REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

LA FLOR DELA ISABELA, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8154

Members:
BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
AUG 3 2012
ABFernando 11:07 a.m.

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D E C I S I O N

BAUTISTA, J.:

The Petition for Review seeks the cancellation of the Final Decision on Disputed Assessment, and deficiency assessments for Withholding Tax on Compensation (LTEADI-WC-05-00038), Expanded Withholding Tax (LTEADI-WE-05-00062), Penalties for Late Filing and Payment of Withholding Tax on Compensation (LTEADI-CP-05-00007), and Penalties for Late Filing and Payment of Expanded Withholding Tax (LTEADI-CP-05-00008), all dated July 20, 2010, issued by respondent against petitioner for the taxable year 2005 in the aggregate amount of ₱6,835,994.76, inclusive of interest and penalties.[1]

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[1] *Records*, pp. 1-69, with Annexes.

FACTS OF THE CASE

Petitioner, La Flor Dela Isabela, Inc., is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at KM 14, West Service Road, Parañaque City.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, with authority, *inter alia*, to issue and decide on disputed tax assessments, with office address at Bureau of Internal Revenue ("BIR") Building, Diliman, Quezon City.

Petitioner filed with the BIR its monthly withholding tax returns for the calendar year 2005 as follows:

Withholding Tax - Expanded	**Date Filed**
January	March 8, 2005
February	March 14, 2005
March	April 14, 2005
April	May 15, 2005
May	June 14, 2005
June	July 14, 2005
July	August 11, 2005
August	September 14, 2005
September	October 14, 2005
October	November 14, 2005
November	December 14, 2005
December	March 14, 2006
Withholding Tax - Compensation	**Date Filed**
January	February 15, 2005
February	March 4, 2005
March	April 15, 2005
April	May 13, 2005
May	June 14, 2005
June	July 4, 2005
July	August 14, 2005
August	September 14, 2005
September	October 14, 2005

October	November 14, 2005
November	December 14, 2005
December	January 14, 2006

On January 30, 2006, petitioner also filed with the BIR its Annual Information Return on Income Tax Withheld on Compensation and Final Withholding Taxes (BIR Form 1604-CF) for taxable year 2005.

On March 1, 2006, petitioner likewise filed with the BIR its Annual Information Return on Creditable Income Taxes Withheld (Expanded) (BIR Form 1604-E) for taxable year 2005.

On February 16, 2009, petitioner executed a Waiver of the Statute of Limitations.

On November 20, 2009, petitioner received a Preliminary Assessment Notice dated November 18, 2009, issued by respondent, assessing the former for alleged deficiency taxes for the taxable year 2005.

On January 7, 2010, petitioner received a Formal Letter of Demand, with Final Assessment Notices LTEADI-WC-05-00038, LTEADI-WE-05-00062, LTEADI-CP-05-00007, LTEADI-CP-05-00008,[2] all dated December 17, 2009, issued by respondent for the alleged deficiency taxes for the year 2005.

On January 15, 2010, petitioner filed a Letter of Protest on the Assessment Notices dated December 17, 2009.

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[2] Based on the Joint Stipulation of Facts, the parties indicated as follows: LTAID-II CP-05-00007, LTAID-II CP 05-00008, LTAID-II WE-05-00062, and LTAID-II WC-05-00038, respectively.

On July 20, 2010, respondent issued a Final Decision on Disputed Assessment covering the alleged withholding taxes in the total amount of ₱6,835,994.76,[3] which was received by petitioner on August 11, 2010.

Thus, on September 13, 2010, petitioner filed the present Petition for Review.[4]

On October 12, 2010, respondent filed her Answer,[5] interposing the following Special and Affirmative Defenses:

5. The taxes were assessed within the period allowed by law, Section 230 of the Tax Code of 1997 states:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

6. Section 222(b) of the Tax code of 1997 clearly states that the period to assess can be validly extended beyond the three (3) year period provided for in Section 203 of the same law with the execution of a waiver, to wit:

> "(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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[3] Joint Stipulation of Facts and Issues, Facts, pars. 1-10; *Records*, pp. 160-163.
[4] *Records*, pp. 1-69, with Annexes.
[5] *Id.*, at pp. 77-112, with Annexes.

7. The validity of the waiver could not be impugned so long as it was executed in compliance with Revenue Memorandum Order No. 20-90, as amended by Revenue Delegation Authority Order No. 05-01.

8. In the case of "*Commissioner of Internal Revenue vs. Kudos Metal Corporation*," the Supreme Court stated:

> RMO 20-906 [issued on April 4, 1990] and RDAO 05-017 [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[.] [T]he 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[.] [I]n the case of a corporation, the waiver must be signed by any of its responsible officials[.] [In case] the authority is delegated by the taxpayer to a representative, such [delegation] should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The [*sic*] CIR or the revenue official authorized by him must sign the waiver indicating that the [*sic*] BIR has accepted and agreed to the waiver[.] [T]he 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.
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> 5. Both the date of execution by the taxpayer and date of acceptance by the [Bureau] should be before the expiration of the period of prescription or before the lapse of the period

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agreed upon in case a subsequent agreement is executed; [and]

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 [O]ffice accepting the waiver[.] [T]he 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.

9. Based on BIR records, petitioner executed three (3) waivers, all of which were executed prior to the lapse of prescriptive period provided for under the law.

10. The first waiver executed on September 3, 2008 was signed by Alan James Anthony [*sic*] C. Harrow, President of petitioner. Petitioner's copy was received by Sonia C. Veras on October 3, 2008. On the other hand, this waiver was accepted in behalf of respondent Olivia O. Lao, Head Revenue Executive Assistant - Large Taxpayer[s] Service - [Excise] who was authorized to sign the name under RDAO 05-01. Moreover, the first waiver was duly notarized. By virtue of this waiver, the period to assess the internal tax liabilities for the year 2005 was extended until June 30, 2009. This waiver was executed within the three (3) year period provided for in the law for the Bureau of Internal Revenue to assess. Since petitioner filed its BIR Form No. 1604-CF on January 30, 2006 for Withholding Taxes on Compensation (WC) and BIR Form No. 1604-E on March 1, 2006 for Expanded Withholding Tax (EWT), respondent had until January 30, 2009 and March 1, 2009 to validly execute the waiver for WC and EWT, respectively, for taxable year 2005. Attached hereto is the waiver dated September 3, 2008 as *Annex "1"* and is made an integral part hereof.

11. The second waiver was [*sic*] executed on February 16, 2009 was signed by Alan James Anthony C. Harrow, President of petitioner. Petitioner's copy was received by Laye Cadutulan on March [19], 2009. This waiver was accepted in behalf of respondent by Olivia O. Lao, [OIC] Head Revenue Executive Assistant - Large Taxpayer[s] Service - [Excise], who was authorized to sign the same under RDAO 05-01. Moreover, the second waiver was duly notarized. This waiver was executed within the validity of the period provided in the first waiver on or before June 30, 2009. Thus, the execution of the second waiver

on February 16, 2009 was well within the period allowed to execute the same. By virtue of this waiver, the period to assess the internal tax liabilities for the year 2005 was extended until December 31, 2009. Attached hereto is the said waiver dated February 16, 2009 as *Annex "2"* and is made an integral part hereof.

12. The third waiver was [*sic*] executed on December 2, 2009 was signed by Atty. Czarino P. Silao, petitioner's authorized representative and legal counsel. Petitioner's copy was received on December 17, 2009. This waiver was accepted in behalf of respondent by Zenaida G. Garcia, OIC - Assistant Commissioner - Large Taxpayer[s] Service who was authorized to sign the same under RDAO 05-01. Moreover, the third waiver was duly notarized. This waiver was executed within the validity of the period provided in the [second] waiver on or before December 31, 2009. Thus, the execution of the third waiver on December 2, 2009 was well within the period allowed to execute the same. By virtue of this waiver, the period to assess the internal tax liabilities for the year 2005 was extended until June 30, 2010. Attached hereto is the said waiver dated December 2, 2009 as *Annex "3"* and is made an integral part hereof.

13. Respondent also submits that the waivers remained valid invoking the doctrine of *laches*. In the case of "*Spouses Morris Carpo and Socorro Carpo vs. Ayala Land, Incorporated,*" the Supreme Court stated:

> By laches is meant the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. It does not involve mere lapse or passage of time, but is principally an impediment to the assertion or enforcement of a right, which has become under the circumstances inequitable or unfair to permit. [citing Caltex (Philippines), Inc. vs. Court of Appeals]

14. In this instance, *laches* have set in. Petitioner failed to assert the defense of prescription from the onset and instead voluntarily executed three (3) valid waivers. In fact, petitioner executed the third waiver dated December 3, 2009 after respondent had already issued her Preliminary Assessment Notice (PAN) on November 18, 2009. Attached hereto is a copy of the PAN dated November 18, 2009 as *Annex "4"* and is made an integral part hereof.

15. From the foregoing, it is unmistakable that petitioner's acts unequivocally show that it did not believe respondent's assessment has prescribed.

16. BIR Records also show that petitioner failed to respond to the PAN dated November 18, 2009. In consonance with Section 3.1.2 of Revenue Regulations No. 12-99, respondent issued her Formal Letter of Demand on December 17, 2009, to wit:

> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. (*Underscoring supplied.*)

17. Respondent also respectfully submits that the doctrine enunciated by the Honorable Court in the case of "*Continental Micronesia, Inc. – Philippine Branch vs. Commissioner of Internal Revenue,*" applies, to wit:

> "To emphasize, the Supreme Court in the case of *Collector of Internal Revenue vs. Suyoc Consolidated Mining Company, et al.*, held that 'there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts, the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government.'"

18. Alternatively, petitioner's availment of Tax Amnesty on October 4, 2007 clearly is incompatible with its claim that the assessment has prescribed. In availing of the benefits of tax amnesty afforded by

Republic Act No. 9480, petitioner has recognized the validity of the assessment made against it. Attached hereto as *Annex "6"* is a copy of respondent's Notice of Availment of Tax Amnesty and is made an integral part hereof.

19. As aptly ruled by the Honorable Court *En Banc* in the case of *"Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue"*:

> "Petitioner cannot question the validity of the waivers with respect to the deficiency onshore and documentary stamp taxes when it paid the deficiency taxes assessed for income tax, gross receipts tax, final withholding tax, expanded withholding tax and documentary stamp tax all of which were covered by the same waivers if petitioner really believes that the waivers were not valid and the subject assessments were issued by the respondent out of time, then it should not have made any payments.
>
> In one case, the Supreme Court ruled that a party is [e]stopped from raising the issue of payment of the 25% ad valorem tax by claiming that there was no removal of pyrite from the mine site where it had paid the same for the tax year. In the same way, We cannot allow petitioner to question the waivers covering the same recomputed assessed taxes and it paying the same while at the same time to assail the other assessed taxes it refused to pay.
>
> To reiterate, petitioner received a letter of authority relative to the examination of all its internal revenue taxes from January 1, 1994 to December 31, 1995. On January 23, 1997, it executed waivers extending the period to assess up to December 31, 2000. On January 27, 2000, an undated letter of demand with fourteen (14) assessment notices attached were issued by the respondent. On December 6, 2000, petitioner received another formal demand letter with recomputed assessments. On the same day, petitioner paid the deficiency taxes assessed except for the onshore tax and documentary stamp tax on special savings accounts.
>
> In disputing the assessments for these onshore and documentary stamp taxes, petitioner now assails the validity of the waivers which covered all the other assessed taxes it already paid.

> We hold that petitioner is [e]stopped from questioning the validity of the waivers. Its act in paying the assessed taxes covered by the same waivers is conclusive that the assessments were valid. Petitioner cannot now deny their validity. This Court cannot countenance petitioner's act of adopting inconsistent postures regarding the waivers." (*Underscoring supplied.*)

20. The doctrine enunciated in the aforementioned case is applicable in this case. In this instance, the amnesty tax paid for by petitioner covered the assessment from which its petition arose. In fact, the assessment issued by respondent deleted items which were within the coverage of the tax amnesty applied for by petitioner. Consequently, the resulting assessment covered only deficiency withholding taxes which were outside the ambit of the tax amnesty. As provided for in Section 8(1) of Republic Act No. 9480:

> "SEC. 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;"

21. Again, the case of "*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,*" is instructive. To wit:

> "Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. Also, petitioner's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess."

22. Additionally, the doctrine enunciated in the case of "*Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc.,*" is applicable in this case. In the cited case, the taxpayer raised the defense of prescription against the efforts of the Commissioner of Internal Revenue to assess

and collect the taxes. The Supreme Court ruled against the taxpayer as it found that there was a valid request for investigation. To wit:

> "In another case, this Court stated that the statutory period of limitation for collection may be interrupted if by the taxpayer's repeated requests or positive acts the Government ha[ve] been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. (*Citing Commissioner of Internal Revenue vs. Consolidated Mining Co., G.R. No. 11527, November 29, 1968*)

23. Similarly, petitioner in this case has by its own action caused the delay in the resolution of its protest. The execution[s] of no less than 3 valid waivers are a testament to this.

24. In any case, since what is sought to be collected from petitioner are penalties for failure to withhold and remit taxes, the period of limitation provided in Section 203 of the Tax Code of 1997 finds no application.

25. The Supreme Court categorically pronounced this doctrine in the case of "*Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corporation*," to wit:

> In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. <u>Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since</u>:
>
> > <u>"the government's cause of action against the withholding [agent] is not for the collection of</u>

> income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer." (*Underscoring supplied.*)

26. Finally, "it is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. It is the lifeblood of the government and so should be collected without unnecessary hindrance."

27. All told, petitioner's petition for review filed before the Honorable Court should be denied for lack of merit.[8] (*Citations omitted.*)

On March 17, 2011, the parties entered their Joint Stipulation of Facts and Issues.[9] Considering that in the said Joint Stipulation of Facts and Issues, respondent had already admitted petitioner's documentary evidence,[10] the latter filed its Formal Offer of Evidence on April 14, 2011, which was resolved by the Court in its Resolution dated May 16, 2011.[11] On the other hand, respondent, on July 18, 2011, manifested that she will not present any evidence.[12]

On September 6, 2011, the case was submitted for decision, considering respondent's Manifestation filed on August 17, 2011,[13] stating that she intends to adopt the relevant facts, proceedings, issues and discussions specifically declared on her Answer filed on October 12, 2010 as her Memorandum, and the Memorandum for the Petitioner filed on August 31, 2011,[14] by petitioner.[15]

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[8] *Id.*, at pp. 78-86.
[9] *Id.*, at pp. 160-164.
[10] Resolution dated April 5, 2011; *Records*, p. 176.
[11] *Records*, pp. 192-193.
[12] *Id.*, at p. 196.
[13] *Id.*, at pp. 201-203.
[14] *Id.*, at pp. 207-222.

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I. Whether or not the assessments and the eventual collection of the alleged deficiency withholding taxes are barred by prescription;

II. Whether or not petitioner is liable to pay for the alleged deficiency withholding tax for the taxable year 2005; and

III. Whether or not the assessments issued by respondent are null and void as alleged by petitioner.[16]

RULING OF THE COURT

The Court finds the Petition for Review meritorious.

In cases of assessment, Section 203 of the 1997 National Internal Revenue Code ("NIRC"), as amended, provides as follows:

> SECTION 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

The foregoing provision mandates respondent to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the return,

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[15] *Id.*, at p. 224.
[16] *Id.*, at p. 163.

or the actual date of filing of such return, whichever is later. Stated otherwise, an assessment issued after the three (3)-year period is deemed void.

In relation thereto, Section 58 of the 1997 NIRC, as amended, is hereby quoted as follows:

> **SEC. 58.** *Returns and Payment of Taxes Withheld at Source.* –
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an 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 return for final withholding tax shall be filed and the payment 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.** *(Boldfacing supplied)*

In relation thereto, Sections 2.58(A)(2) and 2.81 of Revenue Regulations No. 2-98 dated April 17, 1998,[17] as amended by Revenue Regulations No. 06-01 dated July

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[17] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended," Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

31, 2001,[18] and Revenue Regulations No. 17-03 dated March 31, 2003,[19] provide for the period for filing the required returns, *scilicet*:

REVENUE REGULATIONS NO. 06-01

xxx xxx xxx

SECTION 4. *Time for Filing of Withholding Tax and Value-Added Tax Returns and the Payment of Taxes Due Thereon.* – The time for filing of the various tax returns as indicated below and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to the existing regulations, as presented below.

(1) Sections 2.58(A)(2) and 2.81 of Revenue Regulations No. 2-98, as amended, are hereby further amended to read as follows:

xxx xxx xxx

"SECTION 2.81. *FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COMPENSATION (FORM NO. 1601).* – Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; *provided, however*, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year; *Provided, however*, that with respect to taxpayers, whether large or non-large, who availed of the EFPS, the deadline for electronically

[18] Amending Pertinent Provisions of Revenue Regulations Nos. 1-98, 2-98, as Amended, and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon And Others.

[19] Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

filing the aforesaid withholding tax return and paying the tax due thereon via the EFPS shall be five (5) days later than the deadlines set above."

REVENUE REGULATIONS NO. 17-03

xxx xxx xxx

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 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; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.

Nonetheless, in case of disposition of real property classified as capital asset by an individual to the government, the tax to be imposed shall be determined either under the normal income tax rate imposed in Sec. 24(A) or under a final

> capital gains tax of six percent (6%) imposed under Sec. 24(D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows the seller's filed income tax return reflecting the result of the subject real estate transaction.
>
> (b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof."

And in the computation of the three (3)-year period, a year is equivalent to three hundred sixty five (365) days, regardless of whether it is a regular year or a leap year.[20]

From the foregoing, the three (3)-year period within which respondent can validly issue an assessment is reckoned as follows:

Withholding Tax – Expanded	Date Filed	END OF THE THREE-YEAR PERIOD
January[21]	March 8, 2005	March 8, 2008
February[22]	March 14, 2005	March 15, 2008
March[23]	April 14, 2005	April 15, 2008
April[24]	May 13, 2005[25]	May 15, 2008
May[26]	June 14, 2005	June 15, 2008
June[27]	July 14, 2005	July 15, 2008

[20] National Marketing Corporation *v.* Tecson, 139 Phil. 584 (1960), *citing People v. Del Rosario, 97 Phil 70, 71 (1955).*
[21] *Exhibit "A."*
[22] *Exhibit "B."*
[23] *Exhibit "C."*
[24] *Exhibit "D."*
[25] Based on the Joint Stipulation of Facts and Issues, the return was filed on May 15, 2005.
[26] *Exhibit "E."*
[27] *Exhibit "F."*

July[28]	August 11, 2005	August 15, 2008
August	September 14, 2005	September 15, 2008
September[29]	October 14, 2005	October 15, 2008
October[30]	November 14, 2005	November 15, 2008
November[31]	December 14, 2005	December 15, 2008
December[32]	March 1, 2006[33]	March 1, 2009
Withholding Tax - Compensation	**Date Filed**	**END OF THE THREE-YEAR PERIOD**
January[34]	February 15, 2005	February 15, 2008
February[35]	March 14, 2005[36]	March 15, 2008
March[37]	April 14, 2005[38]	April 15, 2008
April[39]	May 13, 2005	May 15, 2008
May[40]	June 14, 2005	June 15, 2008
June[41]	July 14, 2005[42]	July 15, 2008
July	August 14, 2005	August 15, 2008
August[43]	September 14, 2005	September 15, 2008
September[44]	October 14, 2005	October 15, 2008
October[45]	November 14, 2005	November 15, 2008
November[46]	December 14, 2005	December 15, 2008
December[47]	January 30, 2006[48]	January 30, 2009

From the filing of petitioner's monthly returns starting January 2005 and ending on December 2005, respondent has three (3) years within which to issue an assessment, or at the earliest, on February 15, 2008, up to the latest on March 1, 2009.

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28 *Exhibit "G."*
29 *Exhibit "I."*
30 *Exhibit "J."*
31 *Exhibit "K."*
32 *Exhibit "L."*
33 Based on the Joint Stipulation of Facts and Issues, the return was filed on March 14, 2006.
34 *Exhibit "N."*
35 *Exhibit "O."*
36 Based on the Joint Stipulation of Facts and Issues, the return was filed on March 4, 2005.
37 *Exhibit "P."*
38 Based on the Joint Stipulation of Facts and Issues, the return was filed on April 15, 2005.
39 *Exhibit "Q."*
40 *Exhibit "R."*
41 *Exhibit "S."*
42 Based on the Joint Stipulation of Facts and Issues, the return was filed on July 4, 2005.
43 *Exhibit "U."*
44 *Exhibit "V."*
45 *Exhibit "X."*
46 *Exhibit "Y."*
47 *Exhibit "Z."*
48 Based on the Joint Stipulation of Facts and Issues, the return was filed on January 14, 2006.

Based on the records of the case, petitioner received the Formal Letter of Demand, with Final Assessment Notices LTEADI-WC-05-00038, LTEADI-WE-05-00062, LTEADI-CP-05-00007, LTEADI-CP-05-00008,[49] all dated December 17, 2009, issued by respondent for the alleged deficiency taxes for the year 2005, only on January 7, 2010. With the foregoing, the same were issued beyond the three (3)-year prescriptive period.

However, Section 222(b) of the 1997 NIRC, as amended, states as follows:

> SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

Petitioner avers that it had executed a Waiver of the Statute of Limitations on February 16, 2009; on the other hand, respondent counters that the former had executed three (3) Waivers of the Statute of Limitations dated September 3, 2008, February 16, 2009, and December 2, 2009.

Based on the records of the case, the parties stipulated on the execution, filing, and receipt of the Waiver of the Statute of Limitations dated February 16, 2009 only. On the other hand, the Waivers of the Statute of Limitations dated September 3, 2008, February 16, 2009, and December 2, 2009, were neither presented nor offered

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[49] Based on the Joint Stipulation of Facts and Issues, the parties indicated as follows: LTAID-II CP-05-00007, LTAID-II CP 05-00008, LTAID-II WE-05-00062, and LTAID-II WC-05-00038, respectively.

by respondent who cites the same in her Answer as Special and Affirmative Defenses.

Section 34 of Rule 132 of the Revised Rules of Court, expressly provides as follows:

> SEC. 34. *Offer of Evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Further, in the case of *Rafael Arsenio S. Dizon, in his capacity as the Judicial Administrator of the Estate of the deceased Jose P. Fernandez, v. Court of Tax Appeals and Commissioner of Internal Revenue,*[50] the Supreme Court rules as follows:

> While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR. (*Citations omitted.*)

In the case at bench, during trial on June 13, 2011, counsel for respondent move for the resetting of his initial presentation of evidence, considering that he has yet to confer with his witness;[51] and on July 18, 2011, counsel for the respondent manifested that he will not present any evidence.[52] With the foregoing, the Court shall only consider the Waiver of the Statute of Limitations dated February 16, 2009.

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[50] G.R. No. 140944, April 30, 2008.
[51] *Records*, p. 195.
[52] *Id.*, at p. 196; with confirming Resolution dated July 22, 2011.

And as earlier discussed, considering that from the filing of petitioner's monthly returns from January 2005 to December 2005, respondent has three (3) years within which to issue an assessment, or at the earliest, on February 15, 2008, up to the latest on March 1, 2009, the Waiver of the Statute of Limitations dated February 16, 2009 is, thus, been made before the end of the three (3)-year period, insofar as the deficiency expanded withholding tax covering the period of December 2005 is concerned.

Therefore, the three (3)-year period within which respondent can validly issue an assessment against petitioner had already lapsed for the period covering January 2005 to November 2005.

On the other hand, apparently, the period within which respondent may assess petitioner, in accordance with the said Waiver of the Statute of Limitations has been extended until December 31, 2009, making the Formal Letter of Demand and the relevant Final Assessment Notices all dated December 17, 2009, insofar as the deficiency expanded withholding tax covering the period of December 2005 is concerned, has been made within the agreed period in writing.

In the case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[53] the Supreme Court has emphasized the detailed procedure for the proper execution of the Waiver of the Statute of Limitation, which respondent itself issued.

And in the case at bench, the Court notes, however, that the Waiver of the Statue of Limitations failed to indicate the kind and amount of tax involved thereto.

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

In the case of *Dole Philippines, Inc. v. Commissioner of Internal Revenue*,[54] this Court ruled as follows:

> A simple comparison of the accomplished waiver with that of the prescribed form would patently show the deviations. Indeed, petitioner did not state in the subject waiver the kind of tax and the amount of the tax due which is required in the prescribed form. The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner to pinpoint which among the proposed tax assessments may subsequently be issued without the petitioner invoking the defense of prescription *(Pfizer, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003)*. If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of *(Solid Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999)*. It should be emphasized that RMO No. 20-90 requires specific information. Hence, to substitute the same with general statements is a departure from RMO No. 20-90.

Further, in the case of *Guoco Holdings (Philippines), Inc. v. Commissioner of Internal Revenue*,[55] the Court penned as follows:

> Revenue Memorandum Order No. 20-90, provides that the Waiver must be in the following tenor:
>
> "WAIVER OF THE STATUTE OF LIMITATIONS
> UNDER THE NATIONAL INTERNAL REVENUE CODE
>
> ____ in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of ______________________ as ____________ for the years ______________, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after re-investigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after

[54] CTA Case No. 5705, July 1, 2003.
[55] CTA Case No. 6122, August 31, 2005.

______________, 19_____. The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this ____________ day of _______________19____, in Quezon City, Philippines.

____
(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date ______________________"

(Annex A, Revenue Memorandum Order 20-90, April 4, 1990)

xxx xxx xxx

Lastly, the Court notes that the subject Waivers did not indicate the kind and amount of tax due in clear violation of RMO No. 20-90. The execution of a Waiver of the Statute of Limitations presupposes that there is already an initial finding by the respondent as to the tax liabilities of the taxpayer/petitioner, or else, there would be nothing to waive. Moreover, the requirement to specify the kind of tax and amount is for the purpose of limiting the conditions of the waivers with regard to only those taxes and amounts as specified therein. This is to protect both the taxpayer and the government, in the sense that, the parties are particularly apprised of the subject matter of the waivers.

Applying the foregoing, the subject Waiver of the Statute of Limitations dated February 16, 2009 is clearly defective; therefore, the prescriptive period was neither tolled nor extended.

Having caused the defects in the subject waiver, respondent must bear the consequence.[56] With this, the Formal Letter of Demand and the relevant Final Assessment Notices all dated December 17, 2009, insofar as the deficiency expanded withholding tax covering the period of December 2005 is concerned, was likewise issued beyond the three (3)-year prescriptive period.

Lest it be forgotten, a Waiver of the Statute of Limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must carefully and strictly construed.[57]

In sum, this Court finds the Formal Letter of Demand, with Final Assessment Notices LTEADI-WC-05-00038, LTEADI-WE-05-00062, LTEADI-CP-05-00007, LTEADI-CP-05-00008,[58] all dated December 17, 2009, issued beyond the prescriptive period.

WHEREFORE, the Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand, with Final Assessment Notices LTEADI-WC-05-00038,

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[56] *Supra*, note 53.
[57] Philippine Journalist, Inc. *v.* Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[58] Based on the Joint Stipulation of Facts and Issues, the parties indicated as follows: LTAID-II CP-05-00007, LTAID-II CP 05-00008, LTAID-II WE-05-00062, and LTAID-II WC-05-00038, respectively.

LTEADI-WE-05-00062, LTEADI-CP-05-00007, LTEADI-CP-05-00008,[59] all dated December 17, 2009, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

[59] Based on the Joint Stipulation of Facts and Issues, the parties indicated as follows: LTAID-II CP-05-00007, LTAID-II CP 05-00008, LTAID-II WE-05-00062, and LTAID-II WC-05-00038, respectively.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice