REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

GMA NETWORK FILMS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9381

Members:

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

Promulgated:
JUN 30 2020
9:30 a.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

This is a *Petition for Review* filed by petitioner GMA Network Films, Inc. against respondent Commissioner of Internal Revenue on July 7, 2016, praying that judgment be rendered ordering the cancellation and withdrawal of respondent's assessment on petitioner's alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), for the calendar year (CY) 2011, in the aggregate amount of ₱11,054,565.66, inclusive of interest.[1]

THE PARTIES

Petitioner GMA Network Films, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at GMA Network Center, EDSA cor. Timog Avenue, Diliman, Quezon City.[2] It is registered with the Bureau of Internal Revenue (BIR) – Revenue Region No. 7, Revenue District Office (RDO) No. 39, as

[1] Statement of the Case, Pre-Trial Order dated June 21, 2017, Docket – Vol. 2, p. 767.
[2] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 595.

shown in its Certificate of Registration dated September 9, 1997 with Tax Identification Number (TIN) 004-830-087-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, and other tax laws, rules and regulations.[4]

THE ANTECEDENTS

Respondent issued the *Letter of Authority* (LOA) No. LOA-039-2012-00000788 dated August 23, 2012, authorizing Revenue Officer Irene Juana Acacio and Group Supervisor Virgilio Tablizo of RDO No. 39 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2011.[5] The same were received by petitioner on August 28, 2012.[6]

Petitioner executed a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* (*Waiver*) on May 7, 2014,[7] consenting to the assessment and/or collection of tax or taxes for the subject year which may be found after investigation not later than June 30, 2015. The said *Waiver* was accepted by Revenue District Officer Florante R. Aninag on the same date.

Respondent issued the *Preliminary Assessment Notice* (PAN) with attached *Details of Discrepancies* on May 29, 2015, assessing petitioner for deficiency income tax, VAT, and EWT for CY 2011 in the aggregate amount of ₱9,725,766.54.[8] The said PAN was received by petitioner on the same date.[9]

Thereafter, petitioner received on June 15, 2015 copies of respondent's *Final Assessment Notices* (FANs) and *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies*, all dated June 15, 2015, wherein respondent ordered petitioner to pay the alleged deficiency income tax, VAT, and EWT liabilities for CY 2011 in the aggregate amount of ₱9,879,245.42.[10]

[3] Par. 2, Stipulated Facts, JSFI, Docket – Vol. 1, p. 595.
[4] Par. 3, Stipulated Facts, JSFI, Docket – Vol. 1, pp. 595 to 596.
[5] Par. 4, Stipulated Facts, JSFI, Docket – Vol. 1, p. 596.
[6] Exhibit "P-8", Docket – Vol. 1, p. 285; Exhibit "R-2", Docket – Vol. 2, p. 661.
[7] Exhibit "P-15", Docket – Vol. 1, p. 299.
[8] Par. 6, Stipulated Facts, JSFI, Docket – Vol. 1, p. 596.
[9] Exhibit "P-12", Docket – Vol. 1, pp. 289 to 291; Exhibit "R-9", Docket – Vol. 2, pp. 674 to 676.
[10] Par. 7, Stipulated Facts, JSFI, Docket – Vol. 1, p. 596; Exhibits "P-13", Docket – Vol. 2, pp. 813 to 818; Exhibits "R-14", "R-14.1", "R-14.2", "R-15", and "R-16", Docket – Vol. 2, pp. 683 to 688.

Petitioner filed its *Request for Reinvestigation* with the BIR on July 14, 2015.[11] Respondent granted the said request on July 31, 2015,[12] and the BIR continued the tax audit/investigation.[13]

Petitioner received a copy of respondent's *Final Decision on Disputed Assessment* (FDDA) with attached *Details of Discrepancies* on June 7, 2016,[14] wherein respondent ordered petitioner to pay the alleged deficiency income tax, VAT, and EWT for CY 2011 in the total amount of ₱11,054,565.66,[15] broken down as follows:

I. Income Tax:

Taxable Income (Loss) Per Return		₱4,844,155.00
Add: Adjustments Per Investigation		
Receipts Not Subjected to Income Tax	₱12,756,572.87	
Unaccounted Source of Cash	3,993,973.00	
Disallowed Expenses Due to Non Withholding	1,137,777.52	17,888,323.39
Adjusted Taxable Income		₱22,723,478.39
Income Tax Due (30%)		₱6,819,743.52
Less: Tax Credits/Payments		
Prior Year's Excess Credits	₱ 1,718,261.03	
Creditable Withholding Tax Payments	396,434.00	
Total	₱ 2,114,695.03	
Less: Excess Tax Credits carried over to the Next Period	661,449.00	1,453,246.03
Deficiency Income Tax		₱ 5,366,497.49
Add:		
Interest (04/16/12 to 07/15/16)		4,563,728.27
Total Amount Due		**₱9,930,225.76**

II. VAT:

Vatable Sales Per VAT Returns		₱68,016,336.33
Add: Adjustments Per Investigation: Unaccounted Source of Cash		3,993,973.00
Adjusted Vatable Sales		₱72,010,309.33
Output Tax Due (12%)		₱ 8,641,237.12
Less: Allowed Tax Credits/Payments		
Payments	₱ 2,462,707.42	
Current input tax	5,839,893.54	
Total	₱ 8,302,600.96	
Less: Excess input tax carried over to the next period	140,640.61	8,161,960.35
Deficiency VAT		₱ 479,276.77
Add: Interest (1/26/12 to 07/15/16)		428,854.23
Total Amount Due		**₱ 908,131.00**

III. DST:

[11] Exhibit "P-14", Docket – Vol. 2, pp. 1092 to 1095.
[12] Par. 8, Stipulated Facts, JSFI, Docket – Vol. 1, p. 596.
[13] Exhibit "P-16", Docket – Vol. 1, p. 300; Exhibit "P-22", Docket – Vol. 2, p. 1144; Exhibit "R-17", Docket – Vol. 2, p. 689.
[14] BIR Records, pp. 427 to 429.
[15] Par. 9, Stipulated Facts, JSFI, Docket – Vol. 1, p. 596; Exhibit "P-3", Docket – Vol. 1, pp. 145 to 148; Exhibits "R-19" and "R-20", Docket – Vol. 2, pp. 691 to 692; Exhibit "R-1" (BIR Records), pp. 426 to 429.

Basic Tax Due (30%)	₱113,777.75
Add: Interest (01/16/12 to 07/15/16)	102,431.15
Total Amount Due	**₱216,208.90**

Respondent subsequently issued the *Preliminary Collection Letter* dated November 25, 2016,[16] and the *Final Notice Before Seizure* dated December 6, 2016.[17]

Petitioner filed the instant *Petition for Review* on July 7, 2016.[18] This case was originally raffled to this Court's First Division.

On September 21, 2016, the Court granted respondent's *Motion to Admit Answer* which was filed on September 14, 2016.[19] In the *Answer*,[20] respondent raised the following defenses, to wit:

> "The truth is that the assessment issued against Petitioner are correct. Petitioner was correctly assessed a deficiency income tax amounting to P8,871,629.00. It was disclosed during verification that total sales amounting P12,756,572.87 was not fully subjected to income tax. Hence, it was assessed pursuant to Sections 31 and 32 of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended.
>
> Verification also disclosed that Petitioner's deferred input VAT as reflected in its financial statement was not reported in its VAT returns. Thus, the difference amounting to P3,993,973.00 was considered as unaccounted source of cash. Said amount is taxable pursuant to Section 31 of the NIRC of 1997, as amended.
>
> Likewise, verification disclosed that professional fees of Petitioner amounting to P1,137,777.52 was not fully subjected to withholding tax as required under Revenue Regulations No. 2-98, as amended. Thus, the difference was disallowed as a deduction from the gross income pursuant to Section 34 (K) of the NIRC of 1997, as amended.
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> With respect to the deficiency VAT, Petitioner was correctly assessed. Verification disclosed that Petitioner had unaccounted income payments amounting to P3,993,973.00. It

[16] Exhibit "R-21", BIR Records (Exhibit "R-1"), p. 439.
[17] Exhibit "R-22", BIR Records (Exhibit "R-1"), p. 440.
[18] Docket – Vol. 1, pp. 10 to 33.
[19] Docket – Vol. 1, pp. 109 to 111; Resolution dated September 21, 2016, Docket – Vol. 1, p. 118.
[20] Docket – Vol. 1, pp. 112 to 115.

was correctly subjected to 12% value-added tax pursuant to Sections 106 and 108 of the NIRC of 1997, as amended.

As to the Deficiency Expanded Withholding Tax, verification disclosed that Petitioner failed to withhold and remit the full amount of expanded withholding tax on its professional fees per financial statement. Thus, it was correctly assessed pursuant to Revenue Regulations No. 2-98, as amended."

The pre-trial conference was initially set on February 9, 2017.[21] However, respondent filed a *Motion to Cancel and Reset Hearing* on February 3, 2017.[22] Thus, the pre-trial conference was reset to and held on April 27, 2017.[23]

Due to the filing of petitioner's *Urgent Motion to Suspend Collection of Taxes* on January 27, 2017,[24] a hearing was set and held therefor on February 2, 2017.[25] Respondent failed to comment thereon.[26] In support to the said *Urgent Motion*, petitioner presented its documentary and testimonial evidence.

Petitioner's Pre-Trial Brief was filed on February 3, 2017,[27] and *Petitioner's Amended Pre-Trial Brief* was filed on April 21, 2017.[28] *Respondent's Pre-Trial Brief* was submitted on April 24, 2017.[29]

In the meantime, the *Formal Offer of Evidence (in support of the Urgent Motion to Suspend Collection of Taxes)* was filed by petitioner on February 7, 2017.[30] Respondent failed to comment thereon.[31]

In the Resolution dated April 4, 2017,[32] the Court admitted the evidence of petitioner in support of its *Urgent Motion to Suspend Collection of Taxes.*

The Court then granted petitioner's *Urgent Motion to Suspend Collection of Taxes* on May 5, 2017, subject to the posting of the required bond.[33] With the

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[21] Resolution dated September 21, 2016, Docket – Vol. 1, p. 118.
[22] Docket – Vol. 1, pp. 203 to 205.
[23] Order dated February 7, 2017, Docket – Vol. 1, p. 379; Minutes of the hearing held on, and Order dated April 27, 2017, Docket – Vol. 1, pp. 577 to 579 and 581 to 583.
[24] Docket – Vol. 1, pp. 119 to 128.
[25] Notice of Hearing dated January 30, 2017, Docket – Vol. 1, p. 192; Minutes of the hearing held on, and Order dated, February 2, 2017, Docket – Vol. 1, pp. 198 to 201.
[26] Records Verification dated April 21, 2017 issued by the Judicial Records Division of this Court, Docket – Vol. 1, p. 400.
[27] Docket – Vol. 1, pp. 206 to 219.
[28] Docket – Vol. 1, pp. 555 to 569.
[29] Docket – Vol. 1, pp. 570 to 574.
[30] Docket – Vol. 1, pp. 381 to 386.
[31] Records Verification dated April 21, 2017 issued by the Judicial Records Division of this Court, Docket – Vol. 1, pp. 389.
[32] Docket – Vol. 1, pp. 398 to 399.
[33] Resolution dated May 5, 2017, Docket – Vol. 1, pp. 587 to 594.

filing of petitioner's *Compliance* on August 18, 2017,[34] the Court enjoined the Bureau of Internal Revenue's officers and/or employees from collecting from petitioner the amount of the subject deficiency taxes, either by distraint, levy, or otherwise by any other means provided for by law, until further orders from the Court.[35]

On May 12, 2017, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[36] The Court approved and terminated the pre-trial in the Resolution dated May 25, 2017.[37] The Court issued the Pre-Trial Order on June 21, 2017.[38]

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following witnesses, namely: (1) Mr. Neil U. Sison,[39] the Court-commissioned Independent Certified Public Accountant (ICPA);[40] and (2) Ms. Joan C. Rumbaoa,[41] petitioner's Unit Head-Shared Services.

The *ICPA Report* was filed on August 7, 2017[42] which was noted by the Court in the Order dated August 15, 2017.[43] The ICPA subsequently transmitted a compact disc (CD),[44] and the same was noted by the Court in the Order dated September 5, 2017.[45] The ICPA amended his *Report* and submitted another *CD* both on November 29, 2017.[46]

Petitioner filed its *Formal Offer of Evidence* on January 4, 2018.[47] Respondent did not file any comment/opposition thereto.[48]

In the Resolution dated March 23, 2018,[49] the Court admitted petitioner's documentary evidence, *except* for Exhibits "P-30-I-2-1" to "P-30-I-2-2", for not being found in the records of the case. Consequently, on April

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[34] Docket – Vol. 2, pp. 876 to 878.
[35] Resolution dated August 4, 2017, Docket – Vol. 2, pp. 888 to 884.
[36] Docket – Vol. 1, pp. 595 to 611.
[37] Docket – Vol. 1, pp. 633 to 634.
[38] Docket – Vol. 2, pp. 767 to 778.
[39] Exhibit "P-27", Docket – Vol. 2, pp. 1035 to 1046; Minutes of the hearing held on, and Order dated, December 5, 2017, Docket – Vol. 2, pp. 1047 to 1051.
[40] Minutes of the hearing held on, and Order dated, July 6, 2017, Docket – Vol. 2, pp. 798 to 801, and 804 to 805, respectively; *Oath of Commission* dated July 6, 2017, Docket – Vol. 2, p. 802.
[41] Exhibit "P-26", Docket – Vol. 1, pp. 407 to 424; Minutes of the hearing held on, and Order dated, August 29, 2017, Docket – Vol. 2, pp. 960 to 966.
[42] Docket – Vol. 2, pp. 896 to 915.
[43] Order dated August 15, 2017, Docket – vol. 2, p. 917.
[44] *Transmittal Letter* dated August 31, 2017, Docket – Vol. 2, p. 984.
[45] Order dated September 5, 2017, Docket – Vol. 2, p. 990.
[46] Docket – Vol. 2, pp. 1011 and 1046; *Transmittal Letter* dated November 29, 2017, Docket – Vol. 2, p. 1009.
[47] Docket – Vol. 2, pp. 1080 to 1091.
[48] Records Verification dated January 31, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 1185.
[49] Docket – Vol. 2, pp. 1191 to 1193.

23, 2018, petitioner filed its *Motion for Partial Reconsideration (Re: Resolution dated March 23, 2018)*.[50] Respondent failed to file any comment/opposition thereto.[51]

In the Resolution dated June 19, 2018, the Court granted petitioner's *Motion for Partial Reconsideration*, and admitted Exhibits "P-30-I-2-1" to "P-30-I-2-2".[52]

Respondent likewise presented his documentary and testimonial evidence. He proffered the testimonies of three (3) Revenue Officers of the BIR, namely: (1) Ms. Irene Juana Acacio;[53] (2) Mr. Mohammad Bashier S. Usudan;[54] and (3) Mr. Jonathan F. Genova.[55]

On September 7, 2018, respondent transmitted the *BIR Records*.[56]

Respondent filed his *Motion to Admit Formal Offer of Exhibits*[57] with attached *Formal Offer of Evidence*. In the Resolution of the Court dated September 18, 2018,[58] the Court admitted respondent's Formal Offer of Evidence. Petitioner filed its *Comment (To Respondent's Formal Offer of Evidence)* on October 15, 2018.[59] In the Resolution dated February 21, 2019,[60] the Court admitted respondent's exhibits.

Pursuant to the Order dated September 27, 2018,[61] the instant case was transferred to this Court's Third Division.

On April 29, 2019,[62] petitioner submitted its *Memorandum*. On the other hand, the Judicial Records Division of this Court issued a Records Verification Report stating that respondent failed to file his Memorandum.[63]

On May 14, 2019, this case was deemed submitted for decision.[64]

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[50] Docket – Vol. 2, pp. 1194 to 1198.
[51] Records Verification dated June 7, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 1204.
[52] Resolution dated June 19, 2018, Docket – Vol. 2, pp. 1215 to 1217.
[53] Exhibit "R-23", Docket – Vol. 2, pp. 654 to 660; Order dated June 19, 2018, Docket – Vol. 2, pp. 1210 to 1211.
[54] Exhibit "R-24", Docket – Vol. 2, pp. 695 to 701; Order dated June 19, 2018, Docket – Vol. 2, pp. 1210 to 1211.
[55] *Judicial Affidavit of Mr. Jonathan F. Genova* (Exhibit "R-26"), Docket – Vol. 2, pp. 736 to 739; Order dated July 26, 2018, Docket – Vol. 2, pp. 1219 to 1220.
[56] *Compliance* dated September 7, 2018, Docket – Vol. 2, pp. 1222 to 1223.
[57] Docket – Vol. 2, pp. 1224 to 1238.
[58] Docket – Vol. 2, p. 1240.
[59] Docket – Vol. 3, pp. 1249 to 1254.
[60] Docket – Vol. 2, pp. 1259 to 1260.
[61] Docket – Vol. 3, p. 1241.
[62] Docket – Vol. 3, pp. 1273 to 1308.
[63] Records Verification dated May 9, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1313.
[64] Resolution dated May 14, 2019, Docket – Vol. 3, p. 1315.

THE ISSUES

The parties stipulated the following issues[65] to be resolved by this Court, to wit:

"A. WHETHER OR NOT THE WAIVER OF DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS IN THIS CASE IS NULL AND VOID FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE LAW; AND

B. WHETHER OR NOT PETITIONER IS LIABLE TO PAY RESPONDENT DEFICIENCY INCOME TAX, VAT, AND EWT FOR CY 2011 IN THE TOTAL AMOUNT OF PHP11,054,565.66."

Petitioner's arguments:

Petitioner mainly argues that respondent's right to assess petitioner for deficiency income tax, VAT, and EWT for CY 2011 has already prescribed; and that the *Waiver* was invalid and, therefore, did not extend the period to assess deficiency taxes.

Furthermore, petitioner avers that assuming that the assessment has not prescribed, respondent's deficiency income tax assessment should be cancelled for lack of factual and legal basis; that petitioner did not have revenues amounting to ₱12,756,572.87 which were not subjected to income tax; that it did not have unaccounted source of cash amounting to ₱3,993,973.00; and that petitioner's expenses amounting to ₱1,137,777.52 should be allowed as deduction from its gross income.

Lastly, petitioner contends that assuming that the assessment has not prescribed, respondent's deficiency VAT and EWT assessments should be cancelled for lack of factual and legal basis.

Respondent's counter-arguments:

Respondent avers that the amount of ₱12,756,572.87 sales was not subjected to income tax, and thus, petitioner was correctly assessed for deficiency income tax amounting to ₱8,871,629.00; that petitioner's deferred input VAT as reflected in its financial statement was allegedly not reported in its VAT Returns, hence, considered as unaccounted source of cash in the amount of ₱3,993,973.00; that the said amount was correctly subjected to 12%

[65] Par. B, Statement of Facts and Issues, Pre-Trial Order dated June 21, 2017, Docket – Vol. 2, p. 769.

VAT; that since petitioner failed to withhold and remit the full amount of expanded withholding tax on its professional fees per financial statement, the same should be assessed for deficiency EWT.

THE RULING OF THE COURT

Whether or not the waiver executed validly extended the period to assess petitioner

Section 203 of the NIRC of 1997 states the period of limitation upon the assessment of taxes, to wit:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — **<u>Except as provided in Section 222</u>, 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-year period shall be counted from the day the return was filed.** For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphases and underscoring supplied)*

The foregoing provision mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[66] Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[67]

However, as can be gleaned from the above-quoted Section 203, the same expressly recognizes that the rule therein does not cover those provided under Section 222 of the NIRC of 1997. Relative thereto, subparagraph (b) of the latter provision states an instance when the government may assess pertinent taxes against a taxpayer even beyond the above-stated three-year prescriptive period. Said subparagraph (b) reads as follows:

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

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[66] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[67] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

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.**

xxx xxx xxx." (*Emphasis ours*)

Thus, under Section 222(b) of the NIRC of 1997, the three-year prescriptive period under Section 203 of the same Code may be extended, if before the expiration thereof, both respondent and the taxpayer agreed in writing to its assessment, but only within the period agreed upon. Nevertheless, the original period so agreed upon may be extended by a subsequent written agreement made before the expiration of such period.

Indeed, a *Waiver* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[68] However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, **it must be carefully and strictly construed.**[69] The *Waiver* must faithfully comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 in order to be valid and binding.[70]

In this case, it was established that petitioner executed a *Waiver* on May 7, 2014.[71]

The waiver reads as follows:

"WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE

I, ROLANDO G. SANICO, JR., Assistant Comptroller of **GMA NETWORK FILMS, INC. (FORMERLY CINEMAX STUDIOS, INC.)**, with address at GMA Network Complex, EDSA corner Timog, Diliman, Quezon City request for approval by the Commissioner of Internal Revenue for more time to

[68] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[69] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, supra.
[70] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, supra.
[71] Exhibit "P-15", Docket – Vol. I, p. 299.

> submit the documents required in connection with the investigation of our all internal liabilities for the year 2011. I hereby waive the defense of prescription under the statute of limitations prescribed in Section 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found after due investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than **June 30, 2015**.
>
> The intent and purpose of the waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver neither admits in advance the correctness of the assessment/assessments which may be made for the year above- mentioned nor waives the right to use legal remedies accorded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.
>
> The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue."

Petitioner argues that the subject *Waiver* is invalid because: (1) the *Waiver* failed to state the kind and amount of taxes subject of the audit; (2) the *Waiver* was not duly notarized; and (3) the following requirements were not satisfied: (a) the representative's authority must be in writing and duly authorized, and (b) the concerned revenue official shall see to it that the representative's authority to sign on behalf of the taxpayer is in writing and duly notarized.

After consideration, the Court finds the subject *Waiver* is invalid.

In *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* ("*La Flor* case"),[72] the Supreme Court held:

> "In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[73] the Court had ruled that **waivers extending the**

[72] G.R. No. 211289, January 14, 2019.
[73] G.R. No. 220835, July 26, 2017.

prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due, to wit:

> **These requirements are mandatory and must strictly be followed.** To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
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> x x x x
>
> 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.
>
> Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:
>
> x x x x
>
>> 3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)

In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — **the assessments had prescribed as there was no valid waiver.**" *(Emphases and underscoring ours)*

Based on the foregoing jurisprudential pronouncements, it is required, *inter alia*, that the *Waiver*, to be valid, must indicate the nature and the amount of the tax due. These details are material as there can be no true and valid agreement between the taxpayer and respondent absent these information.

A perusal of the subject *Waiver*[74] reveals that the same failed to indicate the kind and exact amount of the taxes to be assessed or collected. Thus, on the basis of the aforequoted jurisprudence, the said *Waiver* is invalid. Correspondingly, the same did not effectively extend the three-year prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity.

To reiterate, under Section 203 of the NIRC of 1997, the three-year prescriptive period commences from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.

Such being the case, the Court shall refer to the specific provisions of the law prescribing the period within which to file the pertinent tax returns vis-à-vis the date of filing of the said tax returns by petitioner, to adjudge the commencement and end of the three-year prescriptive period under Section 203 of the NIRC of 1997 for the instant case.

For the filing of corporate income tax returns, Section 77(B) of the NIRC of 1997 provides as follows:

> "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 ours)*

[74] Exhibit "P-15", Docket – Vol. 1, p. 299.

Thus, petitioner's Annual Income Tax Return for CY 2011 should be filed on or before April 15, 2012.

Anent the filing of quarterly VAT returns, Section 114(A) of the NIRC of 1997, as amended, reads:

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

Based on the foregoing provision, petitioner's Quarterly VAT Returns for the four (4) quarters of CY 2011 should be filed on or before: (1) April 25, 2011, for the 1st quarter; (2) July 25, 2011, for the 2nd quarter; (3) October 25, 2011, for the 3rd quarter; and (4) January 25, 2012, for the 4th quarter.

With regard to the filing of withholding tax returns, Section 2.58(A)(2)(a) of Revenue Regulations No. 2-98, as amended, states:

> "Sec. 2.58. *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.* —
>
> (A) *Monthly return and payment of taxes withheld at source.* –
>
> xxx xxx xxx
>
> (2) WHEN TO FILE —
>
> (a) **For both large and non-large taxpayers, the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements)[,] **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx." *(Emphases ours)*

Thus, petitioner's *Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded)* for the twelve (12) months of CY 2011 should be filed within ten (10) days after the end of each month, except for the month of December 2011, in which case the said Return must be filed on or before January 15, 2012.

Correspondingly, for purposes of the subject tax assessments of deficiency income tax, VAT, and EWT against petitioner for CY 2011, the end of the three-year prescriptive period under Section 203 of the NIRC of 1997 is respectively determined as follows:

Kind of Tax /Period	Actual date of filing of the pertinent tax return	Reckoning date of the three-year prescriptive period[75]	End of the three-year prescriptive period
Income Tax - CY 2011	April 16, 2012[76]	April 16, 2012	April 16, 2015
VAT – 1st Quarter 2011	April 20, 2011[77]	April 25, 2011	April 25, 2014
VAT – 2nd Quarter 2011	July 22, 2011[78]	July 25, 2011	July 25, 2014
VAT – 3rd Quarter 2011	October 24, 2011[79]	October 25, 2011	October 25, 2014
VAT – 4th Quarter 2011	January 25, 2012[80]	January 25, 2012	January 25, 2015
EWT – January 2011	February 9, 2011[81]	February 10, 2011	February 10, 2014
EWT – February 2011	March 9, 2011[82]	March 10, 2011	March 10, 2014
EWT – March 2011	April 11, 2011[83]	April 11, 2011	April 11, 2014
EWT – April 2011	May 10, 2011[84]	May 10, 2011	May 10, 2014
EWT – May 2011	June 9, 2011[85]	June 10, 2011	June 10, 2014
EWT – June 2011	July 11, 2011[86]	July 11, 2011	July 11, 2014
EWT – July 2011	August 10, 2011[87]	August 10, 2011	August 10, 2014
EWT – August 2011	September 12, 2011[88]	September 12, 2011	September 12, 2014
EWT – September 2011	October 10, 2011[89]	October 10, 2011	October 10, 2014
EWT – October 2011	November 10, 2011[90]	November 10, 2011	November 10, 2014
EWT – November 2011	December 12, 2011[91]	December 12, 2011	December 12, 2014
EWT – December 2011	January 11, 2012[92]	January 15, 2012	January 15, 2015

[75] The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
[76] Exhibit "P-17", Docket – Vol. 2, pp. 819 to 823.
[77] Exhibit "P-18-1", Docket – Vol. 2, p. 1096.
[78] Exhibit "P-18-2", Docket – Vol. 2, p. 1097.
[79] Exhibit "P-18-3", Docket – Vol. 2, p. 1098.
[80] Exhibit "P-18-4", Docket – Vol. 2, p. 1099.
[81] Exhibit "P-19-1", Docket – Vol. 2, p. 856.
[82] Exhibit "P-19-2", Docket – Vol. 2, p. 857.
[83] Exhibit "P-19-3", Docket – Vol. 2, p. 858.
[84] Exhibit "P-19-4", Docket – Vol. 2, p. 859.
[85] Exhibit "P-19-5", Docket – Vol. 2, p. 860.
[86] Exhibit "P-19-6", Docket – Vol. 2, p. 861.
[87] Exhibit "P-19-7", Docket – Vol. 2, p. 862.
[88] Exhibit "P-19-8", Docket – Vol. 2, p. 863.
[89] Exhibit "P-19-9", Docket – Vol. 2, p. 864.
[90] Exhibit "P-19-10", Docket – Vol. 2, p. 865.
[91] Exhibit "P-19-11", Docket – Vol. 2, p. 866.
[92] Exhibit "P-19-12", Docket – Vol. 2, p. 867.

Considering that respondent issued, and petitioner received the subject FANs and FLD only on June 15, 2015,[93] the same were issued and received beyond the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended. Hence, the subject assessments are void.

A void assessment bears no valid fruit.[94] Thus, finding the subject tax assessments void, it is no longer necessary to address the remaining issue and other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject FANs and FLD, all dated June 15, 2015, for deficiency income tax, VAT, and EWT, for CY 2011 in the aggregate amount of ₱11,054,565.66, inclusive of interest, are **CANCELLED and SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[93] Par. 7, Stipulated Facts, JSFI, Docket – Vol. 1, p. 596; Exhibits "P-13", Docket – Vol. 2, pp. 813 to 818; Exhibits "R-14", "R-14.1", "R-14.2", "R-15", and "R-16", Docket – Vol. 2, pp. 683 to 688.
[94] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

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.

ERLINDA P. UY
Associate Justice
Chairperson

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.

ROMAN G. DEL ROSARIO
Presiding Justice