REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

3M PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8147**
	Members:
- versus -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 15 2015

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AMENDED DECISION

RINGPIS-LIBAN, *J*.:

For this Court's resolution are the following:

1. Petitioner's **Motion For Partial Reconsideration**, filed by registered mail on November 11, 2014, with respondent's **Comment (To Petitioner's Motion For Partial Reconsideration)**, filed by registered mail on February 12, 2015, and petitioner's **REPLY (To Respondent's Comment dated February 6, 2015)**, filed on February 23, 2015; and

2. Respondent's **Motion For Partial Reconsideration (of the Decision promulgated on 22 October 2014)**, filed by registered mail on November 12, 2014, with petitioner's **COMMENT (To the BIR's Motion for Partial Reconsideration dated November 11, 2014)**, filed by registered mail on January 20, 2015.

Both petitioner and respondent move for the partial reconsideration of the Decision promulgated on October 22, 2014, the dispositive portion of which reads:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of ₱5,554,067.05 and ₱1,626,241.85 representing its erroneous payment of its deficiency Income Tax and deficiency VAT for taxable year 2002, or total amount of ₱7,180,308.90.

SO ORDERED."

<u>Petitioner's Motion for Partial Reconsideration</u>

Petitioner argues that it is entitled to the refund of the entire amount of ₱13,250,152.55 it paid under protest pursuant to the subject Preliminary Assessment Notice (PAN) based on the following grounds:

1. The totality of testimonial and documentary evidence presented by the parties conclusively established that petitioner filed its 2002 tax returns for withholding tax – expanded, withholding tax – compensation, withholding tax – final, final withholding tax – VAT, and fringe benefit tax.

2. Assuming arguendo that petitioner did not establish that it filed the corresponding tax returns for withholding tax – expanded, withholding tax – compensation, withholding tax – final, final withholding tax – VAT, and fringe benefit tax for 2002, the right of the BIR to assess petitioner of any deficiency taxes has nonetheless prescribed.

3. The disallowance of ₱6,069,843.65 indirectly allowed respondent to collect taxes which are already barred not only by prescription but also by laches.

4. The disallowance of ₱6,069,843.65 is erroneous, considering that denial thereof gave the Government the authority to collect deficiency taxes from petitioner despite the absence of a validly issued final assessment.

Respondent moves for the denial of petitioner's motion, arguing that petitioner voluntarily paid the assessed 2002 deficiency taxes, thus, there was no erroneously paid or illegally collected taxes that may be the subject of a claim. She also contends that the burden is on the taxpayer to prove its entitlement to the refund and petitioner in this case failed to prove both the facts and the law on which its claim for refund is based.

Petitioner, in its Reply, asserts that its payment of ₱13,250,152.55 last August 14, 2008 was a payment under protest, not a voluntary payment and that the same is the proper subject of a claim for refund. It also reiterates that it proved the filing of its 2002 tax returns for withholding tax – expanded, withholding tax – compensation, withholding tax – final, final withholding tax – VAT, and fringe benefit tax. Petitioner attached in its Reply, a BIR Certification dated November 12, 2014 confirming that petitioner filed its 2002 returns for and paid the applicable withholding tax – expanded, withholding tax – compensation, withholding tax – final, final withholding tax – VAT, and fringe benefit tax.

Respondent's Motion for Partial Reconsideration

Respondent raises the following grounds:

1. No FAN was issued because there are no more tax liabilities to assess and hence, there is nothing to demand.

2. There is no erroneous or illegally collected taxes (*sic*).

3. The only rationalization derived from the alleged invalidity of waivers is irrelevant.

Petitioner opposes respondent's motion based on the following arguments:

1. Petitioner's payment of ₱13,250,152.55 last August 14, 2008 was a payment under protest, not a voluntary payment, necessitating the issuance of a Final Assessment Notice.

2. The right of the BIR to (i) issue a Preliminary Assessment Notice and Final Assessment Notice, and (ii) assess and collect any deficiency internal taxes against petitioner for taxable year ended 2002 has already prescribed because the waivers sought by the respondent were legally infirm.

3. Considering that there were no validly issued tax assessments against which the ₱13,250,152.55 may be applied, petitioner is entitled to the full refund thereof.

We **PARTIALLY GRANT** petitioner's Motion for Partial Reconsideration, and **DENY** respondent's Motion for Partial Reconsideration.

After a careful study of the arguments proffered by both parties in their respective pleadings, the Court finds for petitioner.

In the assailed Decision, out of the ₱13,250,152.55 originally prayed for, only the amount of ₱7,180,308.90 was allowed to be refunded. The remainder was denied refund for failure of petitioner to present relevant documents, such as tax returns concerning deficiency withholding taxes on compensation, final taxes, and fringe benefit taxes. The portion of the assailed Decision reads:

> "Records disclose that petitioner submitted before this Court its Annual Income Tax Return (ITR) and Quarterly VAT Returns for taxable year 2002 as evidence in support of its claim that respondent's right to make an assessment for deficiency income tax and deficiency VAT for the same taxable year had already been barred by prescription.
>
> <u>Incidentally, no evidence was offered to this Court to support the same in connection with deficiency fringe benefit taxes. Tax returns concerning deficiency withholding taxes on compensation income and deficiency final taxes were denied admission by this Court because petitioner failed to present the originals for comparison in a Resolution dated November 9, 2012.</u>
>
> Therefore, due to petitioner's failure to present before this Court all relevant documents, only the amounts of ₱5,554,067.05 and ₱1,626,241.85 representing assessments for deficiency Income Tax and VAT shall be considered in determining whether the statute of limitations set forth in Section 203 of the NIRC, as amended, has set in." *(Underscoring ours)*

The Court ruled that respondent's right to assess petitioner for deficiency income taxes and VAT for taxable year 2002 has already prescribed. Meanwhile, the claim for refund relative to withholding tax – expanded (EWT), withholding tax – compensation (WTC), withholding tax – final (FWT) , final withholding tax – VAT (FWT-VAT), and fringe benefit tax (FBT), was denied for failure to provide the required returns for determination of whether the statute of limitations has set in.

Upon a thorough evaluation of the parties' arguments and re-examination of the records of this case, the Court is convinced that there is sufficient basis to rule that the right of respondent to assess petitioner deficiency taxes on EWT, WTC, FWT, FWT-VAT, and FBT for taxable year 2002 has prescribed.

The Court reiterates that the four (4) Waivers executed to extend the period to assess were all defective. In addition to the defects mentioned in the assailed Decision, the date of acceptance by respondent of the first waiver was not indicated. While the first waiver was found to be defective, necessarily, the second, third and fourth waivers were of no use as there were no more periods to extend. Since the Waivers in this case are defective and thus invalid, the said waivers produce no effect; hence, the prescriptive period for assessment and collection of alleged deficiency taxes for taxable year 2002 was never suspended or tolled.

In the recent case of *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated*,[1] the Supreme Court was emphatic on the strict observance of the requisites of a valid waiver, it held:

> "The statute of limitations on the right to assess and collect a tax means that once the period established by law for the assessment and collection of taxes has lapsed, the government's corresponding right to enforce that action is barred by provision of law.
>
> **The period to assess and collect deficiency taxes may be extended only upon <u>a written agreement</u> between the CIR and the taxpayer prior to the expiration of the three-year prescribed period** in accordance with Section 222 (b) of the NIRC. In relation to the implementation of this provision, the CIR issued Revenue Memorandum Order (RMO) No. 20-90 10 on 4 April 1990 to provide guidelines on the proper execution of the Waiver of the Statute of Limitations. In the execution of this waiver, the following procedures should be followed:
>
> xxx xxx xxx
>
> In Philippine Journalist, Inc. v. Commissioner of Internal Revenue, the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.

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[1] G.R. No. 187589, December 3, 2014.

To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally."[2]

It is clear that the period to assess and collect deficiency taxes *may only be extended by a written agreement*, and not by any mode of action. Here, the defective Waivers were intended to extend the period of assessment up to the following dates:

WAIVER	Date to which Period to Assess is extended
1st	April 15, 2006[3]
2nd	April 15, 2007[4]
3rd	December 31, 2007[5]
4th	December 31 , 2008[6]

Since these Waivers did not extend the period to assess, consequently, the PAN dated August 4, 2008, received by petitioner through facsimile on August 14, 2008 and the hard copy on September 24, 2008, is null and void. PAN was issued beyond the three (3)-year prescriptive period to assess.

Even assuming petitioner failed to file the required returns, the statute of limitations under Section 222 of the National Internal Revenue Code (NIRC) of 1997, as amended, has already set in. We quote the pertinent portions of Section 222, NIRC of 1997 which provide that in case of false or fraudulent return or failure to file a return, the prescriptive period for the BIR to assess a taxpayer for deficiency internal revenue taxes is ten (10) years, to wit:

"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

[2] *Ibid.*
[3] Exhibits "7" and "7-A".
[4] Exhibits "8" and "8-A".
[5] Exhibits "9" and "9-A".
[6] Exhibits "10" and "10-A".

> 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."

Under the BIR rules and regulations, the tax returns for the following tax types must be filed with the BIR on the following dates:

Tax Type	BIR Form	Deadline	Basis
Withholding Tax – Expanded	1601-E	10 days after the end of each month except for taxes withheld for the month of December which shall be filed on or before January 15 of the succeeding year.	Sec. 2.58(A)(2), RR. No. 02-1998, as amended
Withholding Tax – Compensation	1601-C	10 days after the end of each month except for taxes withheld for the month of December which shall be filed on or before January 15 of the following year	Sec. 2.81, RR. No. 02-1998, as amended
Withholding Tax – Final	1601-F	10 days after the end of each month except for taxes withheld for the month of December which shall be filed on or before January 15 of the following year	Sec. 2.58(A)(2), RR. No. 02-1998, as amended
Final Withholding Tax – VAT	1600	10 days after the end of each month	Sec. 5.116(B), RR. No. 02-1998, as amended
Fringe Benefit Tax	1603	10th day following the calendar quarter in which the fringe benefits were granted	Sec. 5, RR. No. 4-2002

Applying the foregoing to the present case, the right of respondent to assess petitioner for deficiency EWT, WTC, FWT, FWT -VAT, and FBT for taxable year 2002, has already prescribed, to wit:

Withholding Tax - Expanded (BIR Form No. 1601-E)		
Taxable Period	**Deadline**	**Exp. Of 10-Year Period**[7]
January 2002	February 10, 2002	February 10, 2012
February 2002	March 10, 2002	March 10, 2012
March 2002	April 10, 2002	April 10, 2012
April 2002	May 10, 2002	May 10, 2012
May 2002	June 10, 2002	June 10, 2012
June 2002	July 10, 2002	July 10, 2012
July 2002	August 10, 2002	August 10, 2012
August 2002	September 10, 2002	September 10, 2012
September 2002	October 10, 2002	October 10, 2012
October 2002	November 10, 2002	November 10, 2012
November 2002	December 10, 2002	December 10, 2012
December 2002	January 15, 2003	January 15, 2013

Withholding Tax - Compensation (BIR Form No. 1601-C)		
Taxable Period	**Deadline**	**Exp. Of 10-Year Period**
January 2002	February 10, 2002	February 10, 2012
February 2002	March 10, 2002	March 10, 2012
March 2002	April 10, 2002	April 10, 2012
April 2002	May 10, 2002	May 10, 2012
May 2002	June 10, 2002	June 10, 2012
June 2002	July 10, 2002	July 10, 2012
July 2002	August 10, 2002	August 10, 2012
August 2002	September 10, 2002	September 10, 2012
September 2002	October 10, 2002	October 10, 2012
October 2002	November 10, 2002	November 10, 2012
November 2002	December 10, 2002	December 10, 2012
December 2002	January 15, 2003	January 15, 2013

Withholding Tax - Final (BIR Form No. 1601-F)		
Taxable Period	**Deadline**	**Exp. Of 10-Year Period**
January 2002	February 10, 2002	February 10, 2012
February 2002	March 10, 2002	March 10, 2012
March 2002	April 10, 2002	April 10, 2012
April 2002	May 10, 2002	May 10, 2012
May 2002	June 10, 2002	June 10, 2012
June 2002	July 10, 2002	July 10, 2012
July 2002	August 10, 2002	August 10, 2012
August 2002	September 10, 2002	September 10, 2012
September 2002	October 10, 2002	October 10, 2012
October 2002	November 10, 2002	November 10, 2012
November 2002	December 10, 2002	December 10, 2012
December 2002	January 15, 2003	January 15, 2013

[7] A year is composed of twelve (12) calendar months. *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

Final Withholding VAT (BIR Form No. 1600)		
Taxable Period	**Deadline**	**Exp. Of 10-Year Period**
January 2002	February 10, 2002	February 10, 2012
February 2002	March 10, 2002	March 10, 2012
March 2002	April 10, 2002	April 10, 2012
April 2002	May 10, 2002	May 10, 2012
May 2002	June 10, 2002	June 10, 2012
June 2002	July 10, 2002	July 10, 2012
July 2002	August 10, 2002	August 10, 2012
August 2002	September 10, 2002	September 10, 2012
September 2002	October 10, 2002	October 10, 2012
October 2002	November 10, 2002	November 10, 2012
November 2002	December 10, 2002	December 10, 2012
December 2002	January 10, 2003	January 10, 2013

Fringe Benefit Tax (BIR Form No. 1603)		
Taxable Period	**Deadline**	**Exp. Of 10-Year Period**
1st Quarter	April 10, 2002	April 10, 2012
2nd Quarter	July 10, 2002	July 10, 2012
3rd Quarter	October 10, 2002	October 10, 2012
4th Quarter	January 10, 2003	January 10, 2013

Considering the inadmissibility and defectiveness of all four (4) Waivers, the right therefore of respondent to assess petitioner for taxable year 2002 under the 10-year period has already prescribed.

While the PAN was issued by respondent on August 4, 2008, before the lapse of the 10-year prescriptive period, still, respondent has the obligation to issue a FAN as part of due process. We reiterate our ruling, to wit:

> "Second, **regardless of whether or not petitioner treated the PAN as a FAN, since this case is not one where the PAN can be dispensed with under Section 228, this does not discharge the obligation of respondent to issue a FAN -- otherwise known as a Notice of Assessment --together with a Formal Letter of Demand to petitioner.**
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> In *CIR v. Enron Subic Power Corporation*, the Supreme Court clarifies what is required in a Notice of Assessment under the NIRC and RR No. 12-99, thus:
>
> xxx xxx xxx
>
> The ***Enron Case*** brings home three points: First, that **the issuance of a PAN, and subsequently, a FAN, is part of the duties of the CIR in correctly assessing a taxpayer;** Second,

that the mere issuance of a FAN is insufficient if it fails to state the facts and the law on which the assessment is based; and Third, the collection of taxes must comply with the Due Process Clause of the Constitution.

It cannot be stressed enough that in this case, there was no FAN or Notice of Assessment issued by respondent. If jurisprudence and the law have stringent requirements as regards the form in which the FAN is to be issued for due process to be followed, **the omission of the FAN itself, especially when it has been specifically requested by petitioner**, is an obvious indication that the tax collected was without basis." *(Emphasis ours)*

Records show that on August 14, 2008, petitioner paid the alleged deficiency taxes stated in the PAN dated August 4, 2008.[8] In a letter dated August 15, 2008[9], petitioner informed respondent that the payments on August 14, 2008 "*were made without prejudice to its right to file a formal protest on the said assessment upon receipt of the final assessment notice/formal demand letter* xxx"[10].

Since respondent failed to issue a FAN before the 10-year prescriptive period to assess petitioner for taxable year 2002, the collection of petitioner's deficiency taxes on August 14, 2008 is without statutory authority and the payment thereof is deemed erroneous.

In addition to the erroneously paid deficiency IT and VAT, petitioner was able to sufficiently prove that it erroneously paid the alleged deficiency EWT, WTC, FWT, and FBT as stated in the PAN, to wit:

Tax Type	BIR EFPS Payment Confirmation	BIR Payment Form (BIR Form 0605)	Amount Paid
Withholding Tax – Compensation	Exhibit "K", Docket Vol. II, p. 751	Exhibit "15-a", Docket Vol. II, p. 1033	₱ 25,000.00
Withholding Tax – Expanded	Exhibit "L", Docket Vol. II, p. 756	Exhibit "15-b", Docket Vol. II, p. 1034	₱5,583,637.95
Withholding Tax – Final	Exhibit "M", Docket Vol. II, p. 761	Exhibit "15-c", Docket Vol. II, p. 1035	₱ 272.30
Fringe Benefit Tax	Exhibit "O", Docket Vol. II, p. 769	Exhibit "15-e", Docket Vol. II, p. 1037	₱ 228,232.20

[8] Petitioner's Exhibits "J", "K", "L", "M", "O", "P"; Respondent's Exhibits "15 to 15-F".
[9] Petitioner's Exhibits "Q" and Q-1".
[10] *Ibid.*

TOTAL			₱5,837,142.45

Petitioner is therefore entitled to the refund erroneously paid EWT, WTC, FWT, and FBT in the total amount ₱5,837,142.45.

However, while there was evidence that petitioner filed a BIR Payment Form on August 14, 2008 for the deficiency FWT – VAT[11], there was no BIR EFPS Payment Confirmation that was submitted for the transaction. Thus, there was no proof of payment of the same.

As to respondent's Motion for Partial Reconsideration, the same deserves scant consideration. The arguments raised by respondent were mere rehash of the arguments she raised in her Answer[12] and Memorandum[13]. These were already considered and thoroughly threshed out by the Court in the assailed Decision.

"Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government."[14]

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED**, while respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on October 22, 2014 is hereby **MODIFIED** as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of:

Tax Type	Amount to be Refunded
Income Tax	₱ 5,554,067.05
Withholding Tax – Expanded	5,583,637.95
Withholding Tax – Compensation	25,000.00
Withholding Tax – Final	272.30

[11] Exhibit "15-d", Docket Vol. II, p. 1036.
[12] Docket Vol. I, pp. 247-269.
[13] Docket Vol. I, pp. 1139-1156.
[14] *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated*, G.R. No. 187589, December 3, 2014.

Fringe Benefit Tax	228,232.20
Value-added Tax	1,626,241.85
TOTAL	**₱ 13,017,451.35**

representing its erroneously paid taxes relative to Income Tax, Withholding Tax – Expanded, Withholding Tax – Compensation, Withholding Tax – Final, Fringe Benefit Tax and Value-added Tax for taxable year 2002, or total amount of ₱13,017,451.35.

SO ORDERED."

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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