REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HERMANO (SAN) MIGUEL FEBRES CORDERO MEDICAL EDUCATION FOUNDATION (DE LA SALLE - HEALTH SCIENCES INSTITUTE), INC. herein represented by BR. AUGUSTINE BOQUER FSC and DR. ALVIN CRUDO,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE JOEL L. TAN-TORRES,
Respondent.

CTA CASE NO. 8095

Members:

BAUTISTA, *Chairperson*;
FABON-VICTORINO, *and*
RINGPIS LIBAN, *JJ.*

Promulgated:

DEC 18 2013
ABFernando 9:12 a.m.

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DECISION

Fabon-Victorino, J.:

This *Petition for Review*[1] filed by petitioner Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences Institute), Inc. on April 22, 2010 challenges the (1) Formal Letter of Demand (FLD) and Assessment Notice No. 54-2005, both dated January 9, 2009, and the (2) Preliminary Collection Letter dated March 4, 2010, issued against it by respondent Commissioner of Internal Revenue (CIR) for alleged deficiency expanded withholding tax (EWT) in the amount of Php3,572,329.11, inclusive of interest and compromise penalty, for the fiscal year ended May 31, 2005. Petitioner prays that they be nullified and cancelled on ground of prescription.

Petitioner Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences

[1] Docket, pp. 1-22.

Institute), Inc., is a non-stock, non-profit educational and medical institution duly organized and existing under the laws of the Philippines, with principal office address at Congressional East Avenue, Dasmariñas, Cavite.[2] As an educational and medical institution, it engages the services of professionals such as doctors and dentist as consultants.[3]

Respondent Commissioner Joel L. Tan-Torres, is the former Commissioner of the Bureau of Internal Revenue (BIR) sued in his official capacity, having been empowered, among others, to act on protest to tax assessments as provided by law. Respondent held office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 5, 2009, petitioner received a Preliminary Assessment Notice (PAN)[4] dated December 12, 2008 from respondent, for deficiency expanded withholding tax (EWT) inclusive of interest and compromise penalty for taxable year 2005, in the aggregate amount of Php3,531,893.24, broken down as follows:[5]

I. EXPANDED WITHHOLDING TAX		
Professional Services		**P29,608,004.40**
Medical/Dental Services		**14,503,860.20**
Total Income Payments Subject to EWT		**44,111,864.60**
Multiply by: Tax Rate		15%
Total Expanded Withholding Tax Due		6,616,779.69
Less: Tax Paid per BIR Form 1601 E		4,411,186.46
Deficiency Expanded Withholding Tax		**2,205,593.23**
Add: Interest	P1,301,300.01	
Compromise Penalty	25,000.00	1,326,300.01
TOTAL AMOUNT DUE AND PAYABLE		**P 3,531,893.24**

On January 20, 2009, petitioner filed its administrative protest to the PAN dated January 16, 2009[6] with respondent, through the Regional Director of BIR Revenue Region No. 9 - San Pablo City, Laguna.

A day after it filed its protest to the PAN, or on January 21, 2009, petitioner received a Formal Letter of Demand

[2] Exhibits "DD", "EE", "EE-1", and "EE-2" docket, pp. 588 to 596.
[3] Exhibit "FF", docket, p. 334.
[4] Exhibit "G", docket, p. 36.
[5] Exhibits "G" and "G-1", docket, p. 36; Exhibit "17", docket, p. 821.
[6] Exhibits "18" and "18-a", docket, p. 822.

(FLD) and Audit Results/Assessment Notice No. 54-2005 both dated January 9, 2009[7] from respondent, through Jaime B. Santiago, Regional Director of Revenue Region No. 9, assessing petitioner of deficiency expanded withholding tax inclusive of interest and compromise penalty for taxable year 2005, in the aggregate amount of Php3,572,329.11, computed as follows:

I. EXPANDED WITHHOLDING TAX		
Professional Services		**P29,608,004.40**
Medical/Dental Services		**14,503,860.20**
Total Income Payments Subject to EWT		**44,111,864.60**
Multiply by: Tax Rate		15%
Total Expanded Withholding Tax Due		6,616,779.69
Less: Tax Paid per BIR Form 1601 E		4,411,186.46
Deficiency Expanded Withholding Tax		**2,205,593.23**
Add: Interest	P1,341,735.88	
Compromise Penalty	25,000.00	1,366,735.88
TOTAL AMOUNT DUE AND PAYABLE		**P 3,572,329.11**

On February 19, 2009, petitioner filed its administrative protest to the FLD and the Audit Results/Assessment Notice with respondent, through the Regional Director of BIR Revenue Region No. 9, for the cancellation and termination of the assessment on the ground that it is void for failure to comply with Article 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 3.1.4 of Revenue Regulations (RR) No. 12-99; and that the period to assess for June 2004 to May 2005 taxable period had prescribed under Section 203 of the NIRC of 1997, as amended.[8]

The letter protest was denied through the letter dated August 18, 2009 issued by the Revenue District Officer of BIR Revenue Region No. 9, copy of which was received by petitioner on September 4, 2009.[9]

Petitioner elevated the matter to Office of the Commissioner of Internal Revenue on October 5, 2009,

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[7] Exhibits "A" and "B", docket, pp. 24 and 25; Exhibits "19" and "20", docket, pp. 827 and 828.
[8] Exhibit "I", docket, pp. 467 to 472.
[9] Exhibit "D", docket, p. 27.

through an Appeal of the Denial of the Protest (to Formal Letter of Demand) dated September 28, 2009.[10]

On March 23, 2010, petitioner received a Preliminary Collection Letter dated March 4, 2010.[11]

Hence, this instant petition filed on April 22, 2010.

In her *Answer*[12] to the *Petition for Review*, respondent interposes the following Special and Affirmative Defenses: (1) The FLD is valid and binding as it states the facts, law and regulations on which the assessment is based; (2) Petitioner failed to provide all the relevant and supporting documents to controvert the deficiency EWT; and (3) The Final Assessment Notice (FAN) subsequently issued was appropriate for petitioner failed to timely file the administrative protest. In fine, petitioner is liable to pay the amount of Php3,572,329.11 representing deficiency EWT for the fiscal year ended May 31, 2005.

In its *Reply*[13] petitioner asserts that (1) Section 222(a) of the NIRC of 1997 is not applicable to the instant case; (2) The three year prescriptive period was not tolled by its alleged failure to provide pertinent documents and books of accounts; (3) The FLD did not comply with the mandatory requirements of Section 228 of the NIRC of 1997 and Section 3.1.4 of Revenue Regulations No. 12-99; and (4) Petitioner timely filed its protest to the PAN.

On August 13, 2010, petitioner filed an *Urgent Motion for Preferential Resolution of the Issue on Prescription*[14] but the same was denied by the Court in its Resolution[15] dated January 20, 2011.

In compliance with the Court's directive, the parties filed their respective Pre-Trial Briefs, thereafter, their *Joint*

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[10] Par. 1.e, Joint Stipulation of Facts and Issues (JSFI), docket, p. 317; Exhibit "L", docket, pp. 50 to 59.
[11] Exhibit "C", docket, p. 26.
[12] Docket, pp. 190 to 206.
[13] Docket, pp. 219-225.
[14] Docket, pp. 227-235.
[15] Docket, pp. 280-287.

Stipulation of Facts and Issues,[16] on March 4, 2011, which the Court approved in the Resolution[17] dated March 15, 2011.

Trial ensued during which petitioner presented its Assistant Comptroller Arlene C. Lacorte; its legal counsel Sinforoso R. Pagunsan and its messenger Nicanor B. Cahinusayan, as witnesses.

In her Judicial Affidavit,[18] **Arlene C. Lacorte** declared that as the Assistant Comptroller of petitioner, she is responsible for all financial and accounting matters of petitioner and she ensures that the latter is compliant with various laws, rules and regulations including all tax requirements.

She was certain that petitioner's EWT Returns for the period June 2004 to May 2005 were all filed exactly 10 days after the end of each month except for June 2004 and March 2005 which were filed on the next business day as the 10th day fell on a Saturday/Sunday.

On September 18, 2007, petitioner received a Letter of Authority (LOA) and Request for Presentation of Records, both dated September 12, 2007, from the office of the Regional Director, Revenue Region 9, authorizing Revenue District Office (RDO) No. 54, to examine its accounting records. Petitioner complied and delivered the documents requested to RDO No. 54 on February 11, 2008.

On January 5, 2009, petitioner received a PAN dated December 12, 2008, which it protested on January 20, 2009.

On January 21, 2009, petitioner received a FLD and Assessment Notice No. 54-2005, both dated January 9, 2009. Petitioner also protested the FLD on February 19, 2009. On September 4, 2009, petitioner received a letter dated August 18, 2009 denying its protest. Petitioner appealed the denial on October 5, 2009 with the Commissioner of Internal Revenue but the same was

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[16] Docket, pp. 315-319.
[17] Docket, pp. 322-323.
[18] Exhibit "FF", docket, pp. 332-347.

effectively denied when it received a Preliminary Collection Letter dated March 4, 2010, on March 23, 2010. Thus, petitioner filed the instant petition on April 22, 2010.

According to the witness, the assessment was void because the period to make such assessment had lapsed.

Witness **Attorney Sinforoso R. Pagunsan** also testified on direct examination by way of a Judicial Affidavit.[19] He claimed that as petitioner's legal counsel, he provided the latter general legal services including legal advice, preparation and review of contracts, institution of legal action, preparation and filing of legal responses to various notices from different government agencies.

He prepared and signed the protests filed against the PAN and FLD issued to petitioner for deficiency withholding taxes for the period June 2004 to May 2005. He likewise prepared the Appeal on the denial of petitioner's protest to the FLD. The protest to the PAN was filed with RDO No. 55 on January 20, 2009 by petitioner's messenger Nicanor B. Cahinusayan.

Nicanor B. Cahinusayan, also executed a Judicial Affidavit,[20] wherein he stated that he was the one who filed the protest to the PAN at BIR San Pablo, Laguna on January 20, 2009. He brought two (2) copies of the protest, one original and one receiving copy. The original was left at the BIR and he returned the receiving copy to petitioner. He entered this fact of service in his logbook. However, he could not recall the district or person who received the same.

After petitioner rested its case, respondent presented Samera S. Lalia, Revenue Officer II assigned at RDO No. 54A - Trese Martires, Cavite, as her sole witness.

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[19] Exhibit "GG", docket, pp. 401-404.
[20] Exhibit "HH", docket, pp. 417-421.

In her Judicial Affidavit,[21] **Samera S. Lalia** testified that petitioner's case was assigned to her in 2007 per Letter of Authority (LOA) No. 00010865 dated September 12, 2007. Under the supervision of her Group Supervisor Nelia Mejia, she examined petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable period June 2004 to May 2005.

Her examination of the documents submitted by petitioner revealed that petitioner is liable to pay deficiency EWT for taxable period ending May 31, 2005. Petitioner used the rate of 10% instead of 15% on withholding of the income payments made (Professional, Medical and Dental Services) in violation of Revenue Regulations No. 30-2003.

For failure of petitioner to present documents that would controvert the audit findings, a PAN dated December 12, 2008 was issued finding it liable for the payment of deficiency EWT for the taxable period ending May 31, 2005. Thereafter, the FLD dated January 9, 2009, with the Final Assessment Notice, was issued against petitioner signed by Jaime B. Santiago, Regional Director, Revenue Region No. 9, San Pablo City.

She admitted that under RR No. 20-2003, it is permissible for taxpayer to impose the rate of 10% subject to some conditions. Under RR No. 2-98, as amended, the professional fees of practitioners and lawyers not exceeding Php720,000.00 per annum is subject to 10% withholding tax. Based on her examination of petitioner's abstract of remittances per month, there were doctors which exceeded the Php720,000.00 limit.

After respondent rested, the parties filed their respective memoranda.

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[21] Exhibit "21", docket, pp. 749-757.

THE ISSUES

The parties jointly raised the following issues[22] for the resolution of the Court:

a. Whether or not petitioner is liable to pay its deficiency Expanded Withholding Tax ('EWT') for fiscal year ending 31 May 2005 in the total amount of Three Million Five Hundred Seventy Two Thousand Three Hundred Twenty Nine and 11/100 Pesos (P3,572,329.11).

b. Whether or not the income payments (Professional/Medical Services) made by petitioner is subject to EWT.

c. Whether or not petitioner, acting as a withholding agent, is liable to pay EWT for failure to withhold the correct amount of EWT on the Professional and Medical/Dental Services at the rate of 15% pursuant to the provisions of Revenue Regulation No. 30-2003.

d. Whether or not petitioner has submitted supporting documents in relation to its administrative protest.

e. Whether or not petitioner timely filed its administrative protest to the Assessment Notices.

f. Whether or not the FLD and Assessment Notice are void for alleged failure to comply with Section 228 of the National Internal Revenue Code ('NIRC') and Section 3.1.4 of Revenue Regulation No. 12-99.

g. Whether or not the period to assess deficiency taxes covering the period

[22] Docket, p. 318.

June 2004 - May 2005 has already prescribed in accordance with Section 203, NIRC.

h. Whether or not petitioner is liable to pay twenty five percent (25%) surcharge and twenty percent (20%) deficiency and delinquency interest for late payment from 30 April 2004 until fully paid pursuant to Sections 248 and 249, NIRC.

The foregoing may however be summed up into one issue, to wit:

WHETHER PETITIONER IS ENTITLED TO NULLIFICATION OF THE FORMAL LETTER OF DEMAND WITH ASSESSMENT NOTICE NO. 54-2005 AND CANCELLATION OF THE PRELIMINARY COLLECTION LETTER ISSUED AGAINST IT FOR ALLEGED DEFICEINCY EXPANDED WITHHOLDING TAX OF PHP3,572,329.11, INCLUSIVE OF INTEREST AND COMPROMISE PENALTY, FOR THE FISCAL YEAR ENDED MAY 31, 2005 PRAYED FOR IN THE PETITION FOR REVIEW.

Petitioner's Arguments:

Petitioner argues that respondent had three-years to assess EWT commencing from the day it filed its Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E), citing Section 203 of the NIRC of 1997, as amended. That being the case, the right of respondent to assess it for deficiency taxes had prescribed given that the assailed FLD with the Assessment Notice was issued only on January 9, 2009, or three and a half (3½) years from the date of filing of its last BIR Form No. 1601E.

Petitioner claims that the EWT returns it filed cannot be deemed false or fraudulent to justify the application of the ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended, since it did not conceal or alter any figure or amount from the actual income payments it made and the taxes withheld. This stance is bolstered by the fact that no 50% surcharge was imposed under Section 248(B) of the NIRC of 1997, as amended, for false or fraudulent returns or willful neglect to file a tax return.

Petitioner claims that it correctly remitted the EWT due shown in the attachments (Exhibits "P" to "AA", inclusive of sub-markings) to the EWT returns indicating that it withheld the 15% EWT on appropriate income payments.

Finally, the Assessment Notices are void for failure to comply with Revenue Regulations No. 12-99. The FLD and the Assessment Notice merely itemized and summarized the tax base, applied the tax rate, and indicated the alleged tax liability, interest and compromise penalty due thereon. The FLD and the Assessment Notice also failed to state the specific provision of the NIRC of 1997, as amended, or rules and regulations not complied with by petitioner.

Respondent's Arguments:

Respondent counters that (1) the assessment for deficiency EWT was issued in accordance with law, rules and jurisprudence; (2) petitioner's allegations unsubstantiated by evidence are not equivalent to proof; (3) Section 222(a) applies to the present case since petitioner failed to file the correct return and to withhold the correct amount of EWT due on the income payment mentioned in the FLD; (4) petitioner as withholding agent has the legal duty to collect the tax for the government; and (5) petitioner acting as withholding agent was penalized for its failure to subject the services to EWT at 15%, hence a 20% interest and compromise penalty were imposed against it pursuant to Sections 248(a) and 249 of the NIRC of 1997, as amended, and Revenue Memorandum Order No. 1-90 dated November 28, 1989, as amended.

RULING OF THE COURT

The instant *petition* is impressed with merit.

On the issue of prescription, Section 203 of the NIRC of 1997, as amended, relevantly provides, thus:

> 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. *(Emphasis supplied)*

Based on the afore-quoted provision, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later.

The period to file CWT and/or EWT return is provided under Section 58(A) of the NIRC of 1997, as amended, quoted below:

> 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 office.
>
> 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.** xxx *(Emphasis supplied)*

Corollary thereto, Section 5 of Revenue Regulations No. 17-2003 dated March 31, 2003, provides:

> SEC. 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***. -
>
> (1) 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**; xxx *(Emphasis supplied)*

A fortiori, respondent had until the following dates within which to assess petitioner of deficiency EWT for fiscal year June 2004 to May 2005:

Exhibits	Period Covered	EWT Returns Filed On	Last Day to File Return	Last Day to Assess
"P"/"5"	June 2004	07/09/04	07/10/04	07/10/07
"Q"/"6"	July 2004	08/10/04	08/10/04	08/10/07
"R"/"7"	August 2004	09/10/04	09/10/04	09/10/07
"S"/"8"	September 2004	10/11/04*	10/11/04	10/11/07
"T"/"9'	October 2004	11/10/04	11/10/04	11/10/07
"U"/"10"	November 2004	12/10/04	12/10/04	12/10/07
"V"/"11"	December 2004	01/10/05*	01/15/05	01/15/08
"W"/"12"	January 2005	02/10/05	02/10/05	02/10/08
"X"/"13"	February 2005	03/10/05	03/10/05	03/10/08
"Y"/"14"	March 2005	04/11/05	04/11/05	04/11/08
"Z"/"15"	April 2005	05/10/05	05/10/05	05/10/08
"AA"/"16"	May 2005	06/10/05*	06/10/05	06/10/08

*see Exhibit "FF", Judicial Affidavit of Arlene C. Lacorte dated March 24, 2011

However, the three-year period of limitations on the assessment and collection of national internal revenue taxes as set by Section 203 of the NIRC of 1997, as amended, can be affected, adjusted, or suspended, in accordance with the following quoted provisions of the same Code:

> SEC. 222. ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*** –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of **failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If **before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer 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)*
>
> xxx xxx xxx

The above provision enumerates three (3) instances when the running of the three-year prescriptive period does not apply, to wit: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax, and (3) failure to file a return. In all these instances, the period within which to assess deficiency taxes is ten (10) years from discovery of the fraud, falsification or omission.[23]

The original three-year period however may be extended with the execution of a Waiver of the Statute of

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[23] *Commissioner of Internal Revenue v. Tulio*, G.R. No. 139858, 474 SCRA 147, October 25, 2005.

Limitations signed by both parties by virtue of Section 222(b).

Respondent claims that Section 222(a) applies to the present case as petitioner failed to file the return and withhold the correct amount of EWT due on the income payment indicated in the FLD

The Court is not convinced.

There is nothing in the PAN, FLD, Assessment Notice, and the Preliminary Collection Letter that would even hint the non-application of the three-year prescriptive period for purposes of assessment. There is no indication that petitioner filed a false return, or a fraudulent return with intent to evade tax, or failed to file a return.

Moreover, while respondent, in his *Answer* to the instant *Petition for Review* raised the applicability of the 10-year prescriptive period, no evidence was adduced to substantiate the same.

Respondent therefore had three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess petitioner's internal revenue taxes.

Based on the table earlier provided, the last EWT Return for the taxable period June 2004 to May 2005 was filed by petitioner on June 10, 2005. Counting three years from June 10, 2005, respondent had until June 10, 2008, at the latest, to issue an assessment for deficiency EWT for the taxable period June 2004 to May 2005.

However, record reveals that the FLD and the FAN were issued only on January 9, 2009 or seven (7) months late reckoned from June 10, 2008, the last day for issuing an assessment covering the May 2005 EWT.

Significantly, there were no attending circumstances that would prevent respondent from issuing an assessment and collecting the tax due within the period prescribed by law. Petitioner did not request for a re-investigation nor did it execute a waiver of the statute of limitations. Evidently, the assessment issued on January 9, 2009 or after June 10, 2008 had prescribed effectively barring the collection of the alleged tax deficiency.

In *Commissioner of Internal Revenue vs. FMF Development Corporation*[24], the Supreme Court held that:

> Under Section 203 of the NIRC, internal revenue **taxes must be assessed within three years** counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. **Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time**.
>
> An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides:
>
> 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

[24] G.R. No. 167765, June 30, 2008.

> agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx
>
> The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. xxx *(Emphasis supplied)*

Further in *Republic of the Philippines vs. Ablaza*[25], the Highest Tribunal explained that the statute of limitations of actions for the collection of taxes is justified by the need to protect law-abiding citizens from possible harassment, *viz.*:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of

[25] G.R. No. L-14519, July 26, 1960.

the Commission which recommended the approval of the law.

WHEREFORE, the *Petition for Review* filed by Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences Institute), Inc., is hereby **GRANTED**.

Accordingly, the Formal Letter of Demand, Assessment Notice No. 54-2005, and Preliminary Collection Letter with respect to the deficiency expanded withholding tax covering fiscal year ending May 31, 2005 are hereby **CANCELLED** and **SET ASIDE** on ground of prescription.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice