Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

MEINAN PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8839
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
JAN 18 2018 2:40 pm

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review[1] filed on June 23, 2014 by Meinan Philippines, Inc., pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Docket, Vol. I, pp. 7-38.
[2] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.
[3] Act Creating the Court of Tax Appeals.
[4] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.
[5] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the

Petitioner assails the assessment and the Final Decision on Disputed Assessment (FDDA) dated April 1, 2014 that found it liable for alleged deficiency income tax and fringe benefits tax (FBT) in the respective amounts of ₱2,519,352.27 and ₱984,180.53 or in the aggregate amount of ₱3,503,532.80 for calendar year (CY) 2007.

Petitioner Meinan Philippines, Inc. is a corporation organized and existing under Philippine laws, with principal office address at 107 East Main Avenue, Laguna Techno Park, Biñan City, Laguna. It is registered with the Philippine Economic Zone Authority (PEZA) pursuant to the provisions of Republic Act (R.A.) No. 7916 as an Export Enterprise under Certificate of Registration No. 95-141 dated December 13, 1995.[6] It is also registered with the Bureau of Internal Revenue (BIR), with Taxpayer's Identification Number (TIN) 004-826-435-000.[7]

Respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed with the BIR its Annual Corporate Income Tax Return (BIR Form No. 1702) and Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits (BIR Form No. 1603) for CY 2007 on the following dates:

Period Covered	**Date of Filing of Annual Income Tax Return**
Calendar Year 2007	April 15, 2008[8]

Period Covered (Calendar Year 2007)	**Date of Filing of Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits**

Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Exhibits "P-4" and "P-4a", Docket, Vol. VI, pp. 4598-4600.

[7] Exhibit "P-2", Docket, Vol. VI, p. 4597.

[8] Amended Judicial Affidavit of Evelyn Villaroya, Docket, Vol. VI, p. 4697; Docket, Vol. I, p. 114.

First Quarter	April 10, 2007[9]
Second Quarter	July 9, 2007[10]
Third Quarter	October 10, 2007[11]
Fourth Quarter	January 10, 2008[12]

On September 5, 2008, petitioner received Letter of Authority (LOA) No. 2007-00032921[13] dated August 21, 2008, authorizing BIR Revenue Officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2007.

Respondent issued a Notice for Informal Conference[14] on September 16, 2010, requesting petitioner to appear for an informal conference to present its side of the case.

On May 11, 2011[15], petitioner received a copy of the Preliminary Assessment Notice[16] (PAN) dated May 3, 2011 with Details of Discrepancies issued by Regional Director Rodita B. Galanto, informing petitioner of its alleged tax deficiencies for income tax and fringe benefit tax in the total amount of ₱19,876,931.52. Due to the voluminous character of the documents, petitioner requested for a thirty (30)-day extension or until June 10, 2011 within which to file a reply to the PAN on May 18, 2011.[17] On May 31, 2011, petitioner submitted a reply to the PAN.[18]

On June 30, 2011[19], petitioner received a Formal Letter of Demand (FLD) dated June 23, 2011[20] with Assessment Notices and Details of Discrepancies for deficiency income tax and FBT for CY 2007 in the total amount of ₱20,085,116.76.[21] On July 28, 2011, petitioner filed its Protest Letter[22] to the FLD. On September 15, 2011, petitioner submitted voluminous documents in support of its protest.[23]

[9] Exhibit "P-9", Docket, Vol. VI, pp. 4610-4611.
[10] Exhibit "P-10", Docket, Vol. VI, pp. 4612-4614.
[11] Exhibit "P-11", Docket, Vol. VI, pp. 4615-4617.
[12] Exhibit "P-12", Docket, Vol. VI, pp. 4618-4620.
[13] Exhibit "P-13", Docket, Vol. VI, p. 4621.
[14] Exhibit "P-14", Docket, Vol. VI, pp. 4622-4624.
[15] As culled from Exhibit "P-17", Docket, Vol. VI, p. 4629.
[16] Exhibit "P-16", Docket, Vol. VI, pp. 4625-4628.
[17] Exhibit "P-17", Docket, Vol. VI, p. 4629.
[18] Exhibit "P-18", Docket, Vol. VI, pp. 4630-4642.
[19] As culled from Exhibit "P-20", Docket, Vol. VI, p. 4649.
[20] Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol VI, p. 4358.
[21] Exhibits "P-19", "P-19-a" and "P-19-b", Docket, Vol. VI, pp. 4643-4648.
[22] Exhibit "P-20", Docket, Vol. VI, pp. 4649-4661.
[23] Exhibit "P-21", Docket, Vol. VI, pp. 4662-4663.

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On May 24, 2014[24], petitioner received the copy of the FDDA[25] dated April 1, 2014 issued by Regional Director Jose N. Tan, finding petitioner liable for alleged deficiency income tax and fringe benefit tax for CY 2007 in the total amount of ₱3,503,532.80.[26]

Petitioner then filed the instant Petition for Review on June 23, 2014.

Respondent filed his Answer[27] on September 25, 2014, interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

6. The assessment for deficiency Income Tax in the amount of P2,519,352.27 and Fringe Benefits Tax in the amount of P984,180.53 for taxable year 2007 was made in accordance with law, rules and jurisprudence.

RESPONDENT OBSERVED BOTH PROCEDURAL AND SUBSTANTIAL DUE PROCESS IN ISSUING THE ASSESSMENT.

7. Respondent accorded procedural and substantial due process to petitioner in issuing the assessment subject of this case. The Letter of Authority (LOA), Notice for Informal Conference, Preliminary Assessment Notice, Formal Letter of Demand with Audit Result/Assessment Notice and Final Decision on Disputed Assessment were issued in accordance with law, rules and jurisprudence.

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[24] Amended Judicial Affidavit of Evelyn Villaroya, Docket, Vol. VI, p. 4700; Annex "A", Petition for Review, Docket, Vol. I, p. 40.
[25] Exhibit "P-24", Docket, Vol. VI, pp. 4669-4672.
[26] JSFI, Docket, Vol. VI, p. 4358.
[27] Docket, Vol. I, pp. 227-236.

8. Petitioner was also informed of the factual and legal basis of the assessment. The Preliminary Assessment Notice, Formal Letter of Demand with Audit Result/Assessment Notice and Final Decision on Disputed Assessment indicated not only the deficiency tax involved, surcharge and interest due thereon, but also sufficiently stated the facts, the law, rules and regulations on which the assessment is based.

9. Petitioner's allegation that the conduct of assessment is not covered by a valid LOA as the Revenue Officers failed to conduct and complete the audit within 120-day period is untenable. On the contrary, the validity of the LOA should not be put in issue as the LOA was revalidated on 20 November 2009 as found on page 554 of the BIR Records.

RESPONDENT RIGHT TO ASSESS PETITIONER DEFICIENCY INCOME AND FRINGE BENEFIT TAX DID NOT LAPSE.

10. Anent petitioner's allegation that the assessment for deficiency income and fringe benefit tax has already prescribed; the same is manifestly misplaced.

10.1 First, petitioner alleged that it filed its Annual Income Tax Return for calendar year 2007 on 15 April 2008 and that respondent has until 15 April 2011 within which to assess for deficiency income tax; while the Formal Letter of Demand/Formal Assessment Notice was issued on 23 June 2011 and supposedly received on 30 June 2011.

10.2 Second, petitioner further alleged these dated pertaining to Fringe Benefit Tax, quoted herewith to wit:

Fringe Benefits Tax

Quarter	Date of Filing	Prescription	Date of Assessment
First Quarter	10 April 2007	25 April 2010	23 June 2011

Second Quarter	09 July 2007	25 July 2010	23 June 2011
Third Quarter	10 October 2007	25 October 2010	23 June 2011
Fourth Quarter	10 January 2008	25 January 2011	23 June 2011

10.3 However, a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code was executed extending the period to assess petitioner until 31 December 2011.

10.4 Assuming that the Formal Letter of Demand/Final Assessment Notice were issued on 23 June 2011 and supposedly received on 30 June 2011, the aforesaid assessment was clearly received before 31 December 2011.

10.5 Thus, the period of respondent to assess petitioner for deficiency income and fringe benefit tax did not lapse.

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL.

11. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. 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. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**

12. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc, G.R No. 136975, March 31, 2005).** The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the

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assessment issued against petitioner is imbued with factual and legal bases.

13. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of tax Appeals, 164 SCRA 524)*. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

PETITIONER IS LIABLE TO PAY FOR DEFICIENCY INCOME TAX IN THE AMOUNT OF P2,519,352.27 AND FRINGE BENEFIT TAX IN THE AMOUNT OF P984,180.53 FOR TAXABLE YEAR 2007.

14. Respondent posits that the deficiency income tax assessment issued against petitioner must stand as supported by the following factual and legal basis as stated in the Final Decision on Disputed Assessment dated 01 April 2014, portion of which is incorporated hereunder, to wit:

I.	**INCOME TAX**	
	Additional Taxable Income	P 29,340,592.27
	Tax Due	**P1,467,029.61**
	Add: Interest from 04-16-08 to 10-15-11	P 1,027,322.66
	Compromise Penalty	25,000.00
	Total Amount Payable	**P2,519,352.27**
II.	**FRINGE BENEFIT TAX**	
	Grossed-up Monetary Value	P 2,678,411.97
	FBT Rate	32%
	Fringe Benefit Tax Due Per Audit	P 857,091.83
	Less: FBT Paid	306,174.65
	Deficiency FBT	550,917.18
	Add: interest from 01-16-08 to 10-15-11	413,263.35
	Compromise Penalty	20,000.00
	Total Amount Payable	**P 984,180.53**

The aforesaid assessments are premised on the following:

1. INCOME TAX

-Disallowed Cost of Sales (16,063,373.00) – In relation to Section 24 of R.A. 7916 'five percent (5%) of the gross income earned by all business and enterprises within the ECOZONE shall be remitted to the national government'. As implemented by Section 3 of RR

No. 11-2005, '*gross income earned shall refer to gross sales or gross revenue derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus cost of the sales or direct costs but before any deduction is made for administrative, marketing, selling/or operating expenses incidental losses during a given taxable period.' (emphasis and italics supplied).* Audit disclosed that your various expenses were included in the aggregate amount of cost of sales, hence, disallowed pursuant to R.A. 7916 and RR No. 11-2005.

Employee Benefits	P 11,022,852.00
Rental Expenses	1,004,245.00
Repairs and Maintenance	1,758,902.00
Outside Services	1,709,415.00
Retirement Benefits	463,257.00
Transportation and Travel	104,702.00
Total Disallowed Expenses	**P16,063,373.00**

-Salaries and wages not subjected to withholding tax (P13,277,219.27). Verification disclosed that the portion of the salaries and wages (direst cost) were not subjected to withholding tax in violation of the provision of Section 34(k) of the National Internal Revenue Code, hence, disallowed.

Salaries and Wages Claimed per ITR	P 46,515,748.00
Less: Salaries and Wages per Alphalist	29,142,485.73
Discrepancy	17,373,262.27
Less: allocated to Operating Expenses	4,096,043.00
Net Discrepancy	**13,277,219.27**

2. FRINGE BENEFIT TAX

- Verification disclosed that various expenses were not subjected to fringe benefit tax, hence, assessed pursuant to the provision of Section 33 (B) and (C) of 1997.

Fringe Benefit Expenses (Per Return)	Value of Benefits	GMV Factor	Grossed-up Monetary Value
Interest on Loans	P 1,358.00	100%	P 1,358.00
Condo Rentals	1,109,052.64	50%	554,526.32
House Rentals	189,473.64	50%	94,736.82
	1,299,844.28		650,621.14

Additional Fringe Benefit per Audit

1/3/2007	PV	19812	Southern Sky Travel & Tours	24,093.00	100%	24,093.00
1/23/2007	PV	19089	Southern Sky Travel & Tours	43,671.50	100%	43,671.50
2/1/2007	PV	19173	Canlubang Golf & Country Club	2,600.00	100%	2,600.00
2/7/2007	PV	19214	Southern Sky Travel & Tours	33,623.50	100%	33,623.50
		xxx	xxx	xxx		
12/13/2007	PV	21709	Southern Sky Travel & Tours	5,490.00	100%	5,490.00
Total Additional				1,170,699.00		1,170,699.00
Total Value of Fringe Benefit per Audit						**1,821,320.14**

The records of this case disclosed that you have not introduced any evidence to overthrow the validity of our findings despite the notice/ letter dated November 23, 2012 issued by our Revenue District Office No. 57-Binan City.

DEFICIENCY INCOME TAX

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15. The enumeration of direct costs under Revenue Regulations No. 11-2005 is an exclusive list of expenses which can be deducted from the gross revenue for the purpose of computing the five percent (5%) of gross income earned.

16. Revenue Regulations No. 11-2005 (Regulations Defining 'Gross Income Earned' to Implement the Tax Incentive Provision in Section 24 of Republic Act No. 7916, otherwise known as 'The Special Economic Zone Act of 1995' Revoking Section 7 of Revenue Regulations No. 2-2005, and Suspending the Effectivity of Certain Provisions of Revenue Regulations No. 2-2005) provides, to wit:

> **'Section 3. Gross Income Earned**- for purposes of implementing the tax incentive of registered Special Economic Zone (ECOZONE) enterprises in Section 24 of Republic Act No. 7916, the term 'gross income earned' shall refer to gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus cost of sales or direct costs but before any deduction is made for administrative, marketing, selling and/or operating expenses or incidental losses during a given taxable period.
>
> For purposes of computing the total five percent (5%) tax rate imposed, the following direct costs are included in the allowable deductions to arrive at gross income earned for specific types of enterprise:
>
> 1. ECOZONE Export Enterprises, Free Trade Enterprises and Domestic Market Enterprises:
>
>   - Direct salaries, wages or labor expenses
>   - Production supervision salaries
>   - Raw materials used in the manufacture of products
>   - Decrease in Goods in Process Account (Intermediate goods)
>   - Decrease in Finished Goods Account
>   - Supplies and fuels used in production
>   - Depreciation of machinery and equipment used in production, and of that portion of the building owned or constructed that is used exclusively in the production of goods
>   - Rent and utility charges associates with building, equipment and warehouse used in production
>   - Financing charges associated with fixed assets used in production the amount of which were not previously capitalized
>
> 2. ECOZONE Developer/Operator, Facilities, Utilities and Tourism Enterprises:
>
>   - Direct salaries, wages or labor expense
>   - Service supervision salaries

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- Direct materials, supplies used
- Depreciation of machineries and equipment used in the rendition of registered services, and of that portion of the building owned or constructed that is used exclusively in the rendition of registered service
- Rent and utility charges for building and capital equipment used in the rendition of registered services
- Financing charges associated with fixed assets used in the registered service business the amount of which were not previously capitalized.'

17. The above stated statute is clear and categorical. To arrive at the Gross Income Earned subject to the preferential tax rate of five percent (5%), these are explicitly enumerated direct costs which can be deducted from the gross sales or revenues of respondent. These enumerations are exclusive and cannot be enlarged or extended to include deductions not indicated therein.

18. Petitioner deducted expenses from its gross sales/revenues which were not enumerated as direct costs. As a result, the Revenue Officers disallowed expenses amounting to P16,063,373.00 pursuant to R.R. No. 11-2005.

19. It must be stressed that the BIR Rulings cited by petitioner do not apply in the instant case since these are based only on a set of facts as represented by a taxpayer and made applicable only to the facts and circumstances thereto. Thus, it is not a bar on the government to enforce its power to tax.

20. Likewise, Salaries and Wages amounting to P13,277,219.27 were also not subjected to the required withholding tax. Hence, it was disallowed as deduction pursuant to Section 34 (K) of the NIRC.

DEFICIENCY FRINGE BENEFIT TAX

21. With regard to the deficiency Fringe Benefit Tax, the total value per audit amounted to P1,821,320.14 divided by the grossed up monetary factor of 68% which is equivalent to P2,678,411.97 grossed up monetary value.

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22. A more detailed computation of which is stated herewith, to wit:

FRINGE BENEFIT TAX	
Fringe Benefit per Schedule of Quarterly Returns	P 650,621.14
Add: Expenses per Audit	1,170,699.00
Value of Fringe Benefits	1,821,320.14
Divided by: Grossed up Monetary Factor	68%
Grossed-up Monetary Value	P2,678,411.97
FBT Rate	32%
Fringe Benefit Tax Due Per Audit	P 857,091.83
Less: FBT Paid	306,174.65
Deficiency FBT	550,917.18
Add: interest from 01-16-08 to 10-15-11	413,263.35
Compromise Penalty	20,000.00
Total Amount Payable	**P 984,180.53**

23. Various expenses not subjected to Fringe Benefit Tax were assessed pursuant to Section 33 (B) and (C) of the NIRC.

24. Thus, petitioner is liable to pay for deficiency income tax in the amount of P2,519,352.27 and Fringe Benefit Tax in the amount of P984,180.53 for taxable year 2007.

25. As decreed by the Honorable Supreme Court:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'

26. Well settled in the field of taxation – the burden of proof is on the taxpayer to present evidence to show the incorrectness of the assessment. Petitioner miserably failed to provide any concrete proof to justify its claim in assailing the assessments issued against it."

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The case was scheduled for Pre-Trial Conference on May 7, 2015.[28] Petitioner's Pre-Trial Brief[29] was filed on January 22, 2015; while respondent's Pre-Trial Brief[30] was filed on April 20, 2015.

The parties filed their Joint Stipulation of Facts and Issues[31] on May 27, 2015, which was approved by the Court via Resolution[32] dated June 8, 2015.

Petitioner presented witnesses Evelyn Villaroya and Loraine Padilla on October 20, 2015[33], Salvador Fontilo, Jr. on November 24, 2015[34], and Independent Certified Public Accountant George V. Villaruz on February 18, 2016.[35]

On February 26, 2016, petitioner filed its Formal Offer of Exhibits[36], offering Exhibits "P-1", "P-2", "P-4", "P-4a", "P-5", "P-6", "P-7", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-16", "P-17", "P-18", "P-19", "P-19-a", "P-19-b", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25.1" to "P-25.474", "P-26.1", "P-27.1" to "P-27.88", "P-28.1" to "P-28.10", "P-29.1", "P-34", "P-34-1", "P-35", "P-35-1", "P-36", "P-36-1", "P-37", "P-37-a", "P-38", "P-38-1", "P-39", and "P-39-1" as its documentary evidence. Respondent filed his Comment (Re: Formal Offer of Exhibits)[37] on March 7, 2016.

In the Resolution[38] dated April 14, 2016, the Court admitted Exhibits "P-2", "P-4", "P-4a", "P-5", "P-6", "P-7", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-16", "P-17", "P-18", "P-19-b", "P-20", "P-21", "P-24", "P-25.1" to "P-25.474", "P-26.1", "P-27.1" to "P-27.88", "P-28.1" to "P-28.10", "P-29.1", "P-34", "P-34-1", "P-35", "P-35-1", "P-36", "P-36-1", "P-37", "P-37-a", "P-38", "P-38-1", "P-39", and "P-39-1", but denied the admission of Exhibits "P-1", "P-19", "P-19-a", "P-22", and "P-23".

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[28] Order dated February 25, 2015 and Minutes of the hearing, Docket, Vols. I and VI, pp. 269, 4352-4353, respectively.
[29] Docket, Vol. I, pp. 252-260.
[30] Docket, Vol. I, pp. 309-315.
[31] Docket, Vol. VI, pp. 4358-4365.
[32] Docket, Vol. VI, p. 4369.
[33] Minutes of the hearing dated October 20, 2015, Docket, Vol. VI, pp. 4487-4491.
[34] Minutes of the hearing dated November 24, 2015, Docket, Vol. VI, pp. 4532-4536.
[35] Minutes of the hearing dated February 18, 2016, Docket, Vol. VI, pp. 4575-4577.
[36] Docket, Vol. VI, pp. 4582-4593.
[37] Docket, Vol. VI, pp. 4747-4749.
[38] Docket, Vol. VI, pp. 4759-4760.

Petitioner filed a Motion for Reconsideration[39] on May 4, 2016; while respondent filed his Comment/Opposition (Re: Motion for Reconsideration dated 03 May 2016)[40] on May 24, 2016. The Court granted petitioner's Motion for Reconsideration and admitted Exhibits "P-1", "P-19", "P-19-a", "P-22", and "P-23" in the Resolution[41] dated June 22, 2016.

Petitioner's documentary exhibits are as follows:

Exhibit:	Description:
P-1	Secretary's Certificate duly notarized on 20 June 2014
P-2	Meinan Philippines Inc.'s BIR Certificate of Registration No. 1RC0000505954
P-4	PEZA-ERD Form No. 97-01 dated 09 January 2007
P-4a	PEZA-ERD Form No. 03-01 dated 09 January 2007
P-5	BIR Form No. 1702Q electronically filed on 24 May 2007 covering the 1st Quarter of FY2007
P-6	BIR Form No. 1702Q electronically filed on 24 May 2007 covering the 2nd Quarter of FY2007
P-7	BIR Form No. 1702Q electronically filed on 26 November 2007 covering the 3rd Quarter of FY2007
P-9	BIR Form No. 1603 electronically filed on 10 April 2007 covering the 1st Quarter of FY2007
P-10	BIR Form No. 1603 electronically filed on 09 July 2007 covering the 2nd Quarter of FY2007
P-11	BIR Form No. 1603 electronically filed on 10 October 2007 covering the 3rd Quarter of FY2007
P-12	BIR Form No. 1603 electronically filed on 10 January 2008 covering the 4th Quarter of FY2007
P-13	Letter of Authority No. 2007 00032921 dated 21 August 2008
P-14	Notice of Informal Conference dated 16 September 2010
P-16	Preliminary Assessment Notice (PAN) dated 03 May 2011
P-17	Petitioner's Request Letter for extension of time to file PAN filed on 18 May 2011
P-18	Petitioner's Reply to PAN filed on 31 May 2011
P-19	Audit Results/Assessment Notice OCN No. A57-0190-0191-11 amounting to Php19,138,066.54
P-19-a	Audit Results/Assessment Notice OCN No. A57-0190-0191-11 amounting to Php947,050.22
P-19-b	Formal Letter of Demand dated 23 June 2011

[39] Docket, Vol. VI, pp. 4761-4765.
[40] Docket, Vol. VI, pp. 4793-4796.
[41] Docket, Vol. VI, pp. 4825-4827.

P-20	Petitioner's Protest Letter to the Formal Letter of Demand (FLD/FAN) filed on 28 July 2011
P-21	Petitioner's Transmittal Letter of the supporting documents filed on 15 September 2011
P-22	Notice of Informal Conference dated 28 September 2011
P-23	Petitioner's Transmittal Letter filed on 02 January 2012
P-24	Final Decision on Disputed Assessment dated 01 April 2014
P-25.1 to P-25.474	Payment vouchers, request for payment, purchase orders, official receipts, payroll register, SSS, Pag-Ibig and Philhealth remittance forms and debit advices related to the "Employee Benefits" and/or "Salaries/Wages"
P-26.1	Lease contracts/agreements
P-27.1 to P-27-88	Payment vouchers, request for payments, sales invoices, delivery receipts, official receipts related to "Repairs and maintenance"
P-28.1 to P-28.10	Payment vouchers, accounts payable vouchers, sales invoices and fund transfer forms related to "Outside services"
P-29.1	2003 actuarial report prepared by E.M. Zalamea Actuarial Services, Inc.
P-34	Amended Judicial Affidavit of Evelyn Villaroya
P-34-1	Signature of Evelyn Villaroya
P-35	Amended Judicial Affidavit of Loraine Padilla
P-35-1	Signature of Loraine Padilla
P-36	Amended Judicial Affidavit of Salvador Fontillo, Jr.
P-37	Judicial Affidavit of George V. Villaruz dated 26 October 2015
P-37-a	Signature of George V. Villaruz
P-38	Judicial Affidavit of George V. Villaruz dated 09 February 2016
P-38-a	Signature of George V. Villaruz
P-39	Report on Examination and Verification Documents Supporting the Company's Protest against BIR's Tax Assessments for the Period covered 01 January 2007 – 31 December 2007 per CTA Case No. 8839
P-39-1	Signature of George V. Villaruz

Respondent presented his witnesses Jimmy E. Belen, Jr. and Teresita D. Tibayan on July 26, 2016[42], Sonny Boy G. Lambarte[43] on August 23, 2016, and May C. Gimeno on September 27, 2016.[44]

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[42] Minutes of the hearing dated July 26, 2016, Docket, Vol. VI, pp. 4833-4837.
[43] Minutes of the hearing dated August 23, 2016, Docket, Vol. VI, pp. 4841-4842.
[44] Minutes of the hearing dated September 27, 2016, Docket, Vol. VI, pp. 4851-4853.

On September 29, 2016, respondent filed his Formal Offer of Documentary Evidence[45] offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-6-a", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-13-a", "R-13-b", "R-14", "R-15", "R-16", "R-17", "R-18", "R-19", "R-20", "R-21", "R-22", "R-23", "R-24", "R-25", "R-26", "R-27", "R-27-a", "R-28", "R-28-a", "R-29", "R-29-1", "R-30", and "R-30-1" as his documentary exhibits. Petitioner filed its Comments/Objections (To Respondent's Formal Offer of Evidence)[46] on October 17, 2016.

In the Resolution[47] dated December 13, 2016, the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-6-a", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-13-a", "R-13-b", "R-14", "R-15", "R-16", "R-17", "R-18", "R-19", "R-20", "R-21", "R-22", "R-23", "R-24", "R-25", "R-26", "R-27", "R-27-a", "R-28", "R-28-a", "R-29", "R-29-1", "R-30", and "R-30-1" as respondent's evidence.

The documentary evidence filed by the respondent are as follows:

Exhibit:	**Description:**
R-1	Letter of Authority dated 21 August 2008
R-2	Notice for Presentation of Records dated September 01, 2008
R-3	Checklist of Requirements
R-4	Second Notice for Presentation of Records and Documents
R-5	Memorandum dated October 26, 2009
R-6	Final Request for Presentation of Records dated April 21, 2010
R-6-a	Registry Receipt No. 2178
R-7	Notice for Informal Conference dated September 16, 2010 with attached Proposed Tax Assessments
R-8	Waiver of the Defense of Prescription under the Statute of Limitations
R-9	Memorandum dated October 21, 2010
R-10	Indorsement Letter dated October 21, 2010
R-11	Assignment Slip with No. OR-LA-57-11-004-10 dated November 10, 2010
R-12	Preliminary Assessment Notice dated May 03, 2011 with attached Details of Discrepancies
R-13	Formal Letter of Demand dated June 23, 2011 with attached Details of Discrepancies

[45] Docket, Vol. VI, pp. 4857-4867.
[46] Docket, Vol. VI, pp. 4869-4877.
[47] Docket, Vol. VI, pp. 4884-4885.

R-13-a	Audit Result/Assessment Notice for deficiency Income Tax
R-13-b	Audit Result/Assessment Notice for deficiency Fringe Benefit Tax
R-14	Letter dated August 03, 2011
R-15	Memorandum dated August 03, 2011
R-16	Memorandum of Assignment No. 057-LA-00179-8/10/2011 dated August 10, 2011
R-17	Letter dated September 02, 2011
R-18	Revised Notice for Informal Conference dated September 28, 2011 with attached Summary of Audit Findings
R-19	Letter dated November 23, 2012
R-20	Memorandum Report dated November 29, 2012
R-21	2nd Indorsement dated November 29, 2012
R-22	Docket Information Sheet and Action Slip
R-23	Return Memorandum dated February 26, 2013
R-24	Indorsement Letter dated April 03, 2013
R-25	Final Decision on Disputed Assessment dated April 01, 2014
R-26	Letter dated July 01, 2014
R-27	Judicial Affidavit of Revenue Officer Jimmy E. Belen, Jr.
R-27-a	Signature of Affiant Revenue Officer Jimmy E. Belen, Jr.
R-28	Judicial Affidavit of Revenue Officer Teresita D. Tibayan
R-28-a	Signature of Affiant Revenue Officer Teresita D. Tibayan
R-29	Judicial Affidavit of Revenue Officer Sonny Boy M. Lambarte
R-29-1	Signature of Affiant Revenue Officer Sonny Boy M. Lambarte
R-30	Judicial Affidavit of Revenue Officer May C. Gimeno
R-30-1	Signature of Affiant Revenue Officer May C. Gimeno

The Memorandum (For Respondent)[48] was filed on January 3, 2017; while the Memorandum [For the Petitioner][49] was filed on January 18, 2017. Hence, the case was declared submitted for decision.[50]

The parties submitted the following issue for the Court's resolution:[51]

> Whether or not petitioner is liable to pay deficiency income tax, FBT and compromise penalty for taxable year 2007 in the aggregate amount of ₱3,503,532.80, as well as

[48] Docket, Vol. VI, pp. 4888-4898.
[49] Docket, Vol. VII, pp. 4902-4943.
[50] Resolution dated January 24, 2017, Docket, Vol. VII, p. 4945.
[51] Docket, Vol. VI, pp. 4358-4359.

deficiency and delinquency interest as provided in Sections 248 and 249 of the NIRC.

Before going into the merits of the case, the Court shall first determine the timeliness in filing the present Petition for Review pursuant to Section 228 of the NIRC of 1997, as amended, which provides as follows:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

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Petitioner received the FLD dated June 23, 2011 for deficiency income tax and FBT for CY 2007 in the total amount of ₱20,085,116.76 from respondent on June 30, 2011. Within thirty (30) days from receipt of the FLD on June 30, 2011, petitioner filed its administrative protest on July 28, 2011. On September 15, 2011, petitioner submitted voluminous documents in support of its protest.

On May 24, 2014, petitioner received the copy of the FDDA dated April 1, 2014 issued by Regional Director Jose N. Tan. Applying Section 228 of the NIRC of 1997, as amended, the taxpayer adversely affected by the decision of respondent may appeal to this Court within thirty (30) days from receipt of said decision. Thus, petitioner had a period of thirty (30) days from May 24, 2014 or until June 23, 2014, within which to file its Petition for Review before this Court. Petitioner filed the present Petition for Review on June 23, 2014. Clearly, the Court has acquired jurisdiction over the instant case.

Section 203 of the NIRC of 1997, as amended, specifically provides that respondent has three (3) years to assess and collect internal revenue 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." *(Emphasis supplied)*

Based on the foregoing provision, internal revenue taxes shall, as a rule, be assessed within three years after the last day prescribed by law for the filing of return, or the actual filing thereof, whichever comes later. Hence, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.

In determining the last day for respondent to assess petitioner of deficiency income tax and FBT, the Court shall apply Section 77(B)

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of the NIRC of 1997, as amended, and Section 5 of Revenue Regulations (RR) No. 4-2002, to wit:

> "SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed **on or before the fifteenth (15th) day of April**, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." *(Emphasis supplied)*
>
> "SECTION 5. *Time for Filing of Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File.* – The tax imposed under Sec. 33 of the Tax Code shall be treated as a final income tax on the employee that shall be withheld and paid by the employer, whether a large taxpayer or non-large taxpayer, on or before the 10th day of the month following the calendar quarter in which the fringe benefits were granted, provided, however that with respect to employers, whether Large or Non-Large Taxpayers, enrolled with the Electronic Filing and Payment System (EFPS), the deadline for e-filing the Quarterly Remittance Return of Final Income Taxes Withheld On Fringe Benefits Paid to Employees Other than Rank and File (BIR Form No. 1603) and e-paying the tax due thereon shall be five (5) days later than the deadline set herein."

Petitioner received the FLD dated June 23, 2011 for deficiency income tax and FBT for CY 2007 from respondent on June 30, 2011. That being the case, respondent's right to assess petitioner of deficiency income tax and FBT for CY 2007 had already prescribed, as shown below:

Tax Return for the Taxable Year 2007	**Date of Filing**	**Last Day to File as Required by Law**	**Last Day to Assess**
I. Income Tax	April 15, 2008	April 15, 2008	April 15, 2011
II. Fringe Benefits Tax			
1st Quarter	April 10, 2007	April 15, 2007	April 15, 2010

2nd Quarter	July 9, 2007	July 15, 2007	July 15, 2010
3rd Quarter	October 10, 2007	October 15, 2007	October 15, 2010
4th Quarter	January 10, 2008	January 15, 2008	January 15, 2011

The three (3)-year period rule to assess internal revenue taxes is explicitly provided in Section 203 of the NIRC of 1997, as amended. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective.[52] Applying the law and jurisprudence on the matter, the assessed amounts of income tax and FBT can no longer be validly collected by respondent from petitioner for the period covering CY 2007.

However, respondent maintains that prescription had not set in because the parties validly executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC[53] extending the period to assess petitioner until December 31, 2011 under Section 222(b) of the NIRC of 1997, as amended. Said provision reads:

> "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."

In relation to Section 222(b), Revenue Memorandum Order (RMO) No. 20-90[54], as amended by Revenue Delegation Authority Order (RDAO) No. 05-01[55], provides the procedure that should be followed for the proper execution of the Waiver of the Statute of Limitations.

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[52] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[53] Exhibit "R-8", BIR Records, p. 414.
[54] Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, April 4, 1990.
[55] Subject: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, August 2, 2001.

In RMO No. 20-90, respondent laid down the procedure in executing a Waiver as follows:

> "1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase 'but not after ______ 19 ___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated**. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 3. The following revenue officials are authorized to sign the waiver.
>
> A. In the National Office
>
> xxx xxx xxx
>
> 3. Commissioner – For tax cases involving more than P1M
>
> B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. **The foregoing procedures shall be strictly followed**. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with." *(Emphasis supplied)*

Whereas in RDAO No. 05-01, respondent details the following authorities who may sign and accept the Waivers:

"I. *Revenue Officials Authorized to Sign the Waiver*

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

A. *For National Office cases*

Designated Revenue Official

1. Assistant Commissioner (ACIR), Enforcement Service – For tax fraud and policy cases

2. ACIR, Large Taxpayers Service – For large taxpayers cases other than those cases falling under Subsection B hereof

3. ACIR, Legal Service – For cases pending verification and awaiting resolution of certain legal issues prior to prescription and for issuance/compliance of *Subpoena Duces Tecum*

4. ACIR, Assessment Service (AS) – For cases which are pending in or subject to review or approval by the ACIR, AS

5. ACIR, Collection Service – For cases pending action in the Collection Service

B. *For cases in the Large Taxpayers District Office (LTDO)*

The Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in his possession.

C. *For Regional cases*

Designated Revenue Official

1. Revenue District Officer – Cases pending investigation/verification/reinvestigation in the Revenue District Offices

2. Regional Director – Cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious circumstances in the absence of the abovementioned officials.

The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his

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authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The 'WAIVER' should not be accepted by the concerned BIR office and official unless duly notarized."

In the case of *Commissioner of Internal Revenue vs. Standard Chartered Bank*[56], the Supreme Court likewise outlined the procedure for the proper execution of a waiver, to wit:

"1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after __ 19 _', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. **The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative**.

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

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

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6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement." *(Emphasis supplied)*

These requirements are mandatory and must be strictly followed. Failure to comply with any of the requisites renders a waiver defective and ineffectual.

In *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.*[57], the Supreme Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO No. 20-90 and RDAO No. 05-01.

"In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* the Court declared the waiver invalid because: (1) it did not specify the date within which the BIR may assess and collect revenue taxes, such that the waiver became unlimited in time; (2) it was signed only by a revenue district officer, and not the CIR; (3) **there was no date of acceptance**; and (4) the taxpayer was not furnished a copy of the waiver.

In *Commissioner of Internal Revenue v. FMF Development Corporation,* the waiver was found defective and thus did not validly extend the original three-year prescriptive period because: (1) it was not proven that the taxpayer was furnished a copy of the waiver; (2) it was signed only by a revenue district officer, and not the CIR as mandated by law; and (3) **it did not contain the date of acceptance by the CIR, which is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period**.

In another case, the waivers executed by the taxpayer's accountant were found defective for the following reasons: (1) the waivers were executed without the notarized written authority of the taxpayer's representative to sign the waiver on its behalf; (2) **the waivers failed to indicate the date of**

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

acceptance; and (3) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers.

In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.,* the Court nullified the waivers because the following requisites were absent: (1) conformity of either the CIR or a duly authorized representative; (2) **date of acceptance showing that both parties had agreed on the waiver before the expiration of the prescriptive period**; and (3) proof that the taxpayer was furnished a copy of the waiver.

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." (*Emphasis supplied*)

Applying the foregoing rules and jurisprudence, the waiver in question was defective and did not validly extend the original three-year prescriptive period. Notably, the waiver did not indicate the date of such acceptance by the BIR; a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.

The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.[58]

Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[59]

A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[60]

In fine, considering the defects in the Waiver, the period to assess or collect deficiency taxes for CY 2007 was never extended. Consequently, the FDDA dated April 1, 2014 for alleged deficiency income tax and FBT was issued by respondent beyond the three-year prescriptive period and therefore void.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the assessment and the Final Decision on Disputed Assessment dated April 1, 2014 for alleged deficiency income

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[58] *Bank of the Philippine Islands (Formerly: Far East Bank and Trust Company) vs. Commissioner of Internal Revenue*, G.R. No. 174942, March 7, 2008.
[59] *SMI-Ed Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.
[60] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

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tax and fringe benefits tax in the respective amounts of ₱2,519,352.27 and ₱984,180.53 or in the aggregate amount of ₱3,503,532.80 for calendar year 2007 is **CANCELLED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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
Chairperson, 1st Division