REPUBLIC OF THE PHILIPPINES
*Court Of Tax Appeals*
QUEZON CITY

## SECOND DIVISION

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| STANDARD CHARTERED BANK, *Petitioner,* | **C.T.A. CASE NO. 7165** |
| | Members: |
| -versus- | CASTAÑEDA, JR., Chairperson<br>UY, and<br>PALANCA-ENRIQUEZ, JJ. |
| COMMISSIONER OF INTERNAL REVENUE, *Respondent.* | **Promulgated:**<br>FEB 2 7 2009<br>10:50 a.m. |

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# DECISION

**PALANCA-ENRIQUEZ, *J.*:**

The validity of a Formal Letter of Demand and Assessment Notice issued beyond the prescriptive period rests on the existence and validity of the Waivers of the Statute of Limitations, considering that it would have the effect of extending the prescriptive period within which the Bureau of Internal Revenue (BIR) could validly issue an assessment against the taxpayer.

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## THE CASE

This is a *Petition For Review* filed on March 9, 2005 by Standard Chartered Bank (hereafter "petitioner"), which seeks to declare null and void the Formal Letter of Demand dated June 24, 2004 and to cancel the Assessments issued by the BIR for deficiency income tax, final income tax – Foreign Currency Deposit Unit (FCDU), withholding tax – compensation (WTC), expanded withholding tax (EWT), and final withholding tax (FWT) in the aggregate amount of P33,326,211.37, including increments covering taxable year 1998.

## THE PARTIES

Petitioner Standard Chartered Bank is the Philippine Branch of Standard Chartered Bank, a corporation organized and existing under the laws of England, duly authorized to engage business in the Philippines.

Respondent Commissioner of Internal Revenue, on the other hand, is the official authorized under *Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended,* to assess and collect internal revenue taxes, as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court.

## THE FACTS

On July 14, 2004, petitioner received respondent's Formal Letter of Demand dated June 24, 2004, for alleged deficiency income tax, final income tax - FCDU, WTC, EWT, FWT, and increments for taxable year 1998 in the aggregate amount of P33,326,211.37, broken down as follows:

| Tax | Basic Tax | Interest | Compromise Penalty | Total |
|---|---|---|---|---|
| Income Tax | 3,594,272.00 | 3,803,936.67 | 25,000.00 | 7,423,208.67 |
| Final Income Tax – FCDU | 11,748,483.99 | 12,433,808.31 | 25,000.00 | 24,207,292.30 |
| Withholding Tax-Compensation | 50,282.59 | 55,450.48 | 12,000.00 | 117,733.07 |
| Expanded Withholding Tax | 678,361.62 | 748,081.59 | 20,000.00 | 1,446,443.21 |
| Final Withholding Tax | 56,845.84 | 62,688.28 | 12,000.00 | 131,534.12 |
| **TOTAL** | **16,128,246.04** | **17,103,965.33** | **94,000.00** | **33,326,211.37** |

On August 12, 2004, petitioner protested the said assessment by filing a letter-protest dated August 9, 2004 addressed to the BIR Deputy Commissioner for Large Taxpayers' Service stating the factual and legal bases of the assessment, and requested that it be withdrawn and cancelled.

As of the date of filing of this *Petition for Review*, respondent has not rendered a decision on petitioner's protest.

In view of respondent's inaction on petitioner's protest, on March 9, 2005, petitioner filed the present Petition For Review.

On June 7, 2005, respondent filed his *Answer* alleging the following special and affirmative defenses:

"4. On the issue of deficiency income tax assessment in the amount of Php: 7,423,208.67, resulting from the adjustments in commission and miscellaneous income, petitioner argued that in making such adjustment, respondent merely considered the credits to the trial balance, without taking into account the debits indicated in the trial balance or the adjustment as verified by petitioner's audited Financial Statement. *We disagree.* Relative to the difference of Commission Income per Trial Balance as against audited Financial Statement, petitioner failed to adduce or submit clear and convincing documents to explain the discrepancy. Such being the case, the assessment must stand. As to the discrepancy in the Miscellaneous Income per Trial Balance as against the audited financial statement, considering that petitioner was able to submit actual entries in its allegation regarding adjustments to its provisions for probable losses in the amount of Php: 12,483,177.54, said amount can be considered as allowable deduction from the amount of Php: 17,698,295.95;

5. On the issue of Final Income Tax-Foreign Currency Deposit Unit (FCDU) in the amount of ***Php: 24,207,292.30***, according to petitioner, respondent's reliance on Revenue Regulations No. 2-98 and Revenue Regulations No. 10-76 is misplaced because, according to it, the liability of the payment of the tax rests primarily on the payor/withholding agent (petitioner's client) and not upon the payee-petitioner, Standard Chartered Bank. We disagree. Be it noted that no Certificate of Tax Withheld and documents have been presented to show that said amount has been paid to herein respondent. In addition, no names of the withholding agent, address, etc., have been adduced in order to obtain information if indeed the

tax was remitted. It is in this regard that the provisions of Revenue Regulations 10-98 find application, requiring the information and details as contained in Sections 2.27 and 2.28 paragraph (D) thereof, to wit:

> 'It shall also declare thereunder all other incomes derived during the taxable period which are subject to the final withholding taxes, the fact that such final withholding taxes have been withheld therefrom by the payor notwithstanding, indicating the following information:
>
> (a) Name of the withholding agent;
> (b) His/its address;
> (c) His/its Taxpayer Identification Number (TIN);
> (d) Period covered;
> (e) Gross Income;
> (f) Rate of final withholding tax applied; and
> (g) Amount of final withholding tax withheld."

With petitioner's failure to comply with the requirements above-stated, the subject assessment relative to its final income tax, on FCDU, must stand;

6. While it is true that the payor-borrower is constituted by law to withhold and remit the 10% tax on onshore income, the obligation of paying the 10% final tax on onshore income rests on petitioner being the one directly liable for it, pursuant to Section 24(e)(3) [now 28(A)(7)(b)] of the Tax Code (*ING Bank, N.V. Manila Branch vs. Commissioner of Internal Revenue, C.T.A. EB No. 52, April 5, 2005*);

7. With regard to the deficiency withholding tax on compensation, petitioner argued that respondent based said assessment on the assumption that it did not properly withhold taxes on compensation. *We*

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*disagree*. During the informal conference, petitioner alleged that the above discrepancy was due to lack of alpha list of officers. The alleged alpha list and the corresponding remittances of taxes were requested for admission but were not submitted. Hence, the amount of Php: 286,739.25, which represents the discrepancy of gross amount of compensation per alpha list vis-à-vis its Financial Statement, should stand;

8. On the issue of expanded withholding tax in the amount Php: 1,446,443.21, petitioner argued that it is not liable for said deficiency assessment since it has appropriately withheld taxes on its income payments and that petitioner did not have to withhold taxes on items not subject to expanded withholding tax. We disagree. This assessment was based on the individual expense account that should have been covered by the withholding tax as computed corresponding to the applicable rate per account pursuant to Revenue Regulations No. 6-85, now Revenue Regulations 2-98, as amended. The amount assessed pertains to the four items of expenses, such as, maintenance-non-premises in the amount of Php: 4,471,606.30, travel expenses in the amount of Php: 5,149,866.02, GTS costs in the amount of Php: 37,150,236.34 and Miscellaneous in the amount of Php: 12,410,187.15, on which petitioner was required to supply information and proof as to the nature and breakdown, but it failed to provide the same. Hence, the subject assessment should stand;

9. Also, on the issue of Final Withholding Tax relative to petitioner's regular banking unit in the amount of Php: 131,534.12, it argued that petitioner has already withheld and remitted the correct amount of taxes on its interest expense. While petitioner was able to provide some reconciliation of final withholding tax payments to its RBU, however, there still exists a discrepancy which petitioner failed to remit or explain. Hence, the deficiency final withholding tax pertains to those not yet covered by the remittances as

noted in its reconciliation pursuant to Section 57(A) in relation to Section 27(D)(1) of the Tax Code, as amended;

10. Lastly, petitioner argued that respondent's right to assess has already prescribed. We disagree. Admitted is the fact that herein respondent issued the subject assessments on 24 June 2004. However, on 06 June 2004, petitioner, thru its representative, executed a Waiver of the Statute of Limitations under the National Internal Revenue Code, extending the period of prescription until 30 September 2004. Therefore, the contention of petitioner that the subject assessment has already prescribed is without merit;

11. The assessments were issued in accordance with law and regulations;

12. Finally, it is a well settled rule in taxation that assessments are ***prima facie*** presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."[1]

On October 14, 2005, petitioner filed a *Motion for Leave of Court to Serve Supplemental Petition,* with attached *Supplemental Petition for Review,* pursuant to *Rule 10 of the 1997 Rules of Civil Procedure, as amended,* in view of the alleged payments made by petitioner through the BIR's Electronic Filing and Payment System (eFPS) as regards its deficiency withholding tax on compensation and final withholding tax assessments in the amounts of P124,967.73 and P139,713.11, respectively. In its *Supplemental Petition for Review*, petitioner seeks to



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be fully credited of the payments it made to cover the deficiency withholding tax on compensation and final withholding tax. Thus, the remaining assessments cover only the deficiency income tax, final income tax – FCDU, and expanded withholding tax in the modified total amount of P33,076,944.18, computed as follows:

| Tax | Basic Tax | Interest | Compromise Penalty | Total |
|---|---|---|---|---|
| Income Tax | 3,594,272.00 | 3,803,936.67 | 25,000.00 | 7,423,208.67 |
| Final Income Tax – FCDU | 11,748,483.99 | 12,433,808.31 | 25,000.00 | 24,207,292.30 |
| Expanded Withholding Tax | 678,361.62 | 748,081.59 | 20,000.00 | 1,446,443.21 |
| **TOTAL** | **16,021,117.61** | **16,985,826.57** | **70,000.00** | **33,076,944.18** |

Finding merit in petitioner's *motion*, the same was granted and the *Supplemental Petition for Review* was admitted in a *Resolution* dated December 12, 2005.

Petitioner presented Chona G. Reyes, its Vice-President, as witness, and documentary exhibits which were admitted by the Court in its Resolutions dated October 1, 2007, and January 31, 2008.

On the other hand, respondent presented Juan M. Luna, Jr., Revenue Officer II of the BIR LTAID I, as witness, and documentary evidence marked as *Exhibits "1" to "4"*.

Thereafter, the parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich the case shall be deemed submitted for decision.

Respondent's *"Memorandum"* was filed on August 4, 2008, while petitioner's *Memorandum* was filed on October 24, 2008 after a series of motions for extension of time to file memorandum were granted by the Court. The case was deemed submitted for decision on November 12, 2008.

Hence, this decision.

**ISSUES**

As stipulated by the parties, the issues for this Court's consideration are:

I

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX IN THE AMOUNT OF P7,423,208.67.

II

WHETHER OR NOT PETITIONER IS LIABLE FOR FINAL INCOME TAX – FOREIGN CURRENCY DEPOSIT UNIT (FT-FCDU) IN THE AMOUNT OF P24,207,292.30.

III

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY WITHHOLDING TAX ON COMPENSATION (WTC) IN THE AMOUNT OF P111,733.07 CONSIDERING THAT RESPONDENT HAS ADMITTED THE FACT OF PAYMENT.

IV

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAXES (EWT) IN THE AMOUNT OF P1,446,443.21.

V

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY FINAL WITHHOLDING TAX ON RBU IN THE AMOUNT OF P131,534.12 CONSIDERING THAT RESPONDENT HAS ADMITTED THE FACT OF PAYMENT.

VI

WHETHER OR NOT RESPONDENT'S RIGHT TO ASSESS PETITIONER DEFICIENCY INCOME, FT-FCDU, WTC, EWT, AND FWT HAS PRESCRIBED UNDER SECTION 203 OF THE TAX CODE.

**THE COURT'S RULING**

The petition is impressed with merit.

The ultimate purpose of an assessment is to ascertain the amount that each taxpayer must pay (*Tupaz vs. Ulep,316 SCRA 118*). It is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof (*Moreno, Philippine Law Dictionary, 3rd Ed. p. 75*). However, like any demand for payment, an assessment is subject to a statute of limitation, which fixes the time within which parties may take judicial action, or else be thereafter barred from enforcing them (*Barron's Law Dictionary, 2003 Edition, pp. 492-493*). Therefore, an assessment made

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beyond the prescribed period would not be binding on the taxpayer (*Commissioner v. Ayala Securities Corporation, et al., 70 SCRA 204*).

Pursuant to the foregoing doctrine, We deal first with the procedural question – the timeliness of the issuance of the Formal Letter of Demand and Assessment Notice against petitioner.

The Statute of Limitations upon assessment and collection of national internal revenue taxes is provided in *Section 203 of the NIRC of 1997, as amended*, as follows:

> "**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." (*Emphasis supplied*)

Pursuant to the foregoing provision, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of return or from the day the return was filed.

In the instant case, records show that petitioner's income tax return for taxable year 1998 was filed on April 15, 1999. Counting three years

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from this date, respondent had until April 15, 2002 within which to issue an assessment notice on deficiency income tax.

As regards petitioner's Quarterly Income Tax Returns for its Foreign Currency Deposit Unit which were filed on May 28, 1998 (First Quarter), August 31, 1998 (Second Quarter), December 1, 1998 (Third Quarter), and April 15, 1999 (Fourth Quarter), respondent had until **April 15, 2002**, at the latest, within which to issue an assessment notice for any deficiency tax on its FCDU for the fourth quarter of taxable year 1998.

Anent its monthly remittance of withheld income taxes, hereunder are the dates of filing of the returns (BIR Form No. 1743W/1601) and the corresponding dates within which respondent may issue assessment notices (*Exhibits "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", and "KK"*), to wit:

| 1998 Monthly Return (BIR Form No. 1743W/1601) | Date of Filing / Last day of Issuance of Assessment |
|---|---|
| January | 25-Feb-98 / **February 25, 2001** |
| February | 25-Mar-98 / **March 25, 2001** |
| March | 27-Apr-98 / **April 27, 2001** |
| April | 25-May-98 / **May 25, 2001** |
| May | 24-Jun-98 / **June 24, 2001** |
| June | 27-Jul-98 / **July 27, 2001** |
| July | 25-Aug-98 / **August 25, 2001** |
| August | 24-Sep-98 / **September 24, 2001** |
| September | 26-Oct-98 / **October 26, 2001** |
| October | 25-Nov-98 / **November 25, 2001** |
| November | 28-Dec-98 / **December 28, 2001** |
| December | 25-Jan-99 / **January 25, 2002** |

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As regards petitioner's monthly remittance of taxes withheld for its Cebu and Iloilo branches (*Exhibits "LL", "MM", "NN", "OO", "PP", "QQ", and* " RR" to VV-1"), the dates of their filing and corresponding last days within which respondent may issue assessment notices are enumerated below:

| 1998 Monthly Return (BIR Form No. 1743W/1601) Iloilo | Date of Filing / Last Day of Issuance of Assessment |
|---|---|
| January | 16-Feb-98 / **February 16, 2001** |
| February | 12-Mar-98 / **March 12, 2001** |
| March | 7-Apr-98 / **April 7, 2001** |
| April | 12-May-98 / **May 12, 2001** |
| May | 8-Jun-98 / **June 8, 2001** |
| June | 9-Jul-98 / **July 9, 2001** |

| 1998 Monthly Return (BIR Form No. 1743W/1601) Cebu | Date of Filing / Last Day of Issuance of Assessment |
|---|---|
| January | 5-Feb-98 / **February [illegible] 2001** |
| February | 12-Mar-98 / **March 1[illegible] 2001** |
| February | 12-Mar-98 / **March 12, 2001** |
| March | 6-Apr-98 / **April 6, 2001** |
| March | 8-Apr-98 / **April 8, 2001** |
| April | 12-May-98 / **May 12, 2001** |
| April | 12-May-98/ **May 12, 2001** |
| May | 5-Jun-98 / **June 5, 2001** |
| May | 10-Jun-98 / **June 10, 2001** |

Petitioner likewise filed its Monthly Remittance Returns of Final Income Taxes Withheld for its Makati Branch on the following dates, with the corresponding last days within which respondent may issue assessment notices (*Exhibits "BBB" to "PPP"*):

| 1998 Monthly Return (BIR Form No. 1743W/1601) Makati | Date of Filing / Last Day of Issuance of Assessment |
|---|---|
| January – Trade Services | 24-Feb-98 / **February 24, 2001** |
| February - Trade Services | 24-Mar-98 / **March 24, 2001** |
| March – Trade Services | 27-Apr-98 / **April 27, 2001** |

| | |
|---|---|
| April - Trade Services | 25-May-98 / **May 25, 2001** |
| January – Credit Operations | 23-Feb-98 / **February 23, 2001** |
| February – Credit Operations | 19-Mar-98 / **March 19, 2001** |
| March - Credit Operations | 14-Apr-98 / **April 14, 2001** |
| April - Credit Operations | 12-May-98 / **May 12, 2001** |
| May - Credit Operations | 25-Jun-98 / **June 25, 2001** |
| January – Personal Banking Operations | 10-Feb-98 / **February 10, 2001** |
| February - Personal Banking Operations | 9-Mar-98 / **March 9, 2001** |
| March - Personal Banking Operations | 10-Apr-98 / **April 10, 2001** |
| April - Personal Banking Operations | 12-May-98 / **May 12, 2001** |
| May - Personal Banking Operations | 16-Jun-98 / **June 16, 2001** |

However, record further shows that respondent's Formal Letter of Demand and Assessment Notices for deficiency income tax, final income tax – foreign currency deposit unit, withholding tax – compensation, expanded withholding tax, and final withholding tax for taxable year 1998, were issued on June 24, 2004 and received by petitioner on July 14, 2004. Accordingly, when the Formal Letter of Demand and Assessment Notices were issued on June 24, 2004, the right of respondent to assess petitioner for any deficiency internal revenue taxes was already barred by prescription.

Respondent however contends that his right to issue subject Assessment Notices has not yet prescribed, invoking *Section 222(b) of the NIRC of 1997, as amended*, which provides:

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

Respondent offered in evidence copies of the Waivers of the Statute of Limitations executed by the parties, namely: the First Waiver executed on July 20, 2001 extending the period within which the BIR may assess any deficiency taxes until June 30, 2002 (*Exhibit "4", BIR Records, p. 466*); the Second Waiver executed on April 4, 2002 extending the period of limitation to December 30, 2002 (*Exhibit "5", BIR Records, p. 472*); the Third Waiver executed on December 5, 2002 extending the period of limitation to April 15, 2003 (*Exhibit "6", BIR Records, p. 478*); the Fourth Waiver executed on March 27, 2003 extending the period of limitation until September 30, 2003 (*Exhibit "7", BIR Records, p. 480*); the Fifth Waiver executed on September 16, 2003 extending the period to assess until March 31, 2004 (*Exhibit "8", BIR Records, p. 638*); the Sixth, Seventh, and Eighth Waivers executed on January 14, 2004 (*Exhibit "9", BIR Records, p. 638*), March 19, 2004 (*Exhibit "10", BIR Records, p. 639*), and July 6, 2004 (*Exhibit "11", BIR Records, p. 792*), extending the period to assess until June 30, 2004, July 31, 2004, and September 30, 2004, respectively.

On the other hand, petitioner counters that said waivers are null and void because they do not conform with the provisions of *Revenue Memorandum Order (RMO) No. 20-90* dated April 4, 1990, which prescribes the procedure for a proper and valid execution of a Waiver of the Statute of Limitations, to wit:

> "1. **The waiver must be in the form identified hereof.** This form may be reproduced by the Office concerned but **there should be no deviation from such form.** The phrase `but not after ____________ 19 ___ should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. The waiver shall 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.
>
> **Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver.** The date of such acceptance by the Bureau should be indicated. 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.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

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| 1. | ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices.<br><br>In the absence of the ACIR, the Head Executive Assistant may sign the waiver. | For tax cases involving not more than P500,000.00 |
| 2. | Deputy Commissioner | For tax cases involving more than P500,000.00 but not more than P1M |
| 3. | Commissioner | For tax, cases involving more than P1M |

B. In the Regional offices

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4. The waiver must be executed in three (3) 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 shall be indicated in the original copy.**

5. **The foregoing procedures shall be strictly followed. Any revenue official found not to have**

 

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> **complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with."** (*Emphasis supplied*)

Petitioner points out that the Waivers of the Statute of Limitations are void because they suffer from the following infirmities:

1. The First Waiver violated the requirements indicated in RMO No. 20-90 since it was (a) signed only by the Assistant Commissioner for Large Taxpayers Service and not by respondent Commissioner; (b) did not indicate the date of acceptance by respondent; (c) did not specify the amount of taxes due; and (d) deviated from the prescribed format in RMO No. 20-90;

2. The Second Waiver which was supposed to extend the prescriptive period to December 20, 2002 has the same defects as the First Waiver;

3. Since both the First and Second Waivers failed to extend the period to assess, the assessments issued against petitioner were clearly issued beyond the 3-year prescriptive period to assess; and

4. Since the First and Second Waivers are void from their inception, the subsequent waivers are also void.

We agree with petitioner.

The validity of the Formal Letter of Demand and Assessment Notices issued by respondent against petitioner rests primarily on the validity of the execution of the Waivers of the Statute of Limitations, especially, the First and Second Waivers, which were allegedly executed on July 20, 2001 and April 4, 2002, respectively, within the period to issue the subject Assessment Notices.

The First Waiver reads, as follows:

> WAIVER OF THE STATUTE OF LIMITATIONS
> UNDER THE NATIONAL INTERNAL REVENUE CODE
>
> I, **Sanjay Uppal,** representing **STANDARD CHARTERED BANK** in consideration of the approval by the Commissioner of Internal Revenue of our request for extension of time within which to present the required documents in connection with the investigation and/or consideration of our pending internal revenue tax liabilities for the taxable year 1998, 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 collections of the taxes which may be found due after investigation and consideration 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 later than June 30, 2002.
>
> 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 period abovementioned; nor does he waive his right to use any 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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However, prescription, which has already accrued in our favor, shall not be deemed waived.

Executed this 20th day of July 2001 in Makati City, Philippines.

(SGD.) Sanjay Uppal
Chief Finance Officer

ACCEPTED AND AGREED TO:
(SGD.) RENE G. BANEZ
Commissioner of Internal Revenue
By:

(SGD.) VIRGINIA L. TRINIDAD
Assistant Commissioner
Large Taxpayers Service
Date:" (*Exhibit "4"*)

On the other hand, the Second Waiver executed on April 4, 2002 reads:

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

I, Carlos Borromeo representing **STANDARD CHARTERED BANK** in consideration of the approval by the Commissioner of Internal Revenue of our request for extension of time within which to present additional documents involving the investigation of all Internal Revenue Tax tax liabilities for the period 1998, 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 tax or taxes of the said period which may be found due after investigation 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, as amended, but not later than December 30, 2002, provided

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that any prescription that might have already set is not hereby deemed waived.

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 he determination of the aforesaid liabilities. 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 period 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 Section 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.

Executed this 4th day of April 2002 in Makati City, Philippines.

(SGD.) Carlos Borromeo
Acting Chief Finance Officer

ACCEPTED AND AGREED TO:

RENE G. BANEZ
Commissioner of Internal Revenue
By:
(SGD.) EDWIN R. ABELLA
Assistant Commissioner
Large Taxpayers Service
Date:" (*Exhibit "5"*)

Pursuant to *Revenue Memorandum Order No. 20-90*, the waiver must be in the following tenor:

"WAIVER OF THE STATUTE OF LIMITATIONS

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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.

Executed this ______ day of _________ 19 ___, in Quezon City, Philippines.

___________________________
(Taxpayer or Authorized Representative)

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ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date ______________________"

In addition, *Section 1 of RMO No. 20-90* requires that the waiver must be in the form identified therein and that there should be no deviation from such form. *Section 2* thereof requires that soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, shall 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. Both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription; and that the waiver must be executed in three (3) 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. Likewise, the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy (*Section 4, RMO No. 20-90*).

In the case at bar, a careful examination of the subject waivers reveals the following defects:

1) This case involves assessment amounting to more than P1,000,000.00. For this, *RMO No. 20*-90 requires the Commissioner of Internal Revenue to sign for the BIR. A

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perusal of the First and Second Waivers of the Statute of Limitations shows that they were signed by Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad and Assistant Commissioner-Large Taxpayers Service Edwin R. Abella respectively, and not by the Commissioner of Internal Revenue;

2) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad of the First Waiver was not indicated therein;

3) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Edwin R. Abella of the Second Waiver was not indicated therein;

4) The First and Second Waivers of Statute of Limitations did not specify the kind and amount of the tax due; and

5) The tenor of the Waiver of the Statute of Limitations signed by petitioner's authorized representative failed to comply with the prescribed requirements of RMO No. 20-90. The subject waiver speaks of a request for extension of time within which to present additional documents, whereas the waiver provided under RMO No. 20-90 pertains to the approval by the Commissioner of Internal Revenue of the taxpayer's request for re-investigation and/or reconsideration of his/its pending internal revenue case.

In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (*447 SCRA 214*), the Supreme Court laid down the requisites of a valid Waiver of the Statute of Limitations, to wit:

"A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be **strictly** construed. RMO No. 20-90 explains the rationale of a waiver:

> . . . The phrase 'but not after ___________ 19___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. *The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.* (Emphasis supplied)

As found by the CTA, the Waiver of Statute of Limitations, signed by petitioner's comptroller on September 22, 1997 is not valid and binding because it does not conform with the provisions of RMO No. 20-90. It did not specify a definite agreed date between the BIR and petitioner, within which the former may assess and collect revenue taxes. Thus, petitioner's waiver became unlimited in time, violating Section 222(b) of the NIRC.

The waiver is also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No. 20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to



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> extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (P1,000,000.00) and executed almost seven months before the expiration of the three-year prescription period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR."

A careful perusal of the First and Second Waivers of the Statute of Limitations shows that they did not specify the date of acceptance by respondent. This defect makes it difficult to resolve the issue of whether the waivers were actually agreed or executed before the expiration of the three-year prescriptive period. The date of acceptance is material because it determines whether or not the acceptance was made within the prescriptive period; that if the acceptance was made after the prescriptive period, the same is ineffectual since there is no more period to extend.

Thus, in the case of *Philippine Journalists, Inc.* (*supra*), the Supreme Court categorically declared:

> "The other defect noted in this case is the date of acceptance which makes it difficult to fix with certainty if the waiver was actually agreed before the expiration of the three-year prescriptive period. The Court of Appeals held that the date of the execution of the waiver on September 22, 1997 could reasonably be understood as the same date of acceptance by the BIR. Petitioner points out however that Revenue District Officer Sarmiento could not have accepted the waiver yet because she was not the Revenue District Officer of RDO No. 33 on such date. Ms. Sarmiento's transfer and assignment to RDO No. 33 was only signed by the BIR



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> Commissioner on January 16, 1998 as shown by the Revenue Travel Assignment Order No. 14-98. The Court of Tax Appeals noted in its decision that it is unlikely as well that Ms. Sarmiento made the acceptance on January 16, 1998 because 'Revenue Officials normally have to conduct first an inventory of their pending papers and property responsibilities'."

As regards the defect that the subject waivers did not indicate the kind and amount of tax due, the same is a clear violation of RMO No. 20-90. The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner to pinpoint which among the proposed tax assessments may subsequently be issued without the petitioner invoking the defense of prescription. If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of. It should be emphasized that *RMO No. 20-90* requires specific information. Hence, to substitute the same with general statements is a clear violation of *RMO No. 20-90*.

Considering that the First and Second Waivers of the Statute of Limitations are invalid, it necessarily follows that the subsequent waivers did not in any way cure these defects. Neither did they extend the prescriptive period to assess. Hence, the assailed Formal Letter of Demand and Assessment Notices are void for having been issued beyond the reglementary period.

In view of the foregoing discussion, the Court finds it no longer necessary to discuss the other issues raised by petitioner.

**WHEREFORE**, premises considered, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices dated June 24, 2004 for deficiency income tax, final income tax–FCDU, and expanded withholding tax in the total amount of P33,076,944.18 for taxable year 1998, issued by respondent Commissioner of Internal Revenue against the petitioner, are hereby **ORDERED CANCELLED and SET ASIDE.**

**SO ORDERED.**

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

# ATTESTATION

I attest 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.**
Associate Justice
Chairperson, Second Division