REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SABRE TRAVEL NETWORK (PHILIPPINES) INC. (Formerly, ABACUS DISTRIBUTION SYSTEMS PHILIPPINES, INC.)
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9532

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

OCT 25 2019 ; 11:00 a.m.

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DECISION

MANAHAN, J.:

This involves a Petition for Review and an Amended Petition for Review filed by Sabre Travel Network Inc. on February 2, 2017 and March 30, 2017, respectively, against the Commissioner of Internal Revenue, to seek the cancellation and setting aside of the tax deficiency assessments for alleged deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT) and documentary stamp tax (DST) in the aggregate amount of ₱45,856,059.61 for taxable year 2010 and for the refund of EWT paid under protest in the total amount of ₱1,042,579.35[1].

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[1] In the Amended Petition for Review, the Prayer shows that the amount claimed for refund is ₱1,042,579.**25** [*docket (vol. I), p. 246*]. However, paragraph 8 of the Nature of Petition and Jurisdictional Allegations of the same Petition shows the amount paid as ₱1,042,579.**35** [*docket (vol. I), p. 213*], while par. E of the Statement of Issues thereof mentions the refund amount of ₱1,042,579.**35** [*docket (vol. I), p. 220*]. Moreover, Exhibits "P-13" to "P-14" show the amount paid as ₱1,042,579.**35** [*docket (vol. II), pp. 932-933*], while Exhibit "P-15" shows the amount requested for refund as ₱1,042,579.**35** [*docket (vol. II), pp. 934-935*). Hence, it appearing as a typographical

FACTS

Petitioner is a domestic corporation engaged in the business of providing a global distribution system that allows automated transactions between vendors and booking agents (customarily travel agents) in order to provide travel-related services such as airline reservations, hotel reservations, car rentals, and the like to end-customers. Pursuant to its Articles of Incorporation, its primary purpose is to engage in the promotion, development, operation, marketing and selling on job order of computerized reservation systems, techniques, equipment leasing, maintenance, training and computer software for travel services distribution and other related services. It is duly registered with the Bureau of Internal Revenue (BIR) under Revenue District Office No. 50 with Tax Identification No. 000103491000.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) who is vested by law with the authority to, among others, assess and collect all national internal revenue taxes, fees, and charges. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On August 26, 2011, petitioner received a Letter of Authority (LOA) No. LOA-050-2011-00000294[3] dated August 22, 2011 from the BIR, authorizing Revenue Officer (RO) Jose Eric Almosara and Group Supervisor (GS) Joseph Casquejo of Revenue District No. 050 – South Makati to examine the books of accounts and other accounting records of the petitioner for the year ending December 31, 2010.[4]

Petitioner executed two Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (waivers) on August 28, 2013[5] and February 7, 2014[6], respectively.

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error, this Court shall consider as petitioner's claim for refund the amount of ₱1,042,579.**35** instead of ₱1,042,579.**2**5.

[2] Par. 2, *id.*, pp. 751-752; Exhibit "P-1".

[3] Exhibit "P-3"; Exhibit "R-1", BIR Records, p. 739.

[4] Par. 5, Summary of Admitted Facts, JSFI, docket (vol. II), p. 752.

[5] Exhibit "P-4"; Exhibit "R-4", BIR Records, p. 1179.

[6] Exhibit "P-5"; Exhibit "R-5", BIR Records, p. 1179.

Petitioner received a Preliminary Assessment Notice[7] (PAN) dated November 26, 2014 and signed by Regional Director Jonas DP. Amora for alleged deficiency IT, VAT, EWT, WTC, Final Withholding Tax (FWT), Final Withholding of VAT, and DST for the year ended December 31, 2010.[8]

On December 12, 2014, within the fifteen-day period for filing a reply to the PAN, petitioner filed a Letter-Reply to the PAN[9] dated December 8, 2014 with the BIR.[10]

On December 23, 2014, petitioner received a Formal Assessment Notice [11] (FAN) of even date, with details of discrepancies, finding petitioner liable for deficiency IT, VAT, EWT, WTC, FWT, FWT of VAT, and DST, broken down as follows:[12]

TAX	DEFICIENCY TAX	INTEREST & SURCHARGE	TOTAL
IT	₱ 25,583,923.73	₱ 19,359,670.50	₱ 44,943,594.23
VAT	2,205,730.68	1,765,793.16	3,971,523.84
EWT	907,687.64	731,621.11	1,639,308.75
WTC	1,883,723.60	1,518,332.83	3,402,056.43
FWT	768,486.22	619,420.95	1,387,907.17
FWT of VAT	307,394.49	248,610.56	556,005.05
DST	14,629.00	15,528.78[13]	30,157.78
Total	**₱31,671,575.36**	**₱24,258,977.89**[14]	**₱55,930,553.25**

On January 22, 2015, petitioner filed with the BIR a Protest Letter to the FAN[15] dated January 21, 2015.[16]

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[7] Exhibit "P-6"; Exhibit "R-7", BIR Records, pp. 1409-1414.
[8] Par. 6, Summary of Admitted Facts, JSFI, docket (vol. II), p. 752.
[9] Exhibit "P-7".
[10] Par. 7, Summary of Admitted Facts, JSFI, docket (vol. II), pp. 752-753.
[11] While parties stipulated this document as the "Formal Letter of Demand (FLD)" in par. 8, Summary of Admitted Facts, JSFI [*docket (vol. II), p. 753*], the document is actually captioned as "Formal Assessment Notice" offered as Exhibit "P-8" [*docket (vol. II), pp. 878-883*] and Exhibit "R-8", BIR Records, pp. 1447-1452.
[12] Par. 8, Summary of Admitted Facts, JSFI, docket, vol. II, p. 753.
[13] Surcharge amounted to ₱3,657.25 while interest amounted to ₱11,871.53.
[14] The total of the interest and surcharge was erroneously stated as ₱24,818,855.77 in par. 8 of Summary of Admitted Facts in the parties' JSFI [*docket (vol. II), p. 753*].
[15] Exhibit "P-9" (The date received stamped on Exhibit "P-9" is unreadable. However, a copy of the protest letter with a clear received stamp date of January 22, 2015 can be seen in the BIR Records, p. 1477).
[16] Par. 9, Summary of Admitted Facts, JSFI, docket, vol. II, p. 753.

Thereafter, on January 3, 2017[17], petitioner received a Final Decision on Disputed Assessment [18] (FDDA) dated December 20, 2016 finding petitioner liable for deficiency internal revenue taxes, broken down as follows:[19]

TAX	DEFICIENCY TAX	INTEREST & SURCHARGE	TOTAL
IT	₱ 16,760,347.42	₱ 19,609,606.48	₱ 36,369,953.90
VAT	2,205,730.68	2,678,737.37	4,884,468.05
WTC	1,593,356.85	1,943,895.36	3,537,252.21
EWT	463,139.89	565,030.66	1,028,170.55
DST	*14,629.00*[20]	21,585.90	36,214.90
Total	**₱21,037,203.84**	**₱24,818,855.77**	**₱45,856,059.61**

In the said FDDA, respondent also stated that it is his final decision on the matter and that if petitioner disagrees, the latter may appeal the final decision with the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the FDDA.[21]

It is to be noted that in the FDDA issued by respondent, the deficiency assessment for the final withholding VAT was no longer included and is presumed to have been decided in favor of petitioner due to the arguments presented by the latter in its protest to the FAN.

Thus, on February 2, 2017, petitioner filed the present Petition for Review[22] with this Court.

Meanwhile, on March 17, 2017, petitioner wrote a Letter[23] of even date addressed to Regional Director Glen A. Geraldino of BIR Revenue Region No. 8, informing him that notwithstanding the legal issues it will raise on how the BIR derived the amount of deficiency tax due under the EWT assessment, it has nonetheless decided to pay the same under protest. As such, petitioner attached a Payment Form (BIR Form

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[17] Q/A 56, Exhibits "P-28" and "P-28-a"; Amended Judicial Affidavit of Mrs. Mercedes M. Medina dated September 4, 2017, docket (vol. II), p. 788.
[18] Exhibit "P-10".
[19] Par. 10, Summary of Admitted Facts, JSFI, docket (vol. II), pp. 753-754.
[20] The amount of basic deficiency DST was erroneously stated as ₱3,657.25 in par. 10 of Summary of Admitted Facts in the parties' JSFI [*docket (vol. II), pp. 753-754*]; see Exhibit "P-10" [*docket (vol. II), p. 899*].
[21] Par. 11, Summary of Admitted Facts, JSFI, docket (vol. II), p. 754.
[22] Docket (vol. I), pp. 10-41.
[23] Exhibit "P-15".

No. 0605)[24] and bank tax payment deposit slip[25], reflecting payment in the total amount of ₱1,042,579.35 (basic deficiency EWT of ₱463,139.89 and interest of ₱579,439.46) for the assessed deficiency EWT. Accordingly, in a letter[26] dated April 25, 2017, Regional Director Glen A. Geraldino acknowledged petitioner's payment.

Accordingly, in view of the foregoing, petitioner filed on March 30, 2017 an Amended Petition for Review[27], praying that this Court, in addition to its original Petition, refund the amount of ₱1,042,579.35 it paid under protest for deficiency EWT.

Respondent filed his Answer[28], through registered mail on March 29, 2017, and subsequent Answer (To the Amended Petition for Review)[29] on May 2, 2017.

A Notice of Pre-Trial Conference[30] was issued by this Court on May 9, 2017. Accordingly, Respondent's Pre-Trial Brief[31] was filed on June 29, 2017 while a Pre-Trial Brief for Petitioner[32] was filed on July 7, 2017.

On July 31, 2017, the parties submitted their Joint Stipulation of Facts and Issues[33] (JSFI), which this Court approved and adopted in the Pre-Trial Order[34] issued on September 26, 2017. Afterwards, the pre-trial was deemed terminated.

Meanwhile, on July 7, 2017, petitioner filed a Motion to Commission an Independent Certified Public Accountant[35], praying that Atty. Adan T. Delamide, Managing Partner of Delamide & Lock, be appointed as the independent certified public accountant (ICPA) for the present case. Thus, finding merit thereon and without objection from respondent, this

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[24] Exhibit "P-14".
[25] Exhibits "P-13".
[26] Exhibit "P-16".
[27] Docket (vol. I), pp. 210-248.
[28] *Id.*, pp. 393-395.
[29] *Id.*, pp. 399-401.
[30] *Id.*, pp. 402-403.
[31] *Id.*, pp. 404-407.
[32] Docket (vol. II), pp. 703-720.
[33] *Id.*, pp. 751-759.
[34] *Id.*, pp. 999-1010.
[35] *Id.*, pp. 721-724.

Court granted petitioner's motion thereby commissioning Atty. Adan T. Delamide as the ICPA for the present case.[36]

During trial, petitioner presented as witnesses, Atty. Enrique Antonio J. Esquivel III[37], its corporate secretary; Atty. Adan T. Delamide[38], the court-commissioned ICPA; and Mrs. Mercedes M. Medina[39], petitioner's Finance and Administrative Manager, who all testified on direct testimony by way of judicial affidavits.

On January 22, 2018, petitioner filed its Formal Offer of Evidence[40]. Except for Exhibit "P-27007", all of petitioner's exhibits were admitted by this Court in the Resolutions dated April 6, 2018[41] and August 8, 2018[42]. Petitioner then rested its case.

Respondent presented as his witnesses, revenue officers Jose Eric Almosara[43] and Jerry C. Angeles[44], who both testified on direct examination, by way of judicial affidavits.

Thereafter, respondent filed his Formal Offer of Evidence[45] on April 18, 2018.

In a Resolution[46] dated June 4, 2018, this Court admitted all of the exhibits offered by respondent, and further, gave the parties a period of thirty (30) days within which to submit their respective memoranda.

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[36] Order dated July 13, 2017, *id.*, pp. 740-743.
[37] Exhibits "P-23" and "P-23-a"; Judicial Affidavit of Atty. Enrique Antonio J. Esquivel III dated July 6, 2017, docket (vol. II), pp. 694-699.
[38] Exhibits "P-27" and "P-27-a"; Judicial Affidavit of Atty. Adan T. Delamide (On the Report submitted 08 October 2017) dated October 18, 2017, docket (vol. II), pp. 1026-1043.
[39] Exhibits "P-28" and "P-28-a"; Amended Judicial Affidavit of Mrs. Mercedes M. Medina dated September 4, 2017, docket (vol. II), pp. 776-799; and, Exhibits "P-29" and "P-29-a"; Supplemental Judicial Affidavit of Mrs. Mercedes M. Medina dated October 18, 2017, docket (vol. II), pp. 1050-1060.
[40] Docket (vol. III), pp. 1198-1248.
[41] *Id.*, pp. 1255-1257.
[42] *Id.*, pp. 1394-1396.
[43] Exhibits "R-11" and "R-11-a"; Judicial Affidavit of Revenue Officer Jose Eric Almosara dated June 20, 2017, docket (vol. I), pp. 410-417.
[44] Exhibits "R-12" and "R-12-a"; Judicial Affidavit of Atty. Jerry C. Angeles dated June 20, 2017, docket (vol. I), pp. 458-461.
[45] Docket (vol. III), pp. 1266-1270.
[46] *Id.*, p. 1389.

In compliance, petitioner filed its Memorandum[47] on September 21, 2018, while respondent failed to file his Memorandum, as per Records Verification[48] dated October 18, 2018. Accordingly, in a Resolution[49] dated October 25, 2018, the present case was deemed submitted for decision.

ISSUES

The following issues[50] were submitted by the parties for this Court's resolution, *viz.*:

i. Whether petitioner is liable for the tax deficiency assessments for IT, VAT, EWT, WTC and DST in the aggregate amount of ₱45,856,059.61 for taxable period January 1, 2010 to December 31, 2010; and

ii. Whether petitioner is entitled to a refund amounting to ₱1,042,579.35 representing payment of the assessed deficiency EWT, inclusive of interest, under protest.

Petitioner's Arguments

Petitioner assails the validity of the assessments by pointing out the lack of authority of the revenue officers who conducted the audit examination/investigation. Petitioner asserts that the LOA dated August 22, 2011 indicates a different set of officers than the ones who actually conducted the examination/investigation of its books of accounts and other accounting records. It maintains that only the revenue officers designated in the LOA may conduct an audit of the taxpayer's books of accounts pursuant to Section 13 of the 1997 National Internal Revenue Code (NIRC), as amended.

In addition, petitioner avers that the assessments for taxable year 2010 are likewise void on the ground that the waivers of the defense of prescription were not properly executed in accordance with the provisions of BIR Revenue Memorandum Order (RMO) No. 12-1990 and Revenue Delegation Administrative Order (RDAO) No. 05-2001. To

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[47] *Id.*, pp. 1397-1462.
[48] *Id.*, p. 1463.
[49] *Id.*, p. 1465.
[50] Par. 14, Issues to be Resolved, JSFI, docket (vol. II), p. 754.

emphasize its point, petitioner submits that the waivers failed to indicate the specific type of tax and the amount of tax being assessed and that failure to strictly conform with RMO 20-90 and RDAO 05-01 renders inutile the extension of the period to assess, making such assessments void for having been issued beyond the prescriptive period provided by law.

Petitioner also counters that the lack of factual and legal bases of the assessments issued by respondent deprived it of its right to adequately prepare a complete protest or reply, which constitutes a violation of due process.

Respondent's Counter-Arguments

In his Answer to the Petition for Review and subsequent Answer to the Amended Petition for Review, respondent interposed the following special and affirmative defenses, and we quote, thus:

> "1. The Revenue Officers who conducted the original investigation on petitioner's all internal revenue taxes for taxable year 2010 are the ones named in the Letter of Authority dated August 22, 2011 namely, Revenue Officer Jose Eric Almosara and Group Supervisor Joseph Casquejo.
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> 2. The waivers dated August 28, 2013 and February 7, 2014 are all valid.
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> 3. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance *(Commissioner vs. Algue, Inc., L-28896, 17 February 1988).* Taxes are the enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another- *Non videtur quisquam id capere quod ei necesse est alii restitutere.*"

RULING OF THE COURT

We shall first determine whether petitioner timely filed its protest against the FAN and whether petitioner timely filed an appeal against the FDDA with this Court as this is also determinative of the latter's jurisdiction to take cognizance of this case.

Section 228 of the 1997 NIRC, as amended, provides as follows:

"**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:

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."

In the instant case, petitioner received the FAN[51] on December 23, 2014. Petitioner then filed its administrative protest on January 22, 2015 which is within the 30-day period prescribed in the above-quoted Section 228.

The records, however, show that petitioner received respondent's FDDA[52] on January 3, 2017 which is clearly beyond the 180-day period within which respondent may decide on the protest.

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[51] Exhibit "P-8"; Exhibit "R-8", BIR Records, pp. 1447-1452.
[52] Exhibit "P-10".

In the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[53], the Supreme Court held that in case the CIR failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer may either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) wait for the final decision of the CIR on the disputed assessments and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision. Accordingly, if the taxpayer opted to wait for the final decision of the CIR on the protested assessment, it then has the right to appeal such final decision to the CTA by filing a petition for review within 30 days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period fixed by law for the CIR to act on the disputed assessments.

Applying the foregoing jurisprudence to the present case, records reveal that petitioner opted to wait for the CIR's final decision on the disputed assessments instead of appealing his inaction within 30 days, after the lapse of the 180-day period fixed by law within which to act on the said disputed assessments. We therefore find that petitioner timely filed its appeal to this Court on February 2, 2017, or within 30 days after receipt of a copy of the FDDA on January 3, 2017.

We proceed to the other issues raised in this case.

Petitioner initially challenges the validity of the deficiency assessments on the ground that the revenue officers (ROs) who conducted the audit have not been duly authorized by a valid LOA.

Petitioner argues that in LOA No. LOA-050-2011-00000294[54] dated August 22, 2011, it was RO Jose Eric Almosara and Group Supervisor (GS) Joseph Casquejo of Revenue District Office (RDO) No. 050 – South Makati, who were authorized to examine the books of accounts and other accounting records of petitioner for the period January 1, 2010 to December 31, 2010. Yet, a careful scrutiny of the PAN and FAN would readily show a notation on the last page of each document which reads as follows:

"RR8-1/NGS/ASC/RCM/aaa"

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[53] G.R. No. 171251, March 5, 2012.
[54] Exhibit "P-3"; Exhibit "R-1", BIR Records, p. 739.

Petitioner suspects that these initials do not correspond to the initials of RO Jose Eric Almosara or GS Joseph Casquejo. Petitioner continues that, RO Jerry Angeles actually confirmed, during cross-examination, that he was the revenue officer who conducted the reinvestigation on the case pursuant to a Memorandum of Assignment (MOA) No. MOA0502011LOA3632 [55] dated March 17, 2015; and that pursuant to this MOA, he prepared a Memorandum Report[56] which was used by the BIR as basis in issuing the FDDA.

Petitioner then submits that the ROs who conducted the audit, namely, ROs Jerry Angeles and *aaa*, did not have the authority to examine petitioner's books of accounts for 2010 because they were not among the ROs named in the said LOA dated August 22, 2011 thereby rendering the subject assessments void.

A careful analysis of the subject LOA moves this Court to hold otherwise.

There is no dispute that an LOA is necessary for a revenue officer to examine a taxpayer's books of accounts, within the jurisdiction of the district of the said revenue officer, in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due. Section 13 of the 1997 NIRC as amended, provides thus:

> **"SEC. 13.** *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

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[55] Exhibit "R-9", BIR Records, p. 2571.
[56] Exhibit "R-10", BIR Records, pp. 2661-2663.

Clearly, there must be a grant of authority, via an LOA, before any revenue officer may conduct an examination or recommend the issuance of a tax assessment.[57]

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[58], the Supreme Court held that an LOA is required before a revenue officer can examine a taxpayer's books of accounts, and the absence thereof renders the subsequent issued assessment void, and we quote:

> *"The absence of an LOA violated MEDICARD's right to due process*
>
> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
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> > SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) **Examination of Return and Determination of Tax Due**. – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive

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[57] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[58] G.R. No. 222743, April 5, 2017.

at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)

x x x

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."

In the instant case, the subject LOA dated August 22, 2011 was issued authorizing RO Jose Eric Almosara and GS Joseph Casquejo to examine the books of accounts and other accounting records of petitioner for taxable year 2010.

To prove that it was the same revenue officers named in the LOA who conducted the examination, respondent offered the testimony of RO Almosara to confirm that he was authorized to conduct the investigation of petitioner's books of accounts, and after conducting his investigation, recommended the issuance of the PAN against petitioner, thus:

"Q6: How did you come to know the petitioner in this case?

A: I came to know the petitioner in this case when I received the Letter of Authority (LOA) No. 00000294 dated August 22, 2011 duly issued by the respondent authorizing myself to conduct an investigation relative to petitioner's all internal revenue taxes for taxable year 2010.

x x x

Q29: What happened to the conduct of your investigation, if any?

A: After the presentation of pertinent documents by petitioner, I found some discrepancies that resulted to deficiency tax assessments. **Thus, I prepared a Memorandum Report dated June 27, 2014 and recommended that a Preliminary Assessment Notice be issued to petitioner to inform them of the basis and the result of my investigation.**

Q30: You mentioned about the Memorandum Report dated June 27, 2014, if shown to you a copy thereof, would you be able to identify it?

A: Yes. This is the Memorandum Report dated June 27, 2014 I am referring to, marked as **Exhibit 'R-6'**[59].

Q31: Going over the document, I noticed a signature above the name, Jose Eric Z. Almosara, can you tell me whose signature this is?

A: Yes, This is my name and signature, Jose Eric Z. Almosara, marked as Exhibit 'R-6-a'."[60]

More so, during cross-examination, RO Almosara further testified that he also recommended the issuance of the FAN, to wit:

"ATTY. SOLIMAN:

Q: How about the Final Assessment Notice? Did you prepare the Final Assessment Notice?

REVENUE OFFICER ALMOSARA:

A: Yes. Eventually, after the protest to the PAN or after there is no receipt of protest of the Formal Assessment Notice will be issued by the Assessment Division.

ATTY. SOLIMAN:

Q: So, you were also the one who recommended and prepared the Final Assessment Notice. Is this correct, Mr. Witness?

REVENUE OFFICER ALMOSARA:

A: Yeah. Let me see the affidavit first? My recommendation is based on the issuance of assessment which is eventually the

[59] BIR Records, pp. 1217-1222

[60] Exhibit "R-11"; Judicial Affidavit of Revenue Officer Jose Eric Almosara dated June 20, 2017, docket (vol. I), pp. 411 and 414.

PAN issued and then, later on, Formal Assessment... (interrupted).

ATTY. SOLIMAN:

Q: So, did you prepare the Final Assessment Notice or no?

REVENUE OFFICER ALMOSARA:

A: The content, yes. But it was formally prepared by the Assessment Division."[61]

Given the foregoing testimony, petitioner's assertion that a certain RO *aaa* conducted the audit has no factual basis. As explained earlier, it was indeed RO Almosara who conducted the audit of petitioner's books and also recommended the subsequent issuance of the PAN and FAN. Therefore, having been authorized to conduct the audit of petitioner's books of accounts pursuant to the LOA dated August 22, 2011, the assessments are considered valid.

With regard to petitioner's assertion that RO Jerry C. Angeles was not authorized to conduct the reinvestigation of petitioner per its protest letter and thereafter recommend the issuance of the subject FDDA, this Court, nevertheless, finds that the same does not render the assessments void, at most, it may render the FDDA void but not the assessment itself.

Admittedly, in the MOA[62] dated March 17, 2015 the case docket was thereafter referred to RO Angeles for "*reinvestigation per protest letter/request for investigation filed by the subject taxpayer*" and pursuant thereto, RO Angeles prepared a Memorandum Report[63] recommending the issuance of the FDDA. The Supreme Court, however, in *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation*[64], had the occasion to rule that a void FDDA does not *ipso facto* render the assessment void, considering that an assessment is different from a decision, and we quote:

"*A void FDDA does not ipso facto render the assessment void.*

x x x

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[61] Transcript of Stenographic Notes (TSN) dated April 10, 2018, pp. 12-13.
[62] Exhibit "R-9", BIR Records, p. 2571.
[63] Exhibit "R-10", BIR Records, pp. 2661-2663.
[64] G.R. Nos. 215534 & 215557, April 18, 2016.

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:

> 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 li 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 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.

x x x

> The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.**
>
> As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.
>
> x x x
>
> To recapitulate, **a 'decision' differs from an 'assessment' and failure of the FDDA to state the facts and law on which it is based renders the decision void — but not necessarily the assessment.** Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided." (*Citations omitted and emphases supplied.*)

As settled earlier, RO Almosara conducted the examination of petitioner's books of accounts and other accounting records and recommended the issuance of the PAN and FAN pursuant to the LOA dated August 22, 2011. Hence, the assessment was issued pursuant to a valid LOA.

While the law specifically requires an LOA to be addressed to a revenue officer before an examination of a taxpayer and recommendation of an assessment may be had, the law does not specifically require the same for purposes of recommending a final decision on a disputed assessment. Hence, considering that an assessment is different from a decision, then, a new LOA addressed to the revenue officer who conducted the reinvestigation per protest letter is not necessary for purposes of recommending a final decision on a disputed assessment. As provided under Revenue Memorandum Order (RMO) No. 69-2010[65], a MOA shall be issued for protested cases/cases for reinvestigation; and RMO No. 08-06[66] provides that protested cases under re-investigation shall not be assigned to the same

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[65] "Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment", August 11, 2010.

[66] "Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)", February 1, 2006.

RO who handled the original investigation. Hence, the reinvestigation of petitioner's protest letter was referred to a different revenue officer, specifically, RO Jerry C. Angeles; and considering that it was reassigned to him by virtue of a MOA, then, the FDDA, issued upon the recommendation of RO Jerry C. Angeles, should not be invalidated.

As regards the validity of the waivers, petitioner contends that the assessments for taxable year 2010 are void because said waivers dated August 28, 2013[67] and February 7, 2014[68], respectively, were not properly executed in accordance with RMO No. 20-90[69] and Revenue Delegation Authority Order (RDAO) No. 05-01[70].

Perforce, Section 203 of the 1997 NIRC, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for filing of the tax return or the actual date of filing, whichever comes later, and we quote:

> "**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."

In relation thereto, Section 77(B)[71] of the 1997 NIRC, as amended, provides that the annual corporate income tax return

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67 Exhibit "P-4"; Exhibit "R-4", BIR Records, p. 1179.
68 Exhibit "P-5"; Exhibit "R-5", BIR Records, p. 1179.
69 "Proper Execution of the Waiver of the Statute of Limitations Under the National Internal Revenue Code", April 4, 1990.
70 "Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations", August 2, 2001.
71 SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
x x x
(B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

shall be filed on or before April 15 of the following year, for those adopting the calendar year period.

As for VAT returns, Section 114(A)[72] of the NIRC of 1997, as amended, and Section 4.114-1(A)[73] of RR No. 16-2005 provide that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter.

Sections 2.58(A)(2)(a)[74] and 2.81[75] of RR No. 02-98, as amended by RR No. 6-01 and RR No. 17-03, require the filing of the EWT and WTC returns within ten (10) days after the end of each month for the months of January to November, while the withholding tax return for the month of December shall be filed on or before January 15 of the following year.

For DST, the return shall be filed and the tax paid within (5) days after the close of the month when the taxable document

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[72] SEC. 114. *Return and Payment of Value-added Tax.* -
(A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

x x x

[73] SEC. 4.114-1. *Filing of Return and Payment of VAT.* —
(A) *Filing of Return.* — Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return. The term *"taxable quarter"* shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e., the calendar quarter or fiscal quarter).

x x x

[74] SEC. 2.58. *Returns and Payment of Taxes Withheld at Source.* —
(A) Monthly return and payment of taxes withheld at source. —
(1) 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; x x x

[75] SEC. 2.81. FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COMPENSATION (FORM NO. 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

was made, signed, issued, accepted or transferred pursuant to Section 5[76] of RR No. 6-01.

For ease of reference, below is the summary of the dates relevant to the filing of petitioner's returns and the corresponding dates within which respondent should assess petitioner for deficiency IT, VAT, EWT and WTC for taxable year 2010, *viz.*:

Annual Income Tax Return (BIR Form 1702)

Exhibit No.	Year	Date Filed	Last Day to File Return	Last Day to Assess
P-17	2010	April 13, 2011	April 15, 2011	April 15, 2014

VAT Returns (BIR Form 2550Q)

Exhibit No.	Quarter of 2010	Date Filed	Last Day to File Return	Last Day to Assess
P-18	1st Quarter	April 26, 2010	April 26, 2010[77]	April 26, 2013
P-19	2nd Quarter	July 26, 2010	July 26, 2010[78]	July 26, 2013
P-20	3rd Quarter	October 19, 2010	October 26, 2010[79]	October 26, 2013
P-22	4th Quarter	February 3, 2011	January 25, 2011	February 3, 2014

EWT Returns (BIR Form 1601-E)

Exhibit No.[80]	Month of 2010	Date Filed	Last Day to File Return	Last Day to Assess
P-27469	January	February 9, 2010	February 10, 2010	February 10, 2013
P-27470	February	March 8, 2010	March 10, 2010	March 10, 2013
P-27471	March	April 8, 2010	April 12, 2010[81]	April 12, 2013

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[76] SECTION 5. Time for Filing of Documentary Stamp Tax Returns and the Payment of Taxes Due Thereon. - The time for filing of the documentary stamp tax returns and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to existing regulations, as presented below.

(1) Paragraph 19 of Revenue Memorandum Circular No. 1-98 is hereby amended to read as follows:

"(19) The documentary stamp tax return shall be filed within five (5) days after the close of the month when the taxable document was made, signed, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed."

[77] April 25, 2010 fell on a Sunday.

[78] July 25, 2010 fell on a Sunday.

[79] October 25, 2010 was declared a special non-working holiday.

[80] CD Vol. II (Box No. 20) filed on October 9, 2017. Same as Exhibit P-11 (but BIR Form 1601-E from January 2010 to August 2010 only).

[81] April 10, 2010 fell on a Saturday.

P-27472	April	May 11, 2010	May 10, 2010	May 11, 2013
P-27473	May	June 8, 2010	June 10, 2010	June 10, 2013
P-27474	June	July 8, 2010	July 12, 2010[82]	July 12, 2013
P-27475	July	August 6, 2010	August 10, 2010	August 10, 2013
P-27476	August	September 9, 2010	September 10, 2010	September 10, 2013
P-27477	September	October 8, 2010	October 11, 2010[83]	October 11, 2013
P-27478	October	November 9, 2010	November 10, 2010	November 10, 2013
P-27479	November	December 8, 2010	December 10, 2010	December 10, 2013
P-27480	December	January 17, 2011	January 17, 2011[84]	January 17, 2014

WTC Returns (BIR Form 1601-C)

Exhibit No.[85]	Month of 2010	Date Filed	Last Day to File Return	Last Day to Assess
P-27481	January	February 9, 2010	February 10, 2010	February 10, 2013
P-27482	February	March 8, 2010	March 10, 2010	March 10, 2013
P-27483	March	April 8, 2010	April 12, 2010[86]	April 12, 2013
P-27484	April	May 6, 2010	May 10, 2010	May 10, 2013
P-27485	May	June 7, 2010	June 10, 2010	June 10, 2013
P-27486	June	July 8, 2010	July 12, 2010[87]	July 12, 2013
P-27487	July	August 6, 2010	August 10, 2010	August 10, 2013
P-27488	August	September 9, 2010	September 10, 2010	September 10, 2013
P-27489	September	October 8, 2010	October 11, 2010[88]	October 11, 2013
P-27490	October	November 9, 2010	November 10, 2010	November 10, 2013
P-27491	November	December 8, 2010	December 10, 2010	December 10, 2013
P-27492	December	January 17, 2011	January 17, 2011[89]	January 17, 2014

Notably, petitioner failed to present any evidence regarding its DST return.

Records reveal that the FAN and assessment notices were issued, and also received by petitioner, on December 23, 2014. Based on the above table, the FAN and assessment notices were issued beyond the three-year prescriptive period to assess for deficiency income tax, VAT, EWT and WTC.

However, Section 222(b) in relation to Section 203 of the 1997 NIRC, as amended, provides for an exception to the three-year prescriptive period to assess, to wit:

> "**SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —*
>
> x x x

[82] July 10, 2010 fell on a Saturday.
[83] October 10, 2010 fell on a Sunday.
[84] January 15, 2011 fell on a Saturday.
[85] CD, Vol. II (Box No. 20) filed on October 9, 2017.
[86] April 10, 2010 fell on a Saturday.
[87] July 10, 2010 fell on a Saturday.
[88] October 10, 2010 fell on a Sunday.
[89] January 15, 2011 fell on a Saturday.

> (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." *(Emphasis supplied)*

Evidently, the above provision authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where 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.[90]

In this case, two waivers were executed by petitioner with the following details:

Waiver	Exhibit No.	Date of Execution	Expiry date to Assess	Date accepted by BIR	Date received by taxpayer[91]
1st	"P-4"; "R-4"	August 28, 2013	February 28, 2014	October 31, 2013	November 13, 2013
2nd	"P-5"; "R-5"	February 7, 2014	December 31, 2014	February 7, 2014	February 14, 2014

Accordingly, the first waiver was executed by petitioner on August 28, 2013 and accepted by the BIR on October 31, 2013.

Pursuant to Section 222(b) of the 1997 NIRC, as amended, the waiver must be executed prior to the lapse of the period prescribed by law for the assessment of the tax. In relation thereto, RMO No. 20-90 provides that both the date of execution by the taxpayer and date of acceptance by the BIR should be done *before* the expiration of the period of prescription.

Applying the foregoing, it is clear that respondent's right to assess petitioner for deficiency VAT for the 1st to 3rd quarters of 2010 (last day to assess was on October 26, 2013) as well as for deficiency EWT and WTC for the months of January 2010 to September 2010 (last day to assess was on October 11, 2013) had already prescribed when the first waiver was executed on

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90 *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.

91 Dates appearing on the BIR's copy of the waivers; petitioner's copy of the waivers does not bear the date of receipt.

August 28, 2013 and accepted by the BIR on October 31, 2013. Considering that the first waiver was executed and accepted after the expiration of the period to assess for deficiency VAT for the 1st to 3rd quarters of 2010, and deficiency EWT and WTC for January 2010 to September 2010, as a result thereof, there is nothing to extend. Thus, respondent's right to assess petitioner for deficiency VAT for the 1st to 3rd quarters of 2010 and deficiency EWT and WTC for January 2010 to September 2010 has already been barred by prescription.

More so, petitioner argues that a perusal of both waivers reveals defects for failing to indicate the specific type of tax and the amount of tax assessed by the BIR. Petitioner asserts that due to the failure of the waivers to strictly conform to the requirements laid down under RMO No. 20-90 and RDAO No. 05-01, the period to assess and/or collect taxes was never validly extended.

The Court agrees with petitioner.

In *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[92], the Supreme Court enunciated the requirements of a properly executed waiver:

> "Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ________ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. **In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**
>
> 3. The waiver should be duly notarized.

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92 G.R. No. 178087, May 5, 2010.

> 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." *(Emphasis supplied)*

Records disclose that the signatory of the two waivers, Mr. Demetrio C. Silverio, had no notarized written authority from petitioner's Board of Directors. Again, RDAO No. 05-01 requires that 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.

Also, even though the waivers did not specify the kind of tax and the amount of tax due, RO Almosara however explained during trial, why the specific type and amount of tax were not indicated in the waivers, to wit:

> "Q22: I noticed that the waiver dated August 28, 2013 did not indicate the specific type and the amount of tax being assessed, can you explain why?
>
> A: Yes, The waiver dated August 28, 2013 did not indicate the specific type and the amount of tax since during this time, petitioner's deficiency taxes were still under an on-going audit since we are still open to receiving additional documents from petitioner. Even if the Notice for Informal Conference indicate[s] the details of deficiency taxes, such were not yet final and were only the results of our initial findings. Thus, petitioner was given ample time by the BIR within which to submit its documents after it executed the Waiver on August 28, 2013. au

x x x

Q28: I noticed that the waiver dated February 7, 2014 did not also indicate the specific type and the amount of tax being assessed, can you explain why?

A: Yes, The waiver dated February 7, 2014 did not also indicate the specific type and the amount of tax since during this time, we are still in the process of conducting the audit on petitioner's all internal revenue taxes. Petitioner is still yet to present additional documents required for the investigation of the case."[93]

Although there is no precise requirement in RMO No. 20-90 and RDAO 05-01 for the waiver to specify the kind of tax and the amount of tax due, this Court is however not unaware that there are cases[94] where the Supreme Court took note of the fact that there are waivers that did not specify the kind of tax and the amount of tax due thereon. The High Court rationalizes that "there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity."

Going back to the present case, aside from the fact that the waivers failed to specify the kind of tax and the amount of tax due, the waivers were likewise not accompanied by a notarized written authority given to the individual signing the subject waivers on behalf of petitioner making the same defective.

Undeniably, RMO No. 20-90 must be strictly followed. A waiver of the statute of limitations under the 1997 NIRC, as amended, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[95]

From the foregoing, this Court finds both waivers to be defective thus did not validly extend the prescriptive period to assess deficiency income tax, VAT, EWT and WTC. Hence, the

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[93] Exhibit "R-11"; Judicial Affidavit of Revenue Officer Jose Eric Almosara dated June 20, 2017, docket (vol. I), pp. 413-414.

[94] *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015 and *Commissioner of Internal Revenue vs. Systems Technology Institute*, Inc., G.R. No. 220835, July 26, 2017.

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

FAN and Assessment Notices for deficiency IT, VAT, EWT and WTC for taxable year 2010, issued by the BIR beyond the three-year prescriptive period, are void and of no legal effect. A void assessment bears no valid fruit[96].

With regard to the DST assessment issued against petitioner, we find this to be invalid for failure to state the facts upon which it is based.

To illustrate, we quote portions of the FAN's Details of Discrepancy pertaining to the deficiency DST assessment:[97]

"**VII. DOCUMENTARY STAMP TAX (DST)**

Basic Tax Due ₱14,629.00- Verification disclosed that you have failed to pay the documentary stamp tax due on your lease amounting to ₱14,629.00 in violation of Sec. 194 of the NIRC in relation to Revenue Regulation (RR) No. 13-2004 dated December 23, 2004.

Schedule 11:

Nature/Transaction	**Amount**	**Rate**	**Provisions Violated**	**DST Due**
Lease contract/ Rental expense	₱14,627,599.60	₱3.00 for the first ₱2,000.00 or fractional Additional ₱1.00 for every ₱1,000.00 fractional part thereof in excess of	Sec. 194 of the NIRC	₱14,629.00

Based on the aforequoted Details of Discrepancy, petitioner asserts that respondent did not provide any factual basis for the assessed deficiency DST. No lease contract involving real property was identified or set out in the FAN nor in the FDDA. According to petitioner, the ICPA only took it upon himself to trace the source amount of the assessment and, eventually, found that it pertained to the "income payments in the Alphalist that were subjected to 5% EWT." As such, petitioner argues that the BIR incorrectly presumed that all payments made by petitioner which were subjected to 5% EWT automatically pertained to lease or rental of real property. The truth of the matter is, had respondent first considered reviewing petitioner's Alphalist for taxable year 2010, the same would clearly show that the suppliers are telecommunication companies and not lease or rental of real property.

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[96] *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.

[97] Par. VII, Exhibit "P-8"; Exhibit "R-8", BIR Records, p. 1447.

We agree with petitioner.

A careful perusal of the Details of Discrepancy reveals that it did not sufficiently state the factual basis of the deficiency DST assessment. Nowhere in the Details of Discrepancy did it state where the BIR derived the amount of ₱14,627,599.60.

Although the same amount (₱14,627,599.60) can be seen under Schedule 6 of the Details of Discrepancies[98], the said amount was described therein as "Computer reservation terminals for lease" per alphalist/1601-E and not as lease of lands or tenements taxable under Section 194[99] of the NIRC of 1997, as amended, which was the basis for the DST assessment.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[100], the Supreme Court emphasized that:

> "However, the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied. To emphasize, the purpose of this requirement is to sufficiently inform the taxpayer of the bases for the assessment to enable him or her to make an intelligent protest."

In petitioner's protest to the FAN[101] dated January 21, 2015, it raised the following arguments on the deficiency DST assessment, *viz.*:

> "As basis for the assessment, BIR alleges that the use of land or tenements under a lease, agreement, memorandum or contract is subject to DST under Section 194 of the Tax Code. BIR unable to refer to any lease agreement, memorandum or contract but only referring to an amount PHP14,627,599.60 without details. The deficiency DST assessment based on expenses claimed has absolutely no basis whatsoever."

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98 Unaccounted Expenses under Par. I, Exhibit "P-8", docket, vol. II, p. 881; Exhibit "R-8", BIR Records, p. 1449.

99 **SEC. 194.** *Stamp tax on Lease and Other Hiring Agreements.* - On each lease, agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portions thereof, there shall be collected a documentary stamp tax of Three pesos (P3.00) for the first Two thousand pesos (P2,000), or fractional part thereof, and an additional One peso (P1.00) for every One Thousand pesos (P1,000) or fractional part thereof, in excess of the first Two thousand pesos (P2,000) for each year of the term of said contract or agreement.

100 G.R. No. 215957, November 9, 2016.

101 Par. VII, Exhibit "P-9".

From the foregoing, it can be seen that petitioner was unable to file an intelligent protest on the deficiency DST assessment because no details were provided with regard to the amount of ₱14,627,599.60. Also, worth mentioning is that the DST assessment is unclear causing confusion, considering that as noted earlier, the same amount (₱14,627,599.60) can be seen under Schedule 6 of the Details of Discrepancies but was described therein as "Computer reservation terminals for lease" per alphalist/1601-E which is in conflict with the DST assessment which claims that this same amount is for the lease of lands or tenements.

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Section 228 of the 1997 NIRC, as amended, and RR No. 12-99 would be rendered nugatory.[102]

The fact that the ICPA was able to trace where the amount of ₱14,627,599.60 was derived does not suffice.[103] There is no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.[104]

In sum, the deficiency tax assessments for IT, VAT, EWT and WTC are invalid for being issued beyond the three-year prescriptive period while the deficiency tax assessment for DST is invalid for failure to state the facts on which the assessment is based. Moreover, the assessment for WTC is likewise invalidated on the ground that no assessment notice was issued therefor, thereby, negating respondent's demand for payment.

As to petitioner's claim for refund, this Court likewise finds merit in the same.

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[102] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009.

[103] The ICPA Report stated that "we were able to trace that the amount Php14,627,599.60 pertains to the income payments in the Alphalist that were subjected to 5% EWT", see par. 70, Exhibit "P-45", p. 33.

[104] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009.

Having filed an administrative claim[105] on March 17, 2017 with the BIR, requesting for a refund should the CTA decide in its favor, and thereafter filing a judicial claim[106] on March 30, 2017, records clearly show that both the administrative and judicial claims have been filed within two years from the date of its payment on March 17, 2017[107] as provided under Sections 204(C)[108] and 229[109] of the 1997 NIRC, as amended. Hence, petitioner is entitled to the refund of the deficiency EWT assessment it paid under protest in the amount of ₱1,042,579.35

In light of the foregoing, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, premises considered, the Amended Petition for Review is **GRANTED**. Accordingly, the tax deficiency assessments against petitioner for alleged deficiency income tax, VAT, WTC, EWT, and DST issued by respondent in the aggregate amount of ₱45,856,059.61 for the taxable year 2010 are **CANCELLED** and **SET ASIDE**.

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105 Exhibit "P-15", docket, vol. II, pp. 934-935.

106 Amended Petition for Review, docket, vol. I, pp. 210-248.

107 Exhibits "P-13" and "P-14", docket, vol. II, pp. 932-933.

108 **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.–*

x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x

109 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Furthermore, respondent is likewise **ORDERED TO REFUND** in favor of petitioner the amount of **₱1,042,579.35** representing the deficiency EWT assessment it paid under protest.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SABRE TRAVEL NETWORK (PHILIPPINES) INC. (Formerly, ABACUS DISTRIBUTION SERVICES PHILIPPINES, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9532

Members:

DEL ROSARIO, *P.J., Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

OCT 25 2019 : 11:00a.m.

x- x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia's* findings that: (i) the revenue officers who conducted the audit of petitioner's books of accounts and other accounting records for taxable year 2010 were authorized to do so pursuant to a valid Letter of Authority; (ii) the deficiency Documentary Stamp Tax (DST) assessment should be cancelled for respondent's failure to state in the Formal Assessment Notice (FAN) dated December 23, 2014[1] the facts and the law upon which the assessment was based; and, (iii) the assessment for Withholding Tax on Compensation (WTC) should likewise be cancelled as no Assessment Notice (BIR Form No. 1708), which supposedly indicates the due date for payment, was issued thereby negating respondent's specific demand for payment.

With utmost respect, however, I am constrained to withhold my assent to the *ponencia*'s finding that the two (2) Waivers[2] executed by petitioner's President, Demetrio C. Silverio, are void. Hence, the three-year prescriptive period to assess petitioner for deficiency

[1] Exhibit R-8, BIR Records, pp. 1447 to 1482.
[2] Exhibits P-4 and P-5, Docket, pp.858 to 859.

Income Tax, Value-Added Tax (VAT) and Expanded Withholding Tax (EWT) was not validly extended.

Records show that petitioner never raised the issue on the invalidity of the two (2) Waivers when it filed its Letter-Reply to the Preliminary Assessment Notice (PAN) dated December 8, 2014[3] and Protest Letter to the FAN dated January 21, 2015.[4] Stated differently, petitioner never questioned either the validity of the Waivers or the prescription of the assessment for deficiency taxes for the year 2010 before the Bureau of Internal Revenue. In truth, petitioner asserts for the first time in its Petition for Review that the Waivers are invalid.

Petitioner's execution of the two (2) Waivers and its actions subsequent thereto constitute estoppel on its part from claiming that such Waivers are invalid and that the deficiency tax assessments issued against it for the year 2010 were issued beyond the prescriptive period.

With the execution of the two (2) Waivers, **petitioner effectively induced respondent to defer the issuance of the PAN and FAN**, thereby preventing the immediate assessment of petitioner's tax liability, which circumstance justifies the application of the *"in pari delicto"* pronouncement in ***Commissioner of Internal Revenue vs. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.)***[5]. Said the Supreme Court:

> "Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities."

[3] Exhibit P-7, Docket, pp. 867 to 877.
[4] Exhibit P-9, Docket, pp. 884 to 894.
[5] G.R. 212825, December 7, 2015.

In ***Next Mobile***, the validity of the defective waivers were upheld by the Supreme Court based on a categorical finding that **both parties are *in pari delicto* in causing the deficiencies of the subject waivers**. While noting the fault of the BIR in failing to comply with its rules on waivers, the Supreme Court observed that Next Mobile Inc. actually executed defective waivers. By reason of such waivers, the BIR was effectively induced to delay the assessment and eventual collection of tax deficiencies against the taxpayer. Thus, the Supreme Court concluded that "the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of [the CIR's] assessment of [Next Mobile Inc.'s] tax liabilities."

In the case at bar, petitioner voluntarily executed and submitted the subject Waivers, one after the other, and never bothered to raise its objection thereto at the administrative level, and instead decided to impugn their validity after the issuance of the assessment on the ground that its own President, the highest ranking official of petitioner, had no authority to sign the Waivers.

Petitioner's general attitude in the course of the assessment proceedings depicts an admission that the said Waivers are valid. Thus, applying the pronouncement in *Next Mobile*, by the principle of estoppel, petitioner may no longer question the validity of the Waivers and raise the defense of prescription against the government's right to assess. **Impugning the validity of the Waivers from which it benefited and after persuading respondent to postpone the issuance of the FAN is palpably reprehensible.**

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and **its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.** It is designed to aid the law in the administration of justice where without its aid injustice might result.[6] If estoppel is not applied, the Government's ability to collect can easily be jeopardized. The probability of unscrupulous government officials conniving with taxpayers in "executing defective" waivers to foreclose collection of the tax due, cannot be discounted.

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[6] *Megan Sugar Corporation vs. Regional Trial Court of Iloilo, Branch 68, Dumangas, Iloilo; New Frontier Sugar Corporation and Equitable PCI Bank,* G.R. No. 170352, June 1, 2011.

Indeed, to discount the application of the *in pari delicto* rule to include **all** situations involving "defective waivers" despite the fact that they were actually utilized to prevent an assessment and/or collection of deficiency taxes would set a dangerous and mischievous precedent. In the language of ***Next Mobile***:

> "Finally, the Court cannot tolerate this highly suspicious situation. **In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused.** On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. **The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.**
>
> xxx xxx xxx
>
> **xxx The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith."** (Boldfacing supplied)

In ***Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.***,[7] the Supreme Court reiterated that the doctrine of estoppel applies against a taxpayer who did not only raise at the earliest possible opportunity its representative's lack of authority to execute two (2) waivers of defense of prescription, but was also accorded, through said waivers, more time to comply with the audit requirements of the BIR.

The applicability of ***Next Mobile*** and ***Transitions Optical*** to the present case cannot be any clearer. Hence, there should be no reason for the Court to consider the Waivers void.

[7] G.R. No. 227544, November 22, 2017.

All told, I VOTE to PARTIALLY GRANT the Petition for Review by cancelling and setting aside the assessments against petitioner for deficiency DST and WTC for the year 2010. Anent the 2010 deficiency Income Tax, VAT and EWT, I submit that the Court should proceed to determine the validity of the assessments on the merits and the respective amounts of Income Tax, Value-Added Tax and Expanded Withholding liabilities of petitioner, if any.

ROMAN G. DEL ROSARIO
Presiding Justice