REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TOYOTA MOTOR PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8772

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

FEB 2 3 2017
4:29 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This Petition for Review filed by Toyota Motor Philippines Corporation seeks the cancellation of the Final Decision on Disputed Assessment (FDDA) demanding the payment of its alleged deficiency tax liabilities on royalty payments for taxable year ending December 31, 2009 in the amount of ₱242,432,755.32.

THE FACTS

Petitioner Toyota Motor Philippines Corporation is a domestic corporation duly registered with the Securities and Exchange

Commission (SEC) under Company Registration No. 153869.[1] It is registered with the Bureau of Internal Revenue (BIR) with Certificate of Registration No. 8RC0000017498.[2] Petitioner is engaged in the assembly, manufacture, design, construction, purchase, import, sale, distribution, export, mortgage, pledge and disposal of, and otherwise dealing and engaging in any commerce relating to automobiles, cars, trucks, any and all kinds of motor vehicles, automotive products, motor vehicle parts, accessories, instruments, tools, supplies, and equipment, as well as industrial and engineering products.[3]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue, vested by law with authority to perform the duties of said office, including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and related fines.

On May 1, 2009, petitioner and Toyota Motor Corporation, a foreign corporation and a resident of Japan, entered into a Technical Assistance Agreement[4] ("Agreement" for brevity), granting petitioner a non-exclusive, non-divisible, non-transferrable, and non-assignable license to manufacture certain series of motor vehicles and their spare parts in the Philippines. The Agreement specifically covered the following: (1) Camry Series, (2) Corolla Series, (3) Tamaraw Series, (4) Innova Series, (5) Vios Series. Under the Agreement, petitioner will use the relevant technical know-how and data developed by and belonging to Toyota Motor Corporation, for which petitioner will pay royalties equivalent to six percent (6%) of the net selling price of the motor vehicles and accessory parts it sells under the Agreement, and three percent (3%) of the net selling price of the spare parts of the vehicles sold.

On November 15, 2010, petitioner filed a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD) of the BIR requesting confirmation that the royalties it paid are subject to income tax at the rate of ten percent (10%) pursuant to the Convention Between the Republic of the Philippines and Japan for the

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[1] Par. 3, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. III, p. 1165; Exhibit "P-1", docket, vol. IV, p. 1299.
[2] Par. 4, Summary of Admitted Facts, JSFI, docket, vol. III, p. 1166; Exhibit "P-3", docket, vol. IV, p. 1320.
[3] Exhibit "P-2", docket, vol. IV, pp. 1301-1319.
[4] Exhibit "P-4", docket, vol. IV, pp. 1321-1353.

Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income ("Philippines-Japan Tax Treaty" for brevity).[5]

Thereafter, on August 1, 2012, petitioner received a copy of BIR Ruling No. ITAD-292-12[6] dated July 23, 2012, denying the application for tax treaty relief on all royalties paid by petitioner before November 16, 2010 to Toyota Motor Corporation under the Agreement due to petitioner's failure to file the TTRA with the ITAD within the period provided under Revenue Memorandum Order (RMO) No. 72-2010 and RMO No. 1-2000.

Petitioner requested the review of the ruling with the Secretary of Finance on August 31, 2012 through a letter dated August 30, 2012.[7] However, this was denied by the Secretary of Finance in the letter dated December 10, 2012, which affirmed the ruling of respondent.[8]

On February 11, 2013, petitioner received from respondent a Preliminary Assessment Notice (PAN)[9] pursuant to Letter of Authority No. 125-2010-00000139[10] dated May 14, 2010 covering taxable year ended December 31, 2009.[11]

Subsequently, petitioner filed a Reply to the PAN on February 26, 2013, contesting the assessment made by respondent on the alleged deficiency tax liabilities in the total amount of ₱216,536,213.90.[12]

On June 17, 2013[13], petitioner received from respondent a Formal Assessment Notice (FAN) wherein petitioner was still assessed for alleged deficiency final tax on royalties for taxable year 2009.[14] Respondent computed the alleged deficiency final tax on royalties, as follows: ~~

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[5] Exhibit "P-36", docket, vol. IV, p. 1575.
[6] Exhibit "P-39", docket, vol. IV, pp. 1643-1648.
[7] Exhibit "P-40", docket, vol. IV, pp. 1649-1653.
[8] Exhibit "P-41", docket, vol. IV, pp. 1654-1656.
[9] Exhibit "P-8", docket, vol. IV, pp. 1375-1376; Exhibit "R-10", BIR Records, pp. 673-679.
[10] Exhibit "R-1", BIR Records, p. 2.
[11] Par. 5, Summary of Admitted Facts, JSFI, docket, vol. III, p. 1166.
[12] Exhibit "P-12", docket, vol. IV, pp. 1384-1390.
[13] Exhibit "P-9-A", docket, vol. IV, p. 1377.
[14] Par. 6, Summary of Admitted Facts, JSFI, docket, vol. III, p. 1166; Exhibit "P-9", docket, vol. IV, pp. 1377-1378; Exhibit "R-12", BIR Records, pp. 741-744.

Amount of Royalty	₱ 670,905,285.43
Tax Rate	30%
Final Tax	201,271,585.63
Final Tax Paid on Royalty	67,329,541.26
Final Tax on Royalty still due	134,032,044.37
Penalty	
Interest 1.16.2010 - 6.21.2013	91,949,654.55
FINAL WITHHOLDING TAX	**₱225,981,698.92**

Thereafter, petitioner filed a protest letter against the FAN on July 16, 2013.[15]

Petitioner received from respondent a Final Decision on Disputed Assessment[16] on January 24, 2014, demanding payment of petitioner's alleged deficiency final tax on royalties in the amount of ₱242,432,755.32,[17] broken down as follows:

Amount of Royalty	₱ 670,905,285.43
Tax Rate	30%
Final Tax	201,271,585.63
Final Tax Paid on Royalty	67,329,541.26
Final Tax on Royalty still due	134,032,044.37
Penalty	
Interest 1.16.2010 - 1.31.2014	108,400,710.95
FINAL WITHHOLDING TAX	**₱242,432,755.32**

As a result, petitioner filed the instant Petition for Review[18] before this Court on February 21, 2014.

Within the extended time granted by the Court,[19] respondent filed his Answer[20] through registered mail on May 12, 2014. He interposed the following Special and Affirmative Defenses:

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[15] Exhibit "P-13", docket, vol. IV, pp. 1391-1405.
[16] Exhibit "R-16", BIR Records, pp. 893-896; Exhibit "P-10", docket, vol. IV, pp. 1379-1382.
[17] Par. 7, Summary of Admitted Facts, JSFI, docket, vol. III, p. 1166.
[18] Docket, vol. I, pp. 6-34.
[19] Orders dated March 28, 2014 and April 29, 2014, docket, vol. I, pp. 121 and 126.
[20] Docket, vol. I, pp. 128-136.

"5. Respondent repleads the foregoing allegations, and incorporates the same by reference in this section of her *Answer*, insofar as they are material and applicable.

A. No error or illegality can be ascribed to respondent's assessment of petitioner's deficiency final royalty tax liability, as respondent undertook such in accordance with law, jurisprudence and existing administrative rules and regulations.

6. Respondent properly apprised petitioner of its final royalty tax deficiencies for the taxable year 2009.

7. Respondent earnestly maintains that petitioner's failure to file a Tax Treaty Relief Application (hereinafter, 'TTRA') with the International Tax Affairs Division (hereinafter, 'ITAD'), and secure a ruling thereon, prevents it from being entitled to the preferential tax rate under the Philippines-Japan Tax Treaty.

8. The ruling by this Honorable Court in the Mirant Case, which was subsequently upheld by the Honorable Supreme Court, in no less than two occasions, clearly confirmed the efficacy of Revenue Memorandum Order 01-2000 (hereinafter, 'RMO 01-2000'), such that any taxpayer which seeks to invoke a tax treaty provision must first file a TTRA. This Honorable Court, as well as the Honorable Supreme Court, held that this confirmatory step ensures that the provisions of the treaty invoked indeed apply to the applicant, and that in this manner, an erroneous interpretation and application of the treaty provisions is largely avoided.

9. Petitioner should not have dispensed with the requisite of establishing that the provisions of the treaty apply to it, knowing fully that otherwise, it shall be taxed

and assessed in accordance with the provisions of the NIRC. At the time that petitioner incurred the liability to pay final royalty tax, the only applicable rate is the ordinary NIRC rate of thirty percent (30%), as there was no ten percent (10%) preferential tax rate yet to refer to, since petitioner had not invoked its entitlement to such rates as provided for under the Philippines-Japan Tax Treaty.

10. RMO 01-2000 enjoys a strong presumption of regularity and constitutionality. It therefore has statutory force and effect, and should be absolutely enforced until subsequently repealed, amended, or properly annulled. After all, respondent issued the same in the exercise of her full police power and quasi-legislative authority.

11. Albeit that police power is properly vested in Congress, this plenary power may be delegated upon the executive branch of government, to which respondent belongs. The Honorable Supreme Court has in fact appreciated the lawful delegation of police power upon the executive branch, and has upheld the validity, inevitability, and necessity thereof.

12. The delegation by Congress of this police power essentially translates to a transference of legislative authority, and from the perspective of respondent, a grant upon her of quasi-legislative powers. Indeed, as regards her authority to issue and implement RMO 01-2000, in the exercise of police power, suffice it to stress that the powers vested upon her to prescribe and define the rules and regulations for the effective enforcement of the provisions of the NIRC, and also to undertake measures aimed at carrying out such mandate, for the good and welfare of the public, have been so delegated in the NIRC as well. Particularly, she derives her authority from Section 244 of the NIRC, which sets forth as follows:

> 'Section 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful

rules and regulations for the effective enforcement of the provisions of this Code.'

13. Respondent respectfully proposes that Section 244 of the NIRC suffices as legal basis for her to exercise police power. The aforecited provision clearly vests upon her the authority and responsibility to promulgate all rules and regulations as may be necessary for the effective realization of her mandate. Accordingly, she, then possessed of and exercising quasi-legislative authority and police power, promulgated under RMO 01-2000, with the prior recommendation of herein petitioner.

B. This Honorable Court has no jurisdiction over this particular case, as petitioner failed to submit the supporting documents necessary to refute the findings of the revenue examiners, within the 60-day period.

14. Respondent respectfully submits that this Honorable Court has no jurisdiction to take cognizance of the *Petition* considering that the assessment had become final, executory, and demandable due to petitioner's failure to interpose a valid and timely protest.

15. Section 228 of the NIRC, a portion of which has already been cited in the preceding discussion, additionally provides that:

'xxx xxx xxx

<u>Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment</u> in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

xxx xxx xxx.'

16. Such form and manner are further threshed out and provided for in Section 3.1.5 of RR 12-99, to wit:

'3.1.5 Disputed Assessment. – ***The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.***

xxx xxx xxx

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof 'the assessment shall become final, executory and demandable.'

17. Given that petitioner failed to submit supporting documents in order to substantiate its protest upon the assessment, particularly the component thereof pertaining to the deficiency final royalty tax liability.

18. In view of this failure, the intendment of the law, in prescribing that the taxpayer comply with all the administrative requirements continuing up to judicial review, was not served. Simply put, petitioner did not exhaust its administrative remedies.

19. Respondent respectfully submits that the requirement to exhaust administrative remedies is not satisfied with the mere filing of an administrative protest. Rather, respondent contends that an administrative remedy shall only be deemed to have been exhausted if the same had been thoroughly applied, which was not what happened in this case. In this case, petitioner did not submit all documents which may be relevant or important in substantiating its protest. Such being the case, petitioner's recourse to judicial action merely becomes an attempt by it to circumvent the administrative protest and bypass respondent's office.

20. In support of her position, respondent respectfully invites the attention of this Honorable Court to the case of *Jesus A. Jariol v. Commission on Elections*, wherein the Honorable Supreme Court made the following pronouncement:

> 'xxx xxx xxx
>
> A party aggrieved thereby must not merely initiate the prescribed administrative procedure to obtain relief, but also must pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court

xxx xxx xxx'

21. Had petitioner submitted the complete documents, respondent would have had the opportunity to determine the merits of Petitioner's protest. The failure of petitioner to submit its documents essentially deprived respondent of the opportunity to properly exercise her function. Petitioner effectively reduced the filing of the administrative claim to a perfunctory step it had to undertake prior to its filing of this *Petition* before this Honorable Court.

22. Petitioner bypassed its administrative remedy, and it is only now at the judicial stage, before this Honorable Court, that petitioner submits and proposes to present documentary evidence allegedly disputing the assessment against it. Respondent respectfully submits that this should not be allowed as this pernicious practice contravenes the well-settled principle that matters not preliminarily raised in the administrative level cannot be raised for the first time upon appeal.

23. The concept and consequences of the non-exhaustion of administrative remedies need not be discussed in detail. Suffice it to say that the Honorable Supreme Court has long and consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide upon a matter that comes within his or her jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.

24. Applying the foregoing jurisprudential guidelines to the case at hand, respondent respectfully maintains that petitioner's non-exhaustion of its administrative remedies should bar it from seeking judicial recourse. Its failure to exhaust all administrative remedies is fatal to its claim considering that such non-exhaustion is not merely for purposes of practicality and formality, but is also jurisdictional in nature.

25. Hence, circumstances warrant a summary dismissal of the instant Petition for Review.

C. The law heavily presumes upon the favor of the propriety and exactness of tax assessments.

26. Respondent respectfully contends that, as it stands, the deficiency tax liability assessed against petitioner is proper in all respects, and it is upon petitioner to establish that the assessment was incorrect or improper.

27. There exists a presumption in favor of the propriety and exactness of the assessment against petitioner, as well as in the constitutionality and regularity of administrative issuances and regulations. The Honorable Supreme Court discussed this in the case of *Commissioner of Internal Revenue v. Bank of Philippine Islands* to wit:

> 'xxx xxx xxx
>
> Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.
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> xxx xxx xxx'

28. All presumptions are in favor of the correctness of tax assessments. Tax assessors will be presumed to have taken into consideration all the facts to which their attention was called.

29. Thus, it is upon petitioner to present evidence and establish the inaccuracy or outright invalidity of the assessment made against it.

30. Corollarily, its failure to do so further confirms the propriety and exactness of the assessment."

The pre-trial conference was set on July 3, 2014.[21] Petitioner filed its Pre-Trial Brief[22] on June, 25, 2014; while respondent's Pre-Trial Brief[23] was filed on August 15, 2014.

On September 30, 2014, the parties submitted a Joint Compliance with Motion to Admit Attached Joint Stipulation of Facts and Issues[24]. This was noted and granted by the Court in the Resolution[25] dated October 3, 2014 and the parties' Joint Stipulation of Facts and Issues[26] was admitted. This was approved and adopted by the Court in the Pre-Trial Order[27] issued on October 13, 2014, which also terminated the pre-trial.

During trial, petitioner presented as its lone witness, Mr. Amando Bautista, its Tax Manager.[28]

Petitioner also presented and formally offered pieces of documentary evidence. It filed its Formal Offer of Evidence[29] on June 8, 2015.

In a Resolution[30] dated July 20, 2015, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-4-A", "P-4-B", "P-5", "P-6", "P-7", "P-8", "P-8-A", "P-9", "P-9-A", "P-10", "P-10-A", "P-11", "P-11-A", "P-12", "P-12-1", "P-13", "P-13-A", "P-14", "P-14-1", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-22-A", "P- ge

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[21] Notice of Pre-Trial Conference, docket, vol. I, p. 151.
[22] Docket, vol. I, pp. 155-166.
[23] Docket, vol. I, pp. 194-200.
[24] Docket, vol. III, pp. 1161-1164.
[25] Docket, vol. III, p. 1174.
[26] Docket, vol. III, pp. 1165-1172.
[27] Docket, vol. III, pp. 1176-1185.
[28] Exhibit "P-50", Amended Judicial Affidavit of Mr. Amando Bautista, docket, vol. III, pp. 697-726; Minutes of the Hearing dated November 5, 2014, docket, vol. III, p. 1186.
[29] Docket, vol. IV, pp. 1286-1298.
[30] Docket, vol. IV, pp. 1804-1805.

23", "P-23-A", "P-24", "P-24-A", "P-25", "P-25-A", "P-26", "P-26-A", "P-27", "P-27-A", "P-28", "P-28-A", "P-29", "P-29-A", "P-30", "P-30-A", "P-31", "P-31-A", "P-32", "P-32-A", "P-33", "P-33-A", "P-34", "P-35", "P-36", "P-36-A", "P-37", "P-38", "P-39", "P-40", "P-40-A, "P-41", "P-43", "P-43-A", "P-43-B", "P-44", "P-50", "P-50-A", "P-54", "P-55", and "P-55-A". However, the Court denied the admission of Exhibits "P-51", "P-51-A", "P-51-B", "P-52", "P-52-A", "P-52-B", "P-53", "P-53-A", and "P-53-B" for failure to present the originals for comparison.

Petitioner filed a Motion for Reconsideration (of the Honorable Court's Resolution dated July 20 2015)[31] on August 4, 2015 for the admission of Exhibits "P-51", "P-51-A", "P-51-B", "P-52", "P-52-A", "P-52-B", "P-53", "P-53-A", and "P-53-B". This was denied by the Court in the Resolution[32] dated September 22, 2015.

On September 28, 2015, respondent presented his sole witness, Revenue Officer Junely Ivanhoe Fernandez.[33]

During the September 28, 2015 hearing, petitioner made an oral tender of offer of excluded evidence; however, the Court denied the same.[34]

Petitioner filed a Motion for Reconsideration[35] on the matter on October 8, 2015. This was granted by the Court in the Resolution[36] dated November 25, 2015 and Exhibits "P-51", "P-51-A", "P-51-B", "P-52", "P-52-A", "P-52-B", "P-53", "P-53-A", and "P-53-B" were deemed part of the records of the case. In the same Resolution, the Court also resolved respondent's Formal Offer of Documentary Evidence[37] filed on October 19, 2015. Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17", and "R-17-a" were admitted into evidence.

31 Docket, vol. IV, pp. 1806-1812.
32 Docket, vol. IV, pp. 1817-1819.
33 Exhibit "R-17", Judicial Affidavit of Junely Ivanhoe Fernandez, docket, vol. I, pp. 183-190; Minutes of the Hearing dated September 28, 2015, docket, vol. IV, p. 1820.
34 Transcript of Stenographic Notes (TSN) dated September 28, 2015, pp. 4-6.
35 Docket, vol. IV, pp. 1821-1826.
36 Docket, vol. V, pp. 1848-1850.
37 Docket, vol. IV, pp. 1834-1840.

Petitioner filed its Memorandum[38] on February 1, 2016; while respondent filed his Memorandum[39] via registered mail on February 22, 2016. The case was then declared submitted for decision in the Resolution[40] dated March 7, 2016.

THE ISSUES

The parties submitted the following issues[41] for this Court's disposition:

1. Whether or not petitioner is liable to pay the alleged deficiency tax liabilities on its royalty payments for taxable year 2009; and

2. Whether or not respondent's right to assess petitioner is already barred by prescription.

DISCUSSION/RULING

The Court has jurisdiction to entertain the instant petition.

Respondent argues that the Court does not have jurisdiction over the case as the subject matter does not fall under the special jurisdiction granted by the statute to the Court of Tax Appeals. He contends that the core issue of the instant case is the validity of RMO No. 1-2000 and RMO No. 72-2010, which were issued in the exercise of respondent's quasi-legislative power; thus, the Court has no jurisdiction to act on the present case.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over

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[38] Docket, vol. V, pp. 1865-1924.
[39] Docket, vol. V, pp. 1942-1954.
[40] Docket, vol. V, p. 1957.
[41] Statement of the Issues, JSFI, docket, vol. III, p. 1166.

the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[42]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[43] Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*[44], the word "decisions" in the above-quoted provision

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[42] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.

[43] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014, 718 SCRA 513.

[44] G.R. No. 175097, February 5, 2010, 611 SCRA 692.

of RA No. 9282 has been interpreted to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against an issued assessment. Corollary thereto, Section 228 of NIRC of 1997, as amended, provides the procedure for protesting an assessment, to wit:

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

(180)-day period; otherwise, the decision shall become final, executory and demandable."

Contrary to respondent's assertion, the core issue in this case is the validity of the assessment issued against petitioner on its alleged deficiency tax liabilities on royalty payments for taxable year 2009 in the amount of ₱242,432,755.32.

In this case, petitioner received from respondent the FDDA on January 24, 2014. It had thirty days therefrom or until February 23, 2014 within which to file its Petition for Review with the Court of Tax Appeals. Considering that February 23, 2014 fell on a Sunday, petitioner had until February 24, 2014 within which to file its Petition for Review.

Petitioner filed the instant Petition for Review[45] before this Court on February 21, 2014. Thus, the Court has jurisdiction to entertain the instant petition.

The Court will now delve into the merits of the case.

Respondent's right to assess petitioner for deficiency final withholding taxes for taxable year 2009 has not yet prescribed.

Petitioner argues that the right of respondent to assess petitioner for deficiency final withholding taxes for 2009 is already barred by prescription. It claims that the Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code ("Waiver" for brevity) it executed through its representative on May 9, 2012 is invalid for the following reasons:

1. The amount involved in the present case is more than ₱1,000,000.00 but the waiver was signed by the Assistant Commissioner – Large Taxpayers Service and not the Commissioner as required by RMO No. 20-90;

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[45] Docket, vol. I, pp. 6-34.

2. Respondent failed to present the authority of the Assistant Commissioner – Large Taxpayers Service to sign the waiver on behalf of the Commissioner;

3. The waiver did not indicate the specific amount of tax involved; and

4. The waiver is invalid for failure to comply with the requirement that both parties should appear before a notary public and acknowledge the content of the waiver as their voluntary act and deed.

Respondent counter-argues that the waiver executed by petitioner is valid; thus, it effectively extended the period to assess petitioner.

Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in 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."

It is clear from the foregoing that internal revenue taxes must be assessed within three years from the date of actual filing of the tax return or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

The instant case involves final withholding taxes (FWT) on royalty payments. In determining the last day for respondent to assess petitioner for deficiency FWT on royalty payments for taxable year 2009, the Court shall apply Section 2.58(A)(2) of Revenue Regulations (RR) No. 2-98, as amended, which reads as follows:

> "Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.
>
> (A) Monthly return and payment of taxes withheld at source.
>
> xxx xxx xxx
>
> (2) WHEN TO FILE – (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.
>
> Nonetheless, in case of disposition of real property classified as capital asset by an individual to the

government, the tax to be imposed shall be determined either under the normal income tax rate imposed in Sec. 24(A) or under a final capital gains tax of six percent (6%) imposed under Sec. 24(D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows the seller's filed income tax return reflecting the result of the subject real estate transaction.

(b) **With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above**, unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof." *(Emphasis supplied)*

Based on the foregoing, the period within which to file and pay final withholding taxes is ten (10) days after the end of each month, with the exception of taxes withheld for the month of December, in which case, the due date is on January 15 of the following year. However, for taxpayers who availed of the Electronic Filing and Payment System (EFPS), the deadline for filing the applicable withholding tax returns electronically, and for the payment of the taxes due thereon, is five (5) days later than deadlines for manual filings.

Since petitioner availed of the EFPS for taxable year 2009, the deadline for filing its withholding tax returns is on the 15th day of each following month. Thus, the last days for filing petitioner's monthly remittance returns of final income taxes withheld (BIR Form No. 1601-F) were on the 15th day of the month following the month when the royalty payments were remitted and the taxes thereon were withheld.

Petitioner filed the following monthly remittance returns and remitted the corresponding final withholding tax on the dates shown in the table below. Based on such dates, respondent only had until the following dates to assess petitioner of deficiency final income tax on royalty payments:

Period Covered	**Amount of Royalty Payments Made**	**Final Tax Withheld and Remitted**	**Last Day Prescribed by Law for Filing the Return**	**Date of Actual Filing**	**Last Day to Assess**
January 2009[46]	40,461,639.46	4,083,262.60	February 15, 2009	February 16, 2009	February 16, 2012
February 2009[47]	40,571,106.30	4,057,110.63	March 15, 2009	March 13, 2009	March 15, 2012
March 2009[48]	44,708,613.24	4,488,545.25	April 15, 2009	April 20, 2009	April 20, 2012
April 2009[49]	38,611,555.60	3,861,155.56	May 15, 2009	May 13, 2009	May 15, 2012
May 2009[50]	49,363,428.02	4,942,447.34	June 15, 2009	June 11, 2009	June 15, 2012
June 2009[51]	52,151,787.04	5,215,178.70	July 15, 2009	July 14, 2009	July 15, 2012
July 2009[52]	58,618,342.62	5,933,363.91	August 15, 2009	August 14, 2009	August 15, 2012
August 2009[53]	60,537,626.60	6,053,762.66	September 15, 2009	September 10, 2009	September 15, 2012
September 2009[54]	67,693,097.03	6,785,605.65	October 15, 2009	October 12, 2009	October 15, 2012
October 2009[55]	83,723,768.60	8,372,376.86	November 15, 2009	November 12, 2009	November 15, 2012
November 2009[56]	67,852,837.50	6,785,283.75	December 15, 2009	December 11, 2009	December 15, 2012
December 2009[57]	66,614,483.40	6,661,448.34	January 20, 2010	January 13, 2010	January 20, 2013

As shown in the table, respondent needed to assess petitioner for FWT on royalty payments for taxable year 2009 on January 20, 2013 at the latest.

Records show that on May 9, 2012, petitioner executed a Waiver through its representative, Mr. David Go.[58] This extended the period for respondent to assess petitioner for taxable year 2009 until June 30, 2013.

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[46] Exhibits "P-22" and "P-22-A", docket, vol. IV, pp. 1529-1531.
[47] Exhibits "P-23" and "P-23-A", docket, vol. IV, pp. 1532-1534.
[48] Exhibits "P-24" and "P-24-A", docket, vol. IV, pp. 1535-1537.
[49] Exhibits "P-25" and "P-25-A", docket, vol. IV, pp. 1538-1540.
[50] Exhibits "P-26" and "P-26-A", docket, vol. IV, pp. 1541-1543.
[51] Exhibits "P-27" and "P-27-A", docket, vol. IV, pp. 1544-1546.
[52] Exhibits "P-28" and "P-28-A", docket, vol. IV, pp. 1547-1549.
[53] Exhibits "P-29" and "P-29-A", docket, vol. IV, pp. 1550-1552.
[54] Exhibits "P-30" and "P-30-A", docket, vol. IV, pp. 1553-1555.
[55] Exhibits "P-31" and "P-31-A", docket, vol. IV, pp. 1556-1558.
[56] Exhibits "P-32" and "P-32-A", docket, vol. IV, pp. 1559-1561.
[57] Exhibits "P-33" and "P-33-A", docket, vol. IV, pp. 1562-1564.
[58] Exhibit "P-11", docket, vol. IV, p. 1383; Exhibit "R-7", BIR Records, p. 614.

In order to determine whether respondent's right to assess petitioner had been validly extended, the Court shall now determine whether petitioner validly executed the said Waiver.

One of the exceptions to the three-year prescriptive period on the assessment of taxes is that provided under Section 222(b) of the NIRC of 1997, as amended, which states:

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

The above provision is implemented by RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01.

In RMO No. 20-90, respondent laid down the procedures in executing a Waiver as follows:

> "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.

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

xxx xxx xxx

3. Commissioner – For tax cases involving more than ₱1M

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

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.**" *(Emphasis supplied)*

Whereas in RDAO No. 05-01, respondent enumerates the following officials who may sign and accept the Waivers:

"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:

xxx xxx xxx

A. *For National Office cases*

Designated Revenue Official

1. Assistant Commissioner (ACIR), Enforcement Service	— For tax fraud and policy cases
2. ACIR, Large Taxpayers Service	— For large taxpayers cases other than those cases falling under Subsection B hereof

xxx xxx xxx

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." *(Emphasis supplied)*

In the case of *Commissioner of Internal Revenue vs. Standard Chartered Bank*[59], the Supreme Court outlined the procedure for the proper execution of a Waiver of the Defense of Prescription Under the Statute of Limitations, to wit:

"In delineation of the same sense about the waiver of the Statute of Limitations, RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 were issued

[59] G.R. No. 192173, July 29, 2015, 764 SCRA 174.

on 4 April 1990 and 2 August 2001, respectively. The said revenue orders outline the procedure for the proper execution of a waiver, *viz*:

> 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 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."

Applying the foregoing revenue rules and jurisprudence, the Waiver is valid. It complied with all the requirements of a valid waiver There is no merit to the alleged defects in the Waiver cited by petitioner.

Contrary to petitioner's assertions, the Assistant Commissioner - Large Taxpayers Service is authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations under RDAO No. 05-01. There is no need for respondent to present the authority of the Assistant Commissioner of the Large Taxpayers Service to sign the Waiver on behalf of the Commissioner.

Moreover, there is no requirement that the specific amount of tax involved should be indicated in the Waiver.

Lastly, there is no merit to petitioner's argument that the Waiver is invalid for failure to comply with the requirement that both parties should appear before a notary public and acknowledge the content of the waiver as their voluntary act and deed. Petitioner is the one waiving his right to the defense of statute of limitations. Respondent merely signs and accepts the waiver after making sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative. There is no need for respondent to appear before the notary public.

Considering that the Waiver executed by petitioner is valid, the right of respondent to assess petitioner for taxable year 2009 was extended until June 30, 2013.

In this case, petitioner received the PAN on February 11, 2013[60] and the FAN was issued on June 13, 2013 and received by petitioner on June 17, 2013[61]. Clearly, the FAN was issued before respondent's right to assess petitioner has prescribed. Thus, respondent's right to assess petitioner of deficiency final withholding taxes on royalty payments for taxable year 2009 was not barred by prescription.

Petitioner is not liable to pay the alleged deficiency tax liabilities on its royalty payments for taxable year 2009.

Petitioner argues that it is not liable to pay the alleged deficiency tax liabilities on its royalty payments for taxable year 2009 since the royalties on which the said deficiency taxes are imposed are governed by the Philippines-Japan Tax Treaty with respect to royalty payments to Toyota Motor Corporation and Daihatsu Motor Company in Japan and by the Philippines-Thailand Tax Treaty with respect to royalty payments paid to Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. (TMAP-EM) in Thailand. It asserts that the availment of the preferential tax treaty rates under tax treaties entered into by the Philippines is automatic and not conditioned upon the filing of a prior tax treaty relief application.

Respondents aver that no error or illegality can be ascribed to respondent's assessment of petitioner's deficiency final royalty tax liability, as respondent undertook such in accordance with law, jurisprudence and existing administrative rules and regulations. He maintains that petitioner's failure to file a Tax Treaty Relief Application with the BIR International Tax Affairs Division, and secure a ruling thereon, prevents it from being entitled to the preferential tax rate under the Philippines-Japan Tax Treaty.

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[60] Par. 5, Summary of Admitted Facts, JSFI, docket, vol. III, p. 1166.
[61] Exhibit "P-9-A", docket, vol. IV, p. 1377.

The Philippines-Japan Tax Treaty[62] provides that royalties arising from either Japan or the Philippines, and paid to a resident of the other state may be taxed in the state of the recipient, it may also be taxed in the state from which they arose, but the same shall be subject to a preferential tax rate of either fifteen (15) or ten (10) percent. The pertinent provision of the Treaty provides:

"**Article 12**

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

(a) 15 percent of the gross amount of the royalties if the royalties are paid in respect of the use of or the right to use cinematograph films and films or tapes for radio or television broadcasting;

(b) 10 percent of the gross amount of the royalties in all other cases.

(3) Notwithstanding the provisions of paragraph 2, the amount of tax imposed by the Philippines on the royalties paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Japan, who is the beneficial owner of

[62] Convention between Japan and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed in Tokyo, Japan on February 13, 1980, as amended by the Protocol Amending the Convention Between the Republic of the Philippines and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed in Manila on December 9, 2006.

the royalties, shall not exceed 10 percent of the gross amount of the royalties.

(4) The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(5) The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention."

Similarly, the Philippines-Thailand Tax Treaty[63] provides that royalties arising from either of the two states, and paid to a resident of the other state may be taxed in the state of the recipient. It may also be taxed in the state from which they arose, but the same shall be subject to a preferential tax rate of either fifteen (15) or twenty-five (25) percent. The pertinent provision of the Treaty provides:

"ARTICLE 13
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

(a) 15 percent of the gross amount of the royalties if the royalties are paid: (i) by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of

[63] Convention between the Government of the Republic of the Philippines and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed in Manila on July 14, 1982.

activities; or (ii) by an enterprise under the promotion of the Board of Investments of Thailand; or (iii)in respect of cinematographic films or tapes for television or broadcasting;

(b) 25 percent of the gross amount of the royalties in all other cases.

3. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or tapes for television or broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, statutory authority, or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment, then such royalties shall be

deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid having regard to the use, right or information for which they are paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention."

A perusal of the records shows that on November 15, 2010, petitioner filed with the BIR a Tax Treaty Relief Application for Royalty Income (BIR Form No. 0901-R)[64], which was denied by respondent by virtue of its BIR Ruling ITAD No. 292-12 issued on July 23, 2012[65]. Respondent's denial was anchored on the fact that petitioner failed to file its TTRA within 15 days prior to the agreements giving rise thereto, contrary to what is required by RMO No. 72-2010 and RMO No. 1-2000. The denial was affirmed by the Secretary of Finance in the letter[66] dated December 10, 2012, after petitioner requested that the decision of the BIR regarding the matter be reviewed by the said office.

RMO No. 72-2010 requires that the TTRA must be filed before the transaction, and failure to do so has the effect of disqualifying the TTRA.[67] RMO No. 1-2000, on the other hand, requires that the TTRA should be filed fifteen (15) days before the transaction.[68]

However, it must be noted that in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*[69], the Supreme Court held that non-compliance with the prior application rule as required by RMO No. 1-2000 should not operate to automatically divest

[64] Exhibit "P-36", docket, vol. IV, p. 1575.
[65] Exhibit "P-39", docket, vol. IV, pp. 1643-1648.
[66] Exhibit "P-41", docket, vol. IV, pp. 1654-1656.
[67] Section 14, Revenue Memorandum Order No. 72-2010, August 25, 2010.
[68] Revenue Memorandum Order No. 01-2000, November 25, 1999.
[69] G.R. No. 188550, August 28, 2013, 704 SCRA 216, 228-229.

entitlement to the tax treaty relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty and would impair the value of the tax treaty, to wit:

> '''**A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken**.' Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. **The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements**. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.
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> Likewise, it must be stressed that **there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period.** We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's **outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.**
>
> **Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty**. At most, the application for a

tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief**." *(Emphasis supplied)*

Thus, the fact that petitioner failed to file an application for tax treaty relief does not preclude it from enjoying the benefits of the preferential tax rate of 10% under Article 12(2)(b) of the Philippines-Japan Tax Treaty and 25% under Article 13(2)(b) of the Philippines-Thailand Tax Treaty.

Petitioner was able to prove that the royalty payments it made to Toyota Motor Corporation and Daihatsu Motor Company in Japan, and to Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. in Thailand are subject to the preferential tax rates under the said treaties.

Petitioner presented its Certificate of Filing of Amended Articles of Incorporation[70] issued by the Securities and Exchange Commission and its Amended Articles of Incorporation[71] to prove that it is a domestic corporation duly registered with the Philippine SEC.

Moreover, to prove that the royalty payments were paid to residents of Japan and Thailand, the other contracting states in the treaties, petitioner presented the following documentary evidence:

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[70] Exhibit "P-1", docket, vol. IV, p. 1299.
[71] Exhibit "P-2", docket, vol. IV, p. 1301-1319.

1. Toyota Motor Corporation is a resident of Japan:
   a. SEC Certification of Corporate Filing/Information of Toyota Motor Corporation;[72]
   b. Certificate of Residence of Toyota Motor Corporation authenticated by the Consul General of the Philippine Embassy in Japan;[73] and
   c. Articles of Incorporation of the said Company authenticated by the Consul General of the Philippine Embassy in Japan.[74]

2. Daihatsu Motor Company is a resident of Japan:
   a. SEC Certification of Non-Registration of Daihatsu Motor Company;[75]
   b. Certificate of Residence of Daihatsu Motor Company authenticated by the Consul of the Philippine Embassy in Japan;[76] and
   c. Articles of Incorporation of the said company authenticated by the Consul of the Philippine Embassy in Japan.[77]

3. Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. is a resident of Thailand:
   a. SEC Certification of Non-Registration of Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd.;[78]
   b. Certificate of Residence of Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. authenticated by the Vice Consul of the Philippine Embassy in Thailand;[79]
   c. Articles of Incorporation of Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. authenticated by the Vice Consul of the Philippine Embassy in Thailand.[80]

Finally, to prove that the royalty payments were made as a result of technical assistance agreements entered into by petitioner with the recipients of such payments, whereby certain licenses are granted in

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[72] Exhibit "P-5", docket, vol. IV, p. 1354.
[73] Exhibit "P-6", docket, vol. IV, pp. 1355-1358.
[74] Exhibit "P-7", docket, vol. IV, pp. 1359-1374.
[75] Exhibit "P-19", docket, vol. IV, p. 1502.
[76] Exhibit "P-20", docket, vol. IV, pp. 1503-1504.
[77] Exhibit "P-21", docket, vol. IV, pp. 1505-1528.
[78] Exhibit "P-16", docket, vol. IV, p. 1493.
[79] Exhibit "P-17", docket, vol. IV, pp. 1494-1495.
[80] Exhibit "P-18", docket, vol. IV, pp. 1496-1501.

favor of petitioner in exchange for payments of royalties, petitioner presented the following evidence:

1. Technical Assistance Agreement between petitioner and Toyota Motor Corporation;[81]
2. Technical Assistance Agreement between petitioner and Daihatsu Motor Company;[82]
3. Technical Assistance Agreement between Toyota Motor Asia Pacific Engineering and Manufacturing Co. Ltd. (TMAP-EM) and petitioner;[83]
4. Agreement on Training between TMAP-EM and petitioner;[84] and
5. Agreement on Dispatch of Instructions between TMAP-EM and petitioner.[85]

Article 16 of the Technical Assistance Agreement of petitioner and Toyota Motor Corporation provides for the payment of royalties by petitioner to Toyota Motor Corporation "on all of the Licensed Products manufactured by the Licensee, in consideration of the license to use the technical know-how, information, data, etc. furnished by the Licensor." Similarly, Article 14 of the Technical Assistance Agreement of petitioner with Daihatsu Motor Co. also requires the payment of royalties. It specifically states that "[t]he Licensee shall pay the Licensor royalty on all of the Licensed Products manufactured by the Licensee, in consideration of the license to use the technical know-how, information, data, etc. furnished by the Licensor". Lastly, the agreements of petitioner with TMAP-EM in Thailand also provide for payment of fees in exchange for the technical assistance, training of engineering, technical and/or other personnel of petitioner, and the dispatch of TMAP-EM personnel to petitioner's plant. Such payments are royalties since these are for the payment of technical know-how of TMAP-EM in Thailand.

Based on the foregoing, the royalty payments petitioner made to Toyota Motor Corporation and Daihatsu Motor Company in Japan, are subject to the preferential tax rate of 10% under Article 12(2)(b) of the Philippines-Japan Tax Treaty; while the royalty payments of

[81] Exhibit "P-4", docket, vol. IV, pp. 1321-1353.
[82] Exhibit "P-43", docket, vol. IV, pp. 1657-1681.
[83] Exhibit "P-51", docket, vol. IV, pp. 1765-1771.
[84] Exhibit "P-52", docket, vol. IV, pp. 1772-1780.
[85] Exhibit "P-53", docket, vol. IV, pp. 1781-1791.

petitioner to TMAP-EM are subject to the preferential tax treaty rate of 25% under Article 13(2)(b) of the Philippines-Thailand Tax Treaty.

Consequently, the deficiency tax assessment on royalty payments for taxable year 2009 arising from the royalty payments made by petitioner to Toyota Motor Corporation and Daihatsu Motor Company in Japan, and TMAP-EM in Thailand should be cancelled.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment (FDDA) on the deficiency final withholding tax on royalties for taxable year ending December 31, 2009 in the amount of ₱242,432,755.32 issued against petitioner is hereby **CANCELLED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice