REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PHILIPPINE GAMING MANAGEMENT CORPORATION, *Petitioner,*	**CTA CASE NO. 9688**
	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 21 2024 4:00 p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This resolves a Petition for Review,[1] filed on September 18, 2017, pursuant to *Section 228 of the National Internal Revenue Code, as amended* ("*Tax Code*"), asking the Court to render a judgment declaring respondent's Final Decision on Disputed Assessment ("FDDA"),[2] dated March 1, 2012, and the Decision,[3] dated August 9, 2017, null and void.

In the FDDA, petitioner was assessed for deficiency withholding tax on compensation ("WTC"), income tax, value-added tax ("VAT") and expanded withholding tax ("EWT") for the fiscal year ending April 30, 2007 ("FY2007"), in the aggregate amount of ₱48,210,214.02, inclusive of interest.[4]

The Parties

Petitioner Philippine Gaming Management Corporation ("petitioner") is a corporation duly organized and existing under the laws of the Philippines, with principal office address at 9th Floor Rufino Pacific Tower, 6784 Ayala

---

[1] See Petition for Review, Docket, Vol. 1, pp. 10-295, with annexes.
[2] Exhibit "P-12", Final Decision on Disputed Assessment, dated March 1, 2012, Docket, Vol. 6, pp. 3126-3131.
[3] Exhibit "P-15", Decision, dated August 9, 2017, *id.* at 3151-3165.
[4] *Supra* note 2.

Avenue corner V.A. Rufino Street, Makati City.[5] It is primarily engaged in the business of leasing online lottery equipment and providing software support,[6] and is registered with the Bureau of Internal Revenue ("BIR") with Tax Identification Number ("TIN") 204-929-347-00000.[7]

Respondent, on the other hand, is the Commissioner of Internal Revenue ("respondent" or "CIR"), vested under the law the authority to carry out all functions, duties, and responsibilities of the BIR, including, among others, the power to decide disputed assessments.[8] He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

On January 21, 2008, petitioner received Letter of Authority No. 00006809,[9] dated January 14, 2008, ("LOA") issued by the Large Taxpayers Service, Large Taxpayers District Office – Makati of the BIR.

Pursuant to the LOA, petitioner transmitted to the BIR various documents for the latter's inspection and investigation.[10] As a result, the BIR informed petitioner of the outcome of its investigation and invited the latter for an informal conference, through a Letter,[11] dated February 17, 2010.

On January 3, 2011, respondent issued Preliminary Assessment Notice ("PAN"), [12] of even date, with details of discrepancy.[13] Petitioner submitted the reply to the PAN[14] on March 18, 2011.

Thereafter, on July 19, 2011, petitioner received copies of the Formal Letter of Demand ("FLD"),[15] dated June 14, 2011, with Final Assessment Notice Details[16] and Audit Results / Assessment Notice ("FAN") for WTC, income tax, VAT, and EWT,[17] dated June 14, 2011. The assessed taxes are summarized as follows:

Tax Type	Basic	Interest	Total
Withholding tax on compensation	₱15,368,000.00	₱26,833,612.80	₱42,201,612.80

[5] See Exhibit "P-1", Certificate of Registration, Bureau of Internal Revenue Form No. 2303, Docket, Vol. 6, p. 2696.
[6] See Exhibit "P-11-f", Note 1, Audited Financial Statements for FY2017 and FY2016, *id.* at 2940.
[7] *Supra* note 5.
[8] See Admitted Facts in the Pre-Trial Order, Docket, Vol. 3, p. 1378.
[9] Exhibit "P-2", Letter of Authority No. 00006809, Docket, Vol. 6, p. 2698.
[10] See Exhibit "P-3", Letter, dated June 5, 2008, *id.* at 2699.
[11] Exhibit "P-5", Letter, dated February 17, 2010, *id.*, at 2701.
[12] Exhibit "P-7", Preliminary Assessment Notice, dated January 3, 2011, *id.* at 2705.
[13] Exhibit "P-7-a", Details of Discrepancy and Proposed Deficiency Taxes, *id.* at 2706-2707.
[14] Exhibit "P-8", Reply to PAN, dated March 17, 2011, *id.* at 2708-2798, with annexes.
[15] Exhibit "P-10", Formal Letter of Demand, dated June 14, 2011, *id.* At 2301.
[16] Exhibit "P-10-a", Final Assessment Notice Details, *id.* at 2802-2803.
[17] Exhibits "P-10-b" to "P-10-e", Audit Results / Assessment Notice, dated June 14, 2011, *id.* at 2804-2807.

Income tax	749,724.15	656,006.00	1,405,730.15
Value-added tax	268,208.28	246,966.18	515,174.46
Expanded withholding tax	2,120,614.55	1,967,082.06	4,087,696.61
TOTAL	**₱18,506,546.98**	**₱29,703,667.04**	**₱48,210,214.02**

To dispute the assessments, petitioner filed a protest letter[18] addressed to Assistant Commissioner Zenaida Garcia, in response to the FLD, on August 17, 2011.

On May 28, 2012, Petitioner then received the FDDA,[19] dated March 1, 2012, reiterating the assessments per FLD and signed by Assistant Commissioner Alfredo V. Misajon of Large Taxpayers Service.

On June 27, 2012, petitioner filed a request for reconsideration of the FDDA,[20] addressed to respondent CIR.

On August 18, 2017, petitioner received the Decision,[21] dated August 9, 2017, denying its request for reconsideration of the FDDA.

Aggrieved, petitioner filed the instant Petition for Review[22] on September 18, 2017.

After having been granted an extended time within which to respond twice,[23] respondent filed his Answer[24] on December 22, 2017.

On April 11, 2018, the BIR records consisting of two folders were transmitted to the Court.[25]

On even date, respondent filed his Pre-Trial Brief,[26] dated April 11, 2018. On the other hand, petitioner's Pre-Trial Brief,[27] was submitted on April 13, 2018.

[18] Exhibit "P-11", Letter, dated August 17, 2011, *id.* at 2808-2821.
[19] *Supra* note 2.
[20] Exhibit "P-13", Request for Reconsideration of Final Decision on Disputed Assessment, Docket, Vol. 6 pp. 3132-3148.
[21] *Supra* note 3; See also Question and Answer 70 re: date of receipt of Decision dated August 9, 2017, Amended Judicial Affidavit of Maria Kerima Tolentino-Layon, Docket, Vol. 2, p. 950; See also Affirmative Defenses re: date of receipt of Decision uncontroverted by respondent, Answer, Docket Vol. 1, pp. 334-338.
[22] *Supra* note 1.
[23] See Resolutions, dated November 8, 2017 and December 7, 2017, Docket, Vol. 1, pp. 303, 309-310.
[24] See Answer, *id.* at 315-339.
[25] See Compliance dated April 11, 2018, *id.* at 427-429.
[26] See Respondent's Pre-Trial Brief, *id.* at 422-425.
[27] See Pre-Trial Brief Ad Cautelam, *id.* at 432-444.

The Pre-Trial Conference was held on April 17, 2018[28] and the Joint Stipulation of Facts and Issues ("JSFI")[29] was submitted by the parties on May 15, 2018.

On May 15 and May 22, 2018, Commissioner's Hearings were conducted.[30]

During the hearing on July 3, 2018, the Court commissioned Mr. Michael D. Roxas as the Independent Certified Public Accountant ("ICPA") for this Petition for Review.[31]

The Pre-Trial Order was then promulgated by the Court on August 2, 2018.[32]

On May 2, 2019, petitioner filed its Urgent Omnibus Motion[33] praying that the proceedings be held in abeyance in view of its application for compromise settlement through an Offer of Compromise, dated August 6, 2018. In support of such offer, petitioner paid the total amount of ₱7,402,619.20. The Urgent Motion was granted by the Court on May 6, 2019.[34] However, respondent would leave this application of compromise settlement unacted upon, despite the payment, with petitioner leaving what action to take regarding said offer and payment to the discretion of the Court.[35]

On August 1, 2019, petitioner presented Maria Kerima Tolentino-Layon as its witness who testified on direct examination by way of her Amended Judicial Affidavit,[36] dated May 28, 2018 and Supplemental Judicial Affidavit,[37] dated August 30, 2018.

Ms. Tolentino-Layon testified, among others, that contrary to respondent's finding, Mr. Paulino S. Soo is not an employee of petitioner. He rarely comes to petitioner's office and does not utilize petitioner's staff or personnel, no statutory contributions were remitted for Mr. Soo, and the management fees were paid to Abacus Capital and Investment Corporation ("Abacus Corporation") from which taxes were withheld. She further testified that the BIR had issued a Letter of Exemption addressed to Metropolitan Bank

---

[28] See Minutes of Hearing held on April 17, 2018, Docket, Vol. 2, p. 715.
[29] See Joint Stipulation of Facts and Issues, *id.* at 826-838.
[30] See Commissioner's Report, *id.* at 818-820, 869-876.
[31] See Minutes of Hearing held on July 3, 2018, Docket, Vol. 3, p. 1368.
[32] See Pre-Trial Order, dated August 2, 2018, *id.* at 1377-1389.
[33] See Urgent Omnibus Motion, *id.* at 1560-1585, with attached Offer of Compromise and proofs of payment for WTC (Php6,147,200.00), income tax (Php299,889.66), VAT (Php107,283.31), and EWT (Php848,245.82).
[34] See Resolution, dated May 6, 2019, *id.* at 1586.
[35] See Urgent Motion to Reset, Docket, Vol. 4, pp. 3808-3809.
[36] See Motion to Admit (Attached Judicial Affidavit of Ms. Maria Kerima Tolentino-Layon, dated May 28, 2018, Docket, Vols. 2&3, pp. 930-1339, with exhibits.
[37] See Motion to Admit (Submission with attached Supplemental Judicial Affidavit of Maria Kerima Tolentino-Layon, dated August 30, 2018, Docket. Vol. 3, pp. 1425-1436.

and Trust Company, dated December 13, 2007, stating that petitioner's Employee Retirement Plan is a retirement benefit plan within the contemplation of *Section 32(B)(6)(a) of the Tax Code.*

Petitioner also presented Mr. Soo as its witness on January 23, 2020.[38] He testified on direct examination by way of his Amended Judicial Affidavit,[39] dated May 29, 2018. In his Judicial Affidavit, Mr. Soo corroborated the testimony of Ms. Tolentino-Layon regarding the lack of employee-employer relationship between him and petitioner.

He further testified that the fees allegedly subject to WTC actually pertain to management fees paid by petitioner to Abacus Corporation pursuant to a Management Agreement dated October 25, 2002. From 2002 to 2006, Abacus Corporation rendered, undertook, and invoiced the management services and fees. On May 2, 2006, the assignment of rights and interests in the Management Agreement was formalized through a Letter of Assignment,[40] dated May 2 2006.

Also, Mr. Soo testified that he enjoyed wide latitude of discretion as long as his actions are consistent with common business practice and that he did not report to anyone and acted independently, thus the lack of control from petitioner.[41]

During cross-examination, Mr. Soo stated that the management fees were paid to and received by Abacus Corporation and not to him.[42] In turn, he was paid a salary by Abacus Corporation as the latter's president. The management fees paid by petitioner constitute only one of the revenue sources of Abacus Corporation. [43]

Finally, petitioner presented ICPA Roxas as its witness, also on January 23, 2020. In his Judicial Affidavit,[44] he testified on the following, among others: that the management fees were paid to Abacus Corporation, for which official receipts were issued and 15% tax was withheld; and that the deficiency income tax arose from a discrepancy brought about by petitioner's employee retirement fund which was considered a reasonable benefit plan by the BIR and should thus have been allowed as a deduction. Also, during cross-examination, ICPA Roxas stated that the vouchers covering the management fees do not state Mr. Soo's name;[45] that for the alleged deficiency VAT, no

---

[38] See Minutes of hearing dated January 23, 2020, Docket, Vol. 5, p. 2555.
[39] See Motion to Admit (Attached Amended Judicial Affidavit of Mr. Paulio S. Soo dated May 29, 2018, Docket Vol. 2, pp. 883-929, with exhibits.
[40] Exhibit "P-11-b-1", Letter of Assignment dated May 2, 2006, Docket, Vol. 6, pp. 2844-2845.
[41] *Supra* note 38.
[42] See TSN for the hearing held on January 23, 2020, pp. 10 and 16.
[43] See *id.* at 16.
[44] See Judicial Affidavit of Michael D. Roxas, Docket, Vol. 3, pp. 1346-1355.
[45] See TSN for the hearing held on January 23, 2020, p. 32.

VAT receipts were seen, only statement of accounts;[46] and that for the alleged deficiency income tax, provisional receipts have the same effect as official receipts for accounting purposes.[47]

On the other hand, respondent's witness, Atty. Jan Michael A. Rivera, who testified through his Judicial Affidavit, dated April 11, 2018,[48] was presented to the Court on January 21, 2021.[49] Atty. Rivera identified the following documents, among others, in relation to the alleged deficiency tax assessments:

a. Waiver of the Defense of [Prescription] Under the Statute of Limitations executed on 12 April 2010 ("First Waiver"), marked as Exhibit "R-2";[50]
b. Waiver of the Defense of [Prescription] Under the Statute of Limitations executed on 14 October 2010 ("Second Waiver"), marked as Exhibit "R-3";[51] and
c. Waiver of the Defense of [Prescription] Under the Statute of Limitations executed on 24 March 2010 ("Third Waiver"), marked as Exhibit "R-4".[52]

On March 11, 2020, petitioner filed its Formal Offer of Evidence[53] which was resolved by the Court on September 1, 2020.[54]

Meanwhile, respondent submitted his Formal Offer of Evidence on February 1, 2021.[55]

Thereafter, petitioner filed a Manifestation Re: Presentation of Rebuttal Witness and Rebuttal Evidence[56] on February 15, 2021.

In the Court's Resolution,[57] dated March 17, 2021, the evidence offered by respondent were admitted, and the Manifestation filed on February 15, 2021 was granted and noted.

---

[46] See *id.* at 31.
[47] See *id.* at 29.
[48] See Judicial Affidavit of Atty. Jan Michael A. Rivera dated April 11, 2018, Docket, Vol. 1, pp. 415-421.
[49] See Minutes of Hearing held on January 21, 2021, Docket, Vol. 8, p. 3740.
[50] Exhibit "R-2", Waiver of the Defense of Limitations Under the Statute of Limitations of the National Internal Revenue Code, BIR Records, p. 481.
[51] Exhibit "R-3", Waiver of the Defense of Limitations Under the Statute of Limitations of the National Internal Revenue Code, *id.* at 703.
[52] Exhibit "R-4", Waiver of the Defense of Limitations Under the Statute of Limitations of the National Internal Revenue Code, *id.* at 760.
[53] See Formal Offer of Evidence, Docket, Vol. 5, pp. 2598-2628.
[54] See Resolution dated September 1, 2020, *id.* at 2640-2643.
[55] See Formal Offer of Evidence, Docket, Vol. 8, pp. 3743-3748.
[56] See Manifestation Re: Presentation of Rebuttal Witness and Rebuttal Evidence, *id.* at 3757-3759.
[57] See Resolution dated March 17, 2021, Docket, Vol. 8, pp. 3792-3794.

On May 18, 2022, petitioner submitted the Rebuttal Judicial Affidavit of Ms. Winnie Manansala[58] who was presented to the Court on September 21, 2022.[59] Ms. Manansala testified that she is the Financial Controller of petitioner who is in custody of documents pertaining to BIR matters. She stated that petitioner is not aware that the BIR accepted the three waivers presented by respondent because petitioner was not furnished copies of the waivers with BIR's acceptance.

Petitioner then submitted a Supplemental Formal Offer of Evidence[60] which was resolved by the Court, in favor of petitioner, on December 6, 2022.[61]

On February 13, 2022, petitioner submitted its Memorandum.[62] Respondent, on the other hand, manifested that he was adopting the arguments raised in the Answer, dated December 22, 2017, as his Memorandum.[63]

The instant Petition for Review was then submitted for decision on 16 February 2023.

The Issues[64]

The parties submitted the following issues for this Court's resolution:

I.

WHETHER THE BIR'S ASSESSMENT FOR ALLEGED DEFICIENCY TAXES FOR FY2007 HAS ALREADY PRESCRIBED;

II.

WHETHER THE BIR'S ASSESSMENT FOR ALLEGED DEFICIENCY TAXES HAS ATTAINED FINALITY DESPITE IT BEING GIVEN COURSE BY THE COMMISSIONER OF INTERNAL REVENUE;

III.

WHETHER THE COURT HAS JURISDICTION OVER THE PETITION;

---

[58] See Rebuttal Judicial Affidavit of Ms. Winnie Manansala dated May 18, 2022, *id.* at 3838-3846.
[59] See Minutes of Hearing dated September 21, 2022, *id.* at 3861.
[60] See Supplemental Formal of Evidence, *id.* at 3863-3866.
[61] See Resolution dated December 6, 2022, *id.* at 3891-3892.
[62] See Memorandum dated February 13, 2023, *id.* at 3899-3980.
[63] See Manifestation dated January 24, 2023, *id.* at 3893-3895.
[64] See Stipulated Issues in the Pre-Trial Order, Docket, Vol. 3, pp. 1379-1380.

IV.

WHETHER THE BIR'S ASSESSMENT FOR ALLEGED DEFICIENCY WITHHOLDING TAX ON COMPENSATION, INCOME TAX, VALUE-ADDED TAX, AND EXPANDED WITHHOLDING TAX IS VOID BECAUSE THE ASSESSMENT DOES NOT STATE THE LAW AND FACTS ON WHICH IT IS BASED;

V.

WHETHER IT IS FAIR TO ASSESS PETITIONER FOR DEFICIENCY WITHHOLDING TAX ON COMPENSATION DESPITE THE INCOME HAVING BEEN RECOGNIZED AS CONTRACTOR INCOME BY ABACUS CAPITAL & INVESTMENT CORPORATION;

VI.

WHETHER THE MANNER BY WHICH INTEREST ON THE ALLEGED DEFICIENCY WITHHOLDING TAX ON COMPENSATION WAS COMPUTED IS CONFISCATORY AND ILLEGAL;

VII.

WHETHER THE BIR MISCHARACTERIZED THE TRANSACTION BETWEEN PETITIONER, MR. PAULINO S. SOO, AND ABACUS CAPITAL & INVESTMENT CORPORATION;

VIII.

WHETHER THE ALLEGED DEFICIENCY INCOME TAX IS VALID DESPITE PETITIONER'S RECONCILIATION;

IX.

WHETHER THE ALLEGED DEFICIENCY VALUE-ADDED TAX IS VALID DESPITE THE ALLEGED ACTUAL NATURE OF THE TRANSACTION BEING MERE REIMBURSEMENT AND NOT SALE OF SERVICES;

X.

WHETHER THE ALLEGED DEFICIENCY EXPANDED WITHHOLDING TAX IS VALID DESPITE THE RECONCILIATION PROVIDED BY PETITIONER;

XI.

WHETHER PETITIONER IS LIABLE TO PAY THE ASSESSED DEFICIENCY WITHHOLDING TAX ON COMPENSATION, INCOME TAX, VALUE-ADDED TAX, AND EXPANDED WITHHOLDING TAX FOR FY2007 PLUS SURCHARGE, 20% DEFICIENCY AND DELINQUENCY

INTEREST PURSUANT TO SECTIONS 248 AND 249 OF THE TAX CODE, AS AMENDED.

Arguments of the Parties

Petitioner's Arguments[65]

Petitioner argues that the assessment of respondent must be declared null and void due to the following:

a. The BIR's power to assess deficiency taxes for FY2007 has already prescribed under *Section 203 of the Tax Code*;

b. The alleged deficiency tax assessments for WTC, income tax, VAT, and EWT have no basis in law and fact;

c. The alleged deficiency tax assessments for WTC, income tax, VAT, and EWT failed to state the law and the facts on which the assessments are based, thereby violating petitioner's right to due process;

d. Assuming that the BIR's assessment for WTC is not void:
    i. The manner by which interest on the alleged deficiency tax was computed is confiscatory and illegal;

    ii. The BIR mischaracterized the transaction among petitioner, Mr. Paulino S. Soo, and Abacus Corporation;

    iii. Paragraph 3 of the Management Agreement clearly stated that Mr. Soo is a corporate officer and not an employee as insisted by the BIR. The Management Agreement shows that Mr. Soo controls the manner and means by which he performed his obligations, thus making him an independent contractor and not an employee;

    iv. The term "professional fees" does not *ipso facto* convert a corporate officer to an employee. *Section 32 (A) of the Tax Code* states no criteria for determination of employer-employee relationship;

e. Assuming that the assessment for alleged deficiency income tax is not null and void, the assessment would still fail because petitioner was able to reconcile the alleged deficiency;

[65] See Memorandum; Docket, Vol. 8, pp. 3902-3903.

f. Assuming that the assessment for alleged deficiency VAT is not null and void, the assessment still fails because the items are mere reimbursements, thus, not VATable transactions; and

g. Assuming that the assessment for alleged deficiency EWT is not null and void, the assessment would still fail because petitioner was able to reconcile the alleged discrepancy.

Respondent's Counter-Arguments[66]

Respondent insists that the assessment is valid. Specifically, he raises the following points:

a. The BIR's right to assess has not yet prescribed due to petitioner's execution of waivers of the defense of prescription;

b. The execution of waivers was allegedly beneficial to petitioner considering that the waivers constituted a tool for petitioner to have sufficient time to gather voluminous documents/records to support its position against respondent;

c. Petitioner did not challenge the validity of the waivers at the administrative level;

d. Petitioner is estopped from raising the alleged invalidity of the waivers;

e. With regard to the withholding taxes, the amount sought to be collected from the withholding agent is not a tax, but rather a penalty. Thus, *Section 203 of the Tax Code* must not apply at it only pertains to limitation on assessment and collection of taxes but not of penalties;

f. Petitioner was informed of the factual and legal basis of the assessment;

g. Paragraph 3 of the Management Agreement between petitioner and Mr. Soo allegedly satisfy the control test in establishing employer-employee relationship;

h. Nowhere in the Management Agreement is it mentioned that Mr. Soo shall manage petitioner as its president through Abacus Corporation. Both petitioner and Abacus Corporation's financial statements do not

---

[66] See Answer, Docket, Vol. 1, pp. 316-338.

refer to or mention any agreement among petitioner, Abacus Corporation, and Mr. Soo;

i. When petitioner issued VAT official receipts for the non-VATable transaction, it became liable to VAT on the same; and

j. The Petition for Review was filed beyond the period to appeal to the Court of Tax Appeals. Thus, the assessments became final, executory and demandable.

The Ruling of the Court

The Court has jurisdiction over the instant Petition for Review.

Before delving into the merits of the case, the issue raised by the parties as regards the jurisdiction of this Court must be resolved first. It bears stressing that the CTA, being a special court, can take cognizance only of matters that are clearly within its jurisdiction.[67] In relation to this, *Section 7 of Republic Act No. (RA) 1125*,[68] as amended by *RA 9282*,[69] specifically provides:

> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) ***Decisions of the Commissioner of Internal Revenue*** in cases involving ***disputed assessments***, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> ....
>
> (Emphasis supplied)

The above provision is implemented by *Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals* ("*RRCTA*")[70] which provides:

> SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

[67] Procter & Gamble Asia, Pte. Ltd., vs. Commissioner of Internal Revenue, G.R. No. 207587 (Notice), April 28, 2021.
[68] An Act Creating the Court of Tax Appeals, June 16, 1954.
[69] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes; March 30, 2004.
[70] A.M. No. 05-11-07-CTA, November 22, 2005.

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) *Decisions of the Commissioner of Internal Revenue* in cases involving *disputed assessments*, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

....

(Emphasis supplied)

Under *Section 228 of the Tax Code*, if the protest or administrative appeal is denied, in whole or in part, by the Commissioner, the taxpayer adversely affected by the decision may appeal to the CTA within thirty days from the receipt of the adverse decision. *Section 228* thus states:

SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:

....

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations....

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

To implement the foregoing remedies afforded by the law, the BIR has promulgated *Revenue Regulations (RR) No. 12-99.*[71] Note that the amendments under *RR No. 18-2013*[72] have yet to be introduced at the time of the issuance of the subject FLD/FAN[73] and FDDA;[74] thus, the earlier regulations find application in this case.

[71] Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

[72] Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated November 28, 2013.

[73] Received by petitioner on July 19, 2011.

[74] Received by petitioner on May 28, 2012.

Section 3.1.5 of RR No. 12-99 provides:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*
>
> . . .
>
> 3.1.5 *Disputed Assessment.* — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.
>
> . . .
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, ***if the protest is denied***, in whole or in part, by the *Commissioner or his* ***duly authorized representative***, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that *if the taxpayer* ***elevates his protest to the Commissioner*** *within thirty (30) days from date of receipt of the* ***final decision of the Commissioner's duly authorized representative****, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.*
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.
> (Emphasis supplied.)

Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. Thus, in the case of *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue, et al.* ("*PAGCOR case*"),[75] the Supreme Court summarized the three options available to a protesting taxpayer, pursuant to a textual reading of *Section 3.1.5 of RR No. 12-99*, as follows:

1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest. γ

---

[75] G.R. No. 208731, January 27, 2016.

2. If the *protest is wholly or partially* ***denied by the CIR's authorized representative***, then the taxpayer ***may appeal to the CIR*** within 30 days from receipt of the whole or partial denial of the protest.

3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

In the case at hand, respondent posits that 30-day period to file a judicial appeal must be reckoned from the date of receipt of the FDDA[76] on May 28, 2012. To recall, instead of elevating the case to the CTA, petitioner filed a Request for Reconsideration[77] with the CIR, and the Petition for Review was only filed with the Court on September 18, 2017. Respondent now argues that due to the availment of the wrong remedy, the assessment has thus become final, executory, and demandable.

To support such claim, respondent invokes the case of *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue* ("*Fishwealth case*"),[78] where the Highest Tribunal explained:

> In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 *issued by respondent* and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.
>
> Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA. (Emphasis supplied; underscoring in the original.)

However, the Court finds the *Fishwealth case* inapplicable to the case at hand, and the remedies availed by petitioner, summarized in the table below, were duly granted by the laws and regulations:

---

[76] *Supra* note 2.
[77] *Supra* note 20.
[78] G.R. No. 179343, January 21, 2010.

Letter/Notice	Receipt date	Remedy availed	Deadline of filing	Filing date
FLD/FAN	July 19, 2011	Protest filed with Assistant Commissioner, Large Taxpayers District Office - Makati	August 18, 2011	August 17, 2011
FDDA	May 28, 2012	Request for Reconsideration filed with the CIR	June 28, 2012	June 27, 2012
Decision by the CIR	August 18, 2017	Petition for Review filed with the CTA	September 17, 2017 (Sunday)	September 18, 2017

Here, the protest submitted by petitioner was acted upon by then Assistant Commissioner Misajon through the FDDA,[79] dated March 1, 2012, received by petitioner on May 28, 2012. Thus, unlike in the *Fishwealth case*, the CIR did not issue the FDDA in question.

Clear guidance on the remedies available can thus be gleaned from the above-cited *Section 3.1.5 of RR No. 12-99* and the listed procedures in the *PAGCOR case* which categorically state that *if the protest was acted upon by CIR's authorized representative, instead of the CIR himself, then the decision on protest may be appealed to the CIR.*

Accordingly, the elevation of the case to the CIR through a Request for Reconsideration is well within the rights of petitioner.

Therefore, the Decision,[80] dated August 9, 2017, issued in response to the Request for Reconsideration and duly signed by then-CIR Caesar R. Dulay is a final decision which is appealable to this Court within 30 days from receipt thereof on August 18, 2017. Applying the 30-day reglementary period, the instant Petition for Review was timely filed on September 18, 2017,[81] and this Court has duly acquired jurisdiction hereof.

---

[79] *Supra* note 2.
[80] *Supra* note 3.
[81] Last day to file, which is September 17, 2017, falls on a Sunday.

The defects in the waiver rendered the same invalid; thus, the period to assess has prescribed.

Under *Section 203 of the Tax Code*, respondent has three years within to assess a taxpayer, to wit:

> SEC. 203. *Period of Limitation upon Assessment and Collection.*— Except as provided in Section 222, internal revenue taxes *shall be assessed within **three (3) years** after the last day prescribed by law for the filing of the return*, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in 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)

Nevertheless, the three-year period to assess tax liabilities may be extended in accordance with *Section 222 (b) of the Tax Code* through the execution of a valid waiver of the statute of limitations before the expiration of the prescriptive period, thus:

> SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.—
>
> ....
>
> (b) If ***before the expiration of the time prescribed in Section 203*** for the assessment of the tax, both the *Commissioner and the taxpayer have agreed in writing to its assessment after such time*, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by *subsequent written agreement* made ***before the expiration of the period previously agreed upon***.
> (Emphasis supplied)

To implement *Section 222 (b)* above, the BIR promulgated *Revenue Memorandum Order (RMO) No. 20-90*,[82] which provides:

> Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This *written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations*. In the execution of said waiver, the following procedures should be followed:

---

[82] Subject: Proper Execution of Waiver of Statute of Limitations Under the NIRC, Revenue Memorandum Order No. 20-90, April 4, 1990.

....

> 2. The *waiver shall be signed by the taxpayer himself or his duly authorized representative*. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, the *Commissioner of Internal Revenue or the revenue official authorized by him*, as hereinafter provided, ***shall sign the waiver*** *indicating that the Bureau has accepted and agreed to the waiver*. The ***date of such acceptance by the Bureau should be indicated***. Both the *date of execution by the taxpayer and* ***date of acceptance*** by the Bureau should be ***before the expiration of the period of prescription*** *or* ***before the lapse of the period*** *agreed upon in case a subsequent agreement is executed.*
> (Emphasis supplied)

Further to the mandates of *RMO No. 20-90* above, the BIR also issued *Revenue Memorandum Circular* ("*RMC*") *No. 06-05*[83] to highlight the pronouncement of the Supreme Court in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* ("*Philippine Journalists case*").[84] *RMC No. 06-05* states:

> 1. A waiver of the statute of limitations under the Tax Code must *conform strictly with the provisions of Revenue Memorandum Order No. 20-90 in order to be valid and binding.*
>
>   1.1. The waiver must specify a definite agreed date between the BIR and the taxpayer within which the former may assess and collect revenue taxes.
>   1.2. The waiver must be *accepted by the Commissioner of Internal Revenue or his duly authorized representative, and the date of acceptance must be indicated.*
>   1.3. The taxpayer must be furnished a copy of the waiver accepted by the BIR.
>
> 2. A waiver of the statute of limitations under the Tax Code, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.
>
> 3. A waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain.
>
> 4. A waiver of the statute of limitations is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties.
>
> (Emphasis supplied.)

---

[83] Subject: Salient Features of Supreme Court Decision on Waiver of the Statute of Limitations under the Tax Code, February 2, 2005.
[84] G.R. No. 162852, December 16, 2004.

Based on the above provisions, in order to be valid and binding, the rules prescribed under *RMO-20-90* must be strictly complied with. The requirements include, among others, the due signing of both parties before the lapse of the prescriptive period or before the expiration of the date previously agreed upon and the indication of date of acceptance.

In *Republic of the Philippines vs. First Gas Power Corporation* ("*First Gas Power case*"),[85] the Supreme Court upheld the ruling of the CTA declaring the waivers defective due to the lack of date of acceptance by the CIR. Citing the *Philippine Journalists case*, the Highest Tribunal explained that the absence of the date of acceptance by the BIR makes it difficult to ascertain if the waiver was actually agreed upon before the expiration of the three-year prescriptive period.

Also, in the case of *Universal Weavers Corporation vs. Commissioner of Internal Revenue*,[86] the waivers were declared defective due to (1) a failure to reflect the agreed date within which the BIR may assess and collect taxes; (2) a failure to state the date of execution of the agreement; and (3) the absence of the date of acceptance of the CIR or his authorized revenue officials.

The waivers at issue here, as well as the relevant and notable details thereof, are summarized in the table below:

Waiver	**Date Executed by Petitioner**	**Agreed Period to Assess Petitioner**	**BIR's signatory**	**Date Accepted by the BIR**	**BIR-Accepted copy furnished to petitioner**
1st Waiver[87]	April 12, 2010	December 31, 2010	Zenaida G. Garcia [ACI-LTS (Excise and LTDO's)]	April 15, 2010	*No date indicated* *Received by Punong Bayan & Araullo*
2nd Waiver[88]	October 14, 2010	March 31, 2011	*Various signatures appended below the name and designation of ACIR Garcia, but no signature*	*No date indicated*	*No date indicated* *Received by Punong Bayan & Araullo*

[85] G.R. No. 214933, February 15, 2022.
[86] G.R. No. 233990, May 12, 2021.
[87] *Supra* note 47.
[88] *Supra* note 48.

			above her name		
3rd Waiver[89]	March 24, 2011	December 31, 2011	Zenaida G. Garcia [ACI-LTS (Excise and LTDO's)]	March 28, 2011	March 30, 2011 *Received by Punong Bayan & Araullo*

Applying the above-cited law, regulations, and jurisprudence to the case at bar, the Court notes the infirmities which are deemed fatal to the alleged validity of the subject waivers: (1) a lack of date of acceptance by the CIR or his duly authorized representative; and (2) the absence of a clear acceptance/signature by the CIR or his duly authorized representative.

Here, while the first and third waivers duly indicate the date of BIR's acceptance thereof, the same is not true for the second waiver. Also, the Court notes that all waivers contain various signatures below the name and designation of ACIR Garcia. However, unlike the first and third waivers, the second waiver has no signature above ACIR Garcia's name. Thus, it appears to the Court that the second waiver was neither accepted nor signed by ACIR Garcia.

For its part, respondent contends that petitioner is estopped from assailing the validity of the waivers. However, as held in the *First Gas Power case*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[90] the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow; thus:

> The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond the requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.

[89] *Supra* note 49.
[90] G.R. 178087, May 5, 2010.

> Moreover, the **BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued.** As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. **Having caused the defects in the waivers, the BIR must bear the consequence.** It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.
> (Emphasis supplied; citations omitted.)

Due to the foregoing, the second waiver failed to extend the period within which the BIR may assess petitioner with deficiency taxes. Consequently, the third waiver cannot likewise be held as valid since it was executed after lapse of the period agreed upon in the first waiver, which does not contain the same infirmity as the second waiver.

Accordingly, the three-year prescriptive period to assess, as summarized in the table below, shall apply herein, pursuant to *Section 203 of the Tax Code*.

Tax Type	**Due Date or Date of Actual Filing/Payment**	**Statute of Limitations**
Income tax	August 15, 2007	August 15, 2010
WTC	May 15, 2007 *(for the 12th month of FY2007)*	May 15, 2010
EWT	May 15, 2007 *(for the 12th month of FY2007)*	May 15, 2010
VAT	May 27, 2007 *(for the 4th quarter of FY2007)*	May 25, 2010

As the FLD/FAN was received by petitioner on July 19, 2011 which is beyond the statute of limitations as shown above, the validity of the assessment notices, the FDDA, and the Decision must necessarily fail.

Thus, having found the assessment void, the Court will no longer discuss the other issues raised in the present petition.

ACCORDINGLY, the Petition for Review is hereby **GRANTED**. The Final Decision on Disputed Assessment, dated March 1, 2012, and the Decision, dated August 9, 2017, assessing petitioner for deficiency WTC, income tax, EWT, and VAT in the aggregate amount of ₱48,210,214.02, for FY2007 is **CANCELLED** and **SET ASIDE**. Finally, respondent is

ORDERED TO REFUND the amount of ₱7,402,619.20 paid by petitioner in relation to the subject assessment.[91]

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion 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
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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

---

[91] See Prayer for "other reliefs, just and equitable under the premises," Petition for Review, Docket, Vol. 1, p. 50; see also Urgent Motion to Reset, Docket, Vol. 4, pp. 3808-3809.