REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

REPUBLIC CEMENT CORPORATION (as surviving corporation in a merger involving FR CEMENT CORPORATION),
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7131

Members:
BAUTISTA, *Chairperson, and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JAN 25 2013
ABFernandez 3:05 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Petition for Review, filed pursuant to Section 228 of the 1997 National Internal Revenue Code, as amended,[1] seeks the withdrawal and cancellation of the following tax deficiency

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[1] SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

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The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

assessments due to lack of factual and legal basis, *viz.*: Income tax in the amount of ₱486,194,761.75; Value-added Tax in the amount of ₱152,459,066.64; Final Value-added Tax Withholding in the amount of ₱5,141,801.47; Withholding Tax on Compensation in the amount of ₱2,371,641.71; Final Withholding Tax in the amount of ₱12,025,958.54; Fringe Benefits Tax in the amount of ₱33,498,019.17; Documentary Stamp Tax in the amount of ₱40,651,425.00; and Excise Tax in the amount of ₱649,322.91, or in the aggregate amount of ₱732,991,997.19, inclusive of interests, surcharges, and compromise penalties, all for the taxable year 2000.

FACTS OF THE CASE

Petitioner, FR Cement Corporation, is a corporation organized and existing under the laws of the Philippines, with office address at Filipinas Drive, Dulumbayan, Teresa Rizal. It is engaged in the business of manufacturing and distributing cement, concrete aggregates and concrete products generally for the building and construction industry, and carrying on of all businesses incident or connected thereto.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

On September 5, 2003, petitioner received a Letter-Notice dated August 28, 2003, issued by Deputy Commissioner Estelita C. Aguirre, OIC - Large Taxpayers Service of the BIR, informing the former that in connection with the examination of its internal revenue tax liabilities for the calendar year ending December 31, 2000, conducted pursuant to Letter of Authority No. 3421 dated May 24, 2002, deficiency taxes has been found therefrom and was submitted to her for final evaluation; thus, petitioner was invited for an informal conference.

On November 11, 2003, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.[2]

On December 11, 2003, petitioner executed another Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.[3]

On March 3, 2004, petitioner received Preliminary Assessment Notice ("PAN") for deficiency income tax, value-added tax ("VAT"), final VAT withholding, withholding tax on compensation, final tax, fringe benefit tax, documentary stamp tax, and excise tax, as well as penalties thereto.

On March 18, 2004, petitioner, in response to the PAN, submitted documents to respondent.

On March 31, 2004, petitioner received a Formal Letter of Demand dated March 30, 2004,[4] with attached Details of Discrepancies,[5] and Assessment Notices, computed as follows:

Deficiency Income Tax[6]
Assessment No. IT-00-00055

NOLCO			-
Add: Adjustments			
	Other Operating/Non-operating/Miscellaneous Income	₱3,888,935.80	
	Undeclared Income - Sales Priced Below Cost	₱129,634,576.53	
	Undeclared Income - Per Inventory Method	₱283,694,973.81	
	Overstatement of Taxes and Licenses per ITR	₱5,771,704.82	
	Overstatement of Salaries & Wages per ITR	₱29,048,460.74	
	Payments Made to Non-resident Corporation not Subjected to Final Tax	₱27,510,541.10	
	Disallowed Interest Expense	₱425,112,586.25	
	Understatement of Income per ITR *vs.* VAT	₱1,590,414.50	
	Losses per ITR	₱28,173,845.00	
	NOLCO 1998 per ITR	₱41,096,209.00	
	Undeclared Income due to Understatement of	₱12,037,608.89	

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[2] *Exhibit "C,"* with submarkings.
[3] *Exhibit "D,"* with submarkings.
[4] *Exhibit "E."*
[5] *Exhibit "F."*
[6] *Exhibit "G."*

	Rental Expense		
Net Income per Investigation			₱987,559,865.44
Income Tax Due (32%)			₱316,019,154.06
Less: Payments Made			-
Deficiency Income Tax - Basic			₱316,019,154.06
Add: Disallowed Creditable Tax Withheld per ITR			₱4,546,428.00
Deficiency Income			₱320,565,582.06
Add: Interest 4/16/01 to 11/15/03 (51.66%)			₱165,604,179.69
	Compromise Penalty on Non-presentation of Complete Books of Accounts		₱25,000.00
Total Deficiency Income Tax			**₱486,194,761.75**

Value-added Tax[7]
Assessment No. VT-00-00061

Taxable Basis per Return			₱1,766,868,582.20
Add: Adjustments			
	Undeclared Income – Sold Below Cost	₱117,849,615.00	
	Undeclared Sales per Inventory Method	₱257,904,521.60	
	Other Income Subject to VAT	₱2,252,440.80	
	Undeclared Income due to Understatement of Rental Expense	₱10,943,280.81	₱388,949,858.21
Taxable Basis per Investigation			₱2,155,818,440.41
Output Tax Due per Investigation			₱215,581,843.88
Less: Input Tax per Return		₱81,619,103.08	
	Less: Disallowed per ITS Verification/Substantiation	₱34,851,538.74	₱46,767,564.34
Value-added Tax Due			₱168,814,279.54
Less: Payments per Return			₱95,067,754.80
Deficiency VAT			₱73,746,524.74
Add: 50% Surcharge [Sec. 248(B)]			₱36,873,262.37
	Interest 1/26/01 to 11/15/03 (56.70%)		₱41,814,279.53
	Compromise Penalty on Non-submission of Schedule of Output/Input Taxes		₱25,000.00
Total Deficiency VAT			**₱152,459,066.64**

Final VAT Withholding[8]
Assessment No. FVT-00-00036

Taxable Basis per Return		₱37,911,533.97
Add: Adjustments		
	Total Payments not Subject[ed] to VAT Withholding	₱27,510,541.10
Taxable Basis per Investigation		₱65,422,075.07
Final VAT Withholding Tax		₱6,542,207.51
Less: Payments per Return		₱3,791,153.00
Deficiency on Final VAT Withholding		₱2,751,054.51
Add: Interest 1/26/01[9] to 11/15/03 (56.79%)		₱1,559,847.91
	Surcharge, Interest and Compromise Penalties on Late Filing/Payment	₱830,899.05
Total Deficiency on Final VAT Withholding		**₱5,141,801.47**

[7] *Exhibit "H."*
[8] *Exhibit "I."*
[9] *Supra,* note 4; the interest on deficiency tax covers January 26, 2000 to November 15, 2003.

Withholding Tax on Compensation[10]
Assessment No. WC-00-00021

Taxable Basis per Investigation	₱115,789,827.05
Withholding Tax Due on Compensation	₱17,772,436.29
Less: Payments per Return	₱16,271,717.80
Deficiency Tax on Compensation	₱1,500,718.49
Add: Interest on Deficiency Tax (1/22/01 to 1/15/03)	₱850,907.38
Surcharge, Interest and Compromise Penalty on Late Filing/Payment	₱20,015.84
Total Deficiency Tax Due on Compensation	**₱2,371,641.71**

Final Withholding Tax[11]
Assessment No. FWT-00-00035

Taxable Basis per Investigation	₱65,422,057.07
Final Withholding Tax Due	₱11,751,938.94
Less: Payments per Return	₱5,686,730.00
Deficiency Final Tax	₱6,065,208.94
Add: Interest on Deficiency Tax (1/25/01 to 11/15/03)	₱3,438,973.47
Surcharge, Interest and Compromise Penalties on Late Filing/Payment	₱2,521,776.13
Total Deficiency Final Withholding Tax	**₱12,025,958.54**

Fringe Benefit Tax[12]
Assessment No. FBT-00-00074

Taxable Basis per Investigation	₱45,848,080.33
Fringe Benefits Tax Due	₱21,575,567.21
Less: Payments Made per Return	₱220,736.85
Deficiency Fringe Benefit Tax	₱21,354,830.36
Add: Interest on Deficiency Tax (1/26/01 to 11/15/03)	₱12,108,188.81
Compromise Penalties on Non-filing of Tax Returns for 1st to 3rd Quarters	₱35,000.00
Total Deficiency Fringe Benefits Tax	**P33,498,019.17**

Documentary Stamp Tax[13]
Assessment No. DST-00-00015

Basic	₱19,750,000.00
Add: 25% Surcharge	₱4,937,500.00
Interest until 11/15/03 (80.83%)	₱15,963,925.00
Total Deficiency DST	**₱40,651,425.00**

Excise Tax[14]
Assessment No. XS-00-00048

Taxable Basis per Investigation	₱81,893,730.77
Excise Tax Due	₱1,637,874.62

10 *Exhibit "J."*
11 *Exhibit "K."*
12 *Exhibit "L."*
13 *Exhibit "M."*
14 *Exhibit "N."*

Less: Excise Tax Due per Return	₱1,327,358.88
Deficiency Excise Tax	₱310,515.74
Add: 50% Surcharge [Sec. 248(B)]	₱155,257.87
Interest 12/31/00 to 11/15/03 (59.11%)	₱183,549.30
Total Deficiency Excise Tax	**₱649,322.91**

To summarize:

DEFICIENCY TAX	BASIC TAX	SURCHARGE	INTEREST	PENALTIES	TOTAL
Income Tax	₱320,565,582.06	-	₱165,604,179.69	₱25,000.00	₱486,194,761.75
Value-added Tax	₱73,746,524.74	₱36,873,262.37	₱41,814,279.53	₱25,000.00	₱152,459,066.64
Final VAT Withholding	₱2,751,054.51	-	₱1,559,847.91	₱830,899.05	₱5,141,801.47
Withholding Tax on Compensation	₱1,500,718.49	-	₱850,907.38	₱20,015.84	₱2,371,641.71
Final Withholding Tax	₱6,065,208.94	-	₱3,438,973.47	₱2,521,776.13	₱12,025,958.54
Fringe Benefit Tax	₱21,354,830.36	-	₱12,108,188.81	₱35,000.00	₱33,498,019.17
DST	₱19,750,000.00	₱4,937,500.00	₱15,963,925.00	-	₱40,651,425.00
Excise Tax	₱310,515.74	₱155,257.87	₱183,549.30	-	₱649,322.91
TOTAL					**₱732,991,997.19**

On April 29, 2004, petitioner filed its Protest dated April 27, 2004.[15]

Due to respondent's inaction, on January 21, 2005, petitioner filed the present Petition for Review.[16]

On April 7, 2005, respondent filed her Answer,[17] interposing the following Special and Affirmative Defenses, to wit:

6. The assessments were issued within the prescriptive period allowed by law. The legal provision governing the prescription of the Government's right to assess taxes in ordinary cases is Section 203 of the Tax Code, as amended, which reads as follows:

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[15] *Exhibit "AA."*
[16] *Records*, pp. 1-167, with Annexes. Raffled to the then First Division of the Court before the issuance of CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010.
[17] *Id.*, at pp. 190-205.

Section 222 of the Tax Code, as amended, on the other hand, provides the exceptions as to the period of limitation of assessment and collection, which reads as follows:

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6.1. The series of [W]aiver[s] of the [D]efense of [P]rescription under the [S]tatute of [L]imitations of the National Internal Revenue Code executed by the petitioner, which were accepted by the respondent, are all valid and enforceable. There was substantial compliance of the law in the execution of the same, hence, valid. It must be recalled that it was the petitioner who executed the same[,] requesting, and in substance, consenting to the extended audit of the BIR Revenue Officers beyond the normal period of three (3) years thru the execution of the waivers. It is a fact that it was the petitioner who initiated the execution of the same and requested the BIR for its acceptance and conformity. Thus, any minor defects, such as failure to indicate the date of acceptance by the respondent or his duly authorized representative, is deemed immaterial and of no consequence to the validity of the waiver. Such omission is merely formal in nature and should not in any way affect the validity of the waiver. It is submitted that any subsequent action of the petitioner seeking the nullification or invalidity of the same to the disadvantage of the respondent, who merely acqui[esc]ed to the request of the petitioner in extending the audit period, and consequently the prescriptive period to assess as provided in the Tax Code, is action in bad faith. Hence, petitioner's contention in the instant Petition seeking the nullification of the waivers executed no less by the petitioner cannot be used by the petitioner in its petition as a defense on the ground of estoppel. The same should have been brought to the respondent's attention by the petitioner at the earliest opportunity possible, or at the administrative level when it filed its protest, whichever comes earlier. Having not been able to raise it as an issue in the administrative level, it is submitted that petitioner cannot for the first time raised it before the Honorable Court. It is settled that matters not raised in the administrative level cannot be raised for the first time on appeal.

6.2. Likewise, the contention of the petitioner that said waivers did not indicate the kind of tax for which petitioner may be made liable, *Annexes "T"* and *"U"* of the Petition, is false. It is clearly indicated therein that the same is "in connection with the investigation/collection/enforcement of *FRCC's internal revenue tax liabilities fir the taxable year 2000.*" The Tax Code enumerates what are deemed to be national internal revenue taxes under Section 21 thereof. Verily, the taxes covered by the questioned assessments are all internal revenue taxes.

6.3. The amount of tax due need not, likewise, be indicated in the said waivers because what was sought to be extended was the period to assess. Logically, the amount of taxes due is not yet determined with finality at the time of the execution of the waivers. Hence, the contention of the petitioner that the waivers are not valid due to non-indication of the amount of tax due in the waivers is not tenable.

7. Section 32(A)(2) of the Tax Code, as amended, provides that gross income means all income derived from whatever source, including gross income derived from the conduct of trade or business.

8. Results of investigation of the income tax liabilities of the petitioner made by the Revenue Officers disclosed the following

There was an under-declaration of the petitioner's income arising f[ro]m the following transactions which were considered taxable pursuant to Section 32(A)(2) of the same Code, *viz*:

8.1. Investigation disclosed that there were sales made to an affiliate whose selling price was given at below cost, totaling [to] ₱129,634,576.53.

8.2. Using the data supplied by Philippine Cement Corporation (Philcemcor) it was found out that per inventory method used, there is an undeclaration of income totaling [to] ₱283,694,973.81.

8.3. Comparison of Income per ITR and VAT Returns disclosed a difference of ₱1,590,414.50; hence, considered understatement of income per ITR.

8.4. Investigation disclosed that other operating, non-operating and miscellaneous income of ₱3,888,935.80 were not included as part of the reported income.

8.5. Investigation disclosed that there is an undeclaration of income due to understatement of rent expense in the amount of ₱12,037,608.89.

9. The fundamental principles in claiming deductions are the following:

9.1. The taxpayer must prove that there is a law authorizing deductions; and

9.2. The taxpayer must prove he is entitled to deductions.

10. Section 34(A)(1)(a)(b) and (K) of the Tax Code, as amended, provides for the requisites of deductibility of business expenses, *viz*:

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Failure to comply with the above-quoted requisites warrants non-deductibility of expenses in computing the tax liability of a taxpayer.

11. Thus, the following expenses were disallowed by the Revenue Officers after the result of investigation and pursuant to Section 34 of the Tax Code:

    11.1. There was found an overstatement of taxes and licenses in the amount of ₱5,771,704.82 per ITR compared to attached schedule of taxes and licenses.

    11.2. Salaries and wages per income tax return versus alphabetical list (or the Annual Information Return) resulted to an overstatement of salaries and wages in the amount of ₱29,048,460.74.

    11.3. Interest expense totaling [to] ₱425,112,586.25 was not fully substantiated, hence, not deductible.

    11.4. There were payments made to non-resident foreign corporation in the amount of ₱27,510,541.10 not subject to final tax; hence, disallowed as expenses, pursuant to Section 57(A) of the Tax Code.

    11.5. Losses in the amount of ₱28,173,845.00 that were not substantiated as deductible expense were disallowed pursuant to Section 34(D)(2) of the Tax Code.

    11.6. Disallowed net operating loss carry-over (NOLCO) (1998) and Creditable Tax Withheld:

        11.6.1. Disallowed NOLCO in the amount of ₱41,096,209.00 was not substantiated; thus, disallowed pursuant to Section 34(D)(3)(i) of the Tax Code.

11.6.2. Unsupported Creditable tax Withheld amounting to ₱4,546,428.00 was disallowed pursuant to Section 2.58.3 of Revenue Regulations No. 2-98.

12. A compromise penalty of ₱25,000[.00] was imposed due to non-presentation of complete books of accounts. The same was made pursuant to the pertinent provision of the Tax Code and its implementing revenue regulations.

13. Results of investigation of the value-added tax liabilities of the petitioner made by the Revenue Officers disclosed the following:

13.1. Output Tax –

In relation to the details of discrepancies in the Income Tax Liabilities, (a) and (b), sales made to an affiliate at a price below cost in the amount of ₱129,634,576.53 and under-declaration of income using inventory method totaling [to] ₱283,694,973.81 were not subjected to value-added tax; thus, corresponding output tax in the amount of ₱11,784,961.50 and ₱25,790,452.16, respectively, were assessed pursuant to Section 106(A) of the Tax Code.

13.2. Scrap sales and other miscellaneous income amounting to ₱2,252,440.8[0] was not subjected to value-added tax; hence, corresponding output tax in the amount of ₱225,244.08 was assessed pursuant to Sec. 106(A) of the Tax Code.

13.3. In relation to income tax details of discrepancies I(e), there is an undeclaration of income due to the understatement of rent expense in the amount of ₱12,037,608.89; hence, corresponding output tax in the amount of ₱1,094,328.08 was assessed pursuant to Section 106(A) of the Tax Code.

13.4. Disallowed Input –

Input taxes claimed [in the amount] of ₱34,851,538.74 from suppliers who cannot be found among the list of VAT[-]registered taxpayers per ITS verification, and those which lack substantiation are disallowed pursuant to Sections 110(A)(1) and 34(b) of the Tax Code.

13.5. A compromise penalty of ₱25,000.00 was imposed on non-submission of schedule of output/input taxes.

14. Results of investigation of the final withholding VAT liabilities of the petitioner made by the Revenue Officers disclosed the following:

14.1. Investigation disclosed that there were payments made to non-resident foreign corporation in the amount of ₱27,510[,]541.10 not subjected to final withholding VAT, hence, assessed pursuant to Section 114(C) and Section 108 of the Tax Code, as implemented under Section 4.102 of RR [No.] 7-95, as amended by Revenue Regulations No. 8-2002.

14.2. Surcharge, interest, and compromise penalties amounting to ₱830,899.05 were imposed on late filing and late payment of final VAT withholding.

15. Results of investigation of the withholding tax on compensation of the petitioner made by the Revenue Officers disclosed the following:

15.1. Comparison of income taxes withheld per alphabetical list versus withholding taxes withheld and remitted resulted to a discrepancy of ₱1,117[,]396.20. There was also non-withholding of ₱383,322.29 on salaries billed by Southeast Asia Cement Hol[di]ngs (Seacem), or a total of non-withholding and non-remittance of ₱1,500,718.49. Hence, assessed pursuant to Sections 80 and 81 of the Tax Code.

15.2. Surcharge, interest and compromise penalties amounting to ₱20,015.84 were imposed on late filing and late payment of withholding tax on compensation.

16. Results of investigation of the final tax liabilities of the petitioner made by the Revenue Officers disclosed the following:

16.1. There were payments made on royalty and other services amounting to ₱27,510,541.10 to non-resident foreign corporation which were not subjected to final withholding tax prescribed under Section 57(A) and Section 28 of the Tax Code.

16.2. Surcharge, interest and compromise penalties amounting to ₱2,521,776.13 were imposed on late filing and late payment of final withholding tax.

17. Results of investigation of the fringe benefit tax liabilities of the petitioner made by the Revenue Officers disclosed the following:

17.1. Investigation disclosed that fringe benefits tax in the amount of ₱21,354,830.32 was not withheld and remitted to the BIR; thus, assessed pursuant to Section 33 of the Tax Code and as implemented by Revenue Regulations Nos. 2-98 and 3-98.

17.2. Compromise penalties of ₱35,000.00 were imposed on the non-filing of fringe benefits tax returns for the 1st, 2nd and 3rd quarters for the year 2000.

18. Results of investigation of the documentary stamp tax of the petitioner made by the Revenue Officers disclosed the following:

    19.1. Documentary stamp tax of ₱19,750,000.00 on additional subscription of the shares of stocks totaling [to] ₱1,975,000,000.00 was not paid by the petitioner. Thus, assessed pursuant to Section 175 of the Tax Code.

19. Results of investigation of the excise tax liabilities of the petitioner made by the Revenue Officers disclosed the following:

    19.1. Investigation of the excise tax liabilities of the petitioner disclosed that the correct basis of the excise tax is ₱81,893,730.77 instead of ₱66,363,361.93; thus, a deficiency excise tax in the amount of ₱310,515.74 was assessed pursuant to Section 151 of the Tax Code.

20. Petitioner did not submit *relevant* evidence to controvert the findings of the BIR in paragraphs 7 to 18 above, hence, the finality of the assessments. If at all documents were submitted, the same were not sufficient to warrant the reversal of the questioned assessments.

    20.1. Likewise, the imposition of the 50% surcharge is proper pursuant to Section 248(B) of the Tax Code.

21. Issues and defenses not raised in the administrative level cannot be raised for the first time on appeal. As held in the case of *Aguinaldo Industries Corp. Fishing Nets Division v. Commissioner of Internal Revenue, et al., L-29790, Feb. 25, 1982*:

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Likewise, in the case of *Commissioner of Internal Revenue v. Guerrero, et al., L-19074, Jan. 31, 1967,* it was held that:

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22. The assessments were issued in accordance with the existing law and regulations.

23. Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments. (*Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, 98 Phil. 290; Sy Po v. CTA, et al., G.R. No. 81446, August 18, 1988; Dayrit, et al., v. Cruz, et al., L-39910, September 26, 1988; Cagayan Robina Sugar Milling Company v. Court of Appeals, et al., G.R. No/ 122451, October 12, 2000*) Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. (*Delta Motors Co. v. Commissioner, CTA Case No. 3782, May 21, 1986; Commissioner of Internal Revenue v. Court of [A]ppeals, et al., G.R. Nos. 104151 and 105563, March 10, 1995*) Petitioner in the instant case failed to controvert the findings of the BIR, hence the finality of the assessments.[18]

On November 8, 2005, the parties entered their Joint Stipulation of Facts and Issues;[19] accordingly, the Court approved the same in a Resolution dated November 18, 2005.[20]

Trial ensued. Petitioner presented documentary and testimonial evidence.

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[18] *Id.*, at pp.190-201.
[19] *Id.*, at pp. 324-343.
[20] *Id.*, at p. 344.

On March 4, 2008, the Court, resolving the Urgent Motion to Suspend Collection of Tax filed by petitioner, with Comment to Petitioner's Urgent Motion to Suspend Collection of Tax filed by respondent, issued a Resolution, ordering the former to post a bond in the amount equivalent to the assessed deficiency taxes.[21]

On June 3, 2008, the Court, acting on the Manifestation and Omnibus Motion filed by petitioner, with Comment to Petitioner's Manifestation & Omnibus Motion filed by respondent, promulgated a Resolution, ordering the former to submit the originals or certified true copies of the required documents; and to file a partial withdrawal of its Petition for Review, insofar as tax deficiencies covered by the Tax Amnesty Program, as well as, an Amended Petition for Review, insofar as tax deficiencies not covered thereto.[22]

On June 23, 2008, petitioner, accordingly, filed its Submission and Manifestation,[23] and Supplement [To Petition for Review dated January 17, 2005 *(sic)* Pursuant to Sec. 6, Rule 10 of the 1997 Rules of Civil Procedure].[24]

On July 15, 2008, the Court, finding the availment of the Tax Amnesty Program to be in order, issued a Resolution, resolving to partially withdraw the case, insofar as the assessments for deficiency income, value-added, documentary stamp and excise taxes for the taxable year 2002 are concerned, pursuant to the provisions of Republic Act No. 9480.[25]

On November 4, 2008, the Court approved the bond posted by petitioner, in accordance with the Resolution dated July 15, 2008.[26]

On March 19, 2009, the Court, acting on the Motion to Amend Caption filed by petitioner, granted the same, and accordingly, ordered the amendment of the caption to "*Republic Cement*

[21] *Id.*, at pp. 762-764.
[22] *Id.*, at pp. 791-794.
[23] *Id.*, at pp. 796-840, with Annexes.
[24] *Id.*, at pp. 841-923, with Annexes.
[25] *Id.*, at pp. 924-925.
[26] *Id.*, at p. 967.

Corporation (as surviving corporation in a merger involving FR Cement Corporation v. Commissioner of Internal Revenue."[27]

On January 7, 2010, the Court, pursuant to CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010, transferred the case to the Third Division of the Court.[28]

On July 21, 2011,[29] and September 19, 2011,[30] the Court resolved and admitted the Formal Offer of Evidence filed by petitioner.

On December 8, 2011, the Court noted the Manifestation filed by respondent, which states that she will no longer present evidence considering that petitioner has availed of the Tax Amnesty Program under Republic Act No. 9480 for its deficiency Income Tax, VAT, DST and Excise Tax assessments.[31]

On February 1, 2012,[32] the case was submitted for decision, taking into consideration the Memorandum for Petitioner filed on January 16, 2012,[33] *sans* respondent's Memorandum.

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

1. WHETHER PETITIONER SUBMITTED RELEVANT DOCUMENTS IN SUPPORT OF ITS PROTEST.

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[27] *Id.*, at pp. 1119-1120.
[28] *Id.*, at p. 1195.
[29] *Id.*, at pp. 1313-1315.
[30] *Id.*, at pp. 1335-1336.
[31] *Id.*, at p. 1362.
[32] *Id.*, at p. 1408.
[33] *Id.*, at pp. 1363-1405.

2. WHETHER THE RIGHT OF THE GOVERNMENT TO ASSESS DEFICIENCY VAT, WITHHOLDING VAT, FBT, WITHHOLDING TAX ON COMPENSATION, FWT, EXCISE TAX AND DST FOR TAXABLE YEAR 2000 HAS PRESCRIBED.

   2.1. WHETHER THE WAIVERS EXECUTED BY PETITIONER ARE VALID.

   2.2. WHETHER THE ALLEGED INVALIDITY OF THE WAIVERS EXECUTED BY THE PETITIONER CAN BE USED BY IT AS A DEFENSE AGAINST THE ASSESSMENTS ON THE GROUND OF ESTOPPEL.

3. ASSUMING THE RIGHT OF THE GOVERNMENT TO ASSESS DEFICIENCY TAXES FOR THE TAXABLE YEAR 2000 HAS NOT YET PRESCRIBED, WHETHER THE ASSESSMENT NOTICES HAVE FACTUAL AND LEGAL BASES, PARTICULARLY –

   INCOME TAX

   3.1. WHETHER PETITIONER'S NET OPERATING LOSSES ALLEGEDLY SUSTAINED DURING THE TAXABLE YEAR 2000 ARE SUFFICIENT TO OFFSET THE ALLEGED UNDER-DECLARED INCOME AND DISALLOWED EXPENSES.

   3.2. WHETHER THE ASSESSMENT NOTICE FOR ALLEGED DEFICIENCY INCOME TAX FAILED TO EXPLAIN THE FACTS AND THE LAW UPON WHICH IT WAS BASED, PARTICULARLY, ON THE ALLEGED SALES MADE BY PETITIONER TO AN AFFILIATE AT A SELLING PRICE BELOW COST TOTALLING [TO] ₱129,634,576.53[;] THE ALLEGED UNDER-DECLARED INCOME TOTALLING [TO] ₱283,694,973.81 PER INVENTORY METHOD TAKEN FROM THE DATABASE OF PHILCEMCOR[;] THE ALLEGED OPERATING, NON-OPERATING AND MISCELLANEOUS INCOME TOTALLING [TO]

₱3,888,935.80 NOT REPORTED AS PART OF PETITIONER'S INCOME[;] AND THE ALLEGED UNDECLARED INCOME AMOUNTING TO ₱12,037,608.89 DUE TO AN ALLEGED UNDERSTATEMENT OF PETITIONER'S RENT EXPENSE.

3.3. WHETHER PETITIONER ALLEGEDLY MADE SALES TO AN AFFILIATE AT A SELLING PRICE BELOW COST TOTALLING [TO] ₱129,634,576.53.

3.4. WHETHER PETITIONER HAS AN ALLEGED UNDER-DECLARED INCOME IN THE TOTAL AMOUNT OF ₱283,694,973.81 PER INVENTORY METHOD TAKEN FROM THE DATABASE OF PHILCEMCOR.

3.5. WHETHER PETITIONER'S OPERATING, NON-OPERATING AND MISCELLANEOUS INCOME ALLEGEDLY TOTALING [TO] ₱3,888,935.80 WERE REPORTED AS PART OF ITS INCOME.

3.6. WHETHER PETITIONER HAS AN ALLEGED UNDECLARED INCOME IN THE AMOUNT OF ₱12,037,608.89 DUE TO AN ALLEGED UNDERSTATEMENT OF ITS RENT EXPENSE.

3.7. WHETHER PETITIONER'S CLAIMED DEDUCTIONS ARE ADEQUATELY SUBSTANTIATED/DULY SUPPORTED, MORE PARTICULARLY ON THE FOLLOWING ACCOUNTS: TAXES AND LICENSES, SALARIES AND WAGES, INTEREST EXPENSE, PAYMENTS MADE TO NON-RESIDENT FOREIGN CORPORATION, LOSSES, AND NET-OPERATING LOSS CARRY-OVER (1998).

3.8. WHETHER PETITIONER'S CREDITABLE TAX WITHHELD ALLEGEDLY AMOUNTING TO P4,546,428.00 ARE DULY SUPPORTTED.

3.9. WHETHER THERE IS AN UNDERSTATMENT OF PETITIONER'S INCOME IN THE AMOUNT OF ₱1,590,414.50 PER ITR AS ALLEGEDLY DISCLOSED BY A COMPARISON OF INCOME PER ITR AND VAT RETURNS.

<u>*VAT*</u>

3.10. WHETHER THE ASSESSMENT NOTICE FOR ALLEGED DEFICIENCY VAT FAILED TO EXPLAIN THE FACTS AND THE LAW UPON WHICH IT WAS BASED, PARTICULARLY, ON THE ALLEGED SALES MADE BY PETITIONER TO AN AFFILIATE AT A SELLING PRICE BELOW COST TOTALING [TO] ₱129,634,576.53[;] THE ALLEGED UNDER-DECLARED INCOME TOTALING [TO] ₱283,694,973.81 PER INVENTORY METHOD TAKEN FROM THE DATABASE OF PHILCEMCOR[;] THE ALLEGED OPERATING, NON-OPERATING AND MISCELLANEOUS INCOME TOTALING [TO] P3,888,935.80 NOT REPORTED AS PART OF PETITIONER'S INCOME[;] AND THE ALLEGED UNDECLARED INCOME AMOUNTING TO ₱12,037,608.89 DUE TO AN ALLEGED UNDERSTATEMENT OF PETITIONER'S RENT EXPENSE.

3.11. WHETHER THE AMOUNTS OF ₱129,634,576.53 AND ₱283,694,973.81, RESPECTIVELY, REPRESENTING PETITIONER'S ALLEGED SALES TO AN AFFILIATE COMPANY AT A PRICE BELOW COST AND ITS ALLEGED UNDER-DECLARATION OF INCOME PER INVENTORY METHOD BASED ON PHILCEMCOR DATE, ARE SUBJECT TO VAT.

3.12. WHETHER PETITIONER'S SCRAP SALES AND OTHER MISCELLANEOUS INCOME ALLEGEDLY AMOUNTING TO ₱2,252,440.80 ARE SUBJECT TO VAT.

3.13. WHETHER PETITIONER'S OTHER OPERATING, NON-OPERATING AND MISCELLANEOUS INCOME ALLEGEDLY TOTALING [TO] ₱3,888,935.80 ARE SUBJECT TO VAT.

3.14. WHETHER PETITIONER'S ALLEGED UNDECLARED INCOME IN THE AMOUNT OF ₱12,037,608.89 DUE TO AN ALLEGED UNDERSTATEMENT OF ITS RENT EXPENSE IS SUBJECT TO VAT.

3.15. WHETHER PETITIONER'S INPUT TAXES ALLEGEDLY AMOUNTING TO ₱34,851,538.74 ARE DULY SUBSTANTIATED.

FINAL VAT WITHHOLDING

3.16. WHETHER PETITIONER'S ALLEGED PAYMENTS TO A NON-RESIDENT FOREIGN CORPORATION IN THE AMOUNT OF ₱27,510,541.10 WERE SUBJECTED TO FINAL VAT WITHHOLDING.

WITHHOLDING TAX ON COMPENSATION

3.17. WHETHER THE ALLEGED DISCREPANCY OF ₱1,117,396.20 RESULTING FROM A COMPARISON OF PETITIONER'S INCOME TAXES WITHHELD PER ALPHALIST VERSUS THE TAXES WITHHELD AND REMITTED EXISTS FOR WHICH PETITIONER SHOULD BE LIABLE FOR A DEFICIENCY WITHHOLDING TAX ON COMPENSATION.

3.18. WHETHER PETITIONER ALLEGEDLY FAILED TO WITHHOLD THE AMOUNT OF ₱383,322.29 ON SALARIES BILLED BY SOUTHEAST ASIA CEMENT HOLDINGS.

FWT

3.19. WHETHER PETITIONER'S ALLEGED PAYMENTS OF ROYALTY AND OTHER SERVICES AMOUNTING TO ₱27,510,541.10 TO A NON-RESIDENT FOREIGN CORPORATION WAS SUBJECTED TO FWT.

FBT

3.20. WHETHER THE ASSESSMENT NOTICE FOR ALLEGED DEFICIENCY FBT FAILED TO EXPLAIN THE FACTS AND THE LAW UPON WHICH IT WAS BASED.

3.21. WHETHER PETITIONER IS ALLEGEDLY LIABLE TO PAY FBT IN THE AMOUNT OF ₱21,354,830.36.

DST

3.22. WHETHER THE ASSESSMENT NOTICE FOR ALLEGED DEFICIENCY DST FAILED TO EXPLAIN THE FACTS AND THE LAW UPON WHICH IT WAS BASED.

3.23. WHETHER PETITIONER HAS AN ADDITIONAL SUBSCRIPTION TO ITS SHARES OF STOCK FOR WHICH IT IS LIABLE TO PAY DST.

EXCISE TAX

3.24. WHETHER THE ASSESSMENT NOTICE FOR ALLEGED DEFICIENCY EXCISE TAX FAILED TO STATE THE FACTS AND THE LAW UPON WHICH IT WAS BASED.

3.25. WHETHER PETITIONER PROPERLY PAID ITS EXCISE TAXES FOR TAXABLE YEAR 2000.

4. WHETHER PETITIONER IS LIABLE TO PAY INTERESTS ON THE ALLEGED DEFICIENCY INCOME TAX, FINAL

VAT WITHHOLDING, WITHHOLDING TAX ON COMPENSATION, FWT, FBT AND DST.

5. WHETHER PETITIONER IS LIABLE FOR A 25% SURCHARGE ON THE ALLEGED DEFICIENCY DST.

6. WHETHER PETITIONER IS LIABLE TO PAY A 50% SURCHARGE AND INTERESTS ON THE ALLEGED DEFICIENCY VAT AND EXCISE TAX.

7. WHETHER PETITIONER IS LIABLE FOR SURCHARGE AND INTEREST ON ITS ALLEGED LATE FILING OF RETURNS FOR, AND PAYMENT OF, FINAL VAT WITHHOLDING, WITHHOLDING TAX ON COMPENSATION, AND FWT.

8. WHETHER PETITIONER IS LIABLE TO PAY COMPROMISE PENALTIES ON ALLEGED NON-PRESENTATION OF ITS COMPLETE BOOKS OF ACCOUNTS, ALLEGED NON-SUBMISSION OF [ITS] SCHEDULE OF INPUT/OUTPUT TAXES, ALLEGED LATE FILING OF RETURN AND LATE PAYMENT OF FINAL VAT WITHHOLDING, ALLEGED LATE FILING OF RETURN AND PAYMENT OF WITHHOLDING TAX ON COMPENSATION, FWT, AND ALLEGED NON-FILING OF FBT RETURNS FOR THE 1ST, 2ND AND 3RD QUARTERS OF 2000.[34]

RULING OF THE COURT

The Court finds the Petition for Review meritorious.

At the outset, the Court is taking into consideration the Resolution dated July 15, 2008, finding the availment of the Tax Amnesty Program of the petitioner to be in order, and accordingly, resolved to partially withdraw the case, insofar as the assessments for deficiency Income, Value-added, Documentary Stamp and Excise

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[34] *Id.*, at pp. 335-342.

taxes for the taxable year 2002 are concerned, pursuant to the provisions of Republic Act No. 9480.[35]

In view of the foregoing, the remaining issues to be resolved by the Court are the following assessments, *viz*:

DEFICIENCY TAX	BASIC TAX	SURCHARGE	INTEREST	PENALTIES	TOTAL
Final VAT Withholding	₱2,751,054.51	-	₱1,559,847.91	₱830,899.05	₱5,141,801.47
Withholding Tax on Compensation	₱1,500,718.49	-	₱850,907.38	₱20,015.84	₱2,371,641.71
Final Withholding Tax	₱6,065,208.94	-	₱3,438,973.47	₱2,521,776.13	₱12,025,958.54
Fringe Benefit Tax	₱21,354,830.36	-	₱12,108,188.81	₱35,000.00	₱33,498,019.17
TOTAL					**₱53,037,420.89**

In cases of assessment, Section 203 of the 1997 National Internal Revenue Code ("NIRC"), as amended, provides as follows:

> "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."

The foregoing provision mandates respondent to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the return, or the actual date of filing of such return, whichever is later. Stated otherwise, an assessment issued after the three (3)-year period is deemed void.

[35] *Id.*, at pp. 924-925.

In relation thereto, Section 114(C) of the 1997 NIRC, as amended,[36] provides the reckoning of the period for filing the return for Final Value-added Tax ("VAT") Withholding;[37] however, the subject assessment was issued before the effectivity of Republic Act No. 9337,[38] thus, Section 114(C) of the same Code, providing for Withholding of Creditable VAT, states as follows:

> "SECTION 114. *Return and Payment of Value-added Tax.* –
>
> xxx xxx xxx
>
> (C) *Withholding of Creditable Value-added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: *Provided, however,* That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, further,* That the payment for lease

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[36] As amended by Republic Act No. 9337, entitled "*An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code OF 1997, as amended, and for Other Purposes,*" dated November 1, 2005.

[37] SEC. 114. *Return and Payment of Value-added Tax.* –

xxx xxx xxx

(C) *Withholding of Value-added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided,* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

[38] *Supra*, note 36.

or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made."

Based on the records of the case, petitioner filed its Quarterly VAT Return (BIR Form No. 2550Q) on payments made to non-resident foreign corporations during the fourth (4th) quarter of the taxable year 2000, in the amount of ₱3,791,153.00, on January 25, 2001.[39] Thus, applying Section 203 of the 1997 NIRC, as amended, in relation to Section 114(C) of the same Code, the three (3)-year period within which respondent can validly issue an assessment is until January 25, 2004.

As regards the Withholding Tax on Compensation, Section 81 of the 1997 NIRC, as amended, provides as follows:

"SECTION 81. *Filing of Return and Payment of Taxes Withheld.* – Except as the Commissioner otherwise permits, taxes deducted and withheld by the employer on wages of employees shall be covered by a return and paid to an authorized agent bank, Collection Agent, or the duly authorized Treasurer of the city or municipality where the employer has his legal residence or principal place of business, or in case the employer is a corporation, where the principal office is located.

The return shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter: *Provided, however,* That the Commissioner may, with the approval of the Secretary of Finance, require the employers to pay or deposit the taxes deducted and withheld at more frequent intervals, in cases where such

[39] *Exhibit "LLLL."*

requirement is deemed necessary to protect the interest of the Government.

The taxes deducted and withheld by employers shall be held in a special fund in trust for the Government until the same are paid to the said collecting officers."

And Section 2.81 of Revenue Regulations ("RR") No. 2-98, dated April 17, 1998,[40] provides for the period for the filing of the required return:

"SECTION 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 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/employers 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 25 of the succeeding year: *Provided, further,* That large taxpayers as determined by the Commissioner shall remit taxes withheld on or before the 25th day of the following month.

If the person required to withhold and pay the tax is a corporation, the return shall be made in the name of the corporation and shall be signed and verified by the president, vice-president, or authorized officers.

With respect to any tax required to be withheld by a fiduciary, the returns shall be made in the name of the individual, estate, or trust for which such fiduciary acts, and shall be signed and verified by such fiduciary. In the case of

[40] Implementing Republic Act No. 8424, entitled "*An Act Amending the National Internal Revenue Code, as Amended,*" *Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*"

two or more joint fiduciaries the return shall be signed and verified by one of such fiduciaries."

Based on the records of the case, petitioner filed its Monthly Remittance Returns of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for taxable year 2000, on the following dates:

Period Covered	Dated Filed	Exhibit
January 2000	February 24, 2000	*"VVV"*
February 2000	March 24, 2000	*"WWW"*
March 2000	April 25, 2000	*"XXX"*
April 2000	May 25, 2000	*"YYY"*
May 2000	October 16, 2000	*"ZZZ"*
June 2000	July 25, 2000	*"AAAA"*
July 2000	August 25, 2000	*"BBBB"*
August 2000	September 25, 2000	*"CCCC"*
September 2000	October 25, 2000	*"DDDD"*
October 2000	November 27, 2000	*"EEEE"*
November 2000	December 26, 2000	*"FFFF"*
December 2000	January 25, 2001	*"GGGG"*
Amended December 2000	April 10, 2001	*"HHHH"*

From the foregoing, the three (3)-year period within which respondent can validly issue an assessment, at the earliest on February 25, 2003, and up to the latest until January 25, 2004.

As to the Final Withholding Tax, Section 58(A) of the 1997 NIRC, as amended, provides as follows:

"SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –

(A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

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The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided*, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government."

Also, Section 2.58 of Revenue Regulations No. 2-98,[41] states, to quote:

"SECTION 2.58. *Returns and Payment of Taxes Withheld at Source.*

(A) *Monthly return and payment of taxes withheld at source –*

xxx xxx xxx

(2) *WHEN TO FILE –*

(a) The withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year.

(b) For large taxpayers, the filing of the return and the payment of tax shall be made within twenty five (25) days after the end of each month.

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[41] *Ibid.*

(c) The return for 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 the payment made within twenty five (25) days from the close of each calendar quarter.

(C) *Annual Information Return for Income Tax Withheld at Source.* – The payor is required to file with the Commissioner, Revenue Regional Director, Revenue District Officer, Collection Agent in the city or municipality where the payor has his legal residence or principal place of business, where the government office is located in the case of a government agency, on or before January 31 of the following year in which payments were made, an Annual Information Return of Income Tax Withheld at Source (Form No. 1604), showing among others the following information:

(1) Name, address and taxpayer's, identification number (TIN); and

(2) Nature of income payments, gross amount and amount of tax withheld from each payee and such other information as may be required by the Commissioner.

If the payor is the Government of the Philippines or any political subdivision or agency thereof, or any government-owned or controlled corporation, the return shall be made by the officer or employee having control of the payments or by any designated officer or employee."

Based on the records of the case, petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F) for the taxable year 2000 on the following dates:

Period Covered	Dated Filed	Exhibit
June 2000	July 25, 2000	*"OO"*
July 2000	August 25, 2000	*"QQ"*
August 2000	September 25, 2000	*"SS"*

September 2000	October 25, 2000	*"UU"*
October 2000	December 8, 2000	*"OOOO"*
November 2000	December 26, 2000	*"PPPP"*
December 2000	January 25, 2001	*"WW"*

Thus, the three (3)-year period within which respondent can validly issue an assessment, at the earliest on July 25, 2003, and up to the latest until January 25, 2004.

Finally, as to the Fringe Benefit Tax, the earlier quoted Section 58(A) of the 1997 NIRC, as amended, in relation to Sections 33 and 57(A), *scilicet*:

"SECTION 33. *Special Treatment of Fringe Benefit.* –

(A) *Imposition of Tax.* – A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57(A) of this Code. The grossed-up monetary value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by sixty-six percent (66%) effective January 1, 1998; sixty-seven percent (67%) effective January 1, 1999; and sixty-eight percent (68%) effective January 1, 2000 and thereafter: *Provided, however,* That fringe benefit furnished to employees and taxable under Subsections (B), (C), (D) and (E) of Section 25 shall be taxed at the applicable rates imposed thereat: *Provided, further,* That the grossed-up value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by the difference between one hundred

> percent (100%) and the applicable rates of income tax under Subsections (B), (C), (D) and (E) of Section 25."
>
> xxx xxx xxx
>
> SECTION 57. *Withholding of Tax at Source.* –
>
> (A) *Withholding of Final Tax on Certain Incomes.* – Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code."

Based on the records of the case, petitioner filed its Quarterly Remittance Return of Income Taxes Withheld on Fringe Benefits (BIR Form No. 1603) for the fourth (4th) quarter of the taxable year 2000 on January 25, 2001.[42] Thus, the three (3)-year period within which respondent can validly issue an assessment is until January 25, 2004.

And a perusal of the records, however, shows that petitioner received the Formal Letter of Demand dated March 30, 2004,[43] with attached Details of Discrepancies,[44] and Assessment Notices, only on March 31, 2004. Apparently, the same were issued beyond the three mandatory (3)-year prescriptive period.

However, Section 203 of the 1997 NIRC, as amended, must likewise be read in conjunction with Section 222(b) of the same Code, to quote:

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[42] *Exhibit "UUU."*
[43] *Exhibit "E."*
[44] *Exhibit "F."*

"SECTION 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."

Pursuant thereto, records show that on November 11, 2003, and December 11, 2003,[45] petitioner executed Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.[46]

The Court finds the case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[47] to be instructive, to quote:

"Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90[48] issued on April 4, 1990 and RDAO 05-01[49] issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase '*but not after* ______ *19* ___,' which indicates the expiry date of the period agreed upon to assess/collect the tax

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[45] *Exhibit "D,"* with submarkings.
[46] *Exhibit "C,"* with submarkings.
[47] G.R. No. 178087, May 5, 2010, 620 SCRA 232.
[48] *Ibid.*, citing Revenue Memorandum Order No. 20-90, entitled "*Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.*"
[49] *Ibid.*, citing Revenue Delegation Authority Order No. 05-01, entitled, "*Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.*"

after the regular three-year period of prescription, should be filled up.

2. The waiver must 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 representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, 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.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. 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."[50]

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[50] *Ibid.*, citing *Philippine Journalist, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 488 Phil. 218, 235.*

Applying the foregoing, the Court notes that the Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, dated November 11, 2003,[51] and December 11, 2003,[52] both failed to indicate the dates of acceptance by respondent's authorized official.

In addressing respondent's citation of the doctrine of estoppel, the Court quotes the same case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[53] to continue:

> "***Estoppel does not apply in this case***
>
> We find no merit in petitioner's claim that respondent is now estopped from claiming prescription since by executing the waivers, it was the one which asked for additional time to submit the required documents.
>
> In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*,[54] the doctrine of estoppel prevented the taxpayer from raising the defense of prescription against the efforts of the government to collect the assessed tax. However, it must be stressed that in the said case, estoppel was applied as an exception to the statute of limitations on collection of taxes and not on the assessment of taxes, as the BIR was able to make an assessment within the prescribed period. More important, there was a finding that the taxpayer made several requests or positive acts to convince the government to postpone the collection of taxes, *viz*:
>
> xxx xxx xxx
>
> Conversely, in this case, the assessments were issued beyond the prescribed period. Also, there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments.

[51] *Exhibit "C,"* with submarkings.
[52] *Exhibit "D,"* with submarkings.
[53] *Supra*, note 47.
[54] *Ibid.*, citing 104 Phil 819 (1958).

The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right.[55] As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.[56] It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate.[57] Simply put, the doctrine of estoppel must be sparingly applied.

Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed."[58]

Likewise, the Court notes that the Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code failed to indicate the kind and amount of tax involved thereto.

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[55] *Ibid.*, citing *La Naval Drug Corporation v. Court of Appeals, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87.*
[56] *Ibid.*, citing *Ouano v. Court of Appeals, 446 Phil. 690, 708 (2003).*
[57] *Ibid.*, citing *C & S Fishfarm Corporation v. Court of Appeals, 442 Phil. 279, 290 (2002).*
[58] *Ibid.*, citing *Philippine Journalist, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 488 Phil. 218, 235.*

In the case of *Dole Philippines, Inc. v. Commissioner of Internal Revenue*,[59] this Court ruled as follows:

> "A simple comparison of the accomplished waiver with that of the prescribed form would patently show the deviations. Indeed, petitioner did not state in the subject waiver the kind of tax and the amount of the tax due which is required in the prescribed form. The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner to pinpoint which among the proposed tax assessments may subsequently be issued without the petitioner invoking the defense of prescription *(Pfizer, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003)*. If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of *(Solid Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999)*. It should be emphasized that RMO No. 20-90 requires specific information. Hence, to substitute the same with general statements is a departure from RMO No. 20-90."

Further, in the case of *Guoco Holdings (Philippines), Inc. v. Commissioner of Internal Revenue*,[60] the Court penned as follows:

> "Lastly, the Court notes that the subject Waivers did not indicate the kind and amount of tax due in clear violation of RMO No. 20-90. The execution of a Waiver of the Statute of Limitations presupposes that there is already an initial finding by the respondent as to the tax liabilities of the taxpayer/petitioner, or else, there would be nothing to waive. Moreover, the requirement to specify the kind of tax and amount is for the purpose of limiting the conditions of the waivers with regard to only those taxes and amounts as specified therein. This is to protect both the taxpayer and the government, in the sense that, the parties are particularly apprised of the subject matter of the waivers."

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[59] CTA Case No. 5705, July 1, 2003.
[60] CTA Case No. 6122, August 31, 2005.

Therefore, the Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, dated November 11, 2003,[61] and December 11, 2003,[62] both failed to extend the prescriptive period within which respondent can validly issue an assessment against the petitioner.

Having caused the defects in the subject waiver, respondent must bear the consequence.[63] With this, the Formal Letter of Demand dated March 30, 2004,[64] with attached Details of Discrepancies,[65] and Assessment Notices, received only on March 31, 2004, were indeed issued beyond the three (3)-year mandatory prescriptive period.

In sum, the Court finding the availment of the Tax Amnesty Program of petitioner to be in order, hereby affirms the termination of the assessments for deficiency Income, Value-added, Documentary Stamp and Excise taxes for the taxable year 2002, pursuant to the provisions of Republic Act No. 9480.[66] On the other hand, the Court finding that the Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, dated November 11, 2003,[67] and December 11, 2003,[68] failed to extend the three (3)-year mandatory prescriptive period, making the Formal Letter of Demand dated March 30, 2004,[69] with attached Details of Discrepancies,[70] and Assessment Notices, received only on March 31, 2004, issued beyond the same period, hereby declares the assessments for Final VAT Withholding, Withholding Tax on Compensation, Final Withholding Tax and Fringe Benefit Tax null and void.

With the foregoing, the Court deems the resolution of the other issues unnecessary.

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[61] *Exhibit "C,"* with submarkings.
[62] *Exhibit "D,"* with submarkings.
[63] *Supra*, note 47.
[64] *Exhibit "E."*
[65] *Exhibit "F."*
[66] *Records*, pp. 924-925.
[67] *Exhibit "C,"* with submarkings.
[68] *Exhibit "D,"* with submarkings.
[69] *Exhibit "E."*
[70] *Exhibit "F."*

WHEREFORE, the Petition for Review is hereby **GRANTED.** Accordingly, the Formal Letter of Demand dated March 30, 2004,[71] with attached Details of Discrepancies,[72] and Assessment Notice No. FVT-00-00036,[73] Assessment Notice No. WC-00-00021,[74] Assessment Notice No. FWT-00-00035,[75] and Assessment Notice No. FBT-00-00074,[76] all received on March 31, 2004, are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

[71] *Exhibit "E."*
[72] *Exhibit "F."*
[73] *Exhibit "I."*
[74] *Exhibit "J."*
[75] *Exhibit "K."*
[76] *Exhibit "L."*

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice