", Docket – Vol. 3, pp. 1103 to 1105.
72 Exhibit "P-39", Docket – Vol. 3, pp. 1106 to 1108.
73 Exhibit "P-40", Docket – Vol. 3, pp. 1109 to 1111.
74 Exhibit "P-41", Docket – Vol. 3, pp. 1112 to 1114.
75 Exhibit "P-42", Docket – Vol. 3, pp. 1115 to 1117.
76 Exhibit "P-43", Docket – Vol. 3, pp. 1118 to 1120.
77 Exhibit "P-44", Docket – Vol. 3, pp. 1121 to 1123.
78 Monthly Remittances for the taxable year 2015 were filed and paid through eFPS.
79 I(3). Admitted Facts, *Joint Stipulation of Facts and Issues*, Docket – Vol. 1, p. 264, and II(A)(3). Admitted Facts, *Pre-Trial Order* dated February 17, 2022, Docket – Vol. 1, p. 293.
80 Exhibit "P-45", Docket – Vol. 3, pp. 1124 to 1126.
81 Exhibit "P-46", Docket – Vol. 3, pp. 1127 to 1130.
82 Exhibit "P-47", Docket – Vol. 3, pp. 1131 to 1133.
83 Exhibit "P-48", Docket – Vol. 3, pp. 1134 to 1136.
84 Exhibit "P-49", Docket – Vol. 3, pp. 1137 to 1139.

Jun 2015	15 Jul 2015	15 Jul 2015[85]	15 Jul 2018	13 Dec 2018
Jul 2015	15 Aug 2015	14 Aug 2015[86]	15 Aug 2018	13 Dec 2018
Aug 2015	15 Sep 2015	15 Sep 2015[87]	15 Sep 2018	13 Dec 2018
Sep 2015	15 Oct 2015	15 Oct 2015[88]	15 Oct 2018	13 Dec 2018
Oct 2015	15 Nov 2015	16 Nov 2015[89]	16 Nov 2018	13 Dec 2018
Nov 2015	15 Dec 2015	15 Dec 2015[90]	15 Dec 2018	13 Dec 2018
Dec 2015	20 Jan 2016	15 Jan 2016[91]	20 Jan 2019	13 Dec 2018

Documentary Stamp Tax, Improperly Accumulated Earnings Tax, and Final Withholding Tax

In the Details of Discrepancies attached to the FAN, respondent averred that the running of the three (3)-year statute of limitation as provided under Section 203 of the NIRC of 1997, as amended, is not applicable with respect to petitioner's DST, IAET, FWT liabilities but rather the ten (10) year prescriptive period pursuant to Section 222(a) of the same Code, to wit:[92]

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.—*
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of **failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." *(Emphasis supplied)*

Examination of the case records reveals that petitioner did not offer as evidence the returns it filed for the payment of DST, IAET and FWT for the TY 2015. For failure to file a return, the deficiency taxes may thus be assessed within ten (10) years after the discovery of the omission.

In sum, respondent's assessment for TY 2015 relative to the following taxes is void on the ground of prescription:

1) First three quarters for VAT;

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[85] Exhibit "P-50", Docket – Vol. 3, pp. 1140 to 1142.
[86] Exhibit "P-51", Docket – Vol. 3, pp. 1143 to 1145.
[87] Exhibit "P-52", Docket – Vol. 3, pp. 1146 to 1148.
[88] Exhibit "P-53", Docket – Vol. 3, pp. 1149 to 1151.
[89] Exhibit "P-54", Docket – Vol. 3, pp. 1152 to 1154.
[90] Exhibit "P-55", Docket – Vol. 3, pp. 1155 to 1157.
[91] Exhibit "P-56", Docket – Vol. 3, pp. 1158 to 1160.
[92] Exhibit "P-3", Docket – Vol. 1, p. 22.

2) January to June, and August to October 2015 for EWT; and
3) January to October 2015 for WTC.

The FAN is void for failure to state the definite amount of tax liability for which petitioner is accountable as well as the due date for payment

What is left for the Court to determine now is whether petitioner is liable for deficiency taxes for the items that are not time-barred.

On this score, the Court finds for petitioner.

Despite the validity of the LOA and the conduct of audit, the FAN suffers an incurable defect as it lacks the definite amount for which petitioner is accountable for as well as the due date for payment. Without a valid FAN, the assessment that sprung from it is inescapably void.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (*Fitness By Design* case),[93] the Supreme Court ruled as follows:

> "**The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. <u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>.**
>
> xxx xxx xxx
>
> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
>
> xxx xxx xxx
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or

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93 G.R. No. 215957, November 9, 2016.

> her case and produce evidence for substantiation." *(Emphases and underscoring added)*

In this case, the FAN itself did not contain due date. The last paragraph in the FAN (Part I) mentioned of the due date in the enclosed assessment notice, to wit:

> In view thereof, you **are requested that you pay your aforesaid deficiency tax liabilities through the duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605) within the time shown in the enclosed assessment notice**. xxx (Emphasis in the original)

Likewise, the last paragraph of Part II of the FAN assessing petitioner for compromise penalty states:

> If you are amenable, please pay the above suggested compromise amount within the time shown in the enclosed Assessment Notice through the duly authorized agent bank in which your company is enrolled and where it pays its internal revenue taxes. xxx

Hence, the FAN (Part I and II) refers to the due date indicated in the Assessment Notices.

A careful perusal of the Assessment Notices enclosed in the FAN shows that the due date for payment of the deficiency taxes were all stamped **January 7, 2018**. Noteworthy is the fact that the FAN was issued on **December 7, 2018**. Glaringly, the supposed deadline for payment was eleven (11) months *before* the issuance date of the Assessment Notices. It is well settled that, the FAN, to be valid, must contain a definite due date for payment by the taxpayer.

Even considering that the correct due date for payment is January 7, 2019, giving petitioner thirty (30) days from December 7, 2018[94] within which to settle its tax obligation, the Court still cannot accord validity to the FAN as the total amount due cannot be ascertained. In the Assessment Notices, the interests were uniformly computed as follows: 20% (04.16.16 to 12.31.17) and, 12% (01.01.18 to 01.11.19). The 12% interest was computed up to January 11, 2019, or four days *beyond* January 7, 2019. The computation of the assessed amounts in the FAN is shown below:

[94] January 6, 2019 falls on a Sunday.

Tax Type	Basic Deficiency Tax	Surcharge	Interest (20%) (04.16.2016-12.31.2017)	Interest (12%) (01.01.2018 - **01.11.19**)	Amount
Income Tax	2,071,218.69	-	709,321.47	256,036.68	₱3,036,576.84
Value-added Tax	18,182,068.67	-	7,033,720.81	2,247,602.57	27,463,392.05
Expanded Withholding Tax	339,048.89	-	133,018.63	41,912.02	513,979.54
Withholding Tax on Compensation	10,191.29	-	3,998.34	1,259.81	15,449.44
Documentary Stamp Tax	25,800.00	6,450.00	10,263.45	3,189.30	45,702.75
Improperly Accumulated Earnings Tax	2,862,100.50	715,525.13	564,578.73	353,802.67	4,496,007.03
Final Withholding Tax	400,000.00	100,000.00	156,931.51	49,446.58	706,378.09
Compromise Penalty		-			70,000.00
TOTAL	₱23,890,428.04	₱821,975.13			₱36,347,485.74

Citing again the *Fitness by Design* case, the Supreme Court elucidated, *viz*:

> **The disputed Final Assessment Notice is not a valid assessment.**
>
> **First, <u>it lacks the definite amount of tax liability for which respondent is accountable</u>. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. <u>An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite</u>.** It only provides that the tax due is still subject to modification, depending on the date of payment.
>
> xxx xxx xxx
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. **The total amount depended upon when respondent decides to pay. <u>The notice, therefore, did not contain a definite and actual demand to pay</u>.**

The discord in the computation of the interest vis-à-vis the deadline for payment negates the definiteness of the total amount due. Petitioner has until January 7, 2019 (assuming that the stamped year 2018 was a mere clerical error), yet it was assessed interest until January 11, 2019, the basis of which date was not explained. This gives the impression that petitioner can settle payment until January 11, 2019, as the interest is due up to the date of payment. Conversely, if petitioner opts to pay within the period prescribed (on or before January 7, 2019), it would be paying for interest that should not have accrued.

Further, the FAN contains a statement that "the interest and the total amount due will have to be adjusted if paid after the date specified herein." It is, however, unclear to which date respondent pertains.

Petitioner is not liable to pay the subject compromise penalties.

Since the subject assessments are void, petitioner cannot likewise be held liable to the compromise penalty in the amount of ₱70,000.00 as stated in FAN (Part II)[95] dated December 7, 2018. In any case, it must be stressed that a compromise is, by its nature, mutual in essence.[96] It implies agreement. One party cannot impose it upon the other.[97] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[98] Considering that there is no indication that petitioner consented to the subject compromise penalty, the said amount cannot be sustained.

WHEREFORE, in view of the foregoing considerations, the present *Petition for Review* is **GRANTED**. The Formal Assessment Notice (Parts I and II), dated December 7, 2018, issued against petitioner covering deficiency Income Tax of ₱3,036,576.84, Value-Added Tax of ₱27,463,392.05, Expanded Withholding Tax of ₱513,979.54, Withholding Tax on Compensation of ₱15,449.44, Documentary Stamp Tax of ₱45,702.75, Improperly Accumulated Earnings Tax of ₱4,496,007.03, Final Withholding Tax of ₱706,378.09, and Compromise Penalty of ₱70,000.00, inclusive of interests and penalties, for taxable year 2015, is **CANCELLED and SET ASIDE**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

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95 Exhibit "R-13" BIR Records, p. 539.
96 Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
97 *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
98 Refer to Part III.4, Revenue Memorandum Order No. 7-2015.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(on judicial leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
2nd Division Chairperson

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