REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

PARITY PACKAGING CORPORATION, Petitioner,	**CTA Case No. 8825**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 22 2018 : 1:32 pm

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RESOLUTION

UY, J.:

For resolution is respondent's **"MOTION FOR RECONSIDERATION Re: Decision dated 19 September 2017"** filed on October 5, 2017, with petitioner's **"COMMENT (To the Respondent's Motion for Reconsideration)"** filed on October 23, 2017, seeking the reconsideration and setting aside of this Court's Decision dated September 19, 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Amended Petition for Review* is **PARTIALLY GRANTED**.
>
> Accordingly, the subject deficiency income tax assessment is hereby **CANCELLED** and **SET ASIDE**.
>
> However, petitioner is ordered to pay **NINE HUNDRED ELEVEN THOUSAND FOUR HUNDRED**

TEN PESOS AND FIFTY CENTAVOS (₱911,410.50) for the taxable year 2010, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic	25% Surcharge	Total
VAT	₱707,893.93	₱176,973.48	₱884,867.41
EWT	10,163.72	2,540.93	12,704.65
DST	11,070.75	2,767.69	13,838.44
Total	**₱729,128.40**	**₱182,282.10**	**₱911,410.50**

In addition, petitioner is ordered to pay delinquency interest at the rate of 20% per annum on the said total amount of ₱911,410.50, computed from April 30, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

In his *Motion for Reconsideration*, respondent argues that his assessment was made within the period prescribed by law; and that the assessments issued against petitioner have factual and legal bases.

On the other hand, petitioner contends that the finding of the Court that the subject assessment has prescribed must be upheld; and that respondent merely reiterates most, if not all of the submissions he made before, which have already been clearly and definitely settled by this Court.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

A careful perusal of the said *Motion for Reconsideration* shows that except for certain matters as enumerated below, the arguments raised in the said *Motion* are mere reiterations which have already been considered, weighed and resolved in the assailed Decision. Hence, finding no compelling reason to reconsider, modify or reverse the said Decision insofar as the said arguments are concerned, We shall no longer belabor, in this Resolution, to repeat the disquisitions made therein regarding the said arguments.

The said matters raised in the instant *Motion* are the following:

1. Some arguments relating to prescription of the subject tax assessments;
2. Anent the supposed inadmissibility of petitioner's Official Receipt No. 33; and
3. Despite that certain findings of respondent were upheld in the assailed Decision, the deficiency income tax assessment was still cancelled.

We shall proceed to address these matters accordingly.

Respondent failed to show proof of the falsity of the subject returns.

Respondent argues that the 10-year prescriptive period under Section 222(a) of the National Internal Revenue Code (NIRC) of 1997 will still apply even if what was filed was a wrong return; and that for willfully filing false returns, a 50% surcharge was imposed against petitioner.

This argument of respondent is untenable.

As can be gleaned from the assailed Decision, this Court has ruled that prescription has set in for the assessed deficiency value-added tax (VAT) for the first quarter of 2010 and deficiency expanded withholding tax (EWT) for the months of January to March 2010.

Respondent, however, failed to show the falsity of the tax returns for the said periods. In fact, respondent has not presented any evidence at all.

To be clear, VAT Returns are filed quarterly,[1] while EWT Returns are filed on a monthly basis.[2] In this connection, it is noted that respondent assessed petitioner from an annual perspective, *i.e.*, a consolidation of the specific tax assessment for the year 2010, without delineation as to which quarter (in the case of the VAT assessment) or month (in the case of the EWT assessment) such tax assessment pertain.

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[1] Section 114(C), NIRC of 1997, as amended.
[2] Section 2, Revenue Regulations No. 26-2002.

Thus, respondent should have shown the falsity of petitioner's *Quarterly VAT Return* for the first quarter of 2010, and *Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded)* for the months of January to March 2010. In view of respondent's failure to do so, Our ruling as regards the prescription of the subject tax assessments under Section 203 of the NIRC of 1997 stands.

The subject Waiver took effect only on May 2, 2013— the time of acceptance by respondent, and thus covers only the unprescribed portion of the tax assessments on such date.

Respondent points out that the subject *Waiver of the Defense of Prescription* executed by petitioner on April 19, 2013, extending the period within which to issue an assessment until December 31, 2014 is effective, valid and binding; and that it was *executed before* prescription has set in, duly notarized, and accepted by respondent through OIC-Assistant Commissioner Alfredo V. Misajon on May 2, 2013 per Revenue Delegation Authority Order No. 05-01, which acceptance was made known to petitioner.

We do not agree.

For easy reference, Our ruling in the assailed Decision as regards the subject Waiver are reproduced hereunder:

> "Records disclose that petitioner executed a Waiver[3] of the Defense of Prescription on April 19, 2013 which was accepted by respondent on May 2, 2013.
>
> We note that respondent's right to assess deficiency VAT for the first quarter of 2010 was only until April 25, 2013, while that of deficiency EWT for January to March 2010 was only until April 14, 2013. Thus, when the said Waiver became effective on May 2, 2013, respondent's right to assess petitioner of deficiency VAT for the first quarter of 2010 and deficiency EWT for the months of January to March 2010 had already prescribed.

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[3] BIR Records, p. 612.

Accordingly, petitioner was validly assessed of deficiency taxes for taxable year 2010, except for the deficiency VAT covering the first quarter and deficiency EWT for the months of January to March."

In view thereof, respondent is, in effect, arguing that the effectivity of the said *Waiver* is on April 19, 2013—the date of the execution thereof by petitioner, and not on May 2, 2013—when respondent accepted the same.

Respondent is in error.

In *Commissioner of Internal Revenue vs. Standard Chartered Bank*,[4] the Supreme Court said:

> "In the landmark case of *Philippine Journalists, Inc. v. CIR* (PJI case),[5] we pronounced that a waiver is not automatically a renunciation of the right to invoke the defense of prescription. **A waiver of the Statute of Limitations is nothing more than 'an agreement between the taxpayer and the Bureau of Internal Revenue (BIR) that the period to issue an assessment and collect the taxes due is extended to a date certain.' <u>It is a bilateral agreement, thus necessitating the very signatures of both the CIR and the taxpayer to give birth to a valid agreement.</u> Furthermore, <u>indicating in the waiver the date of acceptance by the BIR is necessary in order to determine whether the parties (the taxpayer and the government) had entered into a waiver 'before the expiration of the time prescribed in Section 203 (the three-year prescriptive period) for the assessment of the tax.'</u> When the period of prescription has expired, there will be no more need to execute a waiver as there will be nothing more to extend. Hence, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.**" *(Emphasis and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, a *Waiver of the Statute of Limitations* is a bilateral agreement, and will

[4] G.R. No. 192173, July 29, 2015.
[5] 488 Phil. 219, 231 to 232 (2004).

only be considered a "valid agreement" when both signatures of the concerned taxpayer and the Commissioner of Internal Revenue are already present. In other words, the effectivity of the said bilateral agreement does not occur upon the execution thereof by the concerned taxpayer, but only when respondent signs the same, signifying his acceptance thereof. Thus, since the subject *Waiver* was signed by respondent only on May 2, 2013, such Waiver took effect only on such date.

Consequently, We maintain Our ruling to the effect that the subject *Waiver* covers only the portion of the tax assessments, which have not prescribed when the same *Waiver* took effect.

Although the subject documentary stamp tax (DST) assessments have not prescribed, the ruling of the Court pertaining thereto must be maintained.

Respondent further avers, in effect, that the subject DST assessments have not prescribed on the ground that petitioner did not file any DST Return.

On this score, We agree with respondent.

It is incumbent upon a taxpayer, who wants to avail of the benefits of Section 203 of the NIRC of 1997 by setting up prescription as an affirmative defense, to prove that he submitted a return. If he fails to do so, the conclusion should be that no such return was filed, in which case the Government has ten (10) years within which to make the corresponding assessments.[6]

In this case, there is no showing that petitioner filed the DST Returns for the subject transaction. Thus, the subject DST assessments have not prescribed.

Be that as it may, notwithstanding that the documentary stamp tax assessments have not prescribed, We cannot subscribe to respondent's contention that petitioner's transactions with Fortune Landequities Resources, Inc. (FLRI) and PMFTC, Inc. were not tax-

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[6] *Taligaman Lumber Co., Inc. vs. Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962.

free exchanges as the said transactions do not fall under Section 40(C)(2) of the NIRC of 1997, and hence, petitioner was assessed DST on the original issuance of shares of stocks in FLRI and PMFTC, Inc., and on the assignment of shares in FLRI to PMFTC, Inc.

In the assailed Decision, this Court ruled that the subject transactions were tax-free transactions under Section 40(C)(2) of the NIRC of 1997 on the basis and confluence of certain evidence.[7] For his part, however, respondent has not presented any evidence to refute the same. In other words, respondent's contention is merely an allegation, not supported by evidence.

Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[8]

Thus, respondent's contention to the effect that the subject transactions are not tax-free exchanges under the said provision deserves scant consideration.

Correspondingly, the ruling of this Court, in the assailed Decision, as regards the DST assesments, is maintained.

The three (3)-year prescriptive period applies to withholding tax assessments.

Respondent also contends that Section 203 of the NIRC of 1997 is not applicable to withholding tax assessments, and thus, the subject EWT assessment has not prescribed.

This contention does not hold water.

It is a general rule of statutory interpretation that provisions should not be given a restricted meaning where no restriction is indicated. Just as the express enumeration of persons, objects, situations, etc., is construed to exclude those not mentioned,

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[7] Exhibit "P-41-2", Annex "IC-77 (V .a)", pp. 519 to 525; Exhibit "P-41-2", Annex "IC-71 (V .a)", p. 487 to 496; Exhibit "P-41-2", Annex "IC-70 (V .a)", pp. 484 to 486; Exhibit "P-41-2", Annexes "IC-75 (V .a)", "IC-75.1 (V .a)" and "IC-70 (V .a)", pp. 484 to 486 and 516-517; Annex "IC-81 (V.a)", pp. 548 to 555; Annex "IC-80 (V.a)", pp. 539 to 547; and Exhibit "P-41-2", Annex "IC-85 (V .a)", pp. 573, 590 and 592;

[8] *LNS International Manpower Services vs. Padua, Jr.*, G.R. No. 179792, March 5, 2010.

according to a well-known maxim, so no distinction should be made none appears to be intended. This is not an arbitrary rule but one founded on logic.[9] Simply put, when the law does not distinguish, We must not distinguish.[10]

Thus, since Section 203 of the NIRC of 1997 does not distinguish as to what tax assessments the three-year prescriptive period applies, withholding tax assessments are covered thereby.

Moreover, the Supreme Court has, in a number of cases,[11] uniformly applied the said provision involving withholding tax assessments. Correspondingly, there can be no merit in respondent's argument to the effect that the three-year prescriptive period under Section 203 of the NIRC of 1997 does not apply to withholding tax assessments.

Cases filed before this Court are litigated de novo.

Respondent also avers that the copies of petitioner's OR No. 33[12] (original, duplicate, triplicate and quadruplicate) with marking "cancelled" across its face are inadmissible in evidence. He points out that what has been submitted during audit is the OR that does not have such marking. He then emphasizes that only those documents submitted in the administrative level are the ones that should be presented in the judicial level considering that this is an appeal from the Final Decision issued in the administrative level.

We disagree.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[13] the Supreme Court ruled:

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[9] *Lo Cham vs. Ocampo, et al., etseq.*, G.R. Nos. L-831, L-876 and L-878, November 21, 1946.

[10] *Amores vs. House of Representatives Electoral Tribunal, et al.*, G.R. No. 189600, June 29, 2010.

[11] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008; *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

[12] Exhibits "P-25" and "P-25-a" to "P-25-c", Docket—Vol. II, pp. 1068 to 1071.

[13] G.R. No. 180290, September 29, 2014.

> "**More importantly, the Court of Tax Appeals is <u>not precluded</u> from accepting respondent's evidence <u>assuming these were not presented at the administrative level</u>. Cases filed in the Court of Tax Appeals are litigated *de novo*.** Thus, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim.'" *(Emphasis and underscoring supplied)*

It is clear from the foregoing ruling that this Court is not precluded from accepting evidence even when such evidence was not presented at the administrative level. Thus, the fact that the copies of petitioner's OR No. 33 were not presented at the administrative level is of no consequence.

Thus, Our ruling on the matter stands.

The cancellation of the subject deficiency income tax assessment is proper.

Respondent calls the attention of this Court regarding the following findings in that while they were upheld by this Court, the income tax assessment was nevertheless cancelled:

1. Undeclared income from unreceipted collections from Tanduay Distillers, Inc. – ₱4,059,135.17; and
2. Unsupported compensation/direct labor – ₱163,924.27

Without doubt, We sustain the foregoing findings of respondent, but confirm that indeed this Court has cancelled the subject income tax assessment.

In the assailed Decision, the Court made the following revised computation as regards petitioner's income tax for taxable year 2010, to wit:

Taxable income per return	₱ 9,475,017.79
Add: Adjustments	

Undeclared income from unreceipted collections from Tanduay Distillers, Inc.		4,059,135.17
Unsupported compensation/direct labor		163,924.27
Disallowed expenses for failure to subject to EWT		1,176,936.10
Total sales/income per audit		₱14,875,013.33
Income tax due per audit		₱ 4,462,504.00
Less: Credits/payments		
Prior years' excess credits	₱28,638,577.20	
Add: Allowable CWT	1,641,989.82	30,280,567.02
Basic Deficiency Income Tax		**(₱25,818,063.02)**

A careful analysis of the foregoing computation would reveal that while petitioner is liable in the amount of ₱4,462,504.00, representing the income tax due for the said taxable year, the said amount was offset by the *Prior years' excess credits* and the *Allowable CWT* (Creditable Withholding Tax) in the aggregate amount of ₱30,280,567.02.

As We have ruled in the assailed Decision, respondent's disallowance of the said *Prior years' excess credits* in the amount of ₱28,638,577.20, was without any legal and factual basis in the *Details of Discrepancies*[14] to justify the disallowance thereof. Thus, the same is a nullity, in accordance with the requirement of Section 228 of the NIRC of 1997 that "(t)*he taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.*" Consequently, the said amount must be considered for purposes of determining petitioner's income tax liability for taxable year 2010.

As for the amount of ₱1,641,989.82, representing *Allowable CWT*, the same was allowed by respondent as among the *Allowable credits/payments* of petitioner in the income tax assessment. Thus, this Court merely maintained the same in the determination of the same income tax liability.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

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[14] Exhibits "P-1", Annex A and "P-17", Docket—Vol. II, pp. 981 to 990 and 1012 to 1019.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice