REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 421
(C.T.A. Case No. 6823)

Present:

-versus-

Acosta, ***P.J.,***
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, ***JJ.:***

REPUBLIC CEMENT CORPORATION, (as surviving corporation in a merger involving Fortune Cement Corporation),
Respondent.

Promulgated:
MAY 2 9 2009 1:50 p.m.

x- -x

D E C I S I O N

CASTAÑEDA, JR., J.:

THE CASE

This Petition for Review assails the following:

1. Resolution dated June 6, 2008 declaring as cancelled and withdrawn the Final Demand and Assessment Notice Nos. TFD-98-IT-013-03 (Income Tax), TFD-98-VAT-014-03 (Value Added Tax), TFD-98-WF-015-03 (Final Withholding Tax - Interest on foreign loans), TFD-98-WR-016-03 (Final Withholding Tax – Fringe Benefits) and TFD-98-DST-017-03 (Documentary Stamp Tax), all issued on January 29, 2003 in favor of Republic Cement Corporation[1]; and
2. Resolution dated September 5, 2008 denying the Commissioner of Internal Revenue's Motion for Reconsideration.[2]

THE FACTS

Republic Cement Corporation ("RCC") previously known as Fortune Cement Corporation[3], is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines; while the Commissioner of Internal Revenue ("Commissioner") is an official tasked to perform among others, the assessment and collection of national internal revenue taxes, fees and charges under the 1997 National Internal Revenue Code ("NIRC"), as amended.

[1] Rollo, pp. 73-79. See Docket, C.T.A. Case No. 6823, pp. 259-263.
[2] Rollo, pp. 56-58.
[3] Republic Cement Corporation is a surviving entity as a result of its merger with Fortune Cement Corporation, Lloyds Richfield Industrial Corporation and FR Cement Corporation. See Rollo, pp. 123,143-145.

Pursuant to a letter of authority dated November 10, 1999, the Bureau of Internal Revenue ("BIR") conducted an examination of RCC's books of accounts and other financial records of all internal revenue taxes for taxable year ending December 31, 1998.[4]

RCC filed its annual income tax return ("ITR"), monthly remittance returns of income taxes withheld on compensation and expanded withholding taxes, quarterly value added tax ("VAT") returns covering taxable year 1998 on the following dates:

ANNUAL ITR RETURN

PERIOD	DATE FILED
1998	April 15, 1999[5]

QUARTERLY VAT RETURNS

PERIOD	DATE FILED
1st Quarter 1998	April 27, 1998
2nd Quarter 1998	July 27, 1998
3rd Quarter 1998	October 26, 1998
4th Quarter 1998	January 25, 1999[6]

[4] See Joint Stipulation of Facts and Issues, Docket, C.T.A Case No. 6823, p. 140.
[5] See Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 143.
[6] Ibid.

MONTHLY REMITTANCE RETURNS OF INCOME TAXES WITHHELD ON COMPENSATION AND EXPANDED WITHHOLDING TAXES

PERIOD	DATE FILED
January 1998	February 10, 1998
February 1998	March 11, 1998
March 1998	April 13, 1998
April 1998	May 12, 1998
May 1998	June 10, 1998
June 1998	July 27, 1998
July 1998	August 25, 1998
August 1998	September 25, 1998
September 1998	October 26, 1998
October 1998	November 25, 1998
November 1998	December 28, 1998
December 1998	January 25 1999 [7]

To afford the BIR sufficient time to assess and collect internal revenue taxes beyond the three (3) year period under the 1997 NIRC, on September 6, 2001, RCC executed a document denominated as "Waiver of the Statute of Limitation under the National Internal Revenue Code" consenting to the assessment and/or collection of internal revenue taxes which may be found after investigation before or after the prescriptive period stated in Sections

[7] Ibid.

203 and 223 of the 1997 NIRC.[8] The three other waivers executed are identified as: "Waiver of Statute of Limitation" dated May 20, 2002[9], "Waiver of Statue of Limitation" dated August 8, 2002[10] and "Waiver of Statute of Limitation" dated December 3, 2002[11].

In the Preliminary Assessment Notice ("PAN") dated January 9, 2003, the Commissioner through Assistant Commissioner for Enforcement Service, Mr. Perceival T. Salazar informed RCC of its various internal revenue tax liabilities such as IT, VAT, FWT and DST for taxable year 1998 in the cumulative amount of P480,996,133.56.[12]

Assistant Commissioner Salazar subsequently issued the Final Demand with Assessment Notices ("FANS") Nos. TFD-98-IT-013-03, TFD-98-VAT-014-03, TFD-98-WF-015-03, TFD-98-WR-016-03 and TFD-98-DST-017-03, all dated January 29, 2003, and received by RCC showing as follows:

A. INCOME TAX

Basic (Sec. 34 of the NIRC and RR 2-98)	P	150,671,764.63
Interest – Sec. 249 of the NIRC		115,666,344.22
Compromise Penalty – RMO 1-90		25,000.00
Amount Due and Collectible	**P**	**266,363,108.85**

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[8] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 141. See also Exhibit "J", p.283.
[9] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 141. See also Exhibit "K", p. 284.
[10] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 141. See also Exhibit "L", p.285.
[11] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 141. See also Exhibit "M", Docket, p. 286.
[12] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 141. See also Exhibit "A", p.250.

B. VALUE-ADDED TAX

Basic (Sec. 106 of the NIRC)	P	67,139,411.96
Interest – Sec. 249 of the NIRC		54,484,035.40
Compromise Penalty – RMO 1-90		25,000.00
Amount Due and Collectible	**P**	**121,648,447.06**

C. FINAL WITHHOLDING TAX – Interest on Foreign Loans

Basic (Sec. 28(B) (1)/R.R. 2-98)	P	49,572,908.23
Interest –Sec. 249 of the NIRC		40,228,712.47
Compromise Penalty – RMO 1-90		25,000.00
Amount Due and Collectible	**P**	**89,826,620.70**

D. FINAL WITHHOLDING TAX – Fringe Benefits

Basic (Sec. 33 of the NIRC/RR 2-98)	P	1,287,878.79
Interest –Sec. 249 of the NIRC		1,045,121.37
Compromise Penalty –RMO 1-90		25,000.00
Amount Due and Collectible	**P**	**2,358,000.16**

E. DOCUMENTARY STAMP TAX

Basic (Sec. 180 of the NIRC/Sec. 6, RR 9-94)	P	432,765.22
Interest –Sec. 249 of the NIRC		351,191.57
Compromise Penalty – RMO 1-90		16,000.00
Amount Due and Collectible	**P**	**799,956.79**[13]

On March 3, 2003, RCC protested the Assessment Notices[14], and submitted additional relevant documents.

To prevent the assessment notices from becoming final and executory, on November 28, 2003, RCC filed a Petition for Review docketed as C.T.A. Case No. 6823 before the Court in Division. The Commissioner on

[13] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 142. See also Exhibit "G", pp. 264-265.
[14] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 143. See also Exhibit "H", p. 268.

the other hand, filed an Answer to the Petition on January 28, 2004 within the extended period granted by the Court.[15]

RCC filed an Omnibus Motion dated July 8, 2005 raising the following grounds:

A. For Leave of Court for the Early Resolution of Issues on Prescription.
B. To Allow Petitioner to File its Formal Offer of Evidence relative to the Issue on Prescription.
C. To Hold in Abeyance Petitioner's Presentation of Evidence on the Validity of the Assessments on the Merits Until the Issues on Prescription are Resolved.[16]

In his Comment, the Commissioner signified no objection to the filing of RCC's Omnibus Motion dated July 8, 2005, and reserved his right to present evidence on the issue of prescription.[17]

On October 12, 2005, the Court in Division granted RCC's Omnibus Motion dated July 8, 2005, and allowed the presentation of evidence.[18]

For the purpose of resolving the issue of prescription, both parties proffered their testimonial and documentary evidence with the Court in Division.

As per Court's Resolutions dated August 22, 2007 and October 30, 2007[19], RCC filed its Memorandum on December 7, 2007[20] and the Je

[15] Docket, C.T.A. Case No. 6823, p. 92.
[16] Docket, C.T.A Case No. 6823, p. 184.
[17] Docket, C.T.A Case No. 6823, p.206
[18] Docket, C.T.A Case No. 6823, p. 213.
[19] Docket, C.T.A. Case No. 6823, pp. 529-530.
[20] Docket, C.T.A. Case No. 6823, pp. 534-563.

Commissioner filed a "Memorandum on the Issue of Prescription" on February 6, 2008.[21]

On March 18, 2008, RCC filed a Manifestation and Omnibus Motion stating among others that it availed of the Tax Amnesty Program under Republic Act (R.A.) No. 9480.[22]

In ruling for RCC, the Court in Division issued a Resolution dated June 6, 2008 declaring the Final Demand and Assessment Notices Nos. TFD-98-IT-013-03, TFD-98-VAT-014-03, TFD-98-WF-015-03, TFD-98-WR-016-03, and TFD-98-DST-017-03, all issued on January 29, 2003 covering the taxable year 1998 as cancelled and withdrawn. The Court reasoned that for failure to conform to Revenue Memorandum Order (RMO) No. 20-90, the waivers are defective, thus, they did not produce the effect of extending the period of assessment.[23]

The Commissioner moved for the reconsideration of the Resolution dated June 6, 2008 which the Court denied for lack of merit in the Resolution dated September 5, 2008 reiterating the defectiveness of the waivers.[24]

Unfazed, the Commissioner appealed by way of a Petition for Review with the Court *en banc* interposing the following grounds:

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[21] Docket, C.T.A. Case No. 6823, pp. 586-630.
[22] Docket, C.T.A. Case No. 6823, pp. 651-661.
[23] Rollo, pp. 73-79
[24] Rollo, pp. 56-58.

Grounds for the Allowance of the Petition

A. The Honorable Division failed to discuss and address the arguments of petitioner that respondent is already estopped from questioning the validity of the waivers;

B. The waivers executed no less by respondent are substantially valid in form and substance; and

C. The Honorable Division failed to consider the fact that even assuming for the sake of argument that the subject waivers are not valid, still the assessments must not be cancelled and dismissed because the prescriptive period in the case of filing false returns, as in the case of respondent, is ten (10) years from the date of discovery.[25]

COMMISSIONER OF INTERNAL REVENUE'S ARGUMENTS

According to the Commissioner of Internal Revenue, it was RCC which requested for the extension of the prescriptive periods to be given sufficient time to prepare its accounting records for audit purposes. For this reason he consented to such request. Thus, by its own conduct, RCC led the Commissioner, who acting in good faith, allowed it to substantiate its own contentions at the administrative level through acceptance of the signed waivers. Based on the principles of estoppel and conclusive presumption under Section 2(a) of Rule 131 of the Rules of Court, RCC cannot at this juncture disown the validity of its actions by disputing the validity of the waivers it no less executed.

The waivers executed by RCC which were accepted by the Commissioner are valid and enforceable. Thus, there was substantial compliance of the law in the execution of these documents. *gr*

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[25] Rollo, p.12.

Pursuant to Section 7 of the 1997 NIRC provides that the power to delegate the signing of the waiver is not one of the enumerated non-delegable powers of the Commissioner. Hence, the acceptance of the waivers by his duly authorized representative is valid.

RCC has knowledge of the Commissioner's acceptance by his duly authorized representatives of the waivers. It would not have been possible for RCC to execute another waiver purportedly to extend the audit period were it not known to it that the previous waiver was not accepted by the Commissioner. This shows that there was due acceptance of the waivers.

The waivers were executed prior to the expiration of the original three (3) year period, and before the lapse of the previously agreed period.

Clearly, the waivers executed within the prescriptive period are substantially valid in form and substance.

Even for the sake of argument that the waivers are void, still the assessments are enforceable because the prescriptive period in the case of filing false returns or omission to file returns is ten (10) years from the date of discovery thereof.

Assessments are presumed correct unless rebutted by the taxpayer. RCC in this case opted to defer the presentation of its evidence based on the merits of the case. Thus, it failed to rebut the presumption of correctness of the subject assessment. gr

REPUBLIC CEMENT CORPORATION'S ARGUMENTS

RCC counters that the Court in Division correctly cancelled and withdrew the assessments on its alleged liability for deficiency IT, VAT, final withholding taxes ("FWT"), and documentary stamp tax ("DST") for the taxable year 1998 in the aggregate amount of P480,996,133.56, inclusive of increments.

The waivers are void since they did not comply with the requisites and formalities of a valid waiver pursuant to Revenue Memorandum Order ("RMO") No. 20-90 dated April 4, 1990. Hence, said waivers did not have the effect of extending the three (3) year assessment period.

The failure to observe the requirements of RMO No. 20-90 and Revenue Delegated Authority ("RDA") No. 5-2001 rendered the first waiver invalid, the effect of which is the non suspension of the prescriptive period of assessment.

The Court in Division correctly ruled that inasmuch as the first waiver is invalid, the issuance of the subsequent waivers is of no consequence.

THE COURT'S RULING

The Petition is partly meritorious. *gr*

INVALID WAIVERS

To protect taxpayers from unreasonable investigation and from indefinite issuances of assessments, the law allows assessment of internal revenue taxes within a period of three (3) years from the last day prescribed by law for the filing of a return or from the day when the return was filed, whichever is later, as provided in Section 203 of the 1997 NIRC which reads:

> "SEC. 203. *Period of Limitations Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after 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 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.

The parties may however stipulate in writing to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon in conformity with Section 222 (b) of the 1997 NIRC which provides:

> SEC. 222. *Exceptions as to Period of Limitation 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 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. xxx xxx xxx

Section 222 (b) of the 1997 NIRC should be read in conjunction with RMO No. 20-90, or also known as, "PROPER EXECUTION OF THE WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE" which states the following requisites:

xxx xxx xxx

1. The waiver must be in the form identified as Annex "A" hereof.

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 re-investigation 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 gr 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)

ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date ________________

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

1. ACIRs for Collection, Special Operations,	For tax cases involving not more

National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	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. <u>In the Regional Offices</u>

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

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.

xxx xxx xxx

In this case, separate written agreements denominated as "Waiver of the Statute of Limitations under the National Internal Revenue Code" were executed on September 6, 2001[26], May 20, 2002[27], August 8, 2002[28] and December 3, 2002[29]. However, the Court in Division aptly observed that these waivers failed to comply with the requirements specified in RMO 20-90.

First, the date of acceptance was not indicated in the waivers. The date of execution cannot be presumed as the date of acceptance. The date of acceptance is important because it determines whether or not the acceptance was made within the prescriptive period.[30]

Second, the signatory for the BIR is not authorized to sign the waivers. For tax cases involving more than P1,000,000.00, the Commissioner of Internal Revenue is the authorized signatory of the waivers. In this case, the second and third waivers were executed by Assistant Commissioner for Enforcement Service; while the first and fourth waivers were signed by Assistant Commissioner for Large Taxpayer Service and a Revenue Official, respectively.[31] Jr

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[26] Exhibit "J", Docket, C.T.A. Case No. 6823, p. 283.
[27] Exhibit "K", Docket, C.T.A. Case No. 6823, p. 284.
[28] Exhibit "L", Docket, C.T.A. Case No. 6823, p.285.
[29] Exhibit "M", Docket, C.T.A. Case No. 6823, p. 286.
[30] *Commissioner of Internal Revenue vs. Maruka Enterprises, Inc.,* C.T.A. EB Case No. 105, June 1, 2006 and *Maruka Enterprises, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 5977, February 2, 2005.
[31] See Exhibits "J", "K", "L" and "M", Docket, C.T.A. Case No. 6823, pp. 283-286.

Finally, the subject waivers failed to indicate the kind and amount of tax due in violation of RMO 20-90. The purpose of stating the specific kind of tax and the amount of tax due is to pinpoint which among the proposed tax assessments may subsequently be issued without the taxpayer invoking the defense of prescription.[32]

Considering that the waivers dated September 6, 2001[33], May 20, 2002[34], August 8, 2002[35] and December 3, 2002[36] are defective, the three (3) year prescriptive period of RCC's alleged tax liabilities was not tolled.

ASSESSMENT NOTICE NOS. TFD-98-IT-013-03 AND TFD-98-VAT-014-03 WERE ISSUED BEYOND THE PERIOD PRESCRIBED BY LAW

As previously discussed, since the waivers are defective in violation of RMO 20-90, the three (3) year assessment period is the applicable provision based on Section 203 of the 1997 NIRC.

Section 77 (B) of the 1997 NIRC provides that income tax final adjustment returns or annual income tax returns shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth day of the fourth (4th) month following the close of the fiscal year, as the case may Jc

[32] *Bovis Lend Lease Projects PTE. LTD. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 6825, August 23, 2007.
[33] Exhibit "J", Docket, C.T.A. Case No. 6823, p. 283.
[34] Exhibit "K", Docket, C.T.A. Case No. 6823, p. 284.
[35] Exhibit "L", Docket, C.T.A. Case No. 6823, p.285.
[36] Exhibit "M", Docket, C.T.A. Case No. 6823, p. 286.

be.[37] RCC filed its 1998 annual income tax return ("ITR") on April 15, 1999[38], thus, the Commissioner had until April 15, 2002 within which to assess. FAN No. TFD-98-IT-013-03 dated January 29, 2003 was received on January 31, 2003[39] or beyond the three (3) year prescriptive period of assessment. Hence, the assessment is void.

Concerning VAT, Section 114 (A) of the 1997 NIRC mandates a taxpayer to file quarterly VAT returns "within twenty five days following the close of each taxable quarter xxx".

RCC filed its quarterly VAT returns for taxable year 1998 illustrated as follows:

PERIOD	DATE FILED	LAST DAY TO ASSESS
1st Quarter 1998	April 27, 1998	April 27, 2001
2nd Quarter 1998	July 27, 1998	July 27, 2001
3rd Quarter 1998	October 26, 1998	October 26, 2001
4th Quarter 1998	January 25, 1999[40]	January 25, 2002

Counting from the filing of the returns, the Commissioner had until April 27, 2001, July 27, 2001, October 26, 2001 and January 25, 2002 to assess VAT covering the four quarters of taxable year 1998. The Commissioner's belated issuance of FAN No. TFD-98-VAT-014-03 on Jr

[37] See Section 77 (B) of the 1997 NIRC.
[38] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 143.
[39] Exhibit "H", Docket, C.T.A. Case No. 6823, p. 268.
[40] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6823, p. 143.

January 29, 2003, and RCC's receipt of such assessment notice on January 31, 2003 justifies the cancellation of deficiency VAT for taxable year 1998.[41]

REPUBLIC CEMENT CORPORATION FAILED TO FILE RETURNS FOR FWT ON INTEREST ON FOREIGN LOANS AND FRINGE BENEFITS AND DST ON CASH ADVANCES TO AFFILIATES AND EMPLOYEES COVERING TAXABLE YEAR 1998

Both documentary and testimonial evidence reveal RCC's failure to file returns for FWT on interest on foreign loans and fringe benefits, and DST on cash advances to affiliates and employees for taxable year 1998.

The taxpayer's omission to file returns warrants a ten (10) year assessment period from discovery thereof in accordance with Section 222 of the 1997 NIRC which is an exception to the three (3) year assessment period prescribed in Section 203 of the same Code. The pertinent provision of Section 222 (a) of the 1997 NIRC reads:

> 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 xxx. *gr*

[41] Exhibits "G" and "H", Docket, C.T.A. Case No. 6823, pp. 260,264 and 268.

The mere fact of not filing the return would make the ten (10) year prescriptive period applicable without taking into account the reason of the taxpayer for not filing it.[42]

Section 2.58 (A)(2)(a) of Revenue Regulations ("R.R.") No. 2-98[43] states that "the withholding tax return, whether creditable or final shall be filed and payments should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year".

An examination of the proffered monthly remittance returns of income taxes withheld covering January to December 1998 discloses that RCC reported compensation and expanded withholding taxes **excluding FWT on interest on foreign loans and fringe benefits.** As shown in the monthly remittance returns, no entries were indicated in the column corresponding to "final tax" withheld which bolsters the fact that interest on foreign loans and fringe benefits were not subjected to FWT.[44] The absence of entries in the column for FWT embodied in the monthly remittance returns of income tax withheld should be treated as omission to file returns within the purview of the ten year assessment period under Section 222 (a) of the 1997 NIRC. If RCC is convinced that it is not liable for final taxes

[42] *Prudential Bank vs. Commissioner of Internal Revenue*, July 4, 2007, C.T.A. Case No. 7380.
[43] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as amended" relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.
[44] Docket, C.T.A. Case No. 6823, pp. 287-315.

withheld on interest on foreign loans and fringe benefits, it should have at least noted in the returns that these taxes are not applicable.

This Court cannot give credence to RCC's assertion that creditor banks actually remitted its interest payment on foreign loans evidenced by certifications. Allegation of bank certifications of remittance of final taxes on interest on foreign loans cannot be given weight because they were never proffered in evidence. The fact remains that RCC never filed returns of FWT on interest on foreign loans when it acknowledged in paragraph 50 of the Petition for Review docketed as C.T.A. Case No. 6823 that:

> 50. Consistent with established banking practice, the final taxes on petitioner's interest payments on foreign currency loans were remitted to the Government by petitioner's creditor banks for and on behalf of petitioner. Petitioner creditor banks have in fact issued Certifications of the remittance of final taxes on the interest on loans obtained by the petitioner from them.

Indubitably, the ten year assessment period applies for failure of RCC to file returns of FWT on interest on foreign loans.

With regards to DST, returns should be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.[45]

During the hearing conducted on March 28, 2006, Atty. Suzette Celicious in behalf of RCC admitted that since its client is not liable for DST

[45] Section 200(B) of the 1997 NIRC.

on cash advances to affiliates and employees, there were no DST returns filed. She testified that:

xxx xxx xxx

ATTY. CELICIOUS IS STATING THE PURPOSE:

Your Honors, we offered the testimony of Ms. Rachelle Francisco Calderon for the following purposes:

To prove that the advances to employees and due to affiliates accounts of the petitioner in taxable year 1998 are not subject to DST, thus, petitioner was not required to file a DST return thereon, your Honors. (**Emphasis supplied.**)

To prove the documents supporting the advances to employees and to affiliates in taxable year 1998, consisting of check vouchers and written requests for advances.[46]

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Clearly, there was an omission to file the returns for DST on cash advances to employees and affiliates for taxable year 1998, thus, the ten (10) year period of assessment must be observed.

Assessment Notice Nos. TFD-98-WF-015-03, TFD-98-WR-016-03 and TFD-98-DST-017-03 pertaining to RCC's 1998 FWT and DST liabilities were received on January 31, 2003[47] within the ten (10) year assessment period. Thus, the Court in Division erroneously cancelled assessment notices pertaining to RCC's 1998 FWT and DST liabilities on the basis of prescription. Jr

[46] TSN dated March 28, 2006, pp. 14-15.
[47] Exhibit "H", Docket, C.T.A. Case No. 6823, p. 268.

The Commissioner's assertion of false returns which would merit the application of the ten (10) year assessment period under Section 222 (A) of the 1997 NIRC, is untenable. False return is defined when the entry in the return deviates from the truth.[48] However, in this case, the Commissioner miserably failed to establish the existence of false returns. He who alleges the affirmative of the issue has the burden of proof.[49]

RCC cannot invoke the provisions of R.A. 9480, or also known as the Tax Amnesty Act because it failed to submit the requisite originals or certified true copies of Statement of Assets, Liabilities and Networth ("SALN") as of December 31, 2005, Notice of Availment of Tax Amnesty, Tax Amnesty Return and Acceptance Payment Form.[50]

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly:

1) As regards the Final Notice and Assessment Notices Nos. TFD-98-IT-013-03(Income Tax), and TFD-98-VAT-014-03(Value Added Tax), the assailed Resolution dated June 6, 2008 canceling said Assessment Notices is hereby **AFFIRMED**; ge

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[48] *Aznar vs. Court of Tax Appeals*, L-20569, August 23, 1974, 58 SCRA 519.
[49] *Rizal Commercial Banking Corporation vs. Marcopper Mining Corporation*, G.R. No. 170738, September 12, 2008, 565 SCRA 125.
[50] See Section 3 of R.A. 9480 and Department of Finance Department Order No. 29-07, or the "Rules and Regulations to Implement Act No. 9480". See also Docket, C.T.A. Case No. 6823, pp. 659-661.

2) As regards the Final Notice and Assessment Notices Nos. TFD-98-WF-015-03(Final Withholding Tax - Interest on Foreign Loans), TFD-98-WR-016-03(Final Withholding Tax – Fringe Benefits) and TFD-98-DST-017-03(Documentary Stamp Tax), the assailed Resolution dated June 6, 2008 canceling said Assessment Notices is hereby **REVERSED and SET ASIDE**. Let the case be remanded to the Court in Division for further proceedings on the said remaining issues for trial on the merits.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice