REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

IP CONTACT CENTER OUTSOURCING, INC.,
Petitioner,

-versus-

HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. RICARDO B. ESPIRITU, Revenue District Officer, Revenue District No. 50,
Respondents.

CTA Case No. 8537

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 10 2015
9:00 a.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

The present case is a Petition for Review from the alleged implied denial of the protest of petitioner against the Final Assessment Notice finding petitioner liable for ₱1,761,661.48 deficiency income tax and ₱2,864,084.03 deficiency expanded withholding tax for taxable year 2007.

THE PARTIES

Petitioner IP Contact Center Outsourcing, Inc. (IPPCO) is a corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines, with principal office at 34/F, Tower II Plaza, Ayala Avenue, Makati City. It is engaged in the business of business process outsourcing activities. It may be served with summons and processes of this Court through its counsel, Baterina Baterina Casals Lozada and Tiblani Law Offices, at Unit 1904, 19th Floor, Jollibee Plaza, F. Ortigas Jr. Road, Ortigas Center, Pasig City.

Respondent Hon. Ricardo B. Espiritu is the Revenue District Officer of Revenue District Office (RDO) No. 50, and may be served with summons and processes at 5th Floor, Atrium Building, Makati Avenue, Makati City.

Respondent Kim S. Jacinto-Henares is the Commissioner of Internal Revenue (CIR), head of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges imposed by the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On April 15, 2011, IPCCO received a copy of the Preliminary Assessment Notice (PAN) dated April 12, 2011 from the Revenue Region (RR) No. 8, Makati City, assessing IPCCO of deficiency income tax in the amount of ₱1,970,656.68 and ₱2,540,624.85 deficiency expanded withholding tax (EWT) for taxable year 2007.[1]

IPCCO disputed the assessment in a letter-explanation dated May 30, 2011. After considering the issues raised by IPCCO in its letter-explanation, the 2007 Final Assessment Notice (2007 FAN) with Details of Discrepancies[2] was issued by RR No. 8, assessing IPCCO of deficiency income and deficiency EWT, broken down as follows:

KIND OF TAX	BASIC TAX	INTEREST	TOTAL
Income Tax	₱ 968,966.91	₱ 792,694.57	₱ 1,761,661.48
EWT	₱ 1,533,280.54	₱ 1,330,803.49	₱ 2,864,084.03
Total	₱ 2,502,247.45	₱ 2,123,498.06	₱ 4,625,745.51

On May 18, 2012, IPCCO filed its Protest[3] against the 2007 FAN within thirty (30) days from its receipt thereof on April 15, 2012.

On June 5, 2012, IPPCO, through undersigned counsel, received a letter dated May 30, 2012[4] (May 30, 2012 Letter) from RR No. 8, informing IPCCO that the entire docket together with its Protest against the 2007 FAN was already endorsed to RDO No. 50.

Sixty (60) days from the filing of the Protest against the 2007 FAN, IPCCO submitted a copy of its General Ledger for 2007, pursuant to Section

[1] *Docket*, pp. 28-29, Exhibit "P-1".
[2] *Docket*, pp. 47-51, Exhibit "P-3".
[3] *Docket*, pp. 32-42, Exhibit "P-4".
[4] *Docket*, p. 88.

3.1.5 of Revenue Regulation (RR) No. 12-99 through a letter dated July 17, 2012[5] (July 17, 2012 Letter).

On July 27, 2012, IPCCO received a Preliminary Collection Letter dated July 18, 2012[6] from RDO No. 50 which it considered as an implied denial of its protest against the 2007 FAN. However, on August 6, 2012, IPCCO received a letter from RR No. 8 dated July 30, 2012[7], notifying IPCCO that its July 17 2012 Letter, together with copies of its General Ledger for 2007, was already endorsed to RDO No. 50 for consolidation with the main docket earlier forwarded to the said district.

As shown in the Details of Discrepancies attached in the 2007 FAN, the deficiency income tax assessment against IPCCO arose from the alleged (a) undeclared sales, (b) disallowed expenses due to non-withholding, and (c) unaccounted source of cash, *viz:*

Taxable Income (Loss) per Return		₱ 16,669,751.00
Add: Adjustments/Disallowances		
a. Undeclared Sales	₱ 18,877,436.86	
b. Disallowed expenses due to non withholding	₱ 9,795,253.80	
c. Unaccounted Source of Cash	₱ 3,626,206.20	₱ 32,298,896.86
Taxable Income per Investigation		₱ 48,968,647.86
Income Tax Due per Investigation (3% of the National Government for the 5% GIT)		₱ 1,469,059.44
Less: Tax Paid per Return		₱ 500,092.53
Basic Tax Still Due		₱ 968,966.91
Add: Interest from 16 Apr. 2008 to 18 May 2012		₱ 792,694.57
Total Amount Due		₱ 1,761,661.48

The BIR contended that IPCCO allegedly has undeclared sales through the following reconciliation schedule:

AR, end (net of VAT)		₱ 19,083,297.32
Add: Sales per VAT Return		₱ 68,159,219.04
Total		₱ 87,242,516.36
Less: AR, beg. (net of VAT)		₱ 312,212.50
Sales to be Accrued		₱ 86,930,303.86
Less: Sales per ITR	₱ 59,478,387.00	
Sales of Prepaid Cards	₱ 8,574,480.00	₱ 68,052,867.00
Undeclared Sales		₱ 18,877,436.86

[5] *Docket*, pp. 89-145.
[6] *Docket*, p. 146.
[7] *Docket*, p. 147.

To protect its interests and to avoid any possible lapse of the thirty (30)-day period to appeal to this Court, petitioner filed its Petition for Review[8] on August 28, 2012.

On October 25, 2012, respondents filed a "Motion to Dismiss the Petition for Review for Lack of Jurisdiction"[9] arguing that the Preliminary Collection Letter dated July 30, 2012 was not respondents' final decision on petitioner's protest against the 2007 FAN, and hence, the Court of Tax Appeals (CTA) could not take cognizance over the matter.

On November 26, 2012, petitioner filed its "Comment/Opposition (to the Motion to Dismiss dated 25 October 2012)"[10]. It argued that the CTA had jurisdiction over the case since it was indubitable that the Preliminary Collection Letter wherein respondents not only demanded payment of the amount assessed but also gave the warning that in the event the taxpayer failed to pay the same, respondents would be constrained to enforce the collection by means prescribed by law, is a final decision denying IPCCO's protest. Moreover, jurisprudence dictates that the determination of whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer, and not upon the title thereof.

In a Resolution[11] dated December 13, 2012, the respondent's Motion to Dismiss was denied.

On January 2, 2013, respondent filed its Answer[12] which was later amended[13] when the Court granted respondent's "Motion for Leave to Admit Amended Answer."[14]

Petitioner and respondents filed their Pre-Trial Briefs on February 11[15] and 7[16], respectively.

On November 28, 2013, the Court received the Joint Stipulation of Facts and Simplification of Issues[17] (JSFI) posted by both parties by registered mail on November 25, 2013 which was approved by the Court in the Pre-Trial

[8] *Docket*, pp. 7-24, not including Annexes.
[9] *Docket*, pp. 154-161.
[10] *Docket*, pp. 165-177.
[11] *Docket*, pp. 179-181.
[12] *Docket*, pp. 183-185.
[13] *Docket*, pp. 215-218.
[14] *Docket*, pp. 212-215.
[15] *Docket*, pp. 196-204.
[16] *Docket*, pp. 193-195.
[17] *Docket*, pp. 435-443.

Order[18] issued on December 20, 2013. The initial presentation of petitioner's evidence was then set on January 16, 2014.

Trial ensued thereafter. Petitioner presented its evidence and its sole witness, Ms. Mary Jenelle Palma, the OIC Finance of petitioner, who testified, among others, that petitioner received and disputed the PAN[19] through a letter-explanation[20], that petitioner received the FAN[21] and timely filed a Protest[22], that the assessed deficiency of tax assessment of petitioner for taxable year 2007 as prepared by the BIR was erroneous, and that the Petition for Review was filed on time. After the presentation of its evidence, petitioner rested its case and filed their Formal Offer of Evidence[23].

However, in a Resolution[24] dated April 11, 2014, the Court denied the admission of petitioner's several exhibits which prompted petitioner to file a "Motion for Reconsideration (of the 11 April 2011 Resolution)"[25] on May 7, 2014.

On June 26, 2015, the Court issued a Resolution[26] which set aside the Resolution dated April 11, 2014, ordered petitioner to pay a fine of ₱5,000.00, pursuant to the Judicial Affidavit Rule and Section 10, CTA Circular No. 01-2013, and set a Commissioner's Hearing for the submission of the original documents of previously denied Exhibits "P-5" to "P-20" and for comparison of the photocopies with the originals. In that same Resolution, the Court also admitted Exhibits "P-24" to "P-24-a" and "P-25" to "P-25-a".

Petitioner, however, was unable to present any documents for marking during the Commissioner's Hearing[27]. Instead, petitioner filed a "Motion to Recall Witness"[28] where petitioner moved to recall Ms. Palma to the witness stand to justify the presentation of secondary evidence as petitioner as unable to present the originals of Exhibits "P-5" to "P-20".

During the hearing on September 15, 2014, petitioner's Motion to Recall Witness was denied for lack of merit.[29]

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[18] *Docket*, pp. 446-454.
[19] Dated April 12, 2011, Exhibit "P-1".
[20] Dated May 30, 2011, Exhibit "P-2".
[21] Dated April 12, 2012, Exhibit "P-3".
[22] Dated May 18, 2012, Exhibit "P-4".
[23] *Docket*, pp. 494-511.
[24] *Docket*, pp. 522-523.
[25] *Docket*, pp. 528-546.
[26] *Docket*, pp. 550-553.
[27] *Docket*, p. 554.
[28] *Docket*, pp. 562-568.
[29] *Docket*, p. 569.

Respondent, on the other hand, presented its evidence in chief with Revenue Officer Jose Eric Z. Almosara as its lone witness[30]. Mr. Almosara testified that he assessed petitioner's deficiency IT and EWT, that petitioner was able to only substantially comply with the documents the BIR required them to submit[31], that based on the FAN, petitioner has undeclared sales, disallowed expenses due to non-withholding and unaccounted source of cash and basic tax due[32], and that the FAN issued to petitioner has not yet prescribed.

Respondent filed its Formal Offer of Evidence[33] on September 25, 2014 and all evidence offered therein were admitted by the Court in a Resolution[34] dated January 30, 2015.

On September 30, 2014 petitioner filed a "Motion for Reconsideration (of the September 15, 2014 Order)"[35] which denied its motion to recall witness.

In a Resolution[36] dated January 30, 2015, the Court denied petitioner's motion and petitioner's Exhibits "P-5" to "P-20" were denied with finality as well. Both parties were also ordered to file their respective Memoranda within thirty (30) days from notice.

Petitioner filed its Memorandum[37] on March 20, 2015, while respondent posted her Memorandum[38] on March 31, 2015 which the Court received on April 16, 2015. Considering the foregoing, the case was submitted for decision in a Resolution dated April 22, 2015.

THE ISSUES

The parties submitted the following issues[39] for this Court's disposition:

1. Whether the right of the BIR to issue the 2007 FAN has already prescribed.

2. Whether the petitioner is liable for deficiency income tax for taxable year 2007 in the amount of One Million Seven

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[30] Mr. Almosara testified during the hearing held on September 15, 2014.
[31] TSN, Hearing on September 15, 2014, p. 14.
[32] *Id.* at p. 15.
[33] *Docket*, pp. 584-587.
[34] *Docket*, pp. 694-698.
[35] *Docket*, pp. 573-581.
[36] *Id.* at Note 34.
[37] *Docket*, pp. 707-726.
[38] *Docket*, pp. 732-736.
[39] As agreed upon by the parties in the JFSI which the Court approved on December 20, 2013.

Hundred Sixty One Thousand Six Hundred Sixty One and 48/100 Pesos (₱1,761,661.48) until May 18, 2012.

3. Whether for taxable year 2007, the petitioner is liable for deficiency expanded withholding tax in the amount of Two Million Eight Hundred Sixty Four Thousand Eighty Four and 3/100 Pesos (₱2,864,084.03) until May 18, 2012.

PETITIONER'S ARGUMENTS

Petitioner argues that the right of the respondent to issue the 2007 FAN has already prescribed under Section 203 of the National Internal Revenue Code of 1997, as amended (Tax Code).

Under Section 203 of the Tax Code, respondent has three (3) years, counting from the date of actual filing of the return or the last date prescribed by law for the filing of such return, whichever comes later, within which to assess and collect any national internal revenue taxes still due. Any assessment for deficiency taxes issued after the lapse of three years is no longer valid and effective, except in cases where the BIR and the taxpayer agreed in writing to extend the three (3)-year period or where the taxpayer intentionally filed a false or fraudulent return or failed to file a return, in which case the ten (10)-year prescriptive period applies.

Despite respondent's assertions in the 2007 FAN that IPCCO executed various waivers of the defense of prescription on November 2, 2010 (1st Waiver), May 2, 2011 (2nd Waiver), October 11, 2011 (3rd Waiver), and on September 30, 2012 (4th Waiver), petitioner maintains that the 2nd Waiver is fatally flawed because there is no proof that petitioner was furnished a copy thereof contrary to the requirement in Revenue Memorandum Order (RMO) No. 20-90. Hence, the infirmity of the 2nd Waiver did not extend the period for the BIR to issue the 2007 FAN.

Petitioner further argues, that even assuming the waivers to be valid, it has no deficiency income tax arising from a) undeclared sales, b) disallowed expenses due to non-withholding, and c) unaccounted source of cash.

As regards its alleged undeclared sales, petitioner claims that the Revenue Officer erred in using the formula of: ***sales to be accrued = change/increase in Accounts Receivable (AR) + sales per VAT Returns*** since the change in AR is already reported as sales in the VAT returns. Adding such change in AR resulted in double computation of the relevant sales for the year. Furthermore, the disparity in petitioner's reports for financial and tax accounting is because, under financial reporting rules, petitioner's service revenue is recognized upon performance of business process outsourcing activities of its clients while under VAT rules, VAT is imposable and the relevant revenue is declared upon receipt of payment for the services performed.

As regards its disallowed expenses due to non-withholding, petitioner alleged that several of its expenses can be validly claimed as a deductible expense because they have been subjected to withholding tax, contrary to the assertions of respondent. Petitioner argues that respondent ignored the Details of Monthly Withholding Tax on Professional Fees for the Year 2007 and the List of Professionals with their Corresponding Monthly Income Payments which it submitted together with its Protest, and despite the evidence, still issued the erroneous Preliminary Collection Letter.

As regards its unaccounted source of cash in the amount of ₱3,626,206.20, petitioner alleges that respondent failed to consider that the discrepancy between income payments subjected to EWT as per 1601-E Alphalist with those declared in the Financial Statement pertains to certain capital expenditures such as payments to National Builders & Services and Datacraft Philippines, Inc. As these capital expenditures which were reflected in the Financial Statement are deductible expenses and not income, there is no under-declaration of income and, hence, no unaccounted source of cash.

RESPONDENT CIR'S ARGUMENTS

Respondent CIR contends that the 1st, 2nd, and 3rd Waivers are all valid waivers which conform to the requirements laid down by RMO 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 1, 2001, as amended by Revenue Memorandum Circular (RMC) 06-05 issued on February 2, 2005. As regards the 4th Waiver, respondent claims that the same does not exist.

Respondent maintains that income realized within the taxpayer's annual accounting period becomes the basis for computation of the gross income and the tax liability pursuant to Section 32 and 43 of the Tax Code and should be taxed in accordance with Section 27 thereof. Hence, respondent's reconciliation of sales disclosed that petitioner had undeclared sales.

As regards petitioner's expenses it disallowed due to non-withholding, respondent argues that a comparison of the income payments subject to withholding tax claimed per Financial Statement and Income Tax Return (ITR) as against the Alphalist disclosed that several expenses were not subjected to withholding tax. Hence, the same should be disallowed pursuant to Section 34(K) of the Tax Code.[40]

Lastly, respondent argues that assessments are prima facie presumed correct and made in good faith and the taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, its assessment should not be disturbed.

THE RULING OF THE COURT

Before discussing the factual issues presented, this Court deems it proper to discuss first the legal issue of prescription considering that the resolution of the factual issues would depend on the findings of the same.

After a careful scrutiny of the arguments and documents presented, the Court finds for petitioner.

Respondent's Period to Assess with Respect to Income Tax and EWT

The applicable provision of law is Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, 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." *(Emphasis supplied)*

As regards when the three-year prescriptive period would begin to toll, in the case of petitioner's Income Tax, Sections 76 and 77 of the Tax Code provide:

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[40] 1997, NIRC, Section 34(K). *Additional Requirements for Deductibility of Certain Payments.* - Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section 58 and 81 of this Code.

"**Section 76**. *Final Adjustment Return*. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or
(B) Carry-over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

Section 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax*. -

x x x x x x x x x

(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.

(C) *Time of Payment of the Income Tax*. - The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner."

As for Expanded Withholding Taxes, Revenue Regulation (RR) No. 02-98[41] mandates when the beginning of the prescriptive period should start to toll in the following sections, thus:

> "**SECTION 2.58**. *Returns and Payment of Taxes Withheld at Source.*
>
> (A) Monthly return and payment of taxes withheld at source —
>
> (1) WHERE TO FILE — Creditable and final withholding taxes deducted and withheld by the withholding agent shall be paid upon filing a return in duplicate with the authorized agent banks located within the Revenue District Office (RDO) having jurisdiction over the residence or principal place of business of the withholding agent. In places where there is no authorized agent banks, the return shall be filed directly with the Revenue District Officer, Collection Officer or the duly authorized Treasurer of the city or municipality where the withholding agent's residence or principal place of business is located, or where the withholding agent is a corporation, where the principal office is located except in cases where the Commissioner otherwise permits.
>
> (2) WHEN TO FILE —
>
> (a) The withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year. x x x"

To determine prescription, what is essential only is that the facts demonstrating the lapse of the prescriptive period were sufficiently and

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[41] REVENUE REGULATIONS NO. 02-98, "Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes", April 17, 1998.

satisfactorily apparent on the record either in the allegations of the plaintiff's complaint, or otherwise established by the evidence.[42]

Since prescription is one of the affirmative defenses of the taxpayer, it is incumbent upon him to positively establish when the prescriptive period started to run and when the same ended. He must prove that he has submitted the required returns.[43]

Records of the case would show that petitioner filed its 2007 Annual Corporate Income Tax Return on April 15, 2008[44]. Pursuant to the aforementioned Section, respondent had until April 15, 2011 within which to assess the petitioner of its 2007 income tax liabilities.

As regards its EWT, records likewise show petitioner's filing and payment of its 2007 Expanded Withholding Tax Returns, the last dates to assess in relation to the three-year prescriptive period, and the issuance of the FAN as indicated in the table below:

PERIOD COVERED (2007)	LAST DAY TO FILE RETURN	FILING/ PAYMENT DATE	LAST DAY OF THE 3-YR PERIOD	DATE OF ISSUANCE OF 2007 FAN
JAN 2007	February 10, 2007	February 20, 2007	February 19, 2010	April 12, 2012
FEB 2007	March 10, 2007	March 12, 2007[45]	March 11, 2010	April 12, 2012
MARCH 2007	April 10, 2007	April 11, 2007[46]	April 10, 2010	April 12, 2012
APRIL 2007	May 10, 2007	May 11, 2007[47]	May 9, 2010	April 12, 2012
MAY 2007	June 10, 2007	June 12, 2007[48]	June 11, 2010	April 12, 2012
JUNE 2007	July 10, 2007	July 10, 2007[49]	July 9, 2010	April 12, 2012
JULY 2007	August 10, 2007	August 10, 2007[50]	August 9, 2010	April 12, 2012
AUG 2007	September 10, 2007	September 10, 2007[51]	September 9, 2010	April 12, 2012
SEPT 2007	October 10, 2007	October 10, 2007[52]	October 9, 2010	April 12, 2012
OCT 2007	November 10, 2007	November 12, 2007[53]	November 11, 2010	April 12, 2012

[42] *Bank of the Philippine Islands v. CIR*, G.R. No. 181836, July 9, 2014, citing *D. B. T. Mar-Bay Construction, Inc. v. Panes*, 612 Phil. 93 (2009); *Dino v. Court of Appeals*, 411 Phil. 594 (2001), citing *Gicano v. Gegato*, 241 Phil. 139 (1988); *Chua Lamko v. Dioso*, 97 Phil. 821 (1955).
[43] *Taligaman Lumber Co. vs. Collector*, G.R. No. L-15716, March 31, 1962.
[44] BIR Records, pp. 40-56.
[45] BIR Records, pp. 220-221.
[46] BIR Records, pp. 222-223.
[47] BIR Records, pp. 224-225.
[48] BIR Records, pp.226-227.
[49] BIR Records, pp. 228-229.
[50] BIR Records, pp. 231-230.
[51] BIR Records, pp. 232-233.
[52] BIR Records, pp. 234-235.

NOV 2007	December 10, 2007	December 10, 2007[54]	December 9, 2010	April 12, 2012
DEC 2007	January 15, 2007	January 10, 2008[55]	January 14, 2011	April 12, 2012

Although it seems apparent from the table above that the 2007 FAN was issued well beyond the prescriptive period, respondent has alleged that several waivers have been executed by both parties to extend the prescriptive period. Prior to determining the validity of the waivers, however, the Court shall first discuss if the base prescriptive period has been positively established with the evidence at hand.

Unfortunately for petitioner, the Court finds that it has dismally failed to establish basic facts for its defense of prescription to prosper. Nowhere in its Petition for Review was it alleged when the relevant tax returns were filed and when payment was made. Neither were they included in either party's respective Formal Offers of Evidence for this Court to properly consider.

The consequences of this prosecutorial lapse have been expounded on by the Supreme Court in *Far East Bank & Trust Company v. CIR*[56] as follows:

> "It appears that petitioner failed to file its formal offer of evidence in the CTA, constraining the tax court to rule in favor of the CIR. As explained by the CTA:
>
>> Its repeated non-appearance and failure to comply with court procedures such as the filing of a formal offer of evidence and memorandum only serve to weaken, if not put a death knell, to its claim for refund.
>>
>> **The Rules of Court is strict in considering no evidence which has not been formally offered (Section 24, Rule 132). Without any formal offer of evidence, thus, we could only blame the petitioner for its lost cause. Simply put, it has not proven anything.**
>>
>> x x x x x x x x x

[53] BIR Records, pp. 236-237.
[54] BIR Records, pp 238-239.
[55] BIR Records, pp. 240-241.
[56] G.R. No. 149589, September 15, 2006.

First, it is well-settled that the courts cannot consider evidence which has not been formally offered.[57] Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made.[58] Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.[59] Needless to say, the failure of petitioner to make a formal offer of evidence was detrimental to its cause."

There is an exception to this rule, however, provided in *Vda. de Oñate v. Court of Appeals*[60], thus:

"Section 35 (now Section 34) of Rule 132 of the Rules of Court provides:

> Sec. 35. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles*[61], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

However, in *People v. Napat-a*[62] citing *People v. Mate*[63], we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided

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[57] Rules of Court, Rule 132, Sec. 34.
[58] *Veran v. Court of Appeals*, G.R. No. L-41154, 29 January 1988, 157 SCRA 438.
[59] Francisco, THE REVISED RULES OF COURT IN THE PHILIPPINES 392 (1998), Vol. VII, citing 5 Ency. Of Evidence 469.
[60] G.R. No. 116149, November 23, 1995.
[61] 186 SCRA 385, 388-389 [1990].
[62] 179 SCRA 403 [1989].
[63] 103 SCRA 484 [1981].

the following requirements are present, viz.: **<u>first</u>, the same must have been duly identified by testimony duly recorded** and, **<u>second</u>, the same must have been incorporated in the records of the case**." *(Emphasis supplied)*

Applying the same to the case at bar, the Court finds that petitioner failed to comply with the requisites in order to fall under the exception. First, there has been no mention of the filing and payment of the subject tax returns in the Amended Judicial Affidavit of Mary Jenelle Palma, petitioner's sole witness, dated February 12, 2014[64].

Second, during the hearing held on February 13, 2014, Ms. Palma positively testified that she had no personal knowledge as regards the filing of the subject returns and payment of the relevant taxes, thus:

"ATTY. HERRERA
Q. So it is safe to assume that you have no personal knowledge of the returns that was filed in during the calendar year 2007, considering that you only entered with the petitioner in 2010, is that correct?

ATTY. GUMABUN
Objection, your Honors,

JUSTICE LIBAN
Why?

ATTY. GUMABUN
The question of Respondent's counsel, is falls under the exception for hersay *(sic)* evidence, your Honors.

JUSTICE LIBAN
Objection is overruled. Answer the question Ms. Witness.

MS. PALMA
A. Yes."

As for the second requisite requiring the same to have been incorporated in the records of the case, the Court observes that while the subject returns do exist in the BIR records submitted to this Court by the respondent, the documents are mere photocopies which have not been duly authenticated.

[64] *Docket*, Exhibit "P-25" to "P-25-a".

While it seems as though this falls under one of the exceptions to the Best Evidence Rule[65] because the original is a public record in the custody of a public office or is recorded in a public office, again, the copies were not duly authenticated and made in the manner provided by the rules and all the requirements were not complied with in order to make the same properly admissible in evidence.[66]

Under Section 8[67] of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record.[68] As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction.[69] Moreover, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA.[70] Section 34, Rule 132 of the Revised Rules on Evidence states:

> "SEC. 34. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Again, we must reiterate the pronouncement of the Supreme Court in *The Heirs of Romana Saves, et al. v. The Heirs of Escolastico Saves*[71] that it is a basic procedural rule that the court shall consider no evidence which has not been

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[65] Rules of Court, Rules 130, Sec. 3 . Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a)When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b)When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c)When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d)When the original is a public record in the custody of a public officer or is recorded in a public office.

[66] *Vicente J. Francisco,* The Revised Rules of Court in the Philippines, Evidence, Volume VII, Part I, Rules 128-130 (General Provisions to Character Evidence) at 138 (1997).

[67] Section 8. Court of record; seal; proceedings. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[68] *Commissioner of Internal Revenue v. United Salvage and Towage* (Phils.), Inc., G.R. No. 197515, July 2, 2014, citing *Dizon v. Court of Tax Appeals*, 576 Phil. 110, 128 (2008).

[69] Section 8. Court of record; seal; proceedings. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[70] *Id.* at Note 44.

[71] G.R. No. 152866, October 6, 2010.

formally offered. The purpose for which the evidence is offered must be specified.[72] A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[73]

Indubitably, petitioner failed to establish facts in support of its defense of prescription.

Validity of the 1st, 2nd, and 3rd Waivers of the Defense of Prescription

Respondent does not dispute that the 2007 FAN was issued against petitioner on April 12, 2012. Apparently, based on the above-mentioned dates, the assessment notice was issued beyond the prescriptive period allowed under Section 203 of the Tax Code. However, the same Section 203 of the NIRC of 1997, as amended, provides that an assessment notice issued may be issued after the lapse of the 3-year prescriptive period provided that the instances under Section 222(b) of the same Code are present:

> "**Section 222.** *Exceptions as to the Period of Limitation of Assessment and Collection of Taxes.* —
>
> x x x x x x x x x
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer has 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."

On the subject of waivers, petitioner argues that the 2007 FAN has prescribed because apart from the 2nd Waiver which was attached to its

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[72] *Id.* citing Sec. 34, Rule 132, Revised Rules of Court.

[73] *Id.* at Note 43, citing *Heirs of Pedro Posag v. Parocha*, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

Protest, it claims that it was not furnished a copy of the other BIR-accepted waivers, specifically, the 1st, 3rd, and 4th Waivers.

Respondent, on the other hand, contends that all three waivers are valid, have all been received by petitioner and that the 4th Waiver being alleged by petitioner does not exist.

The table below shows the pertinent information with respect to the Waivers of the Defense of Prescription:

SUBJECT	DATE OF EXECUTION	DATE OF ACCEPTANCE	DATE RECEIVED	LAST DAY TO ASSESS
1st WAIVER[74]	November 2, 2010	November 8, 2010	November 9, 2010	May 4, 2011
2nd WAIVER[75]	May 2, 2011	May 3, 2011	May 10, 2011	November 4. 2011
3rd WAIVER[76]	October 11, 2011	October 12, 2011	October 14, 2011	September 30, 2012
4th WAIVER[77]	September 30, 2012			

As to the purported 4th Waiver alleged by petitioner, this has been specifically denied by respondent in its Amended Answer who also interposed the Special and Affirmative Defense of its non-existence. Since petitioner has not formally offered any evidence on the record to the contrary, this Court shall not consider the same in its discussion of the Waivers.

The leading case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[78], the Supreme Court reiterates the procedure for the proper execution of the waiver, thus:

> "Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90[79] issued on April

[74] *Docket,* Exhibit "R-2", p. 598.
[75] *Docket,* Exhibit "R-5", p. 604.
[76] *Docket,* Exhibit "R-7", p. 608.
[77] Not introduced into evidence by either party, existence denied by respondent.
[78] G.R. 178087, May 5, 2010.
[79] *Id.*, citing: In the execution of said waiver, the following procedures should be followed:

1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase but not after ______ 19 ___ should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

4, 1990 and RDAO 05-01[80] issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase but not after ______ 19 ___, which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority

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2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

1. ACIRs for Collection, Special Operations For tax cases involving National Assessment, Excise and Legal on tax not more than P500,000.00 cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.

3. Commissioner For tax cases involving more than P1M

x x x x

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

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

[80] I. Revenue Officials Authorized to Sign the Waiver

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

A. For National Office cases

Designated Revenue Official

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

x x x x

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

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

II. Repealing Clause

All other issuances and/or portions thereof inconsistent herewith are hereby repealed and amended accordingly.

is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

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

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

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[81]"

As regards the **1st Waiver** which petitioner denies it received, respondent presented evidence to the contrary in the Judicial Affidavit of Mr. Eric Z. Almosara[82], thus:

"Q10: You mentioned about the Waiver of the Defense Prescription dated November 2, 2010 executed by petitioner, if shown to you a copy thereof, will you be able to identify the same?

A: Yes. This is **Waiver of the Defense of Prescription dated November 2, 2010** I am

[81] *Id.* citing Philippine Journalist, Inc. v. Commissioner of Internal Revenue, 488 Phil. 218, 235 (2004).
[82] *Docket,* Exhibits "R-10" and "R-10-a".

referring to, marked as **"Exhibit 2" for the respondent.**

Q11: Going over the document, I noticed that there appeared a name and signature on this Waiver, could you please state whose name and signature this is?

A: Appearing on this Waiver is the name and signature of **RICARDO B. ESPIRITU**, Revenue District Officer, submarked as **Exhibit "2-a" for the respondent.**

Q12: How do you know that this is his signature?

A: Being our Revenue District Officer, I am very familiar with his specimen signature since I regularly saw him signed *(sic)* several documents before in my presence.

Q13: **What proof do you have to show that petitioner was furnished with a copy of the waiver?**

A: **I personally furnished a copy of the waiver to petitioner. This is evidenced by a rubber stamp receipt dated November 9, 2010 received by Ruby Undan.**

Q14: You mentioned about the Rubber Stamp Receipt dated November 9, 2010, if shown to you, will you be able to identify the same?

A: Yes. This is the **Rubber Stamp Receipt dated November 9, 2010** received by Ruby Undan I am referring to, marked as **"Exhibit 2-b" for the respondent,** showing proof that petitioner was furnished with a copy of the said waiver."*(Bold and underlined emphasis in the original; boldfaced emphasis alone, ours)*

Despite receipt thereof having been positively established, the Court notes that the 1st Waiver contains the fatal flaw of failing to specify the amount of tax due in violation of RMO No. 20-90. This Court has previously discussed and emphasized this requirement in numerous cases.[83]

For purposes of clarity, hereunder is a reproduction of the subject 1st Waiver allegedly executed by the parties:

> "WAIVER OF THE STATUTE OF LIMITATION UNDER THE NATIONAL INTERNAL REVENUE CODE
>
> I, **Jaime Enrique Y. Gonzalez,** representing **IP CONTACT CENTER OUTSOURCING, INC.,** request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation of all internal revenue taxes liabilities for the taxable year ending **2007.** I/We 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 for said year which may be found due after investigation/reinvestigation 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 **May 4, 2011**.
>
> The intent and purpose of this 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 assessment/assessments which maybe *(sic)* made for the year above mentioned nor waives the right to use any of the 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 hereon maybe *(sic)* extended by subsequent waiver in writing in accordance with existing rules and regulations of the Bureau of Internal Revenue.

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[83] Scandinavian Motors Corp. v. Commissioner of Internal Revenue, CTA Case No. 7269, March 26, 2008; Bovis Lend Lease Projects Pte. Ltd. v. Commissioner of Internal Revenue, CTA Case No. 6825, August 23, 2007; Commissioner of Internal Revenue v. Maruka Enterprises, Inc., CTA EB Case No. 105, June 1, 2006; Guoco Holdings (Phils.) v. Commissioner of Internal Revenue, CTA Case No. 6122, August 31, 2005; Maruka Enterprises, Inc. v. Commissioner of Internal Revenue, CTA Case No. 5977, February 2, 2005.

Executed this **NOV 02 2010**[84] day of November 2010 in Makati, Philippines.

By:
(sgd.)

Jaime Enrique Y. Gonzalez
Deputy Chairman

(sgd.)
Donna Mantos 11/2/10
(Witness) (Date)

ACCEPTED BY:

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

By:

(sgd.)

RICARDO B. ESPIRITU Date: November 8, 2010
(Name and Signature)
Revenue District Officer
RDO No. 50-South Makati

(sgd.)
JOSE ERIC Z. ALMOSARA
Revenue Officer

(ACKNOWLEDGEMENT FOLLOWS)"

In accordance with existing rules, regulations, and jurisprudence, a valid waiver, therefore, must conform to the following format:

"WAIVER OF THE STATUTE OF LIMITATIONS
UNDER THE NATIONAL INTERNAL REVENUE CODE[85]

[84] Rubber stamped.
[85] Annex "A", Revenue Memorandum Order No. 20-90, April 4, 1990.

____ in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case **involving the assessment of the sums of** _______________________ **as** ____________ **for the years** _____________, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after re-investigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after _____________, 19__.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this __________ day of ________ 19__, in Quezon City, Philippines.

____
(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:
Commissioner of Internal Revenue
Date __________________"*(Emphasis ours)*

A perusal, however, of the subject 1st Waiver dated November 2, 2010, reveals that it failed to follow the prescribed format as required under RMO No. 20-90, which specifically states that there "should be no deviation from such form". Additionally, it does not contain the amount of tax due. This

Court has previously emphasized the inclusion of the same in *Dole Philippines, Inc. v. Commissioner of Internal Revenue*[86], thus:

> "x x x The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner to pinpoint which among the proposed tax assessments may subsequently be issued without the petitioner invoking the defense of prescription.[87] If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of[88]. It should be emphasized that RMO No. 20-90 requires specific information. Hence to substitute the same with general statements is a departure from RMO No. 20-90."

As per the findings of the Court and contrary to the allegations of petitioner, the 1st Waiver was indeed executed by petitioner on November 2, 2010, accepted by respondent on November 8, 2010, and a copy of which was furnished to and received by petitioner on November 9, 2010. However, despite the existence of the 1st Waiver having been indubitably established which would have extended respondent's period to assess to May 4, 2011, the same is fatally infirm for failing to specify the amount of tax due.

Although petitioner was unable to establish evidence for the Court to determine when the prescriptive period should start to toll, the undisputed fact admitted into evidence is that the 2007 FAN dated April 12, 2012 was received by petitioner on April 18, 2012.

The infirmities in the 1st Waiver, however, effectively did not extend respondent's period to assess. A waiver, being void from its inception, does not give rise to a right for which respondent may exercise; it was as if no waiver to extend the period to assess was ever executed. The first waiver being a void one, the succeeding waivers executed by the parties have no force and effect as to bind the parties.[89]

With respondent's failure to issue the assessment notices within three (3) years from the date petitioner filed its income and expanded withholding tax returns, in view of the invalidity of the three Waivers of the Statute of Limitations, respondent's period to assess had already prescribed. The inescapable conclusion, therefore, is that the 2007 FAN is void for having been issued beyond the prescriptive period and, as a consequence thereof, the assessments for deficiency IT and EWT must be cancelled.

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[86] CTA Case No. 5705, July 1, 2003.
[87] *Id.* citing *Pfizer Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6135, April 21, 2003.
[88] *Id.* at Note 62, citing *Solid Cement Corporation v. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue*, CTA Case No. 5420, May 27, 1999.
[89] Philippine Hoteliers, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6985, March 9, 2009.

In view of the foregoing, this Court deems it no longer necessary to resolve the factual issues raised by the parties.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice Nos. IT-LA3529-07-12-0418 and WE-LA3529-07-12-0418 dated April 12, 2012 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

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

ROMAN G. DEL ROSARIO
Presiding Justice