REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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TEKTITE INSURANCE BROKERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8693

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, ***JJ.***

Promulgated:

AUG 26 2016

9:30 a.m.

x- -x

DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed by Tektite Insurance Brokers, Inc., praying that judgment be rendered cancelling and setting aside the Formal Letter of Demand No. 043A-B080-08 with Assessment Notices dated September 28, 2012, which contains the following deficiency tax assessments for the taxable year ending December 31, 2008, *to wit*:

	BASIC DEFICIENCY TAXES	INTEREST	TOTAL
Income Tax	₱ 1,022,720.05	₱ 724,029.76	₱ 1,746,749.81
Value Added Tax	279,880.54	210,255.46	490,136.00
Deficiency Expanded Withholding Tax	17,408.26	13,182.58	30,590.84
Compromise Penalty	4,000.00	-	4,000.00
TOTAL	**₱1,324,008.85**	**₱947,467.80**	**₱2,271,476.65**

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[1] Docket (Vol. I), pp. 6-30

Petitioner Tektite Insurance Brokers is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at the 20th Floor, East Tower, Philippines Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City.[2] It is registered with the Bureau of Internal Revenue (BIR) on April 11, 1997 and was issued Tax Identification (TIN) No. 000-188-338-000, as evidence by BIR Certificate of Registration bearing RDO Control No. 3RC0000493115.[3] Petitioner is also authorized to operate as an insurance broker by the Insurance Commission.[4]

Respondent is the Commissioner of Internal Revenue, who is vested by law with the authority to assess and collect all national internal revenue taxes, fees, and charges. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 2009, petitioner filed its Annual Income Tax Return (BIR Form No. 1702)[5] for taxable year ended 2008 reporting a revenue of ₱5,323,000.06 from its sale of services.

Thereafter, respondent issued a Letter of Authority (LOA) No. 2009-00015036 dated April 5, 2010 authorizing the audit and examination of the books of account and other accounting records of petitioner for 2008.[6]

Petitioner duly executed a Waiver of Statute of Limitations under the National Internal Revenue Code[7] on November 11, 2011, which was duly received/accepted by respondent, whereby petitioner waived the defense of prescription under the statute of limitations under the NIRC, until September 30, 2012.[8]

On September 26, 2012, petitioner received from respondent a Preliminary Assessment Notice[9] (PAN) dated September 11, 2012, assessing it for deficiency Income Tax, Value Added Tax (VAT),

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[2] Paragraph 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. III), p. 1101
[3] Par. 3, Admitted Facts, JSFI, Docket (Vol. III), p. 1102; Exhibit "P-4"
[4] Par. 4, *Ibid.*
[5] Exhibit "P-9" to "P-9-b"
[6] Par. 7, Admitted Facts, JSFI, Docket (Vol. III), p. 1102
[7] Exhibit "P-10"; Exhibit "R-11" and "R-11-A"
[8] Par. 10, Admitted Facts, JSFI, Docket (Vol. III), pp. 1102-1103; Exhibit "R-11"
[9] Exhibit "P-11"; Exhibit "R-12"

Expanded Withholding Tax (EWT), and compromise penalties for the year 2008 in the total amount of ₱2,238,928.49.

In response, petitioner filed on October 3, 2012 a letter[10] with attached supporting schedules[11] dated September 28, 2012, contesting the proposed deficiency tax assessments in the PAN.

On October 18, 2012, petitioner received a Formal Letter of Demand No. 043-A-B080-08 with Assessment Notices[12] (FLD-AN) dated September 28, 2012 reiterating its unpaid deficiency taxes but now in the total amount of ₱2,271,476.65.

On November 16, 2012, petitioner filed with the BIR its protest[13] dated November 5, 2012 to the FAN. Thereafter, on January 14, 2013, petitioner submitted the supporting documents to its protest through a letter[14] dated January 11, 2013.

Claiming inaction on the part of respondent, petitioner elevated the matter with this Court *via* the instant Petition for Review[15] on August 12, 2013.

On October 7, 2013, respondent filed his Answer[16] interposing the following special and affirmative defenses, *to wit*:

> "16. All presumptions are in favor of the correctness of the Assessment.
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> 17. The assessment was issued within the period allowed by law in view of the Waiver of Statute of Limitations duly executed by the petitioner and which was received and accepted by the respondent.
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> 18. The Assessment/Demand Letter No. 043A-B080-08 dated 28 September 2012 for the year 2008 against the petitioner was issued in compliance with the provisions of

[10] Exhibit "P-12"
[11] Exhibit "P-12-a" to "P-12-c"
[12] Exhibit "P-13" to "P-13-c"; Exhibit "R-13"
[13] Exhibit "P-14"
[14] Exhibit "P-15" and "15-a"
[15] *Supra* No. 1
[16] Docket (Vol. I), pp. 287-291

section 228 of the National Internal Revenue Code and in accordance to existing Revenue Rules and Regulations relative to the right of the taxpayer/petitioner to be informed of the factual and legal bases upon which the assessment was made.

19. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.

20. Verification disclosed that the petitioner failed to subject certain income payments to expanded withholding taxes as required under Revenue Regulation No. 2-98, thus disallowed as deductions from gross income pursuant to the provisions of Section 34(K) of the NIRC, as amended.

21. Verification disclosed that certain amount reported as due to an affiliate (Meridien Assurance Corporation) was understated. The understatement resulted in an unaccounted source of cash leading to the inference that part of the commission income of the petitioner has not been declared. Therefore, the amount is added to the reported taxable income pursuant to Section 31 of the NIRC, as amended.

22. Verification disclosed the existence of unsupported creditable tax withheld; that is, claimed tax credit were not supported with appropriate documentary evidence, hence disallowed and assessed pursuant to Revenue Regulation 2-98 in relation to Section 57 of the NIRC, as amended.

23. Verification disclosed that petitioner failed to subject gross receipts to value added tax as determined during investigation, hence assessed pursuant to Section 106 and 108 of the NIRC, as amended.

24. Verification disclosed that petitioner failed to subject portion of income payments to expanded withholding tax as required under Revenue Regulations No. 2-98.

25. The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC.

26. The 25% surcharge must be imposed pursuant to the provisions of Section 248 (A) of the NIRC."

On November 15, 2013, Pre-Trial Brief for the Respondent[17] was filed, while, petitioner on the other hand filed its Pre-Trial Brief[18] on November 18, 2013. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[19] on December 20, 2013. Thus, on January 14, 2014 a Pre-Trial Order[20] was issued by this Court.

On August 8, 2014, petitioner filed its Formal Offer of Evidence[21] offering Exhibits "P-1" to "P-157-a", inclusive of sub-markings. It also presented its Customer Services Manager, **Ms. Cynthia Cuyugan Andal**, its Accountant and bookkeeper, **Ms. Josefa Maria Bernadette Dizon**, and the Chief Accountant of Meridien Assurance Corporation, **Ms. Remedios L. Suing**, as witnesses to support its claim.

On the other hand, respondent submitted his Formal Offer of Evidence[22] on June 8, 2015, offering Exhibits "R-1" to "R-21", inclusive of sub-markings. Likewise, respondent presented his Revenue Officers Jamilah L. Dianalan and Elmer O. Jimenez, as his witnesses.

In the July 28, 2015 Resolution[23], this Court ordered both parties to file their respective memoranda. Thus, in compliance thereto, petitioner filed its Memorandum[24] on September 15, 2015, while respondent failed to file his, as per Records Verification[25] dated September 18, 2015.

Accordingly, as per Resolution[26] dated September 21, 2015, the case was submitted for decision.

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[17] Docket (Vol. I), pp. 293-297
[18] *Ibid.*, (Vol. I), pp. 298-309
[19] *Id.*, (Vol. III), pp. 1101-1117
[20] *Id.*, (Vol. III), pp. 1130-1140
[21] *Id.*, (Vol. VI), pp. 1917-2007
[22] *Id.*, (Vol. VII), pp. 2408-241
[23] *Id.*, (Vol. VII), pp. 2435-2436
[24] *Id.*, (Vol. VII), pp. 2444-2502
[25] *Id.*, (Vol. VII), p. 2503
[26] *Id.*, (Vol. VII), p. 2504

The following issues[27] were submitted by the parties for this Court's disposition:

1) Whether or not the Assessment Notices and the Formal Letter of Demand against petitioner for taxable year ending December 31, 2008 was issued within the three (3)-year prescriptive period under Section 203 of the NIRC;

2) Whether or not the issuance of the assessment notices and the Formal Letter of Demand against petitioner for taxable year ending December 31, 2008 violated the petitioner's right to due process in the conduct of tax audit investigation;

3) Whether or not petitioner is liable for deficiency income tax in the amount of ₱1,746,749.81, inclusive of incremental penalties for taxable year ending December 31, 2008;

4) Whether or not petitioner is liable for deficiency value-added tax in the amount of ₱490,135.10, inclusive of incremental penalties for the taxable year ending December 31, 2008;

5) Whether or not petitioner is liable for deficiency expanded withholding tax in the amount of ₱30,590.84, inclusive of incremental penalties for the taxable year ending December 31, 2008;

6) Whether or not petitioner is liable for compromise penalties in the amount of ₱4,000.00 for taxable year ending December 31, 2008; and,

7) Whether or not the Petition for Review was filed within thirty (30) days from the expiration of the one hundred eighty (180) day period from petitioner's submission of documents, as provided for under Section 228 of the tax code, as amended.

The above-stated stipulated issues can be summarized into, *viz:* (1) Whether respondent's right to assess petitioner has already prescribed and, (2) Whether petitioner is liable in the aggregate amount

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[27] Issues to be Resolved, JSFI, Docket (Vol. III), pp. 1103-1104

of ₱2,271,476.65 representing its alleged income tax, VAT and EWT deficiencies, inclusive of compromise penalties, for taxable year ending December 31, 2008.

In the instant case, petitioner chiefly claims that the FLD-AN[28] dated September 28, 2012 is void for having been issued outside the prescriptive period within which it may be assessed by respondent. Petitioner continues that this is due to the inherent defectiveness of the Waiver of Statute of Limitations under the National Internal Revenue Code[29] ("Waiver") dated November 11, 2011. Thus, the three-year prescriptive period mandated to respondent was not validly extended. Nonetheless, petitioner contests the erroneous findings in the alleged deficiency tax assessments against it by insisting on the following defenses, *viz*: on EWT – it is not required to withhold tax on the repairs and maintenance payments in the amount of ₱17,913.00 since petitioner is not included among the Top 20,000 corporations required to withhold 1% withholding tax on regular suppliers of goods and 2% withholding tax on services. As to the ₱305,500.00 professional fees, ₱130,000 of it were duly remitted as the 10% EWT, while the remaining ₱175,500.00 were attributed to the general professional partnership which is exempt from EWT; on Income tax – the disallowed ₱327,052.55 was duly supported by Certificate of Creditable Tax Withheld At Source (BIR Form No. 2307), contrary to respondents allegations; on VAT – the amounts of ₱12,604.63, and ₱62,462.00 that respondent alleges as unsupported and without valid receipts were unfounded and baseless; on the undeclared income tax and VAT from unaccounted due to affiliates in the amount of ₱1,799,209.00 – petitioner claims that respondent's revenue officers did not exert any effort to verify the amount involved as they merely conducted a "desk audit" without looking into the nature of the transaction being audited; Finally, on the Compromise Penalty – respondent has no legal basis to impose the amount of ₱4,000.00 since compromise penalties are only collectible in lieu of criminal prosecutions.

All told, the crux of the instant controversy basically arises on the validity of respondent's deficiency tax assessments against petitioner. As such, after due consideration of the arguments presented by the parties, this Court finds the deficiency tax assessments for taxable year 2008 as invalid for the reasons stated hereafter.

[28] *Supra* No. 12
[29] *Supra* No. 7

<u>Respondent's right to assess petitioner had already prescribed</u>

Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation.[30] Assessments issued beyond this three-year prescriptive period, save in certain cases, shall not be valid:

> "**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."

Apropos thereto, Section 77 (B)[31] in relation to Section 76[32] of the NIRC of 1997, as amended, requires that every corporation liable to tax shall file a final adjustment return 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. In this case, petitioner filed its Annual Income Tax Return (BIR Form No. 1702)[33] for taxable year 2008 on April 15, 2009.[34] Thus, respondent had until April

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[30] Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008

[31] "**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.

xxx xxx xxx."

[32] "**SEC. 76. Final Adjustment Return.** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year.

xxx xxx xxx."

[33] *Supra* No. 5

[34] Par. 7, Admitted Facts, JSFI, Docket (Vol. III), p. 1102

15, 2012, within which to assess petitioner for any deficiency income tax for taxable year 2008.

Moreover, Section 114 (A)[35] of the NIRC of 1997, as amended, and as implemented by Section 4.114-1(A) of Revenue Regulations (RR) No. 16-2005[36] provides that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter. In this case, petitioner filed its Quarterly Value Added Tax Return (BIR Form No. 2550Q) on April 23, 2008[37] for the first quarter, July 23, 2008[38] for the second quarter, October 20, 2008[39] for the third quarter and January 21, 2009[40] for the fourth quarter of taxable year 2008. Thus, respondent had until January 25, 2012, at the latest, within which to assess petitioner for any deficiency VAT for taxable year 2008.

With regard to EWT, Section 58 (A)[41] of the NIRC of 1997, as amended, and as implemented by Sections 2.58 (A)(2) and 2.81 of RR No. 02-1998[42], as amended by RR No. 06-2001[43], and further amended

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[35] "**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.

xxx xxx xxx.""

[36] "CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005" dated September 1, 2005

[37] Exhibit "P-22-e"

[38] Exhibit "P-22-k"

[39] Exhibit "P-22-p"

[40] Exhibit "P-22-y"

[41] "**SEC. 58. Returns and Payment of Taxes Withheld at Source. -**

(A) Quarterly Returns and Payments of Taxes Withheld. - x x x

xxx xxx xxx

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

[42] "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 TAX" dated April17, 1998

[43] "AMENDING PERTINENT PROVISIONS OF REVENUE REGULATIONS NOS. 1-98, 2-98, AS AMENDED, AND 7-95, AS AMENDED, AND REVENUE MEMORANDUM CIRCULAR NO. 1-98 RELATIVE TO THE INCLUSION OF ADDITIONAL TAXPAYERS TO BE SUBJECT TO FINAL WITHHOLDING TAX, REVISION OF THE WITHHOLDING TAX RATES ON CERTAIN INCOME PAYMENTS SUBJECT TO CREDITABLE WITHHOLDING TAX, TIME FOR THE FILING OF

by RR No. 17-2003[44], in relation to RR No. 26-2002[45], provides that the filing of Monthly EWT returns of taxpayers engaged in insurance such as herein petitioner shall be made within fifteen (15) days following the end of the month, except on December. In this case, petitioner filed its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E) on February 8, 2008[46], March 7, 2008[47], April 4, 2008[48], May 9, 2008[49], June 6, 2008[50], July 9, 2008[51], August 11, 2008[52], September 4, 2008[53],October 9, 2008[54], November 7, 2008[55], December 8, 2008[56] and February 24, 2009[57]. Thus, respondent had until January 13, 2012 at the latest, within which to assess petitioner for any deficiency EWT for taxable year 2008.

For ease of reference of the foregoing material dates, a table is provided below:

Period Covered	Last Day to File Tax Return	Actual Date of Filing	Last Day to Assess
INCOME TAX			
Calendar Year 2008	April 15, 2009	April 15, 2009	April 15, 2012
VALUE ADDED TAX			
1ST Qtr. (Jan-Mar)	April 25, 2008	April 22, 2008	April 25, 2011
2nd Qtr. (Apr-June)	July 25, 2008	July 23, 2008	July 25, 2011

VARIOUS TAX RETURNS AND PAYMENT OF THE TAXES DUE THEREON AND OTHERS" dated July 31, 2001

[44] "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 REGULATION NO. 14-2000; AND FOR OTHER PURPOSES" dated March 31, 2003

[45] "AMENDING FURTHER REVENUE REGULATIONS NO. 9-2001, AS AMENDED BY REVENUE REGULATIONS NO. 2-2002 AND REVENUE REGULATIONS NO. 9-2002, PROVIDING FOR THE STAGGERED FILING OF RETURNS OF TAXPAYERS ENROLLED IN THE ELECTRONIC FILING AND PAYMENT SYSTEM (EFPS) BASED ON INDUSTRY CLASSIFICATION" dated December 5, 2002

[46] Exhibit "P-16"

[47] Exhibit "P-16-c"

[48] Exhibit "P-16-f"

[49] Exhibit "P-16-i"

[50] Exhibit "P-16-l"

[51] Exhibit "P-16-o"

[52] Exhibit "P-16-r"

[53] Exhibit "P-16-u"

[54] Exhibit "P-16-x"

[55] Exhibit "P-16-aa"

[56] Exhibit "P-16-dd"

[57] Exhibit "P-16-jj"

Period Covered	Last Day to File Tax Return	Actual Date of Filing	Last Day to Assess
3rd Qtr. (July-Sept)	October 27, 2008*	October 20, 2008	October 27, 2011
4th Qtr. (Oct-Dec)	January 26, 2009*	January 21, 2009	January 26, 2012
WITHHOLDING TAX - EXPANDED			
January 2008	February 15, 2008	February 8, 2008	February 15, 2011
February 2008	March 17, 2008*	March 7, 2008	March 17, 2011
March 2008	April 15, 2008	April 9, 2008	April 15, 2011
April 2008	May 15, 2008	May 9, 2008	May 15, 2011
May 2008	June 16, 2008*	June 6, 2008	June 16, 2011
June 2008	July 15, 2008	July 9, 2008	July 15, 2011
July 2008	August 15, 2008	August 11, 2008	August 15, 2011
August 2008	September 15, 2008	September 4, 2008	September 15, 2011
September 2008	October 15, 2008	October 9, 2008	October 15, 2011
October 2008	November 17, 2008*	November 7, 2008	November 17, 2011
November 2008	December 15, 2008	December 8, 2008	December 15, 2011
December 2008	January 15, 2009	February 24, 2009**	February 24, 2012

**next working day*
***amended return*

As mentioned earlier, respondent had until **April 15, 2012** for income tax, **January 26, 2012** at the latest for VAT and **February 24, 2012** at the latest for EWT within which he may issue any deficiency tax assessment against petitioner for taxable year 2008. However, in the instant case, the FLD-AN[58] dated September 28, 2012 was served upon petitioner only on October 18, 2012, which is one hundred eighty six (186) days beyond the three-year prescriptive period for income tax, two hundred sixty six (266) days beyond the three-year prescriptive period for VAT and two hundred seventeen (217) days beyond the three-year prescriptive period for EWT.

Nonetheless, the three-year prescriptive period mentioned under Section 203 of the NIRC of 1997, as amended, is not an absolute rule. The said section is subject to certain exceptions under Section 222 of the same code – one of which is upon a written agreement between the tax authorities and taxpayer through the execution of a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, *viz*:

> "**SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —**

[58] *Supra* No. 12

x x x

(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.

x x x." (Emphasis Ours)

In line with this, Revenue Memorandum Order (RMO) No. 20-90[59] dated April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01[60] dated August 2, 2001 were issued so as to set the rules for the proper execution of a Waiver, *to wit*:

1. The waiver must be in 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;

3. The waiver must be duly notarized;

4. The Commissioner of Internal Revenue or the revenue official authorized by him must sign the waiver indicating the BIR's acceptance and agreement to the waiver. The date of such acceptance by the BIR should be indicated;

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

[59] "PROPER EXECUTION OF THE WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE"
[60] "DELEGATION OF AUTHORITY TO SIGN AND ACCEPT THE WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS"

6. The waiver must be 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.[61]

It must be stressed that the foregoing provisions of RMO No. 20-90 and RDAO No. 05-01 explicitly show their mandatory nature, requiring strict compliance. Thus, failure to comply with any of the requisites renders a Waiver defective and ineffectual.[62] Our jurisprudence is replete with cases[63] requiring faithful adherence with the rules regarding execution of Waivers.

In the instant case, the parties executed the Waiver[64] on November 11, 2011, wherein petitioner waived the defense of prescription under the statute of limitations until September 30, 2012.[65]

However, perusal of the said Waiver reveals the following defects, *to wit*:

a) The Waiver failed to specify the kind of tax and amount of the tax due that is the subject of the waiver;

b) The date of acceptance by respondent or her duly authorized revenue official was not indicated therein;

c) The Waiver was executed after the expiration of the prescriptive period for the deficiency VAT assessment for the 1st to 3rd Quarter of 2008, and for the deficiency EWT assessment for the period January to October 2008.

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[61] *See* Philippine Journalist, Inc. vs. CIR, G.R. No. 162852, December 16, 2004
[62] Commissioner of Internal Revenue vs. Standard Chartered Bank, G.R. No. 192173, July 29, 2015
[63] Commissioner of Internal Revenue vs. Standard Chartered Bank, G.R. No. 192173, July 29, 2015; Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 5, 2010; Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008; Philippine Journalist, Inc. vs. CIR, G.R. No. 162852, December 16, 2004; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 115712, February 25, 1999; Commissioner of Internal Revenue vs. Alcon Laboratories, Inc., CTA EB Case No. 1087, September 30, 2014; Commissioner of Internal Revenue vs. Intel Technology Philippines, Inc., CTA EB Case No. 379, November 18, 2008
[64] *Supra* No. 7
[65] *Supra* No. 8

As such, having the foregoing defects, no valid agreement between petitioner and respondent can be construed to have taken place. A waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer.[66]

Verily, this Court could not just turn a blind eye and ignore these irregularities which make the Waiver highly questionable, and therefore, invalid. This is all the more emphasized by the fact that a Waiver of the Statute of Limitations under the NIRC is not an ordinary agreement, as it is, to a certain extent, a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.[67]

Respondent failed to observe proper due process in his assessment

Section 228 of the NIRC of 1997, as amended, in relation to Section 2 of Revenue Regulations (RR) No. 18-2013[68], which amended certain sections of RR No. 12-99[69], provides for the due process requirement that should be observed both by the CIR, or her duly authorized representative, and the taxpayer concerned. The said section provides:

> "**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**: *x x x*
>
> *xxx xxx xxx*
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to

[66] *Supra* No. 61, *citing* CIR vs. CA, G.R. No. 115712, February 25, 1999
[67] Commissioner of Internal Revenue vs. Alcon Laboratories, Inc., CTA EB Case No. 1087, September 30, 2014
[68] "AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT", dated November 28, 2013
[69] "IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", dated September 6, 1999

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.

xxx xxx xxx" (Emphases Ours)

In addition thereto:

"**SECTION 2.** ***Amendment.*** — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows:

'**SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —**

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based *x x x.*

If the taxpayer fails to respond **within fifteen (15) days from date of receipt of the PAN,** he shall be considered in default, in which case, a Formal Letter of

> Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, **within fifteen (15) days from date of receipt of the PAN**, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> *x x x." (Emphases Ours)*

It is with much emphasis that the mandatory character of the foregoing provisions cannot be gainsaid; they are substantive prerequisites to tax collection. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication. [70] To rule otherwise would not just prevent the Commissioner from reconsidering the protested assessment but will practically render nugatory the intention of Congress.

In the instant case, respondent issued the PAN[71] on September 11, 2012, which was received by petitioner only on September 26, 2012. Applying the above-quoted provisions, petitioner has fifteen (15) days **from date of receipt of the PAN** or until October 11, 2012 within which to respond to the PAN. By prematurely issuing a FLD-AN[72] on September 28, 2012, without awaiting the lapse of the fifteen (15) days, respondent acted with grave abuse of discretion by violating petitioner's right to due process.

It is a cardinal rule in administrative law that the taxpayer be accorded due process. A void assessment bears no valid fruit.[73] Following the pronouncement by the Supreme Court in *COMMISSIONER*

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[70] Marinduque Iron Mines Agents Inc. vs. The Municipal Council of the Municipality of Hinabangan, Province of Samar, et al., G.R. No. L-18924, June 30, 1964, *citing* 30 Am. Jur. 153; also McQuillin on Municipal Corp., Vol. 16, p. 267
[71] *Supra* No. 9
[72] *Supra* No. 12
[73] *See* Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R. No. 159694 and G.R. No. 163581, January 27, 2006

OF INTERNAL REVENUE VS. AZUCENA T. REYES,[74] "[t]he law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. *x x x*"

Henceforth, considering that the assessments made by respondent are void, this Court need not belabor on the other issues raised by the parties.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments covering income tax, value added tax, expanded withholding tax, and compromise penalty in the total amount of ₱2,271,476.65, inclusive of interest, for taxable year 2008 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

A T T E S T A T I O N

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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[74] G.R. No. 159694 and G.R. No. 163581, January 27, 2006 *citing* Ang Tibay vs. Court of Industrial Relations and National Labor Union, Inc. (69 Phil. 635)

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice