REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8479

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

Promulgated:

DEC 22 2016
9:17 a.m.

x---x

DECISION

BAUTISTA, J:

Before the Court is a Petition for Review[1] filed by petitioner Total (Philippines) Corporation ("Total") on April 27, 2012, pursuant to *Rule 4, Section 3(a)(1)*[2] *of the Revised Rules of the Court of Tax Appeals, as amended ("RRCTA"),* in relation to *Section 7(a)(1)*[3] *of Republic Act ("RA") No. 1125*[4]*, as amended by RA No. 9282*[5] and *RA No. 9503*[6], which

[1] *Records, CTA Case No. 8479, Vol. 1, Petition for Review,* pp. 9-174, with annexes.

[2] "Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* - (a) Exclusive original or appellate jurisdiction to review by appeal the following: (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."

[3] "Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise: (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."

[4] An Act Creating the Court of Tax Appeals, as amended.

[5] An Act Expanding the Jurisdiction of the Court of Tax Appeals ("CTA"), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[6] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and fo· Other Purposes.

seeks for the Court to render judgment declaring petitioner to be free from any liability for expanded withholding tax ("EWT") and fringe benefits tax ("FBT") deficiencies for taxable year 2005, as well as the corresponding interest and compromise penalties in the aggregate amount of Php104,708,380.71; and that the Formal Letter of Demand ("FLD") and Final Assessment Notices ("FAN") dated November 12, 2009, and the Final Decision on Disputed Assessment ("FDDA") dated March 26, 2012, be cancelled and set aside.[7]

The Parties

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, with principal office address at the Penthouse, Philplans, Corporate Center 1012 Triangle Drive, North Bonifacio, Bonifacio Global City, 1201 Taguig City.[8]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR")[9], empowered under the *1997 National Internal Revenue Code, as amended ("1997 NIRC")*, to authorize the examination of any taxpayer and the assessment of the correct amount of taxes; as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue ("BIR").[10] The CIR holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[11]

The Facts

Pursuant to Letter of Authority ("LOA") No. 2001-90040857[12] dated July 4, 2006 and received by petitioner on July 11, 2006 authorizing the examination of the books of accounts and other accounting records for all internal revenue taxes, respondent conducted a tax investigation on petitioner for taxable year 2005.[13]

---

[7] *Records, Vol. 1, Petition for Review, Prayer*, pp. 35-36.
[8] *Id., Joint Stipulation of Facts and Issues ("JSFI")*, p. 300.
[9] Formerly her Honorable Commissioner of Internal Revenue ("CIR") Kim S. Jacinto-Henares, now his Honorable CIR Caesar R. Dulay.
[10] *Records, Vol. 1, JSFI*, p. 300.
[11] *Id.*
[12] *BIR Records, Vol. 1, Exhibit "SSS"/"R-1," Letter of Authority ("LOA")*, pp. 1-3.
[13] *Records, Vol. 1, JSFI*, p. 300.

Respondent issued a Preliminary Assessment Notice ("PAN")[14] with Details of Discrepancy dated May 19, 2009, for alleged deficiency EWT, FBT and final withholding tax ("FWT").[15] Petitioner replied to the PAN *via* a Letter[16] dated June 30, 2009, opposing all the assessments in the PAN.

Respondent issued the FLD[17] and FANs[18] on November 12, 2009,[19] with findings of alleged deficiency EWT and FBT. After receipt thereof by petitioner on November 13, 2009[20], it submitted a Protest[21] dated and filed[22] with the BIR on December 11, 2009.[23]

On March 26, 2012, respondent issued the FDDA[24] assessing petitioner for alleged EWT and FBT deficiencies amounting to Php104,708,380.71, inclusive of interests and penalties.[25] The FDDA was received by petitioner on March 28, 2012.[26]

Petitioner filed the instant Petition for Review on April 27, 2012,[27] which is within the thirty (30)-day period to appeal, reckoned from the date of receipt of the FDDA. Petitioner argues that the assessments were issued beyond the prescriptive period; that the four (4) Waivers of the Defense of Prescription Under the Statute of Limitations of the Tax Code ("Waivers") executed by petitioner are defective and not valid; and that it is not liable for deficiency EWT and FBT.[28] The FDDA contained the following assessments:

TAX TYPE		BASIC		INTEREST		COMPROMISE PENALTY		TOTAL
EWT	Php	45,857,766.13	Php	56,939,012.63	Php	50,000.00	Php	102,846,778.76
FBT		821,540.84		1,020,061.11		20,000.00		1,861,601.95
TOTAL	**PHP**	**46,679,306.97**	**PHP**	**57,959,073.74**	**PHP**	**70,000.00**	**PHP**	**104,708,380.71**

[14] *Records, Vol. 2, Preliminary Assessment Notice ("PAN"), Exhibit "G,"* pp. 875-884, with annexes; *BIR Records, Vol. 1, Exhibit "R-10,"* pp. 720-732, with annexes.
[15] *Records, Vol. 1, JSFI,* p. 300.
[16] *Records, Vol. 2, Exhibit "H," Reply to the PAN,* pp. 885-894.
[17] *Id., Exhibit "I," Formal Letter of Demand ("FLD"),* p. 895; *BIR Records, Vol. 1, Exhibit "R-13,"* p. 817.
[18] *Id., Exhibit "I," Final Assessment Notices ("FANs"),* pp. 896-909, with annexes; *BIR Records, Vol. 1, Exhibit "R-13,"* pp. 803-816, with annexes.
[19] *Records, Vol. 1, JSFI,* p. 300.
[20] *Records, Vol. 2, Exhibit "I-1," FLD,* p. 795.
[21] *Id., Exhibit "J," Protest to FAN,* pp. 910-921, with annexes.
[22] *Id., Exhibit "J-1,"* p. 910.
[23] *Records, Vol. 1, JSFI,* p. 300.
[24] *Records, Vol. 2, Exhibit "K," Final Decision on Disputed Assessment ("FDDA"),* pp. 922-937.
[25] *Records, Vol. 1, JSFI,* p. 301.
[26] *Records, Vol. 2, Exhibit "K-1,"* p. 922.
[27] *Records, Vol. 1, Petition for Review,* pp. 9-174, with annexes.
[28] *Id.* at 16-35.

Upon notice[29] and with extension granted[30], respondent filed an Answer[31] on June 29, 2012; and an Amended Answer[32] on August 17, 2012, which was admitted in a Resolution[33] dated September 24, 2012. Respondent argues that the Waivers were valid and binding; and that even if said Waivers are defective, petitioner is estopped from assailing the subject Waivers.[34] Further, respondent argues that the assessments were timely issued within the prescriptive periods, as stated in the Waivers; that the assessments were issued in accordance with law, rules and jurisprudence; and that as withholding agent, petitioner has the legal duty to collect the tax for the Government.[35]

Respondent and petitioner filed their Pre-Trial Briefs, on July 25, 2012[36] and July 30, 2012[37], respectively. The Joint Stipulation of Facts and Issues ("JSFI")[38] was filed on October 22, 2012, and approved in the Pre-Trial Order[39] dated November 7, 2012.

The case proceeded to trial. Petitioner presented two witnesses: *(1)* Mr. Dennis Odra ("Mr. Odra"), Total's tax manager, and *(2)* Mr. Enrico T. Pizarro ("Mr. Pizarro"), the Independent Certified Public Accountant ("ICPA").

Mr. Odra's testimony is contained in his Judicial Affidavit[40], Supplemental Judicial Affidavit[41], and Second Supplemental Judicial Affidavit[42]. Mr. Odra was presented as witness on January 21, 2013[43], February 25, 2013[44], April 15, 2013[45], and December 9, 2013[46].

Upon motion[47] and despite opposition[48] from respondent, Mr. Pizarro was commissioned as the ICPA[49], and was ordered to submit

---

[29] *Records, Vol. 1, Summons,* p. 175.
[30] *Id.* at 177-181, in relation to p. 183.
[31] *Id., Answer,* pp. 184-211.
[32] *Id., Amended Answer,* pp. 243-269.
[33] *Id., Resolution,* pp. 288-289.
[34] *Id., Amended Answer,* pp. 244-258.
[35] *Records, Vol. 1, Amended Answer,* pp. 259-267.
[36] *Id., Respondent's Pre-Trial Brief,* pp. 214-221.
[37] *Id., Pre-Trial Brief,* pp. 222-231.
[38] *Id., JSFI,* pp. 299-302.
[39] *Id., Pre-Trial Order ("PTO"),* pp. 305-312.
[40] *Records, Vol. 2, Exhibit "CC," Judicial Affidavit ("JA") of Dennis Odra,* pp. 820-829.
[41] *Id., Exhibit "DD," Supplemental JA of Dennis Odra,* pp. 830-839.
[42] *Id., Exhibit "QQQ," Second Supplemental JA of Dennis Odra,* pp. 953-959.
[43] *Records, Vol. 1, January 21, 2013 Minutes of Hearing,* p. 325.
[44] *Records, Vol. 1, February 25, 2013 Minutes of Hearing,* p. 446.
[45] *Id., April 15, 2013 Minutes of Hearing,* p. 447.
[46] *Records, Vol. 2, December 9, 2013 Minutes of Hearing,* p. 800.
[47] *Records, Vol. 1, Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),* pp. 448-454, with annex.

the ICPA report within 30 days from August 22, 2013 or until September 21, 2013.[50] The ICPA Report[51] was filed on September 20, 2013. Mr. Pizarro's Judicial Affidavit[52] was submitted on September 27, 2013, and he was presented as witness on September 30, 2013.[53]

On February 13, 2014, considering petitioner's failure to file the judicial affidavit of the next witness, the Court denied its motion to reset hearing and its presentation of further evidence was deemed waived.[54] Petitioner was granted five (5) days to file its Formal Offer of Evidence ("FOE").[55]

Petitioner timely filed its FOE[56] on February 18, 2014, formally offering *Exhibits* "A" to "H," "I," "I-1," "J," "J-1," "K," "K-1," "L" to "Z," "AA," "BB," "CC," "CC-1," "DD," "DD-1," "EE," "EE-1," "EEE-1" to "EEE-6," "FFF-1," "FFF-1.1" to "FFF-1.16," "FFF-2," "FFF-2.1" to "FFF-2.35," "FFF-3," "FFF-3.1" to "FFF-3.9," "FFF-4," "FFF-4.1" to "FFF-4.3," "GGG-1," "GGG-1.1" to "GGG-1.3," "GGG-2," "GGG-2.1" to "GGG-2.6," "HHH," "III," "III-1," "JJJ," "JJJ-1," "KKK" to "PPP," and "QQQ." On April 11, 2014, the Court admitted all of petitioner's exhibits, save for *Exhibit* "BB" for failure to have the same identified.[57] Petitioner also submitted a Supplemental FOE[58] for the purpose of remarking its Amended Articles of Incorporation[59] as *Exhibit* "RRR," which was admitted by the Court in a Resolution dated November 10, 2014.[60]

After filing a Judicial Affidavit[61] and two resettings[62], on May 19, 2015[63], respondent presented its sole witness, Revenue Officer Rosario Arriola. Thereafter, respondent was granted until May 29, 2015[64], and later extended up to June 8, 2015[65], for the filing of the

---

[48] *Records, Vol. 1, Opposition to the Commissioning Of Mr. Enrico T. Pizarro as ICPA,* pp. 466-488, with annexes.
[49] *Id., Vol. 1,* pp. 413-415; *Records, Vol. 2, August 22, 2013 Minutes of Hearing,* p. 418; *Records, Vol. 2, Oath of Commission,* p. 419; *Records, Vol. 2,* pp. 421-422.
[50] *Records, Vol. 2, August 22, 2013 Minutes of Hearing,* p. 418; *Records, Vol. 2,* pp. 421-422.
[51] *Id., Exhibit "III," Independent Certified Public Accountant ("ICPA") Report,* pp. 423-647.
[52] *Id., Exhibit "JJJ," JA of Enrico Pizarro,* pp. 840-853.
[53] *Id., September 30, 2013 Minutes of Hearing,* p. 762.
[54] *Id., February 13, 2014 Minutes of Hearing,* p. 801; *Records, Vol. 3,* p. 1136.
[55] *Id.*
[56] *Records, Vol. 2, Formal Offer of Evidence ("FOE"),* pp. 802-819.
[57] *Records, Vol. 3,* pp. 1142-1143.
[58] *Id., Supplemental FOE,* pp. 1159-1162.
[59] *Records, Vol. 2,* pp. 854-866.
[60] *Records, Vol. 3.* pp. 1171-1172.
[61] *Id., Exhibit "R-19," JA of Rosario Arriola,* pp. 1194-1205.
[62] *Records, Vol. 3,* pp. 1180 and 1211.
[63] *Id., May 19, 2015 Minutes of Hearing,* p. 1216.
[64] *Id.*

FOE. On June 15, 2015, Respondent's Formal Offer of Documentary Evidence[66] was timely filed, offering as evidence *Exhibits* "R-1" to "R-19," and "R-19-A." In a Resolution dated August 13, 2015, respondent's exhibits were admitted.[67]

On rebuttal, petitioner presented its Accounting and Tax Manager, Mr. Leonard Escueta ("Mr. Escueta"), with Judicial Affidavit[68] dated September 30, 2015.[69] Aside from the Judicial Affidavit, the Court also admitted *Exhibit* "SSS,"[70] which is the LOA issued for the investigation of petitioner.[71]

Considering respondent's manifestation[72] that he will no longer present further evidence, the Court granted the parties thirty (30) days from notice within which to file their respective memoranda.[73] Respondent filed a Motion for Leave to File and Admit Attached Memorandum[74] on December 21, 2015. Petitioner, after extension was granted[75], filed its Memorandum[76] on December 28, 2015.

In a Resolution[77] dated January 14, 2016, the Court admitted respondent's Memorandum, took note of petitioner's Memorandum, and deemed the case submitted for decision; hence, this Decision.

The Issue[78]

WHETHER PETITIONER IS LIABLE TO PAY DEFICIENCY EWT AND FBT ASSESSMENTS FOR TAXABLE YEAR 2005, IN THE AGGREGATE AMOUNT OF ONE HUNDRED FOUR MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED EIGHTY AND 71/100 PESOS (PHP104,708,380.71) INCLUSIVE OF INTEREST AND COMPROMISE PENALTIES, PURSUANT TO *SECTIONS 248 AND 249 OF THE 1997 NIRC.*

---

[65] *Records, Vol. 3,* p. 1225.
[66] *Id., Respondent's Formal Offer of Documentary Evidence,* pp. 1241-1253.
[67] *Id.,* at 1263-1264.
[68] *Id., JA of Leonard Escueta,* pp. 1267-1273, with annex.
[69] *Id., October 5, 2015 Minutes of Hearing,* p. 1274.
[70] *BIR Records, Vol. 1, Exhibit "SSS"/"R-1," LOA,* pp. 1-3.
[71] *Records, Vol. 3,* pp. 1280-1281.
[72] *Id.* at 1282-1285.
[73] *Id.* at 1286.
[74] *Id.* at 1296-1302, with attached respondent's Memorandum, see pp. 1303-1325.
[75] *Id.* at 1294.
[76] *Id., petitioner's Memorandum,* pp. 1326-1358.
[77] *Records, Vol. 3,* p. 1360.
[78] *Records, Vol. 1, PTO,* p. 307.

Petitioner's Arguments[79]

Petitioner argues that the period to assess deficiency EWT and FBT for taxable year 2005 has already prescribed. It likewise contends that the Waivers are defective considering that they were not signed by the CIR; that the dates of acceptance by the officials of respondent were not indicated therein; that they failed to specify the kind and amount of tax due; that they were not notarized on the part of the respondent; that they do not conform with the requirements for a valid execution of a waiver; and that the officers who signed on behalf of petitioner were not authorized to do so.

With respect to the assessed deficiency taxes, petitioner argues that the assessment is invalid for having arisen from an LOA which was not furnished to petitioner. Petitioner further argues that in the assessment for deficiency EWT, respondent erroneously included items that are not subject to withholding taxes, or were already subjected by petitioner to the proper withholding tax rates. As to the assessment for deficiency FBT, petitioner argues that the taxable fringe benefits granted to its officers have been properly subjected thereto.

Respondent's Counter-Arguments[80]

Respondent argues that petitioner voluntarily executed the subject Waivers; that such Waivers were duly accepted and approved by the person delegated by respondent; and that the failure to indicate the date of acceptance by respondent is a mere oversight which is not fatal to the validity of the Waivers, bearing in mind that the date of acceptance can be presumed to be between the date of notarization and the date of receipt by the taxpayer. Respondent further argues that the first three (3) waivers did not specify the kind and amount of tax, as there was yet no assessment at the time of their execution; and that the fourth waiver already specified the kind of tax being assessed. He likewise claims that it is only petitioner who is required to have the Waivers acknowledged before a notary public; and that petitioner is estopped from questioning the validity of the Waivers.

---

[79] *Records, Vol. 3, petitioner's Memorandum,* pp. 1332-1356.
[80] *Id., respondent's Memorandum,* pp. 1305-1323.

Lastly, respondent alleges that the assessments are valid and binding since the same were issued within the prescriptive period; and are in accordance with the law, rules and jurisprudence.

The Ruling of the Court

The Court has jurisdiction to entertain the present Petition for Review since the assessments have not yet attained finality.

A cursory reading of the relevant portions of *Section 228 of the 1997 NIRC* should shed light on this issue, as follows:

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

The above provision provides the remedy to dispute a tax assessment within a certain period of time. It states that an assessment may be protested by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment by the taxpayer. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. Should the protest be denied, it may be appealed to the CTA within thirty (30) days from receipt of said denial.

On November 13, 2009, petitioner received the FLD and the FANs, assessing petitioner for deficiency EWT and FBT for taxable year 2005.[81] Therefore, petitioner had until December 14, 2009[82] to protest, which it timely filed[83] on December 11, 2009.

On March 28, 2012, petitioner received the FDDA[84], effectively denying its protest. Accordingly, it had until April 27, 2012 within which to appeal the adverse decision of respondent.

Considering that petitioner filed the instant Petition for Review on April 27, 2012[85], it is evident that the Court has jurisdiction over this case and that the assessments have not yet attained finality.

The Letter of Authority is valid.

Petitioner questions the validity of LOA No. 000405857[86] on the ground that it contained a statement that it "supersedes LOA No. 00081620." Petitioner's witness[87] asserts that it never received the said LOA No. 00081620, and thus resulted to a deprivation of due process.[88]

The Court finds the argument without merit. Petitioner has admitted that LOA No. 000405857 was issued to and received by petitioner in connection with the present case. An LOA is the

---

[81] *Records, Vol. 2, Exhibit "I," FLD,* p. 895.
[82] December 13, 2009 fell on a Sunday.
[83] *Records, Vol. 2, Exhibit "J,"* p. 910.
[84] *Id., Exhibit "K," FDDA,* pp. 922-937.
[85] *Records, Vol. 1, Petition for Review,* pp. 9-174, with annexes.
[86] *BIR Records, Vol. 1, Exhibit "SSS"/"R-1," LOA,* pp. 1-3.
[87] *Records, Vol. 3, JA of Leonard Escueta,* pp. 1267-1273, with annex.
[88] *Id., petitioner's Memorandum,* p. 1348.

authority given to the appropriate revenue officer assigned to perform assessment functions.[89] The fact that LOA No. 000405857 supersedes another LOA, which was not received by petitioner, is irrelevant. What is necessary is that the investigation for taxable year 2005 was covered by a valid LOA served upon petitioner. Thus, in view of the fact that petitioner received LOA No. 000405857, the investigation conducted by the revenue officers was done with proper authority.

The Waivers are binding on the parties and the assessments were issued within the prescriptive period, as extended.

Sections 203 of the 1997 NIRC provides the general rule that respondent should issue an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later; and any assessment notice issued beyond this 3-year prescriptive period shall not be valid, to wit:

> SECTION 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.[90]

Nonetheless, *Section 222(b) of the 1997 NIRC* provides that the period to assess and collect taxes may be extended upon a written

[89] *Section 13 of the 1997 NIRC* provides: "Section 13. Authority of a Revenue Officer. - xxx a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."
[90] Underscoring ours.

agreement between the CIR and the taxpayer executed before the expiration of the 3-year period, *viz.*:

> Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

Since the instant case involves deficiency EWT and FBT, the prescribed due dates for the filing of the returns, to be used as bases for the prescriptive periods, vary accordingly.

1. *Expanded Withholding Tax*

Section 6.3.2(a) of RR No. 17-10 states the following relating to large taxpayers, such as petitioner[91]:

> 6.3.2 *Withholding Tax Remittance and Information Returns*
>
> a. All withholding taxes for remittance by the Head Office and/or all branches/units of a Large Taxpayer shall be e-filed in a consolidated return within ten (10) days following the end of each month for January to November, and on or before January 15 of the following year for the month of December, using BIR Form Nos. 1601-C, 1601-E, 1601-F and 1602, respectively, on a staggered basis according to the classification of industry pursuant to existing issuances. For the e-payment, the taxpayer shall give instruction to the AAB to debit its account for the amount of tax payable on or before the due date for payment thereof as prescribed under the prevailing / applicable laws / regulations.
>
> xxx xxx xxx

---

[91] *BIR Records, Vol. 1, Exhibit "SSS"/"R-1," Letter of Authority ("LOA"),* pp. 1-3.

In view of petitioner's enrollment with the Electronic Filing and Payment System ("EFPS") of the BIR, filing of returns (except for December) shall be in accordance with the schedule set forth in *RR No. 26-2002*, to wit:

Group A	Fifteen (15) days following the end of the month
Group B	Fourteen (14) days following the end of the month
Group C	Thirteen (13) days following the end of the month
Group D	Twelve (12) days following the end of the month
Group E	Eleven (11) days following the end of the month

Based on the foregoing, the returns for EWT are set to be filed eleven (11) to fifteen (15) [fifteen (15) days for the month of December] days from the end of each month. Prudently assuming that fifteen (15) days applies to petitioner, the last days to assess are as follows:[92]

2005	DUE DATE FOR FILING OF RETURN	ACTUAL DATE OF FILING OF RETURN	LAST DAY TO ASSESS
January	February 15, 2005	February 14, 2005[93]	February 15, 2008
February	March 15, 2005	March 14, 2005[94]	March 15, 2008
March	April 15, 2005	April 13, 2005[95]	April 15, 2008
April	May 15, 2005	May 13, 2005[96]	May 15, 2008
May	June 15, 2005	June 10, 2005[97]	June 15, 2008
June	July 15, 2005	July 12, 2005[98]	July 15, 2008
July	August 15, 2005	August 10, 2005[99]	August 15, 2008
August	September 15, 2005	September 12, 2005[100]	September 15, 2008
September	October 15, 2005	October 13, 2005[101]	October 15, 2008
October	November 15, 2005	November 14, 2005[102]	November 15, 2008
November	December 15, 2005	December 13, 2005[103]	December 15, 2008
December	January 15, 2006	January 12, 2006[104]	January 15, 2009

2. *Fringe Benefit Tax*

Section 6.3.2(b) of RR No. 17-10 provides the following relating to large taxpayers, such as petitioner[105]:

---

[92] Underlined are the bases for the counting of the three (3)-year period.
[93] *Records, Vol. 2, Exhibit "L," BIR Form No. 1601-E January 2005*, p. 938.
[94] *Id., Exhibit "M," BIR Form No. 1601-E February 2005*, p. 990.
[95] *Id., Exhibit "N," BIR Form No. 1601-E March 2005*, p. 998.
[96] *Id., Exhibit "O," BIR Form No. 1601-E April 2005*, p. 1007.
[97] *Id., Exhibit "P," BIR Form No. 1601-E May 2005*, p. 1016.
[98] *Id., Exhibit "Q," BIR Form No. 1601-E June 2005*, p. 1025.
[99] *Records, Vol. 2, Exhibit "R," BIR Form No. 1601-E July 2005*, p. 1033.
[100] *Id., Exhibit "S," BIR Form No. 1601-E August 2005*, p. 1040.
[101] *Id., Exhibit "T," BIR Form No. 1601-E September 2005*, p. 1048.
[102] *Id., Exhibit "U," BIR Form No. 1601-E October 2005*, p. 1056.
[103] *Id., Exhibit "V," BIR Form No. 1601-E November 2005*, p. 1064.
[104] *Id., Exhibit "W," BIR Form No. 1601-E December 2005*, p. 1072.
[105] *BIR Records, Vol. 1, Exhibit "SSS"/"R-1," LOA*, pp. 1-3.

6.3.2 *Withholding Tax Remittance and Information Returns*

xxx xxx xxx

b. Quarterly Remittance Return of Final Income Taxes Withheld (On Fringe Benefits Paid to Employees Other than Rank and File) (BIR Form No. 1603) shall be e-filled and e-paid on or before the fifteenth (15th) day of the month following the calendar quarter.[106]

Based on the foregoing, the returns for FBT are set to be filed fifteen (15) days from the end of each quarter. Therefore, the last days to assess are as follows:[107]

2005	DUE DATE FOR FILING OF RETURN	ACTUAL DATE OF FILING OF RETURN	LAST DAY TO ASSESS
1st Quarter	April 15, 2005	April 14, 2005[108]	April 15, 2008
2nd Quarter	July 15, 2005	July 15, 2005[109]	July 15, 2008
Third Quarter	October 15, 2005	October 13, 2005[110]	October 15, 2008
Fourth Quarter	January 15, 2006	January 13, 2006[111]	January 15, 2009

Considering that the FLD and the FANs were issued on November 12, 2009 and received by petitioner on November 13, 2009,[112] it would appear that the assessments have prescribed absent a waiver, as provided in *Section 222(b) of the 1997 NIRC.*

Evidence on record provides the contrary.

The parties submitted into evidence four (4) Waivers[113] extending the period for assessment until June 30, 2008, December 31, 2008, June 30, 2009, and December 31, 2009, respectively. With these extensions, the FLD and the FANs received by petitioner on November 13, 2009 were issued within the extended period agreed upon, or before December 31, 2009, as contained in the fourth waiver.

---

[106] Underscoring ours.
[107] Underlined are the bases for the counting of the three (3)-year period.
[108] *Records, Vol. 2, Exhibit "X," BIR Form No. 1603 1st Quarter 2005,* p. 1080.
[109] *Id., Exhibit "Y," BIR Form No. 1603 2nd Quarter 2005,* p. 1083.
[110] *Id., Exhibit "Z," BIR Form No. 1603 3rd Quarter 2005,* p. 1086.
[111] *Id., Exhibit "AA," BIR Form No. 1603 4th Quarter 2005,* p. 1089.
[112] *Id., Exhibit "I-1," FLD,* p. 895.
[113] *Id., Exhibits "C," "D," "E," and "F," Waivers of the Defense of Prescription Under the Statute of Limitations Under the National Internal Revenue Code,* pp. 868-874.

Petitioner now argues against the validity of the Waivers and asserts that the assessments have prescribed.

The Court finds that the glaring defects in the four waivers are the absence of the notarized authority of the persons signing the Waivers on behalf of petitioner and the BIR official's failure to indicate the BIR's date of acceptance.

It has been consistently held that the procedures for the execution of a waiver must be strictly followed; otherwise, the waiver shall be rendered defective and shall not extend the period to assess the tax.[114] However, in cases such as this, where the parties are equally at fault in making the waiver defective, the Supreme Court has declared said waivers to be valid. Thus, in *Commissioner of Internal Revenue v. Next Mobile, Inc.*[115], the Supreme Court ruled:

> To be sure, both parties in this case are at fault.
>
> Here, respondent, through Sarmiento, executed five Waivers in favor of petitioner. However, her authority to sign these Waivers was not presented upon their submission to the BIR. In fact, later on, her authority to sign was questioned by respondent itself, the very same entity that caused her to sign such in the first place. Thus, it is clear that respondent violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and RDAO 05-01 which requires the presentation of a written and notarized authority to the BIR.
>
> Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. It is very clear that under RDAO 05-01 it is the duty of the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. It also instructs that in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. Furthermore, it mandates that the waiver should not be accepted by the concerned BIR office and official unless duly notarized.

---

[114] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 20014, 447 SCRA 214; *Commissioner of Internal Revenue v. FMF Development Corporation*, G.R. 167765, June 30, 2008, 556 SCRA 698; *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010, 620 SCRA 232.
[115] G.R. No. 212825, December 7, 2015.

/

Vis-à-vis the five Waivers it received from respondent, the BIR has failed, for five times, to perform its duties in relation thereto: to verify Ms. Sarmiento's authority to execute them, demand the presentation of a notarized document evidencing the same, refuse acceptance of the Waivers when no such document was presented, affix the dates of its acceptance on each waiver, and indicate on the Second Waiver the date of respondent's receipt thereof.

Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given an opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.

On the other hand, the stringent requirements in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its very own issuances. Verily, if the BIR was truly determined to validly assess and collect taxes from respondent after the prescriptive period, it should have been prudent enough to make sure that all the requirements for the effectivity of the Waivers were followed not only by its revenue officers but also by respondent. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent to even comply with its most basic requirements.

The BIR's negligence in this case is so gross that it amounts to malice and bad faith. Without doubt, the BIR knew that waivers should conform strictly to RMO 20-90 and RDAO 05-01 in order to be valid. In fact, the mandatory nature of the requirements, as ruled by this Court, has been recognized by the BIR itself in its issuances such as Revenue Memorandum Circular No. 6-2005, among others. Nevertheless, the BIR allowed respondent to submit, and it duly received, five defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein. It even openly admitted that it did not require respondent to present any notarized authority to sign the questioned Waivers. The BIR failed to demand respondent to follow the requirements for the validity of the Waivers when it had the duty to do so, most especially because it had the highest interest at stake. If it was serious in collecting taxes, the BIR should have meticulously complied with the foregoing orders, leaving no stone unturned.

The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

First, the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle of public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from

/

the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO 20-90 and RDAO 05-01. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.[116]

Here, petitioner executed four consecutive waivers, without presenting the signatories' written authority to the BIR upon submission thereof. Petitioner also received, without complaint, the

---

[116] Citations omitted.

accepted Waivers from the BIR, even without an indicated date of acceptance. On the other hand, the BIR officials likewise neglected their duty to ensure that the Waivers are duly accomplished and signed by petitioner's representative with a notarized written authority, to demand such notarized written authority if none is presented, and to refuse acceptance of the said Waivers when no such authority is submitted. Moreover, the BIR officials failed to indicate the date of acceptance on each waiver. Despite these defects, the parties continued to deal with each other on the strength of the defective Waivers.

These circumstances are sufficient to declare the parties *in pari delicto* and to declare the four Waivers submitted by petitioner as valid, thereby extending the period of prescription.

Considering that the fourth waiver[117] extended the period until December 31, 2009, and that the FLD and the FANs were issued on November 12, 2009 and received by petitioner on November 13, 2009, the assessments were indeed issued within the prescriptive period, as extended.

The Court will now determine petitioner's liabilities for deficiency EWT and FBT.

The assessment for deficiency EWT is reduced and the assessment for deficiency FBT is upheld.

Respondent computed the basic deficiency EWT as follows:

INCOME PAYMENTS SUBJECT TO EWT	PER AUDIT		PER ALPHALIST		DEFICIENCY		RATE	TAX DUE	
Suppliers	Php	8,146,692,500.38	Php	3,606,020,786.70	Php	4,540,671,713.68	1%	Php	45,406,717.14
Contractors		564,874,179.89		542,321,730.35		22,552,449.54	2%		451,048.99
TOTAL	PHP	8,711,566,680.27	PHP	4,148,342,517.05	PHP	4,563,224,163.22		PHP	45,857,766.13

The above assessment can be broken down as follows:

PARTICULARS	AMOUNT (A)		PER ALPHALIST (B)		DIFFERENCE (A-B=C)		DEFICIENCY EWT (Cx1% or 2%)	
EWT at 1% (Supplier)								
Purchases - ULG	Php	3,056,935,713.82	Php	173,531,602.16	Php	2,883,404,111.66	Php	28,834,041.12

[117] *Records, Vol. 2, Exhibit "F," Waiver of the Defense of Prescription Under the Statute of Limitations Under the National Internal Revenue Code*, p. 874.

Purchases - REG		503,203,112.72		-		503,203,112.72		5,032,031.13
Purchases - Additives - MOGAS		255,935.52		-		255,935.52		2,559.36
Purchases - Additives - Diesel		890,616.02		-		890,616.02		8,906.16
Purchases - Kerosene		348,405,053.77		-		348,405,053.77		3,484,050.54
Purchases - RFO		12,665,089.12		-		12,665,089.12		126,650.89
Purchases - Lubes		26,445,793.33		-		26,445,793.33		264,457.93
Purchases - Lube Materials		258,209,695.16		-		258,209,695.16		2,582,096.95
Purchases - Lube Freight Depot		1,209,072.80		-		1,209,072.80		12,090.73
Purchases - Lube Filling Charges		1,062,367.46		-		1,062,367.46		10,623.67
Purchases - LPG Bulk		492,092,681.14		-		492,092,681.14		4,920,926.81
Purchases - SP Fluids		6,222,290.70		-		6,222,290.70		62,222.91
Surveyors Fee Special Fluids		15,350.00		-		15,350.00		153.50
Port Charges - Special Fluids		72,339.88		-		72,339.88		723.40
Purchases - Lubmarine		1,986,379.26		-		1,986,379.26		19,863.79
Purchases - Lubmarine Materials		376,241.95		-		376,241.95		3,762.42
Uniforms		100,214.09		-		100,214.09		1,002.14
Purchases - Materials/Equipment		348,844.84		-		348,844.84		3,488.45
Office Supplies		893,123.42		-		893,123.42		8,931.23
Office Supplies		3,345,870.20		1,490,338.65		1,855,531.55		18,555.32
Office Supplies - HSE		134,588.87		-		134,588.87		1,345.89
I/S Expenses		677,204.42		-		677,204.42		6,772.04
Retails Stations - Supplies		146,076.00		-		146,076.00		1,460.76
Sub-Total	Php	4,715,693,654.49	Php	175,021,940.81	Php	4,540,671,713.68	Php	45,406,717.14
EWT at 2% (Contractor)								
Port Charges - Client	Php	10,683,306.31	Php	2,496,310.40	Php	8,186,995.91	Php	163,739.92
Charter Hire - Oilink Terminal		3,708,802.68		1,255,680.37		2,453,122.31		49,062.45
Postage, Courier, Express Mail		552,417.09		-		552,417.09		11,048.34
TRD - Support Data Proc & Phone		1,878,206.88		-		1,878,206.88		37,564.14
System Admin & Operation		1,638,659.01		-		1,638,659.01		32,773.18
Warehouse/Storage Charges - Lubes		251,218.19		-		251,218.19		5,024.36
VOC - SF Storage Charges		2,454,545.41		-		2,454,545.41		49,090.91
Fop - Maintenance & Others		3,823,609.20		-		3,823,609.20		76,472.18
Photocopying, Printing Services		1,313,675.54		-		1,313,675.54		26,273.51
Sub-Total	Php	26,304,440.31	Php	3,751,990.77	Php	22,552,449.54	Php	**451,048.99**
TOTAL	**PHP**	**4,741,998,094.80**	**PHP**	**178,773,931.58**	**PHP**	**4,563,224,163.22**	**PHP**	**45,857,766.13**

Petitioner argues that the amounts included in respondent's audit were attributable to importations that are not subject to EWT and to payments that were already subjected to EWT at different rates.

In order to satisfactorily overcome the presumption of regularity and correctness of the assessment, petitioner should provide import documents such as Import Entry Internal Revenue Declaration ("IEIRD"), Bill of Lading (for sea freight)/Airway Bill (for air freight) or Authority to Release Imported Goods ("ATRIG"). In the case of the amounts that were already subjected to EWT, petitioner should provide BIR Form 1601-E or any other document to prove its arguments.

Mr. Pizarro declared in his report[118] that based on his examination and validation of petitioner's pertinent documents, it is not liable for deficiency EWT at 1%, as computed below:

DETAILS		**AMOUNTS**		
Total Purchases, per Books			Php	20,699,021,880.22
Less: Importations				
a) Importation transactions supported by IEIRD documents	Php	14,995,644,494.60		
b) Importation transactions supported by foreign invoices		492,681,277.15		

[118] *Records, Vol. 2, Exhibit "III," ICPA Report*, p. 429.

c) Importation classified in the BIR assessment	1,625,076,111.00	Php	17,113,401,882.75
Total Local Purchases		Php	3,585,619,997.47
Less: Amount per Alphalist of suppliers BIR Form No. 1604-E			3,606,020,786.70
Purchases subject to Withholding Tax		Php	(20,400,789.23)
Tax Rate			1%
WITHHOLDING TAX DUE		**PHP**	-

Mr. Pizarro also stated in his Judicial Affidavit[119] that the right thing to do is to compute the total amount of purchases of goods subject to 1% withholding tax and to deduct the total amount actually subjected to 1% EWT *per* alphalist. This approach would give the overall result of the amount subject or not subject to withholding tax. Considering that the amount *per* alphabetical listing of suppliers is greater than the expenses that should have been subjected to EWT, the ICPA, concluded that petitioner is not liable for deficiency EWT at 1%.

However, an examination of the IEIRDs and foreign sales invoices amounting to Php14,995,644,494.60 and Php492,681,277.15, respectively, shows that these amounts pertain only to petitioner's importation of ULG, ADO, LPG Bulk and SPFUIDS, broken down as follows:

SCHEDULE OF IMPORTATION					
YEAR 2005					
ACCOUNT NAME	**SUPPLIER NAME**	**DESCRIPTION**		**AMOUNT**	**EXHIBIT**
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline	Php	139,572,231.81	FFF-1.1
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		272,734,927.57	FFF-1.2
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		177,514,603.11	FFF-1.3
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		169,408,199.64	FFF-1.4
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		133,870,963.76	FFF-1.5
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		134,303,743.57	FFF-1.6
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		251,520,552.35	FFF-1.7
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		171,194,532.56	FFF-1.8
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		148,953,924.23	FFF-1.9
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		183,165,217.01	FFF-1.10
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		122,638,270.60	FFF-1.11
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		202,155,423.63	FFF-1.12
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		242,265,719.25	FFF-1.13
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		376,152,903.73	FFF-1.14
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		344,224,490.25	FFF-1.15
Purchases - ULG	Total Oil Trading SA	Unleaded Gasoline		175,311,973.28	FFF-1.16
Sub-Total Purchases - ULG Supported with IEIRD			Php	3,244,987,676.35	
Purchases - ADO	Total Oil Trading SA	Diesel	Php	243,447,190.60	FFF-2.1
Purchases - ADO	Total Oil Trading SA	Diesel		306,602,044.09	FFF-2.2
Purchases - ADO	Total Oil Trading SA	Diesel		157,379,946.01	FFF-2.3
Purchases - ADO	Total Oil Trading SA	Diesel		414,660,290.01	FFF-2.4
Purchases - ADO	Total Oil Trading SA	Diesel		456,620,368.43	FFF-2.5
Purchases - ADO	Total Oil Trading SA	Diesel		318,257,352.03	FFF-2.6
Purchases - ADO	Total Oil Trading SA	Diesel		266,643,437.30	FFF-2.7
Purchases - ADO	Total Oil Trading SA	Diesel		442,472,048.11	FFF-2.8
Purchases - ADO	Total Oil Trading SA	Diesel		180,416,775.64	FFF-2.9
Purchases - ADO	Total Oil Trading SA	Diesel		414,128,869.65	FFF-2.10

[119] *Records, Vol. 2, Exhibit "JJJ," JA of Enrico Pizarro,* p. 850.

Purchases - ADO	Total Oil Trading SA	Diesel		176,572,909.43	FFF-2.11
Purchases - ADO	Total Oil Trading SA	Diesel		24,752,984.48	FFF-2.12
Purchases - ADO	Total Oil Trading SA	Diesel		411,632,187.64	FFF-2.13
Purchases - ADO	Total Oil Trading SA	Diesel		340,902,993.31	FFF-2.14
Purchases - ADO	Total Oil Trading SA	Diesel		506,108,901.54	FFF-2.15
Purchases - ADO	Total Oil Trading SA	Diesel		136,577,392.36	FFF-2.16
Purchases - ADO	Total Oil Trading SA	Diesel		78,329,062.89	FFF-2.17
Purchases - ADO	Total Oil Trading SA	Diesel		406,806,516.32	FFF-2.18
Purchases - ADO	Total Oil Trading SA	Diesel		328,843,658.99	FFF-2.19
Purchases - ADO	Total Oil Trading SA	Diesel		257,017,200.00	FFF-2.20
Purchases - ADO	Total Oil Trading SA	Diesel		72,565,785.71	FFF-2.21
Purchases - ADO	Total Oil Trading SA	Diesel		343,159,304.65	FFF-2.22
Purchases - ADO	Total Oil Trading SA	Diesel		308,186,320.62	FFF-2.23
Purchases - ADO	Total Oil Trading SA	Diesel		376,871,119.33	FFF-2.24
Purchases - ADO	Total Oil Trading SA	Diesel		480,377,468.46	FFF-2.25
Purchases - ADO	Total Oil Trading SA	Diesel		159,265,993.39	FFF-2.26
Purchases - ADO	Total Oil Trading SA	Diesel		554,727,727.55	FFF-2.27
Purchases - ADO	Total Oil Trading SA	Diesel		222,024,955.57	FFF-2.28
Purchases - ADO	Total Oil Trading SA	Diesel		278,348,991.43	FFF-2.29
Purchases - ADO	Total Oil Trading SA	Diesel		30,926,738.23	FFF-2.30
Purchases - ADO	Total Oil Trading SA	Diesel		455,037,526.41	FFF-2.31
Purchases - ADO	Total Oil Trading SA	Diesel		158,952,080.79	FFF-2.32
Purchases - ADO	Total Oil Trading SA	Diesel		204,960,728.30	FFF-2.33
Purchases - ADO	Total Oil Trading SA	Diesel		51,696,653.17	FFF-2.34
Purchases - ADO	Total Oil Trading SA	Diesel		312,870,559.88	FFF-2.35
Sub-Total Purchases - ADO Supported with IEIRD			Php	9,878,144,082.32	
Purchases - LPG Bulk	Total International Limit	Purchases LPG	Php	233,767,226.39	FFF-3.1
Purchases - LPG Bulk	Total International Limit	Purchases LPG		222,883,990.32	FFF-3.2
Purchases - LPG Bulk	Total International Limit	Purchases LPG		163,528,572.57	FFF-3.3
Purchases - LPG Bulk	Total International Limit	Purchases LPG		171,026,944.11	FFF-3.4
Purchases - LPG Bulk	Shell Gas Eastern Inc	Purchases LPG		172,480,241.44	FFF-3.5
Purchases - LPG Bulk	Total International Limit	Purchases LPG		116,104,421.29	FFF-3.6
Purchases - LPG Bulk	Shell Gas Eastern Inc	Purchases LPG		269,352,649.78	FFF-3.7
Purchases - LPG Bulk	Total International Limit	Purchases LPG		240,946,720.55	FFF-3.8
Purchases - LPG Bulk	Shell Gas Eastern Inc	Purchases LPG		179,861,138.03	FFF-3.9
Sub-Total Purchases - LPG Bulk Supported With IEIRD			Php	1,769,951,904.47	
Purchases - LPG Bulk	Shell Gas Eastern Inc	Purchases LPG	Php	110,563,578.40	GGG-1.1
Purchases - LPG Bulk	Shell Gas Eastern Inc	Purchases LPG		143,156,331.22	GGG-1.2
Purchases - LPG Bulk	Total International Limit	Purchases LPG		188,405,727.28	GGG-1.3
Purchases - LPG Bulk Supported With Invoice				442,125,636.90	
Sub-Total Purchases - LPG Bulk			Php	2,212,077,541.37	
Purchases - SPFLUIDS	Total Fluides (Solvants)	Banole Bulk	Php	48,671,605.65	FFF-4.1
Purchases - SPFLUIDS	Total Fluides (Solvants)	Spirdane D60L		815,019.56	FFF-4.2
Purchases - SPFLUIDS	Total Fluides (Solvants)	Banole Bulk		53,074,206.25	FFF-4.3
Purchases - SP Fluids Supported With IEIRD			Php	102,560,831.46	
Purchases - SPFLUIDS	Total Oil South East Asia	Ketrul 220	Php	38,115.14	GGG-2.1
Purchases - SPFLUIDS	Total Oil South East Asia	Spirdane D60L		212,525.46	GGG-2.1
Purchases - SPFLUIDS	Total Fluides (Solvants)	Spirdane D60L		674,501.03	GGG-2.2
Purchases - SPFLUIDS	Total Fluides (Solvants)	Spirdane D60L		674,501.03	GGG-2.3
Purchases - SPFLUIDS	Total Fluides (Solvants)	Banole Bulk		46,628,747.83	GGG-2.4
Purchases - SPFLUIDS	Total Fluides (Solvants)	Spirdane D60L		689,565.95	GGG-2.5
Purchases - SPFLUIDS	Total Fluides (Solvants)	Spirdane D60L		817,326.74	GGG-2.6
Purchases - SPFLUIDS	Total Fluides (Solvants)	Spirdane D60L		756,182.51	GGG-2.6
Purchases - SPFLUIDS	Total Fluides (Solvants)	Isane Ip 165		64,174.57	GGG-2.6
Purchases - SP Fluids Supported With Invoice				50,555,640.25	
Sub-Total Purchases – SPFLUIDS			Php	153,116,471.71	
TOTAL			**Php**	**15,488,325,771.75**	

Consequently, only the assessment on deficiency EWT at 1% for the importations of ULG, LPG Bulk and SP Fluids amounting to Php28,834,041.12, Php4,920,926.81 and Php62,222.91, respectively, or in the total amount of Php33,817,190.84 shall be cancelled because petitioner was able to substantially provide IEIRDs in support for

ŕ

such importations. On the other hand, the Court cannot give credit to the IEIRDs[120] in support of the importations of ADO amounting to Php9,878,144,082.32 since such purchases were not part of the assessment.

Petitioner also alleges that some of the items included in the assessment are subject to other withholding tax rates and were already subjected to proper withholding taxes. For example, "Purchases – Lube Materials" in the amount of Php258,209,695.16 are payments for services subject to 2% EWT. Allegedly these were already subjected to 2% EWT by petitioner, thus, should be excluded from the computation of deficiency EWT at 1%. However, petitioner failed to provide evidence to corroborate its claim.

Since petitioner argued that it relies heavily on importation, it is expected of the company to provide, at the very least, an IEIRD on every import transaction. In this connection, petitioner is liable for deficiency EWT in the amount of Php11,589,526.30 for failure to provide any import document or any corroborating evidence to refute respondent's evaluation of tax deficiency, to wit:

PARTICULARS	AMOUNT (A)		PER ALPHALIST (B)		DIFFERENCE (A-B=C)		DEFICIENCY EWT (Cx1%)	
EWT at 1% (Supplier)								
Purchases - REG	Php	503,203,112.72	Php	-	Php	503,203,112.72	Php	5,032,031.13
Purchases - Additives - MOGAS		255,935.52		-		255,935.52		2,559.36
Purchases - Additives - Diesel		890,616.02		-		890,616.02		8,906.16
Purchases - Kerosene		348,405,053.77		-		348,405,053.77		3,484,050.54
Purchases - RFO		12,665,089.12		-		12,665,089.12		126,650.89
Purchases - Lubes		26,445,793.33		-		26,445,793.33		264,457.93
Purchases - Lube Materials		258,209,695.16		-		258,209,695.16		2,582,096.95
Purchases - Lube Freight Depot		1,209,072.80		-		1,209,072.80		12,090.73
Purchases - Lube Filling Charges		1,062,367.46		-		1,062,367.46		10,623.67
Surveyors Fee Special Fluids		15,350.00		-		15,350.00		153.50
Port Charges - Special Fluids		72,339.88		-		72,339.88		723.40
Purchases - Lubmarine		1,986,379.26		-		1,986,379.26		19,863.79
Purchases - Lubmarine Materials		376,241.95		-		376,241.95		3,762.42
Uniforms		100,214.09		-		100,214.09		1,002.14
Purchases - Materials/Equipment		348,844.84		-		348,844.84		3,488.45
Office Supplies		893,123.42		-		893,123.42		8,931.23
Office Supplies		3,345,870.20		1,490,338.65		1,855,531.55		18,555.32
Office Supplies - HSE		134,588.87		-		134,588.87		1,345.89
I/S Expenses		677,204.42		-		677,204.42		6,772.04
Retails Stations - Supplies		146,076.00		-		146,076.00		1,460.76
TOTAL	**PHP**	**1,160,442,968.83**	**PHP**	**1,490,338.65**	**PHP**	**1,158,952,630.18**	**PHP**	**11,589,526.30**

With regard to the assessments on EWT at 2% and FBT, the Court finds merit in respondent's arguments.

Based on the examination of the records of the case and as verified by the ICPA in his report[121], petitioner did not present even an iota of proof to show that the assessment of its tax liability is

---

[120] *Records, Vol. 2, Exhibits "FFF-2-1" to "FFF-2-3,"* pp. 551-559.
[121] *Id., Exhibit "III," ICPA Report, pars. 3 and 4,* p. 430.

excessive or erroneous. Petitioner failed to demonstrate that the assessment was levied without statutory authority or that it is beyond the limits of statutory authority.

In the absence of proof, the presumption of correctness of assessments would prevail. After all, assessments are *prima facie* presumed correct and made in good faith.[122] It is an elementary rule that in the absence of proof of any irregularity in the performance of official duties, an assessment will not be disturbed and will justify judicial affirmance of said assessment.[123] Considering the failure of petitioner to prove that the deficiency tax assessment is "erroneous" or "excessive," the same may not be abated or cancelled.

Subsequently, petitioner is liable for basic deficiency EWT at 1% and 2% in the amounts of Php11,589,526.30 and Php451,048.99, respectively, as well as basic deficiency FBT of Php821,540.84.

Petitioner is not liable for compromise penalties.

Respondent imposed compromise penalties on petitioner in the aggregate amount of Php70,000.00[124], which must be deleted. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because, by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[125] The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[126]

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment issued by respondent against petitioner for taxable year 2005 covering deficiency Expanded Withholding Tax and Fringe Benefit Tax is **UPHELD** but in the

[122] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301.
[123] *Commissioner of Internal Revenue v. Court of Appeals, et. al.*, G.R. No. 104151, March 10, 1995; 242 SCRA 289; *Atlas Consolidated Mining and Development Corporation v. Court of Appeals, et. al.*, G.R. No. 105563, March 10, 1995, 242 SCRA 289.
[124] *Records, Vol. 2, Exhibit "K," FDDA*, pp. 922-929.
[125] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 774.
[126] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc. et al.*, G.R. No. L-35266, January 21, 1991, 193 SCRA 86.

reduced amount of **Sixteen Million Seventy-Seven Thousand Six Hundred Forty-Five Pesos and 16/100 Pesos (Php16,077,645.16),** inclusive of the 25% surcharge imposed under *Section 248(A)(1)(3) of the 1997 NIRC,* computed as follows:

TYPE OF TAX		BASIC		25% SURCHARGE		TOTAL
Expanded Withholding Tax						
Supplier at 1%	Php	11,589,526.30	Php	2,897,381.58	Php	14,486,907.88
Contractor at 2%		451,048.99		112,762.25		563,811.24
Fringe Benefit Tax		821,540.84		205,385.21		1,026,926.05
TOTAL	**PHP**	**12,862,116.13**	**PHP**	**3,215,529.03**	**PHP**	**16,077,645.16**

In addition, petitioner is also **ORDERED TO PAY**:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT and FBT computed from the dates indicated below until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC*:

TYPE OF TAX		BASIC	DEFICIENCY INTEREST COMPUTED FROM
Expanded Withholding Tax			
Supplier at 1%	Php	11,589,526.30	January 16, 2006
Contractor at 2%		451,048.99	January 16, 2006
Fringe Benefit Tax		821,540.84	January 16, 2006

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php16,077,645.16, representing the basic deficiency EWT and FBT and the corresponding 25% surcharge; and on the twenty percent (20%) deficiency interest which have accrued as aforestated in item (1), computed from March 26, 2012[127] until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

---

[127] *Records, Vol. 2, Exhibit "K," FDDA,* p. 922.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON LEAVE
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.

LOVELL R. BAUTISTA
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