REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1974 (CTA Case No. 9345)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
MEGABUCKS MERCHANDISING CORP., Respondent.	Promulgated: FEB 12 2020 3:35 p.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review[1] filed by the Commissioner of Internal Revenue challenges the Decision[2] and Resolution,[3] respectively dated August 17, 2018 and November 22, 2018, rendered by the Court in Division in CTA Case No. 9345. The challenged Decision and Resolution invalidated and cancelled petitioner's assessments for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and

[1] *Rollo,* pp. 7-27.
[2] Ibid. at pp. 34-54.
[3] Id. at pp. 55-67.

documentary stamp tax (DST), including statutory increments issued against respondent Megabucks Merchandising Corp. for calendar year (CY) 2010.

The undisputed facts are as follow.

Petitioner is the Commissioner of Internal Revenue who has the power to decide disputed assessments, application for refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, on the other hand, is a BIR Registered[4] domestic corporation[5] engaged in the business of buying, selling, distributing, marketing at wholesale or retail insofar as may be permitted by law, all kinds of goods, commodities, wares, and merchandise of every kind and description with business address at Doña Natividad Bldg., 10 Quezon Avenue, Quezon City.

Sometime in September 2011, respondent received a Letter of Authority (LOA)[6] dated September 20, 2011 issued by Alfredo Misajon,[7] authorizing the examination of its books of account and other accounting record for CY 2010.

On October 27 and November 8, 2011, respondent submitted the documents requested by the BIR.

On February 13, 2012, respondent filed with the BIR a Letter dated January 25, 2012, presenting its reconciliation of the alleged discrepancy found in Letter Notice (LN) No. 116-RLF-10-00-00062.

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4 Tax Identification No. (TIN) 000-065-310-000.

5 Securities and Exchange Commission (SEC) Registration No. AS091-194637 dated August 16, 1991.

6 LOA-116-2011-00000051.

7 Officer-in-Charge Assistant Commissioner, BIR Large Taxpayer's Service.

On several occasions, respondent executed Waivers of Defense of Prescription under the Statute of Limitations of the NIRC. Petitioner claimed that respondent executed five (5) waivers, however, respondent insisted that it executed only four (4) waivers. Listed below are the details of the purported waivers:

Waiver	Date of Execution	Date Accepted by the BIR	Date Received by the Taxpayer	Last Date to Assess
1st[8]	June 18, 2013	June 28, 2013	August 27, 2013	December 31, 2013
2nd[9]	October 8, 2013	October 17, 2013	November 7, 2013	June 30, 2014
3rd[10]	May 30, 2014	June 13, 2014	No receipt	December 31, 2014
4th[11]	November 10, 2014	November 20, 2014	December 17, 2014	June 30, 2015
5th[12]	May 20, 2015	June 25, 2015	June 29, 2015	December 31, 2015

Meanwhile, on July 4 and October 14, 2013, or during the period covered by the *first* waiver, respondent submitted to petitioner documents in support of its defense.

On July 9, 2015, respondent received a Preliminary Assessment Notice (PAN)[13] (Parts I and II) with Details of Discrepancy of even date, signed for petitioner by Nestor S. Valeroso.[14]

On September 10, 2015, respondent received Formal Letter of Demand (Parts I and II), Formal Assessment Notices, with Details of Discrepancy (FAN/FLD) of even date, assessing it for deficiency IT, VAT, EWT, WTC, and DST, with interest, surcharge and compromise penalties in the aggregate amount of ₱46,203,187.83, broken down as follows:

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8 Exhibits P-41 and R-4.
9 Exhibits P-42 and R-5.
10 Exhibit R-6.
11 Exhibits P-43 and R-7.
12 Exhibits P-44 and R-8.
13 Exhibit R-10.
14 OIC – Assistant Commissioner, BIR Large Taxpayer's Service.

Tax Type	Basic Tax Due	Surcharge	Interest	Total
IT	₱19,055,561.11		₱16,956,839.00	₱36,012,400.11
VAT	4,720,328.46		4,404,778.00	9,125,106.46
EWT	232,996.08		218,697.00	451,693.08
WTC	246,103.62		231,000.00	477,103.62
DST	312.00	78.00	294.56	684.56
Compromise Penalties				136,200.00
Total	**₱24,255,301.27**	**₱78.00**	**₱21,811,608.56**	**₱46,203,187.83**

On October 9, 2015, respondent protested the FAN/FLD with Details of Discrepancy and submitted documents in support thereof.

On May 6, 2016, respondent lodged a Petition for Review with the Court in Division, citing inaction of petitioner on its administrative protest.

On August 17, 2018, the Court in Division rendered the challenged Decision,[15] disposing the case in the following fashion:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Audit Result/Assessment Notice Nos. IT-116-LOA-00000051-10-15-2074, VT-116-LOA-00000051-10-15-2075, WE-116-LOA-00000051-10-15-2076, WC-116-LOA-00000051-10-15-2077, DS-116-LOA-00000051-10-15-2078, and FT-116-LOA-0000012-09-13-253, assessing (respondent) for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, including interest, surcharge and compromise penalties, in the aggregate amount of ₱46,203,187.83 for taxable year 2010, are **CANCELLED**.
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> **SO ORDERED**.

The Court in Division found the deficiency tax assessments for Income Tax, VAT, EWT, WTC DST and the imposition of compromise penalties invalid. It ruled that respondent may not be lawfully compelled to settle its alleged deficiency taxes as indicated in the FAN/FLD dated September 10, 2015 for lack of date certain for their respective payments rendering the same invalid. Citing *Commissioner of Internal Revenue vs. Pascor Realty and*

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15 See Note 2.

Development Corporation, et al.,[16] the Court in Division explained that an assessment must not only contain a computation of tax liabilities but also a demand for payment within a prescribed period.

Unfazed, petitioner moved for reconsideration,[17] but failed[18] to secure a favorable ruling with the Court in Division, hence, the present recourse.

Petitioner states that a court's authority to rule is confined on matters specifically put forward by the parties in a case. With respondent's failure to raise the issue of lack of definite date and clear demand for payment during the proceeding below rendered the ruling of the Court in Division on the matter erroneous.

While petitioner concedes that the Court in Division may resolve matters which are related to the main issue for the proper determination of the case, he nonetheless asserts that such authority does not grant unbridled power to ignore the procedural tenets that the issues to be threshed out at trial must be confined to those agreed upon by the parties during the Pre-trial Conference, pursuant to Section 7, Rule 18 of the Rules of Court.

Petitioner claims that Section 228 of the NIRC, as amended, merely requires that the taxpayer concerned must be informed of the facts, law, rules and regulations upon which the assessment is predicated to be legally effective. Since the FAN/FLD of September 10, 2015 satisfactorily informed respondent of the factual and legal grounds for its issuance, the findings of deficiency taxes reflected in the said FAN/FLD are binding upon respondent.

Further, the assessments in question complied with all the requirements of a valid assessment. Allegedly, the FAN/FLD dated September 10, 2015 comprises of a fixed amount of tax liability and corresponding surcharge. Further, the modification of deficiency and delinquency

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16 G.R. No. 128315, June 29, 1999.
17 Petitioner's Motion for Reconsideration dated September 4, 2018, docket (CTA Case No. 9345), pp. 644-660.
18 See Note 3.

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interests depending on the date of payment as reflected in the subject FAN/FLD is legally permitted by virtue of Section 249 of the same Code. Being complete in all the details for the efficacy of an assessment, the FAN/FLD dated September 10, 2015 was validly issued against respondent and must be sustained by the Court.

Petitioner also avers that the deficiency EWT and WTC imposed upon respondent is a penalty in view of its breach of duty to withhold taxes as required by Section 57(A) of the NIRC, as amended, together with the rules and regulations implementing withholding taxes. Since deficiency EWT and WTC are penalties rather than taxes, the prescriptive period for assessment of taxes under Section 203 of the same Code is inapplicable to withholding taxes. And given that withholding taxes are purportedly imprescriptible, he seasonably issued the deficiency EWT and WTC for TY 2010 via the FAN/FLD dated September 10, 2015 against respondent.

Moreover, respondent executed several notarized waivers, the forms and details of which were compliant with all the requisites of a valid waiver under Section 222(b) of the NIRC, as amended, as implemented by Revenue Memorandum Order (RMO) No. 20-90. For this reason, the said waivers permissibly stretched his period to assess respondent until December 31, 2015. Otherwise stated, the FAN/FLD dated September 10, 2015 was seasonably issued against respondent.

Granting that such waivers were deficient, the ruling in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.,*[19] shall save the day for petitioner. In the said case, the Supreme Court ruled that where the parties are in *pari delicto* in triggering the flaws in a waiver, such defective waiver may extend his period to assess. Given that he and respondent acted in bad faith in causing the defects in the subject waivers, the flawed waivers legally stretched his period to assess until December 31, 2015.

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19 G.R. No. 212825, December 7, 2015.

To cap up his arguments, petitioner cites in his favor the tenet that tax assessments are presumed valid and correct unless duly rebutted by the taxpayer. Since respondent failed to controvert his duly issued assessments, his finding of deficiency taxes, and increments stated in the FAN/FLD of September 10, 2015 must be upheld.

In refutation,[20] respondent points out that the parties mutually raised the issue of whether it is liable to pay for the deficiency tax assessments and the corresponding increments for CY 2010. Allegedly, such issue covers all matters related if not connected to the requirements of a valid assessment, particularly the determination of whether the assessments issued by petitioner has a due date for its payment and a fixed amount of liability to be paid. As such, the Court in Division traversed no procedural impediment when it addressed the matter of lack of due dates and fixed amount of tax liability in the FAN/FLD dated September 10, 2015.

Even assuming that it failed to particularly raise as issue the said infirmities in the assessment notices, Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) allows the resolution of matters associated with the main issue for the orderly resolution of the case. Thus, irrespective of whether the parties raised as an issue the lack of due dates on the assessment notices in the proceedings below, the Court in Division may nonetheless rule on the matter since such issue is determinative of the principal issue mutually agreed upon by the parties for the resolution of the Court, i.e., whether respondent is liable for deficiency taxes contained in the FAN/FLD dated September 10, 2015.

Citing jurisprudence,[21] respondent retorts that due dates for payment, together with a fixed amount of tax liability to be paid are mandatory preconditions to the efficacy of an assessment. Given that the assessment notices accompanying the FLD dated September 10, 2015: 1) failed to specify their respective due dates for payment; and 2) the amounts of tax liability are subject to alteration

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[20] Respondent's *Comment* dated February 1, 2019, *rollo,* pp. 72-83.

[21] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.,* G.R. No. 21597, November 9, 2016.

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depending on the date of payment, the said assessments are not the ones contemplated by law and jurisprudence. On this score, petitioner's FAN/FLD dated September 10, 2015 is a patent nullity.

Petitioner's protestation that deficiency EWT and WTC stated in the FAN/FLD of September 10, 2015 are imprescriptible is also incorrect. In a number of cases decided both by the Highest Tribunal and this Court, the rules on prescription of assessment embodied in Section 203 of the NIRC, as amended, was uniformly applied in deficiency withholding tax assessments.

Further, the defect in the *third* waiver, namely, petitioner's failure to furnish respondent with a copy of the accepted waiver, was solely due to his own blunder in observing the correct procedure in the execution of a waiver found in Section 222(b) of the NIRC, as amended, RMO No. 20-90, along with pertinent jurisprudence on the matter. In effect, the *third* and the waivers subsequent thereto did not operate to lengthen petitioner's prescriptive period to assess until December 31, 2015, precisely the deficiency taxes and increments indicated in the FAN/FLD issued on September 10, 2015 have prescribed.

In closing, respondent states that the principle of *prima facie* correctness of assessment invoked by petitioner is unavailing when there are palpable flaws in the FAN/FLD of September 10, 2015, as well as in the execution of the waivers, as obtaining in the present case.

THE RULING OF THE COURT

The instant petition is devoid of merit.

Petitioner maintains that the Court in Division improvidently ruled on the issue of lack of the due dates in the FAN/FLD dated September 10, 2015 given that it was not raised as an issue by the parties.

Section 7, Rule 18[22] of the Rules of Court allows the Court to define and limit the issues to be addressed during the entire course of the proceeding. The said issues primarily find their roots from the parties' pleadings, and from those they agreed upon during the pre-trial conference for the resolution of the Court. Thus, issues not raised by the parties during this point ordinarily may not be resolved by the Court. To determine whether the Court in Division erred in resolving the issue of lack of due dates in petitioner's FAN/FLD of September 10, 2015, a second hard look at the issues raised by the parties is in order.

One of the issues stipulated by parties in their Joint Stipulation of Facts and Issues dated December 8, 2016,[23] and stated in the Pre-Trial Order of January 12, 2017[24] issued by the Court in Division is as follows:

> B. Whether (Respondent) is liable to pay for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Withholding Tax on Compensation, Documentary Stamp Tax, Interests, Surcharge and Compromise Penalties for taxable year 2010 in the aggregate amount of P46,203,187.83, as well as further interests as provided by Sections 248 and 249 of the National Internal Revenue Code ("NIRC").[25]

Since the above issue revolves around the alleged liability of respondent to pay petitioner's deficiency tax assessments for CY 2010 reflected in the FAN/FLD dated September 10, 2015, this warrants inquiry on the existence and satisfaction of all the requisites of a valid assessment. Among the requirements is the presence in the FAN/FLD of due dates for the payment of alleged tax liability and fixed amount of taxes due. Evidently, the Court in Division did not err in addressing the issue on the absence of respective

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22 **Section 7.** *Record of pre-trial.* — The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall, explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice.

23 Docket (CTA Case No. 9345), pp. 222-231.

24 Ibid. at p. 233.

25 Id.

due dates in petitioner's assessment notices appended to the FAN/FLD of September 10, 2015 since the resolution thereof is determinative of respondent's liability for deficiency taxes under the subject assessments.

Petitioner insists that the FAN/FLD dated September 10, 2015 binds respondent since he observed due process on assessment embodied in Section 228 of the NIRC, as amended.

The Court is not persuaded.

The Court agrees with petitioner that adherence with Section 228 of the NIRC, as amended, is crucial for the validity of the assessments.[26] However, *en contra* with his posture, observance of such provision *alone* does not conclusively render a taxpayer liable for deficiency taxes. The assessments must foremost be legally demandable for it to be binding against the taxpayer such as respondent.

Article 1158[27] of the Civil Code provides *inter alia* that *obligatio ex-lege* such as taxes are not presumed and may only be demandable upon firm compliance with the law that establishes them. The law referred to therein is Section 6(A) of the NIRC, as amended, which is quoted below:

> SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.**
>
> (A)Examination of Return and Determination of Tax Due. - xxx
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> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

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26 See *Commissioner of Internal Revenue vs. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009.

27 **Article 1158.** Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book.

The term "assessment" refers to the determination of amounts due from a person obligated to make payments.[28] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[29] It must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period,[30] the purpose of which is to determine the amount that a taxpayer is liable to pay.[31] Conversely, an assessment which neither has a due date nor a fixed and determinate amount of tax liability is *not* an assessment contemplated under the Tax Code and pertinent jurisprudence.

Per petitioner's FLD (Part I)[32] dated September 10, 2015, the dates for the payment of tax liabilities were allegedly indicated in the enclosed assessment notices, thus:

> In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through eFPS using BIR Form (BIR Form 0605) within the time shown in the enclosed assessment notice. Afterwards, submit copy thereof to Large Taxpayers Regular Audit Division 1 located at Rm 216 National Office Building, BIR Road, Diliman, Quezon City for updating of your records and cancellation of the herein FLD if warranted.[33] (underscoring supplied)

But a closer look of the corresponding assessment notices for IT,[34] VAT,[35] EWT,[36] WTC,[37] and DST[38] appended to the FLD dated September 10, 2015 reveals that the due dates for their respective payments were unaccomplished. For lack of due dates in the assessment notices, the

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28 See *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014.
29 *Adamson vs. Court of Appeals,* G.R. No. 120935, May 21, 2009.
30 *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,* G.R. No. 128315, June 29, 1999.
31 See *Tupaz vs. Hon. Ulep,* G.R. No. 127777, October 1, 1999.
32 Exhibit P-55.
33 Ibid.
34 Exhibit P-55-c.
35 Exhibit P-55-d.
36 Exhibit P-55-e.
37 Exhibit P-55-f.
38 Exhibit P-55-g.

FAN/FLD dated September 10, 2015 cannot be considered as legally ripe for enforcement against respondent.

Also contrary to petitioner's claim, it is not solely the interest which was the subject of adjustment under the assessments in question. Rather, the FLD (Part I)[39] of September 10, 2015 explicitly states that *both* the amount due *and* its resultant interest are to be modified, contingent upon the period when respondent decides to make good its tax obligation in favor of the government, to wit:

> *Please note that the **interest and total amount due** will have to be **adjusted** if paid beyond September 25, 2010. (emphasis supplied)

Given that petitioner utterly failed to state the respective due dates for payment of deficiency taxes in the subject assessments, along with his failure to provide definite amount of taxes to be paid, respondent's obligation for such deficiency taxes may not be deemed to have legally accrued. Simply put, respondent may not be adjudged to account for deficiency taxes which in the first place are not legally demandable. This renders petitioner's FAN/FLD dated September 10, 2015 ineffectual against respondent, justifying its cancellation and withdrawal.

Petitioner further theorizes that EWT and WTC assessments are penalties rather than taxes, hence, not covered by the rules on prescription of internal revenue taxes under Section 203 of the NIRC, as amended.

The theory is implausible.

Section 21[40] of the NIRC, as amended, recognizes income taxes as among the species of internal revenue taxes. The same Code devised a mechanism on how these

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[39] Exhibit P-55.

[40] **SEC. 21. Sources of Revenue.** - The following taxes, fees and charges are deemed to be national internal revenue taxes:

(a) Income tax;

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income taxes may be collected with utmost dispatch. In particular, Sections 57(B)[41] and 79(A)[42] of the same Code personify the withholding tax system whereby the income payor/s-withholding agent/s deduct/s income taxes on certain gains realized by the income payee-taxpayer prior to disbursement thereof in favor of the latter. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base.[43] From these provisions, it can readily be discerned that EWT and WTC are simply income taxes coursed through the withholding tax system. Being income taxes, withholding taxes are therefore internal revenue taxes under the NIRC, as amended. This conclusion finds jurisprudential mooring in the recent case of *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.,* (*Dela Isabela* case)[44] where it was ruled that:

> xxx. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.
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More importantly, Sections 247(b)[45] and 251[46] of the NIRC, as amended, treat deficiency withholding taxes as

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41 **SEC. 57. Withholding of Tax at Source.** -

(B) Withholding of Creditable Tax at Source. - The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

42 **SEC. 79. Income Tax Collected at Source.** -

(A) Requirement of Withholding. - Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

43 *Bank of America NT & SA vs. Honorable Court of Appeals,* G.R. No. 103092, July 21, 1994.

44 G.R. No. 211289, January 14, 2019.

45 **SEC. 247. General Provisions.** -

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basic deficiency taxes separate and distinct from the civil penalties ensuing therefrom. It simply means that our Legislature did not intend to equate withholding taxes as tantamount to civil penalties. Once more, the *Dela Isabela* case is *apropos*:

> Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. xxx

Indeed, pertinent provisions of the Tax Code, as well as jurisprudence categorize withholding taxes as internal revenue taxes and not penalties, contrary to the picture that petitioner tries to paint. On that account, deficiency EWT and WTC assessments are covered by the rules on prescription under Sections 203 and 222 of the NIRC, as amended.

Petitioner claims that the waivers collectively extended his prescriptive period to assess until December 31, 2015. As such, the FAN/FLD was seasonably issued against respondent on September 10, 2015.

This should be corrected.

(b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.

[46] **SEC. 251. Failure of a Withholding Agent to Collect and Remit Tax.** - Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

Section 222(b)[47] of the NIRC, as amended states that internal revenue taxes may be assessed beyond the ordinary three-year prescriptive period under Section 203 of the same Code provided that *both* the taxpayer and petitioner mutually agreed in writing of a fixed date to extend the same prior to the expiration of the original three-year prescriptive period to assess. Further, such extension may subsequently be stretched when the taxpayer *and* petitioner bilaterally agreed in writing of a definite date before the end of the period previously agreed upon.

To put flesh on such provision, RMO No. 20-90 requires *inter alia,* that after respondent accepted the extension of prescriptive period for him to assess proposed by the taxpayer in a waiver, it must make known its acquiescence by furnishing the taxpayer with a copy of the waiver:

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> 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**. (boldfacing supplied)

Failure to sternly adhere with such requirement renders a waiver legally infirm. In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (*PJI* case),[48] the waiver therein was struck down for, among others, respondent's failure to provide the taxpayer with a copy of the waiver bearing its acceptance.

The same conclusion was reached in *Commissioner of Internal Revenue vs. FMF Development Corporation* (*FMF*

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47 (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.

48 G.R. No. 162852, December 16, 2004.

Case)[49] where it was held that the taxpayer's failure to receive a copy of the waivers assented by respondent resulted in no valid extension of prescriptive period to assess.

With the foregoing in mind, the *first*[50] waiver was executed by respondent on June 18, 2013 and was accepted by the BIR on June 28 of even year thereby stretching petitioner's prescriptive period to assess until December 31, 2013.

On October 8, 2013, or during the effectivity of the *first* waiver, respondent executed a *second*[51] waiver which respondent accepted on October 17, 2013, further extending petitioner's prescriptive period to assess until June 30, 2014.

It must be noted however, that the circumstances surrounding the *third*[52] waiver were akin to the *PJI* and *FMF* cases. While the *third* waiver was executed by respondent on May 30, 2014 and accepted by petitioner on June 13, 2014, a copy of the *third* waiver bearing his written acceptance was not received by respondent. It simply means that no mutual agreement was reached for additional extension of period to assess under the *third* waiver. For this reason, the *third* waiver is void and consequently failed to stretched petitioner's prescriptive period to assess.

There being no valid *third* waiver, petitioner's authority to assess respondent ended on June 30, 2014, which was the last day for extension specified in the *second* waiver. The flaw cascaded to the *fourth* and *fifth* waivers executed[53] by respondent and subsequently acknowledged and accepted [54] by petitioner. Beyond June 30, 2014, there was nothing more to extend. *A fortiori*, the *fourth* and *fifth* waivers did not legally operate to lengthen petitioner's prescriptive period to assess until December 31, 2015. Hence, at the precise moment petitioner issued the FAN/FLD

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49 G.R. No. 167765, June 30, 2008.
50 Exhibits P-41 and R-4.
51 Exhibits P-42 and R-5.
52 Exhibit R-6.
53 The fourth and fifth waivers were executed by respondent on November 10, 2014 and May 20, 2015 respectively. See Exhibits P-43 and 44; R-7 and R-8.
54 The fourth and fifth waivers were acceded by the BIR on November 20, 2014 and June 25, 2015 respectively. See Exhibits P-43 and P-44 and R-7 and R-8.

on September 10, 2015, prescription had already set in[55] and implementation thereof against respondent was no longer legally possible.

Neither can petitioner take refuge in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[56] to cover the infirmities in the waivers. In the said case, the therein taxpayer executed five (5) waivers all containing the same flaw, i.e., lack of notarized authority of the taxpayer's representative to execute the waivers, which the taxpayer itself questioned. For its part, the BIR unceasingly shirked in its duty to obligate the taxpayer's representative to present a notarized board resolution authorizing the latter to execute the waivers on its behalf, affix dates of acceptance on such waivers, as well as its failure to indicate on the Second Waiver the date when the taxpayer therein received the same. These collective incidents show that *both* the BIR and taxpayer were in bad faith and were in *pari delicto* thereby allowing the extension of prescriptive period to assess notwithstanding the defects in the waivers.

In stark contrast with the *Next Mobile* case, the infirmity of the *third* waiver involved in this case was occasioned by petitioner's failure to furnish respondent with a copy of the accepted *third* waiver, the nullity of which adversely affected the validity of the *fourth* and *fifth* waivers. Had petitioner been circumspect in ensuring that respondent received the *third* waiver bearing his written consent, then the *fourth and fifth* waivers could have possibly stretched his period to assess until December 31, 2015. Considering that petitioner and his agents were the ones solely responsible for lapses in the execution of the *third, fourth,* and *fifth* waivers, the *Next Mobile* case finds no application in the given controversy.

WHEREFORE, the petition for review dated December 21, 2018 filed by the Commissioner of Internal Revenue is hereby **DENIED**. The challenged Decision dated August 17,

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55 For CY 2010, petitioner's last day to assess respondent under Section 203 of the NIRC, as amended are as follows: a) IT - April 15, 2014; b) VAT [4th Quarter] - January 25, 2014; c) EWT [December 2010] - January 17, 2014; and d) WTC [December 2010] - January 17, 2014. See pp. 9-10 of the challenged Decision.

56 G.R. No. 212825, December 7, 2015.

2018 and Resolution dated November 22, 2018, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MEGABUCKS MERCHANDISING CORP.,
Respondent.

CTA EB NO. 1974
(CTA Case No. 9345)

Present:

DEL ROSARIO, *P.J.,*
CASTANEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 12 2020
3:35 p.m.

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review thereby affirming the assailed Decision and Resolution of the Court in Division which invalidated and cancelled the deficiency tax assessments issued against respondent for the calendar year 2010 but ***solely*** on the ground that Assessment Notices attached to the Formal Letter of Demand dated September 10, 2015 are void for their **failure to demand payment of the tax due within a specific period, as elucidated in the *ponencia*.**

A final assessment notice must not only indicate the legal and factual bases of the assessment **but must also state a clear and categorical demand for payment of the computed tax liabilities**

within a specific period.[1] Absent a valid demand, as in this case, the undated Formal Letter of Demand and Assessment Notices are fatally infirm. Being void assessments, they bear no fruit[2] and must be slain at sight.

All told, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] *Commissioner of Internal Revenue vs. Fitness By Design,* G.R. No. 215957, November 9, 2016.

[2] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.