REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MEDTECS INTERNATIONAL CORPORATION LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8538

Members:

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

Promulgated:
NOV 15 2016 3:02 A.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves the following:

1. Petitioner's Motion for Partial Reconsideration (with Motion to Present Additional Evidence)[1] filed on November 26, 2015;[2]

2. Respondent's Motion for Partial Reconsideration (of the Decision dated November 4, 2015)[3] filed on November 26, 2015, with petitioner's Comment (Re: CIR's Motion for Partial Reconsideration dated November 26, 2015); and

3. Respondent's Motion for Leave to Admit Attached Comment filed on October 20, 2016.

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[1] Docket, vol. III, pp. 1625-1668

[2] The Judicial Records Division reported on January 11, 2016 that respondent failed to file a comment on petitioner's motion with in the time allowed by the Court in its Resolution dated December 8, 2015.

[3] Docket, vol. III, pp. 1620-1623.

On November 4, 2015, the Court rendered a Decision in the instant case, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2006 covering deficiency expanded withholding tax in the amount of ₱8,827.83 and compromise penalties in the amount of ₱162,000.00 are **CANCELLED AND WITHDRAWN**. However, the assessments of deficiency income tax, value-added tax, withholding tax on compensation, and documentary stamp tax are **AFFIRMED WITH MODIFICATIONS**.
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> Consequently, petitioner is **ORDERED TO PAY FIVE MILLION THREE HUNDRED NINETY SEVEN THOUSAND FIVE HUNDRED EIGHTY EIGHT PESOS AND TWENTY THREE CENTAVOS (₱5,397,588.23)** representing deficiency income tax, value-added tax, withholding tax on compensation, and documentary stamp tax for taxable year 2006, inclusive of the twenty-five percent (25%) surcharge and twenty percent (20%) deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	20% Deficiency Interest	Total
Income Tax	₱2,045,393.42	₱511,348.36	₱2,179,885.04	₱4,736,626.82
Value-added Tax	14,400.00	3,600.00		18,000.00
Withholding Tax on Compensation	132,783.92	33,195.98		165,979.90
Documentary Stamp Tax	381,585.21	95,396.30		476,981.51
Total	**₱2,574,162.55**	**₱643,540.64**	**₱2,179,885.04**	**₱5,397,588.23**

> In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 20% per annum on the total amount of **₱5,397,588.23** computed from August 11, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.[4]

Petitioner's Motion for Partial Reconsideration

Petitioner moves for the reconsideration of the Decision on the following grounds:

[4] Docket, vol. III, pp. 1607-1608.

1. Respondent's right to assess petitioner for deficiency taxes for calendar year 2006 has already prescribed;

2. The deficiency tax assessments for 2006 are null and void for respondent's failure to observe administrative due process in the issuance of the assessments; and

3. Assuming the assessments are not prescribed and respondent observed due process, the deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC) and documentary stamp tax (DST) assessments for 2006 should nevertheless be cancelled for lack of legal and factual basis.

Petitioner emphasizes that its motion for partial reconsideration is only with respect to the Court's order for petitioner to pay deficiency income tax, VAT, WTC and DST for 2006 in the aggregate amount of ₱5,397,588.23, plus delinquency interest until full payment thereof.

Petitioner's prescription argument cannot be countenanced

Petitioner admits that it did not raise this argument in its Petition for Review. However, citing *BPI v. Commissioner of Internal Revenue,*[5] it claims that the Court may still consider the defense of prescription if the facts demonstrating the lapse of the prescriptive period were sufficiently and satisfactorily apparent on the record either in the allegations of the plaintiff's complaint, or otherwise established by the evidence.

Petitioner's prescription defense is anchored on its new argument questioning the validity of the waivers of the defense of prescription.

We decline to reconsider the assailed decision based on the issue of prescription. Petitioner would have the Court act despotically and arbitrarily by issuing a speculative resolution on a new issue that was not threshed out during trial and not supported by the record. This cannot be countenanced.

The factual milieu in this case is not on fours with *BPI*, where no waivers were belatedly questioned. Petitioner's new argument of prescription is not something that the Court can resolve based on the documents on record because, apart from the fact that petitioner did not raise it and respondent was not able to meet the issue during trial, no waivers were offered in evidence.

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[5] G.R. No. 181836, July 9, 2014.

In fact, we need not go into the holding of the Supreme Court finding the infirm waivers valid in *Commissioner of Internal Revenue v. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.)*[6] for the simple reason that there are no waivers on record. Petitioner clearly did not regard as invalid the waivers of the defense of prescription that it purportedly executed, despite its attempt to argue otherwise at this late stage. To our mind, petitioner's new argument of prescription must be disregarded as it is an afterthought that contradicts its earlier theory of the case.

Petitioner, in its Petition for Review bewailed, and continues to bewail in this motion for partial consideration, the lack of opportunity to present documents in support of its protest to the FLD/FAN. It was asking, and continues to ask, the Court to enforce the due process requirements in issuing assessments that respondent purportedly violated. In other words, it wants its protest to the FLD/FAN to be acknowledged as complete with supporting documents, fully knowing that the date of the issuance of the FLD/FAN is years beyond the three-year prescription period for assessment.

A void FDDA does not avoid the assessment

Petitioner argues that the assessments are null and void for failure of respondent to observe the due process requirements in their issuance. In particular, petitioner points to respondent's act of rejecting and returning the supporting documents submitted on June 7, 2012 and issuing a final decision without stating the facts, the applicable law, rules and regulations or jurisprudence on which the denial was based.

Section 228 of the NIRC of 1997, as amended, states:

> 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 x x x
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> x x x
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> The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.
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> 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

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

> 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.
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> 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.

Corollary to Section 228 of the NIRC of 1997, as amended, Section 3 of Revenue Regulations (RR) No. 12-99[7] provides the due process requirements in the issuance of a deficiency tax assessment. In particular, sections 3.1.4 to 3.1.6 refers to the due process requirements for the issuance of the FLD/FAN and the FDDA, thus:

> 3.1.4. *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
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> 3.1.5. *Disputed Assessment.* — The taxpayer or his duly authorized representative may protest administratively against the

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[7] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. x x x

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. x x x

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.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

x x x

3.1.6. *Administrative Decision on a Disputed Assessment.* — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision.

Indeed, as petitioner claims, the fact that it was not allowed to submit documents within 60 days from the filing of its protest to the FLD/FAN is a violation of its right to due process, which is spelled out in Section 3.1.5 of RR No. 12-99. This has the effect of avoiding the FDDA, which, in itself is void pursuant to Section 3.1.6 of RR No. 12-99 for not stating the facts, applicable law, rules and regulations or jurisprudence on which the decision is based.

However, the invalidity of the FDDA does not extend to the FLD/FAN. In the recent case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[8] the Supreme Court held –

> In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an "assessment" from a "decision." In *St. Stephen's Association v. Collector of Internal Revenue*, the Court has long recognized that a "decision" differs from an "assessment," to wit:
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> > In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review "*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment* . . ."
>
> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.
>
> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which

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[8] G.R. Nos. 215534 & 215557, April 18, 2016.

> may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other— unless the law or regulations otherwise provide.**
>
> **Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regard to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the decision void. It, however, does not extend to the nullification of the entire assessment.** (Citations omitted. Emphasis supplied.)

In this light, petitioner's claim that the void FDDA also invalidates the FLD/FAN must fall.

The correctness of the deficiency tax assessments has been passed upon

After a careful consideration of the third ground raised in petitioner's motion for partial reconsideration, the Court finds that the issues and arguments had already been amply discussed, passed upon and considered by this Court in the assailed Decision. Petitioner has presented neither compelling nor cogent reason to modify our Decision dated November 4, 2015

In essence, petitioner claims that the Court's finding that that the evidence presented by petitioner is insufficient to cancel the subject assessments is erroneous. This argument holds no water, especially in light of petitioner's Motion to Reopen Trial for Presentation of Additional Evidence (discussed below).

Petitioner's Motion to Reopen Trial for Presentation of Additional Evidence

Petitioner prays for the reopening of trial in order to present additional evidence. The documents it seeks to present are: (1) the purported waivers of the defense of prescription in support of its new argument of prescription; and (2) documents, the most glaring of which is the PEZA registration, that the Court pronounced in the assailed Decision that petitioner was not able to present in order to support it case.

This motion bolsters our foregoing discussion on disregarding the prescription argument. In fact, proof that petitioner is changing the theory of its case is that it is now attempting to offer in evidence the so-called waivers. As discussed above, petitioner shall no longer be allowed to present its new argument of prescription, there being no factual or legal basis to do so.

This motion also bolsters our finding in the assailed Decision that petitioner was not able to substantiate its claims.

Petitioner was afforded an opportunity to prove its case during trial. Trial is the procedure where parties adduce evidence they deem support their claims. After due trial, petitioner's evidence was found wanting. It is the height of injustice to allow petitioner to submit additional evidence now – evidence that the Court pointed to in the assailed Decision that petitioner lacked to prove its case. The absurdity of allowing it would lead to endless litigation.

Hence, petitioner's motion to reopen trial for presentation of additional evidence is **DENIED**.

Respondent's Motion for Partial Reconsideration

Respondent takes issue with the Court greatly reducing the deficiency DST on stock options. Respondent claims that petitioner did not present any evidence to show that the movement was not entirely attributable to stock options issuance. This has been sufficiently discussed in the assailed Decision. In fact, it is respondent's finding that finds no basis.

We reiterate our finding that –

> The Court finds that the issuance of stock options by petitioner is tantamount to an original issuance of shares of stock that is subject to DST pursuant to Section 174 of the Tax Code.
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> Based on the Audited Financial Statements, certain key management personnel of the Branch x x x received share options granted by its Parent Company. The employees were granted 300,000 and 50,000 share options in 2006 and 2005, respectively, which are exercisable one year after the date of grant. The Branch recognized in the Parent Company statement of income the value of employee services on equity-settled stock options of $574 and $3,020 in 2006 and 2005, respectively. The carrying amount of the

employee share option included in the "Current account" presented in the "Home office account" section of the balance sheet was $13,071 and $11,348 as of December 31, 2006 and December 31, 2005, respectively.

Respondent computed the stock options subject to DST by taking the "Decrease in current account" in the amount of $4,738,005 and deducting the "Value of employee services – equity-settled stock options" in the amount of $1,723 and then multiplying the difference ($4,736,282) by ₱51.33 to get the peso equivalent of ₱243,113,355.06. **However, nothing in the records indicates the rationale for respondent's decision to pick up the "Decrease in current account" less the "Value of the employee services – equity-settled stock options" to be subject to DST.**

It should be noted that a Branch Current Account in a Home Office Account is a running account between the Branch and the Head Office where all the transactions between the Branch and Head Office are recorded. Therefore, it cannot simply assume that the net movement of the said account for calendar year 2006 is attributable entirely to stock options issuance.

Considering the foregoing, the Court finds it appropriate that the carrying amount of the employee's share option as of December 31, 2005 included in the "Current account" presented in the "Home office account" section of the Balance Sheet, as discussed in Note 14 of petitioner's Audited Financial Statements (*i.e.*, $11,348), be deducted from the carrying amount of said stock options as of December 31, 2006 (*i.e.*, $13,071), in order to get the stock options granted for calendar year 2006 of $1,723. Then this shall be multiplied by ₱51.33 to get its Philippine Peso equivalent of ₱88,441.59, which shall result in a basic deficiency DST of ₱442.21.[9] (Emphasis supplied)

Respondent has presented no cogent or compelling argument for us to deviate from the foregoing findings.

Finally, respondent's Motion for Leave to Admit Attached Comment is GRANTED. Hence, respondent's Comment is hereby admitted as part of the record of the case.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (with Motion to Present Additional Evidence) and Respondent's Motion for Partial Reconsideration (of the Decision dated

[9] Docket, vol. III, pp. 1602-1604.

November 4, 2015) are hereby **DENIED** for lack of merit. The Decision dated November 4, 2015 is hereby **AFFIRMED**.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice