REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MEGABUCKS MERCHANDISING CORP., *Petitioner,*	**CTA Case No. 9345**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA,** *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 17 2018 3:10 p.m.

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DECISION

MANAHAN, *J.:*

This involves a Petition for Review[1] filed by Megabucks Merchandising Corp. praying that Audit Result/Assessment Notice Nos. IT-116-LOA-00000051-10-15-2074, VT-116-LOA-00000051-10-15-2075, WE-116-LOA-00000051-10-15-2076, WC-116-LOA-00000051-10-15-2077, DS-116-LOA-00000051-10-15-2078, and FT-116-LOA-0000012-09-13-253 assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, and documentary stamp tax with accessory penalties (interest, surcharge, and compromise penalties), in the aggregate amount of ₱46,203,187.83 for calendar year 2010, be declared null and void.

THE PARTIES

Petitioner Megabucks Merchandising Corp. is a domestic corporation duly organized and existing under Philippine laws having been registered with the Securities and Exchange Commission (SEC) on August 16, 1991 under SEC Company

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[1] Docket, CTA Case No. 9345, pp. 10-33.

Registration No. AS091-194637, with business address at Doña Natividad Bldg., 10 Quezon Avenue, Quezon City.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

Petitioner is organized "[t]o engage in, conduct, and carry on the business of buying, selling, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description". It is likewise registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number 000-065-310-000.

Sometime in September 2011[2], petitioner received Letter of Authority (LOA) No. LOA-116-2011-00000051[3] dated September 20, 2011 issued by Alfredo Misajon (OIC-Assistant Commissioner Large Taxpayer Service) of the BIR, which authorized the examination of petitioner's books of accounts and other accounting records for calendar year 2010.[4]

On October 27, 2011[5] and November 8, 2011[6], petitioner submitted documents to the BIR.

On February 13, 2012, petitioner filed a letter[7] dated January 25, 2012 presenting its reconciliation of the discrepancies in relation to Letter Notice No. 116-RLF-10-00-00062.

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2 Docket, Vol. I, par. 9, Petition for Review, p. 12.
3 Exhibit "P-3", Folder - Judicial Affidavit (JA) of Ms. Madge A. Sobrevinas; Exhibit "R-1"; BIR Records, Folder 1, p. 1.
4 Docket, Vol. I, par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), p. 222.
5 Exhibit "P-4", Folder - JA of Ms. Sobrevinas.
6 Exhibit "P-37", BIR Records, Folder 1, p. 206.
7 Exhibit "P-53", BIR Records, Folder 1, p. 317.

On July 4, 2013, petitioner submitted a compact disc containing the softcopies of certain documents.[8]

On October 14, 2013, petitioner again submitted documents to the BIR.[9]

On different dates, petitioner executed several Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code ("waiver" for brevity). Petitioner alleges that it executed four waivers; while respondent alleges that petitioner executed five waivers. Listed below are the details of the waivers:

WAIVER	Exh. No.	DATE OF EXECUTION	EXPIRY DATE TO ASSESS	DATE ACCEPTED BY BIR	DATE RECEIVED BY TAXPAYER[10]
1st	P-41[11]/ R-4[12]	June 18, 2013	December 31, 2013	June 28, 2013	August 27, 2013
2nd	P-42[13]/ R-5[14]	October 8, 2013	June 30, 2014	October 17, 2013	November 7, 2013
3rd	R-6[15]	May 30, 2014	December 31, 2014	June 13, 2014	No receipt
4th	P-43[16]/ R-7[17]	November 10, 2014	June 30, 2015	November 20, 2014	December 17, 2014
5th	P-44[18]/ R-8[19]	May 20, 2015	December 31, 2015	June 25, 2015	June 29, 2015

On July 9, 2015[20], petitioner received a Preliminary Assessment Notice (PAN) (Parts I and II) dated July 9, 2015[21], together with the Details of Discrepancies[22], which was signed for respondent by Nestor S. Valeroso (OIC-Assistant Commissioner, Large Taxpayers Service of the BIR).[23]

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8 Exhibit "P-45", Folder - JA of Ms. Sobrevinas.
9 Exhibit "P-46", BIR Records, Folder 1, p. 337.
10 Dates appearing on the BIR's copy of the waivers; petitioner's copy of the waivers does not bear the date of receipt.
11 Folder - JA of Ms. Sobrevinas.
12 BIR Records, Folder 1, p. 320.
13 Folder - JA of Ms. Sobrevinas.
14 BIR Records, Folder 1, p. 321.
15 BIR Records, Folder 1, p. 322.
16 Folder - JA of Ms. Sobrevinas.
17 BIR Records, Folder 1, p. 323.
18 Folder - JA of Ms. Sobrevinas.
19 BIR Records, Folder 1, p. 324.
20 Docket, Vol. I, Par. 16, Petition for Review, p. 14; Exhibit "P-54", p. 437; Exhibit "R-10", BIR Records, Folder 1, p. 370.
21 Docket, Vol. I, Exhibits "P-54" and "P-54-a", pp. 437-439; Exhibit "R-10", BIR Records, Folder 1, pp. 369-371.
22 Docket, Vol. I, Exhibit "P-54-b", pp. 440-442; Exhibit "R-10", BIR Records, Folder 1, pp. 366-368.
23 Docket, Vol. I, Par. 3, Admitted Facts, JSFI, p. 222.

On September 10, 2015[24], petitioner received respondent's Formal Letter of Demand (FLD) (Parts I and II) dated September 10, 2015[25], together with the Details of Discrepancies[26] and Audit Result/Assessment Notice Nos. IT-116-LOA-00000051-10-15-2074[27], VT-116-LOA-00000051-10-15-2075[28], WE-116-LOA-00000051-10-15-2076[29], WC-116-LOA-00000051-10-15-2077[30], DS-116-LOA-00000051-10-15-2078[31], and FT-116-LOA-0000012-09-13-253[32] assessing petitioner for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and documentary stamp tax (DST) with interest, surcharge and compromise penalties, totaling ₱46,203,187.83 for calendar year 2010, with the following breakdown:[33]

Tax Type	Basic Tax Due	Surcharge	Interest	Total
IT	₱ 19,055,561.11	-	₱ 16,956,839.00	₱ 36,012,400.11
VAT	4,720,328.46		4,404,778.00	9,125,106.46
EWT	232,996.08		218,697.00	451,693.08
WTC	246,103.62		231,000.00	477,103.62
DST	312.00	78.00	294.56	684.56
Compromise Penalties				136,200.00
Total	**₱24,255,301.27**	**₱78.00**	**₱21,811,608.56**	**₱46,203,187.83**

Petitioner filed its Administrative Protest (Request for Reconsideration)[34] on October 9, 2015, together with supporting documents[35].

Respondent having failed to act on petitioner's protest within the 180-day period prescribed by law, petitioner filed the instant Petition for Review on May 6, 2016.

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[24] Docket, Vol. I, Par. 18, Petition for Review, p. 14; Exhibit "P-55", p. 443; Exhibit "R-12", BIR Records, Folder 1, p. 393; Exhibit "R-14", BIR Records, Folder 1, p. 394.
[25] Docket, Vol. I, Exhibits "P-55" and "P-55-a", pp. 443-445; Exhibit "R-12", BIR Records, Folder 1, pp. 392-393 and 388.
[26] Docket, Vol. I, Exhibit "P-55-b", pp. 446-448; Exhibit "R-12", BIR Records, Folder 1, pp. 389-391.
[27] Docket, Vol. I, Exhibit "P-55-c", p. 449; Exhibit "R-13", BIR Records, Folder 1, p. 387.
[28] Docket, Vol. I, Exhibit "P-55-d", p. 450; Exhibit "R-13-1", BIR Records, Folder 1, p. 386.
[29] Docket, Vol. I, Exhibit "P-55-e", p. 451; Exhibit "R-13-2", BIR Records, Folder 1, p. 385.
[30] Docket, Vol. I, Exhibit "P-55-f", p. 452; Exhibit "R-13-3", BIR Records, Folder 1, p. 384.
[31] Docket, Vol. I, Exhibit "P-55-g", p. 453; Exhibit "R-13-4", BIR Records, Folder 1, p. 383.
[32] Docket, Vol. I, Exhibit "P-55-h", p. 454; Exhibit "R-13-5", BIR Records, Folder 1, p. 382.
[33] Docket, Vol. I, par. 4, Admitted Facts, JSFI, p. 223.
[34] Docket, Vol. I, Exhibit "P-56", pp. 455-470.
[35] Docket, Vol. I, Exhibit "P-56-a", pp. 471-472.

In his Answer[36] filed on July 22, 2016, respondent interposed Special and Affirmative Defenses, alleging, among others, that the assessments have not prescribed since valid waivers were executed by and between petitioner and respondent; that the assessment issued against petitioner is valid and lawful; and that the assessment issued against petitioner has factual and legal bases.

A Notice of Pre-Trial Conference[37] was issued by the Court, setting the case for pre-trial conference on September 15, 2016; later reset to October 27, 2016[38] and further reset to November 24, 2016[39]. Accordingly, Respondent's Pre-Trial Brief[40] was filed on September 5, 2016; while the Pre-Trial Brief for the Petitioner[41] was filed on October 20, 2016.

The pre-trial conference ensued.[42] Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[43] on December 8, 2016. Subsequently, the Court issued a Pre-Trial Order[44] on January 12, 2017 and the pre-trial was deemed terminated.

Meanwhile, on February 1, 2017, upon petitioner's motion[45], this Court commissioned Mr. Rendon P. Gammag, as Independent Certified Public Accountant (ICPA) for the case.[46]

During trial, petitioner presented Ms. Madge A. Sobrevinas[47], petitioner's accountant, and Mr. Rendon P. Gammag[48], the Court-commissioned ICPA, as its witnesses.

The Formal Offer of Evidence for the Petitioner[49] was filed on June 5, 2017. All exhibits were admitted by this Court

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[36] Docket, Vol. I, pp. 129-143.
[37] Docket, Vol. I, pp. 145-146.
[38] Docket, Vol. I, Order dated September 13, 2016, p. 163.
[39] Docket, Vol. I, Notice of Resetting dated October 19, 2016, p. 171.
[40] Docket, Vol. I, pp. 152-158.
[41] Docket, Vol. I, pp. 174-182.
[42] Docket, Vol. I, Minutes of the Hearing dated November 24, 2016, p. 220.
[43] Docket, Vol. I, pp. 222-231.
[44] Docket, Vol. I, pp. 233-239.
[45] Docket, Vol. I, Motion to Allow the Engagement of an Independent Certified Public Accountant filed on October 20, 2016, pp. 215-217.
[46] Docket, Vol. I, Minutes of the Hearing dated February 1, 2017, p. 282.
[47] Docket, Vol. I, Minutes of the Hearing dated February 1, 2017, p. 282; Exhibit "P-70", pp. 185-214.
[48] Docket, Vol. I, Minutes of the Hearing dated May 22, 2017, p. 371; Exhibit "P-71", pp. 340-370.
[49] Docket, Vol. I, pp. 377-403. *un*

except for Exhibit "P-31", pursuant to the Resolution[50] dated July 17, 2017.

On the other hand, respondent presented Revenue Officer (RO) Joel M. Aguila[51] and RO Maria Gracielle Cecilia S. Anaban[52] as his witnesses.

Thereafter, respondent's Formal Offer of Evidence[53] was filed on September 22, 2017. All exhibits were admitted by this Court, pursuant to the Resolution[54] dated January 31, 2018.

This case was declared submitted for decision on April 13, 2018[55], considering the Memorandum for Petitioner[56] and respondent's Memorandum[57], both filed on April 10, 2018.

ISSUES

The parties submitted the following issues[58] for the Court's resolution:

a. Whether or not respondent's right to assess petitioner for CY 2010 has allegedly prescribed; and

b. Whether petitioner is liable for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, interests, surcharge and compromise penalties for taxable year 2010 in the aggregate amount of ₱46,203,187.83, as well as further interests as provided by Sections 248 and 249 of the National Internal Revenue Code of 1997, as amended.

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50 Docket, Vol. II, pp. 499-501.
51 Docket, Vol. II, Minutes of the Hearing dated August 30, 2017, p. 542; Exhibit "R-16", pp. 523-537.
52 Docket, Vol. II, Minutes of the Hearing dated August 30, 2017, p. 542; Exhibit "R-17", pp. 508-518.
53 Docket, Vol. II, pp. 548-553.
54 Docket, Vol. II, pp. 563-564.
55 Docket, Vol. II, p. 619.
56 Docket, Vol. II, pp. 574-603.
57 Docket, Vol. II, pp. 604-617.
58 Issues, JSFI, docket, vol. I, p. 223.

Petitioner's Arguments[59]

Petitioner argues that respondent's right to assess had prescribed considering that the third waiver was executed after the extension period provided in the second waiver and that the FLD and Final Assessment Notices (FANs) were invalid because the box for "due date" was left blank.

Petitioner also argues that it is not liable for the assessed deficiency IT, VAT, EWT, WTC, and DST with interest, surcharge and compromise penalties because the disallowances of several expenses were not proper.

Respondent's Counter-Arguments[60]

Respondent, on the other hand, argues that the assailed assessment was valid and lawfully issued. It has factual and legal basis and the disallowances made on petitioner's expenses were properly made.

RULING OF THE COURT

The Court shall first resolve whether respondent's right to assess petitioner for deficiency taxes for CY 2010 has already prescribed.

Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for filing of the tax return or the actual date of filing, whichever comes later, thus:

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

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[59] *Supra.* Note 56.
[60] *Supra.* Note 57.

law for the filing thereof shall be considered as filed on such last day.

In relation thereto, Section 77(B)[61] of the NIRC of 1997, as amended, provides that the Annual Corporate Income Tax Return shall be filed on or before April 15 of the following year, for those adopting the calendar year period.

As for VAT returns, Section 114(A)[62] of the NIRC of 1997, as amended, and Section 4.114-1(A) of Revenue Regulations (RR) No. 16-2005 provide that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter.

On the other hand, Sections 2.58(A)(2)(a)[63] and 2.81[64] of RR No. 02-98, as amended by RR No. 06-01 and RR No. 17-03, require the filing of the expanded withholding tax and withholding tax on compensation returns within ten (10) days after the end of each month for the months of January to November, while the withholding tax return for the month of

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

[62] SEC. 114. *Return and Payment of Value-added Tax.* –
(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.
xxx

[63] SEC. 2.58. *Returns and Payment of Taxes Withheld at Source.* –
(A) *Monthly return and payment of taxes withheld at source.* –
(1) xxx
(2) WHEN TO FILE –
(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; xxx

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

December shall be filed on or before January 15 of the following year.

Below is the summary of the dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency income tax, VAT, EWT, and WTC for taxable year 2010:

ANNUAL INCOME TAX RETURN				
Exh. No.	**Year**	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
P-35[65]	2010	April 15, 2011	April 15, 2011	April 15, 2014

VAT RETURNS				
Exh. No.	**Quarter**	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
P-59[66]	1st Quarter of 2010	April 26, 2010	April 26, 2010[67]	April 26, 2013
P-62[68]	2nd Quarter of 2010	July 26, 2010	July 26, 2010[69]	July 26, 2013
P-65[70]	3rd Quarter of 2010	October 26, 2010	October 26, 2010[71]	October 26, 2013
P-68[72]	4th Quarter of 2010	January 25, 2011	January 25, 2011	January 25, 2014

EWT RETURNS				
Exh. No.[73]	**Period**	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
P-19	January 2010	February 10, 2010	February 10, 2010	February 10, 2013
P-20	February 2010	March 10, 2010	March 10, 2010	March 10, 2013
P-21	March 2010	April 8, 2010	April 12, 2010[74]	April 12, 2013
P-22	April 2010	May 7, 2010	May 10, 2010	May 10, 2013
P-23	May 2010	June 10, 2010	June 10, 2010	June 10, 2013
P-24	June 2010	July 9, 2010	July 12, 2010[75]	July 12, 2013
P-25	July 2010	August 10, 2010	August 10, 2010	August 10, 2013
P-26	August 2010	September 9, 2010	September 10, 2010	September 10, 2013
P-27	September 2010	October 11, 2010	October 11, 2010[76]	October 11, 2013
P-28	October 2010	November 10, 2010	November 10, 2010	November 10, 2013
P-29	November 2010	December 10, 2010	December 10, 2010	December 10, 2013
P-30	December 2010	January 10, 2011	January 17, 2011[77]	January 17, 2014

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65 Folder - JA of Ms. Sobrevinas.
66 Docket, Vol. I, p. 475.
67 April 25, 2010 fell on a Sunday.
68 Docket, Vol. I, p. 480.
69 July 25, 2010 fell on a Sunday.
70 Docket, Vol. I, p. 483.
71 October 25, 2010 was declared a special non-working holiday.
72 Docket, Vol. I, p. 486.
73 Folder - JA of Ms. Sobrevinas.
74 April 10, 2010 fell on a Saturday.
75 July 10, 2010 fell on a Saturday.
76 October 10, 2010 fell on a Sunday.
77 January 15, 2011 fell on a Saturday.

WTC RETURNS				
Exh. No.[78]	**Period**	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
P-6	January 2010	February 10, 2010	February 10, 2010	February 10, 2013
P-7	February 2010	March 10, 2010	March 10, 2010	March 10, 2013
P-8	March 2010	April 8, 2010	April 12, 2010[79]	April 12, 2013
P-9	April 2010	May 7, 2010	May 10, 2010	May 10, 2013
P-10	May 2010	June 10, 2010	June 10, 2010	June 10, 2013
P-11	June 2010	July 9, 2010	July 12, 2010[80]	July 12, 2013
P-12	July 2010	August 10, 2010	August 10, 2010	August 10, 2013
P-13	August 2010	September 9, 2010	September 10, 2010	September 10, 2013
P-14	September 2010	October 11, 2010	October 11, 2010[81]	October 11, 2013
P-15	October 2010	November 10, 2010	November 10, 2010	November 10, 2013
P-16	November 2010	December 10, 2010	December 10, 2010	December 10, 2013
P-17	December 2010	January 13, 2011	January 17, 2011[82]	January 17, 2014

In this case, the FLD and the Assessment Notices were dated September 10, 2015 and received by petitioner on the same day. Based on the above table, the FLD and the Assessment Notices were issued beyond the three-year prescriptive period to assess for deficiency income tax, VAT, EWT, and WTC.

However, Section 222(b) of the NIRC of 1997, as amended, provides for an exception to the three-year prescriptive period to assess, to wit:

> 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.

From the foregoing, the above provision authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the BIR Commissioner may stipulate to extend the period of assessment by a written agreement executed prior to the lapse of the period

[78] Folder - JA of Ms. Sobrevinas.
[79] April 10, 2010 fell on a Saturday.
[80] July 10, 2010 fell on a Saturday.
[81] October 10, 2010 fell on a Sunday.
[82] January 15, 2011 fell on a Saturday.

prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon.[83]

As mentioned earlier, petitioner alleges that it only executed four waivers, while respondent alleges that petitioner executed five waivers. For purposes of discussion, the Court shall refer to the waiver executed on June 18, 2013 as the First Waiver, October 8, 2013 as the Second Waiver, May 30, 2014 as the Third Waiver, November 10, 2014 as the Fourth Waiver, and May 20, 2015 as the Fifth Waiver.

It should be noted that the First Waiver was executed by petitioner on June 18, 2013 and accepted by the BIR on June 28, 2013.

Pursuant to Section 222(b) of the NIRC of 1997, as amended, the waiver must be executed prior to the lapse of the period prescribed by law for the assessment of the tax. In relation thereto, Revenue Memorandum Order (RMO) No. 20-90[84] provides that both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription.

Applying the foregoing, it is clear that respondent's right to assess petitioner for deficiency VAT for the 1st quarter of 2010 (last day to assess was on April 26, 2013) as well as for deficiency EWT and WTC for the months of January 2010 to May 2010 (last day to assess was on June 10, 2013) had prescribed when the first waiver was executed on June 18, 2013 and accepted by the BIR on June 28, 2013. Considering that the First Waiver was executed and accepted after the expiration of the period of prescription to assess for deficiency VAT for the 1st quarter of 2010 and deficiency EWT and WTC for January 2010 to May 2010, then, there was nothing to extend. Thus, respondent's right to assess petitioner for deficiency VAT for the 1st quarter of 2010 and deficiency EWT and WTC for January 2010 to May 2010 was already barred by prescription.

Moreover, petitioner argues that a perusal of the waiver executed on October 8, 2013 (Second Waiver) would reveal that the validity of the waiver and the extension of the period to

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[83] *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.

[84] Subject: Proper Execution of the Waiver of the Statute of Limitations Under the National Internal Revenue Code, April 4, 1990.

assess is only until June 30, 2014; while the Waiver executed on November 10, 2014 (Fourth Waiver) was supposed to extend the period to assess until June 30, 2015, thus, the waiver executed on November 10, 2014 (Fourth Waiver) was executed after the extension period provided in the waiver executed on October 8, 2013 (Second Waiver) had already lapsed.

Petitioner points out that although respondent provided for a certain waiver allegedly executed on May 30, 2014 (Third Waiver), respondent failed to establish the fact that such was actually executed by the person who purportedly signed it. Petitioner further argues that, although this may have been executed by an authorized officer of petitioner, the fact remains that the same does not reflect that it was duly received by petitioner.

On the other hand, respondent argues that the Third Waiver was executed on May 30, 2014 or before the expiration of the period provided in the Second Waiver which is until June 30, 2014. Respondent claims that petitioner deliberately omitted the Third Waiver and supplanted it with the Fourth Waiver in its attempt to argue and conclude that the assessment has prescribed.

Upon review of the subject waiver executed on May 30, 2014 (Third Waiver), marked as Exhibit "R-6"[85], the Court noted that the waiver is an original document that bears the signature of Mr. Earlwood Y. Tan, petitioner's president, whose signature appears to be the same signature on the other waivers executed by petitioner. The subject waiver likewise bears the signature of Mr. Nestor S. Valeroso, OIC – Asst. Commissioner Large Taxpayers Service, whose signature appears to be the same signature on the other waivers. Moreover, the waiver was notarized by Atty. Julie O. Cua.

It is a rule in our jurisdiction that the act of notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. By law, a notarial document is entitled to full faith and credit upon its face. It enjoys the presumption of regularity and is a *prima facie* evidence of the facts stated therein – which may only be overcome by evidence that is clear,

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[85] BIR Records, Folder 1, p. 322.

convincing and more than merely preponderant. Without such evidence, the presumption must be upheld.[86]

But it should be noted that the presumption only applies to the execution of the waiver by petitioner, and not on the acceptance of the BIR, considering that the notary public's acknowledgment merely certified that Earlwood Y. Tan, in his capacity as president of petitioner, personally appeared before her, is known to her and known to be the same person who executed the waiver for and in behalf of the taxpayer, and he acknowledged that the same is his voluntary act and deed and that he is duly authorized to sign the same. Moreover, the notarization takes place before the CIR or his authorized revenue official who signs the waiver indicating the BIR's acceptance and agreement to the waiver pursuant to RMO No. 20-90 and Revenue Delegation Authority Order No. 05-01, which provide that before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.[87]

From the foregoing, there is a presumption that the Third Waiver was duly executed by petitioner. However, as noted by petitioner, the said waiver does not indicate the fact of receipt by petitioner of its file copy of the same in violation of the provisions of RMO No. 20-90 which requires that "the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."[88] This leads to the conclusion that petitioner was not furnished a copy of the said waiver. Hence, in its Administrative Protest (Request for Reconsideration)[89] filed on October 9, 2015, petitioner stated that it executed only four waivers, *i.e.*, waiver executed on June 18, 2013, October 8, 2013, November 10, 2014, and May 20, 2015.

After a careful consideration of the evidence and circumstances of this case, the Court finds the Third Waiver to be defective and did not validly extend the prescriptive period to

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[86] *Heirs of Spouses Angel Liwagon and Francisca Dumalagan, et al. vs. Heirs of Spouses Demetrio Liwagon and Regina Liwagon, et al.*, G.R. No. 193117, November 26, 2014.

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

[88] *Ibid.*

[89] Docket, Vol. I, Exhibit "P-56", pp. 455-470.

assess deficiency income tax, VAT, EWT, and WTC for taxable year 2010.

The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.[90]

In *Commissioner of Internal Revenue vs. Standard Chartered Bank*[91], the Supreme Court held that:

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

Considering that petitioner was not furnished a copy of the Third Waiver, then, it was not notified of the existence of such waiver and of the acceptance by the BIR and the perfection of the agreement; which explains why petitioner claims that it has only four waivers in its possession.

RMO No. 20-90 must be strictly followed. A waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged

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[90] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[91] G.R. No. 192173, July 29, 2015.

and unscrupulous investigations, must be carefully and strictly construed.[92]

Considering the invalidity of the Third Waiver, the Fourth Waiver, executed on November 10, 2014, which was beyond the June 30, 2014 expiry date indicated on the Second Waiver, is likewise invalid for being violative of Section 222(b) of the NIRC of 1997, as amended, which provides that "[t]he period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon". As expounded in RMO No. 20-90, both the date of execution by the taxpayer and date of acceptance by the BIR should be before the lapse of the period agreed upon in case a subsequent agreement is executed.

In other words, the Fourth and Fifth Waivers are likewise without force and effect, as there was nothing to extend when these waivers were executed.

In *Commissioner of Internal Revenue vs. Standard Chartered Bank*[93], the Supreme Court held that:

> It must be remembered that the execution of a Waiver of Statute of Limitations may be beneficial to the taxpayer or to the BIR, or to both. Considering however, that it results to a derogation of some of the rights of the taxpayer, **the same must be executed in accordance with pre-set guidelines and procedural requirements**. Otherwise, it does not serve its purpose, and the taxpayer has all the right to invoke its nullity. For that reason, this Court cannot turn blind on the importance of the Statute of Limitations upon the assessment and collection of internal revenue taxes provided for under the NIRC. The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act properly in the making of the assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who may find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be

[92] *Commissioner of Internal Revenue vs. FMF Development Corporation,* G.R. No. 167765, June 30, 2008.

[93] G.R. No. 192173, July 29, 2015.

> interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law. (*Emphasis supplied*)

In view of the defective waivers, the period to assess was not extended, hence, the assessments for income tax, VAT, EWT, and WTC, which were issued by the BIR beyond the three-year prescriptive period, are void and of no legal effect; and a void assessment bears no valid fruit[94].

As for the deficiency DST assessment and respondent's imposition of compromise penalties, the same are likewise invalid as will be discussed later.

Now, granting that the waivers validly extended the period to assess by the BIR, the Court noted a defect in the Final Assessment Notices issued to petitioner.

Petitioner also argues that a quick perusal of the issued FANs would immediately lead to the conclusion that the box pertaining to the "due date" for payment was left blank. Petitioner contends that in the case of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*, the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within the prescribed time. Petitioner also cites the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, where the Supreme Court held that the FAN is not a valid assessment because of the lack of due dates in the FAN negating the BIR's demand for payment. Hence, petitioner claims that respondent clearly failed to demand payment of the supposed deficiency assessments. Petitioner also points out that the FAN pertaining to VAT, or the document denominated as Audit Result/Assessment Notice VT-116-LOA-00000051-10-15-2075, is visibly under the name of a different taxpayer, *i.e.*, "MANLY PLASTICS, INC." with a TIN different from petitioner's. Thus, petitioner concludes that the FLD/FANs must be cancelled.

After a careful scrutiny of the subject FLD and FANs, the Court finds that the same are not valid for failure to indicate a definite due date for payment by the taxpayer, which negates respondent's demand for payment.

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[94] *Commissioner of Internal Revenue vs. Azucena T. Reyes,* G.R. Nos. 159694 and 163581, January 27, 2006.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[95], the Supreme Court held that:

> **An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. (*Emphasis supplied*)

In relation thereto, the Supreme Court emphasized, in the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[96], the importance of stating the due date in the FAN, to wit:

> **A final assessment notice provides for the amount of tax due with a demand for payment.** This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence."
>
> 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. Its main purpose is to determine the amount that a taxpayer is liable to pay**.
>
> xxx xxx xxx
>
> **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

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[95] G.R. No. 128315, June 29, 1999.

[96] G.R. No. 215957, November 9, 2016.

> **must demand payment of the taxes described therein within a specific period."**
>
> **The disputed Final Assessment Notice is not a valid assessment.**
>
> xxx xxx xxx
>
> 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.* (Emphasis in the original)
>
> 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**.
>
> 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. (*Emphasis supplied, citations omitted*)

In this case, the last paragraph of the subject FLD (Part I) dated September 10, 2015 provides:

> In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through eFPS using BIR Payment Form (BIR Form 0605) **within the time shown in the enclosed assessment notice**. xxx[97]

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[97] Docket, Vol. I, Exhibit "P-55", p. 444; Exhibit "R-12", BIR Records, Folder 1, p. 392.

However, as pointed out by petitioner, the due date on the subject FANs, *i.e.*, Audit Result/Assessment Notice Nos. IT-116-LOA-00000051-10-15-2074[98], VT-116-LOA-00000051-10-15-2075[99], WE-116-LOA-00000051-10-15-2076[100], WC-116-LOA-00000051-10-15-2077[101], DS-116-LOA-00000051-10-15-2078[102], and FT-116-LOA-0000012-09-13-253[103], was left blank, which negates respondent's demand for payment.

Applying the foregoing pronouncements by the Supreme Court, the subject FLD/FANs are likewise invalid for failure to demand payment of taxes within a prescribed period.

Petitioner likewise correctly pointed out that Audit Result/Assessment Notice No. VT-116-LOA-00000051-10-15-2075[104] is in the name of a different taxpayer, *i.e.*, "MANLY PLASTICS, INC." with TIN "000-373-485".

However, as for the FLD (Part II) dated September 10, 2015[105], which pertains to the imposition of compromise penalties, the last paragraph provides for a due date, to wit:

> If you are amenable, please pay the suggested compromise amount within fifteen (15) days from receipt hereof xxx

Nevertheless, respondent's imposition of compromise penalties in the amounts of ₱136,200.00 cannot be sustained. Under RMO No. 01-90, as amended by RMO No. 19-2007, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The

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[98] Docket, Vol. I, Exhibit "P-55-c", p. 449; Exhibit "R-13", BIR Records, Folder 1, p. 387.
[99] Docket, Vol. I, Exhibit "P-55-d", p. 450; Exhibit "R-13-1", BIR Records, Folder 1, p. 386.
[100] Docket, Vol. I, Exhibit "P-55-e", p. 451; Exhibit "R-13-2", BIR Records, Folder 1, p. 385.
[101] Docket, Vol. I, Exhibit "P-55-f", p. 452; Exhibit "R-13-3", BIR Records, Folder 1, p. 384.
[102] Docket, Vol. I, Exhibit "P-55-g", p. 453; Exhibit "R-13-4", BIR Records, Folder 1, p. 383.
[103] Docket, Vol. I, Exhibit "P-55-h", p. 454; Exhibit "R-13-5", BIR Records, Folder 1, p. 382.
[104] Docket, Vol. I, Exhibit "P-55-d", p. 450; Exhibit "R-13-1", BIR Records, Folder 1, p. 386.
[105] Docket, Vol. I, Exhibit "P-55-a", p. 445; Exhibit "R-12", BIR Records, Folder 1, p. 388.

imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[106]

In view of the foregoing, the Court finds the deficiency tax assessments for income tax, VAT, EWT, WTC, DST and the imposition of compromise penalties are invalid. Consequently, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Audit Result/Assessment Notice Nos. IT-116-LOA-00000051-10-15-2074, VT-116-LOA-00000051-10-15-2075, WE-116-LOA-00000051-10-15-2076, WC-116-LOA-00000051-10-15-2077, DS-116-LOA-00000051-10-15-2078, and FT-116-LOA-0000012-09-13-253, assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, including interest, surcharge and compromise penalties, in the aggregate amount of ₱46,203,187.83 for taxable year 2010, are **CANCELLED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[106] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice