REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

AYALA LAND INTERNATIONAL SALES, INC., Petitioner,	CTA CASE NO. 9262
	Members:
	FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	SEP 28 2018 2:41 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1], petitioner Ayala Land International Sales, Inc. prays for the cancellation of the Final Decision on Disputed Assessment (FDDA) dated January 18, 2016, finding it liable for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and documentary stamp tax (DST), including surcharge, interest and compromise penalty, in the aggregate amount of ₱29,226,987.73 for calendar year (CY) 2009.

Petitioner Ayala Land International Sales, Inc. is a domestic corporation, with office address at 3rd Floor, Makati Stock Exchange Building, Ayala Avenue, Makati City.[2] It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 237-523-160-000 and

[1] Docket, vol. 1, pp. 10-34.
[2] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 2, p. 722.

Certificate of Registration No. OCN 8RC0000059755 issued on April 18, 2005.[3]

Petitioner is primarily in the business of selling and marketing real estate products including, but not limited to land, buildings, condominium units, townhouses, apartments, house and lot packages and all other forms of real estate products which are owned and/or developed by its Parent Company, subsidiaries and affiliates within and outside the Philippines.[4]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with the authority to decide on disputed assessments, among others, under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return, Quarterly VAT Returns, EWT Returns, WTC Returns, and DST Return for CY 2009, on the following dates:

Annual Income Tax Return	**Filing Date**
CY 2009	April 14, 2010[5]

Quarterly VAT Return	**Filing Date**
First Quarter of CY 2009	April 20, 2009[6]
Second Quarter of CY 2009	July 24, 2009[7]
Third Quarter of CY 2009	October 21, 2009[8]
Fourth Quarter of CY 2009	January 22, 2010[9]

EWT	**Filing Date**
January 2009	February 16, 2009[10]
February 2009	March 10, 2009[11]
March 2009	April 13, 2009[12]

[3] Exhibit "P-1", docket, vol. 3, p. 1215.
[4] Exhibit "P-13", docket, vol. 2, p. 779.
[5] Exhibit "P-7", docket, vol. 3, pp. 1218-1220.
[6] Exhibit "P-6-A", docket, vol. 2, pp. 647-648.
[7] Exhibit "P-6-B", docket, vol. 2, pp. 649-650.
[8] Exhibit "P-6-C", docket, vol. 2, p. 651.
[9] Exhibit "P-6-D", docket, vol. 3, pp. 1216-1217.
[10] Exhibit "P-8-A", docket, vol. 2, pp. 664-665.
[11] Exhibit "P-8-B", docket, vol. 2, pp. 666-667.

April 2009	May 11, 2009[13]
May 2009	June 10, 2009[14]
June 2009	July 10, 2009[15]
July 2009	August 10, 2009[16]
August 2009	September 10, 2009[17]
September 2009	October 12, 2009[18]
October 2009	November 10, 2009[19]
November 2009	December 10, 2009[20]
December 2009	January 15, 2010[21]

WTC	**Filing Date**
January 2009	February 16, 2009[22]
February 2009	March 10, 2009[23]
March 2009	April 13, 2009[24]
April 2009	May 11, 2009[25]
May 2009	June 10, 2009[26]
June 2009	July 10, 2009[27]
July 2009	August 10, 2009[28]
August 2009	September 10, 2009[29]
September 2009	October 12, 2009[30]
October 2009	November 10, 2009[31]
November 2009	December 10, 2009[32]
December 2009	January 20, 2010[33]

DST	**Filing Date**
June 10, 2009	July 6, 2009[34]

On May 24, 2010, petitioner received Letter of Authority (LOA) No. 126-2010-00000013[35] dated May 14,

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[12] Exhibit "P-8-C", docket, vol. 2, pp. 668-670.
[13] Exhibit "P-8-D", docket, vol. 2, pp. 671-672.
[14] Exhibit "P-8-E", docket, vol. 2, pp. 673-674.
[15] Exhibit "P-8-F", docket, vol. 2, pp. 675-676.
[16] Exhibit "P-8-G", docket, vol. 2, pp. 677-678.
[17] Exhibit "P-8-H", docket, vol. 2, pp. 679-680.
[18] Exhibit "P-8-I", docket, vol. 2, pp. 681-682.
[19] Exhibit "P-8-J", docket, vol. 2, pp. 683-684.
[20] Exhibit "P-8-K", docket, vol. 2, pp. 685-686.
[21] Exhibit "P-8-L", docket, vol. 2, pp. 687-688.
[22] Exhibit "P-9-A", docket, vol. 2, pp. 689-690.
[23] Exhibit "P-9-B", docket, vol. 2, pp. 691-692.
[24] Exhibit "P-9-C", docket, vol. 2, pp. 693-694.
[25] Exhibit "P-9-D", docket, vol. 2, p. 695.
[26] Exhibit "P-9-E", docket, vol. 2, pp. 696-697.
[27] Exhibit "P-9-F", docket, vol. 2, pp. 699-700.
[28] Exhibit "P-9-G", docket, vol. 2, pp. 701-702.
[29] Exhibit "P-9-H", docket, vol. 2, pp. 703-704.
[30] Exhibit "P-9-I", docket, vol. 2, pp. 705-706.
[31] Exhibit "P-9-J", docket, vol. 2, pp. 707-708.
[32] Exhibit "P-9-K", docket, vol. 2, pp. 709-710.
[33] Exhibit "P-9-L", docket, vol. 3, pp. 1221-1222.
[34] Exhibit "P-10", docket, vol. 3, pp. 1223-1224.
[35] Exhibit "R-1", BIR Records, p. 1.

2010, authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for CY 2009.[36]

Five (5) Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code were executed to extend respondent's period to assess and collect petitioner's alleged deficiency taxes for CY 2009, as follows:

Date of Waivers	**Period extended**	**Person who signed the Waivers**
February 6, 2012[37]	Until September 30, 2012	Ma. Teresa R. Famy
July 25, 2012[38]	Until December 31, 2012	Ma. Teresa R. Famy
October 18, 2012[39]	Until June 30, 2013	Ma. Teresa R. Famy
April 22, 2013[40]	Until December 31, 2013	Ma. Teresa R. Famy
August 12, 2013[41]	Until June 30, 2014	Ma. Teresa R. Famy

On March 3, 2014, petitioner received from the BIR a Preliminary Assessment Notice (PAN) dated December 26, 2013 covering CY 2009[42], to which petitioner filed a Protest of even date on March 18, 2014.[43]

The PAN was followed by a Formal Letter of Demand (FLD) dated March 24, 2014, with Details of Discrepancies and Assessment Notices[44], received on April 15, 2014, assessing petitioner for deficiency IT, VAT, EWT, WTC, and DST, including surcharge, interests and compromise penalty

[36] Par. 5, Admitted Facts, JSFI, docket, vol. 2, p. 722.
[37] Par. 6, Admitted Facts, JSFI, docket, vol. 2, p. 722; Exhibit "R-5", BIR Records, p. 413.
[38] Par. 7, Admitted Facts, JSFI, docket, vol. 2, p. 722; Exhibit "R-6", BIR Records, p. 414.
[39] Exhibit "R-7", BIR Records, p. 415.
[40] Exhibit "R-8", BIR Records, p. 416.
[41] Exhibit "R-9", BIR Records, p. 417.
[42] Par. 8, Admitted Facts, JSFI, docket, vol. 2, p. 722.
[43] Par. 2, Stipulated Facts, JSFI, docket, vol. 2, p. 722.
[44] Exhibit "P-2", docket, vol. 2, pp. 520-537.

for CY 2009.[45] Again, petitioner protested the said FLD on May 15, 2014.[46]

On January 18, 2016, petitioner received the assailed FDDA[47] of even date, finding it liable for deficiency IT, VAT, EWT, WTC, and DST, inclusive of penalties and interest, in the aggregate amount of ₱29,226,987.73 for CY 2009.

On February 17, 2016, petitioner filed the instant Petition for Review with this Court.

In his Answer[48], respondent contends that the FLD and the FAN received by petitioner on April 15, 2014 were seasonably issued pursuant to Sections 203 and 222 of the NIRC, as amended, as his period to assess was extended until June 30, 2014 by virtue of the five (5) Waivers of the defense of prescription executed by the parties. Petitioner's contention that the third Waiver was defective, thus, it did not validly extend his period to assess is not borne out by the record of the case.

Further, the imposition for withholding tax against petitioner is not an assessment of internal revenue taxes but an imposition of penalty for its failure to withhold tax from payments made to its supplier. Being in the nature of a penalty, the 3-year prescriptive period to assess under Section 203 does not apply.

Moreover, the assessments issued against petitioner have factual and legal bases and not based on presumption. The unaccounted discrepancy in petitioner's books was properly treated as undeclared income subject to income tax, pursuant to the authority of respondent to assess tax based on the best evidence available as provided under Section 6 of the NIRC, as amended. The Details of

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[45] Pars. 2 and 9, Admitted Facts, JSFI, docket, vol. 2, pp. 721-722.
[46] Par. 3, Admitted Facts, JSFI, docket, vol. 2, p. 721; Exhibits "P-3" and "P-3-A", docket, vol. 2, pp. 538-559.
[47] Exhibit "P-4", docket, vol. 2, pp. 628-642.
[48] Docket, vol. 1, pp. 170-192.

Discrepancy in the FDDA contained the basis of the assailed assessment which petitioner failed to refute.

The expenses for donation, representation, and entertainment as deduction were also properly disallowed as these exceed the threshold provided in Section 34 of the NIRC, as amended. The disallowances for non-withholding of tax as deductions were also proper for petitioner's inability to prove that the tax withheld has been paid and remitted to the BIR pursuant to Section 34(K) of the NIRC, as amended. Certain CWT were likewise correctly disallowed as they were not within TY 2009.

As for VAT, since there was unaccounted discrepancy in petitioner's books treated as undeclared income subject to income tax, the same undeclared income is as well subject to VAT. The assessment for VAT is likewise based on the best evidence available laid under Section 6 of the NIRC, as amended, and fully expounded in the Details of Discrepancy in the FDDA issued against petitioner.

The assessment for EWT is based on the discrepancies between expenses/assets declared per Trial Balance against balances declared in the Alphabetical list of income payments subject to EWT. The failure of petitioner to present specific/itemized refutation on this aspect of the assessment means that the position of respondent on the matter stands. For WTC, the tax liability is due to the disparity in the total amount required to be withheld on salaries and bonuses subject to withholding tax as required under Sections 79(A) and 80(A) of the NIRC, as amended, as compared against the total amount remitted per petitioner's return.

The DST is imposed on petitioner's none interest-bearing advances from affiliates deemed as loan and lease agreements per Section 173 of the NIRC, as amended. For respondent, the said transactions are not exempt from DST, contrary to petitioner's stance.

The assessment in its entirety is presumed correct and made in good faith and it is incumbent on the taxpayer to prove otherwise.

Trial ensued after the Pre-Trial Conference was terminated[49] on September 1, 2016.

Petitioner presented as its witnesses Sheryll Anne Magnaye and the Court-commissioned Independent Certified Public Accountant (ICPA), Katherine O. Constantino[50].

Witness **Sheryll Anne C. Magnaye** testified[51] as part of her duties as petitioner's Finance Manager since January 1, 2016, she oversees the overall accounting and financial transactions of petitioner, including compliance with the reportorial requirements by pertinent government agencies. Although the present petition involves some transactions and documents prior to her being petitioner's Finance Manager, she is nonetheless aware of them being the custodian of the said documents. Precisely, she knows that for the year 2009, petitioner filed VAT Returns for the 1st to 4th quarters, Annual Income Tax Return, Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded), Monthly Remittance Returns of Income Taxes Withheld on Compensation, and Documentary Stamp Tax Return for the period June 10, 2009.

Petitioner and respondent executed four (4) Waivers of the defense of prescription on February 6, 2012, July 25, 2012, October 25, 2012, and August 12, 2013. She received from the BIR copies of the four (4) Waivers after they were accepted and signed by the BIR signatory.

Subsequently, petitioner received an FLD dated March 24, 2014 assessing it for deficiency taxes for TY 2009. Petitioner protested the FLD on May 15, 2014, resulting in the issuance of the FDDA, which petitioner received on

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[49] Docket, vol. 2, pp. 728-734.
[50] Minutes of the hearing dated January 30, 2017, docket, vol. 3, p. 1173.
[51] Judicial Affidavit dated July 29, 2016, docket, vol. 2, pp. 503-518; for cross examination see TSN dated January 30, 2017, pp. 7-9.

January 18, 2016. To assail the FDDA, petitioner filed the instant Petition for Review on February 17, 2016.

The Court-commissioned **ICPA Katherine O. Constantino**[52] testified that she examined petitioner's original documents and records to determine the numerical accuracy of the deficiency assessment issued by the BIR against it. Her ICPA Report dated December 7, 2016 states that certain items in the assessment are erroneous since the bases used by respondent pertain to other years. In any event, there are items wherein petitioner is liable for deficiency taxes. There are some items which cannot be verified either due to respondents inability to specify the details of the bases for these items in the FLD/FDDA, or that petitioner failed to furnish her with sufficient documents to disprove these items in the assessment.

Petitioner rested after the Court admitted all the documents it formally offered[53] as indicated in the Resolution[54] dated April 24, 2017.

To prove his defense, respondent presented retired **Revenue Officer Elizabeth U. Cadiz** as his lone witness.[55]

She testified[56] that at the time of the subject audit and execution of her Judicial Affidavit, she was still with the Regular Taxpayers Audit Division III of the BIR. She was part of the team that audited/examined petitioner's account for TY 2009 pursuant to a Letter of Authority to determine whether it has any unpaid tax liabilities for the period. For this purpose, a Checklist of Requirements, a First Notice for the Presentation of Books of Accounts and Other Accounting Records, and the Final Notice dated July 23, 2010 were issued.

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[52] Judicial Affidavit dated January 20, 2017, docket, vol. 3, pp. 1129-1172; for cross examination see TSN dated January 30, 2017, pp. 16-19.
[53] Docket, vol. 3, pp. 1178-1214.
[54] Docket, vol. 3, pp. 1231-1232.
[55] Minutes of the hearing dated June 5, 2017, docket, vol. 3, p. 1236.
[56] Judicial Affidavit dated July 27, 2016, docket, vol. 1, pp. 229-241; for cross examination see TSN dated June 5, 2017, pp. 7-14.

Petitioner requested for time within which to submit the required accounting records and documents, thus, the execution of five (5) Waivers of the defense of prescription on different dates, specifically, on February 6, 2012, July 25, 2012, October 18, 2012, April 22, 2013, and August 12, 2013.

After submission of documents, a Notice of Informal Conference (NIC) dated November 12, 2013 was issued but petitioner failed to respond. Hence, upon their recommendation, via a Memorandum dated December 26, 2013, a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies was issued. Petitioner protested the PAN in a Letter filed on March 18, 2014.

Finding petitioner liable for deficiency taxes as assessed, respondent served upon petitioner a Formal Letter of Demand (FLD) dated March 24, 2014 with Details of Discrepancies, and Final Assessment Notices (FAN) on April 15, 2014. On May 15, 2014, petitioner protested the FLD.

Upon recommendation in the Memorandum dated November 27, 2015, an FDDA dated January 18, 2016 with Details of Discrepancies was issued and served to petitioner on even date.

A portion of the assessment stems from the fact that petitioner was categorized as a "large taxpayer" or among the top 20,000 corporations of the country as its name is in the BIR's "list" of large taxpayer corporations.

Respondent rested after all its formally offered exhibits[57] were admitted in the Resolution[58] dated September 11, 2017.

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[57] Docket, vol. 3, pp. 1238-1248.
[58] Docket, vol. 3, pp. 1262-1263.

STATEMENT OF THE ISSUE

The parties submit the following issue for resolution:

> Whether petitioner is liable to pay its assessed deficiency IT, VAT, EWT, WTC and DST for TY 2009, plus twenty-five percent (25%) surcharge, twenty percent (20%) deficiency and delinquency interests pursuant to Sections 248 and 249 of the NIRC of 1997, as amended.[59]

DISCUSSION/RULING

As in any assessment cases, the determination of the timeliness of the filing of the Petition for Review with this Court is paramount. In this regard, Section 228 of the NIRC of 1997, as amended, is instructive:

> 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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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

[59] Docket, vol. 2, p. 723.

> such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Evident from the above provision that petitioner had thirty (30) days from receipt of the FAN within which to file its administrative protest. It also had sixty (60) days from filing of the administrative protest to submit all relevant supporting documents. Thereafter, petitioner had another thirty (30) days from receipt of respondent's decision, or from the lapse of one hundred eighty (180)-day period from submission of documents within which to file a Petition for Review with the Court.

Evidence show that petitioner received the FLD dated March 24, 2014 with Details of Discrepancies and Assessment Notices on April 15, 2014. In fine, petitioner timely filed its protest on the last day of the 30-day prescriptive period on May 15, 2014.

Petitioner likewise seasonably filed its Petition for Review with the Court on February 17, 2016, the last day of the 30-day period to seek judicial intervention having received the FDDA, effectively denying its protest against the FLD, on January 18, 2016.

Going on the merits of the case, Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing of such return. The provision 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 (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.

Thus, the CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes.[60]

Below is the summary of the dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency taxes for CY 2009:

2009 Annual Income Tax Return			
Period	**Date Filed**	**Last Day to File Return**[61]	**Last Day to Assess**
CY 2009	April 14, 2010	April 15, 2010	April 15, 2013

2009 Quarterly VAT Returns			
Period Covered	**Date Filed**	**Last Day to File Return**[62]	**Last Day to Assess**
1st Quarter of 2009	April 20, 2009	April 25, 2009	April 25, 2012
2nd Quarter of 2009	July 24, 2009	July 25, 2009	July 25, 2012
3rd Quarter of 2009	October 21, 2009	October 25, 2009	October 25, 2012
4th Quarter of 2009	January 22, 2010	January 25, 2010	January 25, 2013

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[60] Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc., G.R. No. 202695, February 29, 2016.

[61] Pursuant to Section 77 of the NIRC of 1997, as amended, a corporate taxpayer shall file its Final Adjustment Return (Annual Income Tax Return) on or before the fifteenth (15th) day of April.

[62] Section 114(A) of the NIRC of 1997 requires that Quarterly VAT Returns should be filed within twenty-five (25) days following the close of each taxable quarter.

2009 EWT Returns			
Period	**Date Filed**	**Last Day to File Return**[63]	**Last Day to Assess**
January 2009	February 16, 2009	February 13, 2009	February 16, 2012
February 2009	March 10, 2009	March 13, 2009	March 13, 2012
March 2009	April 13, 2009	April 13, 2009	April 13, 2012
April 2009	May 11, 2009	May 13, 2009	May 14, 2012[64]
May 2009	June 10, 2009	June 13, 2009	June 13, 2012
June 2009	July 10, 2009	July 13, 2009	July 13, 2012
July 2009	August 10, 2009	August 13, 2009	August 13, 2012
August 2009	September 10, 2009	September 13, 2009	September 13, 2012
September 2009	October 12, 2009	October 13, 2009	October 15, 2012[65]
October 2009	November 10, 2009	November 13, 2009	November 13, 2012
November 2009	December 10, 2009	December 13, 2009	December 13, 2012
December 2009	January 15, 2010	January 13, 2010	January 15, 2013

2009 WTC Returns			
Period	**Date Filed**	**Last Day to File Return**[66]	**Last Day to Assess**
January 2009	February 16, 2009	February 13, 2009	February 16, 2012
February 2009	March 10, 2009	March 13, 2009	March 13, 2012
March 2009	April 13, 2009	April 13, 2009	April 13, 2012
April 2009	May 11, 2009	May 13, 2009	May 14, 2012[67]
May 2009	June 10, 2009	June 13, 2009	June 13, 2012
June 2009	July 10, 2009	July 13, 2009	July 13, 2012
July 2009	August 10, 2009	August 13, 2009	August 13, 2012
August 2009	September 10, 2009	September 13, 2009	September 13, 2012
September 2009	October 12, 2009	October 13, 2009	October 15, 2012[68]
October 2009	November 10, 2009	November 13, 2009	November 13, 2012
November 2009	December 10, 2009	December 13, 2009	December 13, 2012
December 2009	January 20, 2010	January 13, 2010	January 21, 2013[69]

[63] Pursuant to Revenue Regulations (RR) No. 26-02, return must be filed on or before the thirteenth (13th) day of the month following the month of withholding.
[64] May 13, 2012 fell on a Sunday.
[65] October 13, 2012 fell on a Saturday.
[66] Pursuant to Revenue Regulations (RR) No. 26-02, return must be filed on or before the thirteenth (13th) day of the month following the month of withholding.
[67] May 13, 2012 fell on a Sunday.
[68] October 13, 2012 fell on a Saturday.
[69] January 20, 2013 fell on a Sunday.

2009 DST Return			
Period	**Date Filed**	**Last Day to File Return**[70]	**Last Day to Assess**
June 10, 2009	July 6, 2009	July 5, 2009	July 6, 2012

The record indicates that respondent issued the FLD with Details of Discrepancies and Assessment Notices on March 24, 2014 and it was received by petitioner on April 15, 2014.

Indubitably, the FLD, with Details of Discrepancies and Assessment Notices dated March 24, 2014 and received by petitioner on April 15, 2014, was issued beyond the three-year prescriptive period to assess for TY 2009. Respondent however claims the contrary, invoking the five (5) Waivers executed by petitioner which allegedly extended his period to assess, as follows:

Date of Waivers	Period extended	Person who signed the Waivers	BIR official who accepted the Waivers	Date of Acceptance by BIR
February 6, 2012	Until September 30, 2012	Ma. Teresa R. Famy	OIC-Asst. Com. Alfredo V. Misajon	February 3, 2012
July 25, 2012	Until December 31, 2012	Ma. Teresa R. Famy	OIC-Asst. Com. Alfredo V. Misajon	August 2, 2012
October 18, 2012	Until June 30, 2013	Ma. Teresa R. Famy	OIC-Asst. Com. Alfredo V. Misajon	October 23, 2012
April 22, 2013	Until December 31, 2013	Ma. Teresa R. Famy	OIC-Asst. Com. Alfredo V. Misajon	May 6, 2013
August 12, 2013	Until June 30, 2014	Ma. Teresa R. Famy	OIC-Asst. Com. Alfredo V. Misajon	August 14, 2013

There is no question that under Section 203 of the NIRC, the prescriptive period to assess is three years. Section 222(b) of the same Code however provides for the

[70] Pursuant to Section 5 of RR No. 06-01, return must be filed within five (5) days after the close of the month when the taxable document was made, signed, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.

exception.[71] It states that the period to assess and collect deficiency taxes may be extended upon a written agreement between the CIR and the taxpayer prior to the expiration of the three (3)-year prescriptive period, thus:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx xxx xxx
>
> (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)*

In relation to the foregoing provision, Revenue Memorandum Order (RMO) No. 20-90[72], as amended by Revenue Delegation Authority Order (RDAO) No. 05-01[73], provides the road map for the execution of a valid Waiver, to wit:

> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase 'but not after ______ 19 ___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
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> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case

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[71] Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc., G.R. No. 213943, March 22, 2017.

[72] Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, April 4, 1990.

[73] Subject: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, August 2, 2001.

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.

3. The following revenue officials are authorized to sign the waiver.

xxx xxx xxx

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. **The foregoing procedures shall be strictly followed**. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with. *(Emphasis supplied)*

As indicated above, the procedure in the execution of a valid waiver must be strictly complied with.

Elucidating on the proper execution of a waiver, the Supreme Court ruled, thus:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ___ 19 _', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must 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. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. **The waiver should be duly notarized.**

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. 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.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement. [74]

Applying the foregoing tenet, the Court finds the first Waiver dated February 6, 2012 void as it was not notarized as expressly required under the cited authority. Perusal of the of said document reveals that neither the name of the person who appeared before the notary public nor the detail of his or her identity is indicated. This infirmity is highlighted by the fact that the subsequent four (4) Waivers dated July 25, 2012,[75] October 18, 2012,[76] April 22, 2013,[77]

[74] Commissioner of Internal Revenue vs. Standard Chartered Bank, G.R. No. 192173, July 29, 2015.
[75] BIR Record p. 414.
[76] BIR Record p. 415.
[77] BIR Record p. 416.

and August 12, 2013,[78] bear the name of Ma. Teresa R. Famy as the affiant with the relevant details.

Section 1 of Public Act No. 2103 provides that the acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state. It is obvious that the party acknowledging must likewise appear before the notary public or any other person authorized to take acknowledgments of instruments or documents. The clear requirements of law for a proper acknowledgment may not be dispensed with.[79]

As RMO No. 20-90, as amended provides, the procedures for the execution of a valid waiver of the defense of prescription as outlined in said issuance, shall be strictly followed. Following the rules, the Court *En Banc* invalidated a waiver for being defectively notarized, in the following manner:

> xxx It was also shown that in the acknowledgment of the notarized waiver *(BIR Records p. 118)*, there is nothing indicated to evidence who appeared before the notary public, as there was only a Community Tax Certificate Number presented, but the names were not mentioned therein. [80]

Since, the first Waiver is void, it did not extend the 3-year period to assess. There being no more period to extend, the following Waivers, i.e., the second to the fifth, are as well void. In fine, the FLD dated March 24, 2014 was

[78] BIR Record p. 417.
[79] Dela Rama and Dela Rama vs. Papa and Papa, G.R. No. 142309, January 30, 2009.
[80] Commissioner of Internal Revenue vs. Kudos Marketing Corporation, CTA EB No. 176 (CTA Case No. 7045), September 25, 2006.

issued beyond the 3-year prescriptive period provided under Section 203 of the NIRC, as amended.

The Supreme Court has ruled that RMO No. 20-90 must be strictly followed. x x a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal. xxx" [81]

As ruled by the Final Arbiter, the period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222(b) of the NIRC. x x x the (Supreme) Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012.[82]

Given the defect in the first Waiver, the period to assess or collect the alleged deficiency taxes for CY 2009 was never extended. Consequently, the FLD dated March 24, 2014, with Details of Discrepancies and Assessment Notices, and the FDDA dated January 18, 2016 should be cancelled for having been being issued beyond the 3-year prescriptive period mandated under Section 203 of the NIRC, as amended.

Even assuming that the first Waiver was properly notarized, still, the subject assessment would still be invalid as no evidence was presented to show any Board Resolution

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[81] Commissioner of Internal Revenue vs. FMF Development Corporation , G.R. No. 167765, June 30, 2008.

[82] Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated, G.R. No. 187589, December 3, 2014.

authorizing petitioner's representative to sign the five Waivers.

In a case, the Supreme Court declared the waivers executed by a taxpayer ineffective to extend the period to assess or collect taxes because (1) **the accountant who executed the waivers had no notarized written board authority to sign the waivers on behalf of respondent corporation**; (2) there was no date of acceptance indicated on the waivers; and (3) the fact of receipt by respondent of its file copy was not indicated in the original copies of the waivers. [83]

The essence of the strict compliance with RMO No. 20-90 and RDAO No. 05-01 was again illustrated by the Supreme Court when it did not hesitate to strike down a waiver as it was executed without the notarized written authority of the taxpayer's representative to sign it, thus:

> "In another case, the waivers executed by the taxpayer's accountant were found defective for the following reasons: (1) **the waivers were executed without the notarized written authority of the taxpayer's representative to sign the waiver on its behalf**; (2) the waivers failed to indicate the date of acceptance; and (3) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers." [84] (*Emphasis supplied*)

Time and again, this Court has emphasized that the waiver is not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension.[85] In other words, respondent cannot be passive and simply allow the taxpayer to control the process of the execution of the waivers. Thus, before signifying his

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[83] Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 5, 2010.
[84] Commissioner of Internal Revenue vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.
[85] Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated, G.R. No. 187589, December 3, 2014.

conformity, he must ensure that all the requisites for the proper execution of the waiver have been satisfied and submitted for he, who issued the pertinent administrative rules and regulation, bears the blame for any deficiency or infirmity of such waiver.

Indeed, the BIR cannot veer away from its responsibility and shift the blame to the taxpayer for the defective waivers which execution he also took part. The Court has ruled that respondent cannot take refuge behind the doctrine of estoppel to cloak his failure to comply with RMO 20-90 and RDAO 05-01 which he himself issued. Having caused the defects in the waivers, respondent must bear the consequences. He cannot simply shift the blame to the taxpayer[86], such as the petitioner in this case.

It cannot also be denied that the execution of a Waiver of Statute of Limitations may be beneficial to the taxpayer or to the BIR, or to both. Considering however, that it results to a derogation of some of the rights of the taxpayer, the same must be executed in accordance with pre-set guidelines and procedural requirements. Otherwise, it does not serve its purpose, and the taxpayer has all the right to invoke its nullity. For that reason, this Court cannot turn blind on the importance of the Statute of Limitations upon the assessment and collection of internal revenue taxes provided for under the NIRC. The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act properly in the making of the assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who may find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in

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[86] Commissioner of Internal Revenue vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.

a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.[87]

Finally, the principle of *in pari delicto* does not apply to this case. The doctrine of *in pari delicto* involving waivers of the defense of prescription has been defined by jurisprudence as follows:

> x x this Court recognized the doctrine of estoppel and upheld the waivers when both the taxpayer and the Bureau of Internal Revenue were *in pari delicto.* The taxpayer's act of impugning its waivers after benefitting from them was considered an act of bad faith x x x.
>
> Parenthetically, this Court stated that when both parties continued to deal with each other in spite of knowing and without rectifying the defects of the waivers, their situation is "dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities."[88]

Note that the defects in the waivers as found by the Court, were never raised as an issue by petitioner. In fact, petitioner never impugned the authority of its signatory to sign the waivers. Clearly, there was no intention on the part of petitioner to benefit from the infirmity observed by the Court.

WHEREFORE, the Petition for Review dated February 17, 2016 filed by Ayala Land International Sales, Inc. is hereby **GRANTED**.

Accordingly, respondent's Formal Letter of Demand dated March 24, 2014, with Details of Discrepancies and Assessment Notices, and the Final Decision on Disputed Assessment dated January 18, 2016 assessing petitioner for

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[87] Commissioner of Internal Revenue vs. Standard Chartered Bank, G.R. No. 192173, July 29, 2015.
[88] Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc., G.R. No. 227544, November 22, 2017.

deficiency taxes in the aggregate amount of ₱29,226,987.73 for calendar year 2009 is **CANCELLED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice