REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

PHILUSA CORPORATION, *Petitioner,*	**CTA Case No. 9409**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson* *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 31 2021 9:26am

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D E C I S I O N

MANAHAN, *J.:*

The *Petition for Review* prays that the Court render judgment ordering the cancellation and withdrawal of respondent's assessment against petitioner for deficiency income tax (IT), value-added tax (VAT) and expanded withholding tax (EWT), inclusive of surcharge, interests and compromise penalty, for CY 2009, in the aggregate amount of ₱182,629,162.63.[1]

THE PARTIES

Petitioner Philusa Corporation is a corporation duly organized and existing under Philippine laws, with registered office address at 28 Shaw Blvd., corner Pioneer St., Pasig City.[2] It is a registered taxpayer of the BIR-Large Taxpayers (LT) Service, as shown by its Certificate of Registration dated February 18, 1997, with Taxpayer's Identification No. 000-281-014-000.[3]

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[1] Docket, CTA Case No. 9409, Vol. 1, Summary of the Case, Pre-Trial Order dated May 15, 2017, p. 414.
[2] *Id.*, Vol. 1, Par. 2, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 395.
[3] *Id.*, Vol. I, Par. 3, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-2", p. 1204.

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 1997 National Internal Revenue Code (NIRC), as amended, and its implementing rules and regulations. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS

On May 18, 2010, petitioner received a *Letter of Authority* (LOA) with Serial Number (No). LOA-116-2010-00000094 dated May 14, 2010 from the BIR authorizing the examination of its books of accounts and other financial records for all internal revenue taxes for CY 2009.[5] The said LOA authorized Revenue Officers Jan Andre Abellera, Gilquin Tolentino, Amelia Molinos, Pearl Marie Sta. Maria, Ruby Anne Oradia, Johnro Galicia, and Group Supervisor Edgar Espiritu of the LT Regular Audit 1 to examine the said books of accounts and other accounting records of petitioner.[6]

On November 12, 2012, petitioner was made to execute a document entitled "*Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*" (1st *Waiver*) in connection with the investigation of all its internal revenue tax liabilities for CY 2009.[7] The 1st *Waiver* was accepted by the Officer-in-Charge (OIC)-Assistant Commissioner (ACIR) Alfredo V. Misajon of the BIR – LT Service on November 27, 2012, which indicated that it has extended the period of tax assessment and/or collection until June 30, 2013.[8]

Thereafter, another *Waiver* (2nd *Waiver*) was executed by petitioner on May 21, 2013.[9] This *Waiver* was also accepted by OIC-ACIR Misajon on May 31, 2013, which indicated that

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[4] Docket, Vol. 1, Par. 1, Stipulated Facts, JSFI, p. 395.
[5] *Id.*, Vol. 1, Par. 4, Stipulated Facts, JSFI, p. 396.
[6] *Id.*, Vol. 1, Par. 4, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-3", p. 1205; BIR Records (Folder 1), Exhibit "R-1", p. 605.
[7] *Id.*, Vol. 1, Par. 5, Stipulated Facts, JSFI, p. 396.
[8] *Id.*, Vol. 1, Par. 5, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-9", p. 1273; BIR Records (Folder 1), Exhibit "R-6", p. 707.
[9] *Id.*, Vol. 1, Par. 6, Stipulated Facts, JSFI, Docket – Vol. 1, p. 396.

the period of tax assessment and/or collection is further extended until December 31, 2013.[10]

On November 7, 2013, petitioner received the *Preliminary Assessment Notice* (PAN) dated October 23, 2013 with attached *Details of Discrepancies* in which respondent informed petitioner of the proposed deficiency IT, VAT and EWT assessments for CY 2009, in the aggregate amount of ₱868,311,285.37.[11]

Petitioner then filed its protest to the PAN with the BIR on November 26, 2013.[12]

Another *Waiver* (3rd *Waiver*) was executed by petitioner on November 26, 2013,[13] which indicated that the period of tax assessment and/or collection was now until June 30, 2014. The same was accepted by OIC-ACIR Misajon on November 28, 2013.[14]

On December 21, 2013, petitioner received a *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies* and *Audit Result/Assessment Notices* (FANs). In the FLD, respondent ordered petitioner to settle the alleged deficiency IT, VAT, and EWT in the total amount of ₱902,560,270.47.[15]

Petitioner then protested the findings stated in the FLD and FANs in its letter dated January 20, 2014 which was filed with the BIR on even date.[16]

Thereafter, on July 4, 2016, petitioner received a *Final Decision on Disputed Assessment* (FDDA) with attached *Details of Discrepancies* and FANs. In the FDDA, respondent ordered

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[10] Docket, Vol. 1, Par. 6, Stipulated Facts, JSFI, p. 396; Docket – Vol. 3, Exhibit "P-10", p. 1274; BIR Records (Folder 1), Exhibit "R-7", p. 1014.
[11] *Id.*, Vol. 1, Par. 7, Stipulated Facts, JSFI, p. 396; Docket – Vol. 3, Exhibit "P-4", pp. 1208 to 1213; BIR Records (Folder 1), Exhibit "R-10", pp. 1033 to 1038.
[12] *Id.*, Vol. 3, Exhibit "P-5", pp. 1223 to 1236.
[13] *Id.*, Vol. 1, Par. 8, Stipulated Facts, JSFI, p. 396.
[14] *Id.*, Vol. 1, Par. 8, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-11", pp. 1275; BIR Records (Folder 1), Exhibit "R-12", p. 1059.
[15] *Id.*, Vol. 1, Par. 9, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-6", pp. 1237 to 1245; BIR Records (Folder 1), Exhibits "R-13", "R-13-A", "R-14", "R-14-A", and "R-14-B", pp. 1050 to 1058.
[16] *Id.*, Vol. 3, Exhibit "P-7", pp. 1246 to 1260.

petitioner to pay the alleged deficiency IT, VAT, and EWT, for CY 2009, in the aggregate amount of ₱182,629,162.63.[17]

On August 2, 2016, petitioner filed the instant *Petition for Review.*[18] The case was originally raffled to the Third Division of this Court.

Petitioner thereafter filed a *Motion for Leave to File Supplemental Petition for Review,*[19] with attached *Supplemental Petition for Review*[20] on August 26, 2016. No comment thereon was filed by respondent.[21]

On September 7, 2016, a *Motion to Admit Answer,*[22] with attached *Answer,*[23] was posted by respondent, interposing the following special and affirmative defenses, to wit:

1. The waivers, duly executed by petitioner's duly authorized representative, extended the period to assess petitioner;

2. Petitioner is liable for deficiency Income Tax;

3. Petitioner is liable for deficiency Value Added Tax;

4. Petitioner is liable for deficiency Expanded Withholding Tax; and

5. The compromise penalty was included as a suggestion for petitioner to avoid criminal prosecution.

Respondent filed his *Supplemental Answer* on September 19, 2016, specifically denying paragraphs 1 to 12 of petitioner's *Supplemental Petition for Review.*[24]

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[17] Docket, Vol. 1, Par. 10, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-8", pp. 1261 to 1272; BIR Records (Folder 1), Exhibits "R-16", "R-16-A", "R-17", "R-17-A", "R-17-B", and "R-17-C", pp. 1082 to 1093.
[18] *Id.*, Vol. 1, pp. 10 to 39.
[19] *Id.*, Vol. 1, pp. 150 to 155.
[20] *Id.*, Vol. 1, pp. 156 to 163.
[21] *Id.*, Vol. 1, Records Verification Report dated September 21, 2016 issued by the Judicial Records Division of this Court, p. 189.
[22] *Id.*, Vol. 1, Vol. 1, pp. 166 to 169.
[23] *Id.*, Vol. 1, Vol. 1, pp. 171 to 182.
[24] *Id.*, Vol. 1, pp. 185 to 188.

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On October 6, 2016, petitioner filed its *Comment (Re: Motion to Admit Answer) (With Motion to Declare Respondent in Default)*;[25] while respondent posted his *Reply to Comment to Respondent's Motion to Admit Answer* on October 14, 2016.[26]

In the Resolution dated November 23, 2016,[27] the Court: (1) granted petitioner's *Motion for Leave to File Supplemental Petition for Review* with attached *Supplemental Petition for Review* filed on August 26, 2016; (2) admitted the attached *Supplemental Petition for Review* to form part of the records of the case; (3) granted respondent's *Motion to Admit Answer*; and (4) admitted the attached *Answer* to form part of the records of the case.

The Pre-Trial Conference was set and held on March 21, 2017.[28] Prior thereto, *Respondent's Pre-Trial Brief* was filed on March 9, 2017,[29] while *Petitioner's Pre-Trial Brief* was filed on March 16, 2017.[30]

In the meantime, respondent transmitted the *BIR Records* of this case on January 6, 2017.[31]

On May 5, 2017, the parties filed their *Joint Stipulation of Facts and Issues*.[32] Consequently, the Court then issued the Pre-Trial Order dated May 15, 2017,[33] which terminated the Pre-Trial Conference.

As trial ensued, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Rowena C. Africa,[34] petitioner's Finance Manager; and (2) Michael L. Aguirre,[35] the

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[25] Docket, Vol. 1, Vol. 1, pp. 191 to 197.
[26] *Id.*, Vol. 1, Vol. 1, pp. 198 to 202.
[27] *Id.*, Vol. 1, Vol. 1, pp. 205 to 207.
[28] *Id.*, Vol. 1, *Notice of Pre-Trial Conference* dated November 25, 2016, pp. 208 to 209; Docket – Vol. 1, Minutes of the hearing held on, and Order dated, March 21, 2017, pp. 380, and 382 to 383, respectively.
[29] *Id.*, Vol. 1, pp. 217 to 221.
[30] *Id.*, Vol. 1, pp. 222 to 237.
[31] *Id.*, Vol. 1, *Manifestation (Re: Submission of BIR Records)* dated January 5, 2017, pp. 213 to 214.
[32] *Id.*, Vol. 1, pp. 395 to 408.
[33] *Id.*, Vol. 1, pp. 414 to 422.
[34] *Id.*, Vol. 1, Exhibit "P-29", pp. 241 to 262; Docket, Vol. 3, Minutes of the hearing held on, and Order dated, July 11, 2017, pp. 1144 to 1145.
[35] *Id.*, Vol. 3, Exhibit "P-31", pp. 1149 to 1172; Docket, Vol. 3, Minutes of the hearing held on, and Order dated, August 8, 2017, pp. 1173 to 1174.

Court-commissioned Independent Certified Public Accountant (ICPA).[36]

The *Report* of the ICPA was submitted on July 14, 2017.[37]

On September 7, 2017, petitioner filed its *Formal Offer of Evidence (with Motion to Recall Witness).*[38] No comment was filed thereon by respondent.[39]

In the Resolution dated October 19, 2017,[40] the Court: (1) granted petitioner's *Motion to Recall Witness*; (2) set the case for the recall of witness, Ms. Rowena C. Africa, on February 26, 2018; (3) directed petitioner to submit the Judicial Affidavit of the said witness at least five (5) days before the scheduled hearing; and (4) held in abeyance the resolution on petitioner's *Formal Offer of Evidence.*

On February 26, 2018, petitioner recalled Ms. Africa to the witness stand.[41]

Thereafter, petitioner submitted its *Supplemental Formal Offer of Evidence* on March 5, 2018.[42] However, no comment was filed thereon by respondent.[43]

The Court, in its Resolution dated May 18, 2018,[44] admitted petitioner's Exhibits, *except* for Exhibits "P-26-A", "P-29.1-A", and "P-31-A", as they are not found in the records of the case.

Consequently, petitioner filed a *Motion for Reconsideration (Re: Resolution dated May 18, 2018)* on June

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[36] Docket, Vol. 1, *Oath of Commission* dated June 13, 2017, p. 445; Docket, Vol. 1, Minutes of the hearing held on, and Order dated, June 13, 2017, pp. 444 and 446, respectively.
[37] *Id.*, Vol. 1, Exhibit "P-30", pp. 467 to 500, continued to Docket, Vol. 2, pp. 501 to 504.
[38] *Id.*, Vol. 3, pp. 1180 to 1202.
[39] *Id.*, Vol. 3, Records Verification Report dated October 3, 2017 issued by the Judicial Records Division of this Court, p. 1326.
[40] *Id.*, Vol. 3, pp. 1330 to 1331.
[41] *Id.*, Vol. 3, Minutes of the hearing held on, and Order dated, February 26, 2018, pp. 1355 to 1356; Docket, Vol. 3, Exhibit "P-35", pp. 1335 to 1339.
[42] *Id.*, Vol. 3, pp. 1357 to 1360.
[43] *Id.*, Vol. 3, Records Verification Report dated March 22, 2018 issued by the Judicial Records Division of this Court, p. 1361.
[44] *Id.*, Vol. 3, pp. 1367 to 1369.

11, 2018.[45] Respondent did not file any comment/opposition thereto.[46]

Pursuant to the Order dated September 25, 2018,[47] the instant case was transferred to the First Division of this Court.

In the Resolution dated October 1, 2019,[48] the Court: (1) granted petitioner's *Motion for Reconsideration (Re: Resolution dated May 18, 2018)*; and (2) admitted petitioner's Exhibits "P-26-A", "P-29.1-A" and "P-31-A", as part of the records of the case.

Respondent likewise set forth his documentary and testimonial evidence. He offered the sole testimony of Mr. Jan Andre Abellera,[49] a Revenue Officer II of the BIR.

Subsequently, on December 12, 2019, respondent posted his *Formal Offer of Evidence.*[50] Petitioner submitted its *Comment (Re: Respondent's Formal Offer of Evidence)* on January 22, 2020.[51] In the Resolution dated February 26, 2020,[52] the Court admitted respondent's Exhibits, and directed the parties to submit their respective memorandum within thirty (30) days from receipt of the said Resolution.

Petitioner then filed its *Memorandum* on June 26, 2020,[53] while respondent's *Memorandum* was posted on July 1, 2020.[54]

On July 23, 2020, this case was submitted for decision.[55]

ISSUES

The parties submitted the following issues to be resolved by this Court, to wit:

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[45] Docket, Vol. 3, pp. 1372 to 1378.
[46] *Id.*, Vol. 3, Records Verification Report dated July 19, 2018 issued by the Judicial Records Division of this Court, p. 1398.
[47] *Id.*, Vol. 3, p. 1402.
[48] *Id.*, Vol. 3, pp. 1406 to 1408.
[49] *Id.*, Vol. 3, Exhibit "R-19", pp. 1387 to 1397; Docket – Vol. 3, Minutes of the hearing held on, and Order dated, December 10, 2019, pp. 1415 to 1420.
[50] Docket, Vol. 3, pp. 1425 to 1430.
[51] *Id.*, Vol. 3, pp. 1438 to 1442.
[52] *Id.*, Vol. 3, pp. 1448 to 1449.
[53] *Id.*, Vol. 3, pp. 1450 to 1503.
[54] *Id.*, Vol. 3, pp. 1504 to 1518.
[55] *Id.*, Vol. 3, Resolution dated July 23, 2020, p. 1521.

"For Petitioner:

I. Whether or not Respondent's right to assess Petitioner for deficiency income tax, VAT, and EWT for CY 2009 has prescribed.

II. Assuming for the sake of argument, that Respondent's right to assess Petitioner for deficiency taxes for CY 2009 has not yet prescribed, whether or not the assessment for the alleged deficiency income tax, VAT, and EWT for CY 2009 has factual and legal basis.

III. Whether or not Petitioner is liable to pay compromise penalty on the alleged deficiency income tax, VAT, and EWT.

For Respondent:

I. Whether petitioner can still invoke the defense of prescription despite its voluntary execution of several Waivers of the Defense of Prescription."[56]

Petitioner's Arguments

Petitioner argues that the deficiency tax assessments are null and void for having been issued in violation of petitioner's right to due process; that respondent's right to assess petitioner for deficiency IT, VAT, and EWT, for CY 2009 had already prescribed; that assuming respondent's right to assess petitioner for deficiency taxes has not yet prescribed, the deficiency IT, VAT and EWT assessments should be cancelled for lack of factual and legal bases; and that petitioner may not be compelled to pay the subject compromise penalty.

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[56] Docket, Vol. 1, Issue, JSFI, p. 397.

Respondent's Arguments

Respondent posits that the *Waivers* duly executed by petitioner's duly authorized representatives had validly extended the period to assess petitioner; and that petitioner is liable for deficiency IT, VAT, EWT, and compromise penalties.

RULING OF THE COURT

The instant *Petition for Review* is meritorious.

Failure to revalidate an LOA does not render it void.

Petitioner claims that the revenue officers named in the LOA violated the provisions of RMO No. 38-88, since their tax audit or investigation went beyond one hundred twenty (120) days from the date of the issuance thereof on May 14, 2010, and without being revalidated, thereby making the subject assessments void.

The Court is not convinced.

RMO No. 38-88,[57] reads:

> "This Order aims to set the guidelines on the revalidation of Letters of Authority (LAs) for a more effective and efficient investigation and reporting on cases:
>
> The following are henceforth prescribed:
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> 1. Revalidation of Letters of Authority shall be limited to only once in the regional offices and twice in the National Office after issuance of the original LA.
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> 2. A revalidation shall be covered by the issuance of a new Letter of Authority under the name(s) of the same investigating officer(s), and the superseded LA(s) shall be attached to the new LA issued.
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> 3. Requests for revalidation shall be supported with a progress report on the case and a justification for said revalidation.

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[57] SUBJECT: Guidelines on Revalidation of Letters of Authority.

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4. The Division Chief/RDO shall indorse the request for revalidation which shall be duly approved or disapproved by the Assistant Commissioner (SOS)/Regional Director.

5. The Division Chief/RDO shall be responsible for the monthly monitoring of LAs issued to ensure that reports are rendered within the reglementary 120-day period. The Division Chief/RDO shall be jointly responsible with the REOs for cases with LAs pending beyond the 120-day period.

6. It shall be the duty of the Division Chief/RDO to report immediately to the Inspection Service any tax case for which no report of investigation has been rendered 120 days after the issuance of an LA."

It is clear that RMO No. 38-88 governs the revalidation of LOAs. However, there is nothing in the said administrative issuance which indicates that an LOA will be rendered void if not revalidated within the prescribed 120-day period.

In any event, Revenue Memorandum Circular (RMC) No. 23-2009[58] categorically states that failure on the part of the revenue officer to request for revalidation of an LOA or upon the expiration of the "revalidation period" does not nullify the LOA, nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. RMC No. 23-2009 states, in part, as follows:

"I. Revalidation of LAs

The revalidation of LA shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. **Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.** However, this shall be considered as a ground for the

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[58] SUBJECT: Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division.

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> imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary." *(Emphasis added)*

Thus, considering that the subject LOA was issued on May 14, 2010,[59] the above-quoted provisions of RMC No. 23-2009 dated April 16, 2009 must already govern the instant case, as the same was already in full effect at the time of the issuance of the subject LOA. Correspondingly, the lack of revalidation of the subject LOA, despite the lapse of the 120-day period, does not nullify the same.

The subject Waivers are not valid, and thus, could not have extended the 3-year period to assess petitioner.

According to respondent, the *Waivers* executed by petitioner's duly authorized representative validly extended the period to assess petitioner.

We disagree with respondent.

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.* — **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." *(Emphases and underscoring added)*

[59] Par. 4, Stipulated Facts, JSFI, Docket – Vol. 1, p. 396; Exhibit "P-3", Docket – Vol. 3, p. 1205; Exhibit "R-1", BIR Records (Folder 1), p. 605.

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Based on the foregoing provision, except as provided in Section 222 of the NIRC of 1997, the government may 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. Hence, an assessment notice issued after such period is no longer valid and effective.

By way of an exception, under Section 222 of the NIRC of 1997, there are instances when the government may assess pertinent taxes against taxpayers even beyond the said three (3)-year prescriptive period. Said provision reads as follows:

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

Pursuant to Section 222(a) of the 1997 NIRC, as amended, in case of a false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission.

Moreover, under Section 222(b) of the 1997 NIRC, as amended, the three-year prescriptive period under Section 203 of the same law may be extended, if before the 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.

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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.[60] 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.[61] The *Waiver* must faithfully comply with the provisions of RMO No. 20-90[62] and Revenue Delegation Authority Order No. 05-01[63] in order to be valid and binding.[64]

Relative to the validity of *Waivers*, in *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* [65] (*La Flor* case), 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.*,[66] 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:
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>> **<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.
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[60] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[61] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, 634 Phil. 314 (2010).

[62] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, April 4, 1990.

[63] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, August 2, 2001.

[64] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

[65] G.R. No. 211289, January 14, 2019.

[66] G.R. No. 220835, July 26, 2017.

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> **The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because:** (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) **they did not specify the kind and amount of the tax due**; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.
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> 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:
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> > 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 added)*

Based on the foregoing jurisprudence, it is required, *inter alia*, that for a *Waiver* to be valid and to have the effect of extending the three-year prescriptive period to assess under Section 203 of the NIRC of 1997, **it must indicate the nature and the amount of the tax due.** According to the High court, these details are material as there can be no true and valid agreement between the taxpayer and respondent absent said information.

Just as in the *La Flor* case, the subject *Waivers* would readily reveal that they do not indicate the kind and exact amount of the taxes to be assessed or collected.[67] Thus, the same did not validly extend respondent's right to assess petitioner beyond the three (3)-year prescriptive period under Section 203 of the NIRC of 1997.

Nonetheless, in his *Answer,* respondent argues that the said *Waivers* were supposed to "extend the period of assessment for the conduct of the audit and investigation of all internal revenue tax liabilities of petitioner for taxable year 2009" and "the amount of which cannot be determined at that time since the audit and investigation was still on going."[68]

We do not agree.

It is the duty of this Court to obey decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[69] As eloquently declared by Justice J.B.L. Reyes, *"There is only one Supreme Court from whose decisions all other courts should take their bearings."* [70] Thus, the *La Flor* case must be followed.

In any event, We find respondent's arguments untenable.

It has already been established that in the absence of the accounting records of a taxpayer, the latter's tax liability may be determined by estimation; that respondent is not required to compute such tax liabilities with mathematical exactness; and that approximation in the calculation of the taxes due is

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[67] Docket, Vol. 3, Exhibits "P-9", "P-10" and "P-11" pp. 1273 to 1275.
[68] *Id.*, Vol. 1, Pars. 8 and 9, *Answer*, p. 173.
[69] Refer to *Manila Electric Company vs. Philippine Consumers Foundation, Inc., et al.*, G.R. No. 101783, January 23, 2002.
[70] *Id.*

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justified.[71] Moreover, it has been held that even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously.[72]

Such being the case, if a reasonable estimation of assessed tax liabilities is allowed in the absence of the taxpayer's accounting records, We see no valid reason not to expect an estimate of tax liabilities from the BIR to be reflected in a *Waiver*, pending the investigation of a taxpayer whose books and records are open for scrutiny and inspection. This especially holds true if the tax investigation has long been dragging, as in this case.

It is likewise noted that the subject LOA has been received by petitioner on May 18, 2010,[73] which commenced the tax investigation of petitioner; and that the *1st Waiver* was accepted by the BIR on November 27, 2012.[74] Thus, from the commencement of the said tax investigation until the acceptance of petitioner's *1st Waiver*, a period of more than two (2) years and six (6) months had already passed. Given this period and the availability of petitioner's books and records, the BIR examiners should have been able to identify, albeit partially, determine the possible deficiency taxes and the corresponding amounts thereof.

The expectation to have the estimated tax liabilities of petitioner pre-determined by the respondent, became even more pronounced when the BIR accepted the 2nd *Waiver* on May 31, 2013.[75] By this time, the BIR had been conducting the tax investigation of petitioner for more than three (3) years already. Surely, in that span of time, the estimated deficiency tax liabilities of petitioner, again should at least been partially, determined already.

Moreover, with the BIR's acceptance of the 3rd *Waiver* on November 28, 2013,[76] the period that lapsed from the initial

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[71] Refer to *Manila Electric Company vs. Philippine Consumers Foundation, Inc., et al.*, G.R. No. 101783, January 23, 2002.
[72] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[73] Docket, Vol. 1, Par. 4, Stipulated Facts, JSFI, p. 396.
[74] *Id.*, Vol. 1, Par. 5, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-9", p. 1273; BIR Records (Folder 1), Exhibit "R-6", p. 707.
[75] *Id.*, Vol. 1, Par. 6, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-10", p. 1274; BIR Records (Folder 1), Exhibit "R-7", p. 1014.
[76] *Id.*, Vol. 1, Par. 8, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-11", pp. 1275; BIR Records (Folder 1), Exhibit "R-12", p. 1059.

service of the LOA up to said date was already more than three (3) years and six (6) months. Prior to such acceptance or on November 7, 2013, petitioner received the PAN dated October 23, 2013 containing the proposed deficiency income tax, VAT and EWT assessments in the aggregate amount of ₱868,311,285.37.[77] Thus, it is highly inexcusable for the BIR not to indicate the kind and exact amount of the taxes to be assessed or collected in the said 3rd *Waiver*, since it had already come up with "proposed" deficiency tax assessments.

In fine, considering that the kind and exact amount of the taxes to be assessed or collected were not indicated in the subject *Waivers*, the same are invalid, and did not have the effect of extending the period to assess under Section 203 in relation to Section 222 of the NIRC of 1997, pursuant to the *La Flor* case.

Finding the subject *Waivers* invalid, this Court shall proceed to analyze the provisions of the law or regulations prescribing the period within which to file the pertinent tax returns as they apply to the instant case.

Pursuant to Section 77(B) of the NIRC of 1997, the filing of corporate income tax final adjustment return shall be on or before the 15th day of April, or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be, to wit:

> "(B) *Time of Filing the Income Tax Return.* — The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may."

Thus, for CY 2009, petitioner must have filed its Annual Income Tax Return on or before April 15, 2010.

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[77] Docket, Vol. 1, Par. 7, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-4", pp. 1208 to 1213; BIR Records (Folder 1), Exhibit "R-10", pp. 1033 to 1038.

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With regard to the filing of remittances of EWTs, Section 2.58 of Revenue Regulations (RR) No. 2-98,[78] as amended by RR No. 17-03,[79] provides that withholding tax returns, 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 the month of December of each year, in which case shall be filed on or before January 15 of the following year, *viz.:*

> "Sec. 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) **For both large and non-large taxpayers, the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx." *(Emphases added)*

Thus, petitioner's withholding tax remittance returns for the twelve (12) months of taxable year 2009 should be filed within ten (10) days after the end of each month, except for the month of December 2009, in which case the said Return must be filed on or before January 15, 2010.

Finally, with respect to the filing of VAT, Section 114(A) of the NIRC of 1997, as amended, and as implemented by

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[78] SUBJECT: Implementing Republic Act No. 8424, "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, April 17, 1998.

[79] SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes, March 31, 2003.

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Section 4.114-1 of RR No. 16-05,[80] provides that every person liable to pay VAT shall file a return of its quarterly gross sales or receipts within 25 days following the close of the taxable quarter.

Section 114 of the NIRC of 1997, as amended, provides:

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

Section 4.114-1 of RR No. 16-05 states:

> "SECTION 4.114-1. *Filing of Return and Payment of VAT.* —
>
> (A) Filing of Return. **— Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return.** The term 'taxable quarter' shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e., the calendar quarter or fiscal quarter).
>
> Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter."

Applying the foregoing, as per petitioner's tax returns, the last day for filing of petitioner's tax returns, the date of actual filing of the same and the end of the three (3)-year prescriptive period for respondent to assess petitioner, are shown as follows:

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[80] SUBJECT: Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

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Exhibit	Form	Period Covered	Last Day for Filing (month/day/year)	Actual Date of Filing (month/day/year)	End of three (3) Years (month/day/year)
Income Tax					
"P-12"[81]	1702	2009	4/15/2010	4/14/2010	4/15/2013
Expanded Withholding Tax					
"P-17"[82]	1601-E	January 2009	2/10/2009	2/12/2009	2/12/2012
"P-18"[83]	1601-E	February 2009	3/10/2009	3/12/2009	3/12/2012
"P-19"[84]	1601-E	March 2009	4/10/2009	4/13/2009	4/13/2012
"P-20"[85]	1601-E	April 2009	5/10/2009	1/20/2010*	1/20/2013
"P-21"[86]	1601-E	May 2009	6/10/2009	1/20/2010*	1/20/2013
"P-22"[87]	1601-E	June 2009	7/10/2009	1/20/2010*	1/20/2013
"P-23"[88]	1601-E	July 2009	8/10/2009	8/10/2009	8/10/2012
"P-24"[89]	1601-E	August 2009	9/10/2009	9/12/2009	9/12/2012
"P-25"[90]	1601-E	September 2009	10/10/2009	10/10/2009	10/10/2012
"P-26"[91]	1601-E	October 2009	11/10/2009	11/13/2009	11/13/2012
"P-27"[92]	1601-E	November 2009	12/10/2009	12/13/2009	12/13/2012
"P-28"[93]	1601-E	December 2009	1/15/2010	1/12/2010	1/15/2013
Value-Added Tax					
"P-13"[94]	2550-Q	1st Quarter	4/25/2009	7/27/2009	7/27/2012
"P-14"[95]	2550-Q	2nd Quarter	7/25/2009	7/29/2009	7/29/2012
"P-15"[96]	2550-Q	3rd Quarter	10/25/2009	10/26/2009	10/26/2012
"P-16"[97]	2550-Q	4th Quarter	1/25/2010	1/25/2010	1/25/2013
***amended returns**					

In this case, the undated FLD and FANs was received by petitioner only on December 21, 2013.[98] Thus, in view of the

[81] Docket – Vol. 3, pp. 1276 to 1277.
[82] *Id.*, Vol. 3, pp. 1286 to 1287.
[83] *Id.*, Vol. 3, pp. 1290 to 1291.
[84] *Id.*, Vol. 3, pp. 1288 to 1289.
[85] *Id.*, Vol. 3, pp. 1294 to 1295.
[86] *Id.*, Vol. 3, pp. 1292 to 1293.
[87] *Id.*, Vol. 3, pp. 1296 to 1297.
[88] *Id.*, Vol. 3, pp. 1298 to 1299.
[89] *Id.*, Vol. 3, pp. 1300 to 1301.
[90] *Id.*, Vol. 3, pp. 1302 to 1303.
[91] *Id.*, Vol. 3, pp. 1304 to 1305.
[92] *Id.*, Vol. 3, pp. 1306 to 1307.
[93] *Id.*, Vol. 3, pp. 1308 to 1309.
[94] *Id.*, Vol. 3, pp. 1278 to 1279.
[95] *Id.*, Vol. 3, pp. 1282 to 1283.
[96] *Id.*, Vol. 3, pp. 1280 to 1281.
[97] *Id.*, Vol. 3, pp. 1284 to 1285.
[98] *Id.*, Vol. 1, Par. 9, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-6", pp. 1237 to 1245.

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end of the respective three (3)-year prescriptive period as shown above, there is no doubt that the FLD and FANs were issued beyond the said prescriptive period to assess under Section 203 of the NIRC of 1997, thereby rendering the assessments for deficiency income, EWT and VAT against petitioner void.[99] Consequently, the FDDA[100] which sprung from the void FLD and FANs, is likewise void and should be set aside.

The deficiency tax assessments are a nullity for failure to state the due date for the payment of said tax liabilities.

In the *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (*Fitness By Design*) case,[101] the Supreme Court ruled:

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

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[99] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[100] Docket, Vol. 1, Par. 10, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-8", pp. 1261 to 1272; BIR Records (Folder 1), Exhibit "R-16", pp. 1082 to 1093; Q-32 &A; Docket, Vol. 1, Exhibit "P-29", p. 247.
[101] G.R. No. 215957, November 9, 2016.

The disputed Final Assessment Notice is not a valid assessment.

<u>First</u>, 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 tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation 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)

<u>Second</u>, 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**.

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

Based on the foregoing, a valid tax assessment must not only contain a computation of tax liabilities, it must also include a demand upon the taxpayer for the settlement of a tax liability that is definitely set and fixed. It is further required that the due date in the final assessment notice be stated.

A careful scrutiny of the subject undated FLD and FANs[102] reveals that said undated FLD does not contain any due date for the payment of the assessed taxes. Neither does this Court find any due date in the corresponding undated Audit Result/Assessment Notice Nos. IT-116-LOA-000094-09-13-212,[103] IT-116-LOA-000094-09-13-214[104] and IT-116-LOA-000094-09-13-213.[105] Particularly, the respective space in these FANs where the due date is to be stated "remained unaccomplished", similar to the *Fitness By Design case.*

Verily, the subject tax assessments are indeed void. It must be emphasized that a void assessment bears no valid fruit.[106] Such being the case, the subject tax assessments cannot be enforced against petitioner.

Petitioner is not liable to pay the subject compromise penalty.

Since the subject deficiency IT, VAT and EWT assessments are declared void, petitioner cannot likewise be held liable for the compromise penalty in the amount of

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[102] Docket, Vol. 1, Par. 9, Stipulated Facts, JSFI, p. 396; Docket, Vol. 3, Exhibit "P-6", pp. 1237 to 1245; BIR Records (Folder 1), Exhibits "R-13", "R-13-A", "R-14", "R-14-A", and "R-14-B", pp. 1050 to 1058.

[103] Docket, Vol. 1, Exhibit "P-6", p. 1243; BIR Records (Folder 1), Exhibit "R-14", p. 1052.

[104] *Id.*, Vol. 1, Exhibit "P-6", p. 1244; BIR Records (Folder 1), Exhibit "R-14-A", p. 1051.

[105] *Id.*, Vol. 1, Exhibit "P-6", p. 1245; BIR Records (Folder 1), Exhibit "R-14-B", p. 1050.

[106] Refer to *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

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₱150,000.00.[107] Nevertheless, it must be stressed that a compromise is, by its nature, mutual in essence.[108] It implies agreement. One party cannot impose it upon the other.[109] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[110] Considering that there is no indication that petitioner consented to the subject compromise penalty, the said amount cannot be sustained.

In view of the finding that the subject tax assessments are void, the Court no longer finds it necessary to discuss the other arguments raised by the parties in this case.

WHEREFORE, in light of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the undated FLD and FANs, assessing petitioner for deficiency IT, VAT, EWT and compromise penalty, for calendar year 2009, in the aggregate amount of ₱902,560,270.47 are **CANCELLED** and **SET ASIDE**.

Furthermore, the undated *FDDA* issued by respondent demanding the payment of deficiency IT, VAT, EWT and compromise penalty in the aggregate amount of ₱182,629,162.63 is **REVERSED** and **SET ASIDE**.

Respondent, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner arising from the undated FLD, FANs, and FDDA.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[107] Docket, Vol. 3, Exhibit "P-8", p. 1268; BIR Records (Folder 1), Exhibit "R-17-c", p. 1082.
[108] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue,* G.R. No. 138485, September 10, 2001.
[109] *Commissioner of Internal Revenue vs. Abad, et al.,* G.R. No. L-19627, June 27, 1968.
[110] Refer to Part III.4, Revenue Memorandum Order No. 7-2015.

I CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PHILUSA CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9409

Members:

DEL ROSARIO, *P.J., Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

MAY 31 2021 9:26am

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CONCURRING OPINION

I concur in the grant of the Petition for Review and the cancellation and setting aside of the undated Formal Letter of Demand, with attached Assessment Notices, issued against petitioner assessing it for deficiency taxes for the calendar year 2009 ***solely*** on the ground that the aforesaid Formal Letter of Demand and Assessment Notices are void for their **failure to demand payment of the tax due within a specific period.**

A final assessment notice must not only indicate the legal and factual bases of the assessment **but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period**.[1] Absent a valid demand, as in this case, the Formal Letter of Demand and Assessment Notices are fatally infirm. Being void assessments, they bear no fruit[2] and must be slain at sight.

All told, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] *Commissioner of Internal Revenue vs. Fitness By Design,* G.R. No. 215957, November 9, 2016.
[2] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.