REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AMPARO SHIPPING CORPORATION, *Petitioner,*	**CTA Case No. 9387**
-versus-	Members: **CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 28 2019 2:N p.m.

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DECISION

MANAHAN, J.:

The case involves a Petition for Review filed by Amparo Shipping Corporation to seek the cancellation and setting aside of the Final Decision on Disputed Assessment (FDDA) which held that petitioner is liable to pay the alleged deficiency taxes specifically income tax; value-added tax (VAT) and expanded withholding tax (EWT) in the aggregate amount of ₱16,879,047.24 for taxable year (TY) ended December 31, 2011.

FACTS

Petitioner Amparo Shipping Corporation is a corporation duly organized and existing under Philippine laws with principal office located at 14 Plaridel St., Ermita, Cebu City.[1] Pursuant to its Articles of Incorporation, petitioner is engaged in the general business of domestic shipping, ownership and

[1] Paragraph 1, Joint Stipulation of Facts and Issues (JSFI), Court Docket, Volume II, page 640.

operation of vessels of any class, type or description for domestic trade and to charter in and of any such vessel.[2] It is also registered with the Bureau of Internal Revenue (BIR), with Tax Identification No. 004-983-428-00.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 5, 2013, OIC-Assistant Regional Director Hermeno A. Palamine issued a Letter of Authority (LOA) to authorize the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2011 to December 31, 2011.[4]

On October 9, 2014, petitioner, through its President, Mr. Andrew G. Lau, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code[5] ("first waiver" for brevity), extending the period to assess deficiency taxes for TY 2011 until December 31, 2015.

On May 21, 2015, respondent issued the Preliminary Assessment Notice (PAN)[6], assessing petitioner for deficiency taxes in the total amount of ₱16,380,254.19.

On September 18, 2015, petitioner received the Formal Letter of Demand (FLD) and the Final Assessment Notice (FAN) issued on August 24, 2015 by Hermeno A. Palamine, Regional Director of Revenue Region No. 13, reiterating the alleged deficiency tax liabilities of petitioner for TY 2011.[7]

Petitioner then filed its protest to the Formal Letter of Demand on October 15, 2015.

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[2] Paragraph 5, JSFI, Court Docket Volume II, page 641.
[3] Paragraph 6, JSFI, Court Docket, Volume II, page 641.
[4] Par. 7, JSFI, Court Docket, Volume II, p. 641.
[5] Exhibit "R-5", BIR Records, p. 397.
[6] Exhibit "R-7", BIR Records, pp. 461-462.
[7] Par. 8, JSFI, docket, vol. II, p. 641.

On December 11, 2015, petitioner, through Alan Lau, executed another Waiver of the Defense of Prescription under the Statute of Limitations of the 1997 NIRC[8] ("second waiver" for brevity), extending the period to assess until December 31, 2016.

Petitioner received the Final Decision on Disputed Assessment[9] ((FDDA) dated May 17, 2016 on June 14, 2016, reiterating respondent's assessment of deficiency taxes, interest, and compromise penalties for TY 2011 in the total amount of ₱16,879,047.24.

On July 14, 2016, petitioner filed its Petition for Review before this Court, praying for the cancellation of the deficiency tax liabilities detailed in the FDDA.

Respondent filed his Answer[10] on August 9, 2016, interposing the following special and affirmative defenses, and we quote:

> **"THE ASSESSMENT AGAINST PETITIONER IS VALID AND ISSUED PURSUANT TO A VALID LETTER OF AUTHORITY.**
>
> 5. Petitioner argued that the assessment is void for lack of authority to conduct the same.
>
> 6. A perusal of the original copy of the LOA in the BIR Records specifically states, viz:
>
>> "xxxx is/are authorized to examine your books of accounts and other accounting records for <u>ALL INTERNAL REVENUE TAXES</u> INCLUDING DOCUMENTARY STAMP TAX (DS), OTHER TAXES (MISCELLANEOUS TAX) (OTH) for the period from <u>January 1, 2011 to December 31, 2011</u> pursuant to SEC. 6(A) & SEC. 10 (C) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

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[8] Exhibit "R-9", BIR Records, p. 537.
[9] Exhibits "P-5" and "P-5-1", BIR Records, pp. 572-574.
[10] Court Docket, vol. I, pp. 96-108.

7. The pertinent LOA was issued to authorize the audit examination of petitioner for only one taxable period which is January 1, 2011 to December 31, 2011. Clearly, there was a proper grant of authority for the revenue officers to conduct the audit of petitioner's books of accounts and other accounting records.

8. Moreover, petitioner never questioned the validity of the Letter of Authority nor the authority of the revenue officers who conducted the audit investigation in its reply to the Preliminary Assessment Notice (PAN) nor in its protest to the Formal Letter of Demand (FLD).

RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR TAXABLE YEAR 2011 DID NOT PRESCRIBE.

9. Petitioner alleged that respondent's right to assess petitioner's taxes for taxable year 2011 has prescribed pursuant to the three (3) year limitation period provided for under Section 203 of the NIRC.

10. Petitioner's contention is bereft of merit.

11. True as it may that Section 203 provides for such limitation, however, petitioner failed to consider that such provision is not without exception. Section 222 of the NIRC provides:

xxx xxx xxx

12. Petitioner's taxable year subject of assessment is that of taxable year 2011. Thus, pursuant to Section 203 of the NIRC respondent only has three (3) years from the date prescribed by law for the filing of the return for the applicable tax to make its assessment if it does not fall within the exceptions provided under Section 222.

13. Assuming arguendo that petitioner regularly filed its Tax Returns for taxable year 2011 within the period required by law, respondent interposes that his right to assess petitioner for deficiency income taxes did not prescribe.

14. On October 9, 2014, Mr. Andrew G. Lau, petitioner's duly authorized representative, executed a waiver ("first waiver") of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2011 under 31 December 2015.

15. On 11 December 2015, before the first waiver loses its validity, petitioner's authorized signatory executed another waiver ("second waiver") of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2011 until 31 December 2016.

16. The period of limitation (three years) does not also apply squarely to petitioner's liability for Value-Added Tax (VAT).

17. Section 222 (a) of the Tax Code which specifically provides:

xxx xxx xxx

18. In the instant case, audit of petitioner disclosed that petitioner failed to declare its correct sales subject to VAT for the year 2011. Careful perusal of the Final Decision on Disputed Assessment reveals that there were undeclared sales in the amount of P12,776,857.97 from reconciliation.

19. The Honorable Supreme Court in the case of *Aznar vs. CTA*, had the occasion to define fake or fraudulent return in this wise:

xxx xxx xxx

20. Since the correct sales of petitioner did not appear in its VAT returns, there can only be one inevitable conclusion – that there was a **substantial under-declaration** of sales in its VAT returns.

21. To reiterate, a false return implies **deviation from the truth, whether intentional or not**. Although the Aznar case distinguishes what constitute "false returns" referring to mistake, carelessness or ignorance, from that of "fraudulent returns" referring to intent to evade taxes, the same case does not make a distinction as regards the prescriptive period of 10 years. Indeed, in the same case of Aznar, the Supreme Court ruled in favor of the CIR for an extension of 10 year to assess the taxpayer, thus:

xxx xxx xxx

22. It is, therefore clear from the statutory provision in Section 222 of the NIRC of 1997 in the three different case of

(1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time within 10 years after the discovery of the (1) falsity, (2) fraud, (3) omission. The discrepancy of 75.56% in petitioner's return manifests an evident substantial under declaration which eloquently demonstrate the falsity or fraudulence of the VAT returns with an intent to evade the payment of tax. Respondent, could therefore, rightfully invoke Section 222 because her right to assess has not yet prescribed.

23. Finally, petitioner attacked the validity of the waivers it executed by arguing that the waivers do not indicate any similar appearance and acknowledgment by the relevant BIR Officials before a notary public. Considering that the representation or declaration of the BIR's representatives are not notarized, the waivers are not valid and binding.

24. Respondent differs. To emphasize, waivers are executed at the instance of the taxpayer. This means it is petitioner who initiated the execution of the subject waiver and that he merely submits the same to the respondent for acceptance. Thus it is no longer necessary for respondent to appear before a notary public when she accepts the subject waiver. The acknowledgment of the waiver before the notary public is for petitioner to attest that the signatory is duly authorized to execute the same and that the same is his voluntary act.

xxx xxx xxx

PETITIONER IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE WAIVERS IT EXECUTED

27. It is noteworthy to pinpoint petitioner's conduct amounting to false representation or concealment of material facts calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert.

28. Respondent put emphasis that petitioner executed not only one waiver, but two (2) Waivers of Statute of Limitations. This fact alone will prove that if upon the execution of the first waiver, petitioner believed that the same was invalid, it should not have executed the second waiver. It can be deduced from the succeeding acts of petitioner that it was its clear intention to give force and effect to the waivers.

29. Article 1431 of the Civil Code provides that in order that estoppel may apply to the person, to whom representations have been made and who claims the estoppel in his favor **must have relied or acted on such representations.** Article 1431 states that:

xxx xxx xxx

30. On the other hand, Section 2(a) of Rule 131 of the Rules of court, on burden of proof and presumptions, states as follows:

xxx xxx xxx

31. Respondent humbly submits, that by petitioner's acts or representation, and after benefiting from the effects of the waiver of the defense of prescription petitioner should not be the first to impugn the validity of such agreement. Petitioner should not be allowed to profit from its misdoings. Petitioner benefited from the extension of the period to assess pursuant to the waivers it executed. It was allowed to submit the necessary documents in support of its request for reinvestigation. However, despite the ample time given, petitioner failed to comply.

32. Had it been that the parties intended not to extend the Statute of Limitations, petitioner should have not been allowed to submit additional supporting documents in its favor. In the same way, respondent should have issued the FDDA based on already existing audit findings. Based on the foregoing, both parties with all good faith intended that the Statute of Limitations be extended by virtue of the waivers executed. Further, the execution of a subsequent waiver before a prior waiver losses validity is a clear indication of such intention by the parties.

THE ASSESSMENTS HAVE BASES BOTH IN FACT AND IN LAW.

33. Petitioner argued that the deficiency tax assessments imposed upon it for taxable year 2011 should be declared null and void for having been arbitrarily made and lacking factual and legal basis.

34. Respondent strongly submits that the assessments have bases both in fact and in law which can be gleaned from the following discussion.

I. PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX IN THE

TOTAL AMOUNT OF P11,164,543.29 AND THE CORRESPONDING INTEREST AND COMPROMISE PENALTY.

A. Undeclared Sales and Purchases (P12,776,857.97 and P32,062.00)

35. Per Audit Information, Tax Exemption and Incentives Division (AITEID) data, petitioner had undeclared sales and purchases to wit:

xxx xxx xxx

Per investigation, a detailed reconciliation of sales and purchases per data secured from respondent's AITEID and per petitioner's records was made. The under-declaration of purchases resulted to additional gross income of P10,049.23 which was computed using the cost and gross profit ratios per 2011 manual income tax return.

B. Disallowed Compensation (P358,964.97)

36. Compensation claimed per audited financial statements in the total amount of P4,289,278.03 were not duly substantiated as compensation per Alphabetical List of Employees hence, disallowed as deductions from gross income.

C. Undeclared Source of Cash (P36,000.00)

37. There was an undeclared source of cash which resulted from undeclared professional fee. The corresponding unclaimed cost thereof was not allowed as deduction since the withholding tax due thereof was not paid pursuant to Section 2.58.5 of Revenue Regulations 2-98, as amended.

D. Disallowed Depreciation Expense (P2,000,000.00)

38. Re-computation of depreciation expense for the year based on the accumulated depreciation balances as reflected in Note No. 8 in petitioner's financial statement disclosed an excess claim of P2,000,000.00 hence, disallowed as part of the deduction.

II. PETITIONER IS LIABLE FOR DEFICIENCY VAT IN THE AMOUNT OF P5,172,781.68.

E. Additional Gross Income (P10,049.23)

39. The corresponding amount of gross income on the undeclared purchases per reconciliation was subjected to value-added tax.

F. Undeclared Source of Cash (P36,000.00) and Undeclared Sales (P12,776,857.97)

40. The undeclared source of cash from undeclared professional fee and undeclared sales from reconciliation were likewise subjected to value-added tax.

G. Undeclared Collection per Audit (P5,956,040.21)

41. Pursuant to Section 108 of the National Internal Revenue Code, VAT due on sales of services is based on gross receipts for the year. Analysis of the trade accounts receivable per audited financial statements revealed an undeclared collection/gross receipts of P5,956,040.21.

PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX IN THE AMOUNT OF P490,722.27.

H. Income Payments subject to EWT (P46,069,649.80)

42. Being among the Top 10,000 corporations, all purchases of goods and services from regular suppliers must be subjected to expanded withholding taxes. The undeclared professional fee was subjected to EWT. The total EWT due on said income payments amounted to P725,159.41. However, only P443,268.27 was withheld and remitted for the year.

PETITIONER IS LIABLE FOR COMPROMISE PENALTIES

43. A compromise penalty of P50,000.00 was imposed for failure to preserve complete books of accounts required in the conduct of audit/examination as prescribed in Sections 232, 233 and 235 of the NIRC.

44. Another compromise penalty of P1,000.00 was imposed for non-submission of Monthly Alphalist of Payees (MAP) accompanying the BIR Forms 1601-E for the month of December as required in Section 2.58 of RR 2-98, as amended.

45. The 20% interest was imposed pursuant to Section 249(B) of the NIRC.

46. On a final note, the decision of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* can be well use as a guide, to wit:

xxx xxx xxx

85. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671)*. It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality on respondent's actions and assessments.

86. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995)*."

A Notice of Pre-Trial Conference[11] was issued on August 11, 2016, setting the case for pre-trial conference on September 29, 2016. Respondent filed his Pre-Trial Brief[12] on August 31, 2016. Petitioner, however, moved twice for the deferment of the pre-trial conference. Petitioner then filed its Pre-Trial Brief[13] on October 5, 2016.

The pre-trial conference[14] was held on November 24, 2016. The parties submitted their Joint Stipulation of Facts and Issues[15] on December 9, 2016. Subsequently, the Pre-Trial Order[16] approving and adopting the parties' joint stipulations was issued on January 18, 2017 and the pre-trial was deemed terminated.

During trial, petitioner presented Ms. Shirley Aringo Villaraza (petitioner's bookkeeper) and Atty. Rhenier P. Mora

[11] Court Docket, vol. I, p. 110.
[12] Court Docket, vol. I, pp. 112-119.
[13] Court Docket, vol. I, pp. 146-155.
[14] Order, Court Docket, vol. II, p. 615.
[15] Court Docket, vol. II, pp. 640-646.
[16] Court Docket, vol. III, pp. 1115-1119.

(the Court-commissioned Independent CPA) as its witnesses. Petitioner likewise filed its Formal Offer of Evidence on June 5, 2017, consisting of Exhibits "P-1" to "P-73-1", inclusive of submarkings. The Court admitted all of petitioner's formally offered documentary exhibits, except for Exhibits "P-60-71" to "P-60-74" and "P-60-76 to "P-60-97".

On the other hand, respondent presented Revenue Officer Romela M. Cortes as his lone witness. Respondent filed his Formal Offer of Evidence on April 26, 2018, consisting of Exhibits "R-1" to "R-11". The Court admitted all of respondent's formally offered documentary exhibits via Resolution dated May 24, 2018.

The Court declared the case deemed submitted for decision on July 30, 2018, considering petitioner's Memorandum [17] filed on July 23, 2018 and respondent's Memorandum[18] filed on June 26, 2018.

Hence, this Decision.

ISSUES

The parties submitted the following issues for the Court's resolution:

For Petitioner:[19]

A. Whether the assessment is void as there is no valid issuance of Letter of Authority ("LOA").

B. Whether the assessment is void for failure to comply with the due process requirement of the Tax Code.

C. Whether the assessment for the alleged petitioner's deficiency income tax, value-added tax, and withholding tax for the TY 2011 is null and void as it lacks factual and legal bases, as

[17] Docket, vol. IV, pp. 1920-1955.
[18] Docket, vol. IV. pp. 1899-1914.
[19] Summary Statement of Issues, Petitioner's Pre-Trial Brief, docket, vol. I, pp. 149-150.

required by Section 228 of the Tax Code of 1997, as amended.

D. Whether the respondent's right to assess petitioner's alleged deficiency tax liabilities for TY 2011 has already prescribed.

E. Whether the waivers did not validly extend the original three-year prescriptive period to assess petitioner's internal revenue taxes for TY 2011.

F. Whether no deficiency interest should be imposed on the value-added tax and expanded withholding tax.

G. Whether the petitioner is not liable for the alleged deficiency income tax.

H. Whether the petitioner is not liable for the alleged deficiency value added tax.

I. Whether the petitioner is not liable for the alleged deficiency expanded withholding tax.

J. Whether the petitioner is not liable for the alleged compromise penalty.

For Respondent:[20]

1. Whether or not respondent's right to assess petitioner has prescribed.

2. Whether or not petitioner is liable for the following deficiency taxes:

   a) Income Tax in the amount of ₱11,164,543.29;
   b) Value-Added Tax in the amount of ₱5,172,781.68; and

[20] Issues to be Tried or Resolved, Respondent's Pre-Trial Brief, Court Docket, vol. I, pp. 114-115.

c) Expanded Withholding Tax in the amount of ₱490,722.27.

Petitioner's Arguments:

Petitioner initially focuses its argument on the validity of the deficiency assessment issued by respondent.

First, it asserts that the tax deficiency assessment issued by respondent for TY 2011 is void because there was no valid issuance of an LOA as prescribed under Section 10 of the 1997 NIRC, as amended. Since the LOA was only issued by Officer in-Charge (OIC)-Assistant Regional Director Hermeno A. Palamine of Revenue Region No. 13 and not by the Regional Director of Revenue Region No. 13, said LOA was invalid and any assessment issued pursuant to such invalid authority was therefore void.

Second, the issuance of the assessment failed to comply with the due process requirements laid down in Section 228 of the 1997 NIRC and Revenue Regulations (RR) No. 12-99, as amended by RR 18-2013.

Third, the subject assessment notices failed to state the facts and the law on which the assessment is made hence should be rendered void.

Petitioner goes on to challenge the timeliness of the issuance of the assessment and submits that respondent's right to assess has already prescribed. This assertion stems from the premise that the waiver of the statute of limitations which should have extended the three (3) year prescriptive period failed to comply with the requirements provided under Revenue Memorandum Order No. (RMO) No. 20-90. As such, the defective waiver did not have the effect of extending respondent's right to assess beyond the three (3) year period.

On the substantive aspect of the assessment, petitioner argues that the deficiency interest should not have been imposed on its alleged VAT and withholding tax deficiencies because Section 249 (B) of the 1997 NIRC applies only to income tax; estate tax and donor's tax in relation to Sections 56 (B), 93 and 104 of the same Code.

As to the income tax assessment, petitioner insists that the deficiency assessment was a result of respondent's mis-appreciation of the facts and the documents involved in the case.

resulting to an erroneous computation of its income tax liabilities.

Petitioner also disagrees with the factual and legal bases of the VAT and EWT assessment which again resulted to an alleged erroneous computation of its VAT and EWT liabilities.

Lastly, petitioner asserts that it is not liable to pay compromise penalty since such was imposed by respondent for its alleged failure to submit complete books of accounts and the monthly alphalist of payees. Considering that it was able to submit all the aforesaid supporting documents requested by the respondent during the investigation, petitioner contends that the compromise penalty should not have been imposed.

Respondent's Counter-Arguments:

Respondent maintains that the assessment was issued pursuant to a valid LOA as can be clearly seen from the wordings of the said LOA. Respondent calls attention to the fact that the LOA was issued for only one taxable period from January 1, 2011 to December 31, 2011 and that the revenue officers named therein had the proper authority to conduct audit of petitioner's books of accounts and other accounting records. Further, respondent manifests that petitioner never questioned the validity of the LOA nor the authority of the revenue officers who conducted the audit in its response to the Preliminary Assessment Notice (PAN) nor in its protest to the Formal Letter of Demand (FLD) hence the principle of estoppel should prevent petitioner from questioning the validity of the LOA.

Respondent also stands by the validity of the waiver executed between both parties. He alleges that petitioner's duly authorized representative executed a first waiver extending the period to assess deficiency taxes for taxable year 2011 until December 31, 2015. This was further extended by the execution of a second waiver extending the period to assess until December 31, 2016. Thus, respondent belittles the contention of petitioner that his right to assess tax liabilities for taxable year 2011 has already prescribed. Also, the elements of falsity and fraud exist to serve as an exception to the three (3) year period to assess as provided under Section 222 of the 1997 NIRC, as amended. Further, respondent invokes the principle of estoppel illustrated by the fact that petitioner not only executed one waiver but two waivers which shows quite clearly its intention to give force and effect to the waivers. It cannot now challenge the validity of the waiver which it freely entered into and even executed twice for the same taxable year.

As to the substantive aspect of the tax assessments, respondent emphasizes that they were issued with firm legal and factual support hence disputing petitioner's assertions in its Petition for Review.

RULING OF THE COURT

Jurisdiction of the Court of Tax Appeals

At the outset, it is imperative to determine the timeliness of the filing by the petitioner of its administrative and judicial appeals as this is determinative of this Court's jurisdiction.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[21] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[22] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[23]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[24] The jurisdiction of the CTA regarding internal revenue tax refund is provided under Section 7(a)(1) and (2) of Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, which states:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[21] Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue, G.R. No. 185666, February 4, 2015, citing Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Appeals, G.R. No. L-23999, January 2, 1968.
[22] Carmen Danao Malana, et.al. vs. Benigno Tappa, et.al., G.R. No. 181303, September 17, 2009 quoting Laresma vs. Abellana, 484 Phil 766.
[23] *Supra*, Note No. 35.
[24] Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.), G.R. No. 169778, March 12, 2014.

(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 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 relations 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*)

Similarly, Section 3(a)(1) and (2) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division 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;

On the other hand, Section 228 of the 1997 NIRC, as amended, governs the periods in filing administrative and judicial protests, 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."

Pursuant to the aforequoted Section 228 of the 1997 NIRC, as amended, petitioner has thirty (30) days from receipt of the FLD/FAN within which to file its administrative protest and another thirty (30) days from receipt of respondent's decision, or from the lapse of one hundred eighty (180)-day period from submission of documents within which to file its Petition for Review with the Court of Tax Appeals.

The records and evidence show that on August 24, 2015, respondent through its Regional Director issued a Formal Letter of Demand with accompanying Details of Discrepancies and Final Assessment Notices (FAN) for income tax, VAT and EWT pertaining to taxable year 2011.[25] These were received by petitioner on September 18, 2015.[26]

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[25] Exhibit "P-4", Court Docket, pp. 228-239; paragraph 8, JSFI, Court Docket, Volume II, page 641.
[26] Paragraph 8, JSFI, Court Docket, Volume II, page 641.

On October 15, 2015, petitioner filed a protest letter against the subject FLD and FANs.[27]

On June 14, 2016, petitioner received a Final Decision on Disputed Assessment (FDDA) dated May 17, 2016[28] which reiterated the deficiency taxes for 2011 and demanded its payment with penalties and interests plus compromise penalties in the total amount of Php16,879,047.24 for taxable year 2011.

On July 14, 2016, petitioner filed its Petition for Review with the Court.

Counting thirty (30) days from June 14, 2016, petitioner had until July 14, 2016 within which to file its Petition for Review, thus was filed within the 30-day prescriptive period and is considered timely filed.

With regard to the technical or due process requirements asserted by petitioner beginning with the validity of the subject LOA, we find for the petitioner.

Petitioner asserts that the FLD and the assessments issued by respondent for TY 2011 are void because there was no valid issuance of LOA as prescribed under Section 10 of the 1997 NIRC, as amended. Since the LOA was only issued by OIC-Assistant Regional Director Hermeno A. Palamine of Revenue Region No. 13 and not by the Regional Director of Revenue Region No. 13, said LOA was invalid and any assessment issued pursuant to such invalid authority was therefore void.

We agree.

Section 10(c) of the 1997 NIRC, as amended, provides:

> "SEC. 10. *Revenue Regional Director.* – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
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> xxx xxx xxx

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[27] Exhibit "P-6", Court Docket, pp.240-244.
[28] Exhibit "P-5", Court Docket, pp.237-239.

(c) **Issue Letters of Authority for the examination of taxpayers within the region;"** (emphasis supplied)

The BIR officials aside from the Regional Directors who are authorized to sign the LOA are provided in Revenue Memorandum Order (RMO) No. 43-90 and we quote:

D. Preparation and issuance of L/As

xxx xxx xxx

4. **For the proper monitoring and coordination of the issuance of the Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority, but only upon prior authorization by the Commissioner himself."** (emphasis supplied)

It is clear from the foregoing and as a general rule, only the Regional Directors, the Deputy Commissioners and the Commissioner himself have the requisite authority to sign LOAs. Revenue officials other than the three aforementioned may sign the LOAs but only upon prior authorization by the CIR.

It can be gleaned from the records of this case that the LOA issued to petitioner to commence the audit investigation for TY 2011 was signed and issued by OIC-Assistant Regional Director Hermeno A. Palamine. There is no proof, however, that he was clothed with delegated authority to sign and issue the said LOA in the absence of the Regional Director. Notably, respondent did not pose any counter-argument to petitioner's assertions or offered a Revenue Delegation Authority Order as evidence of the delegated authority.

The fact that OIC-Assistant Regional Director Hermeno A. Palamine subsequently became the Regional Director of Revenue Region No. 13 did not cure the defect in the LOA. The validity of the LOA should be reckoned from the time of its issuance.

Considering that the official who signed the LOA was not authorized to do so, the LOA covering the audit investigation of petitioner's books of accounts for TY 2011 is void. Consequently, the deficiency tax assessment is likewise void.

The Supreme Court in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[29] emphasized the importance of the LOA to satisfy the due process requirement, and we quote:

> "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:
>
> > **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. xxx
>
> 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. xxx

From the foregoing, the Court finds no need to discuss the issue of non-revalidation of the LOA raised by petitioner since the LOA is void *ab initio* for want of authority of the officer who signed the same.

In addition to the defective LOA, this Court finds that the waivers were likewise defective and the right of respondent to

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[29] G.R. No. 222743, April 5, 2017.

assess petitioner's tax liabilities for TY 2011 had already prescribed.

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

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

In relation thereto, Sections 77(B) and 114(A) of the NIRC of 1997, as amended, provide the time for filing of the income tax and VAT returns, thus:

> SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed **on or before the fifteenth (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. (emphasis supplied)
>
> 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. (Emphasis supplied)

Further, pursuant to Revenue Regulations (RR) No. 26-2002[30], taxpayers classified under group A, such as herein petitioner, are required to file the Monthly Withholding Tax Returns within fifteen (15) days following the end of the month.

Applying the foregoing, the dates pertinent to the subject deficiency tax assessments for TY 2011 are as follows:

Period	Exhibit[31] (Returns)	Last day to file	Date of filing	Last day to assess	Date of receipt of FLD
Annual Income Tax Return					
CY 2011	P-8	Apr. 16, 2012[32]	Apr. 16, 2012	Apr. 16, 2015	Sept. 18, 2015
Quarterly VAT Returns					
1st Qtr of 2011	P-9	Apr. 25, 2011	Apr. 20, 2011	Apr. 25, 2014	Sept. 18, 2015
2nd Qtr of 2011	P-10	Jul. 25, 2011	Jul. 25, 2011	Jul. 25, 2014	
3rd Qtr of 2011	P-11	Oct. 25, 2011	Oct. 25, 2011	Oct. 25, 2014	
4th Qtr of 2011	P-12	Jan. 25, 2012	Jan. 25, 2012	Jan. 25, 2015	
EWT Returns					
January 2011	P-13	Feb. 15, 2011	Feb. 15, 2011	Feb. 15, 2014	Sept. 18, 2015
February 2011	P-14	Mar. 15, 2011	Mar. 15, 2011	Mar. 15, 2014	
March 2011	P-15	Apr. 15, 2011	Apr. 15, 2011	Apr. 15, 2014	
April 2011	P-16	May 16, 2011[33]	May 14, 2011	May 16, 2014	
May 2011	P-17	Jun. 15, 2011	Jun. 11, 2011	Jun. 15, 2014	
June 2011	P-18	Jul. 15, 2011	Jul. 15, 2011	Jul. 15, 2014	
July 2011	P-19	Aug. 15, 2011	Aug. 15, 2011	Aug. 15, 2014	
August 2011	P-20	Sept. 15, 2011	Sept. 14, 2011	Sept. 15, 2014	
September 2011	P-21	Oct. 17, 2011[34]	Oct. 14, 2011	Oct. 17, 2014	
October 2011	P-22	Nov. 15, 2011	Nov. 15, 2011	Nov. 15, 2014	
November 2011	P-23	Dec. 15, 2011	Dec. 15, 2011	Dec. 15, 2014	
December 2011	P-24	Jan. 16, 2012[35]	Jan. 14, 2012	Jan. 16, 2015	

[30] SUBJECT: Amending Further Revenue Regulations No. 9-2001, as amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.
[31] Docket, vol. III, pp. 1272-1347.
[32] April 15, 2012 fell on a Sunday.
[33] May 15, 2011 fell on a Sunday.
[34] October 15, 2011 fell on a Saturday.
[35] January 15, 2012 fell on a Sunday.

Based on the above table, it is clear that the deficiency tax assessments for TY 2011 under the FLD and the FAN both dated August 24, 2015 were issued beyond the three-year prescriptive period mandated in Section 203 of the NIRC of 1997, as amended.

However, the three-year prescriptive period may be extended by agreement of the parties, pursuant to Section 222(b) of the NIRC of 1997, as amended, which states:

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

Corollary thereto, Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001 lay down the following procedures for the proper execution of the waiver:

> "1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after __ 19 _", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and

> agreed to the waiver. **The date of such acceptance by the BIR should be indicated.** However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."[36] "(Emphasis supplied)

In the case of *Philippine Journalists, Inc. vs Commissioner of Internal Revenue*[37], the High Court emphasized the need for strict compliance with the requirements provided in RMO No. 20-90, in the following manner:

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

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[36] *Commissioner of Internal Revenue vs Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010; *Commissioner of Internal Revenue vs. Standard Chartered Bank,* G.R. No. 192173, July 29, 2015.

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

Petitioner and respondent executed two waivers covering petitioner's internal revenue taxes for TY 2011, with the following details:

	Exhibit No.	Date of Execution	Date of Acceptance by BIR	Period Extended until
1st waiver	P-25[38]	Oct. 9, 2014	**None**	Dec. 31, 2015
2nd waiver	P-26[39]	Dec. 11, 2015	Dec. 22, 2015	Dec. 31, 2016

Based on records, petitioner's copy of the first waiver, which was offered to and admitted by the Court as evidence for petitioner, does not indicate the date of acceptance by respondent.

On the other hand, respondent's copy of the first waiver[40], which was offered to and admitted by the Court as evidence for respondent, indicated "10/10/14" as the date of acceptance by respondent. However, a Memorandum[41] dated March 27, 2015 issued by Regional Director Hermeno A. Palamine to Group Supervisor (GS) Ramon M. Cabarron/Revenue Officer (RO) Romela M. Cortes reveals the former's knowledge of the absence of the date of acceptance on such waiver as he instructed GS Cabarron/RO Cortes, among others, to "12) Please indicate in the duly executed waiver the date of acceptance by the RDO, otherwise, the same shall be considered invalid".

From the foregoing, it can be deduced that respondent was aware that there was indeed no date of acceptance on the said waiver; that the failure to indicate the same makes the waiver invalid; and that the instruction on the Memorandum issued by Regional Director Palamine was a belated attempt to rectify the waiver's infirmity.

In the case of *Commissioner of Internal Revenue vs. FMF Development Corporation*[42], the Supreme Court ruled that the waiver executed by the taxpayer was defective and did not validly extend the original three-year prescriptive period for the reason, among others, that the waiver did not contain the date of acceptance by the Commissioner of Internal Revenue, which

[38] Docket, vol. III, p. 1348.
[39] Docket, vol. III, p. 1350.
[40] Exhibit "R-5" for Respondent, BIR Records, p. 397.
[41] BIR Records, p. 446.
[42] G.R. No. 167765, June 30, 2008.

is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.

Following RMO No. 20-90 and established jurisprudence, the first waiver executed on October 9, 2014 is invalid and not binding for failure to indicate respondent's date of acceptance therein. Likewise, the execution of the second waiver bears no fruit. As such, the three-year prescriptive period for respondent to assess taxes was not extended.

Therefore, the FLD and the FAN both dated August 24, 2015 and received by petitioner on September 18, 2015 are void for being issued beyond the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended. Consequently, the FDDA dated May 17, 2016, which sprung from the void FLD and FAN, is likewise void and should be set aside.

As to respondent's argument that the three-year period of limitation does not apply to petitioner's VAT liability, we find such contention bereft of merit and hold that there was no substantial under-declaration of sales to warrant the application of the ten-year prescriptive period for the deficiency VAT.

Section 222(a) of the 1997 NIRC, as amended, states:

> "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."

In relation thereto, Section 248(B) of the same Code, provides that:

> "SEC. 248. *Civil Penalties.* –
>
> xxx xxx xxx

> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* That a **substantial underdeclaration of taxable sales, receipts or income**, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return,** and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, **shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income** or for overstatement of deductions, as mentioned herein." *(Emphasis supplied)*

Pursuant to the above provisions, in case a taxpayer filed a false or fraudulent return, the right of respondent to assess the former for deficiency taxes shall be ten (10) years after the discovery of the falsity or fraud; and that the failure on the part of the taxpayer to report sales, receipts or income in an amount exceeding 30% of what is declared in its returns constitutes substantial under-declaration, which is a *prima facie* evidence of a false return.

In the FDDA, respondent assessed petitioner of deficiency VAT for TY 2011 in the amount of ₱5,172,781.68, inclusive of interest, as shown below:

VATable sales per returns		₱ 59,561,759.61
Add: Undeclared collection per audit	₱5,956,040.21	
Additional gross income on undeclared purchases	10,049.23	
Undeclared sales based on AITEID data & 2307 Forms	12,776,857.97	
Undeclared source of cash	36,000.00	18,778,947.41
Total receipts subject to VAT		₱ 78,340,707.02
Multiply by VAT rate		12%
Output tax due		₱ 9,400,884.84
Less: Input taxes:		
Input tax carried over from previous period	₱ 935,519.19	
Deferred input tax on capital goods exceeding ₱1M	560,836.69	

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Input taxes on current purchases	4,548,867.04	
Additional (standard) input on sales to gov't	134,929.72	
Total	₱6,180,152.64	
Less: Disallowed input on disallowed purchases	818,315.57	
Disallowed input on excess claim per VAT returns	43,041.42	
Input tax carried over to the succeeding year	43,051.46	
Deferred input on capital goods acquisition	378,333.22	4,897,410.97
VAT payable		₱ 4,503,473.87
Less: VAT paid		1,523,572.81
Basic deficiency tax		**₱2,979,901.06**
Add: 20% Interest (01/26/12-09/30/15)		2,192,880.62
Total deficiency tax		**₱5,172,781.68**

Meanwhile, in its Amended Quarterly VAT Returns for TY 2011, petitioner reported an amount of ₱66,986,759.61 total sales/receipts, broken down as follows:

Exhibit No.	Period	VATable Sales/Receipts -Private	Zero-rated Sales/Receipts	Total
P-52-1	1st Qtr	₱ 12,957,394.06	-	₱ 12,957,394.06
P-52-6	2nd Qtr	15,143,574.41	-	15,143,574.41
P-52-12	3rd Qtr	7,261,756.47	₱ 7,425,000.00	14,686,756.47
P-52-18	4th Qtr	24,199,034.67	-	24,199,034.67
Total		**₱59,561,759.61**	**₱7,425,000.00**	**₱66,986,759.61**

Contrary to respondent's claim, neither the alleged undeclared sales based on AITEID data and BIR Forms 2307 in the amount of ₱12,776,857.97 nor the entire adjustment of ₱18,778,947.41 (as highlighted above) made by respondent to petitioner's VATable sales exceed 30% of the sales reflected per VAT returns in the amount of ₱66,986,759.61. The assessed amounts of ₱12,776,857.97 and ₱18,778,947.41 represent only 19.07% and 28.03%, respectively, of the ₱66,986,759.61 sales declared per petitioner's VAT returns.

Evidently, there is no substantial under-declaration of sales, hence, no *prima facie* evidence of false return exists. Therefore, the application of the ten-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended, is unwarranted and that the ordinary three-year prescriptive period applies.

Having found substantial defects in the LOA and in the waivers executed, we see no more reason to delve into the substantive aspects of the assessment.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the FLD and the FANs dated August 24, 2015 are declared **VOID** and are **CANCELLED**, and the FDDA dated May 17, 2016 covering the assessed deficiency taxes against petitioner for TY 2011 in the aggregate amount of ₱16,879,047.24 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
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.

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice