REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

NEXT MOBILE, INC. (FORMERLY NEXTEL COMMUNICATIONS PHILS., INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7965

Members:

Acosta, *Chairperson*
Uy, *and*
Fabon-Victorino, *JJ.*

Promulgated:
DEC 11 2012 ; 2:00 p.m.

x - x

DECISION

UY, *J.*:

The instant Petition for Review filed on August 27, 2009, pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, in relation to Section 3(a)(1) of Rule 4 and Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), seeks for the nullification of the Formal Letter of Demand (FLD) dated October 17, 2005[1] and the Assessment Notices/Demand No. 43-734 (FAN) dated October 17, 2005[2] assessing petitioner for deficiency income tax, expanded withholding tax (EWT), final

[1] Exhibit "G", Docket, pp. 372-375.
[2] Exhibits "G-1", "G-2", "G-3", and "G-4", Docket, pp. 376-379.

withholding tax (FWT), increments (for late remittance of EWT, FWT and withholding tax on compensation [WTC]), and compromise penalty (for failure to file BIR Form Nos. 1604F and 1604E, inventory list and alphalist of income payments subjected to withholding tax, late filing/remittance of taxes withheld), in the aggregate amount of Php313,339,610.41, for taxable year ending December 31, 2001. In addition, petitioner also prays that an order be issued directing the Bureau of Internal Revenue (BIR) to issue the corresponding Authority to Cancel Assessment.

THE FACTS

Culled from the records of this case, the factual antecedents are as follows:

Petitioner is a domestic corporation organized under Republic Act (RA) No. 7301 and RA No. 7940, with principal office address at Next Mobile Building, 2244 España Avenue, Sampaloc, Manila. In 2003, petitioner changed its name from Nextel Communications Philippines, Inc. to Next Mobile, Inc.[3]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), holding office at the BIR National Office, Diliman, Quezon City.

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[3] Pars. 1 and 6, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket, pp. 144-145.

On April 15, 2002, petitioner filed with the BIR its Annual Income Tax Return (ITR) for taxable year ending December 31, 2001.[4]

Petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F) for taxable year ending December 31, 2001 on the following dates:

MONTH	DATE OF FILING
January 2001	February 12, 2001[5]
February 2001	March 12, 2001[6]
March 2001	April 10, 2001[7]
April 2001	*June 10, 2001[8]
May 2001	June 11, 2001[9]
June 2001	July 10, 2001[10]
July 2001	August 10, 2001[11]
August 2001	September 10, 2001[12]
September 2001	October 10, 2001[13]
October 2001	November 12, 2001[14]
November 2001	December 10, 2001[15]
December 2001	January 15, 2002[16]

*As prescribed by law, the last day for filing was on May 10, 2001

Petitioner likewise filed its Monthly Remittance Returns of Expanded Withholding Tax (BIR Form No. 1601-E) for taxable year ending December 31, 2001 on the following dates:

[4] Par. 3, *id.*, Docket, p. 145.
[5] Exhibits "II" and "II-1", Docket, p. 460.
[6] Exhibits "JJ" and "JJ-1", Docket, p. 461.
[7] Exhibit "WWW", Docket, p. 1036; Exhibits "YYY" and "YYY-1", Docket, p. 1042.
[8] Exhibits "LL" and "LL-1", Docket, p. 462.
[9] Exhibits "MM" and "MM-1", Docket, p. 463.
[10] Exhibits "NN" and "NN-1", Docket, p. 465.
[11] Exhibits "OO" and "OO-1", Docket, p. 467.
[12] Exhibits "PP" and "PP-1", Docket, p. 469.
[13] Exhibits "QQ" and "QQ-1", Docket, p. 471.
[14] Exhibits "RR" and "RR-1", Docket, p. 473.
[15] Exhibits "SS" and "SS-1", Docket, p. 474.
[16] Exhibits "TT" and "TT-1", Docket, p. 476.

MONTH	DATE OF FILING
January 2001	February 12, 2001[17]
February 2001	March 12, 2001[18]
March 2001	April 10, 2001[19]
April 2001	May 10, 2001[20]
May 2001	June 11, 2001[21]
June 2001	July 10, 2001[22]
July 2001	August 10, 2001[23]
August 2001	September 10, 2001[24]
September 2001	October 10, 2001[25]
October 2001	November 12, 2001[26]
November 2001	December 10, 2001[27]
December 2001	January 15, 2002[28]

For taxable year ending December 31, 2001, petitioner filed its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) on the following dates:

Month	Date of Filing
January 2001	*February 13, 2001[29]
February 2001	March 12, 2001[30]
March 2001	April 10, 2001[31]
April 2001	May 10, 2001[32]
May 2001	June 11, 2001[33]
June 2001	July 10, 2001[34]
July 2001	August 10, 2001[35]

[17] Exhibits "W" and "W-1", Docket, p. 450.
[18] Exhibits "X" and "X-1", Docket, p. 451.
[19] Exhibits "Y" and "Y-1", Docket, p. 452.
[20] Exhibits "Z" and "Z-1", Docket, p. 453.
[21] Exhibits "AA" and "AA-1", Docket, p. 454.
[22] Exhibit "UUU", Docket, p. 1034; Exhibit "YYY", Docket, p. 1041.
[23] Exhibit "VVV", Docket, p. 1035; Exhibits "YYY" and "YYY-1", Docket, pp. 1041-1042.
[24] Exhibits "DD" and "DD-1", Docket, p. 455.
[25] Exhibits "EE" and "EE-1", Docket, p. 456.
[26] Exhibits "FF" and "FF-1", Docket, p. 457.
[27] Exhibits "GG" and "GG-1", Docket, p. 458.
[28] Exhibits "HH" and "HH-1", Docket, p. 459.
[29] Exhibits "L" and "L-1", Docket, p. 422.
[30] Exhibits "M" and "M-1", Docket, p. 423.
[31] Exhibits "N" and "N-1", Docket, p. 424.
[32] Exhibits "O" and "O-1", Docket, p. 426.
[33] Exhibits "P" and "P-1", Docket, p. 427.
[34] Exhibit "SSS", Docket, p. 1032; Exhibits "YYY" and "YYY-1", Docket, p. 1039.

August 2001	September 10, 2001[36]
September 2001	October 10, 2001[37]
October 2001	November 12, 2001[38]
November 2001	December 10, 2001[39]
December 2001	January 15, 2002[40]

*As prescribed by law, the last day for filing was on February 12, 2001

On September 24, 2003, petitioner received a copy of the Letter of Authority (LOA) dated September 8, 2003 signed by Regional Director Nestor S. Valeroso authorizing Revenue Officer Nenita L. Crespo of RDO No. 43 to examine petitioner's books of accounts and other accounting records for income and withholding taxes for the period covering January 1, 2001 to December 31, 2001.[41]

Ms. Ma. Lida Sarmiento, Director of Finance of petitioner, executed several waivers of the statute of limitations to extend the prescriptive period of assessment for taxes due in taxable year ending December 31, 2001 (Waivers), the details of which are summarized as follows:[42]

Waiver	Extended Date of Prescription	Date of Execution	Date of Acknowledgment	BIR Signatory
First Waiver	March 30, 2005	August 26, 2004	August 30, 2004	Revenue District Officer
Second Waiver	June 30, 2005	October 22, 2004	October 22, 2004	Revenue District Officer
Third Waiver	September 30, 2005	January 12, 2005	January 18, 2005	Revenue District Officer
Fourth Waiver	September 30, 2005	None	May 3, 2005	Revenue District Officer

35 Exhibit "TTT", Docket, p. 1033; Exhibits "YYY" and "YYY-1", Docket, p. 1039.
36 Exhibits "Q" and "Q-1", Docket, p. 428.
37 Exhibits "R" and "R-1", Docket, p. 432.
38 Exhibits "S" and "S-1", Docket, p. 434.
39 Exhibits "T" and "T-1", Docket, p. 439.
40 Exhibits "U" and "U-1", Docket, p. 448.
41 Exhibit "1", BIR Records, p. 1.
42 Par. 7, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket, p. 145.

Fifth Waiver	October 31, 2005	March 17, 2005	May 3, 2005	Revenue District Officer

On May 13, 2005, petitioner was furnished copies of the Fourth and the Fifth Waivers, which appeared to have been signed by the Revenue District Officer of RDO No. 43, Mr. Raul Vicente L. Recto.[43]

On September 26, 2005, petitioner received from the BIR, a Preliminary Assessment Notice (PAN) dated September 16, 2005 for which petitioner filed a Reply.[44]

On October 25, 2005, petitioner received a Formal Letter of Demand dated October 17, 2005[45] and Assessment Notices/Demand No. 43-734 dated October 17, 2005[46] from the BIR, demanding payment of deficiency income tax, FWT, EWT, increments for late remittance of taxes withheld[47], and compromise penalty for failure to file returns/late filing/late remittance of taxes withheld[48], in the total amount of Php313,339,610.41, for taxable year ending December 31, 2001, broken down as follows:

NATURE OF TAX	TOTAL
Income Tax[49]	Php 54,552,780.41
Expanded Withholding Tax[50]	933,811.03
Final Withholding Tax[51]	252,282,875.12

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[43] Par. 8, *id.*
[44] Par. 9, *id.*, Docket, p. 146.
[45] Par. 10, *id.*; Exhibit "G", Docket, pp. 372-375.
[46] Exhibits "G-1", "G-2", "G-3", and "G-4", Docket, pp. 376-379.
[47] Docket, p. 35.
[48] Docket, pp. 33-34.
[49] Exhibit "G-1", Docket, p. 376.
[50] Exhibit "G-2", Docket, p. 377.
[51] Exhibit "G-3", Docket, p. 378.

Increments for Late Remittance of Taxes Withheld (EWT/FWT/WTC)[52]	5,376,143.85
Compromise Penalty(Failure to file 1604CF; 1604E; Inventory List and alphalist of income payments subjected to WT; Late filing and remittance of taxes withheld)[53]	194,000.00
	Php313,339,610.41

On November 23, 2005, petitioner filed its protest against the FLD and FAN and requested the reinvestigation of the assessments.[54]

On February 27, 2007, petitioner transferred its business registration from RDO No. 43 to RDO No. 32.[55]

On July 28, 2009, petitioner received a letter from the BIR denying petitioner's protest.[56]

Thus, on August 27, 2009, petitioner filed the instant Petition for Review docketed as CTA Case No. 7965.[57]

On October 5, 2009, respondent filed her Answer[58] to the Petition for Review and raised the following Special and Affirmative Defenses:

> "5. The subject assessments are valid and correct and the petitioner has the burden of proof to impugn their validity (Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671); and assessments duly made by a BIR examiner and

[52] Exhibit "G-4", Docket, p. 379.
[53] Docket, pp. 33-34.
[54] Par. 11, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 146.
[55] Par. 13, *id.*
[56] Par. 14, *id.*
[57] Par. 15, *id.*
[58] Docket, pp. 92-96.

approved by her superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 547).

6. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et. Al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation, Co., 107 Phil 967 [1960]).

7. All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove the contrary (*Commissioner of Internal Revenue v. Antonio Tuason, Inc., 173 SCRA 397; Commissioner of Internal Revenue v. Construction Resources of Asia, Inc. 145 SCRA 671*).

8. The substantive requirements of a valid waiver have been duly complied with by the petitioner and respondent, that is, (1) the waiver must be in writing; (2) it must be signed by the Commissioner of Internal Revenue or his authorized representative and the taxpayer or its responsible officer, and (3) the waiver must be executed within three (3) years prescriptive period to assess pursuant to Section 222 of the 1997 Tax Code. It is but proper that the waiver was signed by Revenue District Officer considering that latter was the authorized representative of the respondent by virtue of a valid delegation of authority issued by the respondent.

9. Petitioner and respondent have benefited from the waiver they executed. It is now duplicitous for the petitioner to assail the very waiver it has executed and received benefits therefrom (Dolores V. Mendoza, et. Al, vs. Agrix Marketing, Inc., 171 SCRA 738, 743 [1983]).

10. By benefiting from the waiver it had executed, petitioner could not now assail its validity. It has been held that the taxpayer is estopped from repudiating a waiver of the statute of limitations which the government has relied upon (Yutivo & Sons Hardware Co. vs. Court of Tax Appeals, et. Al., 1 SCRA 160, 176 [1961], citing Mertens, Law of Federal Income Taxation, Volume 10-A, pp. 159-160).

11. It is well-settled rule in taxation that the State cannot be put in estoppel by the mistakes, errors, negligence and inadvertence of its officials or agents. Although the government may generally be estopped through the affirmative acts of public officers acting within their authority, their neglect, mistake, error, or omission of public duties should not prejudice the government to assess and/or collect the taxes due from the taxpayers, particularly where there was effort made by respondent to allow the petitioner to controvert said assessments but the latter have chosen to hide its evidence and opted to challenge the respondent through technicalities.

12. While the petitioner has executed several waivers of statutes of limitations, the same shall become inconsequential where the petitioner filed a *false income tax return*, hence, respondent's right to assess is within ten (10) years from the date of the discovery of falsity pursuant to Section 222 (a) of the 1997 Tax Code, thus:

> 'Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> a. *In the case of a false xxx xxx return with intent to evade tax xxx, the tax may be assesses [sic] or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of falsity xxx xxx.*"

On October 19, 2009, petitioner filed its Reply[59] to respondent's Answer disputing respondent's allegations therein.

During trial, the parties respectively presented and formally offered their witnesses and documentary evidence.

[59] Docket, pp. 98-108.

With the submission of petitioner's Memorandum on May 3, 2012[60] and respondent's Memorandum on May 7, 2012[61], the case was submitted for decision on May 14, 2012[62].

Hence, this Decision.

THE ISSUES

The parties submit the following issues[63] for the Court's consideration:

"1. Whether the FAN was issued within the 3-year prescriptive period.

2. Whether the requirements under the law and existing jurisprudence were complied with in the execution of the Waivers.

3. Whether the disallowance of salaries and wages in the amount of P48,251,080.00 is proper.

4. Whether the disallowance of professional fees in the amount of P5,249,849.00 is proper.

5. Whether the disallowance of contractor's fees amounting to P498,731.14 is proper.

6. Whether the disallowance of professional and management consultancy fees in the amount of P32,007,137.00 is proper.

7. Whether the disallowance of software and hardware maintenance expense in the amount of P4,319,142.75 is proper.

8. Whether the disallowance of prior year's expense in the amount of P8,007,934.02 is proper.

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[60] Docket, pp. 1250-1288.
[61] Docket, pp. 1290-1301.
[62] Resolution dated May 14, 2012, Docket, p. 1303.
[63] Stipulated Issues, Joint Stipulation of Facts and Issues, Docket, pp. 146-147.

9. Whether Next Mobile is liable for deficiency income tax in the amount of P54,552,780.41 for taxable year 2001.

10. Whether Next Mobile is liable for deficiency expanded withholding tax of P933,311.03 for taxable year 2001.

11. Whether Next Mobile is liable for deficiency final withholding tax of P252,282,875.12 for taxable year 2001.

12. Whether the BIR's imposition of P5,376,143.85 against petitioner for late remittance of taxes withheld is proper.

13. Whether the BIR's imposition of compromise penalty in the amount of P194,000.00 is proper.

14. Whether the Annual ITR is a false return."

THIS COURT'S RULING

In her Answer, respondent prays that the instant Petition for Review be dismissed for lack of jurisdiction.[64] However, respondent did not expound on the basis of her position that the Court lacks jurisdiction to take cognizance of the case.

On the other hand, in its Reply[65] to respondent's Answer as well as in its Memorandum, petitioner argues that pursuant to Section 7(a)(1) of RA No. 1125, as amended, this Court has exclusive appellate jurisdiction to review by appeal decisions of the CIR involving disputed assessments. Petitioner

[64] Docket, p. 95.
[65] Docket, p. 106.

asserts that the letter dated July 24, 2009 denominated as "1st Notice"[66] is the final decision issued by the CIR through the Revenue District Officer of RDO No. 32. Petitioner also points out that respondent admitted that the BIR denied its protest through the "1st Notice", which was received by petitioner on July 28, 2009.

In light of the foregoing considerations, the Court finds it appropriate to first discuss the Court's jurisdiction to take cognizance of the case, before resolving the issues stipulated by the parties.

The Court's jurisdiction

The Court of Tax Appeals (CTA), being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[67] Thus, Section 7(a)(1) of RA No. 1125, as amended by Section 7 of RA No. 9282, provides:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx"

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[66] Exhibit "XXX", Docket, p. 24.

[67] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

Furthermore, Section 3(a)(1) of Rule 4 and Section 3(a) of Rule 8 of the RRCTA state:

"RULE 4
JURISDICTION OF THE COURT

xxx xxx xxx

SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx"

"RULE 8
PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* —

(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes."

The word "decisions" in the above-quoted provision of RA No. 1125, as amended by RA No. 9282, and as implemented by the RRCTA, has been interpreted to mean the decision of the CIR or any of his authorized representatives on the protest of the taxpayer against an assessment.[68] In other words, appealable to the CTA is a decision that refers not to the assessment itself, but to one made on the protest against such assessment. The CIR's action in response to a taxpayer's request for reconsideration or reinvestigation of the assessment constitutes the decision, the receipt of which will start the 30-day period for appeal. The CTA exercises exclusive appellate jurisdiction to review not the assessments themselves, but the decisions involving disputed ones arising under the NIRC.[69]

A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.[70]

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[68] *Allied Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.
[69] *People of the Philippines vs. Sandiganbayan, et al.*, G.R. No. 152532, August 16, 2005.
[70] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.

A perusal of the "1st Notice"[71] issued by the Revenue District Officer of RDO No. 32 shows that it demands the collection of the deficiency income tax, EWT, FWT, increments for late remittance of taxes withheld, and compromise penalty for failure to file returns/late filing/late remittance of taxes withheld, in the aggregate amount of Php313,339,610.41. Said "1st Notice" merely reiterated the demand of the BIR for the settlement of the deficiency taxes, increments and compromise penalty already made on petitioner as indicated in the FLD and FAN.[72] It unmistakably indicates that the CIR, through the Revenue District Officer of RDO No. 32, denied petitioner's request for reinvestigation as stated in its letter dated November 23, 2005 protesting the deficiency income tax, EWT, FWT, increments for late remittance of taxes withheld, and compromise penalty for failure to file returns/late filing/late remittance of taxes withheld as contained in the FLD and FAN. In fact, respondent herself admitted that the "1st Notice" received by petitioner on July 28, 2009 is a denial of petitioner's protest.[73]

In view thereof, it is clear that the "1st Notice" is the CIR's decision on the disputed or protested assessment issued against petitioner for taxable year ending December 31, 2001. It is the final decision which is appealable to this Court pursuant to Section 7(a)(1) of RA No. 1125, as amended by RA

[71] Exhibit "XXX", Docket, p. 24.
[72] Exhibit "G", Docket, pp. 372-375; Exhibits "G-1", "G-2", "G-3", and "G-4", Docket, pp. 376-379; Docket, pp. 33-35.
[73] Par. 14, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket, p. 146.

No. 9282. Hence, the Court has jurisdiction to decide over the instant Petition for Review which was timely filed by petitioner on August 27, 2009 or within thirty (30) days from petitioner's receipt of said "1st Notice" on July 28, 2009.

Requirement to issue the FAN within the three-year prescriptive period

This Court shall now resolve the first issue pertaining to whether the FAN was issued within the three-year prescriptive period prescribed by the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 203 of the NIRC of 1997, as amended, specifically provides that respondent has three (3) years to assess and collect an internal revenue tax, 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 years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That **in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, **a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**." (*Emphasis Ours*)

Pursuant to Section 203 of the NIRC of 1997, as amended, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[74]

Thus, in determining the last day for respondent to assess petitioner for deficiency income tax, EWT, FWT, increments for late remittance of taxes withheld, and compromise penalty for failure to file returns/late filing/late remittance of taxes withheld, the Court shall apply the applicable provisions of the NIRC of 1997, as amended, as well as the implementing rules and regulations issued by the BIR to ascertain the reckoning of the three-year prescriptive period.

In this case, petitioner filed its Annual ITR for taxable year ending December 31, 2001 on April 15, 2002[75], which is the last day prescribed by law for the filing of the same.[76] Applying Section 203 of the NIRC of 1997,

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[74] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.

[75] Par. 3, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket, p. 145.

[76] SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –

(A) xxx

(B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15^{th}) day of as amended, the BIR had until April 15, 2005 within which to issue the FAN assessing petitioner for deficiency income tax for taxable year ending December 31, 2001.

With regard to the deficiency withholding taxes, Revenue Regulations (RR) No. 02-98[77], as amended by RR No. 06-01, requires the filing of the withholding tax returns on EWT, FWT and WTC within ten (10) days after the end of each month for the months of January until November, while the withholding tax return for the month of December should be filed on or before January 15 of the following year. The Court summarized below the dates relevant to the filing of petitioner's tax returns for EWT, FWT and WTC:

April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

[77] SEC. 2.58 – RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.
(A) Monthly return and payment of taxes
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.
SEC. 2.81. FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COPENSATION (form 1601). - Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; provided, however, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year; xxx

Month Covered	Date of Filing of BIR Form No. 1601-F	Date of Filing of BIR Form No. 1601-E	Date of Filing of BIR Form No. 1601-C	Date of Filing as Required by Law	Last Day to Assess
January 2001	February 12, 2001	February 12, 2001	February 13, 2001	February 12, 2001	February 12, 2004/*February 13, 2004
February 2001	March 12, 2001	March 12, 2001	March 12, 2001	March 12, 2001	March 12, 2004
March 2001	April 10, 2001	April 10, 2001	April 10, 2001	April 10, 2001	April 10, 2004
April 2001	June 10, 2001	May 10, 2001	May 10, 2001	June 10, 2001	**June 10, 2004/May 10, 2004
May 2001	June 11, 2001	June 11, 2001	June 11, 2001	June 11, 2001	June 11, 2004
June 2001	July 10, 2001	July 10, 2001	July 10, 2001	July 10, 2001	July 10, 2004
July 2001	August 10, 2001	August 10, 2001	August 10, 2001	August 10, 2001	August 10, 2004
August 2001	September 10, 2001	September 10, 2001	September 10, 2001	September 10, 2001	September 10, 2004
September 2001	October 10, 2001	October 10, 2001	October 10, 2001	October 10, 2001	October 10, 2004
October 2001	November 12, 2001	November 12, 2001	November 12, 2001	November 12, 2001	November 12, 2004
November 2001	December 10, 2001	December 10, 2001	December 10, 2001	December 10, 2001	December 10, 2004
December 2001	January 15, 2002	January 15, 2002	January 15, 2002	January 15, 2002	January 15, 2004

*Last day to assess petitioner for deficiency WTC
**Last day to assess petitioner for deficiency FWT

It is undisputed that the FLD and the FAN, which are both dated October 17, 2005, for alleged deficiency income tax, FWT, EWT, increments for late remittance of taxes withheld, and compromise penalty were received by petitioner only on October 25, 2005.[78]

Based on the date of filing of petitioner's Annual ITR as well as the dates of filing of petitioner's monthly BIR Form Nos. 1601-F, 1601-E and

[78] Par. 10, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket, p. 146.

1601-C, it is clear that the FLD and the FAN both dated October 17, 2005 were issued beyond the three-year prescriptive period allowed under Section 203 of the NIRC of 1997, as amended.

Exception as to the period of limitation of assessment – filing of a false or fraudulent return with intent to evade tax

The Court notes however that Section 203 of the NIRC of 1997, as amended, provides that an assessment notice may be issued after the lapse of the three-year prescriptive period provided that the instances under Section 222 of the NIRC of 1997, as amended, are present.

Under Section 222(a) of the NIRC of 1997, as amended, in case a taxpayer filed a false or fraudulent return, the right of the CIR to assess a taxpayer for deficiency tax shall be ten (10) years after the discovery of the falsity or fraud.

Section 222(a) of the NIRC of 1997, as amended, is quoted hereunder:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: xxx."

In her Answer, respondent claims that the period to assess the deficiency income tax was extended to ten (10) years by virtue of *the false income tax return* filed by petitioner.[79] Furthermore, in her Memorandum[80], respondent alleges that petitioner filed a *fraudulent or false income tax return*, hence, respondent's right to assess is ten years from the date of discovery of the fraud or falsity; that petitioner declared no income in its Annual ITR and accompanying Financial Statements for taxable year 2001 since petitioner allegedly incurred net loss; that petitioner filed a *fraudulent and false return* considering that the amount of the unreported and undeclared income was more than thirty percent (30%) of that reported or declared in its Annual ITR for taxable year 2001.[81]

In its Reply[82] to respondent's Answer as well as in its Memorandum[83], petitioner categorically denied respondent's allegation that petitioner filed a fraudulent or false income tax return. Petitioner claims that respondent failed to allege as to how and why petitioner's Annual ITR is false; that it is unclear whether respondent is alleging that the Annual ITR filed by petitioner was false or fraudulent with intent to evade tax; that respondent should at least raise factual allegations pointing to petitioner's intention to evade taxes; that respondent's allegation is a mere afterthought in order to extend the

[79] Docket, pp. 94-95.
[80] Docket, pp. 1297-1298.
[81] Docket, p. 98.
[82] Docket, pp. 103-105.
[83] Docket, pp. 1260-1262.

prescriptive period to 10 years; that nowhere in the Notice of Informal Conference, the PAN, the FAN, and the "1st Notice" did respondent allege that the ITR of petitioner is a false return; that if respondent is of the belief that the ITR was false, it should have imposed the additional penalty of fifty percent (50%) of the deficiency income tax as mandated by Section 248(B) of the NIRC of 1997, as amended; that petitioner's disallowed deductions constitute less than 30% of the actual deductions claimed; and that respondent did not present any evidence, documentary or testimonial, to prove that petitioner's Annual ITR is false.

The Court agrees with petitioner.

There is no merit in respondent's claim that the deficiency income tax assessment issued against petitioner beyond the three-year prescriptive period to assess is valid as it falls under the exception provided under Section 222(a) of the NIRC of 1997, as amended.

To warrant a ten-year period to assess taxpayer's tax deficiency liabilities, respondent must not only state with clarity the grounds therefor, but must also present substantial evidence in support thereto. Mere allegation in the pleadings, in this case in respondent's Answer and Memorandum, that the case falls under such exception will not suffice.

It should be emphasized that there are only three instances when the ten-year prescriptive period will apply. They are, in case petitioner files a fraudulent return or a false return and in case of failure to file a return. In the case at bench, other than failure to file a return, the Court cannot determine with certainty which ground was relied upon by respondent to validate its assessments. The Court in the past had made a pronouncement that fraud must be proved to exist by clear and convincing evidence amounting to more than mere preponderance and cannot be justified by a mere speculation because fraud is never lightly to be presumed. [84] Furthermore, the burden of proof in establishing whether the taxpayer is guilty of fraud with intent to evade tax is with the CIR.[85]

Considering that respondent failed to substantiate its allegation by clear and convincing proof that petitioner filed a false or fraudulent return, the Court finds the exception provided under Section 222(a) of the NIRC of 1997, as amended, inapplicable in this case.

Exception as to the period of limitation of assessment – execution of a waiver of the statute of limitations

Since the subject assessments were issued beyond the three-year prescriptive period and the exception under Section 222(a) of the NIRC of

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[84] *Pelican Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 5997, May 16, 2003, citing *Philippine Commercial International Bank vs. Commissioner of Internal Revenue*, CTA Case No. 5003, February 4, 1997.
[85] *Headstrong Philippines, Inc. (formerly James Martin & Co. – Philippines, Inc.) vs. Commissioner of Internal Revenue*, CTA Case No. 6986, January 19, 2009, citing *Andrew D. Gruber vs. Commissioner of Internal Revenue*, CTA Case No. 2278, March 5, 1982.

1997, as amended, is inapplicable, it now becomes imperative to pass upon the validity of the subject Waivers executed by Ms. Ma. Lida Sarmiento, Director of Finance of petitioner, to determine whether or not said Waivers validly extended the three-year prescriptive period to assess petitioner for deficiency income tax, FWT, EWT, increments for late remittance of taxes withheld, and compromise penalty.

Under existing tax laws, the taxpayer and the CIR may stipulate to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon. Particularly, Section 222(b) of the NIRC of 1997, as amended, provides:

> "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."

In implementing the aforesaid waiver of the statute of limitations, Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 were issued on April 4, 1990 and August 2, 2001, respectively, to outline the procedure for the proper execution of the said waiver, *viz.*:[86]

> "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

[86] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

> that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

The strict compliance with the requirements provided in RMO No. 20-90 has been upheld by the Supreme Court in the case of ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue***[87]. In reversing the decision of the Court of Appeals promulgated on August 5, 2003, and reinstating this Court's decision promulgated on May 14, 2002, the Supreme Court ruled that:

> "The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period of assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. . .
>
> xxx xxx xxx
>
> RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. **A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed**, xxx" *(Emphasis Ours)*

In the present case, it was already stipulated by the parties that Ms. Ma. Lida Sarmiento, Director of Finance of petitioner, executed five (5) waivers of the statute of limitations to supposedly extend the prescriptive

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[87] G.R. No. 162852, December 16, 2004.

period of assessment for taxes due in taxable year ending December 31, 2001.[88]

Upon perusal of the copies of the Waivers that were submitted as evidence by both parties, and after taking into account the parties' stipulation as well as the testimony of respondent's witness, Mr. Mariano Boliche[89], the Court made some significant observations and summarized the relevant details of the five Waivers, to wit:

Waiver	Extended Date of Prescription	Date of Execution	Date of Acceptance by BIR	Date of Acknowledgment	BIR Signatory	Date of Receipt by Petitioner
First Waiver	March 30, 2005	August 26, 2004	***None***	August 30, 2004	Revenue District Officer	May 23, 2005[90]
Second Waiver	June 30, 2005	October 22, 2004	***None***	October 22, 2004	Revenue District Officer	None[91]
Third Waiver	September 30, 2005	January 12, 2005	***None***	January 18, 2005	Revenue District Officer	May 23, 2005[92]
Fourth Waiver	September 30, 2005	None	***None***	May 3, 2005	Revenue District Officer	May 13, 2005[93]
Fifth Waiver	October 31, 2005	March 17, 2005	***None***	May 3, 2005	Revenue District Officer	May 13, 2005[94]

Based on the foregoing, it appears that the Waivers executed by Ms. Sarmiento have no binding effect on petitioner for reasons discussed hereafter.

First, Ms. Sarmiento signed the Waivers without any notarized written authority from petitioner's Board of Directors. Respondent's witness, Mr.

[88] Par. 7, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket, p. 145.
[89] Transcript of Stenographic Notes (TSN) dated September 20, 2011.
[90] Exhibit "B", BIR Records, p. 267.
[91] Exhibit "C", Docket, p. 368; Exhibit "14", BIR Records, p. 266.
[92] Exhibit "D", Docket, p. 369; Exhibits "15" and "15-a", BIR Records, p. 265.
[93] Exhibits "E" and "E-1", Docket, p. 370; Exhibits "16" and "16-A", BIR Records, p. 265.
[94] Exhibits "F" and "F-1", Docket, p. 371; Exhibits "17" and "17-A", BIR Records, p. 268.

Boliche, explicitly admitted that he did not require Ms. Sarmiento to present any notarized written authority from the Board of Directors of petitioner, authorizing her to sign the Waivers. Mr. Boliche likewise confirmed that Revenue District Officer Raul Vicente L. Recto accepted the Waivers without requiring any notarized written authority from petitioner's Board of Directors to ensure that Ms. Sarmiento is petitioner's authorized signatory.[95]

Moreover, We find the foregoing actuations of Mr. Boliche and Revenue District Officer Recto contrary to the specific requirement under RDAO No. 05-01, which clearly mandates that:

> "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 Ours)*

Relevant thereto, in ***Commissioner of Internal Revenue vs. Kudos Metal Corporation***[96], the Supreme Court considered the waiver executed on behalf of the taxpayer without notarized written authority issued by the taxpayer's Board of Directors as defective and infirmed. Pertinent portions of said pronouncements are quoted hereunder for easy reference:

[95] TSN dated September 20, 2011, pp. 18, 30, 31, 34, 35, and 38.
[96] G.R. No. 178087, May 5, 2010.

> "A perusal of the waivers executed by respondent's accountant reveals the following infirmities:
>
> 1. **The waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent**.
>
> 2. **The waivers failed to indicate the date of acceptance**.
>
> 3. The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers.
>
> **Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void**." *(Emphasis Ours)*

In view of the foregoing discussion, We find that the subject Waivers are null and void for the same were executed by Ms. Sarmiento without the notarized written authority from the Board of Directors of petitioner; thus, violating the clear requirement imposed under RDAO No. 05-01.

Second, even assuming that Ms. Sarmiento had the authority to sign the Waivers, still the Waivers are invalid as the respective dates of their acceptance by Revenue District Officer Recto are not indicated therein. The requirement to indicate the date of acceptance is necessary to determine whether a waiver was validly accepted before the expiration of the original three-year prescriptive period. As quoted earlier in the *Kudos* case[97], a waiver shall be considered void and will not validly extend the original three-

[97] *Id.*

year prescriptive period for failure to indicate the date of acceptance by the authorized representative of the BIR, among others.

Likewise, in the case of ***Commissioner of Internal Revenue vs. FMF Development Corporation***[98], the Highest Tribunal categorically ruled that the waiver executed by the taxpayer was defective and did not validly extend the original three-year prescriptive period for the reason, among others, that the waiver did not contain the date of acceptance by the CIR, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. The Supreme Court ruled in the following fashion:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.
>
> An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides:
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> xxx xxx xxx

[98] G.R. No. 167765, June 30, 2008.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

xxx xxx xxx

The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222 (b), the following procedures should be followed:

1. The waiver must be in the form identified as Annex 'A' hereof xxx

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.

xxx xxx xxx

Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. Xxx xxx **it did not contain the date of acceptance by the Commissioner of Internal Revenue, a**

> **requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.** Bear in mind that the **waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement.**" *(Emphasis Ours)*

Records of this case further reveal additional irregularities in the subject Waivers:

(1) the fact of receipt by petitioner of its copy of the Second Waiver was not indicated on the face of the original Second Waiver;

(2) petitioner received its copy of the First and the Third Waivers on the same day, that is, on May 23, 2005; and

(3) petitioner received its copy of the Fourth and the Fifth Waivers on the same day, *viz.*, on May 13, 2005.

These irregularities are highly questionable and may thus provide an implied explanation on why the Waivers did not indicate the dates when the same were accepted by Revenue District Officer Recto.

Finally, respondent argued that petitioner is already estopped from impugning the validity of the subject Waivers. However, We find this argument bereft of merit.

In the same case[99], the Highest Tribunal likewise had the occasion to rule that estoppel does not apply in questioning the validity of a waiver of the statute of limitations, to wit:

> "**The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow**. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.
>
> Moreover, **the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued**. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. **Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed**." *(Emphasis Ours)*

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[99] *Supra., see note 96.*

Accordingly, this Court finds, and so holds, that the subject Waivers were invalid and not binding, and consequently, the three-year period prescribed by law to issue an assessment was not extended.

In sum, the exceptions provided under Section 222(a) and (b) of the NIRC of 1997, as amended, do not apply in the instant case. Instead, the original three-year prescriptive period to issue the tax assessment as required under Section 203 of the NIRC of 1997, as amended, should be strictly observed by respondent, which it miserably failed in the present case. Hence, the FLD and FAN, both dated October 17, 2005, which were received by petitioner on October 25, 2005, are void for being issued beyond the prescriptive period provided under Section 203 of the NIRC of 1997, as amended. Consequently, the "1st Notice" dated July 24, 2009, which sprung from the void FLD and FAN is likewise void and should be set aside.

In view of the foregoing pronouncements, resolution of the remaining stipulated issues, more particularly, the merits of the subject assessments, becomes no longer necessary.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand dated October 17, 2005 and the Assessment Notices/Demand No. 43-734 dated October 17, 2005 are both hereby **CANCELLED** and **WITHDRAWN** for being issued beyond the prescriptive period allowed by law. Consequently, the "1st Notice" dated July 24, 2009 demanding payment of assessed deficiency income tax, final withholding tax, expanded withholding tax, increments for late remittance of taxes withheld, and compromise penalty in the total amount of Php313,339,610.41 for taxable year ending December 31, 2001 is hereby **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice