REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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RURAL BANK OF BACNOTAN (LA UNION), INC., Petitioner,	**CTA Case No. 9118**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** <u>*JJ.*</u>
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAR 0 2 2020 2:24 p.m.

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DECISION

UY, <u>J</u>.:

Before this Court is a *Petition for Review* filed on August 13, 2015 by Rural Bank of Bacnotan (La Union), Inc., petitioner, against the Commissioner of Internal Revenue, respondent, seeking the cancellation and withdrawal of the Final Assessment Notice and Formal Letter of Demand issued by respondent for the collection of alleged deficiency income tax, gross receipts tax, expanded withholding tax, final withholding tax and compromise penalties on depreciation and taxes and licenses in the aggregate amount ₱2,844,647.67 for taxable year 2010.

THE FACTS

Petitioner Rural Bank of Bacnotan (La Union), Inc. is a corporation organized and existing under the laws of the Philippines with office address at Bacnotan, La Union.[1] It is engaged in the

[1] Par. 1, *Petition for Review*, Docket –Vol. 1, p. 10 *vis-à-vis* Par. 1, *Answer*, Docket – Vol. 4, p. 1744.

business of extending rural credit to small farmers and tenants and to deserving rural industries or enterprises.[2] Petitioner is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 000-541-789-000.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, and holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City where it may be served with summons and other legal processes.[4]

On February 16, 1962, the Central Bank of the Philippines, thru its Monetary Board, approved the grant of a Certificate of Authority to petitioner to operate as a rural bank under the terms and conditions of Republic Act No. 720, as amended.[5]

For taxable year 2010, petitioner filed its Annual Income Tax Return on March 17, 2011.[6]

Sometime on December 16, 2011, petitioner received *Letter of Authority (LOA)* No. 003-2011-00000315 (SN eLA201000069930) dated December 6, 2011, authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes except for Value Added Tax (VAT), Final Withholding VAT, for taxable year 2009 and 2010.[7]

Thereafter, petitioner received a *Preliminary Assessment Notice (PAN)*[8] dated November 26, 2014 from respondent on December 3, 2014, assessing petitioner for alleged deficiency taxes for the calendar year 2010 in the total amount of ₱2,884,647.67 inclusive of interest, broken down as follows:

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[2] Par. 4, *Petition for Review*, Docket–Vol. 1, p. 11 *vis-à-vis* Par. 1, *Answer*, Docket – Vol. 4, p. 1744; Exhibit "P-1", *Amended Articles of Incorporation,* refer to the CD attached to petitioner's FOE.

[3] Exhibit "P-3", BIR Form No. 2303, Certificate of Registration, refer to the CD attached to petitioner's FOE.

[4] Par. 2, *Petition for Review*, Docket –Vol. 1, p. 10 *vis-à-vis* Par. 1, *Answer*, Docket – Vol. 4, p. 1744.

[5] Exhibit "P-2", refer to the CD attached to petitioner's FOE.

[6] Exhibit "P-4", refer to the CD attached to petitioner's FOE.

[7] Exhibit "R-1", BIR Records, p. 2.

[8] Par. 12, *Petition for Review,* Docket – Vol. 1, p. 12 *vis-à-vis* Par. 1, *Answer*, Docket - Vol. 4, p. 1744; Exhibit "P-9", refer to the CD attached to petitioner's FOE; Exhibit "R-13", BIR Records, p. 210-213.

Tax Type	Assessment Number	Amount
Income Tax	IT-eLA69930-03-10-000541789	₱2,244,980.79
Gross Receipts Tax	PT-eLA69930-03-10-000541789	544,954.56
Expanded Withholding Tax	WE-eLA69930-03-10-000541789	29,276.95
Final Withholding Tax	WF-eLA69930-03-10-000541789	23,435.37
Compromise Penalties	MC-eLA69930-03-10-000541789	2,000.00
TOTAL		₱ 2,844,647.67

In response to the PAN, petitioner sent a *letter* dated December 12, 2014 and received by the BIR on December 15, 2014, contesting the proposed imposition of internal revenue tax liabilities and increments.[9]

Subsequently, petitioner received a *Formal Letter of Demand (FLD)*[10] with attached Assessment Notices[11] on January 6, 2015, reiterating the assessments on deficiency income tax, gross receipts tax, expanded withholding tax, final withholding tax and compromise penalties in the aggregate amount of ₱2,876,956.52,[12] broken down as follows:

Tax Type	Assessment Number	Amount
Income Tax	IT-eLA69930-03-10-000541789	₱2,266,532.61
Gross Receipts Tax	PT-eLA69930-03-10-000541789	555,219.71
Expanded Withholding Tax	WE-eLA69930-03-10-000541789	29,550.14
Final Withholding Tax	WF-eLA69930-03-10-000541789	23,654.06
Compromise Penalties	MC-eLA69930-03-10-000541789	2,000.00
TOTAL		₱ 2,876,956.52

Petitioner filed a protest dated January 14, 2015 requesting for reinvestigation, which was received by the BIR on January 15, 2015.[13]

Respondent allegedly failed to act on petitioner's protest to the FLD/Assessment Notices. Hence, petitioner filed the instant petition on August 13, 2015.[14]

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[9] Exhibit "P-10", refer to the CD attached to petitioner's FOE.
[10] Par. 15, *Petition for Review,* Docket – Vol. 1, p. 13 *vis-à-vis* Par. 1, *Answer*, Docket – Vol. 4, p. 1744; Exhibit "P-12", refer to the CD attached to petitioner's FOE.
[11] Exhibits "P-12-1" to "P-12-5", refer to the CD attached to petitioner's FOE; Exhibit "R-14, BIR Records, pp. 265 to 270.
[12] The amount is different from PAN due to interest adjustments.
[13] Exhibit "P-13", refer to the CD attached to petitioner's FOE.
[14] Docket – Vol. 1, pp. 10 to 36.

Respondent filed his *Answer* on October 2, 2015[15], interposing the following Special and Affirmative Defenses: 1) Respondent's right to assess petitioner has not yet prescribed; 2) The PAN and FLD were issued in accordance with law; and 3) The Assessment issued against petitioner have factual and legal basis.

Thereafter, the Pre-Trial Conference was set on February 11, 2016.[16] By agreement of both parties' counsels during pre-trial, *Joint Stipulation of Facts and Issues* (JSFI) was submitted on March 2, 2016.[17] The same was approved in the Resolution dated March 14, 2016,[18] and the Court issued a Pre-Trial Order on April 26, 2016.[19]

During trial, petitioner presented witnesses Sylvia L. Florendo,[20] Vina Rose D. Marinas, [21] and court commissioned Certified Public Accountant, Atty. Adan T. Delamide.[22] Subsequently, petitioner filed its *Formal Offer of Evidence (FOE)* on April 3, 2017[23], with respondent's *Comment (Re: Petitioner's Formal Offer of Evidence)* filed on May 23, 2017.[24]

In the Resolution[25] dated September 4, 2017, the Court admitted most of petitioner's evidence except for: (1) Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-6-1" to "P-6-13", "P-7", "P-7-1" to "P-7-12, "P-8","P-8-1" to "P-8-4", "P-15-1" to "P-15-3-205", for failure to have the exhibits identified and to submit the duly marked exhibits; and (2) Exhibits "P-5-1" to "P-5-12", "P-9", "P-10", "P-11", "P-12", "P-12-1" to "P-12-5", "P-13", "P-14", "P-14-1" to "P-14-3", "P-15" and "P-16", "P-16-1", for failure to submit the duly marked exhibits.

On September 20, 2017, petitioner filed an "*Omnibus Motion (a) Motion for Partial Reconsideration (b) Motion to Re-Open Trial*" [26]

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[15] Docket – Vol. 4, pp. 1744 to 1752.
[16] Notice of Pre-Trial Conference, Docket – Vol. 4, pp. 1753 to 1754.
[17] JSFI, Docket – Vol. 4, pp. 1827 to 1835.
[18] Docket –Vol. 4, p. 1838.
[19] Docket – Vol. 4, pp. 1871 to 1883.
[20] Minutes of the hearing held on, and Order dated May 31, 2016, Docket – Vol. 4, pp. 2029 to 2034; Exhibit "P-31", Docket – Vol. 4, pp. 1799 to 1802.
[21] Minutes of the hearing held on, and Order dated June 28, 2016, Docket – Vol. 4, pp. 2060 to 2066; Exhibit "P-32", Docket – Vol. 4, pp. 1803 to 1805.
[22] Minutes of the hearing held on, and Order dated June 28, 2016, Docket – Vol. 4, pp. 2060 to 2066; Exhibit "P-33", Docket – Vol. 4, pp. 2047 to 2051.
[23] Docket – Vol. 4, pp. 2188 to 2199.
[24]Docket –Vol. 4, pp. 2205 to 2206 vis a vis Resolution dated May 31, 2017, p. 2210.
[25] Docket – Vol. 4, pp. 2214 to 2215.
[26] Docket – Vol. 4, pp. 2224 to 2236.

praying for a partial reconsideration of its Resolution dated September 4, 2017, to admit exhibits"P-5-1" to "P-5-12", "P-9", "P-10", "P-11", "P-12", "P-12-1" to "P-12-5", "P-13", "P-14", "P-14-1" to "P-14-3", "P-15", "P-16", and "P-16-1", and to order the re-opening of trial to allow petitioner's witnesses, Vina Rose D. Marinas and Sylvia L. Florendo to identify Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", inclusive of its sub-markings; "P-6-1" to "P-6-13", "P-7", inclusive of its sub-markings; "P-7-1" to "P-7-12, "P-8"; inclusive of its sub-markings; "P-8-1" to "P-8-4", "P-15-1" to "P-15-3-205".

On October 13, 2017, respondent filed an *Opposition (Re: Omnibus Motion a) Motion for Partial Consideration and b) Motion to Reopen Trial).*[27]

In the Resolution[28] dated December 6, 2017, the Court granted petitioner's Motion to Re-open Trial. Thus, petitioner's witnesses, Sylvia L. Florendo[29] and Vina Rose D. Marinas[30] were recalled on January 18, 2018 to identify some of petitioner's exhibits. Upon termination of their testimonies, petitioner's counsel filed a *Supplemental Formal Offer of Petitioner's Documentary Exhibits*[31] on February 1, 2018, to which respondent's counsel filed a *Comment (Re: Petitioner's Supplemental Formal Offer of Evidence)*[32] on February 2, 2018.

In the Resolution dated March 2, 2018[33], the Court granted petitioner's Motion for Partial Reconsideration and admitted all of petitioner's denied exhibits. Thus, petitioner was deemed to have rested its case.

For his part, respondent presented witnesses, Venus B. Ferrer[34] and Anna Rose T. Romero[35]. On May 23, 2018[36], respondent filed his *Formal Offer of Evidence*. In the Resolution dated August 6, 2018, the Court noted several discrepancies

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[27] Docket – Vol. 4, pp. 2244 to 2247.
[28] Docket – Vol. 4, pp. 2250 to 2253.
[29] Exhibit "P-2436", Docket – Vol. 4, pp. 2254 to2262
[30] Exhibit "P-2437", Docket – Vol. 4, pp. 2263 to 2268.
[31] Docket – Vol. 4, pp. 2280 to 2285.
[32] Docket – Vol. 4, pp. 2286 to 2287.
[33] Docket, pp. 2293 to 2295.
[34] Minutes of the hearing held on, and Order dated September 5, 2017, Docket – Vol. 4, pp. 2216 to 2222; Exhibit "R-17", Docket – Vol. 4, pp. 1785 to 1788.
[35] Minutes of the hearing held on, and Order dated May 8, 2018, Docket – Vol. 4, pp. 2296 to 2304; Exhibit "R-18", Docket – Vol. 4, pp. 1775 to 1779.
[36] Docket – Vol. 4, pp. 2314 to 2322.

between the reference of Exhibit Numbers in respondent's FOE and the actual markings of the documents. Respondent was given a period of ten (10) days to file an Amended Formal Offer of Evidence. Hence, the resolution of respondent's FOE was held in abeyance.[37]

Thereafter, respondent filed his *Amended FOE* on August 23, 2018,[38] with petitioner's *Comment to the original Formal Offer of Evidence* filed on June 13, 2018.[39]

In the Resolution dated January 18, 2019[40], the Court admitted all of respondent's evidence **(Exhibits "R-1" to "R-16")** and directed the parties to file their respective Memorandum within thirty (30) days from notice. Petitioner filed its *Memorandum* on February 26, 2019;[41] while respondent filed his *Memorandum* on March 21, 2019.[42]

Thereafter, the instant case was submitted for decision on March 26, 2019.[43] Hence, this Decision.

THE ISSUES

As stipulated by the parties, the following are the issues[44] for this Court's resolution, to wit:

> "1. Whether respondent's right to assess petitioner has already prescribed.
>
> 2. Whether the Pre-Assessment Notice, Final Assessment Notice and Formal Letter of Demand were issued in accordance with law.
>
> 3. Whether income tax, gross receipts tax, final withholding tax and expanded withholding tax deficiencies for the calendar year 2010 have factual and legal basis,
>
> 4. Whether petitioner is liable to pay the aggregate amount of ₱2,876,956.52, broken down as follows:

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[37] Docket – Vol. 4, pp. 2342 to 2343.
[38] Docket – Vol. 4, pp. 2345 to 2353.
[39] Docket – Vol. 4, pp. 2329 to 2330.
[40] Resolution dated January 18, 2019, Docket – Vol. 5, pp. 2356 to 2357.
[41] Docket – Vol. 5, pp. 2369 to 2401.
[42] Docket – Vol. 5, pp. 2405 to 2416.
[43] Docket – Vol. 5, p. 2418.
[44] JSFI, Docket – Vol. 4, pp. 1828 to 1829.

a.) ₱2,266,532.61 as deficiency Income Tax for taxable year 2010 plus 50% surcharge and 20% interest per annum pursuant to Sections 5, 32, 248 and 249 of the NIRC of 1997, as amended; RMO 13-2010;

b.) ₱55,219.71 deficiency GRT for the taxable year 2010 plus 50% surcharge and 20% interest per annum pursuant to Sections 5, 106, 248 and 249 of the NIRC of 1997, as amended, RMO 13-2012;

c.) ₱29,550.14 as deficiency EWT for the taxable year 2010 plus 50% surcharge and 20% interest per annum pursuant to Sections 5, 106, 248 and 249 of the NIRC of 1197 as amended, RMO 13-2012;

d.) ₱23,654.06 as deficiency FWT for the taxable year 2010 plus 50% surcharge and 20% interest per annum pursuant to Sections 5, 106, 248 and 249 of the NIRC of 1997 as amended, RMO 13-2012;

e.) ₱2,000.00 as compromise penalty."

Petitioner's arguments:

Petitioner argues that respondent failed to issue the FAN/FLD within the period prescribed by law. Allegedly, respondent's right to assess petitioner has already lapsed since the FAN/FLD was issued on December 15, 2014, way beyond the three (3) year period.

Moreover, petitioner points out that the Waiver of Statute of Limitations executed on December 16, 2014 signed by both parties on December 19, 2014 is defective, for the following grounds: 1) it was executed beyond the three (3) year period to assess; 2) there was failure on the part of respondent to notify petitioner of the acceptance of the waiver; and) the Waiver was not signed by the duly authorized representative of the taxpayer.

Petitioner also claims that its right to due process was violated when respondent issued the FAN/FLD before the expiration of the fifteen (15) day period to file a valid protest and that respondent failed to prove the factual and legal basis of their deficiency assessment.

Respondent's counter-arguments:

Respondent counter-argues that his right to assess petitioner has not yet prescribed. Allegedly, petitioner executed two Waivers of the Defense of Prescription under the Statute of Limitations, thus extending the period to assess petitioner. Moreover, petitioner is allegedly estopped from questioning the validity of the waivers since it never questioned its validity during the conduct of the audit investigation.

Lastly, respondent asserts that the PAN and the FLD were issued in accordance with law and that the assessment issued against the petitioner have factual and legal basis.

THE COURT'S RULING

The *Petition for Review* is meritorious.

Before resolving the issues raised in the instant *Petition for Review*, the Court finds its necessary to look into the validity of the Waivers executed by the parties in this case to achieve an orderly disposition of the case, to wit:

"Whether or not the Waivers of Defense of Prescription under the Statute of Limitations executed by petitioner and respondent are valid"

The inclusion and resolution thereof is warranted under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, stated as follows:

> "RULE 14
> JUDGEMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."** *(Emphasis supplied)*

Based on the foregoing, this Court is not limited to the issues stipulated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[45]

The Waivers are invalid and thus, did not extend the prescriptive period to assess petitioner

Respondent argues that his right to assess petitioner has not yet prescribed. Allegedly, petitioner executed two *Waivers of the Defense of Prescription under the Statute of Limitations*, which thereby extended the period to assess to petitioner.

We do not agree.

Section 203 of the NIRC of 1997, as amended, provides the period of limitation upon the assessment of taxes, to wit:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* – **<u>Except as provided in Section 222</u>, 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**." *(Emphases and underscoring supplied)*

Based on the foregoing, as a general rule, internal revenue taxes must be assessed by the BIR within three (3) years from the last day prescribed by law for the filing of the tax return or from the actual date of filing of such return, whichever comes later.

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[45] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

An exception thereto is found in Section 222 (b) of the NIRC of 1997, as amended, pertaining to one of the instances where the BIR may assess the taxpayer beyond the said three-year prescriptive period. Said provision reads as follows:

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

Based on the aforequoted Section 222 (b), the three-year prescriptive period may be extended, if before the expiration of the time prescribed in Section 203 for the assessment of the tax, both Commissioner and the taxpayer have agreed in writing to its assessment after such time, and 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.

This written agreement is called a *Waiver of the Defense of Prescription under the Statute of Limitations (or Waiver)*. A *Waiver* is not a unilateral act of the taxpayer or the BIR, but a bilateral agreement between two parties to extend the period to a certain date.[46] The *Waiver* must faithfully comply with provisions of Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 in order to be valid and binding.[47]

Furthermore, in the case of *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.*[48] *(La Flor)* citing the case of *Commissioner of Internal Revenue vs. System Technology Institute*,[49] the Supreme Court ruled on the materiality of compliance with RMO

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[46] *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated,* G.R. No. 187589, December 3, 2014.
[47] *Commissioner of Internal Revenue vs. Next Mobile, Inc.,* G.R. 212825, December 7, 2015.
[48] G.R. No. 211289, January 14, 2019.
[49] G.R. No. 220835, July 26, 2017.

No. 20-90 and the inclusion of the nature and amount of taxes in the Waiver, to wit:

> "In *Commissioner of Internal Revenue v. Systems Technology Institute*, Inc., the Court ruled that **<u>waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due</u>**, to wit:
>
> > **These requirements are mandatory and must strictly be followed.** To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
> >
> > xxx xxx xxx
> >
> > The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank,* because: (1) they were signed by Assistant Commissioner – Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.
> >
> > Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:
> >
> > xxx xxx xxx
> >
> > 3. Similar to *Standard Chartered Bank,* the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of

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> limitations is a bilateral agreement between the taxpayer and the BIR to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)
>
> **<u>In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected.</u> As above-mentioned, <u>these details are material</u> as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity.** The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached – the assessments had prescribed as there was no valid waiver." *(Emphases and underscoring supplied)*

Based on the foregoing, it is a requirement, among others, that Waivers extending the prescriptive period of tax assessments must indicate the nature and amount of the tax due. These requirements are mandatory and must strictly be followed.

In the instant case, the Court finds two waivers executed by the parties and admitted by the Court: 1) Waiver of the Defense of Prescription Under Statute of Limitations executed on October 9, 2013[50] (*First Waiver)*; and 2) Waiver of the Defense of Prescription Under Statute of Limitations dated December 16, 2014[51] (*Second Waiver).*

A perusal of the *First* and *Second Waivers* show that both Waivers failed to indicate the exact amount of the tax due to be

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[50] Exhibit "R-5", BIR Records, p. 88.
[51] Exhibit "P-11", refer to the CD attached to petitioner's FOE; Exhibit "R-15", BIR Records, p. 276.

assessed or collected. Following the Supreme Court's pronouncement in the *La Flor* case, the amount of tax due to be assessed or collected are material details that must be indicated in the Waiver in order to reflect the true and valid agreement between the taxpayer and the CIR.

In the absence thereof, the two (2) *Waivers* did not effectively extend the three-year period under Section 203 of the NIRC of 1997 on account of their invalidity. As a result, the assessment against petitioner had prescribed as the Waivers were invalid.

Having found the *Waivers* in the instant case defective due to the absence of the amount of tax due to be assessed, it follows that the period to assess granted to respondent was not extended.

The subject tax assessment has prescribed

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides the period of limitation upon the assessment of taxes, to wit:

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

As a rule, internal revenue taxes must be assessed by the BIR within three (3) years from the last day prescribed by law for the filing of the tax return or from the actual date of filing of such return, whichever comes later. Accordingly, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.[52]

In this case, petitioner was assessed by respondent for deficiency income tax, gross receipts tax (GRT), expanded withholding tax (EWT) and final withholding tax (FWT). In determining the last day for respondent to assess petitioner of the said taxes, we refer to the pertinent provisions in the NIRC of 1997 relative to said taxes.

With regard to income tax assessment, Section 77 (B) of the NIRC of 1997, provides the time for filing of the Final Adjustment Return of a corporate taxpayer is due to be filed on or before April 15 of the following calendar year, to wit:

> "***SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax.*** –
>
> (B) Time of Filing the Income Tax Return. – The corporate quarterly tax declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. **The final adjustment return shall be filed on or before the fifteen (15th) day of April,** or on or before the fifteen (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." *(Emphasis Supplied)*

Anent the GRT assessment, Section 6 of Revenue Regulation (RR) 9-2004[53], provides the filing and payment of GRT shall be made within twenty (20) days after the end of each month, to wit:

> "**SEC. 6. TIME AND VENUE FOR THE FILING AND PAYMENT OF GRT – The GRT due computed and determined in accordance with these Regulations shall be paid monthly within 20 days following the end of the taxable month** using BIR Form 2551M to the concerned AAB of the RFO/LTDO/LTAID I where the

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

[53] SUBJECT: Implementing Certain Provisions of Republic Act No. 9328, Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004. Issued on June 21, 2004.

> taxpayer is registered or required to be registered. Provided, that, if the taxpayer is an EFPS taxpayer, the rules and regulations governing the filing of returns and payment of taxes under EFPS shall be observed." *(Emphasis Supplied)*

Finally, with regard to withholding tax assessments (EWT and FWT), Section 2.58 of RR 2-98, as amended by RR 17-03, provides that the filing of withholding tax returns shall be made within ten (10) days after the end of each month except for taxes withheld for December, the return for which must be filed by January 15 of the following year. The relevant provisions of RR 2-98 provide:

> "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 payment should 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 *(Emphasis Supplied)*

Based on the foregoing prescriptive periods, the relevant dates in determining the timeliness of the income tax, GRT, EWT and FWT assessments against petitioner for taxable year 2010 are summarized as follows:

Income Tax – Annual Filing (Year 2010)

Tax Return	Date of Actual Filing	Last Day to File Return	Last Day to Assess
Annual Income Tax Return CY 2010[54]	March 17, 2011	April 15, 2011	April 15, 2014

GRT – Monthly Filing (Year 2010)

Tax Return	Date of Actual Filing	Last Day to File Return	Last Day to Assess
January[55]	February 16, 2010	February 20, 2010	February 20, 2013
February[56]	March 17, 2010	March 20, 2010	March 20, 2013
March[57]	April 19, 2010	April 20, 2010	April 20, 2013
April[58]	May 17, 2010	May 20, 2010	May 20, 2013
May[59]	June 17, 2010	June 20, 2010	June 20, 2013
June[60]	July 19, 2010	July 20, 2010	July 20, 2013
July[61]	August 19, 2010	August 20, 2010	August 20, 2013
August[62]	September 16, 2010	September 20, 2010	September 20, 2013
September[63]	October 18, 2010	October 20, 2010	October 20, 2013
October [64]	November 18, 2010	November 20, 2010	November 20, 2013
November[65]	December 16, 2010	December 20, 2010	December 20, 2013
December[66]	January 17, 2011	January 20, 2011	January 20, 2014

EWT – Monthly Filing (Year 2010)

Tax Return	Date of Actual Filing	Last Day to File Return	Last Day to Assess
January[67]	February 8, 2010	February 10, 2010	February 10, 2013
February[68]	March 9, 2010	March 10, 2010	March 10, 2013

[54] Exhibit "P-4", refer to the CD attached to petitioner's FOE.
[55] Exhibit "P-5-1" & Exhibit "P-5-1-1", refer to the CD attached to petitioner's FOE.
[56] Exhibit "P-5-2" & Exhibit "P-5-2-1", refer to the CD attached to petitioner's FOE.
[57] Exhibit "P-5-3" & Exhibit "P-5-3-1", refer to the CD attached to petitioner's FOE.
[58] Exhibit "P-5-4" & Exhibit "P-5-4-1", refer to the CD attached to petitioner's FOE.
[59] Exhibit "P-5-5" & Exhibit "P-5-5-1", refer to the CD attached to petitioner's FOE.
[60] Exhibit "P-5-6" & Exhibit "P-5-6-1", refer to the CD attached to petitioner's FOE.
[61] Exhibit "P-5-7" & Exhibit "P-5-7-1", refer to the CD attached to petitioner's FOE.
[62] Exhibit "P-5-8" & Exhibit "P-5-8-1", refer to the CD attached to petitioner's FOE.
[63] Exhibit "P-5-9" & Exhibit "P-5-9-1", refer to the CD attached to petitioner's FOE.
[64] Exhibit "P-5-10" & Exhibit "P-5-10-1", refer to the CD attached to petitioner's FOE.
[65] Exhibit "P-5-11" & Exhibit "P-5-11-1", refer to the CD attached to petitioner's FOE.
[66] Exhibit "P-5-12" & Exhibit "P-5-12-1", refer to the CD attached to petitioner's FOE.
[67] Exhibit "P-6-1" & Exhibit "P-6-1-1", refer to the CD attached to petitioner's FOE.
[68] Exhibit "P-6-2" & Exhibit "P-6-2-1", refer to the CD attached to petitioner's FOE.

March[69]	April 8, 2010	April 10, 2020	April 10, 2013
April[70]	May 6, 2010	May 10, 2010	May 10, 2013
May[71]	June 8, 2010	June 10, 2010	June 10, 2013
June[72]	July 8, 2010	July 10, 2010	July 10, 2013
July[73]	August 9, 2010	August 10, 2010	August 10, 2013
August[74]	September 9, 2010	September 10, 2010	September 10, 2013
September[75]	October 7, 2010	October 10, 2010	October 10, 2013
October[76]	November 9, 2010	November 10, 2010	November 10, 2013
November[77]	December 9, 2010	December 10, 2010	December 10, 2013
December[78]	January 10, 2011	January 15, 2011	January 15, 2014

FWT – Monthly Filing (Year 2010)

Tax Return	Date of Actual Filing	Last Day to File Return	Last Day to Assess
January[79]	February 8, 2010	February 10, 2010	February 10, 2013
February[80]	March 9, 2010	March 10, 2010	March 10, 2013
March[81]	April 8, 2010	April 10, 2010	April 10, 2013
April[82]	May 6, 2010	May 10, 2010	May 10, 2013
May[83]	June 8, 2010	June 10, 2010	June 10, 2013
June[84]	July 8, 2010	July 10, 2010	July 10, 2013
July[85]	August 9, 2010	August 10, 2010	August 10, 2013
August[86]	September 9, 2010	September 10, 2010	September 10, 2013
September[87]	October 7, 2010	October 10, 2010	October 10, 2013
October[88]	November 9, 2010	November 10, 2010	November 10, 2013

[69] Exhibit "P-6-3" & Exhibit "P-6-3-1", refer to the CD attached to petitioner's FOE.
[70] Exhibit "P-6-4" & Exhibit "P-6-4-1", refer to the CD attached to petitioner's FOE.
[71] Exhibit "P-6-5" & Exhibit "P-6-5-1", refer to the CD attached to petitioner's FOE.
[72] Exhibit "P-6-6" & Exhibit "P-6-6-1", refer to the CD attached to petitioner's FOE.
[73] Exhibit "P-6-7" & Exhibit "P-6-7-1", refer to the CD attached to petitioner's FOE.
[74] Exhibit "P-6-8A" & Exhibit "P-6-8A-1", refer to the CD attached to petitioner's FOE.
[75] Exhibit "P-6-9" & Exhibit "P-6-9-1", refer to the CD attached to petitioner's FOE.
[76] Exhibit "P-6-10" & Exhibit "P-6-10-1", refer to the CD attached to petitioner's FOE.
[77] Exhibit "P-6-11" & Exhibit "P-6-11-1", refer to the CD attached to petitioner's FOE.
[78] Exhibit "P-6-12" & Exhibit "P-6-12-1", refer to the CD attached to petitioner's FOE.
[79] Exhibit "P-7-1" & Exhibit "P-7-1-1", refer to the CD attached to petitioner's FOE.
[80] Exhibit "P-7-2" & Exhibit "P-7-2-1", refer to the CD attached to petitioner's FOE.
[81] Exhibit "P-7-3" & Exhibit "P-7-3-1", refer to the CD attached to petitioner's FOE.
[82] Exhibit "P-7-4" & Exhibit "P-7-4-1", refer to the CD attached to petitioner's FOE.
[83] Exhibit "P-7-5" & Exhibit "P-7-5-1", refer to the CD attached to petitioner's FOE.
[84] Exhibit "P-7-6" & Exhibit "P-7-6-1", refer to the CD attached to petitioner's FOE.
[85] Exhibit "P-7-7" & Exhibit "P-7-7-1", refer to the CD attached to petitioner's FOE.
[86] Exhibit "P-7-8" & Exhibit "P-7-8-1", refer to the CD attached to petitioner's FOE.
[87] Exhibit "P-7-9" & Exhibit "P-7-9-1", refer to the CD attached to petitioner's FOE.
[88] Exhibit "P-7-10" & Exhibit "P-7-10-1", refer to the CD attached to petitioner's FOE.

November[89]	December 9, 2010	December 10, 2010	December 10, 2013
December[90]	January 10, 2011	January 15, 2011	January 15, 2014

The foregoing tabulations indicate the last dates to assess deficiency income tax, GRT, EWT and FWT for taxable year 2010.

As a rule, the assessment contemplated in Sections 203 and 222 of the NIRC refers to the service of the FAN upon the taxpayer.[91]

In the instant case, petitioner received the *FLD*[92] and *FAN*[93] on January 6, 2015. Thus, as guided by the above-mentioned dates, it is clear that the FLD and FAN were issued beyond the three-year prescriptive period. Consequently, respondent's right to assess petitioner of deficiency income tax, GRT, EWT and FWT for taxable year 2010 has prescribed.

In light of the foregoing, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Final Assessment Notices assessing petitioner for deficiency income tax, gross receipts tax, expanded withholding tax, final withholding tax and compromise penalties for taxable year 2010 in the total amount of ₱2,844,647.67 are **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[89] Exhibit "P-7-11" & Exhibit "P-7-11-1", refer to the CD attached to petitioner's FOE.
[90] Exhibit "P-7-12" & Exhibit "P-7-12-1", refer to the CD attached to petitioner's FOE.
[91] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.
[92] Par. 15, *Petition for Review,* Docket – Vol. 1, p. 13 *vis-à-vis* Par. 1, *Answer*, Docket – Vol. 4, p. 1744; Exhibit "P-12", refer to the CD attached to petitioner's FOE; Exhibit "R-14, BIR Records, p. 265.
[93] Exhibits "P-12-1" to "P-12-5", refer to the CD attached to petitioner's FOE.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice