REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

MEDICAL CENTER TRADING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9412

Members:

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

Promulgated:
SEP 2 3 2020 3:58 P.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

This case is *Petition for Review* filed by petitioner Medical Center Trading Corporation against respondent Commissioner of Internal Revenue on August 3, 2016, praying for the Court to order the cancellation and setting aside of the alleged deficiency taxes under the *Final Decision on Disputed Assessment* (FDDA) for taxable year ended December 31, 2009.[1]

THE PARTIES

Petitioner Medical Center Trading Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Pioneer Street corner Shaw Boulevard, Pasig City.[2] It is registered with the Bureau of Internal

[1] Summary of the Case, Pre-Trial Order dated September 19, 2017, Docket – Vol. 2, p. 887.
[2] Exhibit "P-1", Docket – Vol. 2, pp. 436 to 448.

Revenue (BIR) under Certificate of Registration No. OCN-8RC0000049332 dated June 14, 1994, with Tax Identification Number (TIN) 000-280-681-000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested by law to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, with office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE ANTECEDENTS

On May 25, 2010, petitioner received from respondent the *Letter of Authority* (LOA) No. LOA-116-2010-00000069 dated May 14, 2010,[5] authorizing the examination of petitioner's books of accounts and other accounting records for taxable year ended December 31, 2009.[6]

During the course of audit, four (4) *Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* were executed by petitioner, through its President, Mr. Sulpicio A. Batilaran, and accepted by respondent, through Mr. Alfredo V. Misajon, OIC Assistant Commissioner for Large Taxpayer Service, to wit:

	Date of Execution	**Stated period of Extension**
1st *Waiver*[7]	July 17, 2012	until June 30, 2013
2nd *Waiver*[8]	April 2, 2013	until December 31, 2013
3rd *Waiver*[9]	September 3, 2013	until June 30, 2014
4th *Waiver*[10]	March 27, 2014	until December 31, 2014

Thereafter, petitioner received from the BIR a *Preliminary Assessment Notice* (PAN), wherein petitioner was assessed deficiency income tax, value-added tax (VAT), withholding tax – expanded (EWT), withholding tax – compensation (WTC), documentary stamp tax (DST), plus interest and compromise penalties, for taxable year 2009 in the aggregate amount of ₱1,000,782,684.57.[11]

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[3] Exhibit "P-3", Docket – Vol. 2, p. 450.
[4] Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 752.
[5] Exhibit "R-1", BIR Records, p. 251.
[6] Par. 15, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 2, pp. 13 and 294, respectively.
[7] Exhibit "R-5", BIR Records, p. 321.
[8] Exhibit "R-6", BIR Records, p. 324.
[9] Exhibit "R-7", BIR Records, p. 326.
[10] Exhibit "R-8", BIR Records, p. 329.
[11] Par. 20, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 2, pp. 14 and 294, respectively.

On August 4, 2014, petitioner received a *Formal Letter of Demand* (FLD) with *Details of Discrepancies*,[12] and attached undated *Audit Result/Assessment Notices* (FANs)[13] from respondent, containing assessments for deficiency income tax, VAT, EWT, WTC, and DST for taxable year 2009, in the aggregate amount of ₱1,009,814,663.69, inclusive of surcharge, interests and compromise penalties, broken down as follows:

Tax Type	Amount
Income tax	₱ 667,916,886.27
VAT	325,667,994.36
EWT	14,248,326.32
WTC	1,612,937.06
DST	368,519.68
Total	**₱1,009,814,663.69**

On September 2, 2014, petitioner filed with the BIR its protest letter dated August 26, 2014,[14] requesting for a reinvestigation of the findings in the FLD.

Thereafter, on July 4, 2016, petitioner received the assailed undated FDDA with *Details of Discrepancies*,[15] and attached undated FANs[16] from respondent, demanding payment in the total reduced amount of ₱347,498,651.38, broken down as follows:

Tax Type	Amount
Income tax	₱277,588,175.00
VAT	55,266,522.71
EWT	12,641,062.97
WTC	1,951,116.61
DST	51,774.09
Total	**₱347,498,651.38**

On August 3, 2016, petitioner filed the present *Petition for Review*.[17] The case was initially raffled to this Court's First Division.

On November 14, 2016, respondent filed his *Answer*.[18]

On November 28, 2016, petitioner filed a *Reply*,[19] refuting the allegations in respondent's *Answer*.

[12] Exhibit "P-52", Docket – Vol. 2, pp. 641 to 654; Exhibit "R-12", BIR Records, pp. 508 to 516.
[13] Exhibits "R-13" to "R-13-d", BIR Records, pp. 503 to 507.
[14] Exhibit "P-53", Docket – Vol. 4, pp. 2338 to 2341.
[15] Exhibit "P-56", Docket – Vol. 2, pp. 661 to 666; Exhibit "R-15", BIR Records, pp. 669 to 674.
[16] Exhibits "R-16" to "R-16-d", BIR Records, pp. 678 to 668.
[17] Docket – Vol. 1, pp. 10 to 50.
[18] Docket – Vol. 1, pp. 294 to 311.

Respondent transmitted to this Court the *BIR Records* for the case on January 12, 2017.[20]

The Pre-Trial Conference was initially set on March 8, 2017.[21] However, the same was finally reset to, and held on, July 13, 2017.[22] Petitioner filed its *Pre-Trial Brief* on March 3, 2017,[23]while *Respondent's Pre-Trial Brief* was submitted on July 6, 2017.[24]

On July 28, 2017, the parties filed their *Joint Stipulation of Facts & Issues* (JSFI).[25] In the Resolution dated August 10, 2017,[26] the said JSFI was approved by this Court and deemed the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated September 19, 2017 was issued.[27]

Trial thereafter ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Oliver Kabigting,[28] its Finance and Administration Manager; and (2) Mr. Michael L. Aguirre,[29] the court-commissioned Independent Certified Public Accountant (ICPA).[30]

The *Report* of the ICPA was submitted on August 11, 2017.[31]

Petitioner filed its *Formal Offer of Evidence* on March 5, 2018.[32] Respondent failed to file his comment thereto.[33] In the Resolution dated

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[19] Docket – Vol. 1, pp. 319 to 335.

[20] *Compliance (Re: Transmittal of BIR Records)* dated January 10, 2017, Docket – Vol. 1, pp. 337 to 339.

[21] *Notice of Pre-Trial Conference* dated November 21, 2016, Docket – Vol. 1, pp. 313 to 314.

[22] Minutes of the hearing held on, and Order dated, March 8, 2017, Docket – Vol. 1, pp. 365 to 369; Order dated April 27, 2017, Docket – Vol. 1, p. 397; Minutes of the hearing held on, and Order dated, July 13, 2017, Docket – Vol. 2, pp. 725 to 729, and 732 to 734, respectively.

[23] Docket – Vol. 1, pp. 348 to 358.

[24] Docket – Vol. 2, pp. 717 to 721.

[25] Docket – Vol. 2, pp. 752 to 759.

[26] Docket – Vol. 2, pp. 767 to 768.

[27] Docket – Vol. 2, pp. 887 to 914.

[28] Exhibit "P-60", Docket – Vol. 2, pp. 423 to 435; Order dated September 19, 2017, Docket – Vol. 2, pp. 882 to 884.

[29] Exhibit "P-59", Docket – Vol. 2, pp. 792 to 816; Order dated January 16, 2018, Docket – Vol. 2, pp. 920 to 922.

[30] *Oath of Commission* dated July 13, 2017, Docket – Vol. 2, p. 730; Minutes of the hearing held on, and Order dated, July 13, 2017, Docket – Vol. 2, pp. 725 to 729, and 732 to 734, respectively.

[31] *Re: Transmittal* dated August 11, 2017, Docket – Vol. 2, p. 769.

[32] Docket – Vol. 3, pp. 932 to 2116.

[33] Records Verification dated April 5, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 4, p. 2119.

September 11, 2018,[34] the Court admitted petitioner's exhibits, *except* for the following:

1. Exhibits "P-7-b", "P-7-c", "P-46", "P-47", "P-48", "P-48-a", "P-49", "P-51", "P-52", "P-53", and "P-55", for failure to present the original for comparison;
2. Exhibits "P-21-a", "P-21-b", "P-22-a", "P-22-b", "P-23-a", "P-23-b", "P-24-a", "P-24-b", "P-25-a", "P-25-b", "P-25-c", "P-26-a", "P-26-b", "P-26-c", "P-27-a", "P-27-b", "P-27-c", "P-28-a", "P-28-b", "P-28-c", "P-29-a", "P-29-b", "P-29-c", "P-30-a", "P-30-b", "P-30-c", "P-31-a", "P-31-b", "P-31-c", "P-33-a", "P-33-b", "P-33-c", "P-34-a", "P-34-b", "P-34-c", "P-35-a", "P-35-b", "P-36-a", "P-36-b", "P-36-c", "P-37-a", "P-37-b", "P-37-c", "P-38-a", "P-38-b", "P-38-c", "P-39-a", "P-39-b", "P-39-c", "P-40-a", "P-40-b", "P-41-a", "P-41-b", "P-41-c", "P-42-a", "P-42-b", "P-42-c", "P-43-a", "P-43-b", "P-43-c", "P-44-a", "P-44-b", "P-44-c", "P-45-a", "P-45-b", and "P-45-c", for failure to submit the duly marked exhibits;
3. Exhibits "P-33" and "P-41", for not being found in the records of the case;
4. Exhibits "P-12-Q-ICPA" (second offer), "P-17-HV-ICPA" (first offer), "P-16-A.40.12-ICPA", "P-16-A-82.-ICPA", "P-21-J-1-ICPA" (first offer), "P-21-J-2-ICPA" (first offer), "P-21-J-3-ICPA" (first offer), and "P-23-ICPA", for failure to submit the scanned copy of these ICPA-marked exhibits;
5. Exhibits "P-21-W-2-ICPA", "P-21-W-3-ICPA", "P-21-W-5-ICPA", and "P-21-W-6-ICPA", for failure of the exhibits formally offered to correspond with the ICPA-marked exhibits as these documents are completely blurred/unreadable; and
6. Exhibits "P-21-I-1-ICPA" and "P-21-V-7-ICPA", for failure of the exhibits formally offered to correspond with the ICPA-marked exhibits.

On September 18, 2018, the present case was transferred to the Third Division of this Court.[35]

Petitioner filed its *Motion for Reconsideration* on October 10, 2018, praying, *inter alia*, for the reconsideration of the denial of its Exhibits.[36] Respondent failed to file his comment thereto.[37] Petitioner eventually filed its *Amended Formal of Evidence* on February 26, 2019.[38] Thus, in the Resolution dated April 15, 2019,[39] this Court admitted certain exhibits of petitioner, but *still specifically denied* the following: N

[34] Docket – Vol. 4, pp. 2127 to 2189.
[35] Order dated September 26, 2018, Docket – Vol. 4, p. 2190.
[36] Docket – Vol. 4, pp. 2192 to 2209.
[37] Records Verification dated November 6, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 4, p. 2217.
[38] Docket – Vol. 4, p. 2343 to Vol. 6, p. 3508.
[39] Docket – Vol. 6, pp. 3512 to 3517.

1. Exhibits "P-7-b" and "P-7-c", for failure to present the originals for comparison;
2. Exhibits "P-48", "P-48-a", and "P-49", for failure to submit the duly marked exhibits; and
3. Exhibits "P-21-I-1-ICPA", "P-21-J-3-ICPA" (first offer), and "P-21-V-7-ICPA", for failure of the exhibits formally offered to correspond to the marked exhibits.

Petitioner then filed its *Tender of Excluded Evidence* on May 20, 2019,[40] praying that the denied exhibits be noted and approved as its tender of excluded evidence. In the Order dated May 21, 2019,[41] this Court noted the same.

Respondent likewise presented its documentary and testimonial evidence. He offered the testimony of his lone witness, Mr. Wilfredo Reyes,[42] Chief Revenue Officer I of BIR's LTAD 1.

On June 4, 2019, respondent filed his *Formal Offer of Evidence.*[43] Petitioner filed its *Comment (To Respondent's Formal Offer of Evidence)* on June 18, 2019.[44] Thus, in the Resolution dated July 30, 2019,[45] respondent's evidence was admitted by this Court.

On September 4, 2019, respondent submitted his *Memorandum*;[46] while petitioner filed its *Memorandum* on September 13, 2019,[47] and a *Reply Memorandum* on September 20, 2019.[48]

The present case was deemed submitted for decision on September 26, 2019.[49]

THE ISSUE RAISED BY THE PARTIES

The sole issue stipulated by the parties for this Court's resolution is the following:

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[40] Docket – Vol. 6, pp. 3518 to 3521.
[41] Docket – Vol. 6, pp. 3523 to 3524.
[42] Exhibit "R-18", Docket – Vol. 2, pp. 701 to 716; Minutes of the hearing held on, and Order dated, May 21, 2019, Docket – Vol. 6, pp. 3522 to 3523.
[43] Docket – Vol. 6, pp. 3525 to 3533.
[44] Docket – Vol. 6, pp. 3536 to 3539.
[45] Docket – Vol. 6, pp. 3550 to 3551.
[46] Docket – Vol. 6, pp. 3558 to 3579.
[47] Docket – Vol. 6, pp. 3581 to 3636.
[48] Docket –Vol. 7, pp. 3643 to 3658.
[49] Resolution dated September 26, 2019, Docket –Vol. 7, pp. 3660 to 3661

> "1) WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE AGGREGATE AMOUNT OF ₱347,498,651.38 AS DEFICIENCY INCOME TAX, VALUE-ADDED TAX, WITHHOLDING TAX – EXPANDED, WITHHOLDING TAX – FINAL, WITHHOLDING TAX – COMPENSATION, DOCUMENTARY STAMP TAX, FOR TAXABLE YEAR 2009 AS WELL AS COMPROMISE PENALTIES AND 20% DEFICIENCY AND DELIQUENCY INTEREST FOR LATE PAYMENT UNTIL FULLY PAID PURSUANT TO SECTIONS 248 AND 249 OF THE NIRC OF 1997."[50]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that respondent failed to strictly comply with the due process requirements in the conduct of tax audit investigations; that the BIR failed to issue a *Notice of Informal Conference* (NIC); that the BIR failed to accord petitioner the required 15-day period to file its *Reply* to the PAN; that the BIR failed to complete its audit within the sixty (60) days required by Revenue Memorandum Order No. 36-2010; that the BIR failed to issue a new LOA on the reassignment of the 2009 audit to a new audit team; and that the FLD and FDDA were issued beyond prescriptive period allowed by law.

Moreover, petitioner contends that assuming *arguendo* that the 2009 PAN, FLD and FDDA are valid, the deficiency taxes assessed under the FDDA are without factual and legal basis; and that it is not liable for compromise penalties on the alleged assessments for deficiency income tax, VAT, EWT, WTC, and DST, under the FDDA.

Additionally, in pointing out that the four (4) *Waivers* are invalid, petitioner avers that verification of its records shows that the person signing the same had no written notarized authority to do so on its behalf; and that the said *Waivers* do not specify the kind and amount of tax that is the subject thereof.

On the other hand, respondent maintains that the four (4) *Waivers* executed by petitioner are all valid and binding; and that the assessments against petitioner are valid.

THE RULING OF THE COURT

The subject Waivers are not valid, and thus, could not have extended the period to assess petitioner.

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[50] Issues to be Resolved, JSFI, Docket – Vol. 2, pp. 752 to 753.

Section 203 of the NIRC of 1997 states the period of limitation upon the assessment of taxes, to wit:

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

Except as provided in Section 222 of the NIRC of 1997, the foregoing provision mandates the government to assess internal revenue taxes 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.[51] Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[52]

By way of an exception, however, 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-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

[51] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[52] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

extended by subsequent written agreement made before the expiration of the period previously agreed upon.

xxx xxx xxx." (*Emphasis ours*)

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 foregoing 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.[53] 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.[54] The *Waiver* must faithfully comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 in order to be valid and binding.[55]

Relative thereto, in *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* ("*La Flor* case"),[56] the Supreme Court held:

> "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.*,[57] 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:

[53] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[54] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, supra.
[55] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, supra.
[56] G.R. No. 211289, January 14, 2019.
[57] G.R. No. 220835, July 26, 2017.

> **These requirements are mandatory and must strictly be followed.** 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.
>
> 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 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-year prescriptive period to assess, **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 tax and respondent absent these information.

In this case, a cursory reading of the subject *Waivers* would reveal that they do not indicate the kind and exact amount of the taxes to be assessed or collected.[58] Thus, on the basis of the aforequoted jurisprudence, the said *Waivers* are invalid. Correspondingly, the same did not effectively extend the three-year prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity.

Finding the invalidity of the subject *Waivers*, this Court shall proceed to determine the pertinent three-year prescriptive period to assess the subject deficiency taxes under Section 203 of the NIRC of 1997.

To reiterate, under Section 203 of the NIRC of 1997, the three-year prescriptive period commences 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.

Such being the case, We shall primarily refer to the specific provisions of the law 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-year prescriptive period under Section 203 of the NIRC of 1997 for the instant case.

For the filing of corporate income tax returns, Section 77(B) of the NIRC of 1997 provides as follows:

> "SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* —
>
> xxx xxx xxx
>
> (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 be." *(Emphasis added)*

[58] Exhibits "R-5", "R-6", "R-7", and "R-8", BIR Records, pp. 321, 324, 326, and 329, respectively.

Thus, on the basis thereof, petitioner's Annual Income Tax Return for taxable year 2009 should be filed on or before April 15, 2010.

Anent the filing of quarterly VAT returns, Section 114(A) of the NIRC of 1997, as amended, reads:

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

Based on the foregoing provision, petitioner's Quarterly VAT Returns for the four (4) quarters of taxable year 2009 should be filed on or before: (1) April 25, 2009, for the 1st quarter; (2) July 25, 2009, for the 2nd quarter; (3) October 25, 2009, for the 3rd quarter; and (4) January 25, 2009, for the 4th quarter.

With regard to the filing of withholding tax returns, Section 2.58(A)(2)(a) of Revenue Regulations No. 2-98, as amended, states:

> "Sec. 2.58. *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.* —
>
> (A) *Monthly return and payment of taxes withheld at source.* –
>
> xxx xxx xxx
>
> (2) WHEN TO FILE —
>
> (a) **For both large and non-large taxpayers, the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements)[,] **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx." *(Emphases added)*

Thus, petitioner's remittance returns for the twelve (12) months of taxable year 2009 should be filed within ten (10) days after the end of each month, except for the month of December 2009, in which case the said Return must be filed on or before January 15, 2010.

Finally, for the DST, 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.

Correspondingly, for purposes of the subject tax assessments of deficiency income tax, VAT, EWT, WTC, and DST against petitioner for taxable year 2009, the end of the three-year prescriptive period under Section 203 of the NIRC of 1997, if applicable, is respectively determined as follows:

Kind of Tax & Period	Actual date of filing of the pertinent tax return	Reckoning date of the three-year prescriptive period[59]	End of the three-year prescriptive period
Income Tax – for 2009	April 12, 2010[60]	April 15, 2010	April 15, 2013
VAT – 1st Quarter 2009	April 17, 2009[61]	April 25, 2009	April 25, 2012
VAT – 2nd Quarter 2009	July 17, 2009[62]	July 25, 2009	July 25, 2012
VAT – 3rd Quarter 2009	October 19, 2009[63]	October 25, 2009	October 25, 2012
VAT – 4th Quarter 2009	January 19, 2010[64]	January 25, 2010	January 25, 2013
EWT – January 2009	February 9, 2009[65]	February 10, 2009	February 10, 2012
EWT – February 2009	March 9, 2009[66]	March 10, 2009	March 10, 2012
EWT – March 2009	April 7, 2009[67]	April 10, 2009	April 10, 2012

[59] The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
[60] Exhibit "P-7", Docket – Vol. 2, pp. 466 to 467.
[61] Exhibit "P-11", Docket – Vol. 2, pp. 514 to 515.
[62] Exhibit "P-14", Docket – Vol. 2, pp. 526 to 527.
[63] Exhibit "P-17", Docket – Vol. 2, pp. 540 to 541.
[64] Exhibit "P-20", Docket – Vol. 2, pp. 555 to 556.
[65] Exhibit "P-34", Docket – Vol. 2, p. 584.
[66] Exhibit "P-35", Docket – Vol. 2, p. 585.

EWT – April 2009	May 7, 2009[68]	May 10, 2009	May 10, 2012
EWT – May 2009	June 8, 2009[69]	June 10, 2009	June 10, 2012
EWT – June 2009	July 6, 2009[70]	July 10, 2009	July 10, 2012
EWT – July 2009	August 7, 2009[71]	August 10, 2009	August 10, 2012
EWT – August 2009	September 8, 2009[72]	September 10, 2009	September 10, 2012
EWT – September 2009	October 6, 2009[73]	October 10, 2009	October 10, 2012
EWT – October 2009	November 5, 2009[74]	November 10, 2009	November 10, 2012
EWT – November 2009	December 7, 2009[75]	December 10, 2009	December 10, 2012
EWT – December 2009	January 9, 2010[76]	January 15, 2010	January 15, 2013
WTC – January 2009	February 9, 2009[77]	February 10, 2009	February 10, 2012
WTC – February 2009	March 9, 2009[78]	March 10, 2009	March 10, 2012
WTC – March 2009	April 7, 2009[79]	April 10, 2009	April 10, 2012
WTC – April 2009	May 7, 2009[80]	May 10, 2009	May 10, 2012
WTC – May 2009	June 8, 2009[81]	June 10, 2009	June 10, 2012
WTC – June 2009	July 6, 2009[82]	July 10, 2009	July 10, 2012
WTC – July 2009	August 7, 2009[83]	August 10, 2009	August 10, 2012
WTC – August 2009	September 8, 2009[84]	September 10, 2009	September 10, 2012
WTC – September 2009	October 6, 2009[85]	October 10, 2009	October 10, 2012
WTC – October 2009	November 5, 2009[86]	November 10, 2009	November 10, 2012
WTC – November 2009	December 7, 2009[87]	December 10, 2009	December 10, 2012
WTC – December 2009	January 9, 2010[88]	January 15, 2010	January 15, 2013
DST – 2009	***(No DST return filed)***	-	-

Considering that petitioner received the subject FLD and FANs only on August 4, 2014,[89] the same were received beyond the respective three-year prescriptive period under Section 203 of the NIRC of 1997, insofar as the

[67] Exhibit "P-36", Docket – Vol. 2, p. 586.
[68] Exhibit "P-37", Docket – Vol. 2, p. 587.
[69] Exhibit "P-38", Docket – Vol. 2, p. 588.
[70] Exhibit "P-39", Docket – Vol. 2, p. 589.
[71] Exhibit "P-40", Docket – Vol. 2, p. 590.
[72] Exhibit "P-41", Docket – Vol. 4, p. 2318.
[73] Exhibit "P-42", Docket – Vol. 2, p. 591.
[74] Exhibit "P-43", Docket – Vol. 2, p. 592.
[75] Exhibit "P-44", Docket – Vol. 2, p. 593.
[76] Exhibit "P-45", Docket – Vol. 2, p. 594.
[77] Exhibit "P-21", Docket – Vol. 2, pp. 560 to 561.
[78] Exhibit "P-22", Docket – Vol. 2, pp. 562 to 563.
[79] Exhibit "P-23", Docket – Vol. 2, pp. 564 to 565.
[80] Exhibit "P-24", Docket – Vol. 2, pp. 566 to 567.
[81] Exhibit "P-25", Docket – Vol. 2, pp. 568 to 569.
[82] Exhibit "P-26", Docket – Vol. 2, pp. 570 to 571.
[83] Exhibit "P-27", Docket – Vol. 2, pp. 572 to 573.
[84] Exhibit "P-28", Docket – Vol. 2, pp. 574 to 575.
[85] Exhibit "P-29", Docket – Vol. 2, pp. 576 to 577.
[86] Exhibit "P-30", Docket – Vol. 2, pp. 578 to 579.
[87] Exhibit "P-31", Docket – Vol. 2, pp. 580 to 581.
[88] Exhibit "P-32", Docket – Vol. 2, pp. 582 to 583.
[89] Exhibit "P-52", Docket – Vol. 2, pp. 641 to 654; Exhibits "R-12", and "R-13" to "R-13-d", BIR Records, pp. 503 to 516

assessments for deficiency income tax, VAT, EWT, and WTC are concerned, and thus, said assessments are void.[90]

As regards the deficiency DST assessment, since petitioner failed to prove its filing thereof for taxable year 2009, thus, the deficiency DST assessment issued within the ten (10)-year prescriptive period under Section 222 (a) of the NIRC of 1997 is valid.

However, even if the subject waivers may be held to have extended the period to assess petitioner, still the subject FLD and FANs, as well as the assailed FDDA are void.

The absence of an eLOA in the present case invalidates the subject tax assessments.

It is already well-settled in this jurisdiction that a revenue officer must be authorized, through an LOA, in order that the said officer may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.[91]

Relative thereto, RMO No. 69-10 dated August 11, 2010[92] mandates that all LOAs, whether issued manually or electronically, from March 1, 2010, covering cases for year 2009 and other taxable years, are **<u>subject to retrieval, and replacement with the new eLOA form</u>** (BIR Form No. 1966). The pertinent portions of the said RMO reads as follows:

> "III. Policies and Guidelines
>
> x x x
>
> 6. **<u>All LAs[93], whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years,</u> as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, <u>shall be retrieved and replaced with the new *e*LA[94] form</u> (BIR Form No. 1966).**

[90] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[91] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017; *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

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

[93] That is, "Letters of Authority".

[94] That is, "Electronic Letter of Authority".

> 7. **All revenue officers ordered to conduct investigation/audit through manually issued LAs prior to July 1, 2010 should continue the conduct of audit/investigation, <u>subject to the retrieval and replacement of LAs as mandated under Item No. III 6 of this Order</u>.**" *(Emphases and underscoring ours)*

A plain reading of the same administrative issuance would reveal that all revenue officers, who are ordered to conduct investigation/audit through manually issued LOAs prior to July 1, 2010, should continue the conduct of such audit/investigation. **However, it likewise clear that such directive to continue the audit/investigation is <u>subject to the retrieval of the manually-issued LOA, and replacement of a new eLOA</u>.** In other words, the authority to continue the said audit/investigation shall be done only when such retrieval and replacement have been made.

In the present case, there is no showing that the present LOA, which was issued after March 1, 2010, but prior to July 1, 2010, specifically, LOA No. LOA-116-2010-00000069 dated May 14, 2010,[95] has been retrieved and replaced by an eLOA.

Apparently, the revenue officers named in the said LOA, and any other BIR personnel who examined petitioner, were not authorized through an eLOA to proceed with the BIR's tax audit. Thus, not having the requisitie eLOA to continue the examination of petitioner's records in the first place, the subject tax assessments issued by the BIR are inescapably void.

The indefiniteness of petitioner's tax liability and the absence of a due date on the FLD and FANs rendered the assessments void.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,*[96] the Supreme Court had the opportunity to emphasize the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "**An assessment contains not only a computation of tax liabilities, but also a demand for payment <u>within a prescribed period</u>.** It also signals the same time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx.

[95] Exhibit "R-1", BIR Records, p. 251.
[96] G.R. No. 128315, June 29, 1999.

> xxx an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment." *(Emphases added)*

Furthermore, in *Commissioner of Internal Revenue vs. Fitness by Design, Inc.,*[97] the Supreme Court again emphasized the importance of the issuance of a valid formal assessment, *i.e.*, that it must be a demand for payment of the taxes described, within a specific period, and that the amount of tax liability for which the taxpayer is accountable must be definite, as follows:

> "...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
>
> xxx xxx xxx
>
> **The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
>
> 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.**
>
> **First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a**

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[97] G.R. No. 215947, November 9, 2016.

demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)

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. The notice, therefore, did not contain a definite and actual demand to pay.**

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)*

Based on the foregoing, a tax assessment must not only contain a computation of tax liabilities, but must also include a demand for the settlement of a tax liability that is definite and fixed.

In the present case, no date was indicated in the FLD[98]. It only contains the following statements:

1. "Please take note that the interest will have to be adjusted if paid beyond the date specified therein."

2. "In view thereof, you are requested to pay your aforesaid deficiency tax liabilities using the BIR Payment Form (BIR Form 0605) through eFPS within the time shown in the enclosed assessment notice."

Moreover, while the FLD provides for the computation of petitioner's tax liability, the amount, however, remains indefinite as it states that the total amount of tax due *is still subject to adjustment.* In other words, the tax assessment is still subject to modification or adjustment, depending on petitioner's date of payment.

Similarly, a perusal of the enclosed FANs[99] shows that the spaces for the due dates were conspicuously left blank. Since the said FANs did not indicate the due date when the deficiency tax must be paid, no proper demand thereof within a specific period was validly made.

Accordingly, given that respondent utterly failed to state the respective due dates for payment of deficiency taxes in the subject assessments, along with his failure to provide definite amount of taxes to be paid, petitioner's obligation for such deficiency taxes may not be deemed to have legally accrued. Simply put, petitioner may not be adjudged to account for deficiency taxes which in the first place are not legally demandable.

In the same vein, it is noteworthy that the assailed FDDA[100] similarly contains the following statements:

[98] Exhibit "P-52", Docket – Vol. 2, pp. 641 to 654; Exhibit "R-12", BIR Records, pp. 508 to 516.
[99] Exhibits "R-13" to "R-13-d", BIR Records, pp. 503 to 507.
[100] Exhibit "P-56", Docket – Vol. 2, pp. 661 to 666; Exhibit "R-15", BIR Records, pp. 669 to 674.

1. "Please take note that the interest will have to be adjusted if paid beyond the dated specified therein."

2. "It is requested that your aforesaid deficiency tax liabilities amounting to ₱328,276,071.26 inclusive of penalties incident to delinquency, be paid immediately upon receipt hereof using the BIR Payment Form (BIR Form 0605) through eFPS within the time shown in the enclosed assessment notice."

While the FDDA explicitly provided that the payment of deficiency taxes shall be made immediately upon receipt thereof, it also failed to provide the definite amount of tax liability which petitioner should correspondingly pay. Similarly, the attached FANs[101] in the FDDA do not also indicate any due date, which correspondingly negates respondent's demand for payment.

Considering the BIR's substantial and procedural lapses, the subject tax assessments hardly fall under the jurisprudential definition of a tax assessment under the NIRC, considering that it lacked *"a due tax liability that is there definitely set and fixed."* They likewise do not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be.

In view of the time-honored maxim, a void assessment bears no valid fruit,[102] the inevitable conclusion is that the deficiency tax assessments against petitioner for the taxable year 2009 is fatally infirm.

Based on the foregoing discussions, it becomes unnecessary to address the other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject assessments issued against petitioner under the FDDA for taxable year ended December 31, 2009 for deficiency income tax, VAT, EWT, WTC, and DST, inclusive of increments and compromise penalties in the aggregate amount of ₱347,498,651.37 are **CANCELLED and SET ASIDE**.

SO ORDERED.

Ma. Belen SL

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[101] Exhibits "R-16" to "R-16-d".
[102] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
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