Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILAM PLANS INC.,
Respondent.

CTA EB CASE NO. 913
(CTA Case No. 6992)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

Promulgated:
AUG 15 2013 9:10 a.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review for the Court *En Banc* under Section 18 of Republic Act 1125,[1] as amended, and *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals*, as amended.*[2]

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[1] An Act Creating the Court of Tax Appeals

[2] RULE 4
JURISDICTION OF THE COURT
Sec. 2. *Cases within the jurisdiction of the Court en banc.-* The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
xxx xxx xxx
RULE 8
PROCEDURE IN CIVIL CASES
Sec. 4. *Where to appeal; mode of appeal.-*

Petitioner Commissioner of Internal Revenue (CIR) prays that the Decision[3] and Resolution[4] rendered by the Third Division of this Court on April 17, 2012 and June 21, 2012, respectively, be REVERSED and SET ASIDE.

The dispositive portions thereof, respectively, read as follows:

Decision dated April 17, 2012:

"**WHEREFORE** premises considered, the instant Petition for Review and the Supplement (To Petition for Review) are hereby **GRANTED**. Accordingly, the Final Assessment Notice and the Assessment Notices are hereby **CANCELLED** and **WITHDRAWN** for being issued beyond the prescriptive period allowed by law. Consequently, the Final Decision on Disputed Assessment dated June 14, 2004 demanding payment of assessed deficiency withholding tax plus interest in the total amount of P15,293,391.99 for taxable year ending December 31, 1997 is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED."[5]

Resolution dated June 21, 2012:

"**WHEREFORE**, premises considered, the Motion for Reconsideration filed by the respondent is hereby **DENIED** for lack of merit.

SO ORDERED."[6]

(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[3] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justices Lovell R. Bautista and Olga Palanca-Enriquez. *En Banc* Docket, pp. 35-70.
[4] *Id.*, at *En Banc* Docket, pp. 71-79.
[5] *En Banc* Docket, at 69.
[6] *En Banc* Docket, at 79.

The Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), charged with the duty of assessing and collecting internal revenue taxes. She holds office at the BIR National Office Bldg., Agham Road, Diliman, Quezon City.[7]

Philam Plans, Inc. (PPI) is a pre-need corporation duly organized and existing under and by virtue of Philippines laws, with office address at the 6th Floor, Philamlife Building, United Nations Avenue, Ermita, Manila.[8]

PPI filed its Monthly Remittance Returns of Income Taxes Withheld (BIR Form 1601) and remitted the withholding tax due therein for the taxable year ending December 31, 1997 on the following dates:[9]

Month (1997)	**Date of Filing of Return and Remittance of Withholding Tax**
January	February 25, 1997
February	March 25, 1997
March	April 25, 1997
April	May 25, 1997
May	June 25, 1997
June	July 25, 1997
July	August 25, 1997
August	September 25, 1997
September	October 24, 1997
October	November 25, 1997
November	December 29, 1997
December	January 26, 1998

On April 17, 2000, PPI received a copy of the BIR Letter of Authority (LOA) No. 00059015 dated April 12, 2000 in connection with the examination of its books of accounts and other accounting records for the taxable year ending December 31, 1997.[10]

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[7] Petition for Review, *En Banc* Docket, p. 13.
[8] *Id.*
[9] Assailed Decision dated April 17, 2012, *En Banc* Docket, pp. 36-37.
[10] *Id.*, at 37.

On April 18, 2000, Mr. Lorenzo L. Blanco, PPI's then Assistant Vice-President (AVP), executed a Waiver of the Statute of Limitations extending the period of assessment of taxes for the taxable year ending December 31, 1997 until June 30, 2001 (First Waiver).[11]

On July 18, 2001 or eighteen (18) days after the expiration of the extended period of assessment in the First Waiver, Mr. Blanco executed another Waiver of the Statute of Limitations extending the period of assessment of taxes for the taxable year ending December 31, 1997 until December 31, 2002 (Second Waiver).[12]

On May 13, 2002, Mr. Blanco executed another Waiver of the Statute of Limitations extending the period of assessment of taxes for the taxable year ending December 31, 1997 until September 30, 2003 (Third Waiver).[13]

On November 19, 2002, Mr. Blanco executed a Waiver of the Statute of Limitations extending the period of assessment of taxes for the taxable year ending December 31, 1997 until May 30, 2003 (Fourth Waiver).[14]

On August 8, 2003, PPI received the undated Final Assessment Notice (FAN) with attached Assessment Notices from the BIR for alleged deficiency taxes for the taxable year ending December 31, 1997.[15]

PPI filed a protest to the FAN on September 3, 2003 and submitted the required supporting documents to the protest on November 3, 2003.[16] c

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[11] *Id.*, Exhibits "A" and "5", Division Docket Vol. III, p. 1605.
[12] *Id.*, Exhibits "B" and "18", Division Docket Vol. III, p. 1606.
[13] *Id.*, Exhibits "C" and "16", Division Docket Vol. III, p. 1607.
[14] *Id.*, Exhibits "D" and "17", Division Docket Vol. III, p. 1608.
[15] *Id.*, at 38.
[16] *Id.*, Pars. 2 and 3, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Vol. III, pp. 1497-1498.

As of May 1, 2004, the CIR had not decided on the Protest.[17]

On May 25, 2004, petitioner filed the instant Petition for Review before this Court.[18]

In the Answer filed by CIR on August 4, 2004,[19] it is alleged, among others, by way of special and affirmative defense that the instant petition for review is devoid of cause of action as only the decision of the CIR on the re-investigation, duly received by PPI on June 14, 2004, is the final decision which can be the subject of an appeal to this Court. She further argues that based on the aforesaid decision, PPI was found to have grossly understated its gross profit subject to income tax by more than 30%, the falsity of which is sufficient indication of its intent to evade the payment of taxes. Thus, the assessment against PPI has not yet prescribed as Section 222(a) of the NIRC is the prescriptive period applicable to the instant case. Moreover, she alleges that the Waivers of the Statute of Limitations executed by Mr. Lorenzo L. Blanco on four (4) different occasions are valid and binding against PPI and the dates of the waivers are presumed to be the dates of acceptance thereof pursuant to *Section 3(u), Rule 131 of the Rules of Court.*

On June 15, 2004, PPI received from CIR a Final Decision on Disputed Assessment (FDDA) dated June 14, 2004, finding PPI liable for deficiency income tax, deficiency VAT and deficiency withholding tax, inclusive of interest and surcharge, in the total amount ₱667,542,122.58.[20]

On December 26, 2007, PPI availed of the Tax Amnesty Program under Republic Act (RA) No. 9480[21] and paid the

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[17] *Id.*, Par. 4, JSFI, Division Docket, Vol. III, p. 1498.
[18] Division Docket, Vol. I, pp. 1-68.
[19] *Id.*, at 88-95.
[20] Assailed Decision, *En Banc* Docket, pp. 40-41 citing Exhibit "15", BIR Records, pp. 1543-1549; Division Docket, Vol. III, pp. 1431-1437.
[21] AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2005 AND PRIOR YEARS.

amnesty tax.[22] Thus, in a Resolution dated August 3, 2009,[23] the former First Division of this Court cancelled and set aside the assessments for deficiency Income Tax and Value-Added Tax for the taxable year 1997 against PPI.

Trial ensued with respect to the deficiency withholding tax for the taxable year ending December 31, 1997.

On April 17, 2012, the Third Division of this Court rendered a Decision[24] granting the Petition for Review and the Supplement (To Petition for Review), and the Final Assessment Notice and the Assessment Notices were accordingly cancelled and withdrawn for having been issued beyond the prescriptive period allowed by law.

The CIR moved for reconsideration of the above-said Decision, which was subsequently denied in a Resolution[25] dated June 21, 2012.

Hence, the instant Petition for Review was filed by the CIR.

The principal issue is whether PPI is liable to pay the deficiency withholding tax inclusive of increments for the taxable year 1997.

We answer the principal issue in the negative.

The CIR argues that the deficiency tax assessments made against PPI for the taxable year 1997 were issued within the prescriptive period allowed by law through the series of waivers of the statute of limitations executed between the parties; that PPI is already estopped from questioning the validity of the waiver for PPI's failure to challenge the legality of the waivers within the

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[22] Omnibus Motion filed on April 20, 2009, Division Docket Vol. III, pp. 1222-1292.
[23] Division Docket Vol. III, pp. 1391-1392.
[24] *Supra* note 1.
[25] *Supra* note 2.

administrative level; and that PPI's availment of the Tax Amnesty under RA No. 9480 is tantamount to an admission of the validity of the assessments and waivers.

Conversely, PPI claims that the assessment for deficiency CWT for the taxable year 1997 has already prescribed considering that the FAN was issued beyond the 3-year prescriptive period of assessment. In addition, PPI avers that the waivers were invalid as the same were not executed by the Commissioner and these did not comply with the requirements for their validity.

The CIR's stance is bereft of merit.

Section 203 of the NIRC of 1977, as amended, provides for a three-year period for the BIR to assess and collect any deficiency internal revenue tax from a taxpayer, thus:

> SEC. 203. *Period of limitation upon assessment and collection.* – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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 the 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.

The rationale for the three-year prescriptive period on the assessment and collection of internal revenue taxes is to safeguard the interest of the taxpayer against unreasonable investigation. [26] Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes

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[26] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004 *citing* J.C. Vitug and E.D. Acosta, TAX LAW AND JURISPRUDENCE 295 (2nd ed. 2002), citing Report of the Tax Commission, Vol. I, p. 98.

after the expiration of a reasonable period of time.[27] Thus, an assessment notice issued after the three-year prescriptive period is no longer valid and effective.

As an exception to the above-cited rule, *Section 223 (b) and (d) of the NIRC of 1977, as amended,* states that the period of limitation of assessment and collection of taxes may be extended through execution of a written agreement between the CIR and taxpayer before expiration of the three-year period, thus:

> SEC. 223. – *Exceptions as to period of limitation of assessment and collection of taxes.* –
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> (b) If before the expiration of the time prescribed in the preceding section 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.
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> (d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
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Corollary thereto, *Revenue Memorandum Order (RMO) No. 20-90* was issued on April 4, 1990 in order to delineate the procedure for the proper execution of the said waiver. The pertinent portions of which read as follows:

> "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

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[27] *Id.*

constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.**

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

A. In the National Office

1. ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	For tax cases involving not more than P500,000.00
2. Deputy Commissioner	For tax cases involving more than P500,000.00 but not more than P1M
3. Commissioner	**For tax cases involving more than P1M**

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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.]

In ***Philippine Journalists, Inc. v. Commissioner of Internal Revenue***[28], the Supreme Court emphasized the significance of strict compliance with the procedure for proper execution of waiver of statute of limitations as it is, to a certain extent, a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations, thus:

> "**A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed** *[See Ouano v. Court of Appeals, G.R. No. 129279, 4 March 2003, 398 SCRA 525, citing People v. Donato, G.R. No. 72969, 5 June 1991, 198 SCRA 130]*. **The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription** as erroneously held by the Court of Appeals. **It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain.** The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. **For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.** xxx"[29] [Emphasis supplied.]

Applying the foregoing precepts in the instant case, this Court affirms the findings of the Court *a quo* that the four (4) waivers of statute of limitations executed between CIR and PPI are invalid and without binding effect for the reasons herein stated:

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[28] G.R. No. 162852, December 16, 2004.
[29] *Id.*

"**First, the First Waiver was not signed by the BIR Commissioner.** RMO No. 20-90 specifically requires that for tax cases involving more than P1,000,000.00, the revenue officer authorized to sign a waiver is only the BIR Commissioner. As aptly pointed out by petitioner [PPI], when the First Waiver was executed on April 18, 2000, Revenue Delegation Authority Order (RDAO) No. 05-01 was not yet in effect. Thus, Ms. Virginia L. Trinidad, the Assistant Commissioner of the Large Taxpayers Service, was not authorized to sign and accept the First Waiver.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue [G.R. No. 162852, December 16, 2004],* the Highest Tribunal, in holding that the waiver signed by the taxpayer is not valid for, among others, the reason that the waiver was not accepted by the authorized revenue officer, ruled as follows:

> 'The waiver is also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No. 20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (P1,000,000.00) and executed almost seven months before the expiration of the three-year prescription period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR.

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In the instant case, the assessment emanated from the National Office and the amount of which exceeds P1,000,000.00. Based on the clear wordings of RMO No. 20-90, the First Waiver should have been accepted and signed by the BIR Commissioner herself. Since the First Waiver was signed only by the Assistant Commissioner of the Large Taxpayers Service, the First Waiver is not binding between petitioner [PPI] and the CIR; hence, it could not extend the original three-year prescriptive period to issue the assessment. Furthermore, while RDAO No. 05-01 authorizes the Assistant Commissioner to sign and accept waivers, RDAO No. 05-01 was issued only on August 2, 2001 and took effect only after the execution of the First Waiver. In other words, at the time that petitioner [PPI] issued the First Waiver, the authorized revenue officer to sign and accept the same was the CIR pursuant to RMO No. 20-90.

Second, even assuming that the Assistant Commissioner of the Large Taxpayers Service had the authority to sign and accept the Waiver, still **the First Waiver is invalid for it failed to indicate the date of its acceptance by Ms. Trinidad.** This requirement is necessary to determine whether the Waiver was validly accepted before the expiration of the original three-year prescriptive period.

The Supreme Court applied RMO No. 20-90 in the case of *Commissioner of Internal Revenue vs. FMF Development Corporation [G.R. No. 167765, June 30, 2008]*, when it ruled that the waiver executed by the taxpayer was defective and did not validly extend the original three-year prescriptive period for the reason, among others, that the waiver did not contain the date of acceptance by the BIR Commissioner; a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period, to wit:

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> Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. . . . it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement.' (Emphasis supplied)

Likewise, in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation [G.R. No. 178087, May 5, 2010]*, the Supreme Court applied RMO No. 20-90 in holding that the waivers executed by the taxpayer were defective and did not validly extend the original three-year prescriptive period on the basis, among others, that the waivers failed to indicate the date of acceptance.

Third, the fact of receipt of the First Waiver by petitioner [PPI] was not indicated in the original copy of the First Waiver (Exhibit "A"/Exhibit "5"). It is to be noted that under RMO No. 20-90, the waiver must be executed in three (3) copies, the second copy of which is for the taxpayer. It is likewise required that the fact of receipt by the taxpayer of his/her file copy be indicated in the original copy. Again, respondent [CIR] failed to comply with this requisite.

This Court cannot over emphasize the fact that RMO No. 20-90 is directed to all concerned internal revenue officers and it clearly requires that the procedures found therein should be strictly followed. The First Waiver, formally offered to this Court as evidenced by both petitioner [PPI] and respondent [CIR], does not show on its face the fact of receipt by petitioner [PPI] of the duly accepted First Waiver in violation of the strict requirement imposed by RMO No. 20-90. Respondent [CIR] did not formally offer any other copy of the First Waiver, which would show the fact of receipt by petitioner [PPI] of its file copy. Pursuant to Section 34 of Rule 132 of the Rules of Court on Evidence, this Court shall consider no evidence which has not been formally offered.

Clearly, the First Waiver is not binding between petitioner [PPI] and respondent [CIR] due to its failure to strictly comply with the requirements of RMO No. 20-90. As there was no valid waiver (First Waiver) executed by petitioner [PPI] before the expiration of the period prescribed by law for the assessment of the deficiency withholding tax/CWT for the taxable year ending December 31, 1997, the waivers (Second Waiver, Third Waiver and Fourth Waiver) subsequently executed after the prescribed period were likewise not valid and binding. The Second Waiver, Third Waiver and Fourth Waiver cannot be considered as "subsequent written agreement(s) made before the expiration of the period previously agreed upon" referred to in the second sentence of the earlier quoted Section 223 (b) of the 1977 Tax Code, as amended, as there is no "period previously agreed" to speak of.

Finally, even assuming *arguendo* that the First Waiver is valid, it extended the three-year prescriptive period until June 30, 2001 only. **The Second Waiver (Exhibit "B"/Exhibit "18") was executed on July 18, 2001 or eighteen (18) days after the expiration of the extended period indicated in the First Waiver.** Hence, the Second Waiver is invalid for violating Section 223 (b) of the 1977 Tax Code, as amended, which mandates that the period agreed upon in a waiver of the statute of limitations can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. Consequently, as the Second Waiver was not executed by petitioner before the expiration of the period extended by the First Waiver, the waivers subsequently executed after the Second Waiver did not likewise have any binding effect as there was nothing to extend in the first place.

Accordingly, this Court holds that since the four Waivers of the Statutes of Limitations are not valid and binding, the three-year period prescribed by law to issue an assessment was not extended. Therefore, the FAN and Assessment Notices, which were received by petitioner [PPI] on August 8, 2003, are void for they were issued beyond the prescriptive period provided under Section 203 of the 1977 Tax Code, as amended. As a consequence, the FDDA dated June 14, 2004, which sprung from the void FAN and Assessment Notices, is likewise void and should be set aside."[30] [Emphasis supplied.]

Anent the CIR's contention that PPI's availment of the Tax Amnesty Program under RA No. 9480 constitutes as an admission to the validity of the tax assessments and the waivers executed by the parties, this Court is not persuaded.

In 2007, RA 9480 took effect granting a tax amnesty to qualified taxpayers for all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.[31]

The Tax Amnesty Program under RA 9480 may be availed of by any person except those who are specifically excluded under Section 8 thereof, to wit:

SECTION 8. *Exceptions.* — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

(a) Withholding agents with respect to their withholding tax liabilities;

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government; *c*

[30] En Banc Docket, pp. 61-69.

[31] *Asia International Auctioneers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 179115, September 26, 2012, *citing* RA No. 9480, Sec. 1.

> (c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
> (d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
> (e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
> (f) Tax cases subject of final and executory judgment by the courts.

Significantly, in *Revenue Memorandum Circular No. 69-2007,*[32] the CIR clarified that even a taxpayer who has been filing a correct networth may also avail of the Tax Amnesty Program under RA No. 9480, thus:

> **"Q-14 For taxpayers who had been filing their correct networth and have no additional asset to declare further, but would like to participate in the amnesty program, will they be allowed to do so?**
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> A-14 In cases where the taxpayer decides to avail but does not declare additional assets or decides that he/it should not make any amendments of his/its networth as December 31, 2005, **he/it can avail of the amnesty program by paying five percent (5%) of the total declared networth as of Balance Sheet date in 2005 or the prescribed minimum absolute amount, whichever is higher.**" [Emphasis supplied.]

Clearly then, there is no merit in the CIR's argument that PPI's availment of the benefits of RA No. 9480 is tantamount to an admission to the validity of the assessments and waivers as the kind of tax involved in this case, *i.e.,* Withholding Tax, is expressly excluded from the coverage of the Tax Amnesty Program. Moreover, it must be underscored that PPI's availment of the Tax Amnesty

[32] Clarification of Issues Concerning the Tax Amnesty Program Under Republic Act No. 9480 as Implemented by Department Order No. 29-07, November 5, 2007.

Program for its assessed deficiency Income and Value-added taxes for the taxable year 1997 is separate and distinct from the Withholding Taxes subject of the instant petition. As long as it is within the bounds of the law, a taxpayer has the liberty to decide whether to avail of the tax amnesty program or not. In fact, with or without prior assessments duly issued therefor, a taxpayer may opt to avail of the tax amnesty under RA No. 9480.

In view of the foregoing, and as correctly observed by the Court *a quo* that the three-year prescriptive period for expanded withholding tax shall commence to run from the last day for filing of the Monthly Remittance Return of Income Taxes Withheld, pursuant to *Section 51 of the 1977 NIRC, as amended,* [33] and as implemented by *Revenue Regulations (RR) No. 05-85,* [34] as amended by *RR No. 03-93,* [35] and further amended by *RR No. 18-93,* [36] the

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[33] "Section 51. *Returns and payment of taxes withheld at source.* –

(a) *Quarterly returns and payment of taxes withheld.* – Taxes deducted and withheld under Section fifty-three (now 50) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made."

[34] Synchronization of the Time and Manner of Remitting Taxes Withheld under Sections 53, 54 and 93 of the National Internal Revenue Code, March 19, 1985.

[35] Amending Revenue Regulations No. 5-85, January 8, 1993.

[36] Amending Further Revenue Regulations No. 5-85, as Amended by Revenue Regulations No. 3-93, October 25, 1993.

Section 1 of RR No. 18-93 reads:

SECTION 1. Section 2 of Revenue Regulations No. 5-85, as amended by Revenue Regulations No. 3-93, is hereby further amended to read as follows:

"Sec. 2. Monthly Return and Remittance of Taxes Withheld. — Taxes deducted and withheld on:

(i) compensation income;

assessment on deficiency withholding tax shall have prescribed on the following dates:

Monthly Remittance Return of Income Taxes Withheld (TY 1997)	Date Filed	Prescription Date
January	February 25, 1997	February 25, 2000
February	March 25, 1997	March 25, 2000
March	April 25, 1997	April 25, 2000
April	May 25, 1997	May 25, 2000
May	June 25, 1997	June 25, 2000
June	July 25, 1997	July 25, 2000
July	August 25, 1997	August 25, 2000
August	September 25, 1997	September 25, 2000
September	October 24, 1997	October 24, 2000
October	November 25, 1997	November 25, 2000
November	December 29, 1997	December 29, 2000
December	January 26, 1998	January 26, 2001

In the instant case, it is undisputed that PPI received the FAN with attached Assessment Notices for alleged deficiency Income Tax, VAT and Withholding Tax only on August 8, 2003[37] or way beyond the 3-year prescriptive period provided by law. Consequently, the foregoing assessments issued by CIR have already prescribed. Hence, the FDDA dated June 14, 2004 is likewise void and should be set aside.

In view of our foregoing disquisitions, there is no longer a need to still delve into and resolve the other issues raised.

(ii) income payments subject to the creditable (expanded) withholding taxes; and

(iii) income subject to final withholding taxes.

shall be remitted within ten (10) days after the end of each calendar month with the filing of appropriate return (BIR Form 1743-W). However, taxes withheld from the last compensation/income payment for the calendar year (December) shall be remitted on or before the 25th of January of the succeeding year. Provided, further, that taxes withheld by Large Taxpayers, as identified and notified by the Bureau of Internal Revenue pursuant to Republic Act No. 7646, as implemented by Revenue Regulations No. 12-93, shall be remitted within twenty-five (25) days after the end of each calendar month with the filing of appropriate return (BIR Form 1743-W).

[37] Par. 1, Statement of Admitted or Undisputed Facts, JSFSI, Division Docket, Vol. III, p. 1497.

in the said petition. Thus, we find no cogent reason to reverse the findings of this Court's former Third Division.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**. The Decision and Resolution of the Third Division of this Court in CTA Case No. 6992 dated April 17, 2012 and June 21, 2012, respectively, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Li
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice