REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PET PLANS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10002

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

Promulgated:
MAR 23 2023
9:54 a.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition") filed by petitioner, **PET PLANS, INC.,** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to ***Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282 ("RA 1125"),*** seeks to reverse the Decision of the Bureau of Internal Revenue ("BIR"), which denied the request for reconsideration of the Final Decision on Disputed Assessments ("FDDA") for taxable year ("TY") 2005 issued against petitioner in the total amount of Php140,721,049.42 ("Assailed Decision") due to prescription and lack of factual and legal basis.[1]

The Parties

Petitioner is a corporation duly organized and existing under Philippine laws. It is primarily engaged in the marketing and selling of securities such as educational plans, pension plans, life plans and others.[2]

[1] See Statement of the Case in the Pre-Trial Order, Records, Vol. 2, p. 553.
[2] See Statement of Facts and Issue in the Pre-Trial Order, *id.*, p. 554.

Respondent is the head of the BIR, the government agency tasked to perform among others, collect all national internal revenue taxes. As CIR, respondent 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 of 1997, as amended ("NIRC")***, other tax laws, and rules and regulations.[3]

The Facts

On 5 July 2006, a Letter of Authority ("LOA") was issued by the Officer-in-Charge ("OIC") of the Large Taxpayer Service ("LTS"), Merlinda L. Ordoyo, in favor of Revenue Officers ("RO") Matias Fadri III, Rene De Veyra, Romualdo Plocios and Josephine Gaerlan, and Group Supervisor ("GS") Juvy S. dela Pena authorizing them to audit and examine petitioner's books of accounts and other accounting records for the purpose of determining any deficiency tax liability for TY starting 1 January 2005 to 31 December 2005.[4] This LOA was then received by petitioner on 11 July 2006.[5]

On 3 December 2008, the aforementioned ROs recommended the issuance of a Notice of Informal Conference ("NIC") against petitioner.[6] On the same date, the NIC was issued against petitioner.[7] A copy of the said NIC was received by petitioner.[8] Shortly thereafter, on 22 December 2008, the informal conference was conducted.[9]

On 13 January 2009, the ROs issued a Memorandum recommending the issuance of a Preliminary Assessment Notice ("PAN") against petitioner.[10] On 22 January 2009, petitioner received an undated PAN.[11]

Due to petitioner's alleged failure to respond to the PAN within the mandated fifteen (15) day period, the ROs once again issued a Memorandum, dated 3 June 2009, recommending the issuance of a Formal Letter of Demand ("FLD") / Final Assessment Notices ("FAN") against petitioner.[12] An undated,

3 *Ibid.*
4 Exhibit "R-1", BIR Records, Exhibit "R-15", Folder No. 2, p. 1.
5 Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 2, p. 555.
6 BIR Records, Exhibit "R-15", Folder No. 2, pp. 285-352.
7 Exhibits "R-4" and "P-3", BIR Records, Exhibit "R-15", Folder No. 2, pp. 354-359.
8 See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 2, p. 555.
9 BIR Records, Exhibit "R-15", Folder No. 2, p. 359.
10 Exhibit "R-5", BIR Records, Exhibit "R-15", Folder No. 2, pp. 370-374.
11 See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 2, p. 555; Exhibits "R-6" and "P-4", BIR Records, Exhibit "R-15", Folder No. 2, pp. 385-390.
12 Exhibit "R-7", BIR Records, Exhibit "R-15", Folder No. 2, pp. 402-403.

FLD/FAN was received by petitioner on 23 June 2009.[13] On 8 July 2009, petitioner filed its Protest to the FLD/FAN.[14]

Afterwards, an undated Memorandum Report was issued recommending the issuance of the FDDA against petitioner.[15] On 21 March 2013, respondent issued the FDDA, which was then received by petitioner on 25 March 2013.[16]

On 24 April 2013, petitioner filed an Appeal with the Office of the CIR questioning the FDDA.[17] On 13 March 2018, a Memorandum Report was issued recommending the issuance of the Assailed Decision.[18] On 19 November 2018, the CIR issued the Assailed Decision effectively denying petitioner's Appeal.[19] The Assailed Decision was received by petitioner on 3 December 2018,[20] and it assessed petitioner for the following deficiency taxes:

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Value Added Tax ("VAT")	31,218,834.97	15,609,417.49	44,578,935.40		91,407,187.86
Expanded Withholding Taxes ("EWT")	16,287,506.77	8,143,753.39	23,302,210.19	10,000.00	47,743,470.35
Withholding Tax on Compensation ("WTC")	641,956.66		918,434.55	10,000.00	1,570,391.21
Total	53,999,030.60	23,753,170.88	68,799,580.14	20,000.00	140,721,049.42

On 28 December 2018, petitioner filed the instant Petition.[21] The case was initially raffled to this Court's First Division, which then issued Summons to respondent on 11 January 2019.[22]

Respondent filed his Answer on 15 March 2019[23] and elevated the entire BIR Records appurtenant to this case on 21 March 2019.[24]

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13 See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 2, p. 555; Exhibits "R-8" and "P-6", BIR Records, Exhibit "R-15", Folder No. 2, pp. 414-419; See TSN, dated 11 March 2020, pp. 7-8.

14 See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 2, p. 555; Exhibit "P-7", BIR Records, Exhibit "R-15", Folder No. 2, pp. 420-421.

15 Exhibit "R-10", BIR Records, Exhibit "R-15", Folder No. 2, pp. 658-661.

16 See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 2, p. 555; Exhibits "R-11" and "P-8", BIR Records, Exhibit "R-15", Folder No. 2, pp. 679-688.

17 See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 2, p. 556; Exhibit "P-9", BIR Records, Exhibit "R-15", Folder No. 1, pp. 1-314.

18 BIR Records, Exhibit "R-15", Folder No. 1, pp. 696-697.

19 *Id.*, pp. 700-712.

20 See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 2, p. 556.

21 Records, Vol. 1, pp. 10-223.

22 *Id.*, pp. 224-225.

23 *Id.*, pp. 238-253.

24 *Id.*, p. 254-257.

In a Resolution, dated 22 March 2019, the case was referred to mediation,[25] which was then reported as unsuccessful on 4 July 2019.[26]

In an Order, dated 8 July 2019, this Court issued a Notice of Pre-Trial Conference setting the Pre-Trial on 10 October 2019.[27]

Petitioner then filed its Pre-Trial Brief on 4 October 2019,[28] while respondent filed his Pre-Trial Brief on 8 October 2019.[29]

Pre-Trial ensued on 10 October 2019.[30]

On 21 October 2019, petitioner submitted the Judicial Affidavit of its witness, Ester L. Reyes.[31] Meanwhile, respondent submitted the Judicial Affidavit of his witness, RO Matias Fadri III, on 23 October 2019.[32]

On 4 November 2019, the parties submitted their Joint Stipulation of Facts and Issue[33] which then terminated the Pre-Trial.[34] Thereafter, a Pre-Trial Order was issued by the Court on 4 December 2019.[35]

On 2 March 2020, petitioner filed the Amended Judicial Affidavit of its witness, Ester L. Reyes,[36] who was placed on the witness stand on 11 March 2020[37]

On 1 July 2020, petitioner filed its Formal Offer of Evidence,[38] to which respondent interposed no objections.[39]

In a Resolution, dated 23 September 2020, this Court admitted petitioner's Exhibits subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in the present case except Exhibits "P-15", "P-15-A", "P-15-B", "P-15-C", "P-15-D", "P-15-E", "P-15-F", "P-15-G", "P-15-H", "P-15-/

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25 *Id.*, pp. 258-260.
26 *Id.*, p. 267.
27 *Id.*, pp. 275-276.
28 *Id.*, pp. 279-288.
29 *Id.*, pp. 294-297.
30 *Id.*, pp. 303-307.
31 *Id.*, pp. 308-506.
32 Exhibit "R-16", Records, Vol. 2, pp. 507-517.
33 *Id.*, pp. 529-535.
34 See Resolution, dated 13 November 2019, *id.*, pp. 550-551.
35 *Id.*, pp. 553-560.
36 Exhibit "P-18", *id.*, pp. 591-866.
37 *Id.*, pp. 868-870.
38 Records, Vols. 2-3, pp. 873-1107.
39 Records, Vol. 3, pp. 1109-112.

I", "P-15-J", "P-15-K", "P-15-L", "P-15-M", "P-15-N", "P-15-O", "P-15-P", "P-15-Q", "P-15-R", "P-15-S", "P-15-T", "P-15-U", "P-15-V", "P-15-W", "P-16", "P-16-A", "P-16-B", "P-16-C", "P-16-D", "P-16-E", "P-16-F", "P-16-G", "P-16-H", "P-17", "P-17-A", "P-17-B", "P-17-C", "P-17-D", "P-17-E", "P-17-F", "P-17-G", "P-17-H", "P-17-I", "P-17-J", and "P-17-K" for failure to present the originals for comparison.[40]

On 9 February 2021, respondent placed its witness, RO Fadri III, on the witness stand.[41]

Subsequently, on 1 March 2021, respondent filed its Formal Offer of Evidence,[42] to which petitioner filed a Comment/Opposition.[43] The Court, in a Resolution, dated 25 June 2021, admitted all of respondent's offered Exhibits.[44]

On 27 October 2021, petitioner tendered its Exhibits which were denied admission by this Court.[45] This was noted by this Court in a Resolution, dated 11 December 2021. The previously denied Exhibits were then made part of the records of this case.[46]

On 4 November 2021, petitioner filed its Memorandum,[47] while respondent filed none.[48]

Thus, on 23 February 2021, this Court issued a Resolution submitting the instant case for Decision.[49]

Hence, this Decision.

<u>The Issues</u>[50]

> "WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX AND WITHHOLDING TAX ON COMPENSATION IN THE TOTAL AMOUNT OF

40 *Id.*, pp. 1114-1118.
41 *Id.*, pp. 1119-1121.
42 *Id.*, pp. 1122-1133.
43 *Id.*, pp. 1136-1143.
44 *Id.*, pp. 1144-1147.
45 *Id.*, pp. 1148-1159.
46 *Id.*, pp. 1226-1228.
47 *Id.*, pp. 1163-1224.
48 *Id.*, p. 1229.
49 *Id.*, p. 1231.
50 See Issue in the Pre-Trial Order, Records, Vol. 2, p. 556.

PHP140,721,049.42, INCLUSIVE OF SURCHARGE AND INTEREST, FOR THE TAXABLE YEAR 2005."

Arguments of the Parties

Petitioner's Arguments[51]

Petitioner avers the following in its Memorandum:

a) The period to assess the alleged deficiency taxes has prescribed;

   i. Petitioner received the FLD/FAN only on 23 June 2009, clearly beyond the three (3) year period to assess;

   ii. The ten (10)-year period to assess deficiency taxes under ***Sections 203 and 222 of the NIRC*** is not applicable;

   iii. The assessment of withholding taxes is subject to prescription;

b) The investigation and audit of the BIR lasted more than one hundred twenty (120) days, rendering the assessment void;

c) There is no legal or factual basis for the alleged deficiency VAT against the petitioner for TY 2005;

   i. The total amount of Trust Fund Contribution is Php300,349,118.08 and not just Php54,204,044.00, as erroneously stated in the FLD/FAN;

   ii. Handling Fees are not subject to VAT on the part of petitioner;

   iii. The FLD, FDDA, and the Assailed Decision failed to inform petitioner of the factual basis in disallowing certain input taxes amounting to Php1,812,667.06;

d) There is no legal and factual basis for the alleged deficiency EWT against the petitioner for TY 2005;

   i. The amount of Commissions in TY 2005 only amounts to Php88,352,164.00;

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[51] Records, Vol. 3, pp. 1167-1222.

ii. The Commissions and Overrides in the amount of Php224,140,239 already include the Deferred Commissions for TY 2004 amounting to Php135,788,075;

iii. The Office Rentals Paid for an Office Space in Hong Kong is not subject to EWT in the Philippines;

iv. The Purchases of Goods and Services are from Non-Regular Suppliers and are less than Php10,000.00 per transaction, hence, not subject to EWT;

e) There is no legal and factual basis for the alleged deficiency WTC against the petitioner for TY 2005;

i. The computation of withholding tax on Total Salaries and Other Compensation Expense failed to take into consideration petitioner's contributions to Philhealth, Social Security Services ("SSS") and Pag-Ibig; and

f) There are no deficiency taxes which should have been paid; therefore, no surcharge, interest, or compromise should have been charged from petitioner.

Respondent's Counter-Arguments[52]

Respondent counter argues as follows in his Answer:

a) Respondent's right to assess petitioner has not yet prescribed;

b) The assessment of withholding taxes is imprescriptible;

c) The conduct of the audit beyond the one hundred twenty (120) – day period does not invalidate the assessment. The assessment remains valid;

d) The assessment has factual and legal bases. Petitioner is liable for deficiency VAT, EWT and WTC; and

e) Petitioner is liable for surcharge, interest & compromise penalty.

The Ruling of the Court

The instant **Petition is impressed with merit.**

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52 See Answer, Records, Vol. 1, pp. 239-251.

The Court has jurisdiction over the present Petition.

Jurisdiction by this Court over the instant case is conferred by ***Section 7 (1) of RA 1125***, to wit:

> "***SEC. 7. Jurisdiction.*** - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;" (Emphasis and underscoring, Ours.)

In the instant case, petitioner is appealing the Assailed Decision by respondent CIR, which affirmed the assessment contained in the FDDA that was disputed by petitioner. The Assailed Decision is a decision of the CIR pertaining to deficiency tax assessments referred to in the above cited provision that may be appealed before this Court. Accordingly, the said subject matter is within the jurisdiction of this Court, and it may validly try the same as long as the appeal has been timely made.

The records show that petitioner received the Assailed Decision on 3 December 2018. Under ***Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***, "[a] party adversely affected by a decision… of the Commissioner of Internal Revenue… may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision." Following this, petitioner had thirty (30) days from receipt of the Assailed Decision (*i.e.*, 3 December 2018), or until 2 January 2019, within which to file a judicial appeal before this Court. As petitioner filed the instant Petition on 28 December 2018, this Court properly assumed jurisdiction over the present case.

Petitioner was able to overturn the presumption that it filed false returns. Accordingly, the three (3) – year prescriptive period to issue tax assessments applies in the case at bar.

Section 203 of the NIRC provides a three (3)-year prescriptive period to assess deficiency taxes, *viz.*:

> "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 and underscoring, Ours.)

As an exception, ***Section 222 (a) of the NIRC*** provides a ten (10)-year prescriptive period to assess deficiency taxes in case a taxpayer: a) fails to file a return, b) files a false return, or c) files a fraudulent return, 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 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."
(Emphasis and underscoring, Ours.)

Here, respondent applied the ten (10)-year prescriptive period on its position that petitioner made a substantial under-declaration in its VAT Returns (*i.e.*, petitioner allegedly failed to report sales, receipt or income in an amount more than 30% of that declared in the VAT return). It posits that the substantial under-declaration of sales, receipt, or income in petitioner's VAT Returns is prima facie evidence that said tax return is false.[53]

While it is true that such a substantial under declaration of sales, receipts, or income results in a presumption of falsity or fraud, such presumption can be overcome by evidence to the contrary. Indeed, in order to escape from the application of the longer ten (10)-year prescriptive period the taxpayer is bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns.[54]

Was the petitioner able to so refute the presumption of falsity of its returns? The Court finds that it has successfully done so.

In the Assailed Decision, which merely affirmed the assessment contained in the FDDA, the VAT assessment issued against petitioner was computed, as follows:[55]

53 See Answer, Records, Vol. 1, pp. 239-242.
54 See Commissioner of Internal Revenue v. Asalus Corporation, G.R. No. 221590, 22 February 2017.
55 See Assailed Decision, Annex "A" of the Petition, Records, Vol. 1, p. 48.

Premium Collection		Php506,829,611.00
Add: Other Income Subject to VAT:		
Handling Fee	Php64,886,238.00	
Management Fee	9,000,000.00	
Commission Fee	5,192,069.00	
Others	4,346,494.00	
Sale of Property and Equipment	609,583.04	84,034,384.04
Total		Php590,863,995.04
Less: Trust Fund Contribution		54,204,044.00
Taxable Receipts per Audit		Php536,659,951.04
Output Tax Due		Php53,665,995.10
Less: Allowable Input Tax		
Input Tax per Return	Php5,904,398.26	
Less Disallowed per Audit	1,812,667.06	4,091,731.20
VAT Due per Audit		Php49,574,263.00
Less VAT Paid per Return		18,355,428.93
Basic Deficiency VAT		Php31,218,834.97
Add Increments:		
Surcharge (***Sec. 248 (B) of the NIRC*** – 50%)	Php15,609,417.49	
Interest from 01/25/06 to 03/15/13	44,578,935.40	60,188,352.89
Total Deficiency VAT		Php91,407,187.86

As can be gleaned, above, the taxable receipts, per respondent's audit, amounted to P536,659,951.04.

On the other hand, the taxable receipts per petitioner's Quarterly VAT Returns, only amounted to P242,600,271.90, as follows:

VAT Return	Total Gross Receipts Subject to VAT	Exhibit No.
First Quarter	Php74,058,925.90	Exh. No. 11-C-1
Second Quarter	55,243,063.60	Exh. No. 11-F
Third Quarter	60,493,265.50	Exh. No. 11-J
Fourth Quarter	52,805,016.90	Exh. No. 11-O
Total	Php242,600,271.90	

Comparing these two figures, there would appear to be a 121% discrepancy or under declaration of taxable receipts. Obviously, this was the basis of respondent's finding that petitioner's VAT Returns are false and his subsequent application of the ten (10)-year prescriptive period for assessing deficiency taxes.

Petitioner, however, has successfully presented evidence refuting such presumption of falsity.

To begin with, Trust Fund contributions are funds set-up by pre-need companies to be used to pay the benefits of the plan holders as provided in the pre-need plan.[56] It is not disputed that said Trust Fund contributions are deducted from taxable receipts for being VAT exempt. This is clear from ***BIR Ruling DA-027-06***, where respondent opined that pre-need plans are subject to VAT based on the gross receipts from premiums or payments received from plan holders, net of actual Trust Fund contribution, *viz.*:

> "In the case of pre-need companies, pre-need plan holders are assured of receiving the benefits of their investments and in order to ensure delivery of the promised goods and services, pre-need companies are required to place part of the proceeds of the sale in banks as Trust fund where they earn income.
>
> As defined in the New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities Regulation Code, 'trust fund' means a fund set up from Plan holders' payments, separate and distinct from the paid-up capital of a registered Pre-Need Company, established with a Trustee under a trust agreement approved by the Commission, to pay for the Benefits as provided in the Pre-Need Plan. (paragraph 1.9 of Rule 1) This trust fund (inclusive of earnings) shall be administered and managed by a trust company, bank, or investment house authorized to perform trust functions in the Philippines. No withdrawal shall be made from the trust fund except for: (1) paying the cost of services rendered or property delivered; (2) trust fees, bank charges and investment expenses in the operation of the trust fund; (3) cash surrender/termination value payable to the plan holders; (4) annuities; (5) contributions to the fund of cancelled plans; (6) taxes on trust funds; and (7) reasonable withdrawal for minor repairs and costs of ordinary maintenance of trust fund assets. Further, under the Rules, to guarantee the delivery of property or performance of services in the future, a deposit shall be made by the issuer into a Trust Fund to be established for each type of plan in accordance with the rates used in the actuarial studies computed on the basis of 45% of the contract price of pre-need plan, for cash sales, and on a graduated rate of 5%-80%, for installment sales.
>
> **Clearly, contributions to the trust fund represent a certain percentage of the amounts collected from the plan holders, which are held in trust by a pre-need company and earmarked as reserved fund as mandated by the SEC and required to be deposited with a trust company to guarantee the faithful compliance of the obligation under the plan.**
>
> Foregoing premises considered, we hereby confirm your opinion that gross receipts of a pre-need company should be net of actual trust fund contribution for purposes of computing the 10% value-added tax (VAT) pursuant to Section 4.108-3, paragraph (j) of RR No. 16-2005, which defines 'Pre-need Companies' as follows:

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[56] BIR Ruling DA-027-06, 31 January 2006.

> 'SEC. 4.108-3. Definitions and Specific Rules on Selected Services.
>
> —
>
> 'xxx xxx xxx'
>
> (j) Pre-need Companies are corporations registered with the Securities and Exchange Commission and authorized/licensed to sell or offer for sale pre-need plans, whether a single or multi-plan. They are engaged in business as seller of services providing services to plan holders by managing the funds provided by them and making payments at the time of need or maturity of the contract.
>
> As service providers, the compensation for their services is the premiums or payments received from the plan holders.'
>
> As defined above, pre-need companies are considered to be engaged in business as seller of services providing services to plan holders by managing the funds provided by them. As service providers, **<u>the gross receipts of pre-need companies for VAT purposes should only be the premium or payment collected from the plan holders excluding the 'funds' provided by the plan holders, which are being managed by the pre-need companies for them.</u>**
>
> **<u>The 'funds' provided by the plan holders, which are being managed by the pre-need companies, pertain to such amount of trust fund contributions as mandated by the SEC. Therefore, such amount of trust fund contributions do not form part of the gross receipts of the pre-need companies for purposes of determining their gross receipts subject to 10% VAT.</u>** To disallow such amount credited to the trust fund would be tantamount to taxing that percentage of contributions of plan holders which actually are held in trust by pre-need companies, and earmarked as reserved fund to guarantee the payment of services and/or delivery of the property or cash surrender/termination value to plan holders. (BIR Ruling No. UN-248-A-95 dated July 16, 1995)"
> (Emphasis and underscoring, Ours.)

Indeed, Trust Fund contributions are exempted from VAT as ***Sec. 108 of the NIRC*** merely imposes VAT on the gross receipts derived from the sale or exchange of services. Trust Fund contributions are not received by petitioner as payment for its pre-need services but are received only for management by petitioner, from which the pre-need benefits of the plan holders will be obtained from.

Accordingly, all Trust Fund contributions received by petitioner, being VAT exempt, should be deducted from its gross receipts subject to VAT.

Herein lies the error in the instant case.

As may be gleaned from the computation of respondent in its Decision, he only considered the amount of P54,204,044.00 as an allowed deduction from petitioner's taxable receipts.

According to petitioner, however, its total Trust Fund Contributions for the year amounted to P300,349,118.00. This comprised the P54,204,044.00 allowed deduction by respondent and the amount of P246,145,074.00 which was the actual contribution amount to the Trust Fund for that year.

Its witness, Ester L. Reyes, testified on this as follows:

"54 Q: You earlier stated in the FLD that the total VAT deficiency is P91,407,187.86, can you tell us what is the reason why you say that this is erroneous?

A: The computation of the VAT deficiency is erroneous because in arriving at the total VAT liability of PET Plans, the amounts corresponding to Trust Find Contributions and Handling Fees should have been excluded. The VAT computation in the FDDA is as follows:

Premium Collection		Php 506,829,611.00
Add: Other Income Subject to Vat		
Handling Fee	Php 64,882,238.00	
Management Fee	Php 9,000,000.00	
Commission Fee	Php 5,192,069.00	
Others	Php 4,346,494.00	
Sale of property and equipment	Php 609,583.04	Php 84,034,384.04
Total		Php 590,863,995.04
Less: Trust Fund Contribution		Php 54,204,044.00
Taxable Receipts per Audit		Php 536,659,995.10
Outputs Tax Due		Php 53,665,995.10
Less: Allowable input tax		
Input Tax per return	Php 5,904,398.26	
Less Disallowed per audit	Php 1,812,667.06	Php 4,091,731.20
VAT Due per Audit		Php 49,574,263.00
Less VAT Paid per Return		Php 18,355,428.93
Basic Deficiency VAT		Php 31,218,834.97
Add Increments:		
Surcharge (Sec. 248(B). NIRC – 50%)	Php 15,609417.49	
Interest from 01 / 25 / 06 to 03 / 15 / 13	Php 44,578,935.40	Php 60,188,352.89
Total Deficiency VAT		Php 91,407,187.86

The amount of **Php 54,204,044.00** as Trust Fund Contributions is erroneous as the total amount of trust funds should be **Php 300,349,118.08**.

55 Q: What is your basis for saying that the total amount of trust funds should be **Php 300,349,118.08**?

A: In the Audited Financial Statements for 2005 ("AFS") it can be seen that PET Plans deposited Php 300,349,118.08 as trust fund contributions, as shown in the following items of the AFS:

AFS Portion	*Description*	*Amounts*
Statements of Cash Flows	Contributions to investments in trust funds	Php 246,145,074.00
Note 8. Trust Funds	Equity Additional contributions during the year	
Note 12. Actuarial Reserve Liabilities	Subsequent deposits	Php 54,204,044.00
	Total	**Php 300,349.118.00**

The BIR only took into consideration Note 12 of the Notes to Financial Statements and only considered the amount of **Php 54,204,044.00** as trust fund contributions, which is only a portion of the total trust fund contributions. The BIR failed to consider the "Statements of Cash Flows" and "Note 8. Trust Funds" which show another trust fund deposits [sic] amounting to **Php 246,145,074.00**. The amount of **Php 54,204,044.00** represents the subsequent deposits required in view of the **Php 163,114,230.00** trust fund variance noted in Note 12. Actuarial Reserve Liabilites in the AFS."[57]

It stands clear, then, that aside from the P54,204,044.00 allowed as deduction by respondent from petitioner's taxable receipts, the amount of P246,145,074.00 should have also been deducted as VAT exempt. This amount has been penciled in twice in petitioner's Financial Statements for the year 2005 as contributions to its Trust Funds:

First, as "(C)ontributions to investments in trust funds" under the heading "Cash Flows From Investing Activities" in petitioner's Statements of Cash Flows which is part of its Financial Statements for 2005.[58]

Second, as "(A)dditional contributions during the year" under the heading "Equity" in petitioner's Notes to Financial Statements under Note 8 on Trust Funds.[59]

This amount is, in fact, the actual contributions to the Trust Fund during the year. The amount of P54,204,044.00 was merely a subsequent deposit to the Trust Fund, prompted by the requirements of the Securities and Exchange Commission ("SEC") due to variance. Indeed, the amount was penciled in as "(S)ubsequent deposits" under Note 12 on Actuarial Reserve Liabilities of petitioner's Notes to Financial Statements where it was further explained that "(A)nnual actuarial valuations of the pre-need contractual commitments are

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[57] Exhibit "P-18", pp. 14-16. Records, Vol. 2, pp. 604-606.
[58] Exhibit "P-14", Records, Vol. 3, p. 1037.
[59] Exhibit "P-14-B", *id.*, p. 1051.

based on the computation prescribed by the SEC. Any deficiency between amount and the trust fund should be funded by the Company within 120 days as discussed in Note 7".[60]

With only the amount of P54,204,044.00 allowed to be deducted from petitioner's gross receipts subject to VAT, the VAT assessment expectedly increased, resulting in what respondent found to be more than 30% discrepancy or under declaration of taxable receipts.

With the evidence before this Court, the total Trust Fund Contributions exempt from VAT should be as follows:

Contributions to Investment in Trust Funds	P246,145,074.00
Subsequent Contributions as mandated by the SEC due to Trust Fund Variance	P54,204,044.00
Total Trust Fund Contribution	P300,349,118.00

Given this finding, the revised taxable receipts per audit should be as follows:

Premium Collection		Php506,829,611.00
Add: Other Income Subject to VAT:		
Handling Fee	Php64,886,238.00	
Management Fee	9,000,000.00	
Commission Fee	5,192,069.00	
Others	4,346,494.00	
Sale of Property and Equipment	609,583.04	84,034,384.04
Total		Php590,863,995.04
Less: Trust Fund Contribution		300,349,118.00
Taxable Receipts per Audit		Php290,514,877.04

Comparing the revised Taxable Receipts per Audit (*i.e.*, Php290,514,877.04) with the gross receipts subject to VAT per VAT returns filed by petitioner (*i.e.*, 242,600,271.90), there is now a reduced discrepancy in the total receipts subject to VAT declared by petitioner in its VAT Returns in the total amount of Php47,914,605.14. This visible under-declaration is now just 20% of the total gross receipts subject to VAT declared by petitioner in its VAT Returns.

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60 Exhibit P-14-A, *id.*, p. 1054.

As respondent, himself, held out in his Answer, "the amount of trust fund contributions which petitioner can claim as a deduction to its total taxable receipts subject to VAT is a question of fact".[61] Evidence on that question of fact has been on the side of petitioner.

All told, the Court finds that petitioner has successfully refuted the presumption that its VAT Returns were false. The burden of proof then shifted to respondent which failed to present any evidence to the contrary. Without actual proof that petitioner's tax returns are false or fraudulent, the applicable prescriptive period is the three (3)-year period to assess.

The EWT and WTC assessments are not imprescriptible.

In the Answer, respondent contended that the EWT and WTC assessments against petitioner are imprescriptible. This is terribly misplaced.

In ***Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.***,[62] the Supreme Court already declared that withholding tax assessments are subject to prescription, *viz.*:

> "Withholding taxes are internal revenue taxes covered by Section 203 of the NIRC.
>
> Section 203 of the NIRC provides for the ordinary prescriptive period for the assessment and collection of taxes, to wit:
>
> SEC. 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in 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)
>
> xxx xxx xxx
>
> The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.

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[61] Answer, p. 10; Records, Vol. 1, p. 247.
[62] G.R. No. 211289, 14 January 2019.

> xxx xxx xxx
>
> Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.
>
> As a consequence of the withholding tax system, two distinct liabilities arise — one for the income earner/payee and another for the withholding agent...
>
> xxx xxx xxx
>
> It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.
>
> xxx xxx xxx
>
> The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties...
>
> xxx xxx xxx
>
> Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code.

The Supreme Court, in the aforecited case, stated in no uncertain terms that a withholding tax assessment is not merely an imposition of penalty on the withholding agent. On the contrary, it was categorically held that the collection of withholding taxes falls squarely within the purview of ***Section 203 of the NIRC***. The three (3)-year prescriptive period under ***Section 203 of the NIRC*** thus applies to withholding tax assessments.[63]

[63] Commissioner of Internal Revenue v. First Philippine Electric Corporation, CTA *EB Case* No. 2091, CTA Case No. 9199, 11 November 2020.

The VAT, EWT and WTC assessments have all prescribed.

To repeat, as respondent failed to adduce evidence clearly showing that the tax returns filed by petitioner are false or fraudulent, the applicable prescriptive period is the three (3)-year period provided under ***Section 203 of the NIRC.*** Applying the said provision, each of petitioner's VAT, EWT and WTC Returns had the following deadlines for assessment:

VAT Returns[64]

Return	Date Due/ Date of Filing	Last day for respondent to assess
Monthly Value-Added Tax Declaration (2550-M) for January 2005	February 15, 2005	February 14, 2008
Amended Monthly Value-Added Declaration (2550-M) for January 2005	May 17, 2005	May 16, 2008
Amended Monthly Value-Added Declaration (2550-M) for February 2005	May 17, 2005	May 16, 2008
Quarterly Value-Added Tax Return(2550-Q) for 1st Quarter of 2005	April 25, 2005	April 24, 2008
Monthly Value-Added Tax Declaration (2550-M) for April 2005	May 25, 2005	May 24, 2008
Amended Monthly Value-Added Tax Declaration (2550-M) for May 2005	June 24, 2005	June 23, 2008
Quarterly Value-Added Tax Return(2550-Q) for 2nd Quarter of 2005	July 22, 2005	July 21, 2008
Amended Quarterly value-Added Tax Return (2550-Q) for 2nd Quarter of 2005	October 5, 2005	October 4, 2008
Monthly Value-Added Tax Declaration (2550-M) for July 2005	August 25, 2005	August 24, 2008
Amended Monthly Value-Added Tax Declaration (2550-M) for August 2005	September 23, 2005	September 22, 2008

64 Exhibits "P-11" to "P-11-O-1", Records, Vol. 2, pp. 935-978

Quarterly Value-Added Tax Return(2550-Q) for 3rd Quarter of 2005	October 25, 2005	October 24, 2008
Monthly Value-Added Tax Declaration (2550-M) for October 2005	November 25, 2005	November 24, 2008
Amended Monthly Value-Added Tax Declaration (2550-M) for November 2005	December 23, 2005	December 22, 2008
Amended Monthly Value-Added Tax Declaration (2550-M) for November 2005	May 2, 2006	May 1, 2009
Quarterly Value-Added Tax Return(2550-Q) for 4th Quarter of 2005	January 25, 2006	January 24, 2009
Amended Quarterly Value-Added Tax Return(2550-Q) for 4th Quarter of 2005	May 2, 2006	May 1, 2009

EWT Returns[65]

Return	Date Due/ Date of Filing	Last day for respondent to assess
Annual Return of Expanded Withholding Taxes(1604-E) for 2005	February 21, 2006	February 20, 2009
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For January 2005	February 15, 2005	February 14, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For February 2005	March 15, 2005	March 14, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For March 2005	April 13, 2005	April 12, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For April 2005	May 13, 2005	May 12, 2008

65 Exhibits "P-12" to "P-12-L", Records, Vols. 2-3, pp. 979-1004.

Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For May 2005	June 15, 2005	June 14, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For June 2005	July 15, 2005	July 14, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For July 2005	August 15, 2005	August 14, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For August 2005	September 15, 2005	September 14, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For September 2005	October 14, 2005	October 13, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For October 2005	November 15, 2005	November 14, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For November 2005	December 15, 2005	December 14, 2008
Monthly Remittance Return for Creditable Income Taxes Withheld (1601-E) For December 2005	January 13, 2006	January 12, 2009

WTC Returns[66]

Return	**Date Due/ Date of Filing**	**Last day for respondent to assess**
Amended Annual Information Return of Withholding Taxes on Compensation and Final Withholding Taxes	January 31, 2006	January 30, 2009
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for January 2005	February 15, 2005	February 14, 2008

[66] Exhibits "P-13" to "P-13-L", Records, Vol. 3, pp. 1005-1030.

Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for February 2005	March 15, 2005	March 14, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for March 2005	April 15, 2005	April 14, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for April 2005	May 13, 2005	May 12, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for May 2005	June 15, 2005	June 14, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for June 2005	July 15, 2005	July 14, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for July 2005	August 18, 2005	August 17, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for August 2005	September 15, 2005	September 14, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for September 2005	October 14, 2005	October 13, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for October 2005	November 15, 2005	November 14, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for November 2005	December 15, 2005	December 14, 2008
Monthly Remittance Return for Income Taxes Withheld on Compensation (1601-E) for December 2005	January 15, 2006	January 14, 2009

It is of note that during the cross-examination of respondent's witness, Revenue Officer Matias Fadri III, the Court requested the parties to enter into a stipulation that the last tax return subject of the instant case was filed on 2 May 2006, to which petitioner and respondent both agreed:

> "JUSTICE SAN PEDRO: All right, can you give the period the latest of which because your point is that these were executed at the period of 2005 and the latest early 2006 so that you do not have to go monthly because I think, I am correct you will enter into a stipulation.
>
> ATTY. TEJADA: Yes, Your Honors.
>
> ATTY. FAUSTINO: Your Honors, may we enter into a stipulation that the last of the return was filed on May 2, 2006, the quarterly returns the monthly VAT returns, the monthly EWT returns and monthly WTC returns the last of which was filed, when of the last of which was filed on May 2, 2006.
>
> JUSTICE SAN PEDRO: Can you stipulate on that?
>
> ATTY. TEJADA: Yes, as far as I could remember it.
>
> JUSTICE SAN PEDRO: So the stipulation is that the last quarterly or monthly was on May 2006 and that all the other returns were filed earlier.
>
> ATTY. FAUSTINO: Yes, Your Honors." [67]

Given the foregoing stipulation and applying the three (3)-year prescriptive period, the last day for respondent to assess deficiency taxes based on the stipulation will be on 1 May 2009.

The date of issuance of the FLD/FAN determines whether or not respondent was able to issue an assessment within the prescriptive period. In the present case, respondent issued an undated FLD/FAN. Hence, the actual date of issuance of the FLD/FAN cannot be determined. However, the Memorandum prepared by the ROs which recommended the issuance of such FLD/FAN was dated 3 June 2009. Considering this, the FLD/FAN could not have been issued earlier than 3 June 2009.

Accordingly, the assessment in the present case is void because it was only issued on 3 June 2009 at the earliest, which is beyond any of the last days of the three (3)-year prescriptive periods as computed above, whether the date as stated in the tables above, which is the last day to assess deficiency taxes for each tax return subject of the present assessment, or the date which has been stipulated upon by the parties as the latest date of filing of any of the tax returns subject of the present assessment.

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[67] See TSN, dated 9 February 2021, pp. 11-12.

The deficiency VAT, EWT, and WTC assessment in the total amount of Php140,721,049.42 is consequently null and void for being issued beyond the prescriptive period.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** The PAN, FLD/FAN, FDDA, and the Assailed Decision issued against petitioner are declared **NULL AND VOID**. The deficiency VAT, EWT and WTC assessments issued against petitioner for TY 2005, in the aggregate amount of Php140,721,049.42, are hereby **CANCELLED** and **SET ASIDE.** Respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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