REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FIRST PHILIPPINE INDUSTRIAL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 9000
For: Assessment

Members:
CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:
FEB 24 2020
9:10 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on May 20, 2019 is a *Petition for Review* filed by First Philippine Industrial Corporation against the Commissioner of Internal Revenue on February 25, 2015, praying for the cancellation of the alleged deficiency tax assessments under the Formal Letter of Demand (FLD) for taxable year 2009 in the amount of ₱160,199,415.34.[1]

Petitioner First Philippine Industrial Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at the Ground Floor, Benpres Building, Exchange Road corner Meralco Avenue, Pasig City, Philippines.[2]

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[1] Statement of the Case, Pre-Trial Order dated August 30, 2016, Docket – Vol. II, p. 939.
[2] Par. 3, *Petition of Review*, Docket – Vol. I, p. 15.

Respondent is the duly appointed Commissioner of Internal Revenue with authority, among others, to collect all national internal revenue taxes and to decide disputed tax assessments and refunds of internal revenue taxes, fees or other charges in relation thereto, with office address at the Bureau of Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.[3]

During the conduct of the audit of petitioner, the latter's Comptroller, Ms. Ana Maria D. Del Rosario, executed *Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*, which include the following:

a. Waiver dated September 7, 2012, purportedly extending Respondent's period of assessment until December 31, 2012, which was accepted by then Officer-in-Charge Assistant Commissioner for Large Taxpayers Service Alfredo V. Misajon (OIC-ACIR Misajon) on September 18, 2012; and

b. Waiver dated November 27, 2012, purportedly extending respondent's period of assessment until June 30, 2013, which was accepted by OIC-ACIR Misajon on December 19, 2012.[4]

On June 9, 2014, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated June 5, 2014 issued by the BIR which stated that after investigation, petitioner has been found liable for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), final tax (FT), fringe benefits tax (FBT), and documentary stamp tax (DST) for taxable year 2009 in the total amount of ₱158,082,305.80.[5]

Petitioner then filed, on June 24, 2014, a *Reply* dated June 23, 2014 to the PAN, with corresponding supporting documents, which opposed the assessments contained in the PAN.[6]

On June 30, 2014, petitioner received a copy of the FLD with Final Assessment Notice (FLD-FAN) dated June 27, 2014.[7] The FLD-

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[3] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 875.
[4] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 876.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 876.
[6] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 876.

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FAN contained deficiency assessments in the total amount of ₱160,199,415.34, inclusive of interests and penalties, broken down as follows:[8]

Breakdown of Deficiency Tax Assessment in FLD-FAN		
Assessment No.	**Type of Tax**	**Amount**
IT-116-LOA-00000054-09-14-978	Income tax	₱113,668,077.39
VT-116-LOA-00000054-09-14-979	VAT	4,921,155.91
WC-116-LOA-00000054-09-14-980	WTC	33,443,935.34
WF-116-LOA-00000054-09-14-981	FT	6,425,054.80
WR-116-LOA-00000054-09-14-982	FBT	1,638,865.83
DS-116-LOA-00000054-09-14-983	DST	102,326.07
Total Deficiency Assessment		**₱160,199,415.34**

Petitioner filed a *Protest to Assessments*, with supporting documents attached, on July 30, 2014.[9]

Petitioner filed the instant *Petition for Review* on February 25, 2015.[10] The instant case was initially raffled to this Court's First Division.

In the *Answer* filed on May 13, 2015,[11] respondent interposed the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

The waivers, duly executed by petitioner's VP-Comptroller, Ana Maria S. Del Rosario, extended the period to assess petitioner.

5. Petitioner claimed that respondent's right to assess has prescribed anchoring its claim on Section 203 of the Tax Code, to wit:

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[7] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 876.
[8] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. II, pp. 876 to 877.
[9] Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 877.
[10] Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 877; Docket – Vol. I, pp. 14 to 91.
[11] Docket – Vol. I, pp. 261 to 273.

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> **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. Respondent disagrees.

7. The case at hand falls squarely as an exception to Section 203 of the Tax Code – that is when both the taxpayer and the Commissioner have agreed in writing to extend the time for assessment. Section 222 of the Tax Code states:

> **SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** –
>
> -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.

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(Emphasis supplied).

8. In the instant case, petitioner executed, not one (1), but four (4) Waivers of the Defense of Prescription for it to be able to submit and/or present the required books of accounts and other accounting records to facilitate the examination in connection with audit and/or investigation of all its internal revenue taxes for taxable year 2009.

9. Such action on the part of petitioner and the subsequent acceptance of respondent validly extended the period to assess petitioner.

10. Petitioner contended that the waivers it executed were invalid because (1) the waivers were not accompanied by a Board Resolution authorizing its VP Comptroller, Ana Maria S. Del Rosario, to execute the said waivers; and (2) the revenue officer who accepted the waiver was not authorized to do so.

11. Respondent begs to differ.

12. First, it must be emphasized that an authority to sign the waiver is not needed when the waiver is signed by the taxpayer itself thru its responsible official. Revenue Memorandum Order No. 20-1990 is clear:

> 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 between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:
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> -xxx-
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> 2.The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a

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> representative, such delegation should in writing and duly notarized.
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> -xxx-
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> (**Emphasis supplied**).

13.As here, petitioner, through its VP-Comptroller, Ana Maria S. Del Rosario, voluntarily executed four (4) Waivers of the Defense of Prescription to extend the period of assessment which were duly accepted by OIC-Assistant Commissioner Alfredo V. Misajon.

14.In fact, pertinent portion of the notarizations in the said waivers state that Ana Maria S. Del Rosario acknowledged that the execution of the waivers were the voluntary act and deed of petitioner. Specifically:

> In the City of Pasig -xxx- personally appeared before me **ANA MARIA S. DEL ROSARIO**, -xxx-, **in her capacity as VP-Comptroller of First Philippine Industrial Corporation**, -xxx- executed the foregoing waiver for and in behalf of said taxpayer, and he/she **acknowledged to me that the same is the voluntary act and deed of First Philippine Industrial Corporation, and that she is duly authorized to sign the same.**
> (**Emphasis supplied**).

15.Moreover, petitioner's reliance on CIR v. Kudos Metal is clearly misplaced. In the said case, the Honorable Supreme Court invalidated the waiver since it was signed by a mere accountant of the corporation – an officer who cannot, without a Board Resolution, sign the waiver since the execution of the waiver is not in the ordinary course of her functions.

16.This is not the case here. In the case at bar, Ana Maria S. Del Rosario is petitioner's VP-Comptroller who acted in the course of her functions in signing the waivers. In fact, the Board of Directors is considered to have impliedly ratified her dealings with the Bureau of Internal Revenue by silence and acquiescence.

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17. Accordingly, petitioner cannot assert now that Ana Maria Del Rosario is not a responsible official to execute the four (4) Waivers of the Defense of Prescription.

18. Second, all waivers signed by the duly designated revenue official authorized to sign and/or accept waivers for tax cases pending investigation. Pursuant to paragraph B, No. 15 of Revenue Delegated Authority Order (RDAO) No. 04-07 dated 31 August 2007, the Commissioner of Internal Revenue delegated to the Assistant Commissioner (ACIR) – LTS, or in his/her absence, the concerned Head Revenue Executive Assistant, the power to approve and sign, among others, Waivers of the Statute of Limitation duly signed by the taxpayer of authorized representative.

19. Petitioner's contention that the signatory was a mere Officer-In-Charge (OIC) is bereft of merit.

20. It must be emphasized that an OIC can legally exercise the duties and functions pertaining to the office. The case of Estrada v. Desierto pointed out that:

> While it is true that under Section 206 of the NIRC as amended, the Commissioner of the BIR and not any Officer of the BIR was one granted the power to issue a notice of distraint, **it bears to stress, however, that when respondent Hefti exercised such function of the BIR Commissioner, she was then designated Officer-In-Charge of the BIR** by President Gloria Macapagal-Arroyo, as evidenced by a photocopy of her Memorandum of Appointment dated January 23, 2001. By virtue of her appointment as Officer-In-Charge of BIR, **it necessary follows that respondent Hefty can now legally exercise the duties and functions pertaining to the BIR Commissioner,** including issuance of constructive distraint.
> (**Emphasis supplied**).

21. Thus, in comparison to the instant case, since Alfredo V. Misajon was OIC-ACIR at the time the waivers were executed, he had the power to sign on behalf of the

Commissioner of Internal Revenue pursuant to RDAO No. 04-07.

22.It would be absurd to posit that it should have been the ACIR that signed the waivers since there was not ACIR at that time; hence the necessity of designating an OIC.

23.Moreover, even petitioner pointed out that the designation of an OIC is a temporary and convenient arrangement intended to avert paralyzation of the day to day operations of an office in the meantime that the head of office is absent.

24.In cases of waivers, acceptance by the Bureau of Internal Revenue, within the time provided by law, is an essential factor to its validity. Thus, had there been no OIC – ACIR at the time of execution of the waivers, it would inevitably lead to the paralyzation of the day to day operations of the Bureau.

25.Finally, the execution of the waivers proved to be beneficial to petitioner considering that aforesaid waivers constituted as tools for petitioner by providing enough time to gather its voluminous documents/records for the conduct of audit by respondent. The waiver eventually led to the issuance of the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) and Final Assessment Notice (FAN). Despite the ample time given by respondent, still petitioner failed to provide complete supporting documents to refute the findings, thus, assessment for deficiency taxes was issued.

26.It is quite absurd and unfair that when the PAN, FLD and FAN proved to be adverse to petitioner, the very same waiver utilized by petitioner, for its own advantage will now be used by the very same petitioner to defeat the validity of the waiver it voluntarily executed. Ergo, petitioner's deafening silence and failure to challenge the legality of the waivers within the administrative level operates as an estoppel on its part to question the same before the Honorable Court.

27.In view of the foregoing, the waivers executed by petitioner are valid, thus extending respondent's period to assess petitioner. Consequently, the FLD and FAN received by petitioner was issued well within the prescriptive period.

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Petitioner was not and was never deprived of its constitutionally protected right to due process.

28. Petitioner contended that respondent violated its right to due procedural due process when the FLD/FAN was issued just days after respondent's receipt of its Reply to the PAN.

29. Petitioner's contention is bereft of merit.

30. In the case at hand, petitioner miserably failed to refute the findings in the PAN with the arguments it presented in its Reply.

31. In fact, as stated in its Reply, it has already presented the same arguments during the discussions with and submissions to the audit group of the Large Taxpayer Service of the Bureau of Internal Revenue.

32. Hence, these 'arguments' and alleged 'supporting documents' have already been read and considered by respondent.

Respondent has complied with the auditing rules and procedures as prescribed in the issuances of the Bureau of Internal Revenue.

33. The Honorable Supreme Court has time and again ruled that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

34. Petitioner's imputation that respondent has failed to follow the prescribed audit rules and procedures is a mere allegation without proof.

35. Matrices, memoranda and schedules prepared by the Bureau of Internal Revenue belies this allegation.

36. In fact, respondent has followed strictly the auditing rules and procedures prescribed by the issuances of the Bureau of Internal Revenue.

37. In the present case, since petitioner failed to submit the documents required, respondent has no choice but to obtain third party information. Notably, relying on third party information is a long established practice and auditing procedure used by revenue officers to determine a taxpayer's liability.

38. Thus, petitioner cannot just rely on this fact alone and impute upon the Bureau of Internal Revenue an alleged wrongdoing which it has no proof of.

There was no violation of petitioner's right to speedy disposition of cases.

39. Finally, petitioner argued that respondent violated its constitutionally enshrined right to speedy disposition of cases.

40. The Honorable Supreme Court in the case of Ombudsman v. Jurado categorically held that:

> The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of 'speedy trial,' 'speedy disposition of cases' is a flexible concept. It is consistent with delays and depends upon the circumstances. **What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.**
> **(Emphasis supplied).**

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41.As here, there was no unreasonable, arbitrary and oppressive delay so as to violate petitioner's right to speedy disposition of cases.

42.In fact, petitioner was the one which executed four (4) waivers of the defense of prescription to extend the period of assessment for it to be able to submit documents to dispute the assessment – to which respondent only acceded.

43.Clearly, the validly extended assessment was not because of any unreasonableness and arbitrariness on the part of respondent; rather it was a request which has been granted so as to give petitioner time to dispute the assessment.

Petitioner is liable for deficiency Income Tax.

44.Petitioner contended that it does not have any unaccounted income of any kind or form and that it has always adopted policies of transparency and full reporting in its tax records.

45.However, audit and investigation revealed otherwise.

46.Upon respondent's reconciliation of purchases per books and third party information, it showed that petitioner failed to account for income it has received. Thus, respondent found respondent liable of deficiency income tax pursuant to Section 32 of the Tax Code.

47.Moreover, it was found that petitioner has opted to use itemized deduction for its Quarterly Income Tax Return. Such election of petitioner is irrevocable pursuant to the clear provision of Section 34 (L) of the Tax Code.

48.Thus, respondent was correct in disallowing petitioner's claim for Optional Standard Deduction.

49. Finally, audit and investigation revealed that there were discrepancies on the reported Salaries and Wages and Depreciation.

50.Therefore, petitioner was correctly assessed for deficiency Income Tax.

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Petitioner is liable for deficiency Value Added Tax.

51.Contrary to petitioner's contentions and as explained above, it was found that it has failed to account for all income that it received and it has failed to report accurately deductions that it claimed.

52.These discrepancies are subject to Value Added Tax pursuant to the clear provisions of Section 106 of the Tax Code.

53.Hence, the assessment for deficiency Value Added Tax must stand.

Petitioner is liable for deficiency Withholding Tax on Compensation, Final Tax, Fringe Benefit Tax and Documentary Stamp Tax.

54.It must be pointed that the assessment for deficiency Withholding Tax on Compensation resulted from the comparison of the Alphabetical List and Financial Statement of petitioner.

55.Petitioner has miserably failed to account for such discrepancy and as such the assessment should be upheld.

56.On the other hand, the assessment for deficiency Final Tax arose when petitioner failed to subject its service fee to Shell Global Solution International B.V. to final withholding tax.

57.Accordingly, it resulted to deficiency Final Tax pursuant to Section 2.57.1 of Revenue Regulations No. 2-1998.

58.The assessment for deficiency Fringe Benefits Tax was imposed since petitioner failed to subject certain fringe benefits it gave to its employees to final withholding tax.

59.Thus, pursuant to Section 33 (B) of the Tax Code, petitioner is liable for Fringe Benefits Tax.

60.Finally, the Documentary Stamp Tax on the following accounts were not paid:

a. Due to related parties;
b. Notes and contract receivables; and
c. Rental

61.Thus, Section 179 and 194 of the Tax Code mandate the imposition of Documentary Stamp Tax and corresponding additions to tax.

62.All told, it is very clear that petitioner is indeed liable for deficiency taxes in the aggregate amount of P160,199,415.34.

It is incumbent upon petitioner to file the necessary motion to suspend the collection of tax.

63.Finally, Section 218 of the Tax Code is clear and explicit, that is, no court shall have the authority to grant an injunction to restrain the collection of any internal revenue tax, fee or charged imposed by the Tax Code.

64.The Honorable Supreme Court has been consistent in ruling that no suit enjoining the collection of tax, disputed or undisputed, can be brought, the remedy being to pay the tax first, formerly under protest and not, without need of protest, file a claim with the collector and if he denies it, bring an action for recovery against him.

65.As the sole exception to the above-cited rule, the Court of Tax Appeals has the power to suspend the collection of taxes pursuant to the clear guidelines under Section 10 of the Revised Rules of the Court of Tax Appeals.

66.As here, petitioner has included in its prayer that this Honorable Court order officials and employees of the Bureau of Internal Revenue to cease and or stop any action or effort to collect the assessments subject of the petitioner.

67.This cannot be done.

68.It is incumbent upon petitioner to file the necessary motion to suspend the collection of tax. Moreover, as required by Section 10 of the Revised Rules of the Court of Tax Appeals, petitioner must prove that it will be prejudiced by

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the collection. And most importantly, the necessary bond must be deposited.

69.Thus, petitioner's prayer is not only erroneous but a grave disregard of the established rules of procedure of this Honorable Court; and as such must be scrapped out."

The pre-trial conference was initially set on September 24, 2015.[12] However, the pre-trial conference was further reset to,[13] and held on, June 15, 2016.[14]

On September 18, 2015, the *Pre-Trial Brief for Petitioner* was filed;[15] while *Respondent's Pre-Trial Brief* was submitted on March 17, 2016.[16]

The parties submitted their *Joint Stipulation of Facts and Issues* on July 11, 2016.[17] The Court issued the Pre-Trial Order on August 30, 2016.[18]

As trial ensued, petitioner presented documentary and testimonial evidence. As part of its testimonial evidence, petitioner offered the testimonies of the following individuals: (1) Atty. Eileen C. Pangalangan-Pardo,[19] petitioner's Assistant Corporate Secretary; (2) Ms. Ana Maria S. Del Rosario,[20] former Vice President for Comptroller & Office Strategy Management of petitioner; (3) Maria Dolores S. Santos,[21] former Supervising Accountant of petitioner; and (4) Atty. Maria Myla Maralit,[22] the Court-commissioned Independent Certified Public Accountant (ICPA).[23]

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[12] Resolution dated July 9, 2015, Docket – Vol. I, pp. 283 to 285.
[13] Order dated September 22, 2015, Docket – Vol. I, p. 307; Resolution dated January 22, 2016, Docket – Vol. I, pp. 314 to 315; Order dated March 9, 2016, Docket – Vol. I, p. 368; Minutes of the hearing held on, and Resolution dated, April 21, 2016, Docket – Vol. I, pp. 648 to 650, and 661 to 662, respectively.
[14] Minutes of the hearing held on, and Order dated, June 15, 2016, Docket – Vol. I, pp. 707 to 711, and 720 to 721, respectively.
[15] Docket – Vol. I, pp. 295 to 306.
[16] Docket – Vol. I, pp. 372 to 376.
[17] Docket – Vol. II, pp. 875 to 887.
[18] Pre-Trial Order dated August 30, 2016, Docket – Vol., pp. 939 to 957.
[19] Exhibit "P-60", Docket – Vol. I, pp. 319 to 326; Minutes of the hearing held on, and Order dated, September 22, 2016, Docket – Vol. II, pp. 965 to 969.
[20] Exhibit "P-59", Docket – Vol. I, pp. 382 to 411; Minutes of the hearing held on, and Order dated, August 31, 2016, Docket – Vol. II, pp. 959 to 963.
[21] Exhibit "P-506", Docket – Vol. II, pp. 737 to 762; Minutes of the hearing held on, and Order dated, November 10, 2016, Docket – Vol. II, pp. 1094 to 1098.
[22] Exhibit "P-58", Docket – Vol. II, pp. 921 to 929; Minutes of the hearing held on, and Order dated, September 22, 2016, Docket – Vol. II, pp. 965 to 969; Exhibit "P-61-b", Docket – Vol. II,

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On March 7, 2017, petitioner filed its *Formal Offer of Evidence.*[24] Respondent then filed his *Comment (Re: Petitioner's Formal Offer of Exhibits)* on March 13, 2017.[25] In the Resolution dated October 24, 2017,[26] the Court admitted petitioner's Exhibits, *except* for the following:

1. Exhibits "P-506", "P-404", and "P-405", for failure to correspond with the document actually marked;
2. Exhibit "P-506-A", for being a sub-marking of Exhibit "P-506", which has been denied admission; and
3. Exhibits "P-52", "P-53", "P-53-A", "P-53-B", "P-53-C", "P-53-D", "P-53-E", "P-53-F", "P-54", "P-55", and "P-56", for failure to identify, considering that they are identified in the Judicial Affidavit marked as Exhibit "P-506", which has been denied admission.

Consequently, petitioner filed its *Motion for Partial Reconsideration [Re: Resolution dated October 24, 2017]* on November 9, 2017.[27] Thus, in the Resolution dated April 30, 2018,[28] the Court granted the said *Motion for Partial Reconsideration*, and admitted Exhibits "P-52", "P-53", "P-53-A", "P-53-B", "P-53-C", "P-53-D", "P-53-E", "P-53-F", "P-54", "P-55", "P-56", "P-404", "P-405", "P-506", and"P-506-A".

Petitioner's documentary exhibits are as follows:

Exhibit:	Description:
P-1	Formal Letter of Demand (FLD) issued to FPIC dated June 27, 2014 covering taxable year 2009
P-2	Annual Income Tax Return (ITR) BIR Form No. 1702 of FPIC for the year ended 2009 filed with and stamped received by the BIR on March 5, 2010
P-3	eFPS Filing on March 5, 2010
P-3-A	Payment reference number on March 5, 2010
P-4	Quarterly VAT Return BIR Form No. 2550-Q for the

pp. 1058 to 1062; Exhibit "P-507", Docket – Vol. II, pp. 1074 to 1093; Minutes of the hearing held on, and Order dated, November 10, 2016, Docket – Vol. II, pp. 1094 to 1098.

[23] *Oath of Commission* dated September 22, 2016, Docket – Vol. II, p. 958; Minutes of the hearing held on, and Order dated, September 22, 2016, Docket – Vol. II, pp. 965 to 969.

[24] Docket – Vol. III, pp. 1144 to 1217.

[25] Docket – Vol. III, pp. 1537 to 1539.

[26] Docket - Vol. III, pp. 1548 to 1551.

[27] Docket – Vol. III, pp. 1552 to 1558.

[28] Docket – Vol. III, pp. 1569 to 1571.

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	first quarter of 2009 of FPIC filed on May 10, 2010
P-5	Quarterly VAT Return BIR Form No. 2550-Q for the second quarter of 2009 of FPIC with Reference No. 100900003109062, filed with the BIR on July 23, 2009
P-5-A	Corresponding eFPS Payment filing reference details dated July 23, 2009
P-6	Quarterly VAT Return BIR Form No. 2550-Q for the third quarter of 2009 of FPIC with the Reference No. 100900003296069, filed with the BIR on October 22, 2009
P-6-A	Corresponding eFPS Payment filing reference details dated October 22, 2009
P-7	Quarterly VAT Return BIR Form No. 2550-Q for the fourth quarter of 2009 of FPIC with REfernece No. 101000003504449, filed with the BIR on January 22, 2010
P-7-A	Corresponding eFPS Payment filing reference details dated January 22, 2010
P-8	BIR Form No. 1601-C for the month of January 2009, filed with the BIR on February 10, 2009 and Filing Reference No. 010900002756754
P-8-A	Corresponding eFPS Payment filing reference details dated February 10, 2009
P-9	BIR Form No. 1601-C for the month of February 2009, filed with the BIR on March 10, 2009 and Filing Reference No. 010900002819182
P-9-A	Corresponding eFPS Payment filing reference details dated March 10, 2009
P-10	BIR Form No. 1601-C for the month of March 2009, filed with the BIR on April 3, 2009 and Filing Reference No. 0109000028700280
P-10-A	Corresponding eFPS Payment filing reference details filed April 3, 2009
P-11	BIR Form No. 1601-C for the month of April 2009, filed with the BIR on May 7, 2009 and Filing Reference No. 010900002943522
P-11-A	Corresponding eFPS Payment filing reference details filed May 7, 2009
P-12	BIR Form No. 1601-C for the month of May 2009, filed with the BIR on June 5, 2009 and Filing Reference No. 010900003007296
P-12-A	Corresponding eFPS Payment filing reference details filed June 5, 2009
P-13	BIR Form No. 1601-C for the month of June 2009, filed with the BIR on July 9, 2009 and Filing Reference No. 010900003075986
P-13-A	Corresponding eFPS Payment filing reference details dated July 10, 2009
P-14	BIR Form No. 1601-C for the month of July 2009, filed with the BIR on August 6, 2009 and Filing Reference No. 010900003126571

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P-14-A	Corresponding eFPS Payment filing reference details filed August 6, 2009
P-15	BIR Form No. 1601-C for the month of August 2009, filed with the BIR on September 8, 2009 and Filing Reference No. 010900003197058
P-15-A	Corresponding eFPS Payment filing reference details filed September 8, 2009
P-16	BIR Form No. 1601-C for the month of September 2009, filed with the BIR on October 8, 2009 and Filing Reference No. 010900003257076
P-16-A	Corresponding eFPS Payment filing reference details filed October 8, 2009
P-17	BIR Form No. 1601-C for the month of October 2009, filed with the BIR on November 10, 2009 and Filing Reference No. 010900003330746
P-17-A	Corresponding eFPS Payment filing reference details dated November 10, 2009
P-18	BIR Form No. 1601-C for the month of November 2009, filed with the BIR on December 11, 2009 and Filing Reference No. 010900003409672
P-18-A	Corresponding eFPS Payment filing reference details dated December 11, 2009
P-19	BIR Form No. 1601-C for the month of December 2009, filed with the BIR on January 11, 2010 and Filing Reference No. 011000003462717
P-19-A	Corresponding eFPS Payment filing reference details dated January 11, 2010
P-20	BIR Form No. 1601-F for the month of January 2009 filed with the BIR on February 7, 2009, with corresponding Filing Reference No. 200900002746225
P-20-A	Corresponding eFPS Payment filing reference details dated February 7, 2009
P-21	BIR Form No. 1601-F for the month of February 2009 filed with the BIR on March 9, 2009, with corresponding Filing Reference No. 200900002818344
P-21-A	Corresponding eFPS Payment filing reference details dated March 9, 2009
P-22	BIR Form No. 1601-F for the month of March 2009 filed with the BIR on April 2, 2009, with corresponding Filing Reference No. 200900002868112
P-22-A	Corresponding eFPS Payment filing reference details dated April 2, 2009
P-22-B	eFPS Payment Details dated April 8, 2009
P-23	BIR Form No. 1601-F for the month of April 2009 filed with the BIR on May 5, 2009, with corresponding Filing Reference No. 200900002937510
P-23-A	Corresponding eFPS Payment filing reference details dated May 5, 2009
P-24	BIR Form No. 1601-F for the month of May 2009 filed with the BIR on June 5, 2009, with corresponding Filing Reference No. 200900003018325

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P-24-A	Corresponding eFPS Payment filing reference details dated June 9, 2009
P-25	BIR Form No. 1601-F for the month of June 2009 filed with the BIR on July 9, 2009, with corresponding Filing Reference No. 200900003075917
P-25-A	Corresponding eFPS Payment filing reference details dated July 9, 2009
P-26	BIR Form No. 1601-F for the month of July 2009 filed with the BIR on August 7, 2009, with corresponding Filing Reference No. 200900003132523
P-26-A	Corresponding eFPS Payment filing reference details dated August 7, 2009
P-27	BIR Form No. 1601-F for the month of August 2009 filed with the BIR on September 8, 2009, with corresponding Filing Reference No. 200900003107098
P-27-A	Corresponding eFPS Payment filing reference details dated September 8, 2009
P-28	BIR Form No. 1601-F for the month of September 2009 filed with the BIR on October 8, 2009, with corresponding Filing Reference No. 200900003256947
P-28-A	Corresponding eFPS Payment filing reference details dated October 8, 2009
P-29	BIR Form No. 1601-F for the month of October 2009 filed with the BIR on November 10, 2009, with corresponding Filing Reference No. 200900003330630
P-29-A	Corresponding eFPS Payment filing reference details dated November 10, 2009
P-30	BIR Form No. 1601-F for the month of November 2009, filed with the BIR on December 8, 2009, with corresponding Filing Reference No. 200900003390814
P-30-A	Corresponding eFPS Payment filing reference details dated December 8, 2009
P-31	BIR Form No. 1601-F for the month of December 2009, filed with the BIR on January 8, 2010, with corresponding Filing Reference No. 201000003448012
P-31-A	Corresponding eFPS Payment filing reference details dated January 8, 2010
P-32	BIR Form No. 1603 for the first quarter of 2009 stamped and received by the BIR on April 15, 2009
P-32-A	Corresponding Debit/Credit Advice slip from Union Bank with reference numbe 000910009922
P-33	BIR Form No. 1603 for the second quarter of 2009 filed with the BIR on July 14, 2009, with corresponding Filing Reference No. 040900003093937
P-33-A	Corresponding eFPS Payment filing reference details dated July 14, 2009
P-34	BIR Form No. 1603 for the third quarter of 2009 filed with the BIR on October 13, 2009
P-34-A	Corresponding eFPS Payment filing reference details dated October 13, 2009
P-35	BIR Form No. 1603 for the fourth quarter of 2009 filed

	with the BIR on January 13, 2010
P-35-A	Corresponding eFPS Payment filing reference details dated January 13, 2010
P-36	Letter of Authority No. LOA-116-2010-00000054
P-36-A	Date of Receipt of the LOA by FPIC dated May 18, 2010
P-37	FPIC's Transmittal Letter dated June 4, 2010 stamped received by the BIR on the same date
P-38	FPIC's Transmittal Letter dated June 10, 2010 stamped received by the BIR on June 11, 2010
P-39	FPIC's Transmittal Letter dated June 11, 2010 stamped received by the BIR on June 15, 2010
P-40	Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated September 7, 2012 (First Waiver)
P-41	Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated November 27, 2012 (Second Waiver0
P-42	Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated February 22, 2013 (Third Waiver)
P-43	Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated October 2, 2013 (Fourth Waiver)
P-44	Preliminary Assessment Notice (PAN) issued by respondent on June 5, 2014 which was received by petitioner only on June 9, 2014
P-45	Reply to the PAN dated June 23, 2014 consisting of seven (7) pages
P-46	Protest to Assessments filed by FPIC with the BIR on July 30, 2014 consisting of forty-two (42) pages
P-47	General Information Sheet of FPIC filed January 29, 2016
P-48	Amended By-Laws of FPIC
P-49	Secretary's Certificate dated February 29, 2016
P-50	Negative Certification issued by Program Realty & Development Corporation dated November 7, 2014 in favor of petitioner
P-51	Negative Certification issued by the Pan Pacific Industrial Sales Co., Inc. dated October 24, 2014 in favor of petitioner
P-52	CV No. 03-017068 for the amount of P27,000.00
P-53	FPIC Summary List of Purchases for January 2009
P-53-A	FPIC Summary List of Purchases for February 2009
P-53-B	FPIC Summary List of Purchases for March 2009
P-53-C	FPIC Summary List of Purchases for May 2009
P-53-D	FPIC Summary List of Purchases for August 2009
P-53-E	FPIC Summary List of Purchases for November 2009
P-53-F	FPIC Summary List of Purchases for December 2009
P-54	Official Receipt No. 18186 dated October 19, 2009 (OR

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	18186) issued by Isla Lipana in favor of petitioner for the amount of P8,482.14
P-55	Bill No. 23668 from Isla Lipana and Co., Inc. in the amount of P8,482.14
P-56	FPIC 2009 Annual ITR
P-57	2009 Audited Financial Statement of FPIC
P-57-A	Note 5 page 22 of FPIC's 2009 Audited Financial Statement
P-57-B	Note 16 page 31 of FPIC's Audited Financial Statement
P-58	Judicial Affidavit of Atty. Maria Myla S. Maralit (Atty. Maralit) dated August 26, 2016 consisting of nine (9) pages
P-58-A	PRC License Card of Atty. Maralit
P-58-B	BIR Accreditation Certificate of RGM&Co.
P-58-C	Philippines Institute of Certified Public Accountants (PICPA) Certificate of Good Standing issued to Atty. Maralit
P-58-E	Signature of Atty. Maralit
P-59	Judicial Affidavit of Ms. Ana Del Rosario dated March 9, 2016 consisting of thirty (30) pages
P-59-A	Signature of Ms. Ana Del Rosario
P-60	Judicial Affidavit of Atty. Pangalangan-Pardo dated March 4, 2016 consisting of eight (8) pages
P-60-A	Signature of Atty. Pangalangan-Pardo
P-61	Independent Certified Public Accountant Report dated October 24, 2016 (consisting of fifty-one (51) pages (ICPA Report)
P-61-A	Signature of Atty. Maralit in the ICPA Report
P-61-B	Supplemental ICPA Report dated November 4, 2016 consisting of five (5) pages
P-61-C	Signature of Atty. Maralit in Supplemental ICPA Report
P-62	Petitioner's electronically filed Quarterly Income Tax Return (BIR Form No. 1702Q) for the quarter ended March 2009
P-62-1	Date of electronic filing by the petitioner of the Quarterly Income Tax Return (BIR Form No. 1702Q) for the quarter ended March 2009
P-62-2	Method of Deduction indicated in electronically filed Quarterly Income Tax Return (BIR Form No. 1702Q) for CY 2009
P-63	Petitioner's manually filed Quarterly Income Tax Return (BIR Form No. 1702Q) for the quarter ended March 2009
P-63-1	Method of Deduction indicated in manually filed Quarterly Income Tax Return (BIR Form No. 1702Q) for CY 2009
P-64	Petitioner's electronically filed Quarterly Income Tax Return (BIR Form No. 1702Q) for the quarter ended June 2009
P-64-1	Date of electronic filing by the petitioner of the Quarterly Income Tax Return (BIR Form No. 1702Q)

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	for the quarter ended June 2009
P-64-2	Method of Deduction indicated in the electronically filed Quarterly Income Tax Return (BIR Form No. 1702Q) for CY 2009
P-65	Petitioner's manually filed Quarterly Income Tax Return (BIR Form No. 1702Q) for the quarter ended June 2009
P-65-1	Method of Deduction indicated in the manually filed Quarterly Income Tax Return (BIR Form No. 1702Q) for CY 2009
P-66	Petitioner's electronically filed Quarterly Income Tax Return (BIR Form No. 1702Q) for the quarter ended September 2009
P-66-1	Date of electronic filing by the petitioner of the Quarterly Income Tax Return (BIR Form No. 1702Q) for the quarter ended September 2009
P-66-2	Method of Deduction indicated in the electronically filed Quarterly Income Tax Return (BIR Form No. 1702Q) for CY 2009
P-67	Petitioner's manually filed Quarterly Income Tax Return (BIR Form No. 1702Q) for the quarter ended September 2009)
P-67-1	Method of Deduction indicated in the manually filed Quarterly Income Tax Return (BIR Form No. 1702Q) for CY 2009
P-68	Petitioner's electronically filed Annual Income Tax Return (BIR Form No. 1702) for CY 2009
P-68-1	Date of electronic filing by the petitioner of the Annual Income Tax Return (BIR Form No. 1702)for CY 2009
P-68-2	Method of Deduction indicated in the electronically filed Annual Income Tax Return (BIR Form No. 1702) for CY 2009
P-69	Petitioner's manually filed Annual Income Tax Return (BIR Form No. 1702) for CY 2009
P-69-1	Method of Deduction indicated in the manually filed Annual Income Tax Return (BIR Form No. 1702) for CY 2009
P-69-2	Amount declared by petitioner as Direct Charges – Salaries, Wages and Benefits per Income Tax Return (BIR Form NO. 1702) for CY 2009
P-69-3	Amount declared by petitioner as Direct Charges – Depreciation per Income Tax Return (BIR Form No. 1702) for CY 2009
P-69-4	Amount declared by petitioner as Salaries and Allowances – Operating Expense per Income Tax Return (BIR Form No. 1702) for CY 2009
P-69-5	Amount declared by petitioner as Depreciation – Operating Expense per Income Tax Return (BIR Form 1702) for CY 2009
P-69-6	Amount declared by petitioner as Amortization on Impairment Loss of Fixed Assets per Attachment III –

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	"Reconciliation of Net Income Per Books against Taxable Income" of the petitioner's Income Tax Return (BIR Form No. 1702) for CY 2009
P-69-7	Amount declared by petitioner as Revaluation Increment in Property and Equipment and Investment Property per Attachment III – "Reconciliation of Net Income Per Books against Taxable Income" of the petitioner's Income Tax Return (BIR Form No. 1702) for CY 2009
P-70	Petitioner's electronically filed Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of January 2009
P-70-1	Date of electronic filing by the petitioner of the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of January 2009
P-71	Petitioner's electronically filed Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of February 2009
P-71-1	Date of electronic filing by the petitioner of the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of February 2009
P-72	Petitioner's electronically filed Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 31 March 2009
P-72-1	Date of electronic filing by the petitioner of the Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 31 March 2009
P-72-2	Amount properly reported as Purchases Not Qualified for Input Tax per Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 31 March 2009
P-73	Petitioner's electronically filed Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of April 2009
P-73-1	Date of electronic filing by the petitioner of the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of April 2009
P-74	Petitioner's electronically filed Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of May 2009
P-74-1	Date of electronic filing by the petitioner of the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of May 2009
P-75	Petitioner's electronically filed Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 30 June 2009
P-75-1	Date of electronic filing by the petitioner of the Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 30 June 2009
P-76	Petitioner's electronically filed Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month

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	of July 2009
P-76-1	Date of electronic filing by the petitioner of the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of July 2009
P-77	Petitioner's electronically filed Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of August 2009
P-77-1	Date of electronic filing by the petitioner of the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of August 2009
P-78	Petitioner's electronically filed Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 30 September 2009
P-78-1	Date of electronic filing by the petitioner of the Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 30 September 2009
P-79	Petitioner's electronically filed Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of October 2009
P-79-1	Date of electronic filing by the petitioner of the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of October 2009
P-80	Petitioner's electronically filed Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of November 2009
P-80-1	Date of electronic filing by the petitioner of the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for the month of November 2009
P-81	Petitioner's electronically filed Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 31 December 2009
P-81-1	Date of electronic filing by the petitioner of the Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the quarter ended 31 December 2009
P-82	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of January 2009
P-82-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of January 2009
P-82-2	Amount properly reported as Total Amount of Compensation for the month of January 2009
P-83	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of February 2009
P-83-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of February 2009

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P-83-2	Amount properly reported as Total Amount of Compensation for the month of February 2009
P-84	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of March 2009
P-84-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of March 2009
P-84-2	Amount properly reported as Total Amount of Compensation for the month of March 2009
P-85	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of April 2009
P-85-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of April 2009
P-85-2	Amount properly reported as Total Amount of Compensation for the month of April 2009
P-86	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of May 2009
P-86-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of May 2009
P-86-2	Amount properly reported as Total Amount of Compensation for the month of May 2009
P-87	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of June 2009
P-87-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of June 2009
P-87-2	Amount properly reported as Total Amount of Compensation for the month of June 2009
P-88	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of July 2009
P-88-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of July 2009
P-88-2	Amount properly reported as Total Amount of Compensation for the month of July 2009
P-89	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of August 2009
P-89-1	Date of electronic filing by the petitioner of the

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	Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of August 2009
P-89-2	Amount properly reported as Total Amount of Compensation for the month of August 2009
P-90	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of September 2009
P-90-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of September 2009
P-90-2	Amount properly reported as Total Amount of Compensation for the month of September 2009
P-91	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of October 2009
P-91-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of October 2009
P-91-2	Amount properly reported as Total Amount of Compensation for the month of October 2009
P-92	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of November 2009
P-92-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of November 2009
P-92-2	Amount properly reported as Total Amount of Compensation for the month of November 2009
P-93	Petitioner's electronically filed Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of December 2009
P-93-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the month of December 2009
P-93-2	Amount properly reported as Total Amount of Compensation for the month of December 2009
P-94	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of January 2009
P-94-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of January 2009

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P-95	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of February 2009
P-95-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of February 2009
P-96	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of March 2009
P-96-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of March 2009
P-97	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of April 2009
P-97-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of April 2009
P-98	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of May 2009
P-98-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of May 2009
P-99	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of June 2009
P-99-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of June 2009
P-100	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of July 2009
P-100-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of July 2009
P-101	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of August 2009
P-101-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of August 2009
P-102	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No.

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	1601-F) for the month of September 2009
P-102-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of September 2009
P-103	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of October 2009
P-103-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of October 2009
P-104	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of November 2009
P-104-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of November 2009
P-105	Petitioner's electronically filed Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of December 2009
P-105-1	Date of electronic filing by the petitioner of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of December 2009
P-106	Petitioner's manually filed Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the quarter ended 31 March 2009
P-106-1	Date of manual filing by the petitioner of the Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the quarter ended 31 March 2009
P-107	Petitioner's electronically filed Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the quarter ended 30 June 2009
P-107-1	Date of electronic filing by the petitioner of the Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the quarter ended 30 June 2009
P-108	Petitioner's electronically filed Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the quarter ended 30 September 2009
P-108-1	Date of electronic filing by the petitioner of the Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the quarter ended 30 September 2009
P-109	Petitioner's electronically filed Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the quarter ended 31 December 2009
P-109-1	Date of electronic filing by the petitioner of the

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	Quarterly Remittance Return on Final Income Taxes Withheld (BIR Form No. 1603) for the quarter ended 31 December 2009
P-110	Petitioner's Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 07 September 2012
P-111	Petitioner's Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 27 November 2012
P-112	Petitioner's Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 22 February 2013
P-113	Petitioner's Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 02 October 2013
P-114 to P-246 (inclusive of submarkings P-114-1 to P-246-1)	Various Invoices and Official Receipts, issued by the Suppliers of FPIC relating to its purchases for CY 2009
P-247 (inclusive of submarkings P-247-1 to P-247-5)	FPIC's Summary List of Purchases for the month of January 2009
P-248 (inclusive of submarkings P-248-1 to P-248-6)	FPIC's Summary List of Purchases for the month of February 2009
P-249 (inclusive of submarkings P-249-1 to P-249-5)	FPIC's Summary List of Purchases for the month of March 2009
P-251 (inclusive of submarkings P-251 to P-251-6	FPIC's Summary List of Purchases for the month of May 2009
P-252 (inclusive of submarkings P-252-1 to P-252-3)	FPIC's Summary List of Purchases for the month of June 2009
P-254 (inclusive of submarkings P-254-1 to P-254-5)	FPIC's Summary List of Purchases for the month of August 2009

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P-255 (inclusive of submarkings P-255-1 to P-255-2)	FPIC's Summary List of Purchases for the month of September 2009
P-256 (inclusive of submarkings P-256-1 to P-256-5)	FPIC's Summary List of Purchases for the month of October 2009
P-257 (inclusive of submarkings P-257-1 to P-257-5)	FPIC's Summary List of Purchases for the month of November 2009
P-258 (inclusive of submarkings P-258-1 to P-258-4)	FPIC's Summary List of Purchases for the month of December 2009
P-259 to P-332 (inclusive of submarkings P-259-1 to P-332-2)	FPIC's various disbursement vouchers and general ledgers for its purchases in CY 2009
P-333	FPIC's Schedule of Reconciliation of Undeclared Purchases
P-334	Negative Certification issued by Program Realty & Development Corporation dated November 7, 2014 in favor of petitioner
P-335	Negative Certification issued by Pan Pacific Industrial Sales Co., Inc
P-336	Certification issued by JKA International Trading Corporation
P-337 (inclusive of submarkings P-337-1 to P-337-81)	FPIC's Audited Trial Balance
P-338 (inclusive of submarkings P-338-1 to P-338-12)	FPIC's Audited Financial Statement for CY 2009
P-339	Certification of Rental Payment of ROW by Cocochem Agro Industrial Park, Inc.
P-340	Certification issued by FH Commercial, Inc.
P-341 (inclusive of submarkings	Income Tax Computation Working Papers (TTWP) for CY 2009

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P-341-1 to P-341-35)	
P-342	Schedule of Purchases properly reported under Purchases not qualified for Input Tax for January 2009
P-343	Schedule of Purchases properly reported under Purchases not qualified for Input Tax for February 2009
P-344	Schedule of Purchases properly reported under Purchases not qualified for Input Tax for March 2009
P-346	Official Receipt No. 36842 issued by Angara Abello Concepcion Regala & Cruz
P-347	Statement of Account No. 1163939 issued by Angara Abello Conception Regala & Cruz Law Office
P-348	Invoice No. 24070134 issued by ETSI Technologies, Inc.
P-349	FPIC's Summary List of Purchases for the month of May 2008
P-350	FPIC's Summary List of Purchases for the month of September 2008
P-351	FPIC's Summary List of Purchases for the month of March 2007
P-352	Disbursement Voucher No. CV-05-020189 for Angara Abello Concepcion Regala & Cruz Law Office
P-353	Disbursement Voucher No. CV-09-021083 for Angara Abello Concepcion Regala & Cruz Law Office
P-354	Petitioner's Disbursement Voucher No. CV-03-017068 for ETSI Technologies, Inc.
P-355	FPIC's Reconciliation of Salaries & Wages Not Subjected to Withholding Tax
P-356 to P-361	FPIC's General Ledgers
P-362 to P-379	FPIC's Journal Vouchers supporting interest income from employee loans
P-380 (inclusive of submarkings P-380-1 to P-380-2)	FPIC's General Ledger
P-381 (inclusive of submarkings P-381-1 to P-381-3)	FPIC's Service Invoice No. 4519
P-382	FPIC's Official Receipt No. 11301
P-383	Petitioner's Cash Receipts Register for CY 2009
P-384	Petitioner's Summary List of Sales (SLS) for the month of April 2009
P-385 to P-396 (inclusive of Submarkings	Acknowledgement Receipts supporting dividend income

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P-385-1 to P-396-1)	
P-397	FPIC's General Ledger for Account No. 8301 "Interest and Dividend Income – Dividends" for CY 2009
P-398	FPIC's Journal Voucher pertaining to FPIC's receipt of refund
P-399	FPIC's Journal Voucher pertaining to FPIC's receipt of refund or rebate recorded as "Miscellaneous income" for the month of October 2009
P-400 to P-402	FPIC's Journal Vouchers pertaining to FPIC's receipt of refund or rebate recorded as "Miscellaneous income" for the month of December 2009
P-403	Debit Memo No. D01864 issued by Globe Telecom
P-404	Acknowledgment Official Receipt No. 0693
P-405	Acknowledgment Official Receipt No. 0559
P-406	FPIC's Accounts Payable Voucher 030865
P-407 and P-407-1	Petitioner's Journal Voucher (JV) GJ-0000000009340
P-408 and P-408-1	Journal Voucher (J) GJ-0000000009341
P-409 andP-409-1	Petitioner's Journal Voucher (JV) GJ-0000000009385
P-410 to P-417	Various Invoices and Disbursement Vouchers pertaining to service fees paid to Shell Global Solutions International B.V.
P-418	Certification of Non-Registration of Shell Global Solutions International BV issued by the Securities and Exchange Commission (SEC) on August 16, 2016
P-420 to P-459 (inclusive of submarkings P-420-1 to P-459-1)	Various Journal Vouchers for CY 2008
P-460	Disbursement Voucher for CY 2009
P-466 to P-505	Various Journal Vouchers for CY 2009
P-506	Judicial Affidavit of Ms. Doris Santos (Ms. Santos) dated March 9, 2016 consisting of thirty (30) pages
P-506-A	Signature of Ms. Doris Santos
P-507	Judicial Affidavit of Atty. Maralit
P-507-A	Signature of Atty. Maralit

On September 26, 2018, the instant case was transferred to this Court's Second Division.[29]

[29] Order dated September 26, 2018, Docket – Vol. III, p. 1592.

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Respondent also presented his documentary and testimonial evidence. With respect to testimonial evidence, respondent proffered the testimony of Ms. Olivia Sison,[30] Revenue Officer III of the BIR.

On December 10, 2018, the *Respondent's Formal Offer of Evidence* was filed.[31] The Court then admitted all of respondent's Exhibits, in the Resolution dated January 28, 2019.[32]

Respondent offered the following exhibits, to wit:

Exhibit:	**Description:**
R-1	Letter of Authority numbered LOA-116-2010-00000054 dated 14 May 2010
R-2	Letter Request dated 14 May 2010
R-3	Checklist of Requirements
R-4	First Notice for the Presentation of the Books of Accounts and Other Accounting Records dated 7 June 2010
R-5	Second and Final Notice for the Presentation of the Books of Accounts and Other Accounting Records dated 7 June 2010
R-6	Waiver of the Defense of Prescription dated 7 September 2012 which was accepted by the Bureau of Internal Revenue (BIR) on 18 September 2012
R-7	Waiver of the Defense of Prescription dated 27 November 2012 which was accepted by the BIR on 19 December 2012
R-8	Waiver of the Defense of Prescription dated 22 February 2013 which was accepted by the BIR on 12 March 2013
R-9	Waiver of the Defense of Prescription dated 2 October 2013 which was accepted by the BIR on 10 October 2013
R-10	Memorandum dated 24 April 2014
R-11	PAN with attached Details of Discrepancies dated 5 June 2014
R-12	Memorandum dated 20 June 2014
R-13	FLD with attached Details of Discrepancies dated 27 June 2014
R-14	FAN

[30] Exhibit "R-14", Docket – Vol. I, pp. 667 to 674; Minutes of the hearing held on, and Order dated, December 5, 2018, Docket – Vol. III, pp. 1597 to 1599.
[31] Docket – Vol. III, pp. 1600 to 1605.
[32] Docket – Vol. III, pp. 1609 to 1610.

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On April 29, 2019, respondent submitted his *Memorandum*;[33] while on May 2, 2019, petitioner filed its *Memorandum*.[34]

On May 20, 2019, this case was considered submitted for decision.[35]

THE ISSUE RAISED

The parties set forth the following issue for this Court's resolution, to wit:

> "Whether or not Petitioner is liable for deficiency Income tax, Value-Added Tax, Withholding Tax on Compensation, Final Tax, Fringe Benefits Tax and Documentary Stamp Tax for taxable year 2009 in the aggregate amount of One Hundred Sixty Million One Hundred Ninety Nine Thousand Four Hundred Fifteen Pesos and Thirty Four Centavos (₱160,199,415.34), inclusive of interests and penalties."[36]

Petitioner's arguments:

Petitioner argues that respondent's right to assess petitioner for taxable year 2009 has already prescribed. In support thereof, petitioner points out that the *Waiver of the Statute of Limitations* executed by petitioner is invalid and therefore, did not stall the running of the prescriptive period; that there was no Board Resolution authorizing the signatory to sign the *Waivers* on behalf of petitioner; that the revenue officer did not request the signatory of the *Waiver* to present his written authority from petitioner's Board of Directors; and that the revenue officer who accepted the *Waivers* is equally not authorized to accept the same.

Moreover, petitioner avers that respondent's arbitrary assessment against the petitioner is a clear violation of due process, thus rendering the same void. According to petitioner, the BIR's

[33] Docket – Vol. III, pp. 1629 to 1644.
[34] Docket – Vol. III, pp. 1646 to 1729.
[35] Resolution dated May 20, 2019, Docket – Vol. III, p. 1731.
[36] Issues To Be Resolved, JSFI, Docket – Vol. II, p. 877.

disregard of the documents submitted by petitioner in support of its position violated the latter's right to due process.

Finally, petitioner contends that it is not liable for deficiency income tax, VAT, WTC, FWT, FBT, and DST.

Respondent's counter-arguments:

Respondent counter-argues that *Waivers*, duly executed by petitioner's VP-Comptroller, Ana Maria S. Del Rosario, extended the period to assess petitioner; that petitioner was not and was never deprived of its constitutionally protected right to due process; that respondent has complied with the auditing rules and procedures as prescribed in the issuances of the BIR; that there was no violation of petitioner's right to speedy disposition of cases; and that petitioner is liable for deficiency income tax, VAT, WTC, FBT, and DST.

THE COURT'S RULING

Notwithstanding the above-quoted issue raised by the parties, this Court resolves to raise, and rule on, the following related issues, which it deems necessary to achieve an orderly disposition of the instant case, before looking into the said issue or matters raised by the parties, if still warranted under the premises, to wit:

"Whether or not the subject *Waivers* are valid."

"Whether or not the subject tax assessments are valid."

The foregoing issues are relevant primarily because in the instant *Petition for Review*, petitioner prays for the declaration of nullity of the subject tax assessments under FLD dated June 27, 2014 for taxable year 2009, in the aggregate amount of ₱160,199,415.34. In other words, the resolution of the said issues has relevance on the determination on whether to grant petitioner's prayer in the instant *Petition for Review*. Thus, it is proper to specifically resolve the said issues raised by this Court.

After all, there is even legal bases allowing this Court to resolve the same issue.

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Legal bases to resolve the issues raised by this Court.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals reads as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding a 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 provision, this Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[37] Such authority of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[38] *viz*:

> **"On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> **SECTION 1. *Rendition of judgment.* – xxx**

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

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> **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.**
>
> **The above section is clearly worded.** On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphases ours)*

Furthermore, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[39] the Supreme Court held:

> "The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
>
> xxx xxx xxx
>
> **<u>The rule against raising new issues on appeal is not without exceptions</u>; it is a procedural rule that the Court may relax <u>when compelling reasons so warrant or when justice requires it</u>. What constitutes good and sufficient cause that would merit suspension of the rules is <u>discretionary upon the courts</u>**. Former Senator Vicente Francisco, a noted

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[39] G.R. No. 163835, July 7, 2010.

authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]
>
> xxx xxx xxx

Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance." *(Emphases and underscoring ours)*

On the basis of the foregoing jurisprudential pronouncements, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving *matters of public importance*.

In this case, whether or not the subject *Waivers* and tax assessments are valid is a *matter of record*, and *of public importance*. The said issues are a *matter of record* because the parties submitted their respective evidence to establish what transpired in the proceedings *a quo*, and thus, could be resolved by simply referring to the same evidence. Moreover, the issues raised by this Court have some bearing on the issue submitted by the parties. Furthermore, the same issues can be deemed as *matter of public importance*,

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simply because a void assessment bears no valid fruit.[40] Taxpayers, including petitioner, must not be held liable under an invalid tax assessment.

By virtue of the foregoing, We see no legal obstacle to resolve the above-stated issues raised by this Court.

The subject Waivers are not valid, and thus, could not have extended the period to assess petitioner.

According to respondent, the *Waivers* executed by petitioner are valid, thus extending his period to assess petitioner. Such being the case, the FLD-FAN received by petitioner was issued well within the prescriptive period.

We disagree with respondent.

Section 203 of the NIRC of 1997 states the period of limitation upon the assessment 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-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)*

The foregoing provision mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of

[40] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue,* G.R. No. 193100, December 10, 2014.

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filing of such return, whichever comes later.[41] Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[42]

However, under Section 222(b) of the NIRC of 1997, there is an instance when the government may assess pertinent taxes against a taxpayer even 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.
>
> xxx xxx xxx." (*Emphasis ours*)

Thus, under Section 222(b) of the NIRC of 1997, the same three-year prescriptive period under Section 203 of the same Code, may be extended, if before the expiration thereof, both respondent and the taxpayer agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.

Indeed, a *Waiver* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[43] However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[44] The *Waiver* must faithfully comply with the provisions of Revenue Memorandum

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[41] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[42] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.
[43] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[44] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, supra.

Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 in order to be valid and binding.[45]

In *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* ("*La Flor* case"),[46] the Supreme Court held:

> "In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[47] the Court had ruled that **waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and <u>must indicate the nature and amount of the tax due</u>**, to wit:
>
>> **<u>These requirements are mandatory and must strictly be followed</u>**. 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.
>>
>> x x x x
>>
>> 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:
>>
>> x x x x
>>
>>> 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

[45] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, supra.
[46] G.R. No. 211289, January 14, 2019.
[47] G.R. No. 220835, July 26, 2017.

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> the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period 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)

> **In the present case, <u>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, these details are material 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 ours)*

Based on the foregoing jurisprudential pronouncements, it is required, *inter alia*, that the *Waiver*, to be valid and would extend the three-year prescriptive period to assess, must indicate the nature and the amount of the tax due. These details are material as there can be no true and valid agreement between the tax and respondent, absent these information.

In this case, a careful reading of the subject *Waivers*[48] do not indicate the kind and amount of the taxes to be assessed or collected. Such being the case, the same did not effectively extend the prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity.

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[48] Exhibits "P-40", "P-41", "P-42", and "P-43", Docket – Vol. III, pp. 1357 to 1360.

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In any event, even granting that the said *Waivers* are valid, the same is of no consequence. This must be so because all the subject tax assessments are actually void.

The subject assessments are void since petitioner's tax liability remains indefinite.

An assessment "refers to the determination of amounts due from a person obligated to make payments."[49] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a **due tax liability that is there definitely set and fixed**.[50]

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.* ("*Fitness by Design* case"),[51] the Supreme Court ruled as follows:

> "xxx. Furthermore, **the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
>
> xxx xxx xxx
>
> **The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes**. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. **<u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>**.
>
> xxx xxx xxx

[49] *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.
[50] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[51] G.R. No. 215957, November 9, 2016.

The disputed Final Assessment Notice is not a valid assessment.

xxx **it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.'** Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.* (Emphasis Supplied)

xxx xxx xxx

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation." *(Emphases supplied)*

A careful scrutiny of the subject FLD-FAN,[52] reveals that just as in the *Fitness by Design* case, although the same FLD-FAN provides

[52] Exhibits "P-1" and "R-13", BIR Records, pp. 842 to 854.

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for the computations of petitioner's tax liabilities, the amounts thereof remain indefinite, since the tax dues are still subject to modification. Specifically, the subject FLD-FAN states:

> "***Please take note that the interest <u>will have to be adjusted</u> if paid beyond the date specified therein.***"[53]

Thus, it is clear that the amounts assessed are still indefinite, since the same still subject to further adjustment being contemplated after payment. In addition, it is not clear as to which does the phrase *"the date specified therein"* refer. In view of this ambiguity, the indefiniteness in the amounts being assessed becomes amplified.

Correspondingly, the subject FLD-FAN hardly falls under the jurisprudential definition of a tax assessment under the NIRC, considering that it lacks *"a due tax liability that is there definitely set and fixed."* Clearly, the subject tax assessments are void, and thus, bear no valid fruit.[54]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency tax assessments under the FLD-FAN dated June 27, 2014 for taxable year 2009 in the amount of ₱160,199,415.34 are **CANCELLED and SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[53] Exhibit "P-1" and "R-13", BIR Records, at p. 852.
[54] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018, G.R. No.197945 citing *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

(with Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

FIRST PHILIPPINE INDUSTRIAL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9000

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
FEB 24 2020
9:10 a.m.

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the conclusion reached in the *ponencia* of our esteemed colleague, Hon. Justice Cielito N. Mindaro-Grulla. The grant of the present petition is warranted following the invalidity of the waivers from petitioner. Indeed, the material details on the waivers, particularly the kind and amount of taxes to be assessed, must be indicated; otherwise, the waivers could not effectively extend the prescriptive period under Section 203 of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[1]

[1] **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.

On the applicability of the case of *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[2] (**Fitness By Design**) to the case at bar, I am, however, constrained to register my respectful dissent to the *ratio* of the *ponencia* on the matter.

In *Fitness By Design*, the Supreme Court noted that the amount in the Final Assessment Notice (**FAN**) remained indefinite as the same was subject to modification, depending on the date of the taxpayer's payment. The wordings in the FAN there is quoted as follows:

> ...
> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249(B) of the [National Internal Revenue Code], as amended. **Please note, *<u>however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004</u>*.**[3]
> ...

The Supreme Court also emphasized that the FAN there did not contain due dates, thus, it held:

> ...
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
> > In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>
> However, based on the findings of the Court of Tax Appeals First Division, **<u>the enclosed assessment pertained to remain unaccomplished</u>**.[4]
> ...

[2] G.R. No. 215957, 09 November 2016.
[3] Emphasis in the original text and underscoring supplied.
[4] Italics in the original text, emphasis and underscoring supplied.

Whereas, the pertinent portion of the Formal Letter of Demand (**FLD**) in the case at bar reads:

> ...
>
> ***Please take note that the <u>interest</u> will have to be adjusted if paid beyond the date specified therein.***[5]
>
> ...

Unlike in *Fitness By Design*, the FLD in the present case merely spells out the reality that *interest* will undoubtedly be adjusted if the taxpayer pays *beyond* the deadline or due date provided (which is 15 July 2014[6]). The breakdown as well of each of petitioner's tax liabilities in the FLD states that the interest is "computed up [to] 7.15.2014".[7] It is thus undeniable that the amount of the liability and the deadline for payment of the same are definite. This remain true despite warning on the part of the Bureau of Internal Revenue (**BIR**) that additional interest shall continue to accrue if the tax liabilities are not paid on due date specified in the FLD. It would therefore be unfair to admonish the BIR for just reminding the taxpayer of the necessary consequences of a delayed settlement.

What is crucial in determining the validity of the assessment is the definiteness of the amount indicated in the FLD and the deadline for payment (shown in the assessment notices attached to the FLD). If the FLD substantially satisfies both requirements, then the FLD could not be found wanting or that the assessment be deemed void. It is true that while the computation of interest may not yet appear definite, the same is only logical as the BIR could not be reasonably expected to foresee when the taxpayer will actually settle its tax obligation. Therefore, to set aside the assessment on the basis of the indefiniteness *<u>not</u>* of the amount of tax liability but of the interest that may accrue (beyond the deadline of payment) is in discord with the wisdom of the Supreme Court in *Fitness By Design*.

Moreover, the *proviso* in the FLD involved in *Fitness By Design* used the phrase "prior to or beyond April 15, 2004". This makes the total amount in the FAN indefinite and subject to modification. In effect, the total amount of assessment in the FAN is merely suggestive

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[5] Exhibit "P-1", emphasis and underscoring supplied.
[6] As shown in Assessment Notices of the BIR; see BIR Records.
[7] Id.

as the final computation of liability is entirely dependent on the actual date of payment by the taxpayer. Hence, the Supreme Court held:

> ...
>
> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there: definitely set and fixed." **Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment**. Thus:
>
>> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*
>
> ...
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.[8]

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[8] Italics in the original text; Emphasis and underscoring supplied.

...

The above circumstances do not exist in the present case. The deadline for payment is the reckoning date from which delinquency interest will run (assuming the taxpayer pays beyond the prescribed period).

In *Fitness By Design*, the deadline for payment in the assessment notices remained unaccomplished. The absence of the said deadline was fatal to the BIR's claim because the FAN itself indicated that the taxpayer was requested to pay the deficiency taxes due "within the time shown in the enclosed assessment notice". It was for this reason that April 15, 2004 indicated in the FAN was not considered as a deadline for payment.

In the case at bar, the assessment notices attached to the FLD show that the deadline for payment to be "15 July 2014". As stated earlier, the computation of interest in the FLD coincided with the said deadline for payment.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice