21-000320-0048

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10588

COMMISSION ON ELECTIONS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. RAMON B. LORENZO
ATTY. ROWELL B. VICENTE
ATTY. MYRNA R. SANTELICES
Bureau of Internal Revenue
BIR Revenue Region No. 6
5/F, BIR Bldg. I, Solana Street
Intramuros, Manila

ATTY. CHARMAGNE L. VELASCO-RONQUILLO
ATTY. NEIL ANTHONY P. DABALOS
ATTY. NICOLE KAY C. JAMES
COMMISSION ON ELECTIONS
Law Department
8th Floor, Palacio del Gobernador Bldg.
General Luna Street corner Andres Soriano Jr. Avenue
Intramuros, Manila

GREETINGS:

You are hereby notified by these presents that on **November 13, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 15, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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COMMISSION ON ELECTIONS,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10588

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA,, *and*
CUI-DAVID, *JJ.*

Promulgated:

NOV 13 2024; 10:55AM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* (**Petition**)[1] filed on July 14, 2021 by petitioner, the Commission on Elections ("**Petitioner**"), against respondent, the Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"). The *Petition* challenges the Final Decision on Disputed Assessment (**FDDA**) dated June 10, 2021, which assessed petitioner of deficiency withholding taxes amounting to ₱289,957,810.79, inclusive of surcharge and interest, for taxable years (**TY**) 2012 to 2013.

THE PARTIES

Petitioner is one of the three Constitutional Commissions of the Philippines.[2] It is the principal agency tasked by the Constitution to enforce and administer all laws and regulations relative to the conduct of elections, plebiscites, initiatives, referenda, and recall elections in the Philippines, [3] duly

[1] Docket, pp. 5–36, including annexes.
[2] Const., art. IX, sec. 1.
[3] Const., art. IX(C), sec. 2.

registered with the Bureau of Internal Revenue (**BIR**) Revenue District Office (**RDO**) No. 33 with address at 8th Floor, Palacio del Gobernador Bldg., Gen. Luna St. corner Andres Soriano, Jr. Ave., Intramuros, Manila.[4]

Respondent is the duly appointed CIR who holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS

On November 20, 2014, respondent issued a Letter of Authority (**LOA**) No. LOA-033-2014-00000360, authorizing Revenue Officers (**RO**) Reigna Bernardo, Jhonelle Fahad Dimakuta, Jaypee Legaspi, and Group Supervisor (**GS**) Jessie Parugrug to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2010 to December 31, 2013.[6]

On April 30, 2019, petitioner received an undated *Notice of Informal Conference* (**NIC**) from respondent.[7] Based on the NIC, the surcharge assessed by respondent was 50%.[8]

On September 30, 2019, petitioner received from respondent a *Preliminary Assessment Notice* (**PAN**) dated September 27, 2019.[9] The surcharge assessed in the PAN was reduced to 25%.[10]

On October 15, 2019, petitioner filed its *Reply to the PAN.*[11]

On January 21, 2020, petitioner received a *Final Assessment Notice with Formal Letter of Demand* (**FAN/FLD**), Demand No. 33-2010 to 2013-B7730-19-340, and *Details of Discrepancy* dated January 16, 2020.[12]

The *FAN/FLD* assessed petitioner of deficiency withholding taxes for TY 2012 and 2013, as follows:

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4 Docket, p. 415, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, par. 1.
5 *Id.* at par. 2.
6 Docket, p. 416, JSFI, Admitted Facts, par. 10; Exhibit "P-4-A" and "R-1", Docket, p. 304.
7 Docket, p. 416, JSFI, Admitted Facts, par. 11; Exhibit "P-4", Docket, pp. 114–115.
8 Docket, p. 416, JSFI, Admitted Facts, par. 12.
9 Docket, p. 416, JSFI, Admitted Facts, par. 13; Exhibit "P-5", Docket, pp. 117–120.
10 *Supra* note 8 at par. 14.
11 *Id.* at par. 15.
12 Docket, p. 416, JSFI, Admitted Facts, par. 16; Exhibits "P-1", "P-1-A", "P-2" and "P-3", Docket, pp. 108–113.

	2012	2013
Basic tax due	₱ 55,267,629.88	₱ 151,106,506.79
50% surcharge[13]	27,633,814.94	75,553,253.40
20% interest	54,813,375.39	119,643,234.14
12% interest	14,118,229.62	38,600,467.65
Total amount due	₱ 151,833,049.82	₱ 384,903,461.98
Total		**₱ 536,736,511.80**

On February 18, 2020, petitioner protested the *FAN/FLD*.[14]

On June 24, 2021, petitioner received the *FDDA* dated June 10, 2021, issued by Regional Director Jethro M. Sabariaga (**RD Sabariaga**).[15] The *FDDA* addressed petitioner's *Protest* against the *FAN/FLD* and reduced the deficiency withholding tax assessment as follows:

	2012	2013
Basic tax due	₱ 44,528,308.10	₱ 54,881,634.42
50% surcharge	22,264,154.05	27,440,817.21
20% interest	44,284,317.37	54,430,552.49
12% interest	18,870,243.01	23,257,784.14
Total amount due	₱129,947,022.53	₱160,010,788.26
Total		**₱289,957,810.79**

PROCEEDINGS BEFORE THE COURT

Still dissatisfied, petitioner filed its *Petition for Review*[16] on July 14, 2021.

Summons were issued to respondent on July 19, 2021.[17]

Respondent filed his *Answer* on October 25, 2021, which was received by the Court on November 5, 2021.[18] This was accompanied by the *Offer of Testimony of Revenue Officer Jaypee Legaspi with Attached Judicial Affidavit*[19] and *Offer of Testimony of Revenue Officer Jowil D. Delavin with Attached Judicial Affidavit*.[20]

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13 This was separately stipulated in par. 17, Admitted Facts, Joint Stipulation of Facts and Issues, Docket, p. 416.
14 Docket, p. 417, JSFI, Admitted Facts, par. 20; Exhibit "P-6", Docket, pp. 121–138.
15 Docket, p. 417, JSFI, Admitted Facts, par. 21; Exhibit "P-7", Docket, pp. 143–146.
16 *Supra* note 1.
17 Docket, p. 294.
18 *Id.* at 349–364.
19 *Id.* at 295–302.
20 *Id.* at 315–323.

After the pre-trial was set,[21] petitioner[22] and respondent[23] both filed their respective pre-trial briefs on March 11, 2022. The parties appeared before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) on April 18, 2022. [24]

On April 18, 2022, respondent elevated the *BIR Records* of the case, consisting of 18 folders and 2,927 pages.[25]

Eventually, the PMC-CTA issued a *No Agreement to Mediate* on May 5, 2022.[26] The case was then reset for pre-trial on June 29, 2022,[27] and later on August 1, 2022.[28]

The pre-trial was conducted on August 1, 2022, [29] and both parties filed their *Joint Stipulation of Facts and Issues* on August 31, 2022. [30] The *Pre-Trial Order* was issued on September 23, 2022[31] and was amended on October 14, 2022.[32]

At the January 26, 2023 hearing, petitioner presented its lone witness, Maria Lea R. Alarkon, who testified on direct examination without any cross-examination. Her testimony was deemed completed and terminated.[33] Petitioner filed its *Formal Offer of Exhibits* on February 23, 2023,[34] which was resolved by the Court on April 17, 2023.[35]

At the April 27, 2023 hearing, respondent presented RO Jowil D. Delavin who testified on direct examination by way of a judicial affidavit. His testimony was completed after the cross-examination.[36]

In relation to the Court's April 17, 2023 *Resolution*, petitioner filed a *Motion for Reconsideration* on May 3, 2023.[37] On July 28, 2023, the Court granted petitioner's *Motion for Reconsideration*,[38] thereby admitting all of petitioner's exhibits.

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21 *Id.* at 366–367, Notice of Pre-Trial Conference dated December 7, 2021.
22 *Id.* at 376–396.
23 *Id.* at 369–375.
24 *Id.* at 401, Order dated March 16, 2022.
25 *Id.* at 404–405, Compliance dated April 13, 2022.
26 *Id.* at 408.
27 *Id.* at 410, Notice of Resetting dated May 18, 2022.
28 *Id.* at 411, Notice of Resetting dated June 10, 2022.
29 *Id.* at 412.
30 *Id.* at 415–427.
31 *Id.* at 445–458.
32 *Id.* at 464.
33 *Id.* at 476–477, Order dated January 26, 2023.
34 *Id.* at 478–501.
35 *Id.* at 506–507.
36 *Id.* at 509–510, Order dated April 27, 2023.
37 *Id.* at 511–515.
38 *Id.* at 528–529.

At the January 17, 2024 hearing, respondent presented his witness, RO Legaspi, who testified by way of his judicial affidavit.[39] Respondent then filed his *Formal Offer of Evidence* on January 22, 2024,[40] which was resolved by the Court on February 19, 2024.[41]

Respondent filed his *Memorandum* on March 20, 2024,[42] while petitioner filed its *Memorandum* on March 26, 2024.[43]

The case was submitted for decision on April 19, 2024.[44]

THE ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:[45]

> Whether or not the petitioner is liable to pay the aggregate amount of Php289,957,810.79 representing deficiency withholding tax on compensation, expanded withholding tax, and withholding on value-added tax for taxable years 2012 and 2013.

PETITIONER'S ARGUMENTS

In its *Petition for Review*[46] and *Memorandum*,[47] petitioner argues that the FAN/FLD lacks the definite amount of tax liability for which it is allegedly accountable, citing the wording used in the FAN/FLD and applying *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (*Fitness by Design*).[48] Petitioner also states that separate LOAs should have been issued for each taxable year being assessed.[49]

Petitioner also argues that respondent's right to assess its withholding tax liability for TYs 2012 and 2013 has already prescribed, arguing that respondent only had a three-year period to make an assessment.[50] According to petitioner, the 10-year prescriptive period is not applicable, and respondent's

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[39] *Id.* at 533–534, Order dated January 17, 2024.
[40] *Id.* at 536–545.
[41] *Id.* at 557–558.
[42] *Id.* at 559–573.
[43] *Id.* at 574–630.
[44] Undocketed.
[45] Docket, p. 418, JSFI, Issue.
[46] *Supra* note 1.
[47] Docket, pp. 574 630.
[48] G.R. No. 215957, November 09, 2016 [Per J. Leonen, Second Division]; Docket, pp. 592–600, Petitioner's Memorandum, pars. 8.1–8.7.
[49] Docket, pp. 600–602, Petitioner's Memorandum, pars. 8.8–8.14.
[50] Docket, pp. 602–610, Petitioner's Memorandum, pars. 8.15–8.31.

claim of fraud or filing of a false return was "raised merely to justify the unwarranted delay committed by their office."[51] Petitioner maintains that actual fraud, not mere suspicion, is required before respondent can issue an assessment beyond the three-year period.[52]

Finally, petitioner states that the alleged discrepancies between its tax withheld and the report of the Commission on Audit (**COA**) can be reconciled.[53]

RESPONDENT'S ARGUMENTS

In his *Answer*[54] and *Memorandum*,[55] respondent asserts that the FAN/FLD "has fixed and definitely set the deficiency withholding tax liabilities of petitioner."[56] Anent petitioner's argument that separate LOAs should have been issued for each taxable year, respondent counters that Revenue Memorandum Order (**RMO**) No. 44-2010 does not require the LOA to cover only one taxable period. Respondent argues that "what matters is that the LOA must specifically indicate the taxable years covered by the RO's audit or examination."[57]

Respondent also contends that his right to assess petitioner's deficiency withholding tax has not prescribed. First, respondent argues that "assessments issued for creditable withholding taxes (**CWT**) are imprescriptible," asserting that the taxpayer's liability "is different from that of the withholding agent."[58] Second, respondent claims that petitioner "filed false returns, failed to file returns for such amounts and the returns filed with the respondent do not faithfully reflect the correct amount of [CWT]," thus invoking the 10-year prescriptive period for the remaining assessments.[59]

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

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[51] Docket, pp. 610–612, Petitioner's Memorandum, pars. 8.32–8.37.
[52] Docket, pp. 612–626, Petitioner's Memorandum, pars. 8.38–8.60.
[53] Docket, pp. 626–627, Petitioner's Memorandum, pars. 8.61–8.66.
[54] Docket, pp. 349–364.
[55] *Id.* at 559-573.
[56] Docket, pp. 562–565, Respondent's Memorandum, pars. 1–10.
[57] Docket, pp. 565–567, Respondent's Memorandum, pars. 11–14.
[58] Docket, pp. 567–569, Respondent's Memorandum, pars. 15–21.
[59] Docket, pp. 569–571, Respondent's Memorandum, pars. 22–29.

The Court has jurisdiction over the present case.

Before addressing the merits, the Court must first determine whether it has jurisdiction over the instant case.

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,[60] as amended by RA No. 9282,[61] confers jurisdiction upon this Court relative to decisions and inactions of respondent, as follows:

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

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the time frame for filing an appeal before the CTA, to wit:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the [CIR]**...may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ...** *[Emphasis supplied]*

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[60] An Act Creating the Court of Tax Appeals, June 16, 1954.

[61] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

These provisions are likewise provided under Section 3(a)(1)(2), Rule 4,[62] and Section 3(a), Rule 8[63] of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

Based on the foregoing, this Court has exclusive jurisdiction to review, by appeal, a decision, ruling, or inaction of respondent. The appeal must be filed by the taxpayer affected - or, as stated in RA No. 9282, the party adversely affected - within 30 days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

In this case, petitioner received the FDDA dated June 10, 2021, on June 24, 2021.[64] Therefore, petitioner had 30 days from that date, or until **July 24, 2021**, to file a petition for review. Consequently, the Court finds that petitioner timely filed its *Petition for Review* on **July 14, 2021**,[65] and that this Court has jurisdiction over the subject matter of this case.

The FAN/FLD indicates a definite amount.

In its *Petition for Review* and *Memorandum*, petitioner argues that the FAN/FLD lacks a definite amount of tax liability, citing the phraseology used in the FAN/FLD and applying the case of *Fitness by Design*.[66] On the other hand, in his *Answer* and *Memorandum*, respondent contends that the FAN/FLD "has fixed and definitely set the deficiency withholding tax liabilities of petitioner."[67]

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[62] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

[63] Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[64] Docket, p. 417, JSFI, Admitted Facts, par. 21; Exhibit "P-7", Docket, pp. 143–146.

[65] *Supra* note 1.

[66] Docket, pp. 592–600, Petitioner's Memorandum, pars. 8.1–8.7.

[67] *Supra* note 56.

In the instant case, the FAN/FLD provides: "Please note that the interest and the total amount due will have to be adjusted if paid after the date specified herein." [68] According to petitioner, this statement makes the FAN/FLD void for failing to specify a definite amount to be paid.

We rule in favor of respondent.

A comparison between the assessment notices in *Fitness by Design* and the present case reveals the following substantial differences:

Fitness By Design (G.R. No. 215957)	**Commission on Elections (CTA Case No. 10588)**
Please note, however, that the interest and the total amount due will have to be adjusted if paid **<u>prior</u> or <u>beyond</u> April 15, 2004**.	Please note that the interest and the total amount due will have to be adjusted if paid after the date specified herein.
The Supreme Court found that: "[T]here are **<u>no due dates in the Final Assessment Notice</u>**. This negates petitioner's demand for payment. ... The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment: In view thereof, you are requested to **pay** your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled **within the time shown in the enclosed assessment notice.** However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained <u>unaccomplished</u>**."	The penultimate paragraph of the FLD states: In view thereof, you are requested to **pay the aforesaid deficiency tax liability/ies** in a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605) within the time as shown in the enclosed assessment notice. The assessment notice specifies a due date of **February 17, 2020**.

[68] *Supra* note 12.

First, in *Fitness by Design*, the Supreme Court found that the FAN/FLD **lacked a definite tax liability**, as the amount was subject to modification and *entirely dependent* on the taxpayer's payment date, *viz.*:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249(B) of the [National Internal Revenue Code], as amended. **Please note, however, that the interest and the total amount due will have to be adjusted <u>if paid prior or beyond April 15, 2004</u>.** [*Emphasis supplied*]

Second, the FAN in *Fitness by Design* **did not set a specific due date**, which negated the demand for payment. The Supreme Court held:

> ... [T]here are **no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004, should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
>> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remain unaccomplished.** [*Emphasis supplied*]

Hence, the Supreme Court cancelled the FAN issued against *Fitness by Design,* citing the absence of *a definite tax liability* and *due date*, as discussed above. These irregularities in the FAN do not exist in the instant case.

The records show that the FAN/FLD specifies a fixed and definite amount of respondent's deficiency withholding tax liability, as follows:

	2012	2013
Basic tax due	₱ 44,528,308.10	₱ 54,881,634.42
50% surcharge	22,264,154.05	27,440,817.21
20% interest	44,284,317.37	54,430,552.49
12% interest	18,870,243.01	23,257,784.14
Total amount due	₱129,947,022.53	₱160,010,788.26
Total		**₱289,957,810.79**

With the due date of *February 17, 2020* stated explicitly in the FAN/FLD, along with the above computation of deficiency withholding tax liability up to the said due date, **there is a definite amount of tax liability in this case.**

The statement in the FLD that "*the interest and total amount due will have to be adjusted if paid after the date specified herein*" does not make respondent's deficiency withholding tax liability indefinite so as to render the subject FLD/FAN void. This statement merely informs respondent that the interest would have to be adjusted if payment is made after *February 17, 2020.*

It is important to note that only the 12% deficiency/delinquency interest per annum, as provided under Section 249 of the National Internal Revenue Code (**NIRC**) of 1997, as amended,[69] will need to be adjusted if payment is made **beyond** *February 17, 2020.* Undeniably, the interest must be recalculated because the BIR cannot predict when the taxpayer will settle the deficiency taxes. Therefore, the total amount due may be adjusted based on the actual payment date.

Thus, the subject assessment cannot be invalidated on the ground that it does not specify a **definite tax liability**.

The LOA is valid even if it covers more than one taxable year.

On November 20, 2014, respondent issued a LOA authorizing ROs Bernardo, Dimakuta, Legaspi, and GS Parugrug to examine petitioner's books of accounts and other

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69 SEC. 249. Interest. –
(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twelve percent (12%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
(B) Deficiency Interest. - ...
(C) Delinquency Interest. - ...

accounting records for all internal revenue taxes for the period **from January 1, 2010 to December 31, 2013.**[70]

Petitioner argues that it is an established rule that an LOA should cover only one taxable period. Petitioner claims that the LOA is invalid because it covers more than one taxable period, in violation of RMO No. 44-2010 and established jurisprudence, which require each taxable year to be covered by a separate LOA.[71]

On the other hand, respondent contends that RMO No. 44-2010 does not require an LOA to cover only one taxable period. Respondent asserts that "what matters is that the LOA must specifically indicate the taxable years covered by the Revenue Officer's audit or examination."[72]

We rule in favor of the validity of the LOA.

First, there is no prohibition under the NIRC of 1997, as amended, as to the number of taxable periods that an LOA may cover.

Second, Section C of RMO No. 43-1990[73] provides:

> A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. **If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A**. [*Emphasis supplied*]

Although the first part of RMO No. 43-1990 states that an LOA shall cover a taxable period *not exceeding one taxable year*, it does not preclude the possibility of an LOA covering more than one taxable period, provided that "*the other periods or years shall be specifically indicated in the LOA.*"

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.,*[74] where the LOA covered the year 1997 **and** unverified *prior years*, the Supreme Court ruled that if the CIR intended to include another taxable year – specifically the year 1998 - this

[70] *Supra* note 6.
[71] *Supra* note 49.
[72] *Supra* note 57.
[73] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.
[74] G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

should have been done by "including it in the LOA **or** issuing another LOA," *viz.*:

> As earlier stated, LOA 19734 covered "the period 1997 and unverified prior years." For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, **the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA**. [*Emphasis supplied*]

This ruling was reiterated in the more recent case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[75] *viz.*:

> Nonetheless, a valid LOA does not necessarily clothe validity to an assessment issued on it, as when the revenue officers designated in the LOA act in excess or outside of the authority granted them under said LOA. Recently in *CIR v. De La Salle University, Inc.* we accorded validity to the LOA authorizing the examination of DLSU for "*Fiscal Year Ending **2003** and Unverified Prior Years*" and correspondingly held the assessment for taxable year 2003 as valid because this taxable period is specified in the LOA. However, we declared void the assessments for taxable years **2001** and **2002** for having been *unspecified* on separate LOAs as required under RMO No. 43-90.
>
> Likewise, in the earlier case of *CIR v. Sony, Phils., Inc.*, we affirmed the cancellation of a deficiency VAT assessment because, while the LOA covered *"**the period 1997** and unverified prior years,"* the said deficiency was arrived at based on the records of a later year, from ***January to March 1998***, or using the fiscal year which ended on 31 March 1998. **We explained that the CIR knew which period should be covered by the investigation and that if the CIR wanted or intended the investigation to include the year 1998, it would have done so by including it in the LOA or by issuing another LOA.** [*Emphasis supplied, citations omitted*]

Given the foregoing, the Court upholds the validity of the LOA, even though it covers four taxable years, from January 1, 2010 to December 31, 2013.

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[75] G.R. No. 183408, July 12, 2017 [Per J. Martires, Second Division].

The period to assess petitioner of deficiency withholding tax for taxable years 2012 to 2013 has already prescribed.

Petitioner argues that respondent's right to assess its withholding tax liabilities for TYs 2012 and 2013 has prescribed, citing the three-year prescriptive period for making assessments. [76] Petitioner contends that the 10-year prescriptive period does not apply, asserting that respondent's "baseless imputation of fraud or filing of false return was raised merely to justify the unwarranted delay committed by their office." [77] Petitioner emphasizes that actual fraud, not mere suspicion, is required to extend the assessment period beyond three years.[78]

Conversely, respondent argues that his right to assess petitioner for deficiency withholding taxes has not yet prescribed. First, respondent claims that "assessments issued for [CWT] are imprescriptible," reasoning that the liability of the taxpayer "is different from that of the withholding agent." [79] Second, respondent asserts that petitioner "filed false returns, failed to file returns for such amounts and the returns filed with respondent do not faithfully reflect the correct amount of [CWT];" thus, the 10-year prescriptive period applies.[80]

On this issue, the Court agrees with petitioner.

The BIR's power and duty to assess and collect taxes is provided under Section 2 of the NIRC of 1997, as amended, which reads:

> **SEC. 2.** ***Powers and Duties of the Bureau of Internal Revenue.*** - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance, and **its powers and duties** shall comprehend **the assessment and collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. ... [*Emphasis supplied*]

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[76] *Supra* note 50.
[77] *Supra* note 51.
[78] *Supra* note 52.
[79] *Supra* note 58.
[80] *Supra* note 59.

Correspondingly, the CIR's authority to make tax assessments is provided under Section 6 of the NIRC of 1997, as amended, to wit:

> **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, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, **notwithstanding any law requiring the prior authorization of any government agency or instrumentality**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. ... [*Emphasis supplied*]

However, the BIR's power to assess and collect taxes is subject to Section 203 of the NIRC of 1997, as amended, which limits the period for making assessments to three years:

> **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 **<u>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</u>**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. [*Emphasis supplied*]

Given the foregoing, internal revenue taxes must be assessed within *<u>three years</u>* from either the last day prescribed by law for filing the return or the date the return was filed, whichever is later.

As an exception, Section 222 of the NIRC of 1997, as amended, allows the extension of the assessment period beyond three years. Specifically, Section 222(a) provides a 10-year prescriptive period in cases involving *false or fraudulent returns with intent to evade tax* or *failure to file a return*, while Section

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222(b) authorizes an extension upon execution of a *valid waiver, viz.:*

> **SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-***
>
> (a) In the case of a **false or fraudulent return with intent to evade tax** or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud** or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (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. ... [*Emphasis supplied*]

Accordingly, the crux of the controversy here is whether respondent's right to assess withholding taxes is imprescriptible, and if prescriptible, whether the assessment against petitioner falls under the ordinary three-year prescriptive period or the extraordinary 10-year prescriptive period.

The Court will address these issues *seriatim.*

Withholding tax assessments are prescriptible.

The assessment of withholding taxes is not imprescriptible, as respondent suggests. This was settled in *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[81] where the Supreme Court ruled that withholding taxes are internal revenue taxes subject to the three-year limitation under Section 203 of the NIRC of 1997, as amended:

[81] G.R. No. 211289, January 14, 2019 [Per J. J. Reyes, Jr., Second Division].

Withholding taxes are internal revenue taxes <u>covered by Section 203 of the NIRC</u>.

<u>Section 203 of the NIRC provides for the ordinary prescriptive period for the assessment and collection of taxes</u>, to wit:

> SEC. 203. Period of Limitation upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed **within three (3) years** after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. [*Emphasis supplied*]

... ...

The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision, considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.

... ...

Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.

As a consequence of the withholding tax system, two distinct liabilities arise — one for the income earner/payee and another for the withholding agent. . .

... ...

It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the

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> income earned by the taxpayer/payee. **Nonetheless, the Court disagree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.**
>
> ... ...
>
> The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties. . .
>
> ... ...
>
> Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code." [*Emphasis supplied*]

Accordingly, the Court holds that assessments for withholding taxes are prescriptible and subject to the period of limitation under Section 203 of the NIRC of 1997, as amended as other internal revenue taxes.

The three-year prescriptive period applies.

To determine whether the assessment against petitioner is governed by the 3-year or 10-year prescriptive period, the Court finds the case of *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue (McDonald's)*,[82] highly instructive.

The Supreme Court held in *McDonald's* that the extension of the assessment period to 10 years is **conditioned** upon concurrence of the <u>*requisites under Section 222 (a)*</u> of the NIRC of 1997, as amended, and compliance with <u>*due process requirements*</u>, *viz.:*

[82] G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].

F. Summary: ***Conditions*** *for a Valid Extension of Assessment Period in Case of a False Return*

i. ***Requisites*** *under Section 222 (a) of the 1997 Tax Code*

- *General Rule — Proof of False or Fraudulent Return*

Pursuant to Section 222 (a) of the 1997 Tax Code, the extraordinary 10-year assessment period may apply in case the taxpayer: (1) filed a false return, (2) filed a fraudulent return, or (3) failed to file a return.

A fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due," while a false return simply "implies deviation from the truth, whether intentional or not."

It must be stressed, however, that a false return within the meaning of Section 222 (a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a *false return* when:

(1) the return contains an error or misstatement, and
(2) **such error or misstatement was *deliberate or willful.***

Consequently, **the Court's ruling in *Aznar*** which applied the extraordinary 10-year assessment period under Section 222 (a) to false returns in general, *i.e.*, regardless of whether the deviation is intentional or not**, is *abandoned.***

It shall be the CIR's burden to establish the existence of the above-enumerated statutory requisites with ***clear and convincing evidence.***

- *Exception — Prima Facie Evidence of a False or Fraudulent Return (30% Threshold)*

The **CIR may be relieved from the above-mentioned burden of proof when there is *prima facie evidence of falsity or fraud,*** as defined under Section 248 (B) of the 1997 Tax Code.

(1) The CIR ascertains that there is a *misstatement/misdeclaration* in the return, in particular,

(a) an *understatement/underdeclaration* of sales, receipts, or income or

(b) an *overstatement/overdeclaration* of expenses or other deductions, and

(2) the misstatement is *substantial*, such that exceeds the corresponding amount declared in the return by 30%.

30% threshold satisfied. There is *prima facie* evidence of falsity or fraud and the burden of proof shifts to the taxpayer. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the 10-year period.

Taxpayer refutes presumption. If the taxpayer is successful in overturning the presumption (*e.g.*, demonstrating that the misstatement as ascertained by the CIR had been inadvertent or attributable to a mistake or was not deliberate or willful on the part of the taxpayer), the CIR cannot rely on the presumption in proving the taxpayer's *intent to evade.*

ii. ***Due Process Requirements***

(1) First Due Process Requirement. The *assessment notice* issued to the taxpayer must clearly state the following:

(a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and

(b) the bases of allegations of falsity or fraud, *e.g.*, if the CIR seeks to rely on the *presumption of falsity or fraud* particularly, the formal notice to the taxpayer *must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*

(2) Second Due Process Requirement. The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied. [*Emphasis supplied*]

Applying the foregoing **conditions**, which outline the *requisites* under Section 222 (a) of the NIRC of 1997, as amended, and the *due process requirements*, the Court finds that the extraordinary 10-year period to assess does not apply in this case.

With respect to these ***requisites***, the Court reiterates the ruling in *McDonald's*:

> Pursuant to Section 222 (a) of the 1997 Tax Code, the extraordinary 10-year assessment period may apply in case the taxpayer: (1) filed a false return, (2) filed a fraudulent return, or (3) failed to file a return.
>
> ... ...
>
> It must be stressed, however, that a false return within the meaning of Section 222 (a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a *false return* when:
>
> (1) the return contains an error or misstatement, and
> (2) **such error or misstatement was *deliberate or willful.***

A return may contain errors, as in this case. However, without *clear and convincing* evidence that the errors or misstatements were deliberate or willful, the 10-year prescriptive period cannot be invoked.

In this case, respondent imposed a 50% surcharge on the deficiency withholding taxes for taxable years 2012 and 2013 alleging petitioner's "**willful neglect"** to file the withholding tax returns within the period prescribed by law.[83] Respondent further alleged that petitioner "failed to withhold and remit in full the corresponding withholding taxes. As a consequence, petitioner filed false returns, failed to file returns for such amounts and the returns filed with the respondent do not faithfully reflect the correct amount of creditable withholding taxes." [84]

However, respondent failed to present *clear and convincing* evidence proving that petitioner **deliberately or willfully** under-remitted its withholding taxes or filed false returns. The records show that the *Memorandum Reports* prepared by the ROs assigned to examine petitioner, as well as the assessments in the PAN, FAN/FLD and FDDA, primarily relied on the findings of the COA. Yet, respondent neither called a COA representative to validate the COA report and testify on the accuracy of its figures nor offered the report itself as evidence. Thus, the withholding tax assessment against petitioner lacks both factual and legal basis, and respondent's allegations that

[83] Exhibit "P-2" and "P-7", Docket, p. 110 and p. 144.
[84] Docket, p. 569, Respondent's Memorandum, par. 22.

petitioner filed false returns or failed to file returns for undeclared CWTs are likewise unfounded.

The 10-year prescriptive period also requires strict compliance with ***due process***. As clarified in *McDonald's*, the following requirements must be observed:

> *ii.* ***Due Process Requirements***
>
> (1) *First* Due Process Requirement. The *assessment notice* issued to the taxpayer must clearly state the following:
>
> (a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and
>
> (b) the bases of allegations of falsity or fraud, *e.g.*, ...
>
> (2) *Second* Due Process Requirement. The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied. [*Emphasis supplied*]

As regards the ***first*** requirement, the Court notes that respondent indicated in the FAN/FLD and the FDDA that the 10-year prescriptive period was being applied and that a 50% surcharge was imposed on the withholding tax assessments for taxable years 2012 and 2013 due to petitioner's alleged willful neglect to file returns. However, respondent failed to support these allegations with *clear and convincing* evidence. Moreover, the Court finds that petitioner timely filed its withholding tax remittance returns for TYs 2012 and 2013 using the appropriate forms: BIR Form 1601-C for withholding tax on compensation, BIR Form 1601-E for expanded withholding tax, and BIR Form 1600 for withholding value-added taxes and other percentage taxes, as will be discussed in detail later.

Anent the ***second*** requirement, the Supreme Court discussed in *Mcdonald's*:

> Second, **they are likewise proscribed from adopting a position inconsistent with the invocation of the extended period** or that which will mislead the taxpayer and prejudice its defense (Second Due Process Requirement).

> In the past, the Court regarded the following acts performed by the tax authorities as contradictory to the application of the 10-year prescriptive period: (a) prior execution of waivers meant to extend the basic three-year period (Inquirer); (b) hasty issuance of an assessment notice in order to meet the basic three-year deadline (i.e., one day before the last day of the three-day prescriptive period, as in Unioil). [*Emphasis supplied; citations omitted.*]

Indeed, respondent must not mislead the taxpayer regarding the applicable prescriptive period.

Here, the records reveal that on April 30, 2019, petitioner initially received an undated NIC which imposed a 50% surcharge for both TYs 2012 and 2013. On September 30, 2019, petitioner received the PAN, which also reflected a 50% surcharge, [85] however, the actual amounts imposed were equivalent to only 25% of the basic tax due.[86] This aligned with the initial recommendation of ROs Bernardo, Legaspi, and GS Amalia S. Canlas to impose a 25% surcharge. Eventually, on January 16, 2020, respondent issued the FAN/FLD, reinstating the 50% surcharge. These inconsistent actions, which reflect the BIR's uncertainty and indecision regarding whether a 25% or 50% surcharge should apply, misled petitioner and prejudiced its defense, as noted in *McDonald's*.

Such inconsistency is fatal to respondent's invocation of the 10-year prescriptive period.

Given these circumstances, the Court concludes that the 10-year prescriptive period does not apply.

The Court now determines whether the assessment was made within the ordinary three-year prescriptive period under Section 203 of the NIRC of 1997, as amended.

First, the deadline for filing remittance returns for withholding tax on compensation, [87] expanded withholding tax,[88] and withholding value-added tax[89] falls on the 10th day following the end of the month in which the withholding was made. However, for withholding tax on compensation for the

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[85] *Supra* note 9.
[86] *Supra* note 8, at par. 14.
[87] Revenue Regulation (RR) No. 2-1998, sec. 2.81.
[88] *Id.* at sec. 2.58(2)(a).
[89] *Id.* at sec. 4.114.

month of December, the deadline is set on January 15 of the following year.[90]

Second, an assessment is considered made only when the assessment notice has been released, mailed, or sent to the taxpayer.[91] Further, Sections 203 and 222 of the NIRC of 1997, as amended, made clear that the assessment contemplated refers to the service of the FAN/FLD upon the taxpayer.[92]

Third, as established, petitioner filed its remittance returns for the taxable periods covered by the instant assessment. Specifically, petitioner filed its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form 1601-C), Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form 1601-E), and the Monthly Remittance Return of Value-Added Taxes and other Percentage Taxes Withheld (BIR Form 1600):

Taxable Period 2012	**BIR Form 1601-C**	**BIR Form 1601-E**	**BIR Form 1600**
January	Exhibit "P-8"	Exhibit "P-32"	Exhibit "P-56"
February	Exhibit "P-9"	Exhibit "P-33"	Exhibit "P-57"
March	Exhibit "P-10"	Exhibit "P-34"	Exhibit "P-58"
April	Exhibit "P-11"	Exhibit "P-35"	Exhibit "P-59"
May	Exhibit "P-12"	Exhibit "P-36"	Exhibit "P-60"
June	Exhibit "P-13"	Exhibit "P-37"	Exhibit "P-61"
July	Exhibit "P-14"	Exhibit "P-38"	Exhibit "P-62"
August	Exhibit "P-15"	Exhibit "P-39"	Exhibit "P-63"
September	Exhibit "P-16"	Exhibit "P-40"	Exhibit "P-64"
October	Exhibit "P-17"	Exhibit "P-41"	Exhibit "P-65"
November	Exhibit "P-18"	Exhibit "P-42"	Exhibit "P-66"
December	Exhibit "P-19"	Exhibit "P-43"	Exhibit "P-67"

Taxable Period 2013	**BIR Form 1601-C**	**BIR Form 1601-E**	**BIR Form 1600**
January	Exhibit "P-20"	Exhibit "P-44"	Exhibit "P-68"
February	Exhibit "P-21"	Exhibit "P-45"	Exhibit "P-69"
March	Exhibit "P-22"	Exhibit "P-46"	Exhibit "P-70"
April	Exhibit "P-23"	Exhibit "P-47"	Exhibit "P-71"
May	Exhibit "P-24"	Exhibit "P-48"	Exhibit "P-72"
June	Exhibit "P-25"	Exhibit "P-49"	Exhibit "P-73"
July	Exhibit "P-26"	Exhibit "P-50"	Exhibit "P-74"
August	Exhibit "P-27"	Exhibit "P-51"	Exhibit "P-75"
September	Exhibit "P-28"	Exhibit "P-52"	Exhibit "P-76"
October	Exhibit "P-29"	Exhibit "P-53"	Exhibit "P-77"
November	Exhibit "P-30"	Exhibit "P-54"	Exhibit "P-78"
December	Exhibit "P-31"	Exhibit "P-55"	Exhibit "P-79"

[90] *Id.* at sec. 2.81, as amended by RR No. 6-2001.
[91] *CIR v. Pascor Realty & Development Corp.*, G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division].
[92] *CIR v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division].

Based on petitioner's returns and the preceding discussion, the Court now determines whether respondent's right to assess has already prescribed:

Taxable Period 2012	**Date of Filing of Withholding Tax Returns**	**Last Day to File Return**	**Last Day to Assess**
January	February 9, 2012	February 10, 2012	February 10, 2015
February	March 9, 2012	March 12, 2012	March 12, 2015
March	April 3, 2012	April 10, 2012	April 10, 2015
April	May 9, 2012	May 10, 2012	May 11, 2015
May	June 8, 2012	June 11, 2012	June 11, 2015
June	July 10, 2012	July 10, 2012	July 10, 2015
July	August 10, 2012	August 10, 2012	August 10, 2015
August	September 7, 2012	September 10, 2012	September 10, 2015
September	October 8, 2012	October 10, 2012	October 12, 2015
October	November 9, 2012	November 12, 2012	November 12, 2015
November	December 5, 2012	December 10, 2012	December 10, 2015
December	January 8, 2013	January 10, 2013; January 15, 2013 (for BIR Form 1601-C)	January 11, 2016; January 15, 2016 (for BIR Form 1601-C)

Taxable Period 2013	**Date of Filing of Withholding Tax Returns**	**Last Day to File Return**	**Last Day to Assess**
January	February 8, 2013	February 11, 2013	February 11, 2016
February	March 7, 2013	March 11, 2013	March 11, 2016
March	April 8, 2013	April 10, 2013	April 11, 2016
April	May 9, 2013	May 11, 2013	May 11, 2016
May	June 7, 2013	June 10, 2013	June 10, 2016
June	July 10, 2013	July 10, 2013	July 11, 2016
July	August 8, 2013	August 12, 2013	August 12, 2016
August	September 4, 2013	September 10, 2013	September 12, 2016
September	October 8, 2013	October 10, 2013	October 10, 2016
October	November 7, 2013	November 11, 2013	November 11, 2016
November	December 6, 2013	December 10, 2013	December 12, 2016
December	January 10, 2014	January 10, 2014; January 15, 2014 (for BIR Form 1601-C)	January 10, 2017; January 15, 2017 (for BIR Form 1601-C)

Considering that the FAN/FLD was issued only on **January 16, 2020**,[93] - more than three years after the latest allowable period to assess i.e., January 15, 2017, has lapsed - the Court finds that respondent's right to assess petitioner for deficiency withholding taxes for TYs 2012 and 2013 has prescribed.

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93 *Supra* note 12.

As respondent's right to assess petitioner has already prescribed, the Court need not address the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.

Accordingly, the Formal Letter of Demand and Final Assessment Notice No. 33-2010 to 2013-87730-19-340 (WT) issued on January 16, 2020, are **CANCELLED** and **SET ASIDE.** Furthermore, the Final Decision on Disputed Assessment issued on June 10, 2021, assessing petitioner Commission on Elections for deficiency withholding taxes covering taxable years 2012 and 2013 are **REVERSED** and **SET ASIDE**.

Further, respondent is **ENJOINED and PROHIBITED** from enforcing the collection of the subject deficiency taxes.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
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