REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

THE LANDMARK CORPORATION, *Petitioner,*	**CTA CASE NO. 9317**
	Members:
	RINGPIS-LIBAN, *Chairperson,* and **MODESTO-SAN PEDRO,** *JJ.*
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	SEP 14 2023 11:04 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The *Petition for Review* prays that the Court:

(a) Nullify the deficiency tax assessments for taxable year 2011 against petitioner under the *Final Decision on Disputed Assessment* (FDDA) dated March 1, 2016, for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET), in the total amount of ₱583,998,287.78, inclusive of interests and penalties;

(b) Direct respondent or any of his duly authorized representatives to withdraw and/or cancel the deficiency tax assessments for taxable year 2011 under the said FDDA, and all other documents and issuances which are a result of, or in relation to, the above issuance; and

(c) Order respondent, and any and all persons acting on his behalf to desist from further acting on the same FDDA.[1]

[1] Summary of the Case, Pre-Trial Order dated January 6, 2017, Docket – Vol. 2, pp. 673 to 674.

THE PARTIES

Petitioner The Landmark Corporation is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at Ayala Center, Makati Avenue, Makati City.[2]

Respondent Commissioner of Internal Revenue is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), authorized to perform the duties of his office including, among others, the power to decide disputed assessments or other charges and penalties imposed in relation thereto pursuant to the provisions of the National Internal Revenue Code (NIRC), as amended. He holds office at the BIR National Office Building, Diliman, Quezon City.[3]

THE FACTS

On April 1, 2013, respondent issued *Letter of Authority* (LOA) No. 116-2013-00000095,[4] authorizing the examination of petitioner's books of account and other accounting records for all internal revenue taxes for taxable year 2011.[5]

On July 10, 2014, petitioner, through its Assistant to the Executive Vice President (EVP), Ms. Conchita V. Lee, executed a *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*, wherein petitioner waived the said defense, and consented to the assessment and/or collections of tax or taxes for 2011 which may be found due after investigation/reinvestigation/re-evaluation, at any time before or after the lapse of the period of limitations fixed by Sections 203 and 222 of the NIRC, but not later than December 31, 2015.[6] The said *Waiver* was accepted by respondent on July 25, 2014.[7]

On June 23, 2015, respondent issued a *Preliminary Assessment Notice* (PAN) with the *Details of Discrepancies*, informing petitioner of its alleged deficiency income tax, VAT, EWT, DST, and IAET, based on third-party information for the taxable year 2011.[8]

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[2] The Parties, *Petition for Review*, Docket – Vol. 1, p. 10.
[3] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI) (Docket – Vol. 2, p. 658) vis-à-vis The Parties, *Petition for Review* (Docket – Vol. 1, p. 10).
[4] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 658; Exhibit "R-1", BIR Records – Folder 1, p. 1.
[5] Par. 2, Statement of Facts, *Petition for Review* vis-à-vis par. 1, *Answer (to the Petition for Review dated 29 March 2016)*, Docket – Vol. 1, p. 14 and 450, respectively.
[6] Exhibit "R-5", BIR Records – Folder 1, p. 20.
[7] *Id.*
[8] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 658; Exhibits "P-1" and "R-7", BIR Records – Folder 1, pp. 595 to 605.

Thereafter, on July 3, 2015, the BIR Large Taxpayers Regular Audit Division received petitioner's letter dated July 2, 2015, stating its objections to the PAN dated June 23, 2015.[9]

On July 22, 2015, petitioner received the *Formal Letter of Demand* (FLD) of even date issued by respondent,[10] with the *Details of Discrepancies* and the corresponding *Audit Results/Assessment Notices*,[11] informing petitioner of its alleged deficiency income tax, VAT, EWT, DST, and IAET, based on third-party information for the taxable year 2011.[12]

The BIR Large Taxpayers Service then received petitioner's protest letter dated August 18, 2015 on August 20, 2015.[13]

Subsequently, on September 30, 2015, the BIR Large Taxpayers Service received petitioner's letter dated September 29, 2015, submitting additional documents in support of its protest.[14]

On October 19, 2015, the BIR Large Taxpayers Service and Large Taxpayers Regular Audit Division received petitioner's letter dated October 16, 2015, submitting additional documents in support of its protest.[15]

On March 1, 2016, petitioner received the assailed FDDA issued by respondent,[16] assessing petitioner of its alleged deficiency income tax, VAT, EWT, DST, and IAET, for the taxable year 2011.[17] In the *Details of Discrepancies* attached to the FDDA, respondent conceded an adjustment to the *"Undeclared Income per E-sales Validation vs. Reported in ITR"* and reduced the assessment from ₱48,727,079.25 to ₱48,414,515.72.[18] Respondent further cancelled the assessment on *"Unaccounted Exempt Sale"* in the total amount of ₱146,306,077.59.[19] With the said FDDA, the BIR also issued the corresponding *Audit Results/Assessment Notices* bearing the same date.[20]

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[9] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659; Exhibits "P-2" and "R-8", BIR Records – Folder 1, p. 606.
[10] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659.
[11] Exhibits "P-3" and "R-10", BIR Records – Folder 9, pp. 617 to 627; Exhibits "R-11" to "R-11-d", BIR Records – Folder 9, pp. 612 to 616.
[12] Par. 5, Statement of Facts, *Petition for Review* vis-à-vis par. 1, *Answer (to the Petition for Review dated 29 March 2016)*, Docket – Vol. 1, p. 14 and 450, respectively.
[13] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659.
[14] Par. 7, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659.
[15] Par. 8, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659.
[16] Par. 9, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659; Exhibits "P-7" and "R-13", BIR Records – Folder 9, pp. 791 to 807.
[17] Par. 9, Statement of Facts, *Petition for Review* vis-à-vis par. 1, *Answer (to the Petition for Review dated 29 March 2016)*, Docket – Vol. 1, p. 15 and 450, respectively.
[18] Par. 10, Statement of Facts, *Petition for Review* vis-à-vis par. 1, *Answer (to the Petition for Review dated 29 March 2016)*, Docket – Vol. 1, p. 15 and 450, respectively.
[19] Par. 11, Statement of Facts, *Petition for Review* vis-à-vis par. 1, *Answer (to the Petition for Review dated 29 March 2016)*, Docket – Vol. 1, p. 15 and 450, respectively.
[20] Exhibits "R-14" to "R-11-d", BIR Records – Folder 9, pp. 786 to 790.

Petitioner filed the present *Petition for Review* on March 29, 2016.[21]

On May 17, 2016, petitioner filed an *Extremely Urgent Motion for Suspension of Collection of Taxes.*[22] Respondent then filed his *Comment/Opposition (Re: Petitioner's Extremely Urgent Motion for Suspension of Collection of Taxes dated 17 May 2016)* on June 1, 2016.[23] Petitioner filed its *Reply (Re: Respondent's Comment/Opposition dated 01 June 2016)* on June 9, 2016.[24]

At the hearing held for the *Extremely Urgent Motion for Suspension of Collection of Taxes* of petitioner on May 30, 2016, the latter presented the testimony of its Accounting Comptroller, Ms. Flordeliza J. Soriano.[25] Petitioner filed its *Formal Offer of Documentary Evidence* in relation to petitioner's *Extremely Urgent Motion for Suspension of Collection of Taxes* on May 31, 2016.[26]

On June 2, 2016, respondent filed a *Motion for Extension of Time to File Answer.*[27]

In the Resolution dated June 20, 2016,[28] the Court: (1) noted the filing of respondent's *Comment/Opposition (Re: Petitioner's Extremely Urgent Motion for Suspension of Collection of Taxes dated 17 May 2016)*; (2) gave respondent fifteen (15) days from notice to file his comment on petitioner's *Formal Offer of Evidence*; and (3) granted respondent's *Motion for Extension of Time to File Answer*, by giving the latter a final and non-extendible period of thirty (30) days from June 3, 2016 or until July 3, 2016, within which to file his *Answer* on petitioner's *Petition for Review.*

On June 30, 2016, respondent filed his *Comment [Re: Petitioner's Formal Offer of Documentary Evidence dated 31 May 2016].*[29]

Respondent then filed another *Urgent Motion for Extension of Time to File Answer* on July 1, 2016.[30] In the Resolution dated July 20, 2016,[31] the court granted respondent a final and non-extendible period of fifteen (15) days from July 3, 2016 or until July 18, 2016, within which to file his *Answer.*

On July 18, 2016, respondent eventually filed his *Answer (to the Petition for Review dated 29 March 2016).*[32]

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[21] Docket – Vol. 1, pp. 10 to 63.
[22] Docket – Vol. 1, pp. 319 to 331.
[23] Docket – Vol. 1, pp. 409 to 419.
[24] Docket – Vol. 1, pp. 430 to 434.
[25] Exhibit "P-8-Motion", Docket – Vol. 1, pp. 337 to 344; Minutes of the hearing held on May 30, 2016, Docket – Vol. 1, p. 403.
[26] Docket – Vol. 1, pp. 404 to 408.
[27] Docket – Vol. 1, pp. 421 to 424.
[28] Docket – Vol. 1. pp. 436 to 437.
[29] Docket – Vol. 1, pp. 438 to 441.
[30] Docket – Vol. 1, pp. 443 to 447.
[31] Docket – Vol. 1, pp. 477 to 478.
[32] Docket – Vol. 1, pp. 450 to 474.

In the Resolution dated August 3, 2016,[33] the Court resolved the *Formal Offer of Documentary Evidence* of petitioner by admitting all its exhibits, and granting petitioner's *Extremely Urgent Motion for Suspension of Collection of Taxes*, subject to the condition that petitioner files a surety bond.

Respondent transmitted the *BIR Records* of the present case [consisting of nine (9) folders] on October 14, 2016.[34]

The Pre-Trial Conference was set and held on October 25, 2016.[35] Prior thereto, *Respondent's Pre-Trial Brief* was submitted on October 14, 2016,[36] while petitioner's *Pre-Trial Brief* was filed on October 20, 2016.[37]

On November 24, 2016, the parties filed their *Joint Stipulation of Facts and Issues*.[38] The Pre-Trial Order dated January 6, 2017 was then subsequently issued by the Court,[39] thereby deeming the termination of the Pre-Trial Conference.

On January 31, 2017, petitioner filed a *Motion for Preferential Resolution of the Issue on Prescription*,[40] praying that it be allowed to present its evidence on the issue of prescription and for the Court to rule on the said issue ahead of the reception of evidence and resolution of all other issues in this case. Respondent filed his *Comment/Opposition [Re: Petitioner's Motion for Preferential Resolution of the Issue on Prescription dated 31 January 2017]* on February 23, 2017.[41] In the Resolution dated March 21, 2017,[42] the Court granted petitioner's *Motion for Preferential Resolution of the Issue on Prescription.*

In the meantime, petitioner offered the testimonies of the following individuals, namely: (1) Ms. Brigitte Y. Francisco Chan,[43] Corporate Secretary of petitioner; and (2) Ms. Flordeliza J. Soriano,[44] petitioner's Accounting Comptroller.

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[33] Docket – Vol. 1, pp. 487 to 492.
[34] *Compliance* dated October 13, 2016, Docket – Vol. 2, pp. 550 to 553.
[35] Notice of Pre-Trial Conference dated August 1, 2016, Docket – Vol. 1, pp. 479 to 480; Minutes of the hearing held on, and Order dated, October 25, 2016, Docket – Vol. 2, pp. 642 and 644 to 645, respectively.
[36] Docket – Vol. 2, pp. 523 to 529.
[37] Docket – Vol. 2, pp. 564 to 576.
[38] Docket – Vol. 2, pp. 658 to 668.
[39] Docket – Vol. 2, pp. 673 to 683.
[40] Docket – Vol. 2, pp. 699 to 705.
[41] Docket – Vol. 2, pp. 716 to 721.
[42] Docket – Vol. 2, pp. 727 to 729.
[43] Exhibit "P-32", Docket – Vol. 2, pp. 556 to 561; Minutes of hearing held on, and Order dated, March 14, 2017, Docket – Vol. 2, p. 725.
[44] Exhibit "P-30", Docket – Vol. 1, pp. 337 to 344; Exhibit "P-31", Docket – Vol. 2, pp. 577 to 598; Minutes of hearing held on, and Order dated, February 13, 2017, Docket – Vol. 2, pp. 708 to 710.

Petitioner filed its *Formal Offer of Documentary Evidence (On the Issue of Prescription)* on June 6, 2017;[45] while respondent submitted his *Opposition (Re: Petitioner's Formal offer of Evidence dated 06 June 2017)* on June 21, 2017.[46] In the Resolution dated July 25, 2017,[47] the Court admitted all of petitioner's offered evidence.

At the hearing held for *Motion for Preferential Resolution of the Issue on Prescription* of petitioner, respondent presented the testimony of his lone witness, Revenue Officer (RO) Rosario A. Arriola.[48]

Subsequently, respondent filed his *Formal Offer of Evidence* on August 22, 2018.[49] Petitioner filed its *Objections to Respondent's Formal Offer of Evidence* on September 14, 2018.[50] The Court then admitted respondent's offered exhibits, in its Resolution dated December 18, 2018.[51]

Petitioner's *Memorandum (on the Issue of Prescription)* was submitted on January 30, 2019,[52] while respondent's *Memorandum* was filed on February 8, 2019.[53]

Noting that there were several other factual matters that were inexorably intertwined with the other issues of the parties that necessitate a full-blown trial, the Court, in its Resolution dated June 25, 2019,[54] held in abeyance the resolution on *Preferential Resolution of the Issue on Prescription,* and deemed it proper to resolve the same together with the other issues comprising the entirety of the case, and set the presentation of petitioner's evidence as regards deficiency assessments for DST, IAET, and compromise penalties, all for taxable year 2011, on August 20, 2019.

On July 22, 2019, petitioner posted a *Motion for Partial Reconsideration (Re: Resolution dated 25 June 2019),*[55] praying for the Court to partially reconsider its Resolution dated June 25, 2019, by allowing petitioner to also present evidence on the deficiency assessments for income tax, VAT, EWT, and interests for taxable year 2011. No comment was submitted by respondent on petitioner's *Motion for Partial Reconsideration.*[56] In the Resolution dated November 20, 2019,[57] the Court denied the same.

[45] Docket – Vol. 2, pp. 735 to 764.
[46] Docket – Vol. 2, pp. 834 to 836.
[47] Docket – Vol. 2, pp. 841 to 842.
[48] Exhibit "R-16", Docket – Vol. 2, pp. 536 to 549; Minutes of hearing held on, and Order dated, August 7, 2018, Docket – Vol. 2, pp. 849 to 850.
[49] Docket – Vol. 2, pp. 851 to 860.
[50] Docket – Vol. 2, pp. 862 to 865.
[51] Docket – Vol. 2, pp. 868 to 869.
[52] Docket – Vol. 2, pp. 878 to 899.
[53] Docket – Vol. 2, pp. 903 to 917.
[54] Docket – Vol. 2, pp. 925 to 930.
[55] Docket – Vol. 2, pp. 938 to 943.
[56] Records Verification dated September 26, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 948.
[57] Docket – Vol. 2, pp. 950 to 952.

During the hearing held on March 10, 2021, petitioner offered the testimonies of: (1) Atty. Juan R. Bernardino, Jr.,[58] in-house counsel of petitioner; and (2) Ms. Brigitte Y. Francisco Chan,[59] Corporate Secretary of petitioner.

Petitioner then filed, through electronic mail, its *Formal Offer of Documentary Evidence (On the Issue of Deficiency Documentary Stamp Tax, Improperly Accumulated Earnings Tax, Interests, and Compromise Penalties),* on May 20, 2020.[60] Respondent posted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on June 16, 2020.[61] In the Resolution dated August 26, 2020,[62] the Court admitted petitioner's offered evidence.

On March 17, 2021, respondent recalled to the witness stand its lone witness, RO Rosario Arriola.[63]

In the Resolution dated October 11, 2021,[64] the Court stated that during the hearing held on March 17, 2021, it granted respondent until March 29, 2021 to file his *Formal Offer of Evidence*, but it failed to do so. Thus, respondent's right to present his evidence was deemed waived, and both parties were given a period of thirty (30) days from notice to file their respective memoranda.

Respondent then filed an *Omnibus Motion (1. For Reconsideration Re: Resolution dated 11 October 2021; 2. To Admit Attached Formal Offer of Evidence; and 3. To Hold in Abeyance Submission of Memorandum)* filed on June 26, 2021.[65] Petitioner correspondingly filed its *Comment (Re: Omnibus Motion dated 25 November 2021)* on February 28, 2022.[66] In the Resolution dated April 19, 2022,[67] the Court: (i) granted respondent's *Omnibus Motion*; (ii) admitted the attached respondent's *Formal Offer of Evidence*; and (iii) gave petitioner a period of ten (10) days from notice to file its comment to respondent's *Formal Offer of Evidence.*

On May 20, 2022, petitioner filed its *Objections to Respondent's Formal Offer of Evidence (On the Issues of Documentary Stamp Tax, Improperly Accumulated Earnings*

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[58] Exhibit "P-40", Docket – Vol. 3, pp. 960 to 967; Minutes of hearing held on, and Order dated, March 10, 2020, Docket – Vol. 3, pp. 1020 to 1022.
[59] Exhibit "P-41", Docket – Vol. 3, pp. 1008 to 1012; Minutes of hearing held on, and Order dated, March 10, 2020, Docket – Vol. 3, pp. 1020 to 1022.
[60] Docket – Vol. 3, pp. 1025 to 1031.
[61] Docket – Vol. 3, pp. 1100 to 1101.
[62] Docket – Vol. 3, pp. 1105 to 1106.
[63] Exhibit "R-16", Docket – Vol. 2, pp. 536 to 549; Minutes of the hearing held on, and Order dated, March 17, 2021, Docket – Vol. 3, pp. 1114 to 1116.
[64] Docket – Vol. 3, pp. 1118 to 1119.
[65] Docket – Vol. 3, pp. 1120 to 1138.
[66] Docket – Vol. 3, pp. 1141 to 1148.
[67] Docket – Vol. 3, pp. 1157 to 1160.

Tax, Interests, Compromise Penalty).[68] In the Resolution dated July 21, 2022,[69] the Court admitted all of respondent's documentary evidence.

Thereafter, on September 12, 2022, respondent posted a *Manifestation,*[70] stating that he is adopting the arguments he raised in his *Answer* dated July 15, 2016 as his *Memorandum.*

On October 10, 2022, petitioner filed its *Memorandum.*[71]

The present case was submitted for decision on October 13, 2022.[72]

THE ISSUES

The parties failed to stipulate a common issue and submitted the following respective issues for the Court's resolution, to wit:

"**For the Petitioner:**

I

WHETHER RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR THE FOLLOWING TAXES FOR TAXABLE YEAR 2011 HAD ALREADY PRESCRIBED:

1. INCOME TAX;

2. VALUE-ADDED TAX; AND

3. EXPANDED WITHHOLDING TAX

II

WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY INCOME TAX IN THE AMOUNT OF P436,391,974.45 FOR TAXABLE YEAR 2011.

III

WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY VALUE-ADDED TAX IN THE AMOUNT OF P107,866,542.40 FOR TAXABLE YEAR 2011.

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[68] Docket – Vol. 3, pp, 1161 to 1166.
[69] Docket – Vol. 3, p. 1171.
[70] Docket – Vol. 3, pp. 1172 to 1174.
[71] Docket – Vol. 3, pp. 1179 to 1219.
[72] Order dated October 13, 2022, Docket – Vol. 3, p. 1220.

IV

WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY EXPANDED WITHHOLDING TAX IN THE AMOUNT OF P14,886,281.52 FOR TAXABLE YEAR 2011.

V

WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY DOCUMENTARY STAMP TAX IN THE AMOUNT OF P315,910.98 FOR TAXABLE YEAR 2011.

VI

WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY IMPROPERLY ACCUMULATED EARNINGS TAX IN THE AMOUNT OF P24,537,578.43 FOR TAXABLE YEAR 2011.

VII

WHETHER PETITIONER IS LIABLE FOR COMPROMISE PENALTIES ON THE DEFICIENCY TAX ASSESSMENTS UNDER THE FDDA.

VIII

WHETHER PETITIONER IS LIABLE FOR DEFICIENCY INTERESTS ON THE DEFICIENCY TAX ASESSMENTS UNDER THE FDDA.

For the Respondent:

WHETHER PETITIONER IS LIABLE TO PAY THE TOTAL AMOUNT OF P583,998,287.78 FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX (VAT) AND EXPANDED WITHHOLDING TAX (EWT), DOCUMENTARY STAMP TAX (DST) AND IMPROPERLY ACCUMULATED EARNINGS TAX (IAET) FOR TAXABLE YEAR 2011, AS WELL AS CORRESPONDING COMPROMISE PENALTIES, 25% SURCHARGE, 20% DEFICIENCY AND DELINQUENCY INTEREST PURSUANT TO SECTIONS 248 AND 249 OF THE NIRC OF 1997."[73]

[73] Issues, JSFI, Docket – Vol 2, pp. 660 to 662.

Petitioner's arguments:

Petitioner argues that respondent's failure to revalidate the LOA rendered the examination and assessment of petitioner a patent nullity; that respondent's right to assess petitioner of deficiency income, VAT, and EWT, for taxable year 2011, has already prescribed and is, therefore, void because respondent issued the FLD dated July 22, 2015 beyond the three-year prescriptive period; that petitioner is not liable to pay the deficiency DST in the amount of ₱315,910.98 for taxable year 2011 considering that respondent's assessment has no factual and legal bases; that petitioner is not liable for the alleged deficiency IAET in the amount of ₱24,537,578.43 for taxable year 2011, because petitioner's remaining appropriated retained earnings stated in its Audited Financial Statements for 2011 was not in excess of its capital stock; that respondent erroneously assessed compromise penalties on the alleged deficiency income tax, VAT, EWT, DST, and IAET, for taxable year 2011; and that respondent illegally assessed deficiency interests on the alleged deficiency income tax, VAT, EWT, DST, and IAET, for taxable year 2011.

Respondent's counter-arguments:

Respondent contends that the right of respondent to assess petitioner for taxable year 2011 did not prescribe, as there was a *Waiver of the Defense of Prescription* executed by petitioner's authorized representative, which extended the period of assessment until December 31, 2015; that the assessed deficiency withholding tax as a penalty to petitioner does not fall within the ambit of the period of limitation provided in Section 203 of the Tax Code, as amended; that petitioner is estopped from assailing the validity of the waiver it executed; that the assessments have bases both in fact and in law; and that petitioner is liable for deficiency income tax, VAT, EWT, and IAET, as well as the corresponding compromise penalties, surcharge and interests, for taxable year 2011.

THE COURT'S RULING

The present *Petition for Review* has merit.

The subject LOA need not be revalidated.

Petitioner argues that respondent's failure to revalidate the LOA rendered the examination and assessment of petitioner a patent nullity.

We disagree with petitioner.

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[74] the Supreme Court held as follows:

> "Without revalidation, the LOA shall be considered void and the assigned revenue officer is 'prohibited from *further* investigation and contact with the taxpayer.' The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit*. It contemplates a *served LOA* and *an on-going audit investigation*. Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.
>
> Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days.
>
> That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.
>
> In any case, AGIC does not even allege facts showing that the assigned revenue officers continued with their audit investigation beyond the first 120 days after issuance/service of the LOA. Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first seeking the requisite revalidation.
>
> **Furthermore, <u>even if the Court assumes that the BIR illegally extended their investigation</u>, AGIC could have also resisted further investigation as early as the 121st day after the LOA's issuance/service if it truly believed that the assigned revenue officers no longer possessed the requisite authority. <u>That it kept silent about the supposed violation and complained only when it was already found liable for deficiency taxes, once again, only show that it acquiesced to the BIR's extended audit, if any</u>.**
>
> **Based on the foregoing, absent any showing that the failure to revalidate resulted in a violation of AGIC's right to**

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[74] G.R. No. 222133, November 4, 2020.

> **due process, the Court upholds the subject LOA's validity."** *(Emphasis and underscoring added)*

Thus, on the basis of the foregoing jurisprudential pronouncements, even granting that the BIR illegally extended their investigation of petitioner, it is noteworthy that the latter did not resist the further investigation despite the lapse of the 120-day period from the issuance of the subject LOA. To be sure, petitioner acquiesced to the BIR's extended audit, as it kept silent about the supposed violation and complained only at this stage of the proceedings.

Furthermore, there is no showing that the failure to revalidate the subject LOA resulted in petitioner's right to due process, and thus, the same is upheld.

Be that as it may, it must be pointed out that Revenue Memorandum Circular (RMC) No. 23-2009 dated April 16, 2009[75] categorically states that failure on the part of the concerned RO to request for revalidation of an LOA or upon the expiration of the *"revalidation period"* does not nullify the same, nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. The said issuance states, in part, as follows:

> **"I. Revalidation of LAs**
>
> The revalidation of LA[76] shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. **Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.** However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary." *(Emphasis added)*

After one (1) year from the issuance of RMC No. 23-2009, respondent issued Revenue Memorandum Order (RMO) No. 44-2010 dated May 12,

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[75] SUBJECT: Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division.
[76] That is, an LOA or a Letter of Authority.

2010,[77] whereby respondent declares that there is no need for revalidation of the LOA beginning June 1, 2010, to wit:

> "xxx xxx xxx
>
> 8. **Beginning June 1, 2010**, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, **there is no need for revalidation of the LA even if the prescribed audit period has been exceeded**. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.
>
> xxx xxx xxx
>
> V. REPEALING CLAUSE
>
> **The provisions of existing issuance that are inconsistent herewith are hereby repealed, amended, or modified**." *(Emphasis supplied)*

On the basis thereof, it is clear that the revalidation of LOAs which should be done "for failure of the revenue officials to complete the audit within the prescribed period", has been withdrawn beginning on June 1, 2010. The effect of such failure is merely to subject the concerned RO(s) to applicable administrative sanctions, and not to render null the issued LOA. More significantly, the lapse of the said period of audit would not have the effect of revoking the authority given to the concerned RO(s).

Thus, considering that LOA No. 116-2013-00000095 was issued on April 1, 2013,[78] the above-quoted provisions of RMO No. 044-2010 must already govern the present case, as the same was already in full effect at the time of the issuance of the said LOA. Correspondingly, the lack of revalidation of the subject LOA, despite the lapse of the 120-day period, does not nullify the same.

Contrary to respondent's stance, withholding tax assessments are covered under Section 203 of the NIRC of 1997.

Respondent posits that the period of limitation upon assessment provided in Section 203 of the NIRC of 1997 finds no application to withholding taxes.

[77] SUBJECT: Electronic Issuance of Letters of Authority.
[78] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 658; Exhibit "R-1", BIR Records – Folder 1, p.1.

The Court disagrees.

Section 203 of the NIRC of 1997 reads 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-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." *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that except as provided in Section 222 of the NIRC of 1997, internal revenue taxes must be assessed within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[79] As a corollary, an assessment notice issued after the three-year prescriptive period is not valid and effective.[80]

In *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* (the "*La Flor* case"),[81] the Supreme Court said:

> "The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.
>
> xxx xxx xxx
>
> ...**withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself**

[79] Refer to *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[80] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.
[81] G.R. No. 211289, January 14, 2019.

> **recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes.** For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code.
>
> In addition, Section 247(b) of the NIRC provides:
>
> > SEC. 247. *General Provisions.* –
> >
> > x x x x
> >
> > (b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.
>
> On the other hand, Section 251 of the Tax Code reads:
>
> > SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* – Any person required to withhold, account for and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.
>
> **Based on the above-cited provisions, it is clear to see that the 'penalties' are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. Thus, <u>it was wrong for the CIR to restrict the EWT and WTC assessments against La Flor as only for the purpose of imposing penalties and not for the collection of internal revenue taxes</u>.**" *(Emphases and underscoring added)*

Thus, on the basis of the foregoing ruling of the High Court, withholding tax assessments are also within the purview of deficiency internal revenue taxes and thus, are also subject to the period of limitation of three (3) years under the aforequoted Section 203 of the NIRC of 1997. Correspondingly, in Our determination whether the subject tax assessments have prescribed, the assessment for EWT shall be included. N

The subject Waiver did not validly extend the three (3)-year prescriptive period to assess petitioner.

Respondent maintains that the subject *Waiver* executed by petitioner's duly authorized representative is valid and binding upon petitioner.

The Court is not persuaded.

By way of an exception, under Section 222 of the NIRC of 1997, there are instances when the government may assess pertinent taxes against taxpayers even beyond the said three (3)-year prescriptive period. Said provision reads as follows:

> "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.
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx." *(Emphasis added)*

Based on Section 222(a), in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission.

Moreover, under the Section 222(b), the three-year prescriptive period under Section 203 of the NIRC of 1997 may be extended, if before the expiration thereof, both respondent and the taxpayer have agreed in writing to its assessment. Thereafter, the pertinent tax may be assessed within the period agreed upon.

Indeed, a *Waiver of the Defense of Prescription* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[82] However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[83] The *Waiver* must faithfully comply with the provisions of RMO No. 20-90[84] and Revenue Delegation Authority Order No. 05-01[85] in order to be valid and binding.[86]

Relative to the validity of *Waivers*, in the *La Flor* case, the Supreme Court further held the following, to wit:

> "The CIR further argues that even if Section 203 of the NIRC was applicable, the assessments against La Flor had yet to prescribe. It points out that La Flor had executed three Waivers to extend the statutory prescriptive period. The CIR insists that the Waivers should have been considered even if they were not offered in evidence because the CTA is not strictly governed by technical rules of evidence. It adds that the requirements under RMO No. 20-90 are not mandatory.
>
> In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[87] the Court had ruled that **waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and <u>must indicate the nature and amount of the tax due</u>**, to wit:
>
>> **<u>These requirements are mandatory and must strictly be followed</u>.** To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
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>> x x x x
>>
>> **The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because:** (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was

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[82] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[83] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, 634 Phil. 314 (2010).
[84] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, April 4, 1990.
[85] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, August 2, 2001.
[86] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.
[87] G.R. No. 220835, July 26, 2017.

not shown; (3) **they did not specify the kind and amount of the tax due**; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

x x x x

3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)

In the present case, <u>the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers</u> <u>failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected</u>. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — **the assessments had prescribed as there was no valid waiver.**" *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is required, *inter alia*, that a *Waiver*, to be valid and would have the effect of extending the three (3)-year prescriptive period to assess under Section 203 of the NIRC of 1997, **must indicate the nature and the amount of the tax due.** According to the High Court, these details are material as there can be no true and valid agreement between the taxpayer and respondent absent these information.

Just as in the *La Flor* case, the subject *Waiver* would readily reveal that the same does not indicate the kind and exact amount of the taxes to be assessed or collected.[88] Thus, on the basis of the aforequoted jurisprudence, the said *Waiver* is invalid. Correspondingly, the same did not effectively extend the three (3)-year prescriptive period under Section 203 of the NIRC of 1997 on account of its invalidity.

Finding the invalidity of the subject *Waiver*, this Court shall proceed to determine the pertinent three (3)-year prescriptive period to assess the subject deficiency taxes against petitioner under Section 203 of the NIRC of 1997. Specifically, the Court shall refer to the specific provisions of the law or regulations prescribing the period within which to file the pertinent tax returns vis-à-vis the date of filing of the said tax returns by petitioner, to adjudge the commencement and end of the three (3)-year prescriptive period under Section 203 of the NIRC of 1997 for the present case.

Pursuant to Section 77(B) of the NIRC of 1997, the filing of corporate income tax final adjustment return shall be on or before the 15th day of April, or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be, to wit:

> "(B) *Time of Filing the Income Tax Return.* — The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may."

Accordingly, petitioner's final adjustment return for taxable year 2011, must have been filed on or before April 15, 2012.

With respect to the filing of VAT, Section 114(A) of the NIRC of 1997, as amended, and as implemented by Section 4.114-1 of RR No. 16-2005[89], provides that every person liable to pay VAT shall file a return of its quarterly gross sales or receipts within twenty five (25) days following the close of the taxable quarter. Said Section 114(A) provides:

> "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**

[88] Exhibit "R-5", BIR Records – Folder 1, p. 20.
[89] SUBJECT: Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

> **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 added)*

Moreover, Section 4.114-1 of RR No. 16-2005 states:

> "SECTION 4.114-1. *Filing of Return and Payment of VAT.* —
>
> (A) Filing of Return. — **Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return.** The term 'taxable quarter' shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e., the calendar quarter or fiscal quarter).
>
> Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter."

Based on the foregoing provisions, petitioner's Quarterly VAT Returns for the four (4) quarters of taxable year 2011 should have been filed on or before: (1) April 25, 2011, for the 1st quarter; (2) July 25, 2011, for the 2nd quarter; (3) October 25, 2011, for the 3rd quarter; and (4) January 25, 2012, for the 4th quarter.

With regard to the filing of remittances of EWTs, Section 7 of RR No. 9-2001 dated August 3, 2001[90], as amended by RR No. 26-2002 dated December 5, 2002[91], provides that the EWT returns for Group C shall be filed and the tax due thereon shall be paid within thirteen (13) days after the end of each month:

> "Section 7. TIME OF FILING OF RETURN. — For purposes of filing returns under the EFPS, the taxpayers classified under the following business industries shall be required to file the Monthly Withholding Tax Returns, except withholding of Value-Added Tax; Monthly VAT Declarations; and Monthly Percentage

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[90] SUBJECT: Electronic Filing of Tax Returns and Payment of Taxes.
[91] SUBJECT: Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification

Tax Returns, on or before the dates prescribed and presented herein-below:

x x x x

Business Industry	*Monthly Withholding Tax Returns Except Withholding Of Value Added Tax*	x x x
x x x x Group C Retail Sale Wholesale Trade and Commission Trade Sale, Maintenance, Repair of Motor Vehicle, Sale of Automotive Fuel Collection, Purification and Distribution of Water Computer and Related Activities Real Estate Activities	 • Thirteen (13) days following end of the month.	 x x x

Thus, petitioner's withholding tax remittance returns for the twelve (12) months of taxable year 2011 should be filed within thirteen (13) days after the end of each month.

As regards the filing of the DST returns, Section 200(B) of the NIRC of 1997 provides:

> "SEC. 200. *Payment of Documentary Stamp Tax.* –
>
> xxx xxx xxx
>
> (B) *Time for Filing and Payment of the Tax.* – **Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner,** the tax return prescribed in this Section shall be filed within the ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed." *(Emphasis added)*

Such being the case, it must be shown that the pertinent DST Return was filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred.

Finally, for the IAET, Section 6 of RR No. 02-2001 dated February 12, 2011[92] states:

> "SECTION 6. *Period for Payment of Dividend/Payment of IAET.* – The dividends must be declared and paid or issued not later than one year following the close of the taxable year, otherwise, **the IAET, if any, should be paid within fifteen (15) days thereafter.**" *(Emphasis added)*

Such being the case, it must be shown that the pertinent IAET Return (BIR Form No. 1704) was filed within fifteen (15) days after the close of taxable year 2011.

Applying the foregoing, as per petitioner's tax returns, the last day for filing of petitioner's tax returns, the date of actual filing of the same and the end of the three (3)-year prescriptive period for respondent to assess petitioner, are shown as follows:

Kind of Tax & Period	Last Day for Filing (month/day/year)	Actual Date of Filing (month/day/year)	End of the three (3) years (month/day/year)
Income tax			
Income Tax for 2011	April 15, 2012	April 12, 2012[93]	April 15, 2015
VAT			
VAT – 1st Quarter 2011	April 25, 2011	April 20, 2011[94]	April 25, 2014
VAT – 2nd Quarter 2011	July 25, 2011	July 22, 2011[95]	July 25, 2014
VAT – 3rd Quarter 2011	October 25, 2011	October 24, 2011[96]	October 25, 2014
VAT – 4th Quarter 2011	January 25, 2012	January 25, 2012[97]	January 25, 2015
EWT			
EWT – January 2011	February 13, 2011	February 12, 2011[98]	February 13, 2014
EWT – February 2011	March 13, 2011	March 11, 2011[99]	March 13, 2014
EWT – March 2011	April 13, 2011	April 13, 2011[100]	April 13, 2014
EWT – April 2011	May 13, 2011	May 12, 2011[101]	May 13, 2014
EWT – May 2011	June 13, 2011	June 10, 2011[102]	June 13, 2014
EWT – June 2011	July 13, 2011	July 12, 2011[103]	July 13, 2014
EWT – July 2011	August 13, 2011	August 12, 2011[104]	August 13, 2014

[92] SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.
[93] Exhibits "P-8" to "P-8-A", Docket – Vol. 2, pp. 765 to 768; Exhibit "P-8-D", Docket – Vol. 2, pp. 771 to 773.
[94] Exhibit "P-9", Docket – Vol. 2, pp. 776 to 781.
[95] Exhibit "P-10", Docket – Vol. 2, pp. 782 to 788.
[96] Exhibit "P-11", Docket – Vol. 2, pp. 789 to 794.
[97] Exhibit "P-12", Docket – Vol. 2, pp. 795 to 801.
[98] Exhibit "P-13", Docket – Vol. 2, pp. 802 to 803.
[99] Exhibit "P-14", Docket – Vol. 2, pp. 804 to 805.
[100] Exhibit "P-15", Docket – Vol. 2, pp. 806 to 807.
[101] Exhibit "P-16", Docket – Vol. 2, pp. 808 to 809.
[102] Exhibit "P-17", Docket – Vol. 2, pp. 810 to 811.
[103] Exhibit "P-18", Docket – Vol. 2, pp. 812 to 813.
[104] Exhibit "P-19", Docket – Vol. 2, pp. 814 to 815.

EWT – August 2011	September 13, 2011	September 12, 2011[105]	September 13, 2014
EWT – September 2011	October 13, 2011	October 12, 2011[106]	October 13, 2014
EWT – October 2011	November 13, 2011	November 11, 2011[107]	November 13, 2014
EWT – November 2011	December 13, 2011	December 13, 2011[108]	December 13, 2014
EWT – December 2011	January 13, 2012	January 13, 2012[109]	January 13, 2015
DST			
DST for 2011	(No DST return was filed for the subject lease)		
IAET			
IAET for 2011	(No IAET return was filed)		

In this case, the FLD and *Audit Results/Assessment Notices* were received by petitioner only on July 22, 2015.[110] Thus, in view of the end of the respective three (3)-year prescriptive period as shown above, there is no doubt that the FLD and *Audit Results/Assessment Notices* were issued beyond the said prescriptive period to assess under Section 203 of the NIRC of 1997, thereby rendering the assessments for deficiency income tax, VAT and EWT against petitioner void.[111] Consequently, the FDDA,[112] which sprung from the void FLD and *Audit Results/Assessment Notices*, anent the assessments for deficiency income tax, VAT and EWT, should be set aside.

As regards the DST and IAET assessments, considering that petitioner did not file a tax return, the ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997 applies. However, this Court finds a ground to declare the subject tax assessments, in their entirety, as a nullity.

The subject FLD and FDDA are void for failure to state due date for the payment of petitioner's tax liabilities.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (hereinafter referred to as the "*Fitness By Design* case"),[113] the Supreme Court ruled as follows:

> "**The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the

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[105] Exhibit "P-20", Docket – Vol. 2, pp. 816 to 817.
[106] Exhibit "P-21", Docket – Vol. 2, pp. 818 to 819.
[107] Exhibit "P-22", Docket – Vol. 2, pp. 820 to 821.
[108] Exhibit "P-23", Docket – Vol. 2, pp. 822 to 823.
[109] Exhibit "P-8-A", Docket – Vol. 2, pp. 824 to 827.
[110] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659; Exhibits "P-3" and "R-10", BIR Records – Folder 9, pp. 617 to 627; Exhibits "R-11" to "R-11-d", BIR Records – Folder 9, pp. 612 to 616.
[111] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[112] Par. 9, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659; Exhibits "P-7" and "R-13", BIR Records – Folder 9, pp. 791 to 807.
[113] G.R. No. 215957, November 9, 2016.

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.'

The disputed Final Assessment Notice is not a valid assessment.

xxx xxx xxx

Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice. (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

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>.**

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

A careful scrutiny of the subject FLD[114] and FDDA[115], respectively, reveals that just as in the *Fitness by Design* case, there are no due dates indicated therein.

The FLD states that:

> "***Please note that the amount of deficiency tax assessments is inclusive of interests and penalties and will be adjusted if not paid on the prescribed dates.***"

On the other hand, the FDDA merely indicates:

> "***Please note that the amount of deficiency tax assessments is inclusive of interests and penalties and will be adjusted if not paid on the***"

However, both of these documents did not indicate the prescribed dates for the payment of the assessments.

Correspondingly, following the ruling in the *Fitness by Design* case, the inevitable conclusion is that the subject tax assessments are void, since the subject FLD and FDDA hardly fall under the jurisprudential definition of a tax assessment under the NIRC, considering that they lack *"a due tax liability that is there definitely set and fixed."* They do not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. Clearly, the subject tax assessments are void, and thus, bear no valid fruit.[116]

Petitioner is not liable to pay the subject compromise penalties.

Since the subject tax assessments are void, petitioner cannot be held liable for the same, including the imposed compromise penalties in the total amount of ₱216,000.00. Nevertheless, it must be stressed that a compromise is,

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[114] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659; Exhibits "P-3" and "R-10", BIR Records – Folder 9, pp. 617 to 627; Exhibits "R-11" to "R-11-d", BIR Records – Folder 9, pp. 612 to 616.
[115] Par. 9, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 659; Exhibits "P-7" and "R-13", BIR Records – Folder 9, pp. 791 to 807.
[116] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018, G.R. No.197945 citing *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

by its nature, mutual in essence.[117] It implies agreement. One party cannot impose it upon the other.[118] 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.[119] Considering that there is no indication that petitioner consented to the subject compromise penalties, the said total amount cannot likewise be sustained.

In view of the foregoing findings, it is no longer necessary to address the other issues and arguments respectively raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. The FLD dated July 22, 2015, and the FDDA dated March 1, 2016, both issued against petitioner, for deficiency income, VAT, EWT, DST, and IAET, and deficiency interests and penalties, in the aggregate amount of ₱583,998,287.78, for taxable year 2011, are **CANCELLED and SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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117 Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
118 *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
119 Refer to Part III.4, Revenue Memorandum Order No. 7-2015.

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.

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