REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LA FRUTERA, INC.,
Respondent.

CTA EB NO. 1011
(CTA Case No. 7988)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

AUG 04 2014 Apolinario 8:35 a.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court En Banc is a Petition for Review filed by petitioner Commissioner of Internal Revenue ("CIR") under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking the nullification of the Decision[1] dated December 20, 2012, the dispositive portion of which reads:

[1] Rollo CTA EB Case No. 1011 pp. 25

> **WHEREFORE,** the Petition for Review is hereby **GRANTED**. Accordingly, the assessment for deficiency withholding tax issued against petitioner for taxable year 2004 in the aggregate amount of Php7,240,220.77, inclusive of surcharge, interest and compromise penalty, is **CANCELLED** and **SET ASIDE**.

and the Resolution[2] dated March 22, 2013 of the same First Division of the Court (Court in Division) denying the Commissioner of Internal Revenue's Motion for Reconsideration.

THE FACTS

The relevant antecedents stated in the assailed Decision[3]which was adopted by the CIR are as follows:

> "Petitioner[4] alleges that for its labor requirements in connection with its business activities for the year 2004, it employed laborers through Paglas Employment Agency, Inc. ("Agency"). The service fees paid to the agency were subjected to appropriate withholding tax.
>
> For the same taxable year 2004, petitioner allegedly imported materials and supplies for its operational requirements.
>
> For the months of January to December of 2004, petitioner filed its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) on the following dates:

EXHIBIT	PERIOD	DATE FILED
"R" and "S"	January	February 10, 2004
"T" and "U"	February	March 10, 2004
"V" and "W"	March	April 12, 2004
"X" and "Y"	April	May 5, 2004
"Z" and "AA"	May	June 10, 2004
"BB" and "CC"	June	July 8, 2004
"DD" and "EE"	July	August 10, 2004
"FF" and "GG"	August	September 10, 2004
"HH"and "II"	September	October 11, 2004

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[2] Rollo pp. 71
[3] Ibid pp. 25.
[4]Respondent La Frutera in this Petition for Review.

"JJ"	October	October 11, 2004
"KK"	October	November 10, 2004
"LL"	November	November 10, 2004
"MM"	November	December 10, 2004
"NN"	December	December 10, 2004
"OO"	December	January 17, 2005
"PP"	December	January 17, 2005

On December 28, 2007, petitioner received from respondent[5] two Formal Letters of Demand (FLDs) both dated December 10, 2007. One FLD was for Audit Results/Assessment Notice No. L/D#0417-04/2007(WHT), and the other, for Audit Results/Assessment Notice No. L/D#0417(A)-04/2007(WHT). Petitioner was assessed for deficiency withholding tax inclusive of surcharge, interest and compromise penalty for taxable year 2004, in the aggregate amount of Php9,971,741.27.

x x x.

The Details of Discrepancies attached to the said FLD demanded immediately payment of the alleged tax liability, x x x.

On January 2, 2008, petitioner protested the two FLDs, asserting that the cost of sales as reflected in their 2004 Audited Financial Statements did not entirely constitute cost and expenses attributable to local purchase of goods and services that were subjected to the corresponding expanded withholding tax (EWT). In connection thereto and in consideration for the approval of its request for reinvestigation, petitioner, through its Controller, Mr. Edwin S. Ledesma, executed a "Waiver of the Statute of Limitations under the National Internal Revenue Code" dated December 28, 2007, but notarized exactly a year after or on December 28, 2008.

On February 27, 2009, petitioner received from respondent, through Revenue District Officer Muslimen L. Maca-agir, Al Hadj, a Notice for Informal Conference dated February 24, 2009.

On August 28, 2009, petitioner received a Preliminary Assessment Notice (PAN) dated August 11, 2009 from

[5]Petitioner CIR in this Petition for Review.

respondent through Assistant Regional Director Alberto S. Olasiman of BIR Revenue Region No. 18, assessing it for deficiency withholding tax inclusive of interest and compromise penalty for taxable year 2004, in the total amount of Php7,240,220.77.

On September 1, 2009, petitioner protested the PAN through a letter dated August 28, 2009.

On October 5, 2009, petitioner received an undated letter from respondent, through Regional Director Atty. Marcelinda Omila-Yap of BIR Revenue Region No. 18, together with two FLDs both dated September 1, 2009. One of the FLDs was for Assessment Nos. L/D#0130-04/2009(WHT) and the other, for L/D#0130(A)-04-2009(WHT).

x x x.

Together with the foregoing FLDs was respondent's undated letter denying petitioner's request for further reinvestigation. xxx

Attached to the said undated letter was the Details of Discrepancies, wherein respondent wrote:

> It is requested that your aforesaid deficiency withholding tax liability be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from the date of receipt hereof, otherwise, our said deficiency withholding tax assessment shall become final, executory and demandable.

On November 4, 2009, petitioner filed the instant Petition for Review."

The CIR interposed the following defenses in La Frutera's Petition for Review[6]: a) that La Frutera is liable to pay its deficiency expanded withholding tax for calendar year 2004 in the total amount of Seven Million Two Hundred

[6] Before the Court in Division.

Forty Thousand Two Hundred Twenty Pesos and 77/100 (P7,240,220.77) including penalties, surcharges and interest; b) that La Frutera is regarded as one of the Top 10,000 corporations and as such, it is subject to mandatory withholding of tax on its purchases of goods and services from its regular local supplier. The top 10,000 corporations are assessed pursuant to Revenue Regulation (RR) No. 17-2003 in relation to Revenue Memorandum Circular No. 72-2004; c) that in the course of reinvestigation, La Frutera submitted documents comprising receipts issued by Paglas Employment Agency, Incorporated and a scrutiny of the receipts reveal that the labor works on farm overhead were performed not by the employees of Paglas Employment Agency, Incorporated. In other words, the labor works were outsourced and income payment was made to the employment agency, a local supplier of service. Such income payment is subject to expanded withholding tax which La Frutera failed to do; d) that in 2004, La Frutera imported materials and supplies which were used in the operation of the plantation; e) that the documents submitted by La Frutera during investigation were not considered by the Bureau of Internal Revenue (BIR) because it submitted only photocopied documents the veracity of which cannot be verified and also the documents were submitted beyond the time required to submit the same despite various notices given to it; and f) that despite re-investigation, La Frutera failed to submit all pertinent papers, records and documents which could evidently prove the incorrectness of the assessment made by BIR.

After trial on the merits wherein both parties presented their respective evidence, and upon the parties' submission of their respective memoranda, the case was submitted for decision.

On December 20, 2012 and March 22, 2013, the Court in Division rendered the questioned Decision and Resolution.

Aggrieved, the CIR filed before the Court En Banc this Petition for Review[7].

In the Resolution[8] dated July 1, 2013, respondent La Frutera was directed by the Court En Banc to file its comment in this case. On July 18, 2013, respondent filed its Comment[9], and sought for this Court En Banc to deny this Petition for Review, affirm the Decision and Resolution of the First Division.

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[7]Ibid pp. 6-24.
[8]Ibid pp. 75-76.
[9]Ibid pp. 77-96.

Thereafter, both parties were ordered to file their respective Memoranda[10]. The CIR filed a "Manifestation"[11]stating that she is adopting the arguments raised in her Petition for Review filed on May 22, 2013 as her Memorandum. La Frutera filed its Memorandum[12] on October 17, 2013.

This case was deemed submitted for decision on November 6, 2013[13].

ISSUE

The principal issue in this case is whether the Court in Division erred in cancelling and setting aside the assessment for deficiency withholding tax issued against respondent La Frutera for Taxable Year 2004.

PETITIONER'S ARGUMENTS

The CIR argues that the waiver executed by La Frutera was a valid undertaking to extend the period to assess; that La Frutera is estopped from assailing the validity of the waivers; that the assessments became final for failure of respondent to lodge a valid administrative protest against the assessments and due to respondent's failure to submit relevant documents within sixty (60) days from filing of administrative protest; and that the presumption under the law is in favor of the correctness of tax assessments.

RESPONDENT'S ARGUMENTS

La Frutera argues that the 2007 Formal Demand issued against it were void for failing to comply with the requirements of RR No. 12-99; that the waiver executed by Mr. Edwin Ledesma was defective and void, hence, it did not extend the original three (3) year period to assess; that it is not estopped from assailing the validity of the waiver and raising the defenses of prescription; and that the presumption of correctness may be overturned by evidence to the contrary.

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[10]Ibid pp. 98-99.
[11]Ibid pp. 100-102.
[12]Ibid pp. 104-124.
[13]Ibid pp. 126.

RULINGS OF THE COURT EN BANC

The Court finds no reversible error in the assailed Decision and Resolution of the Court in Division.

The CIR argues that the waiver executed by La Frutera was a valid undertaking to extend the period to assess and that the request for reinvestigation by La Frutera and the subsequent submission of the waiver, extended the period to assess the latter.

Section 203 of the 1997 National Internal Revenue Code (NIRC), 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 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 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. *(Emphasis supplied)*

The rationale for this three-year prescriptive period is to safeguard the interest of the taxpayer against unreasonable investigation.[14]

The rule however, is not without exception. The exception is provided under Section 222(b) and (d) of the 1997 NIRC, as amended, viz:

> SEC. 222. – *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
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[14]Phil. 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

> (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.
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> xxx
>
> (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 five (5) 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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> xxx

An assessment that was given beyond the statute of limitations can never become final and executory, hence, the assessments would not be binding on the taxpayer[15] ***except*** if there is a valid waiver for the extension of the assessment and collection of the taxes due.

The Supreme Court had consistently ruled in a number of cases that a request for reconsideration or reinvestigation by the taxpayer, without a valid waiver of the prescriptive periods for the assessment and collection of tax, as required by the Tax Code and implementing rules, will not suspend the running thereof.[16]

Thus, it is the execution of a valid waiver, not the request of the taxpayer for reinvestigation that extends the period for assessment. The revenue official is tasked to see to it that the waiver is strictly followed, and any revenue official

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[15] Commissioner of Internal Revenue vs. Ayala Securities Corporation, 70 SCRA 204.

[16] Bank of the Philippines Islands vs. Commissioner of Internal Revenue, G.R. NO. 139736, October 17, 2005; Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, 16 December 2004, 447 SCRA 214; Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 115712, 25 February 1999, 303 SCRA 614; Collector of Internal Revenue v. Pineda, 112 Phil 321 (1961).

found not to have complied with the same, resulting in prescription of the right by the government – to assess/collect, shall be administratively dealt with.

In *Commissioner of Internal Revenue v. Kudos Metal Corporation*[17], the Supreme Court enunciated the requirements of a properly executed waiver:

> 'Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 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.
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> 3. The waiver should be duly notarized.
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> 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

[17] G.R. No. 178087, May 5, 2010, [620 SCRA 232].

> before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
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> 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.'

The strict compliance to the rules on waiver was emphasized by the Supreme Court in *Philippine Journalist Inc. v. CIR*[18], 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. 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."

Applying the rules on waiver in this case, this Court affirms the finding of the Court in Division that the waiver executed by Mr. Edwin S. Ledesma is

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[18] G.R. No. 162852, December 16, 2004 [447 SCRA 214, 224].

defective and is therefore without binding effect. As correctly found by the Court in Division:

> (a) The waiver has no date of acceptance by Muslimen L. Maca-agir, Al Hadji Revenue District Officer of RDO No. 107;
>
> (b) It was notarized only on December 28, 2008, or a year after it was executed on December 28, 2007. The jurat is also infirm for it failed to indicate the person or persons who actually appeared for petitioner and the proper identification presented. Hence, the date of execution of said waiver by petitioner's representative cannot be considered as the date the parties agreed on the waiver before the notary public;
>
> (c) Nothing in the waiver shows that petitioner was furnished with a copy of said waiver after acceptance;
>
> (d) The type of tax due was also not indicated in the waiver; and
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> (e) There was also no indication that Mr. Edwin S. Ledesma was duly authorized by petitioner to sign the waiver on its behalf.[19]

The CIR asserts that the waiver executed by La Frutera led the CIR to believe that a binding agreement was reached leading to the postponement of tax collection. Hence, La Frutera is estopped from questioning the validity of the waivers it has voluntarily executed.

Petitioner's claim is unmeritorious.

This Court finds applicable the ruling in *Kudos*[20] that:

> **"The doctrine of estoppel cannot be applied in this case as an exception to the**

[19] Rollo, pp. 66-67.
[20] Ibid. note 15.

> **statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow.** As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.
>
> Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. **Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.**" *(Emphasis supplied, citations omitted)*

The CIR next argues that the assessment for deficient withholding tax has become final and executory for (1) failure of respondent to lodge a valid administrative protest against the Final Assessment Notice and the Formal Letter of Demand and (2) failure of respondent to submit relevant documents within sixty (60) days from filing of administrative protest.

An assessment to be valid must conform to the provisions of Section 228 of the NIRC, RR No. 12-99[21] and Revenue Memorandum Order No. 37-94[22].

Under the rules,[23] when the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings by sending of a PAN, which shall state the facts and the laws, rules and regulations, or jurisprudence on which the proposed assessment is based. If the taxpayer fails to reply within fifteen (15) days from receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Assessment Notice shall be issued demanding for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

In this case, the revenue officer did not comply with the requirements regarding assessments. Also all the notices issued by the revenue officers were issued beyond three (3) years from the time La Frutera filed its January to December 2004 returns and therefore were already barred by prescription. Thus, the assessment and Final Letter of Demands dated December 10, 2007 are null and void, and will never become final and executory. As stated by the Court in Division in its Decision:

> "The record shows that it was on December 28, 2007 that petitioner received the two (2) FLDs both dated December 10, 2007. One was for the Audit Results/Assessment Notice No. L/D#0417-04/2007(WHT) demanding payment of deficiency withholding tax liability for 2004 in the total amount of P9,946,741.27, and the other FLD was for Audit Results/Assessment Notice No. L/D#0417-(A)-04-2007(WHT), requesting payment of compromise penalty for 2004 in the amount of P25,000.00
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> Clear from the evidence adduced that the two (2) FLDs with their corresponding Audit Results/Assessment Notices, all dated December 10, 2007, were sent by respondent without a PAN having been priorly issued to petitioner. Neither was there

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[21] Implementing the Provisions of the NIRC of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty.
[22] Revision to RMOs 27-85 and 51-89 regarding procedures on the preparation, approval and release of assessment notices and demand letters and the preparation of BIR Form 40.00.
[23] Section 228 of the NIRC.

any indication that an informal conference was conducted for the alleged 2004 withholding tax liability and compromise penalties before the issuance of two (2) FLDs and final assessment notices.

The Details of Discrepancies, which formed part of the December 10, 2007 assessments is evident that respondent had reached a final determination of petitioner's tax liability even in the absence of a PAN.

The sending of a PAN to a taxpayer to inform him of the assessment made is part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "shall" in subsection 3.1.2 of RR No. 12-99 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of the right to due process.

Undoubtedly, the requirement that assessments should state the facts and the law on which said assessments were made was not complied with by respondent rendering the assessment and the FLDs dated December 10, 2007 null and void.

Respondent's arguments that petitioner was afforded the required due process when it received the assessment notice and the Notice for Informal Conference dated February 24, 2009 on February 27, 2009, is untenable.

The FLDs dated September 1, 2009, which proceeded from the issuance of respondent's PAN dated August 11, 2009 and the Notice for Informal Conference dated February 24, 2009, discloses that the call for payment pertained to the alleged deficiency withholding tax of petitioner for taxable year 2004, which was also the subject matter of the FLDs dated December 10, 2007 and September 1, 2009, are essentially the same. In fine, they both pertained to deficiency withholding tax for 2004, with the same principal amounts, type of tax, and taxable year. To say the least, the issuance of the FLDs dated September 1, 2009 was an afterthought obviously to cure the flaws committed, namely, the failure to priorly issue a PAN and call for informal conference to thresh out any discrepancies before the FLDs dated December 10, 2007 was (sic) issued.

In any event, the subsequent assessments covered by the FLDs dated September 1, 2009 had already prescribed. The Notice for Informal Conference dated February 24, 2009, received by petitioner on February 27, 2009; the Preliminary Assessment Notice dated August 11, 2009 and received by petitioner on August 28, 2009; and the second letter of demand together with the Formal Letters of Demand dated September 1, 2009, the Details of Discrepancies, and the Audit Results/Assessment Notices all dated September 1, 2009 received by petitioner on October 5, 2009 were **all issued beyond the three-year period for respondent to assess** petitioner for the subject deficiency withholding tax and compromise penalty covering the year 2004. xxx xxx xxx

Corollarily, Section 58(A) of the NIRC of 1997, as amended, and Section 5 of RR No. 17-2003 provide:

> SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* – xxx xxx xxx
>
> **The return for final withholding tax shall be filed and the payments made within twenty-five (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: *Provided,* That the Commissioner, with the approval of the Secretary of Finance, may 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.***(Emphasis supplied)*
>
> SECTION 5. *Returns and Payments of Taxes Withheld at Source.* - Section 2.58 of Revenue

Regulations No. 2.98, as amended, is hereby further amended to read as follows:

Sec. 2.58. *Returns and Payments 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 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

Therefore, respondent had until the following dates within which to assess petitioner for the subject deficiency EWT for taxable year 2004:

PERIOD	DATE FILED	DATE OF FILING AS PRESCRIBED BY LAW	LAST DAY TO ASSESS
January	February 10, 2004	February 10, 2004	February 10, 2007
February	March 10, 2004	March 10, 2004	March 10, 2007
March	April 12, 2004	April 10, 2004	April 12, 2007
April	May 5, 2004	May 10, 2004	May 10, 2007
May	June 10, 2004	June 10, 2004	June 10, 2007
June	July 8, 2004	July 10, 2004	July 10, 2007
July	August 10, 2004	August 10, 2004	August 10, 2007
August	September 10, 2004	September 10, 2004	September 10, 2007
September	October 11, 2004	October 10, 2004	October 11, 2007
October	October 11, 2004	November 10, 2004	November 10, 2007
October	November 10, 2004	November 10, 2004	November 10, 2007
November	November 10, 2004	December 10, 2004	December 10, 2007
November	December 10, 2004	December 10, 2004	December 10, 2007
December	December 10, 2004	January 15, 2004	January 15, 2008
December	January 17, 2005	January 15, 2005	January 17, 2008
December	January 17, 2005	January 15, 2005	January 17, 2008

> It was sufficiently established that petitioner filed its 2004 Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) from February 10, 2004 to January 17, 2005. Hence, as detailed in the table above, respondent had until February 10, 2007 to January 17, 2008, within which to assess petitioner for any deficiency withholding tax for taxable year 2004.
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> *A fortiori*, the Preliminary Assessment Notice dated August 11, 2009; and received by petitioner on August 28, 2009;and the second letter of demand together with the Formal Letters of Demand dated September 1, 2009, the Details of Discrepancies, and the Audit Results/Assessment Notices all dated September 1, 2009 and received by petitioner on October 5, 2009, were issued more than three (3) years from the time petitioner filed its January to December 2004 returns. In other words, the assessments for the taxable year 2004 were already barred by prescription.[24]

Lastly, the CIR argues that the presumption under the law is in favor of the correctness of tax assessments.

While it is true that tax assessments issued by the BIR enjoy the presumption of correctness, such presumption can be proven otherwise.

In this case, the presumption in favor of the assessments was clearly overcome by the evidence on record that the assessments were tainted with irregularities.

Therefore the assessments for Taxable Year 2004 should be cancelled.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED for lack of merit.** Accordingly, the Decision dated December 20, 2012 and Resolution dated March 22, 2013 are hereby affirmed in toto.

SO ORDERED.

Ma. Belen R. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[24] Rollo, pp. 51-58.

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

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

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice