Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ASIAN TRANSMISSION CORPORATION, Petitioner,	**CTA Case No. 8476**
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 28 2014 3:50 p.m.

x---x

DECISION

CASANOVA, *J.:*

This Petition for Review[1], filed by petitioner Asian Transmission Corporation seeks to reverse and set aside the Decision of the Commissioner of Internal Revenue dated November 15, 2011, finding it liable for deficiency withholding tax on compensation in the amount of P67,722,419.38, expanded withholding tax in the amount of P7,436,545.83 and final withholding tax in the amount of P537,651.55, or in the total amount of P75,696,616.75 for taxable year 2002.

Petitioner Asian Transmission Corporation (ATC) is a corporation duly organized and existing under Philippine Laws with business address at Carmelray Industrial Park, Canlubang, Calamba City, Laguna.[2] ATC is a manufacturer of motor vehicle transmission component parts and engines of Mitsubishi vehicles. It was organized and registered with the Securities and Exchange

[1] Docket (Vol. I), pp. 6-31.
[2] Par. 2.1, The Parties, Petition for Review (Petition), Docket (Vol. I), p. 7.

Commission on August 29, 1973 as evidenced by its Certificate of Incorporation.[3]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) with office address at BIR National Office Bldg., Agham Road, Diliman, Quezon City.[4]

On January 30, 2003[5] and March 3, 2003,[6] ATC filed its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes and Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax, respectively.

On August 11, 2004, ATC received Letter of Authority (LA) No. 200000003557 where respondent Commissioner of Internal Revenue (CIR) informed ATC that its revenue officers from the Large Taxpayers Audit and Investigation Division II shall examine its books of accounts and other accounting records for the taxable year 2002.[7] Thereafter, respondent issued a Preliminary Assessment Notice (PAN)[8] to ATC.

Consequently, on various dates, ATC, through its Vice President for Personnel and Legal Affairs, Mr. Roderick M. Tan, executed several documents denominated as "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver),[9] as follows:

Waiver	**Source of Document**	**Date of Execution**	**Date of Extension of Investigation**
First Waiver[10]	Page 415, BIR Records	September 8,2004	June 30, 2005
Second Waiver[11]	Page 419, BIR Records	March 3,2005	December 31, 2005

a

[3] Par. 3.1, Statement of Facts, Petition, Docket (Vol. I), p. 7; Exh. "A".
[4] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 240.
[5] Exhibit "CCC".
[6] Exhibit "DDD".
[7] Exhibit "J".
[8] Par. 2, Summary of Admitted Facts, JSFI, Docket (Vol. I), p. 241; Exhibit "K".
[9] Par. 4, Summary of Admitted Facts, JSFI, Docket, pp. 241-242.
[10] Exhibit "B".

Third Waiver[12]	Page 422, BIR Records	November 10, 2005	June 30, 2006
Fourth Waiver[13]	Page 429, BIR Records	March 21, 2006	December 31, 2006
Fifth Waiver[14]	Page 767, BIR Records	March 21, 2006	June 30, 2007
Sixth Waiver[15]	Page 349, BIR Records	April 18, 2007	December 31, 2007
Seventh Waiver[16]	Page 354, BIR Records	October 25, 2007	June 30, 2008
Eight Waiver[17]	Page 1176, BIR Records	May 30, 2008	December 31, 2008

Meanwhile, on February 28, 2008, ATC availed of the Tax Amnesty program under Republic Act No. 9480.[18]

On July 15, 2008, ATC received a Formal Letter of Demand[19] from respondent CIR for deficiency withholding tax on compensation in the amount of P62,977,798.02, expanded withholding tax in the amount of P6,916,910.51, final withholding tax in the amount of P501,077.72. On August 14, 2008, ATC filed its Protest Letter[20] in regard thereto.

Accordingly, on April 14, 2009, ATC received the Final Decision on Disputed Assessment[21] where respondent CIR found ATC liable to pay deficiency tax in the amount of P75,696,616.75. Thus, on May 14, 2009, ATC filed an appeal letter/request for reconsideration[22] with respondent CIR.

On April 10, 2012, ATC received the Decision[23] of respondent CIR dated November 15, 2011, denying its request for

---

[11] Exhibit "C".
[12] Exhibit "D".
[13] Exhibit "E".
[14] Exhibit "F".
[15] Exhibit "G".
[16] Exhibit "H".
[17] Exhibit "I".
[18] Exhibits "S" and "T".
[19] Exhibit "L".
[20] Exhibit "O".
[21] Exhibit "M".
[22] Exhibit "R".
[23] Exhibit "N".

reconsideration. As such, on April 23, 2012, ATC filed the instant Petition for Review (With Application for Preliminary Injunction and Temporary Restraining Order).

On April 26, 2012,[24] a hearing was conducted with respect to petitioner's Application for Preliminary Injunction and Temporary Restraining Order. Upon ATC's submission of its Compliance and posting of Injunction Bond,[25] the Court, in its Resolution[26] dated April 30, 2012, granted the aforesaid application. Consequently, on July 18, 2012, the Court issued a Resolution[27] enjoining respondent CIR and all persons acting on her behalf from undertaking any and all remedies to collect the subject deficiency taxes until further orders from the Court.

On July 9, 2012, respondent CIR filed her Answer where she raised the following Special and Affirmative Defenses,[28] *to wit*:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 4. Respondent reiterates and re-pleads the preceeding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. Petitioner Asian Transmission Corporation, is liable to pay its deficiency withholding taxes for calendar year 2002 in the total amount of Seventy-Five Million Six Hundred Ninety-Six Thousand Six Hundred Sixteen Pesos and 75/100 (Php75,696,616.75) including penalties and interests for the following reasons:
>
> 5.1 The assessment for taxable year 2002 in the amount of Php75,696,616.75 was issued in accordance with law and regulations.
>
> 5.2 Comprehensive study of petitioner's books of accounts and pertinent accounting records disclosed that it is liable to pay the total deficiency withholding tax

---

[24] Minutes of the Hearing, Docket (Vol. I), p. 110.
[25] Compliance, Docket (Vol. I), pp. 146-148; pp. 189-190.
[26] Docket (Vol. I), pp. 112-116.
[27] Docket (Vol. I), p. 197.
[28] Pars. 4-11, Special and Affirmative Defenses, Answer, Docket (Vol. I), pp. 174-183.

assessments. The pertinent portions of the Memorandum Report of the examiner who conducted the investigation of petitioner's case are quoted hereunder, to wit:

'xxx xxx xxx

WITHHOLDING TAX

a. **WITHHOLDING TAX ON COMPENSATION**

1. Discrepancy on salaries subjected to withholding tax vs. per FS – P93,630,341.27

The above amount represents unaacounted *(sic)* salaries as a result of reconciliation of compensation recorded per audited financial statement vs. per alphalist, hence, the withholding thereon was assessed pursuant to Sections 79 and 80 of the National Internal Revenue Code.

b. **EXPANDED WITHHOLDING TAX – P3,281,434.04**

Income payments subject to creditable withholding tax under Revenue Regulations 2-98 were identified in order to ascertain the correctness of the amount withheld and remitted to BIR. The result of such examination and verification revealed that the subject taxpayer is still liable to pay the basic deficiency expanded withholding tax amounting to P3,281,434.04 pursuant to Section 57 (B) of the National Internal Revenue Code.

c. **WITHHOLDING TAX – FINAL**

Discrepancy on royalties subjected to withholding tax vs. per FS – P2,309,592.58

The above amount represents royalties not subjected to final withholding tax, hence, assessed pursuant to Section 57(A) of the NIRC, as implemented by RR 2-98.

Detailed computation of the above assessment is attached herewith.

The taxpayer failed to submit additional documents to support their claims, hence, previous assessment was reiterated.

xxx xxx xxx

Corollary thereto, the Decision rendered by the Commissioner of Internal Revenue in response to petitioner's request for reconsideration of the decision denying its protest is hereunder quoted, *to wit*:

xxx xxx xxx

ISSUES TO BE RESOLVED:

1. Whether or not ATC is liable for deficiency withholding tax on compensation in the amount of P67,722,419.38 based on the discrepancy on salaries subjected to withholding tax and the amount of salaries reported in the Financial Statements.

2. Whether or not ATC is liable for deficiency expanded withholding tax in the amount of P7,436,545.82.

3. Whether or not ATC is liable for deficiency final withholding tax in the amount of P537,651.55.

DISCUSSION:

This Office after thoroughly reviewing the facts of the case and the applicable laws and jurisprudence pertinent thereto, finds the herein request for reconsideration bereft of merit.

RE: **DEFICIENCY WITHHOLDING TAX ON COMPENSATION**

The pertinent provisions in this case are Section 79 and Section 80 of the National Internal Revenue Code (Tax Code) of 1997, as amended, which provide:

Section 79. Income Tax Collected at Source.-

(A) Requirement of Withholding. **Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code**, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

(B) Tax Paid by Recipient. – if the employer, in violation of the provisions of this Chapter, fails to deduct, and Withhold the tax as required under this Chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but this Subsection shall in no case relieve the employer from liability for any penalty or addition to the tax otherwise applicable in respect of such failure to deduct and withhold.

xxx xxx xxx

Section 80. Liability of Tax.-

(A) Employer- The employer shall be liable for the withholding and remittance of the correct amount of tax required to be deducted and withheld under this Chapter. If the employer fails to withhold and remit the correct amount of fax *(sic)* as required to be withheld under the provision of this Chapter, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.'

Briefly, the law says that every employer making payment of wages shall deduct and withhold upon such wages a tax in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

The employer is responsible for the withholding and remittance of the correct amount of tax required to be deducted from the salaries and/or wages of its employees under the Tax Code.

The purpose of the withholding of the tax on wages is to insure the collection at source of income tax on wages. What is required to be withheld is not a new tax but the income tax on individual taxpayers imposed under Section 24(A) of the Tax Code. The employer is constituted as the withholding agent.

In the instant case, evidence shows that there was a discrepancy on salaries subjected to withholding tax. ATC's total salaries reported per Financial Statement/Income Tax Return was P292,007,241.00 while the total salaries reported per Alphalist was only P198,376,899.73, thus resulting to a discrepancy in the amount of P93,630,341.27. Per audit and verification of the investigating examiners, said amount of P93,630,341.27 represents ATC's unaccounted salaries as a result of the reconciliation between the compensation per audited Financial Statements and Alphalist.

ATC's contention is anchored on the following grounds:

a. The examiners failed to distinguish that for financial statement reporting purposes, several non-compensation items not subjected to withholding tax, were classified for financial statement reporting purposes under the salaries and wages expenses.

b. The reconciliation also did not take into consideration compensation payments made by ATC to its employees which were not subject to withholding tax on compensation and thus were not included in the Alphalist.

c. As plainly explained in the reconciliation schedule, the bulk of the alleged discrepancy consists of non-compensation accounts not subject to withholding and thus not included in the disclosures on the Alphalist.

Findings, however, actually show that ATC failed to substantiate by clear and convincing evidence its contention. The difference accounted for non-compensation accounts, compensation of Excom Members/Managers, labor cost of finished goods inventory ending, all in the total amount of P93,630,341.27 were not presented in the Audited Financial Statements as opposed to what the taxpayer was claiming. Consequently, such amount cannot be considered by the investigating examiners since it was neither presented in the Financial Statements nor in the Income Tax Return.

Therefore, ATC's unsupported argument cannot prevail over the result of the investigation made by the assigned investigating examiners. There was indeed a discrepancy on ATC's salaries per Financial Statements and Alphalist which must be subjected to withholding tax. Thus, the assessment on deficiency withholding tax on compensation is proper.

RE: DEFICIENCY EXPANDED WITHHOLDING TAX

ATC's contention is that the manner by which the alleged expanded withholding tax assessment was arrived at is at its best a mere presumption which cannot be the basis of an assessment.

Contrary to ATC's contention, records actually show that there was indeed a discrepancy on income payments subject to withholding taxes against the amount actually withheld and remitted, hence, assessed pursuant to Section 57(B) of the NIRC. For failure to dispute the actual findings, this office has no recourse but to sustain the assessment.

RE: DEFICIENCY FINAL WITHHOLDING TAX ON ROYALTIES

With regard to the discrepancy on royalties, ATC argued that as per details of discrepancy on royalties, all income payments subject to the final withholding tax system were already subjected to the appropriate withholding tax rates.

Actual findings, however, shows the contrary. The royalties subjected to withholding tax were compared to ATC's Financial Statements, which resulted to a discrepancy of P2,309,592.58. The said amount represents royalties not – subjected to final withholding tax, hence, assessed pursuant to Section 57(A) of the NIRC, as implemented by RR 2-98.

Well-settled is the 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. All presumptions are in favor of tax assessments (*Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil. 290; Sy Po v. CTA, et al., G.R. No. 81446, Aug. 18, 1988; Dayrit, et al. v. Cruz, et al., L-39910, September 26, 1988; Cagayan Robing Sugar Milling Co. v. Court of Appeals, et al., G.R. No. 122451, Oct. 12, 2000*).

Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (Delta Motors Co. v. Commissioner, CTA Case No. 3782, May 21, 1986; Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. Nos. 104151 and 105563, Mar. 10, 1995). Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.

Moreover, the delinquency in the withholding tax system is more reprehensible than other tax delinquency because the withholding agent which in this case is the ATC deprives the government of funds to which it never had a right. It holds such fund in trust for the government.

IN VIEW THEREOF, ATC's request for reconsideration of the decision denying its protest is hereby DENIED. The assessments demanding payment of the total amount of P75,696,616.75 as deficiency withholding tax on compensation, expanded withholding tax and final withholding tax for the taxable year 2002 are hereby **AFFIRMED** in all respects. Consequently, ATC is hereby ordered to pay the aforestated amount to the Large Taxpayers-Collection and Enforcement Division, BIR National Office, Diliman, Quezon City within thirty (30) days from receipt hereof; otherwise, collection thereof shall be effected through the summary remedies provided by law.

This constitutes the **FINAL DECISION** of this Office on the matter.

5.3 In case of disputed assessments, the burden of proof is on the taxpayer to establish the fact that it is indeed not liable for any deficiency taxes subject of the assessment. Failure to show documents that would substantiate a claim that no deficiency taxes are due, would result to upholding the validity of the assessment for deficiency income taxes **(Camara Steel Industries, Inc. vs. Commissioner of Internal Revenue)**.

5.4 Well settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments (**Sy Po vs. Court of Tax Appeals**). Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

Petitioner is estopped from assailing the validity of the waiver with respect to the assessments of its deficiency withholding taxes.

6. Indubitably, petitioner is now questioning the validity of the waiver for the first time on appeal. It is clear from the records of the case that petitioner did not raise the issue of validity of the waiver in its alleged letter protest nor did it raise the said defense in its alleged Administrative Appeal with the Commissioner of Internal Revenue.

7. The execution of the waivers by petitioner proved to be beneficial to the latter considering that aforesaid waivers constitute as tools for petitioner by providing it enough time to gather its voluminous documents/records for the conduct of audit by respondent. The waiver eventually led to the issuance of the Final Assessments and demand for payment.

8. It is quite absurd and unfair that when the Final Assessments proved to be adverse to petitioner, the very same waiver utilized by petitioner for its own advantage will now be used by the very same petitioner to defeat the validity of the waivers it voluntarily executed. Ergo, petitioner's deafening silence and failure to challenge the legality of the waivers within the administrative level operates as an estoppel on its part to question the same before the Honorable Court.

As found under Section 1431 of the Civil Code of the Philippines avers:

> 'Art. 1431. Through estoppels, an **admission** or **representation** is rendered conclusive upon the person making it and cannot be denied or disproved as against the

> person relying it.' (*Emphasis and underscoring supplied*)
>
> 9. Respondent humbly manifests that petitioner's voluntary act of signing the waivers is tantamount to an assent or consent to extend the period of assessment. The act of signing the rest of the waivers already cured the alleged defect found in the prior waivers. Therefore, petitioner is now estopped from claiming otherwise.
>
> 10. Petitioner cannot now question its validity, especially, after it has received and accepted certain benefits as a result of the execution of the subject waivers.
>
> 11. A party shall not, after its opportunity to enjoy the benefits of an agreement, be allowed later to dispute the same, when the terms thereof ultimately would prove to operate against its hopeful expectations."

On July 12, 2012, the Court issued a Notice of Pre-Trial Conference.[29] Then, on July 19, 2012 and July 27, 2012, respondent CIR[30] and ATC[31] filed their respective Pre-Trial Briefs. In the August 2, 2012 hearing,[32] the Court gave ATC until August 22, 2012 within which to submit the parties' Joint Stipulation of Facts and Issues,[33] which was filed on August 22, 2012. Thus, the Pre-Trial was deemed terminated and the case was set for petitioner's presentation of evidence.[34]

In support of its Petition, ATC presented the following witnesses: Mr. Roderick M. Tan – Corporate Secretary and Vice President for Personnel and Legal Affairs of ATC,[35] Mr. Edwin B. Celoso – Finance Department Manager of ATC,[36] Mr. Antonio O. Maceda, Jr. – Managing Partner in Maceda Valencia & Co., Independent Certified Public Accountant,[37] Ms. Menchie A. Fresco – ATC's rebuttal witness and OIC-Asst. Chief Personnel Division of the

---

[29] Docket (Vol. I), p. 188.
[30] Respondent's Pre-Trial Brief, Docket (Vol. I), pp. 198-208.
[31] Pre-Trial Brief, Docket (Vol. I), pp. 209-222.
[32] Minutes of the Hearing, Docket (Vol. I), p. 223.
[33] JSFI, Docket (Vol. I), pp. 240-249.
[34] Resolution dated August 28, 2012, Docket (Vol. I), p. 251.
[35] Minutes of the Hearing, Docket (Vol. II), p. 533; Exh. "Z".
[36] Minutes of the Hearing, Docket (Vol. II), p. 581; Exhibit "EEE.
[37] Minutes of the Hearing, Docket (Vol. II), p. 592; Exhibit "FFF"; Exhibit "GGG".

BIR and Mr. Leohar S. Ocampo – also ATC's rebuttal witness, Admin. Officer II, Compensation Benefits Section, Personnel Division of ~~the~~ BIR National Office.[38]

ATC likewise formally offered its documentary evidence.[39] In its Resolution[40] dated April 19, 2013, the Court admitted as evidence Exhibits "A" to "C", "E" to "P", "R", "S", "U", "V", "Y", "Z", "Z-1", "BB", "EEE" to "HHH-1", "1-1" to "1-45", "2-1" to "2-12", "3-1" to "3-22", "4-1" to "4-12", "5-1" to "5-14", "6-1" to "6-12", "7-1" to "7-5", "8-1" to "8-37", "8-39" to "8-97", "8-100" to "8-102", "8-104" to "8-121", "8-123" to "8-163", "9-1" to "9-6", "10-1" to "10-57", "11-1" to "11-284", "12-1" to "12-382", "13-1" to "13-127", "13-129" to "13-134.1", "13-134.3" to "13.268", "14-1" to "14-54", "15-1" to "15-12", "16-1" to "16-38", "17-1" to "17-7", "18-1" to "18-21", "19-1" to "19-3", "20-1" to "20-32", "21-1" to "21-35", "24-1" to "24-7" and "25-1" to "25-17".

However, the Court denied the admission of the following evidence: Exhibits "D", "Q", "8-98", "8-99", "8-103", "13-134.2", "22-1" to "22-16", "23-1" to "23-30", "T", "CCC", "DDD", "1-46", "1-47", "8-38", "8-122", "12-383", "13-128", "24-8" and "24-9".

On May 14, 2013, ATC filed its Motion for Reconsideration[41]. In the Resolution[42] dated July 4, 2013, the Court admitted as evidence Exhibits "D", "T", "CCC", "DDD", "22-1" to "22-16", "23-1" to "23-30" and "13-134.2".

On the other hand, respondent CIR presented as her sole witness Ms. Catalina Benedicto – Revenue Officer of the BIR.[43] Thereafter, on June 18, 2013, respondent CIR filed her Formal Offer of Evidence[44] where the Court, in its Resolution[45] dated July 24, 2013, admitted Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "22" and "22-A" but denied admission of Exhibit "21".

---

[38] Minutes of the Hearing, Docket (Vol. III), p. 1254.
[39] Docket (Vol. II), pp. 721-740.
[40] Docket (Vol. III), pp. 1080-1081.
[41] Docket (Vol. III), pp. 1099-1104.
[42] Docket (Vol. III), pp. 1204-1207.
[43] Minutes of the Hearing, Docket (Vol. III), p. 1155; Exhibit "22".
[44] Docket (Vol. III), pp. 1174-1188.
[45] Docket (Vol. III), pp. 1216-1217.

Respondent CIR filed its Motion for Reconsideration (Resolution dated July 24, 2013)[46] on August 13, 2013 and in its Resolution[47] dated September 12, 2013, the Court admitted as evidence Exhibit "21".

Meanwhile, ATC filed its Formal Offer of Rebuttal Evidence[48] on November 27, 2013. In the Resolution[49] dated January 22, 2014, the Court admitted Exhibits "III" and "JJJ". In the same Resolution, the Court ordered the parties to submit their respective Memorandum and after which, the case shall be deemed submitted for decision.

ATC filed its Memorandum [For the Petitioner],[50] through registered mail, on March 25, 2014, while respondent CIR filed her Memorandum[51] on April 11, 2014. As such, the case was submitted[52] for decision on April 22, 2014.

Meanwhile, on April 28, 2014, petitioner filed a Motion to Admit Reply [To Respondent's Memorandum dated 10 April 2014] together with a copy of the said Reply and the same was admitted by the Court in its May 29, 2014 Resolution. Likewise, petitioner's Motion to Admit Attached Supplemental Reply [To Respondent's Memorandum dated 10 April 2014] filed on November 5, 2014 is hereby **NOTED**. Hence, this Decision.

The following issues were submitted by the parties for the consideration of the Court:

1. Whether or not LOA No. 00003557 had lost its validity.

2. Whether or not the Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code validly extended the government's right to assess deficiency taxes against petitioner ATC.

---

[46] Docket (Vol. III), pp. 1218-1224.
[47] Docket (Vol. III), pp. 1247-1248.
[48] Docket (Vol. III), pp. 1256-1258.
[49] Docket (Vol. III), p. 1272.
[50] Docket (Vol. III), pp. 1293-1340.
[51] Docket (Vol. III), pp. 1350-1372.
[52] Docket (Vol. III), p. 1373.

3. Whether or not the right of the government to issue the challenged assessment has already prescribed.

4. Whether or not petitioner ATC is liable for its alleged deficiency withholding tax on compensation in the amount of P67,722,419.38.

5. Whether or not petitioner ATC is liable for its alleged deficiency expanded withholding tax in the amount of P7,436,545.83.

6. Whether or not petitioner ATC is liable for its alleged deficiency final withholding tax in the amount of P537,651.55.

7. Whether petitioner is estopped from questioning the validity of the waivers pertinent subject of the instant petition.[53]

The issues presented by the parties may be summarized as follows: (1) Whether or not LOA No. 00003557 already lost its validity so as to invalidate respondent CIR's assessment; (2) Whether or not the Waivers executed by ATC validly extended the government's right to assess deficiency taxes against it; (3) Whether or not ATC is estopped from questioning the validity of the subject waivers; and (4) Whether or not ATC is liable to pay the deficiency withholding tax assessments in the total amount of P75,696,616.75.

Whether or not LOA No. 00003557 already lost its validity so as to invalidate respondent CIR's assessment

ATC asserts that it received LOA No. 00003557 on August 11, 2004 and as such, the assigned examiner had 120 days under Revenue Memorandum Order 43-90 (RMO 43-90), from said date to conclude her examination or to have the same revalidated. However, the audit investigation continued and was concluded beyond the 120-day period without the LOA having been revalidated, hence, it became invalid. ATC continues that respondent CIR's decision dated April 10, 2012 confirms that the ATC received the PAN only on April

[53] Pars. 1-7, Submitted Issues for Trial, JSFI, Docket, p. 242.

11, 2007, or two years and eight months from the commencement of the audit investigation.[54]

ATC anchors the aforesaid argument on Revenue Memorandum RMO 43-90, which relevantly provides:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> xxx
>
> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As".

Prefatorily, the power of respondent CIR to make assessments is laid down under the NIRC of 1997, as amended, thus:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforecement. –**
>
> (A) Examination of Returns and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> xxx"

---

[54] Pars. 31-34, Discussion, Memorandum [For the Petitioner], Docket (Vol. III), pp. 1302-1303.

With respect to the authority to examine the taxpayer through respondent CIR's authorized representative, the general rule is provided for under Section 7 in relation to Sections 10 and 13 of the NIRC of 1997, as amended:

> "SEC 7. **Authority of the Commissioner to Delegate Power. –** The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner:"

> "SEC. 10. **Revenue Regional Director. –** Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
>
> x x x
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region;"

> "SEC. 13. **Authority of a Revenue Officer.** – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

Under the afore-quoted provisions of the NIRC of 1997, as amended, the power to make assessments is primarily lodged with the respondent CIR. Incidentally, the power to issue Letters of Authority in relation to the power of respondent to make assessments is expressly delegated to the Revenue Regional Director, which, in turn, is further delegated to a Revenue Officer. Meanwhile, the power to issue Letters of Authority by the Revenue Regional Director is subject to rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance. Corollary thereto, a Revenue Officer may perform assessments functions pursuant to a Letter of Authority issued by the Revenue Regional Director.

One of the policies and standards governing Letters of Authority applicable at the time the subject LA was issued is Revenue Memorandum Order 38-88 (RMO 38-88), which provides the 120-day rule on revalidation where an LA needs to be revalidated when it is over 120 days from the date of its issue. Otherwise, it will be invalidated.

In the instant case, records show that ATC received the PAN only on April 11, 2007 by virtue of LOA No. 00003557 received by ATC through its authorized representative on August 11, 2004. Thus, the BIR's examination conducted through the authority of the subject LA, took more than two years from the date of its issuance without the LA having been revalidated.

In this regard, respondent's witness, Ms. Catalina Benedicto – Revenue Officer II of the BIR, testified as follows:

"7. Q: Why are you aware with the subject matter?

A: I am one of the Revenue Officers assigned to conduct the investigation/examination of all internal revenue taxes of petitioner for the calendar year 2002 pursuant to Letter of Authority No. 20000003557 dated August 9, 2004. The Letter of Authority together with our First Notice requesting for the presentation of records both served to petitioner on August 11, 2004 and received by petitioner's representative, Priscilla V. Mojares.

xxx

12. Q: What happened after the Letter of Authority and the First Notice for presentation of records were served to petitioner?

A: Petitioner failed to present the documents we needed for our review and examination, thus we served a Second Request for Presentation of Records dated September 1, 2004 and received by petitioner's representative Priscilla V. Mojares on the same date.

xxx

14. Q: What happened after the Second Request for Presentation of Records was served to petitioner?

A: On September 8, 2004, Mr. Roderick Tan, VP for Personnel and Legal Division executed the first Waiver of Statute of Limitations extending the period of assessment until June 30, 2005. It was notarized on September 21, 2004 and received by petitioner on October 07, 2004.

xxx

16. Q: What happened after Mr. Tan executed the first waiver?

A: Since petitioner failed to submit all the necessary documents stated in our previous requests dated August 11, 2004 and September 1, 2004, a Final Notice for the Presentation of records dated December 15, 2004 was served to petitioner on the same date.

xxx

18. Q: What happened after the Final Notice was served to petitioner?

> A: We conducted our audit and investigation, and during the course of our investigation, petitioner thru Mr. Roderick Tan, executed several Waivers of Statute of Limitations. xxx"[55]

It appears from the foregoing that the delay of the witness in conducting the examination of ATC's records is not wholly attributable to respondent. In fact, if the 120-day rule for revalidation of the subject LA is to be strictly applied from its date of issue on August 9, 2004, the same would have expired on December 7, 2004 without ATC submitting the documents required by the BIR.

Thus, respondent cannot be faulted for failure to observe the 120-day rule under RMO 38-88 considering that it only had reasonable opportunity to conduct its examination after December 15, 2004 – the date when the BIR sent its Final Notice for the Presentation of Records to ATC. In other words, ATC itself contributed to the delay in the examination of its records and as such, it cannot be allowed to question the 120-day lifespan of the subject LA.

Nevertheless, in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[56] the Court had the occasion to discuss the significance of a Revenue Memorandum Order in relation to taxpayer's rights, in this wise:

> "A revenue memorandum order or RMO is an issuance directed to BIR personnel containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives. RMC Order No. 32-2007 afore-quoted, and relied upon by petitioner here as basis for saying that an LOA should have been issued in this case, is one such issuance that is a natural and necessary incident to the power of the Commissioner to lay down delineations of functions among BIR officials. It does not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR

---

[55] Exh. "22".
[56] CTA Case No. 7948, June 5, 2014.

> and may change from time to time 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. xxx"[57]

In the said case, it was explained that an RMO is a mere internal work procedure of the BIR which does not grant any vested right to a taxpayer, provided only that due process or statutory rights are not subverted.

In the instant case, the 120-day lifespan of an LA under RMO 38-88 *vis a vis* RMO 43-90 merely relates to the internal work procedure of the BIR. While the examination of ATC's records exceeded the 120-day period, there was no violation of ATC's right to due process because it initiated itself the delay in the examination of its records.

Considering the foregoing, the Court declares that LOA No. 00003557 is valid and it does not affect the validity of the assessment.

Whether or not the Waivers executed by ATC validly extended the government's right to assess deficiency taxes against it

Whether or not ATC is estopped from questioning the validity of the subject waivers

In essence, these issues are pertinent in determining whether ~~the~~ respondent's right to issue the subject assessments had already prescribed.

Sections 203 and 222 (b) of the NIRC of 1997, as amended, respectively provide:

---

[57] Id., citing *Hector S. De Leon*, the NIRC Annotated, 2000 edition, p. 20.

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

Based from Sections 203 and 222 (b) of the NIRC of 1997, as amended, internal revenue taxes shall be assessed within 3 years after the last day prescribed by law for the filing of the return, except when before the expiration of the 3-year period, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time and within the period agreed upon.

In the instant case, ATC filed the subject returns on January 30, 2003 and March 3, 2003, respectively. Counting the 3-year period from said dates, respondent CIR had until January 30, 2006 and March 3, 2006, respectively, to issue its assessment. However, as the circumstances would bear, it was only on July 15, 2008 when ATC received the Formal Letter of Demand.

In the meantime, records show that ATC executed several Waivers of Statute of Limitations under Section 222 (b) of the NIRC of 1997, as amended. Hence, to determine whether respondent's right to assess ATC had been validly extended, the Court shall now determine whether ATC validly executed the aforesaid Waivers.

In the leading case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[58] the Supreme Court reiterated the procedure for the proper execution of the waiver as laid down under Revenue Memorandum Order No. 20-90 (RMO 20-90) and Revenue Delegation of Authority Order (RDAO 05-01), viz:

> "Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the

[58] G.R. No. 178087, May 5, 2010.

> waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."[59]

Additionally, RMO 20-90 provides that only the respondent CIR is authorized to sign the Waiver for tax cases involving more than P1,000,000.00.

Here, petitioner asserts that the Waivers were not validly executed because (1) the person who executed these Waivers had no authority to do so; (2) the Waivers were not validly notarized; (3) the first, second, fourth, fifth, sixth, seventh, eight and ninth Waivers failed to indicate the date of acceptance by the BIR; (4) all waivers failed to comply with the rule that 'the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement'; (5) considering that the case involves more than P1,000,000.00, only the respondent CIR has the authority to sign said Waivers; and (6) the Waivers failed to specify the type of tax and the amount of tax due.

On the other hand, respondent CIR argues that ATC is estopped from assailing the validity of the waivers with respect to the assessments of its deficiency withholding taxes.

---

[59] Id., citing *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, 488 Phil. 218, 235 (2004).

As to whether Mr. Roderick Tan – the person who executed the subject Waivers, had authority to do so, ATC argues that respondent failed to present any evidence to prove Mr. Tan's authority to execute the foregoing Waivers. As such, the acts of Mr. Tan cannot bind ATC.

In the case of *Inter-Asia Investments Industries, Inc. vs. Court of Appeals*,[60] the Supreme Court held that:

> "**The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation**. A corporation is a juridical person, separate and distinct from its stockholders and members, 'having x x x powers, attributes and properties expressly authorized by law or incident to its existence.'
>
> Being a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management, as provided in Section 23 of the Corporation Code of the Philippines:
>
>> SEC. 23. *The Board of Directors or Trustees.* - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x.
>
> Under this provision, the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. <u>**However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents.**</u> **The authority of such individuals to bind the corporation is**

[60] G.R. No. 125778, June 10, 2003.

generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business, ***viz:***

A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused person dealing with the officer or agent to believe that it has conferred.

x x x

[A]pparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words the apparent authority to act in general, with which it clothes him; or (2) **the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. It <u>requires</u> <u>presentation</u> of <u>evidence</u> of <u>similar</u> <u>act (s)</u> <u>executed</u> <u>either</u> in its <u>favor</u> or in<u>favor</u> of <u>other</u> <u>parties</u>. It is not the <u>quantity</u> of <u>similar</u> acts <u>which</u> <u>establishes</u> <u>apparent</u> <u>authority</u>, but the <u>vesting</u> of a <u>corporate</u> <u>officer</u> with <u>power</u> to <u>bind</u> the <u>corporation</u>.**

xxx"[61]

Under the afore-cited case, the Supreme Court explained that a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that the authority to do so has been conferred upon him. This includes powers in the usual course of the particular business, or powers incidental to, or may be

[61] Id., citing *People's Aircargo and Warehousing Co., Inc. vs. Court of Appeals*, G.R. No. 117847, October 7, 1998.

implied from, the powers intentionally conferred. It also includes powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused person dealing with the officer or agent to believe that it has conferred.

In relation thereto, ATC's witness Mr. Tan states in his Judicial Affidavit that:

> "4) Q: As Vice-President for Personnel and Legal Affairs, what are some of your duties and responsibilities?
>
> A: I am responsible for all court and administrative cases in which ATC is a party, **oversee and supervise ATC's compliance with all requirements imposed by local and national departments and agencies relative to ATC's conduct of its business**.
>
> Q: You mentioned that as Vice-President for Personnel and Legal Affairs of ATC, you are tasked to attend to court and admin cases in which ATC is a party, what kind of cases are these?
>
> A: These cases include, among others, labor cases, local tax assessments and national tax assessments made by the Bureau of Internal Revenue (BIR)."[62] *(Emphasis supplied)*

As stated by Mr. Tan, he is in charge of the overseeing and supervision of ATC's compliance with all the requirements imposed by local and national departments and agencies relative to ATC's conduct of business. Being in charge of ATC's compliance obligations, it may be inferred therefrom that Mr. Tan has the implied power to take necessary actions relative to the aforesaid requirements, including matters relating to tax assessments, as in this case. This implied power became more apparent when Mr. Tan executed eight succeeding Waivers with respect to the subject assessment.

---

[62] Exh. "Z", Judicial Affidavit of Mr. Roderick M. Tan.

On this score, it is hard to believe that Mr. Tan – being ATC's Vice President and overseer who exercises supervision over its compliance requirements, would just sign eight Waivers at the behest of the BIR examiners.[63] Evidently, in light of Mr. Tan's duties and responsibilities with ATC, he voluntarily executed the eight succeeding Waivers which is necessarily incidental to, or may be implied from, his powers as enumerated above.

Hence, applying the ruling of the Supreme Court in the *Inter-Asia Investments Case*, Mr. Tan is deemed clothed with the apparent authority to execute the subject Waivers.

However, with respect to the other requirements of a valid Waiver, the Court, upon examination and evaluation of the evidence submitted by the parties, found the following:

First, the notarization of the respective Waivers was not in accordance with A.M. No. 02-8-13-SC, otherwise known as the *2004 Rules on Notarial Practice Act*. In this regard, it was sufficiently shown by ATC through its witness, Mr. Leoher S. Ocampo – Administrative Officer II of the BIR, that the person who notarized the foregoing Waivers, a certain Atty. Dennis Lim, also from the BIR, was not commissioned as a Notary Public and therefore, not authorized to perform notarial acts[64] in relation to Section 3, Rule II[65] of the 2004 Rules on Notarial Act.

Second, records show that the first, second, fourth, fifth, sixth, seventh, eight and ninth Waivers clearly failed to indicate the date of acceptance by the BIR. As held in *Commissioner of Internal Revenue vs. FMF Development Corporation*,[66] the date of acceptance by the respondent CIR is "a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period."[67] Hence, said Waivers are, likewise, defective on this aspect.

---

[63] Exh. "Z", Pars. 10, 32, 50, 67, 84, 94, 110 and 122.
[64] TSN dated November 20, 2013, pp. 7-8.
[65] SEC. 3. **Commission**. – "Commission" refers to the grant of authority to perform notarial acts and to the written evidence of the authority.
[66] G.R. No. 167765, June 30, 2008.
[67] Id., citing *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

Third, the tax case involves the amount of more than P1,000,000.00. Thus, as per RMO 20-90, only the respondent CIR is authorized to sign the Waivers. However, it appears from the subject Waivers that they were not signed by the respondent CIR. Instead, they were merely signed by the BIR's Chief LTAID II, OIC Asst. Commissioner -- Large Taxpayer's Service and Head Revenue Exec. Assistant, in violation of RMO 20-90.

Lastly, the Waivers, indeed, failed to specify the type of tax and the amount of tax due.

Considering the defects in the subject Waivers, which were not executed in accordance with RMO 20-90 and RDAO 05-01, the same are, therefore, invalid Waivers and did not stop the running of the prescriptive period for respondent to make the assessment.

Incidentally, while the Court earlier explained that an RMO is a mere internal work procedure of the BIR which does not grant any vested right to a taxpayer, it bears stressing that it must not violate the taxpayer's right to due process or his statutory rights, such as his right to invoke prescription.

In *Commissioner of Internal Revenue vs. FMF Development Corporation*,[68] the Supreme Court likewise held that:

> "Petitioner contends that the procedures in RMO No. 20-90 are merely directory and that the execution of a waiver was a renunciation of respondent's right to invoke prescription. We do not agree. RMO No. 20-90 must be strictly followed. In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* we ruled that a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal. Notably, in this case, the waiver became unlimited in time because it did

---

[68] Id.

not specify a definite date, agreed upon between the BIR and respondent, within which the former may assess and collect taxes. It also had no binding effect on respondent because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality."[69]

Finding that the subject Waivers are defective, the next question to be resolved is: Is ATC estopped from assailing the validity of the waivers with respect to the assessments of its deficiency withholding taxes to effectively toll or extend the 3-year prescriptive period for assessment?

In *Kudos Metal Corporation Case*,[70] the following defects were found in the Waiver of Prescription: (1) the waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent; (2) the waivers failed to indicate the date of acceptance; and (3) the fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers. Incidentally, the petitioner CIR therein raised the defense of estoppel as against the respondent.

Ruling in favor of the respondent corporation, the Supreme Court held that:

"The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in

---

[69] Id., citing *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 115712, February 25, 1999, 303 SCRA 614, 620-622

[70] *Supra.*, Note 57.

which they originate. Simply put, the doctrine of estoppel must be sparingly applied.

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. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed."[71]

Applying the said ruling in the case at bench, ATC is not estopped from raising the invalidity of the subject Waivers as the BIR in this case caused the defects thereof, *to wit*: the subject Waivers were notarized by their own employee who was not validly commissioned to perform notarial acts; it failed to indicate the date of its acceptance; it failed to specify the amount of and particular tax involved; and the respondent CIR failed to sign the Waivers despite the clear mandate of RMO 20-90. As such, the invalid Waivers did not operate to toll or extend the three-year period of prescription.

Consequently, since the right of the respondent CIR to assess ATC has already prescribed, it follows that ATC is not liable to pay the deficiency withholding tax assessments in the total amount of P75,696,616.75.

WHEREFORE, in view thereof, the Petition for Review is hereby **GRANTED**. Accordingly, the deficiency withholding tax on compensation in the amount of P67,722,419.38, expanded withholding tax in the amount of P7,436,545.83 and final withholding tax in the amount of P537,651.55, or in the total amount of

---

[71] Id., citing *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87, *Ouano v. Court of Appeals*, 446 Phil. 690, 708 (2003), *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279, 290 (2002) and *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, supra note 19 at 231-232.

P75,696,616.75 for taxable year 2002, are hereby declared **CANCELLED**, **WITHDRAWN** and **WITH NO FORCE AND EFFECT**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice