REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

FONTERRA BRANDS PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 9230

Members:

- versus -

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 14 2020
10:00 a.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

The instant *Petition for Review* filed by Fonterra Brands Philippines, Inc. against the Commissioner of Internal Revenue prays for the cancellation and withdrawal of the latter's assessment for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT), final withholding VAT (FWVAT), and documentary stamp tax (DST) for the fiscal year (FY) covering August 1, 2009 to July 31, 2010, in the aggregate amount of ₱1,291,706,904.96, inclusive of interest.[1]

THE PARTIES

Petitioner Fonterra Brands Philippines, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 28th Floor, Cyber One Tower, No. 11

[1] Summary of the Case, Pre-Trial Order, Docket – Vol. 3, p. 1260.

Eastwood Ave., Eastwood City, Bagumbayan, Quezon City.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayer's Assistance Division, as shown by its Certificate of Registration dated January 1, 1997, with Taxpayer's Identification No. 004-515-331.[3] Based on its Amended Articles of Incorporation, petitioner was organized for the following primary purposes:

> To engage in the business of manufacturing, importing, selling, exporting, trading, and distribution on a wholesale basis of dairy and other food products under the "ANCHOR" trademark and brand and such other brands as my be agreed upon, and to engage in milk production, milk processing, sale, import and export, improvement, preparation, deal and trade on wholesale basis in milk and like products and for the above purpose, to won and otherwise acquire machineries, equipment, and other necessary properties essential or incidental to said business, and for carrying out the purposes of said corporation.[4]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, and other tax laws, rules and regulations.[5]

THE ANTECEDENTS

On November 3, 2011, respondent issued *Letter of Authority* (LOA) No. LOA-116-2011-00000176, authorizing revenue examiners and a group supervisor from the Large Taxpayers Regular Audit Division I (LTRAD I) to examine petitioner's books of accounts and other accounting records for the FY covering August 1, 2009 to July 31, 2010 (FY 2010).[6]

Petitioner signed *Waivers of the Defense of Prescription under the Statute of Limitations* (the *Waivers*), which purportedly extended the period for the assessment of petitioner's alleged deficiency taxes on the following dates and with the following details as indicated in the respective *Waivers*:[7]

Date Signed by Petitioner's Officer	Signatory of Petitioner	Date Signed by Respondent	Signatory of Respondent	Assessment Period Extended up to
January 18, 2013	Marlon P. Magtoto	January 28, 2013	Alfredo V. Misajon	December 31, 2013
September 24, 2013	Dennis D. Vitug	September 26, 2013	Alfredo V. Misajon	June 30, 2014
April 2, 2014	Dennis D. Vitug	April 10, 2014	Alfredo V. Misajon	September 30, 2014

[2] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 3, p. 1218.
[3] Par. 4, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1219; Exhibit "P-1", Docket – Vol. 5, p. 2372.
[4] Par. 2, Stipulated Facts, JSFI, Docket – Vol. 3, pp. 1218 to 1219.
[5] Par. 3, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1219.
[6] Par. 5, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1219.
[7] Par. 6, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1219.

On August 26, 2014, petitioner received a copy of respondent's *Preliminary Assessment Notice* (PAN) with attached *Details of Discrepancies*. In the PAN, respondent, through Mr. Nestor S. Valeroso, the OIC-Assistant Commissioner of the BIR's Large Taxpayers Service (LTS), informed petitioner of the proposed assessment for deficiency income tax, VAT, EWT, FWT, FWVAT, and DST for FY 2010 in the aggregate amount of ₱1,497,875,272.44.[8]

Thereafter, on September 12, 2014, petitioner received a copy of respondent's *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies*. In the FLD, respondent, through Mr. Valeroso, ordered petitioner to pay its alleged deficiency income tax, VAT, EWT, FWT, FWVAT, and DST for FY 2010, amounting to ₱1,497,875,272.44.[9]

On October 10, 2014, petitioner filed with the BIR Large Taxpayers Service (LTS) its protest letter against respondent's FLD,[10] requesting the cancellation and withdrawal of the deficiency income tax, VAT, EWT, FWT, FWVAT, and DST for FY 2010 in the aggregate amount of ₱1,497,875,272.44.

On March 13, 2015, petitioner received a copy of respondent's undated *Final Decision on Disputed Assessment* (FDDA) with attached *Details of Discrepancies*, ordering petitioner to pay alleged deficiency income tax, VAT, EWT, FWT, FWVAT, and DST for FY 2010 in the aggregate amount of ₱1,291,706,904.96.[11]

On April 10, 2015, petitioner filed with respondent a letter, protesting and appealing the FDDA.[12]

On December 7, 2015, petitioner received a copy of respondent's letter dated September 21, 2015, denying its request for reconsideration and reiterating the order to pay the deficiency tax assessments for FY 2010 amounting to ₱1,291,706,904.96.[13]

Petitioner filed before this Court the instant *Petition for Review* on January 6, 2016.[14]

On April 18, 2016, respondent filed his *Answer*,[15] interposing the following special and affirmative defenses: that the waivers executed by

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[8] Par. 7, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1220.
[9] Par. 8, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1220.
[10] Exhibit "P-9", BIR Records, pp. 821 to 847.
[11] Exhibit "P-11", Docket – Vol. 5, pp. 2443 to 2456.
[12] Exhibit "P-12", Docket – Vol. 5, pp. 2457 to 2470.
[13] Par. 9, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1220.
[14] Docket – Vol. 1, pp. 10 to 75.
[15] Docket – Vol. 1, pp. 384 to 406.

petitioner are valid and it effectively extended the period of assessment; that the requirement of due process was properly complied with in issuing the Formal Letter of Demand/Final Assessment Notice and Final Decision on Disputed Assessment; that withholding tax is not an internal revenue tax but is only a system used to collect income tax in advance, thus, the period within which to assess finds no application in the present case; and that petitioner is liable to pay its deficiency income tax, value-added tax, expanded withholding tax, final withholding VAT and documentary stamp tax for fiscal year covering August 1, 2009 to July 31, 2010 in the aggregate amount of Php1,291,706,904.96.

The pre-trial conference was initially set on October 18, 2016.[16]

Respondent transmitted the *BIR Records* for the instant case on August 4, 2016.[17]

On September 8, 2016, petitioner filed an *Omnibus Motion (I) To Defer Pre-Trial Conference; and (II) To Set Case for Preliminary Hearing to Resolve Issue of Prescription.*[18]

Thereafter, on September 30, 2016, petitioner filed an *Urgent Motion to Defer Pre-Trial Conference.*[19]

In the Resolution dated October 12, 2016,[20] the Court partially granted petitioner's *Omnibus Motion*; granted petitioner's *Motion to Defer Pre-Trial Conference*; and denied for lack of merit the *Motion to Set Case for Preliminary Hearing.* Accordingly, the pre-trial conference previously scheduled was reset to, and was held on, January 31, 2017.[21]

The *Petitioner's Pre-Trial Brief* was filed on January 26, 2017;[22] while the *Respondent's Pre-Trial Brief* was submitted on January 27, 2017.[23]

Thereafter, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on February 27, 2017.[24] On March 22, 2017, the Court issued the Pre-Trial Order.[25]

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[16] *Notice of Pre-Trial Conference* dated June 24, 2016, Docket – Vol. 1, pp. 455 to 456.
[17] Respondent's *Compliance*, Docket – Vol. 1, pp. 485 to 486.
[18] Docket – Vol. 2, pp. 508 to 522.
[19] Docket – Vol. 2, pp. 525 to 529.
[20] Docket – Vol. 2, pp. 545 to 547.
[21] Minutes of the hearing held on, and Order dated, January 31, 2017, Docket – Vol. 3, pp. 1163 to 1165.
[22] Docket – Vol. 2, pp. 790 to 812.
[23] Docket – Vol. 3, pp. 1155 to 1158.
[24] Docket – Vol. 3, pp. 1218 to 1236.
[25] Docket – Vol. 3, pp. 1260 to 1269.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following witnesses: (1) Ms. Gloria Rodriguez,[26] petitioner's Compliance/Tax Analyst; (2) Mr. Alvin Jay T. Punongbayan,[27] petitioner's Sales Director; (3) Ms. Cynthia David,[28] petitioner's Project Tax Accountant; (4) Ms. Marissa Ben,[29] petitioner's Senior Business Analyst; (5) Ms. Richelle Bergonia,[30] petitioner's Finance and Administration Manager; and (6) Ms. Katherine O. Constantino,[31] the Court-commissioned Independent Certified Public Accountant (ICPA).[32]

The ICPA Report was submitted on August 2, 2017.[33]

On April 20, 2018, petitioner filed its *Formal Offer of Evidence* (FOE).[34] On April 27, 2018, respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence.*[35]

In the Resolution dated June 1, 2018,[36] this Court admitted petitioner's Exhibits, but denied the admission of the following:

1. Exhibit "P-24", for failure to present the original for comparison; and

2. Exhibits "P-44-4018", "P-44-4050", "P-44-5340", "P-44-5341", "P-44-5737", "P-44-5921", "P-44-5972", "P-59-105", "P-61-472", "P-61-858", and "P-68-1121", for not being found in the records of the case.

Consequently, on June 20, 2018, petitioner filed a *Motion for Partial Reconsideration (Re: Resolution dated June 1, 2018)*,[37] wherein petitioner prayed that the Court (a) reconsider its Resolution dated June 1, 2018, (b) admit Exhibit

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[26] Exhibit "P-29", Docket – Vol. 3, pp. 1278 to 1290; Minutes of the hearing held on, and Order dated, May 2, 2017, Docket – Vol. 3, pp. 1291 and 1293, respectively.
[27] Exhibit "P-76", Docket – Vol. 2, pp. 816 to 820; Minutes of the hearing held on June 6, 2017, Docket – Vol. 3, pp. 1308.
[28] Exhibit "P-30", Docket – Vol. 2, pp. 551 to 569; Minutes of the hearing held on, and Order dated, July 4, 2017, Docket – Vol. 3, pp. 1310 and 1311, respectively.
[29] Exhibit "P-78", Docket – Vol. 2, pp. 942 to 951; Minutes of the hearing held on, and Order dated, July 4, 2017, Docket – Vol. 3, pp. 1310 and 1311, respectively.
[30] Exhibit "P-31", Docket – Vol. 3, pp. 1323 to 1357; Minutes of the hearing held on, and Order dated, September 5, 2017, Docket – Vol. 4, pp. 1611 and 1612, respectively.
[31] Exhibits "P-81" and "P-86", Docket – Vol. 4, pp. 1624 to 1645, and 2015 to 2023, respectively; Minutes of the hearing held on, and Order dated, December 5, 2017, Docket – Vol. 4, pp. 2025 and 2026, respectively.
[32] *Oath of Commission (For a CPA Firm),* Docket – Vol. 3, p. 1292; Exhibit "P-35", Docket – Vol. 3, pp. 1180 to 1182; Minutes of the hearing held on, and Order dated, May 2, 2017, Docket – Vol. 3, pp. 1291 and 1293, respectively.
[33] Docket – Vol. 3, p. 1319.
[34] Docket – Vol. 4, pp. 2040 to 2060; Docket – Vol. 5, pp. 2061 to 2136.
[35] Docket – Vol. 6, pp. 2623 to 2625.
[36] Docket – Vol. 6, pp. 2628 to 2633.
[37] Docket – Vol. 6, pp. 2637 to 2651.

"P-24" as petitioner's secondary evidence for the purposes stated in its FOE, and (c) admit Exhibits "P-44-4018", "P-44-4050", "P-44-5737", "P-44-5921", "P-44-5972", "P-59-105", "P-61-858," and "P-68-1121", as petitioner's evidence for the purposes stated in its FOE.

In the Resolution dated September 3, 2018,[38] the Court admitted Exhibits "P-44-4018", "P-44-4050", "P-44-5737", "P-44-5921", "P-44-5972", "P-59-105", "P-61-858," and "P-68-1121", but still denied the admission of Exhibit "P-24", for failure to present the original for comparison.

At the hearing held on September 4, 2018, respondent manifested that all their documents intended to be presented have been admitted by the parties in the JSFI, and that they will no longer present evidence.[39] In the same hearing, the Court granted the parties thirty (30) days to file their respective memorandum.

On September 19, 2018, petitioner filed a *Motion for Partial Reconsideration (Re: Resolution dated September 3, 2018)*,[40] wherein petitioner prayed that this Court reconsider its Resolution dated September 3, 2018, and admit Exhibit "P-24" as petitioner's secondary evidence for the purposes stated in its FOE. Respondent failed to file his comment on petitioner's *Motion for Partial Reconsideration (Re: Resolution dated September 3, 2018)*.[41]

Subsequently, petitioner filed its *Memorandum* on November 5, 2018,[42] while respondent filed his *Memorandum* on November 15, 2018.[43]

In the Resolution dated February 26, 2019,[44] the Court granted petitioner's *Motion for Partial Reconsideration (Re: Resolution dated September 3, 2018)*, and admitted petitioner's Exhibit "P-24". In the same Resolution, the present case was submitted for decision.

THE ISSUES

The parties submitted the following main issue for this Court's resolution,[45] to wit:

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[38] Docket – Vol. 6, pp. 2679 to 2686.
[39] Minutes of the hearing held on, and Order dated, September 4, 2018, Docket – Vol. 6, pp. 2687 and 2688, respectively.
[40] Docket – Vol. 6, pp. 2689 to 2696.
[41] Records Verification dated October 23, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 6, pp. 2708.
[42] Docket – Vol. 6, p. 2709 to 2811.
[43] Docket – Vol. 6, pp. 2824 to 2846.
[44] Docket – Vol. 6, pp. 2852 to 2855.
[45] Issues, JSFI, Docket – Vol. 3, pp. 1220 to 1221.

"WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VAT, EWT, FWT, FWVAT, AND DST FOR FY 2010 IN THE AGGREGATE AMOUNT OF ₱1,291,706,904.96, INCLUSIVE OF INCREMENTS.

11. This issue may be broken down in the following sub-issues:

a. Whether or not Respondent's right to assess deficiency income tax, VAT, EWT, FWT, FWVAT and DST for FY 2010 had already prescribed in view of the lapse of the three-year prescriptive period provided under Section 203, Tax Code;

b. Whether or not the Waivers in this case are null and void for failure to comply with the requirements of the law; and

c. Whether or not the deficiency income tax, VAT, EWT, FWT, FWVAT, and DST assessment for FY 2010 has legal and factual basis."

Petitioner's arguments:

Petitioner argues that respondent's right to assess petitioner for alleged deficiency tax liabilities for FY 2010 had already prescribed; and that the assessment is null and void for violating petitioner's right to due process.

Respondent's counter-arguments:

Respondent argues that the waivers executed by petitioner are valid and effectively extended the period of assessment; that the requirement of due process was properly complied with in issuing the FLD/FAN and FDDA; that withholding tax is not an internal revenue tax but is only a system used to collect income tax in advance, thus, the period within which to assess finds no application in the present case; and that petitioner is liable to pay its deficiency income tax, VAT, EWT, FWVAT, and DST for fiscal year covering August 1, 2009 to July 31, 2010 in the aggregate amount of ₱1,291,706,904.96.

THE RULING OF THE COURT

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

Section 203 of the NIRC of 1997 states the period of limitation upon the assessment of taxes, to wit:

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

The foregoing provision mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[46] Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[47]

By way of an exception, however, under Section 222(b) of the NIRC of 1997, there is an instance when the government may assess pertinent taxes against taxpayers even beyond the said three-year prescriptive period. Said provision reads as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx."*(Emphasis ours)*

Thus, under the foregoing provision, the three-year prescriptive period under Section 203 of the NIRC of 1997 may be extended, if before the

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[46] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[47] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

expiration thereof, both respondent and the taxpayer have agreed in writing to its assessment. Thereafter, the pertinent tax may be assessed within the period agreed upon.

Indeed, a *Waiver of the Defense of Prescription* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[48] However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[49] The *Waiver* must faithfully comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 in order to be valid and binding.[50]

In *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* ("*La Flor* case"),[51] the Supreme Court held:

> "The CIR further argues that even if Section 203 of the NIRC was applicable, the assessments against La Flor had yet to prescribe. It points out that La Flor had executed three Waivers to extend the statutory prescriptive period. The CIR insists that the Waivers should have been considered even if they were not offered in evidence because the CTA is not strictly governed by technical rules of evidence. It adds that the requirements under RMO No. 20-90 are not mandatory.
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> In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[52] the Court had ruled that **waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and <u>must indicate the nature and amount of the tax due</u>**, to wit:
>
> > **<u>These requirements are mandatory and must strictly be followed</u>.** To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
> >
> > x x x x
> >
> > The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they

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[48] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[49] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, supra.
[50] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, supra.
[51] G.R. No. 211289, January 14, 2019.
[52] G.R. No. 220835, July 26, 2017.

did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

x x x x

3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)

In the present case, <u>the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers</u> <u>failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected</u>. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — **the assessments had prescribed as there was no valid waiver.**" *(Emphases and underscoring ours)*

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

The Waiver[53] executed on April 2, 2014 reads as follows:

> "I, **Dennis Vitug** of **Fonterra Brands Phils., Inc**. request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation / reinvestigation/ re-evaluation/ collection enforcement of its **Internal Revenue Taxes** for the **year 2010**. I/We hereby waive the defense of prescription under the statute of limitations prescribed under Section 203 and 222, and other related provisions of the National internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said taxable year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than **September 30, 2014**.
>
> The intent and purpose of this waiver is to afford the Commissioner of Internal revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 2014 and 229 of the national Internal Revenue Code.
>
> The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue."

In this case, it is apparent that the subject *Waivers*[54] do not indicate the kind and amount of the taxes to be assessed or collected. Thus, the same are void, and did not effectively extend the prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity.

Also, the Court disagrees with respondent's contention that the withholding tax is not an internal revenue tax but is only a system used to collect income tax in advance, and thus, the period within which to assess finds no application in the present case.

[53] Docket, Vol. 5, p. 2147.
[54] Exhibits "P-5-1-1", "P-5-2", and "P-5-3-1".

In the *La Flor* case, the Supreme Court likewise ruled that withholding taxes are internal revenue taxes covered by Section 203 of the NIRC of 1997. Such being the case, there is no merit in the said contention of respondent. Thus, the three-year prescriptive period equally applies to withholding tax assessments, such as the subject EWT, FWT, and FWVAT assessments.

Nevertheless, even granting that the subject *Waivers* are valid, the same is of no moment since subject tax assessments are actually void.

The assessments for deficiency internal revenue taxes for FY 2010 are void

The undated FLD[55] reads as follows:

"Sir:

This has reference to the Preliminary Assessment Notice (PAN) served on August 26, 2014 covering your deficiency Income Tax, Value-added Tax, Expanded Withholding Tax, Final Withholding Tax, VAT Withheld, and Documentary Stamp Tax in the amounts of P1,047,532,101.93, P411,088,125.94, P29,920,574.15, P6,370,346.19, P2,910,268.48, and P53,855.75, respectively, inclusive of increments for the year 2010.

Pursuant to Revenue Regulations No. 18-2013, a Formal Letter of Demand is hereby issued on the deficiency Income Tax, Value Added Tax, Expanded Withholding Tax, Final Withholding Tax, VAT Withheld, and Documentary Stamp Tax as shown hereunder:

xxx xxx xxx

Please take note that the interest will have to be adjusted if paid beyond the date specified therein.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX -A of this letter.

The twenty five percent (25%) surcharge and twenty percent (20%) interest per annum has been imposed pursuant to Sections 248(A) and 249(B), respectively, of the NIRC of 1997, as amended, due to your failure to pay the tax within the time

[55] Exhibit "P-8".

prescribed by law for its payment. Compromise penalty have been imposed pursuant to Revenue Memorandum Order No. 19-2007.

Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within thirty (30) days for receipt hereof. However, if you are amenable, you may pay the above assessment thru the EFPS facility. Afterwards, submit the proof of payment thereof to the Regular Large Taxpayers Audit Division I at RM 216 BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records.

We hope that you will give this matter your preferential action."

The attached Details of Discrepancy[56] state as follows:

In case you disagree to the assessment, you or your duly authorized representative or your duly authorized BIR accredited Tax Agent, may protest administratively against the Formal Letter of Demand/Final Assessment Notice (FAN) within thirty (30) days from date of receipt hereof, and submit the same to the office of the Assistant Commissioner, Large Taxpayers Service at Rm. 307 BIR National Office Building, BIR Road, Diliman, Quezon City, stating the nature of the protest whether for **reconsideration or reinvestigation**, specifying the newly discovered or additional evidence you intend to present, the date of assessment notice, and the applicable law, rules and regulations or jurisprudence from which your protest is based pursuant to Revenue Regulations No. 18-2013, otherwise your protest shall be considered void and without force and effect. However, if you are amendable, whether in whole or in part, it is requested that you settle first the tax attributable to the undisputed issue and furnish this office a photocopy of payment thereof, otherwise a collection letter shall be issued calling for the payment of the said deficiency tax or attributable thereto, inclusive of the applicable surcharge and/or interest.

In case of failure to file a valid protest or pay the tax within the time prescribed, the assessment shall become final, executory and demandable and therefore subject to delinquency penalties pursuant to RR No. 18-2013."

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[56] Docket, Vol. 5, p. 2436.

A reading of the Audit Result/Assessment Notices (BIR Forms No. 0401) with Assessment Nos. IT-116-LOA-00000176-10-1142, VT-116-LOA-00000176-10-14, WE-116-LOA-00000176-10-14-1144, WF-116-LOA-00000176-10-14-1145, WG-116-LOA-00000176-10-1146, and DS-116-LOA-00000176-10-14-1147 show that the "DUE DATE" portions for the payment of the assessed tax deficiencies were left blank.

Thus, the FLD, Details of Discrepancy and Audit Result/Assessment Notices failed to indicate the specific period when the payment of deficiency taxes should be made.

Settled is the rule that an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. Thus, absent a specific date or period within which the alleged tax deficiencies must be settled or paid by petitioner, the FLD/FAN is fatally infirm. Consequently, the FDDA which rooted from the said FLD/FAN is likewise void, the deficiency tax assessments contained in the former are of no consequence as a void assessment bears no fruit.[57]

In ***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 a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the same 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. xxx xxx xxx
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> xxx xxx xxx
>
> (N)either the NIRC nor the revenue regulations governing the protest of assessments provide a specific definition or form of an assessment. However, the NIRC defined the specific functions and effects of an assessment. To consider the affidavit attached to the Complaint as a proper assessment is to subvert the nature of an assessment and to set a bad precedent that will prejudice innocent taxpayers.

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[57] *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. No. 159694 & 163581, January 27, 2006, 480 SCRA 396; *Commissioner of Internal Revenue Vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

> True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period.** Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> xxx xxx xxx
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondent's tax liability. It did not state a demand or a period for payment. Worse, it was addressed to the justice secretary, not to the taxpayers." (Boldfacing supplied)"

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[58], the Supreme Court emphasized the importance of the issuance of a **valid formal assessment**, *i.e.,* it must demand payment of the taxes described **within a specific period**, as follows:

> "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.
>
> A pre-assessment notice 'do[es] not bear the gravity of a formal assessment notice.' A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.

[58] G.R. No. 215957, November 09, 2016.

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'

The disputed Final Assessment Notice is not a valid assessment.

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

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

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.*)"

The Court also notes that while the issue of lack of due date of the FLD and FAN was not raised by the parties, the former is not precluded of its jurisdiction to rule on the same, following the pronouncement of the Supreme Court in the case on *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[59] viz:

> "**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > **SECTION 1.** ***Rendition of judgment.*** **– xxx**
> >
> > **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**
>
> **The above section is clearly worded.** On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority

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[59] G.R. No. 183408, July 12, 2017.

> of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphases ours)*

In view of the foregoing discussions, this Court is well within its authority to consider in its decision the issue on the invalidity of the FAN and FLD, albeit the parties have not raised the same in their pleadings or memoranda.

To reiterate, an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. The requirement to indicate a fixed and definite period within which a taxpayer must pay the tax deficiencies is vital to the validity of the assessment.

Hence, the absence of the specific period in the FLD and Assessment Notices negates the CIR's demand for payment and makes the assessment void.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent's assessments for deficiency Income Tax, VAT, EWT, FWT, FWVAT, and DST, issued against petitioner, for the FY covering August 1, 2009 to July 31, 2010, in the aggregate amount of ₱1,291,706,904.96, inclusive of interest, issued against petitioner is **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
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