

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

GMA NETWORK FILMS, INC.,

Respondent.

CTA EB No. 2441
(CTA Case No. 9381)

Present:

DEL ROSARIO, PJ,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:

OCT 17 2022

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DECISION

REYES-FAJARDO, J.:

This is a Petition for Review¹ filed by the Commissioner of Internal Revenue (CIR) on March 8, 2021, praying for the reversal and setting aside of the Decision² of the Third Division of this Court (Court in Division) promulgated on June 30, 2020 and Resolution³ of the Court in Division promulgated on January 25, 2021. The respective dispositive portions of the assailed Decision and Resolution read as follows:

¹ Rollo (CTA EB No. 2441), pp. 6-14.

² Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring; Rollo (CTA EB No. 2441), pp. 17-33.

³ Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring; Rollo (CTA EB No. 2441), pp. 34-37.

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Assailed Decision

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject FANs and FLD, all dated June 15, 2015, for deficiency income tax, VAT, and EWT, for CY 2011 in the aggregate amount of ₱11,054,565.66, inclusive of interest, are **CANCELLED and SET ASIDE**.

Assailed Resolution

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision dated June 30, 2020) is **DENIED** for lack of merit.

FACTS

Petitioner CIR is vested with the power to decide disputed assessments and to cancel and abate tax liabilities, under the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations.⁴

Respondent GMA Network Films, Inc. is a corporation organized and existing under the laws of the Republic of the Philippines, with principal place of business at GMA Network Center, EDSA cor. Timog Avenue, Diliman, Quezon City.⁵ It is registered with the Bureau of Internal Revenue (BIR) – Revenue Region No. 7, Revenue District (RDO) No. 39 with Tax Identification Number 004-830-087-000.⁶

On August 23, 2012, petitioner issued Letter of Authority (LOA) No. LOA-039-2012-00000788, authorizing Revenue Officer (RO) Irene Juana Acacio and Group Supervisor (GS) Virgilio Tablizo of RDO No. 39 to examine respondent's books of accounts and other accounting

⁴ Par. 3, Stipulated Facts, JSFI, *Rollo* (CTA Case No. 9381), Vol. I, pp. 595-596.

⁵ Statement of the Case, Pre-Trial Order dated June 21, 2017, *Rollo* (CTA Case No. 9381), Vol. II, p. 767.

⁶ Par. 2, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), *Rollo* (CTA Case No. 9381), Vol. I, p. 595.

records for all internal revenue taxes for calendar year (CY) 2011.⁷ On August 28, 2012, respondent received the LOA.⁸

On May 7, 2014, respondent executed a Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC (Waiver), consenting to the assessment and/or collection of tax or taxes for the subject CY for the period not later than June 30, 2015. On the same date, Revenue District Officer Florante R. Aninag accepted the Waiver.⁹ The Waiver states, in part:

WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE
STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL
REVENUE CODE

I, ROLANDO G. SANICO, JR., Assistant Comptroller of GMA NETWORK FILMS, INC. (FORMERLY CINEMAX STUDIOS, INC.) with address at GMA Network Complex, EDSA corner Timog, Diliman, Quezon City request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation of all our internal liabilities for the year 2011. I hereby waive the defense of prescription under the statute of limitations prescribed in Section 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than June 30, 2015.

...¹⁰

On May 29, 2015, petitioner issued the Preliminary Assessment Notice (PAN) with attached Details of Discrepancies, assessing respondent for deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) for CY 2011 amounting to ₱9,725,766.54.¹¹ On the same date, respondent received the PAN.¹²

On June 15, 2015, petitioner issued the Final Assessment Notices and Formal Letter of Demand (FAN/FLD) with attached Details of

⁷ Par. 4, Stipulated Facts, JSFI, Docket, *Rollo* (CTA Case No. 9381), Vol. I, p. 596.

⁸ Exhibit "P-8", *Rollo* (CTA Case No. 9381), Vol. I, p. 285; Exhibit "R-2", *Rollo* (CTA Case No. 9381), Vol. I, p. 661.

⁹ *Id.*

¹⁰ Boldfacing supplied.

¹¹ Par. 6, Stipulated Facts, JSFI, *Rollo* (CTA Case No. 9381), Vol. I, p. 596.

¹² Exhibit "P-12", *Rollo* (CTA Case No. 9381), Vol. I, pp. 289-291; Exhibit "R-9", *Rollo* (CTA Case No. 9381), Vol. II, pp. 674-676.

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Discrepancies, assessing respondent for deficiency income tax, VAT, and EWT for CY 2011 amounting to ₱9,879,245.42.¹³ On the same date, respondent received the FAN/FLD.¹⁴

On July 14, 2015, respondent filed a Request for Reinvestigation with the BIR.¹⁵ On July 31, 2015, petitioner granted the request,¹⁶ and continued with the tax audit/investigation.¹⁷

On June 7, 2016, respondent received petitioner's Final Decision on Disputed Assessment (FDDA) with attached Details of Discrepancies.¹⁸ The FDDA ordered petitioner to pay deficiency income tax, VAT, and EWT for CY 2011 in the amount of ₱11,054,565.66,¹⁹ as follows:

On July 7, 2016, petitioner filed a Petition for Review with the Court of Tax Appeals.²⁰

On November 25, 2016, petitioner issued the Preliminary Collection Letter.²¹ On December 6, 2016, petitioner issued the Final Notice Before Seizure.²²

On February 2, 2017, a hearing²³ was held due to the filing of respondent's Urgent Motion to Suspend Collection of Taxes on January 27, 2017.²⁴ On February 7, 2017, respondent filed a Formal Offer of Evidence (in support of the Urgent Motion to Suspend Collection of Taxes).²⁵

¹³ Exhibit "P-12", *Rollo* (CTA Case No. 9381), Vol. I, pp. 289-291; Exhibit "R-9", *Rollo* (CTA Case No. 9381), Vol. II, pp. 674-676.

¹⁴ *Id.*

¹⁵ Exhibit "P-14", *Rollo* (CTA Case No. 9381), Vol. II, pp. 1092-1095.

¹⁶ Par. 8, Stipulated Facts, JSFI, *Rollo* (CTA Case No. 9381), Vol. I, p. 596.

¹⁷ Exhibit "P-16", *Rollo* (CTA Case No. 9381), Vol. I, p. 300; "P-22", *Rollo* (CTA Case No. 9381), Vol. II, p. 1144; Exhibit "R-17", *Rollo* (CTA Case No. 9381), Vol. II, p. 689.

¹⁸ BIR Records, pp. 427-429.

¹⁹ Par. 9, Stipulated Facts, JSFI, *Rollo* (CTA Case No. 9381), Vol. I, p. 596; Exhibit "P-3", *Rollo* (CTA Case No. 9381), Vol. I, pp. 145-148; Exhibits "R-19" and "R-20", *Rollo* (CTA Case No. 9381), Vol. II, pp. 691-692; Exhibit "R-1", BIR Records, pp. 426-429.

²⁰ *Rollo* (CTA Case No. 9381), Vol. I, pp. 10-33.

²¹ Exhibit "R-21", BIR Records (Exhibit "R-1"), p. 439.

²² Exhibit "R-22", BIR Records (Exhibit "R-1"), p. 440.

²³ Notice of Hearing dated January 30, 2017, *Rollo* (CTA Case No. 9381), Vol. I, p. 192.

²⁴ *Rollo* (CTA Case No. 9381), Vol. I, pp. 119 to 128.

²⁵ *Rollo* (CTA Case No. 9381), Vol. I, pp. 381-386.

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On April 27, 2017, the Pre-Trial Conference was held.²⁶

On May 5, 2017, the Court granted respondent's Urgent Motion to Suspend Collection of Taxes, subject to the posting of the required bond.²⁷

On May 12, 2017, the parties filed their Joint Stipulation of Facts and Issues (JSFI).²⁸ On June 21, 2017, the Court issued the Pre-Trial Order.²⁹

With the filing of respondent's Compliance on August 18, 2017,³⁰ the Court enjoined the BIR officers and/or employees from collecting from respondent the amount of the subject deficiency taxes, either by distraint, levy, or otherwise by any other means provided for by law, until further orders from the Court.³¹

During trial, respondent presented its documentary evidence and the testimonies of the following witnesses, namely: (1) Neil U. Sison,³² the Court-commissioned Independent Certified Public Accountant (ICPA),³³ and (2) Joan C. Rumbaoa,³⁴ respondent's Unit Head-Shared Services.

On January 4, 2018, respondent filed its Formal Offer of Evidence.³⁵ Petition did not file any comment/opposition thereto.³⁶

In the Resolution dated March 23, 2018,³⁷ the Court admitted respondent's documentary evidence, except for Exhibits "P-30-I-2-1" to "P-30-I-2-2", for not being found in the records of the case.

²⁶ Order dated February 7, 2017, *Rollo* (CTA Case No. 9381), Vol. I, p. 379.

²⁷ Resolution dated May 5, 2017, *Rollo* (CTA Case No. 9381), Vol. I, pp. 587-594.

²⁸ JSFI, *Rollo* (CTA Case No. 9381), Vol. I, pp. 595-611.

²⁹ Pre-Trial Order, *Rollo* (CTA Case No. 9381), Vol. II, pp. 767-778.

³⁰ *Rollo* (CTA Case No. 9381), Vol. II, pp. 876-878.

³¹ Resolution dated May 5, 2017, *Rollo* (CTA Case No. 9381), pp. 587-594.

³² Exhibit "P-27", *Rollo* (CTA Case No. 9381), Vol. II, pp. 1035-1046; Minutes of the hearing held on and Order dated December 5, 2017, *Rollo* (CTA Case No. 9381), Vol. II, pp. 1047-1051.

³³ Minutes of the hearing held on and Order dated July 6, 2017, *Rollo* (CTA Case No. 9381), Vol. II, pp. 798-801 and 804-805; Oath of Commission dated July 6, 2017, *Rollo* (CTA Case No. 9381), *Rollo* (CTA Case No. 9381), Vol. II, p. 802.

³⁴ Exhibit "P-26", *Rollo* (CTA Case No. 9381), Vol. II, pp. 407-424; Minutes of the hearing held on and Order dated August 29, 2017, *Rollo* (CTA Case No. 9381) pp. 960-966.

³⁵ *Rollo* (CTA Case No. 9381), Vol. II, pp. 1080-1091.

³⁶ Records Verification dated January 31, 2018 issued by the Judicial Records Division of this Court, *Rollo* (CTA Case No. 9381), Vol. II, p. 1185.

³⁷ *Rollo* (CTA Case No. 9381), Vol. II, pp. 1191-1193.

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Consequently, on April 23, 2018, respondent filed its Motion for Partial Reconsideration (Re: Resolution dated March 23, 2018).³⁸ Petitioner failed to file any comment/opposition.³⁹

In the Resolution dated June 19, 2018, the Court granted respondent's Motion for Partial Reconsideration, and admitted Exhibits "P-30-I-2-1" to "P-30-I-2-2".⁴⁰

Petitioner likewise presented documentary evidence and the testimonies of three (3) Revenue Officers of the BIR, namely: (1) Irene Juana Acacio,⁴¹ (2) Mohammad Bashier S. Usudan,⁴² and (3) Jonathan F. Genova.⁴³

On September 7, 2018, petitioner transmitted the BIR Records.⁴⁴ On the same date, petitioner filed a Motion to Admit Formal Offer of Exhibits with attached Formal Offer of Evidence.⁴⁵ In the Resolution of the Court dated September 18, 2018, the Court admitted petitioner's Formal Offer of Evidence.⁴⁶ Respondent filed its Comment (To Respondent's Formal Offer of Evidence) on October 1, 2018.⁴⁷ In the Resolution dated February 21, 2019, the Court admitted petitioner's exhibits.⁴⁸

On April 29, 2019, respondent submitted a Memorandum.⁴⁹ The Judicial Records Division of the Court issued a Records Verification Report stating that respondent failed to file a Memorandum.⁵⁰

On May 14, 2019, the case was deemed submitted for decision.

³⁸ *Rollo* (CTA Case No. 9381), Vol. II, pp. 1194-1198.

³⁹ Records Verification dated June 7, 2018 issued by the Judicial Records Division of this Court, *Rollo* (CTA Case No. 9381), Vol. II, p. 1204.

⁴⁰ Resolution dated June 19, 2018, *Rollo* (CTA Case No. 9381), Vol. II, pp. 1215 to 1217.

⁴¹ Exhibit "R-23", *Rollo* (CTA Case No. 9381), Vol. II, pp. 654-660; Order dated June 19, 2018, *Rollo* (CTA Case No. 9381), Vol. II, pp. 1210-1211.

⁴² Exhibit "R-24", *Rollo* (CTA Case No. 9381), Vol. II, pp. 695-701, Order dated June 19, 2018, *Rollo* (CTA Case No. 9381), Vol. II, pp. 1210-1211.

⁴³ Exhibit "R-26", *Rollo* (CTA Case No. 9381), Vol. II, pp. 736-739; Order dated July 26, 2018; *Rollo* (CTA Case No. 9381), Vol. II, pp. 1219-1223.

⁴⁴ Compliance dated September 7, 2018, *Rollo* (CTA Case No. 9381), Vol. II, pp. 1222 to 1223.

⁴⁵ *Rollo* (CTA Case No. 9381), Vol. II, pp. 1224-1237.

⁴⁶ Resolution dated September 18, 2018, *Rollo* (CTA Case No. 9381), Vol. II, p. 1240.

⁴⁷ Comment (To Respondent's Formal Offer of Evidence), *Rollo* (CTA Case No. 9381), Vol. III, pp. 1249-1254.

⁴⁸ Resolution dated February 19, 2019, *Rollo* (CTA Case No. 9381), Vol. III, pp. 1259-1260.

⁴⁹ Memorandum, *Rollo* (CTA Case No. 9381), Vol. III, pp. 1273-1308.

⁵⁰ Records Verification dated May 9, 2019 issued by the Judicial Records Division of this Court, *Rollo* (CTA Case No. 9381), Vol. III, p. 1313.

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On June 30, 2020, the Court in Division rendered the assailed Decision granting the Petition for Review and ordering the cancellation and setting aside of the FAN/FLD dated June 15, 2015 for deficiency income tax, VAT, and EWT totaling Eleven Million Fifty-Four Thousand Five Hundred Sixty-Five and Sixty-Six Centavos (P11,054,565.66), inclusive of interest. The Court in Division ruled that the Waiver is invalid and therefore did not extend the three (3)-year prescriptive period under Section 203 of the NIRC, as amended.⁵¹

On July 27, 2020, petitioner filed a Motion for Reconsideration (Decision dated June 30, 2020). On January 25, 2021, the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration for lack of merit.⁵²

On February 18, 2021, petitioner filed a Motion for Extension of Time to File Petition for Review praying for an additional fifteen (15) days from February 19, 2021, or until March 6, 2021 to file a Petition for Review.⁵³ On February 22, 2021, the Court *En Banc* granted petitioner's request for additional time to file a Petition for Review.⁵⁴

On March 8, 2021, petitioner filed a Petition for Review with this Court.⁵⁵

On June 4, 2021, petitioner filed a Comment (Re: Petition for Review dated March 8, 2021)⁵⁶

On June 16, 2021, this Court issued a Resolution referring the case for mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) under Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.⁵⁷

On July 26, 2021, the PMC-CTA reported that the parties decided not to have their case mediated by the PMC-CTA.⁵⁸

⁵¹ Decision, *Rollo* (CTA Case No. 9381), Vol. III, pp. 1372-1388.

⁵² Resolution dated January 25, 2021, *Rollo* (CTA Case No. 9381), Vol. III, pp. 1389-1392.

⁵³ *Rollo* (CTA EB No. 2441), pp. 1-4.

⁵⁴ Minute Resolution dated February 22, 2021, *Rollo* (CTA EB No. 2441), p. 5.

⁵⁵ *Rollo* (CTA EB No. 2441), pp. 6-14.

⁵⁶ *Rollo* (CTA EB No. 2441), pp. 44-51.

⁵⁷ Resolution dated June 16, 2021, *Rollo* (CTA EB No. 2441), pp. 53-55.

⁵⁸ *Rollo* (CTA EB No. 2441), p. 56.

On October 21, 2021, this Court issued a Resolution submitting the case for decision.⁵⁹

Petitioner's Arguments

Petitioner argues as follows:

The Waiver executed by the parties on May 7, 2014 is valid and has complied with the requirements of Section 222 (b) of the NIRC, as amended, Revenue Memorandum Order (RMO) No. 20-90, and Revenue Delegation Authority Order (RDAO) No. 05-01. Hence, the three (3)-year prescriptive period has been extended and the assessments for deficiency income tax, VAT, and EWT for CY 2011 are valid. Petitioner argues:

RMO 20-90 and RDAO No. 05-01 do not mention that the kind and exact amount of taxes should be indicated in the Waiver. Besides, the Waiver did not specify the particular kind of taxes and the exact amount to be assessed considering that it was executed during the audit and investigation stage wherein the tax liability of respondent is still being determined.

An RMO is an issuance directed to BIR personnel and that an RDAO refers to the functions delegated by the Commissioner to Revenue Officers. As such, it does not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.

Respondent is estopped from questioning the validity of the Waiver. By virtue of the Waiver, respondent was given the opportunity to gather and submit documents, contest, and negotiate the assessments against it. After enjoying the benefit of executing the Waiver, respondent now challenges the validity of the Waiver when the consequences thereof are not in its favor.

⁵⁹ Rollo (CTA EB No. 2441), pp. 57-59.

Respondent's Arguments

Respondent argues as follows:

Petitioner failed to present any compelling ground to merit the reversal of the Court in Division's Decision and Resolution. Waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due.

Petitioner's demand for liberality, while seeking strict enforcement of the rule against taxpayers, would result in a reversal of the rule that the statute of limitations on assessment and collection of taxes shall be applied liberally in favor of the taxpayer and strictly against the Government.

The rule on estoppel only operates to supplant deficiencies in law. However, existing tax regulations and jurisprudence sufficiently provide the requirements for the validity of a waiver. Hence, there is no need for the application of the rule on estoppel.

RULING

The Petition for Review is denied.

***The Petition for Review was
timely filed.***

On July 27, 2020, petitioner filed a Motion for Reconsideration (Decision dated June 30, 2020) with the Court in Division. On January 25, 2021, the Court in Division issued a Resolution, denying petitioner's Motion for Reconsideration for lack of merit, which was received by petitioner on February 4, 2021.

On February 18, 2021, petitioner filed a *Motion for Extension of Time to File Petition for Review* with the Court *En Banc*. On February 22, 2021, this Court granted petitioner's request for additional fifteen (15) days from February 19, 2021, or until March 6, 2021 to file a Petition for Review.⁶⁰

⁶⁰ Rollo (CTA EB No. 2441), pp. 1-4.

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On March 8, 2021, petitioner filed a *Petition for Review* with this Court. Since March 6, 2021 fell on a Saturday, petitioner timely filed its Petition for Review.⁶¹

The Waiver is invalid.

It did not indicate the kind and amount of tax due in violation of Section 222 (b) of the NIRC, as amended, RMO 20-90 and RDAO No. 05-01.

Section 203 of the NIRC of 2007, as amended, limits the CIR's period to assess and collect internal revenue taxes to three (3) years counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later.⁶² Thus, assessments issued after the expiration of such period are no longer valid and effective.⁶³

In *Commissioner of Internal Revenue v. Standard Chartered Bank*,⁶⁴ the Court explained the primary reason behind the prescriptive period on the CIR's right to assess or collect internal revenue taxes: that is, to safeguard the interests of taxpayers from unreasonable investigation. The government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.⁶⁵

An exception to the three (3) year-prescriptive period to assess taxes is Section 222 (b) of the NIRC, as amended, to wit:

⁶¹ *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021.

⁶² *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, G.R. No. 220835, July 26, 2017 citing *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087.

⁶³ *Id.*

⁶⁴ G.R. No. 175410, November 12, 2014 citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

⁶⁵ *Commissioner of Internal Revenue v. FMF Development Corporation*, G.R. No. 167765, June 30, 2008 citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

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SEC. 222. Exceptions as to Period of Limitations of Assessment and Collection of Taxes. –

...

(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.

...

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.⁶⁶

Section 222 (b) of the NIRC, as amended, provides that “[i]f 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**.” It may be observed that ‘tax’ was preceded by the definite article ‘the’ in Section 222 (b) of the NIRC, as amended. The definite article ‘the’ particularizes the subject spoken of and refers to a certain object as opposed to the article ‘a’ which refers to the indefinite.⁶⁷ Following the concept of *verba legis* as discussed by the Supreme Court, that the “legislature is presumed to know the meaning of the words, to have used words advisely, and to have expressed its intent by the use of such words as are found in the statute,”⁶⁸ from the plain meaning of Section 222 (b), the term ‘tax’ when referred to must be particularized and referred to in the definite sense.

Since a waiver is a bilateral agreement, specific information on the kind and amount of tax due is necessary for its validity. The

⁶⁶ Boldfacing supplied.

⁶⁷ Black’s Law Dictionary, 4th Edition, p. 1647 citing *Sharff v. Com.*, 2 Bin., Pa., 516; *Penn Mut. Life Ins. Co. v. Henderson*, D.C.Fla., 244 F. 877, 880; *Howell v. State*, 138 S.E. 206, 210, 164 Ga. 204; *Hoffman v. Franklin Motor Car Co.*, 32 Ga. App. 229, 122 S.E. 896, 900. “The” house means only one house. *Rocci v. Massachusetts Acc. Co.*, 222 Mass. 336, 110 N.E. 972, 973, Ann. Cas.1918C, 529.

⁶⁸ *Juan D. Victoria v. Commission on Elections and Jesus James Calisin*, G.R. No. 109005, January 10, 1994,

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Supreme Court in *Systems Technology Institute* citing *Commissioner of Internal Revenue v. Standard Chartered Bank*⁶⁹ held that:

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

...

3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that **a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity.**

...⁷⁰

Waivers extending the prescriptive period of tax assessments must comply with RMO No. 20-90 and RDAO No. 05-01, which includes the requirement to indicate the kind and amount of tax due. The Supreme Court in *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,⁷¹ citing *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*⁷² and *Commissioner of Internal Revenue v. Standard Chartered Bank*,⁷³ emphasized the mandatory and strict nature of the requirements of RMO No. 20-90 and RDAO No. 05-01, thus:

In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, the Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due, to wit:

These requirements are mandatory and must strictly be followed. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.

...

The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*,

⁶⁹ G.R. No. 220835, July 26, 2017.

⁷⁰ Boldfacing supplied. Citations omitted.

⁷¹ G.R. No. 211289, January 14, 2019.

⁷² G.R. No. 220835, July 26, 2017.

⁷³ G.R. No. 192173, July 29, 2015.

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because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) **they did not specify the kind and amount of the tax due**; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.⁷⁴

Recently, the Supreme Court in *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*,⁷⁵ invalidated waivers which did not comply strictly with the provisions of RMO No. 20-90 and RDAO No. 05-01, which includes the failure to specify the kind and amount of tax due.

RMC No. 29-12, requiring that the amount of tax due be indicated was applicable in this case, as the subject year of assessment is CY 2011.

RMO No. 20-90 expressly required that the amount of tax due be indicated.⁷⁶ In this case, the covered year in the assessment is CY 2011.

⁷⁴ Boldfacing supplied.

⁷⁵ G.R. No. 202105, April 28, 2021.

⁷⁶ RMO No. 20-90 prescribes the form of the waiver to be as follows:

"WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE"

_____ in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of _____ as _____ for the years _____, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after reinvestigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after _____, 19____.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension."

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It may be argued that the waiver for said CY 2011 does not require that the amount of tax be indicated since RMC No. 29-12 provides that the applicable form starting August 2, 2001 is not that prescribed under RMO No. 20-90 but that under RDAO No. 05-01, which does not expressly require the amount of tax due.⁷⁷

This is incorrect.

The BIR clarified in Revenue Memorandum Circular (RMC) No. 29-12,⁷⁸ that the form of the waiver prescribed under RMO No. 20-90 no longer applies starting August 2, 2001, but the prescribed form under RDAO No. 05-01. The RMC also provided that a waiver must comply with the substantive requirements under RMO No. 20-90 and observe the form under RDAO No. 05-01, to wit:

The provisions of RMO No. 20-90 should be strictly complied with in order for a Waiver to be valid. However, the Waiver form prescribed in RMO No. 20-90 should no longer be used as the same has been revised per RDAO No. 05-01.

The Supreme Court in *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*⁷⁹ citing *Commissioner of Internal Revenue v. Standard Chartered Bank*,⁸⁰ as above-cited, a case covering

⁷⁷ RDAO No. 05-01 prescribes the form of the waiver to be as follows:

"WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF
LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE

I, _____ of _____ request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its _____ tax liabilities for the year _____. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than _____.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code."

⁷⁸ Subject: Waiver of the Defense of Prescription under the Statute of Limitations.

⁷⁹ G.R. No. 220835, July 26, 2017.

⁸⁰ G.R.No.192173, July 29, 2015.

deficiency taxes for the fiscal year ending March 31, 2003, found the subject waivers in the case invalid for failure to indicate the kind of tax and the amount due as tested against the requirements of RMO No. 20-90 and relevant jurisprudence.⁸¹ Likewise, in the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,⁸² a case covering a tax assessment for CY 2005, the Supreme Court ruled:

In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, the Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due

...

In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached – the assessments had prescribed as there was no valid waiver.⁸³

The Waiver failed to indicate any tax.

The Waiver executed on May 7, 2014 not only failed to indicate the kind and amount of tax due pursuant to RMO 20-90 and RDAO No. 05-01 but also failed to indicate that *any* tax, even in the general sense. The Waiver covers “*all our internal liabilities.*” The Waiver therefore is not compliant to the form of a waiver as required by RDAO No. 05-01 and as required by Section 222 (b) of the NIRC, as amended, to wit:

WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE
STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL
REVENUE CODE

⁸¹ *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, G.R. No. 220835, July 26, 2017 citing *Commissioner of Internal Revenue v. Standard Chartered Bank* G.R. No.192173, July 29, 2015.

⁸² GR No. 211289, January 14, 2019.

⁸³ Boldfacing supplied. Citations omitted.

I, ROLANDO G. SANICO, JR., Assistant Comptroller of GMA NETWORK FILMS, INC. (FORMERLY CINEMAX STUDIOS, INC.) with address at GMA Network Complex, EDSA corner Timog, Diliman, Quezon City request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation of **all our internal liabilities** for the year 2011. I hereby waive the defense of prescription under the statute of limitations prescribed in Section 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than June 30, 2015.⁸⁴

Finally, petitioner erroneously contends that the Waiver did not specify the particular kind of taxes and the exact amount to be assessed since it was executed during the audit and investigation stage wherein petitioner or his duly authorized representative was still in the process of determining the tax liability of respondent.

As found in the records of the case, the BIR Records⁸⁵ particularly Exhibits "R-6",⁸⁶ "R-6.1",⁸⁷ and "R-6.3",⁸⁸ as early as August 23, 2012, petitioner has determined the amounts of ₱5,366,497.49 as deficiency basic income tax due, ₱479,276.77 as deficiency basic VAT due, and ₱113,777.75 deficiency basic EWT due, respectively. As observed, these amounts are also the basic deficiency taxes due as reflected in the PAN, FAN/FLD, and FDDA.

Petitioner is not estopped.

The Court in Division in its Resolution dated January 25, 2021 correctly rejected petitioner's argument on estoppel, to wit:

[T]he doctrinal pronouncement made by the Supreme Court in the RCBC case is not applicable in the present case for the simple reason that there was no partial payment made which is tantamount to an implied admission of the validity of the subject waivers...

⁸⁴ Boldfacing supplied.

⁸⁵ Exhibit "R-1", BIR Record.

⁸⁶ Revenue Officer's Audit Report on Income Tax dated August 23, 2012, *Rollo* (CTA Case No. 9381), Vol. II, p. 707.

⁸⁷ Revenue Officer's Audit Report on Value-Added Tax dated August 23, 2012, *Rollo* (CTA Case No. 9381), Vol. II, p. 708.

⁸⁸ Revenue Officer's Audit Report on Value-Added Tax dated August 23, 2012, *Rollo* (CTA Case No. 9381), Vol. II, p. 710.

...

In the present case, the Court has not found any piece of evidence showing that petitioner admitted, either expressly or impliedly, the validity of the subject *waiver*. In the absence of such evidence and the *waiver* being a derogation of petitioner's right to security against prolonged tax investigation, the same must be strictly construed. To reiterate, "[i]ndeed, a *Waiver* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date. However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it **must be carefully and strictly construed**. The *Waiver* must faithfully comply with the provisions RMO No. 20-90 and Revenue Delegation Authority Order No. 05-01 in order to be valid and binding. Correspondingly, the details in the said provisions are material as there can be no true and valid agreement between the taxpayer and respondent absent these information.

The above ruling finds support in the more recent case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*,⁸⁹ and was reiterated in *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation* citing *Commissioner of Internal Revenue v. Kudos Metal Corporation*,⁹⁰ where the Supreme Court ruled that the BIR cannot invoke estoppel to conceal its failure to comply with its own issuances, to wit:

Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued...Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer.

The assessments are void due to absence of definite tax liability.

Even granting that the Waiver was valid and therefore effectively extended the three (3)-year prescriptive period under Section 203 of the NIRC, as amended, the FLD⁹¹ contains the statement that the "*interest and the total amount due will have to be adjusted if paid beyond JUL 15 2015,*" which renders the amount of tax due indefinite, as it is subject to modification depending on the date of payment.

⁸⁹ G.R. No. 202105, April 28, 2021.

⁹⁰ G.R. No. 214933, February 15, 2021 citing *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

⁹¹ Exhibit "R-15", Rollo (CTA Case No. 9381), Vol. II., pp. 727-728.

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*Commissioner of Internal Revenue v. Fitness by Design, Inc.*⁹² expounds on the requirement that a FAN must specify the definite amount of tax liability for which the taxpayer is accountable, to wit:

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."⁹³

In the present case, among the components of the said FLD's amount due for IT, VAT, and EWT are the *basic* IT, VAT, and EWT, with interest thereon. Since the total amount due is subject to adjustment, depending on respondent's date of payment, petitioner's tax assessments failed to contain a fixed and determinate amount of tax liabilities.

The FLD specifically states that petitioner is requested to pay its aforesaid deficiency tax liabilities within the time shown in the assessment notices.⁹⁴ However, the interest in both the FAN⁹⁵ and the FLD⁹⁶ was computed up to **July 22, 2015** which differ from the date specified in the FAN when the total amount is payable which was on or before **July 15, 2015** and in the FLD, as contained in the notation "*interest and the total amount due will have to be adjusted if paid beyond JUL 15 2015.*"

In view of the foregoing, the Court in Division did not err in ruling that the Waiver is invalid and that it did not effectively extend the three (3)-year prescriptive period under Section 203 of the NIRC, as amended. Since respondent issued, and petitioner received the subject FAN/FLD only on June 15, 2015, the FAN and FLD were issued and received beyond the three (3)-year prescriptive period under Section 203 of the NIRC, as amended.

⁹² G.R. No. 215957, November 9, 2016.

⁹³ Citations omitted. Boldfacing supplied.

⁹⁴ Exhibit "R-15", *Rollo* (CTA Case No. 9381), Vol. II., p. 728.

⁹⁵ Exhibits "R-14", "R-14.1", "R-14.2", *Rollo* (CTA Case No. 9381), Vol. II., pp. 724-726.

⁹⁶ Exhibit "R-15", *Rollo* (CTA Case No. 9381), Vol. II., pp. 727-728.

QY

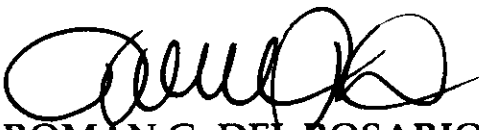
The assessments issued by the respondent are void and a void assessment bears no valid fruit.⁹⁷

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated June 30, 2020 and Resolution dated January 25, 2021, both rendered by the Third Division of this Court in CTA Case No. 9381 are **AFFIRMED**.

SO ORDERED.


MARIAN IV F. REYES-FAJARDO
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


(With due respect, I join the Concurring and Dissenting Opinion of Associate Justice San Pedro)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

⁹⁷ *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.


(I concur with the results on the ground of invalid waiver solely)
CATHERINE T. MANAHAN
Associate Justice


(With Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


(With Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
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.


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2441
(CTA Case No. 9381)

Present:

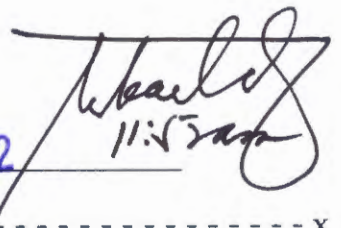
- versus -

DEL ROSARIO, P.L.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, II.

GMA NETWORK FILMS, INC.,
Respondent.

Promulgated:

OCT 17 2022


11:57 am

X ----- X

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the Petition for Review¹ filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**), on the ground that petitioner's assessment for deficiency taxes against respondent GMA Network Films, Inc. (**respondent/GNFI**) for the taxable year (**TY**) 2011 is void since the Formal Letter of Demand² (**FLD**) and Final Assessment Notices³ (**FANs**), all dated 15 June 2015, were issued (by petitioner) and received (by respondent) beyond the three (3)-year prescriptive period 

¹ Rollo, pp. 6-40, with annexes.

² Exhibit "P-13", Division Docket, Volume II, pp. 813-815.

³ Exhibits "R-14", "R-14.1", "R-14.2", id., pp. 683, 684 and 685, respectively.

under Section 203⁴ of the National Internal Revenue Code (NIRC) of 1997, as amended.

Indeed, the waiver executed on 07 May 2014⁵ did not effectively extend the three (3)-year prescriptive period under Section 203⁶ of the NIRC of 1997, as amended, as it was invalid for failure to specify the kind and amount of tax due.

In the *ponencia* of our esteemed colleague, Associate Justice Marian Ivy F. Reyes-Fajardo, particularly on page 17, paragraph 2, it is stated that, with respect to the notation on the FLD⁷, i.e., “[p]lease note that the interest and total amount due will have to be adjusted if paid beyond July 15, 2015”, “[s]ince the total amount due is subject to adjustment, depending on respondent’s date of payment, petitioner’s assessment failed to contain a fixed and determinate amount of tax liabilities.”

With due respect, I wish to clarify that the aforesaid notation on the FLD⁸ merely means that the interest (as distinguished from the basic deficiency tax) will be adjusted if the taxpayer fails to pay on the due date specified in the assessment notices. The interest, and *only* the interest, may be adjusted if the taxpayer pays before or after the due date, i.e., on 15 July 2015 as indicated in the FANs.⁹ The basic deficiency tax liability remains the same and for this reason, the subject FLD contained a definite amount of tax due.

All told, I vote to **DENY** the Petition for Review.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

⁴ **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.

⁵ Exhibit “P-15”, Division Docket, Volume I, p. 299.

⁶ Supra at note 4.

⁷ Supra at note 2.

⁸ Supra at note 2.

⁹ Supra at note 3.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER **OF CTA EB NO. 2441**
INTERNAL REVENUE, **(CTA Case No. 9381)**
Petitioner,

Present:

-versus-

DEL ROSARIO, PJ,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

GMA NETWORK FILMS, INC., Promulgated:

Respondent.

OCT 17 2022

x

x

CONCURRING AND DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

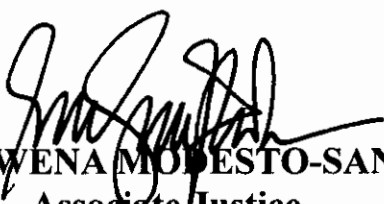
I concur with the Decision penned by my esteemed colleague, honorable Associate Justice Marian Ivy F. Reyes-Fajardo, in so far as it provides that the waivers in the instant case did not extend the prescriptive period to assess as the same were defective for failure to specify the kind and amount of tax due.

However, I disagree with my colleague's position that the instant assessments are void due to the absence of a definite tax liability. According to my colleague, the statement "interest and the total amount due will have to be adjusted if paid beyond JUL 15 2015" found in the Formal Letter of Demand ("FLD")¹ rendered the amount of tax due indefinite as it is subject to modification depending on the date of payment. *Y*

¹ Exhibit "R-15", *Rollo* (CTA Case No. 9381), Vol. II, pp. 727-728.

It is my position that the instant assessment still contains a definite amount of tax liability despite the presence of such statement in the FLD. The cited statement simply requires that the interest be adjusted if the taxpayer fails to pay on the due date provided. Only the interest changes depending on the actual date of payment by the taxpayer, but the basic deficiency tax, which is the focal point and base amount of every assessment, remains the same. Accordingly, the instant assessment still demands a definite tax liability as the final amount is still determinable after adjusting the interest based on the actual date of payment.

Premises considered, I therefore vote to **DENY** the Petition for Review.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice