REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PFIZER, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 6135

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 2 1 2003

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DECISION

This case involves assessments for alleged deficiency income tax and value-added tax in the total amount of P52,895,130.82 (originally in the amount of P304,516,403.56) for the fiscal year ended November 30, 1995.

The facts as borne out by the records of the case are as follows:

Petitioner is a corporation organized and existing under the laws of the Philippines with office address at the 23rd Floor, Ayala Life-FGU Center, 6811 Ayala Avenue, Makati City. It is engaged, among others, in the business of manufacturing and distributing chemical, pharmaceutical, medicinal and biological products *(pars. 1 and 3, Stipulation of Facts, pages 333 & 334, CTA records)*.

On March 15, 1996, petitioner filed its Corporation Annual Income Tax Return for the fiscal year ended November 30, 1995 with the respondent's collection agent bank, Citytrust Banking Corporation, Ayala branch *(par. 25, Stipulation of Facts, page 338, CTA records; page 1,024, BIR records)*.

462

On October 25, 1996, petitioner received Letter of Authority No. 132706 dated October 2, 1996, issued by Officer-in-Charge Armi S. Linsangan of Revenue District Office No. 50, Bureau of Internal Revenue *(page 665, BIR records)*. The said letter authorized Revenue Officer Erna B. Esteves to be supervised by Group Supervisor Letecia Balderama, to examine petitioner's books of accounts and other accounting records for income and other taxes for fiscal year ended November 30, 1995. On July 15, 1997, Revenue District Officer Gerardo R. Florendo issued Letter of Authority No. 133024 revalidating the previous letter of authority. Petitioner received the second letter of authority on July 18, 1997 *(page 667, BIR records).*

On October 15, 1998, petitioner received a preliminary report of investigation for the alleged deficiency income tax, value-added tax, expanded withholding tax, final tax, documentary stamp tax and compromise penalties covering the fiscal year ended November 30, 1995, in the aggregate amount of P289,414,028.36 *(par. 4, Stipulation of Facts, page 334, CTA records; page 1,028, BIR records)*. On October 23, 1998, petitioner filed its protest letter to the above findings of the examiners and requested that the said proposed deficiency tax assessments be withdrawn and cancelled for lack of factual and legal bases *(par. 5, Stipulation of Facts, page 334, CTA records; pages 1,042 to 1,051, BIR records).*

On October 23, 1998, petitioner signed a waiver of the statute of limitations extending the period to assess up to September 15, 1999 *(par. 6, Stipulation of Facts, page 334, CTA records; page 1,029, BIR records)*. Revenue District Officer Edmundo

A. Vasquez signed the waiver pursuant to Revenue Memorandum Order No. 20-90 dated April 4, 1990 (*par. 17, Stipulation of Facts, pages 336 & 337, CTA records).*

On March 12, 1999, petitioner received another proposed deficiency tax assessments for the year 1995, this time for the lower sum of P283,909,392.53, broken down as follows: *(par. 8, Stipulation of Facts, page 335, CTA records; pages 1,071 to 1,074, BIR records).*

Deficiency Income Tax	P 226,602,544.70
Deficiency Expanded Withholding Tax	3,246,835.27
Deficiency Final Tax	16,151,389.83
Deficiency Value-added Tax	37,906,622.73
Compromise Penalties for	
a. Non-filing of Alpha List of Separated Employees	1,000.00
b. Non-filing of Alpha List for Dividends Declared	1,000.00
T o t a l	P 283,909,392.53

Likewise, petitioner protested the second proposed deficiency tax assessments on March 24, 1999 *(par. 9, Stipulation of Facts, page 335, CTA records; pages 1,075 to 1,086, BIR records).*

On April 8, 1999, the proposed deficiency tax assessments were referred to the Chief, Assessment Branch of Revenue of Revenue Region No. 8, Bureau of Internal Revenue for review *(page 1,091, BIR records).* As a result, the Chief, Assessment Branch approved the issuance of preliminary assessment notice (PAN).

On September 7, 1999, petitioner received three Pre-Assessment Notices, all dated September 2, 1999, issued by the Assessment Division of Revenue Region No. 8 Makati, Bureau of Internal Revenue, through its Chief, Assessment Division Ma. Nieva A. Guerrero, informing petitioner that the report of investigation conducted by the

464

Revenue District Office No. 50 was in her office for final review and that it may file a written protest regarding the following proposed deficiency tax assessments: *(par.10, Stipulation of Facts, page 335, CTA records; pages 1,100 to 1,102, BIR records)*

Deficiency Income Tax	P 228,967,447.83
Deficiency Expanded Withholding Tax	3,430,309.20
Deficiency Final Tax	17,069,739.74
Deficiency Value-added Tax	40,350,597.86
Compromise Penalties for	
a. Non-filing of Alpha List of Separated Employees	1,000.00
b. Non-filing of Alpha List for Dividends Declared	1,000.00
Total	P 289,820,094.63

Petitioner protested the above pre-assessment notices on September 16, 1999, not knowing that the final assessment notices together with their corresponding demand letters have in the meantime been issued on September 14, 1999 by Revenue Region No. 8 of the Bureau of Internal Revenue, through its Regional Director Virginia L. Trinidad, covering the following deficiency tax assessments, to wit: *(pages 1,485 to 1,492, BIR records)*

Deficiency Income Tax
Assessment No. LA#133024-FY95-99-547
Demand No. LA#133024-FY-95-99-547

Net Business Income		114,935,613.00
Add: Discrepancies		
Undeclared tolling services income	P 18,856,839.00	
Write-off of obsolete inventories per f/s	2,377,868.00	
Interest expense	15,185,914.36	
Expenses not subjected to 1% & 5¼% EWT	209,607,911.80	
Total compensation/salaries & wages not Subjected to tax	76,776,444.57	
Various expenses disallowance	64,130,654.16	
Underdeclared sale of 2nd hand car	16,021,165.27	
Underdeclared importation (GPM)	1,645,962.54	
Proposed adjustment income		404,602,759.70
Net Income Subject to Tax		519,538,372.70

46'

Tax Due	181,838,430.44
Less: Tax Paid	40,227,465.00
Deficiency Tax	141,610,965.44
Add: Interest	99,127,675.81
Compromise	25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	240,763,641.25

Deficiency Value-Added Tax
Assessment No. 02-420-FY95B-99-B2-547
Demand No. 02-420-FY95B-99-B2-547

Gross Sales/Receipts per Return		P 868,455,108.20
Add: Discrepancies per Investigation		
Sales-not subject to VAT	P 13,641,079.40	
Sales of services-tolling	14,748,010.03	
Undeclared importation	2,532,250.07	
Undeclared sales of company cars	15,247,205.25	46,168,544.75
Taxable Sales Receipts		P 914,623,652.95
10% Percentage Tax Due Thereon		P 91,462,365.29
Less: Tax Already Paid		67,022,609.01
Deficiency Tax due		P 24,439,756.28
Interest		17,804,362.45
Compromise		25,000.00
TOTAL AMOUNT DUE		P 42,269,118.73

DEFICIENCY EXPANDED WITHHOLDING TAX
Assessment No. 133024-FY95-99-547
Demand No. 133024-FY95-99-547

Total Deficiency Tax		
1% EWT	P 2,034,194.31	
5% EWT	29,629.45	P 2,063,823.76
Add: Interest		1,512,163.67
Compromise		25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE		P 3,600,987.43

466

DEFICIENCY FINAL TAX
Assessment No. 02-419-FY95B-99-B2-547
Demand No. 02-419-FY95B-99-B2-547

Taxable Sales Receipts (undocumented charges)	P 29,514,700.85
35% Percentage Tax Due Thereon	P 10,330,145.30
Add: Interest	7,525,510.85
Compromise	25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 17,880,656.15

COMPROMISE PENALTIES
Assessment No. 133024-FY95-99-547
Demand No. 133024-FY95-99-547

Compromise	
Non-filing of Alpha List of Separated Employees	P 1,000.00
Non-filing of Alpha List of Payees of Dividend Declaration	1,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 2,000.00

The foregoing assessment notices together with their corresponding demand letters and "Details of Discrepancies" were all received by petitioner on September 15, 1999 *(pars. 12, 13, and 14, Stipulation of Facts, pages 335 & 336, CTA records).*

On October 14, 1999, petitioner filed its protest letter with the respondent's Assessment Division, Revenue Region No. 8 (Makati), Bureau of Internal Revenue, contesting each of the aforementioned deficiency tax assessments *(par. 15, Stipulation of Facts, page 336, CTA records; pages 1,494 to 1,508, BIR records).* Petitioner raised therein that the subject assessments are already barred by prescription and pointed out that the waiver executed on October 23, 1998 is void for failure to comply with the requisites and formalities of a valid waiver.

Despite such defect, petitioner nevertheless attached to its latest protest the second "Waiver of the Statute of Limitations" extending the period of assessment up to November 14, 1999 but stated therein that the same was executed solely for purposes of complying with Section 6 of Revenue Regulations No 12-85 *(par. 16, Stipulation of Facts, page 336, CTA records; page 1,116, BIR records)*. Like the first waiver, the second waiver was also signed by Revenue District Officer Edmundo A. Vasquez pursuant to a delegated authority per Revenue Memorandum Order No. 20-90 *(par. 17, Stipulation of Facts, pages 336 & 337, CTA records)*.

On December 13, 1999, petitioner submitted to the respondent all the relevant documents in support of its protest *(par. 18, Stipulation of Facts, page 337, CTA records; page 1,512, BIR records)*.

On July 10, 2000, petitioner filed the instant petition for review pursuant to Section 228 of the Tax Code, as amended. On even date, petitioner received a letter from Revenue District Office No. 50, South Makati, with the information that the assessments issued against it had been reduced and that revised Assessment Notices would be issued by the Assessment Branch of Revenue Region No. 8. The assessments were reduced to P15,059,723.14 for deficiency income tax, P215,587.24 for deficiency expanded withholding tax and P26,943,506.88 for deficiency value-added tax. *(par. 21, Stipulation of Facts, page 337, CTA records; pages 1,530 & 1,531, BIR records)*.

468

On July 20, 2000, petitioner, unmindful of the substantial reduction of its alleged deficiency taxes for the year 1995, still registered its objection to the said report of re-investigation. Petitioner again requested that the deficiency tax assessments be cancelled and withdrawn for lack of factual and legal bases *(par. 22, Stipulation of Facts, page 338, CTA records; pages 1,537 to 1,542, BIR records).*

Finally, on December 11, 2000, Revenue Region No. 8, through its Regional Director Lucien E. Sayuno, issued its decision on the disputed assessments. The Regional Director modified the deficiency tax assessments issued against petitioner from the original amount of P304,516,403.56 covering deficiency income, value-added, expanded withholding and final taxes and compromise penalty to P52,895,130.82 covering only deficiency income and valued-added taxes, detailed as follows: *(par. 24, Stipulation of Facts, page 338, CTA records; pages 1,610 to 1,612, BIR records)*

Deficiency Income Tax

Net income per return		P 114,935,613.00
Add: Discrepancy/disallowance after reinvestigation		
1. Gross receipts from tolling service	P 22,000,000.00	
Less: Net income from tolling per F/S	3,143,161.00	
Cost of tolling service not duly accounted for		18,856,839.00
2. Undocumented write-off of inventories		2,377,868.00
Total taxable income per reinvestigation		P 136,170,320.00
Income Tax Due (35%)		P 47,659,612.00
Less: Tax Paid		40,227,465.00
Basic tax due		P 7,432,147.00
Add: Surcharge (25%)		1,858,036.75
Interest (03/15/96-12/30/00)		8,901,854.07
Compromise penalty		25,000.00
Total Deficiency Income Tax		P 18,217,037.82

Deficiency Value Added Tax

Deemed Sales			
Free Items/Samples		P	9,980,297.38
Output Tax		P	998,029.74
Add: Disallowed input taxes on importation	P 13,475,288.11		
Less: Over remittance	514,368.00		12,960,920.11
Balance Still Due		P	13,958,949.85
Add: Surcharge (25%)			3,489,737.46
Interest (00/26/96-12/30/00)			17,204,405.69
Compromise penalty			25,000.00
		P	34,678,093.00

This case was submitted for decision on October 2, 2002 after both parties presented their respective memorandum.

The jointly stipulated issues to be resolved by the court are the following:

1. Whether or not the right of the government to assess deficiency taxes for fiscal year 1995 has already prescribed;

2. Whether or not the First and Second Waiver executed by petitioner are invalid considering that the Commissioner of Internal Revenue did not sign the same;

3. Whether or not the First and Second Waiver complied with the requisites and formalities of a valid waiver prescribed under Revenue Memorandum Order No. 20-90, April 4, 1990.

4. Assuming the right of the government to assess deficiency taxes for fiscal year 1995 has not yet prescribed, whether or not the assessment notices should be cancelled for lack of factual and legal bases;

5. Whether or not petitioner has undeclared income derived from tolling services;

6. Whether or not petitioner's obsolete inventories are deductible from its gross income;

7. Whether or not a certification from the BIR (i.e., RDO Report of Destroyed Items) is an indispensable requirement to deductibility of obsolete, expired and destroyed inventories from gross income;

8. Whether or not the assessment for alleged deficiency VAT in the amount of P13,475,288.11, arising from the disallowance of input VAT on importation of goods, has factual and legal bases.

9. Whether or not petitioner's input taxes on importation may be allowed as a tax credit;

10. Whether or not the distribution by petitioner of free items/samples to doctors and medical practitioners is a transaction "deemed sale" subject to the 10% VAT; and

11. Whether or not petitioner is liable for surcharge for late payment.

Petitioner averred that the right of respondent to assess deficiency internal revenue taxes for fiscal year ended November 30, 1995 had already prescribed inasmuch as all the assessment notices were issued beyond the three-year period allowed under Section 203 of the Tax Code, as amended, which provides:

> **SEC. 203.** ***Period of Limitation Upon Assessment and Collection.*** **-** Except as provided in Section 222, <u>internal revenue taxes shall be assessed within three 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</u>: *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. (*Underlining supplied*)

Petitioner filed its 1995 Corporation Annual Income Tax Return on March 15, 1996 and the respective 1995 quarterly VAT returns on the following dates:

Period Covered	Date Filed
4th Quarter 1994	01-20-95
1st Quarter 1995	04-20-95
2nd Quarter 1995	07-20-95
3rd Quarter 1995	10-20-95
4th Quarter 1995	01-22-96

Since the assessments were issued only on September 14, 1999, the same were issued clearly beyond the three-year period allowed by law.

Respondent, on the other hand, argued that the assessment notices were timely issued considering that petitioner on October 23, 1998, executed a "Waiver of Statute of Limitations" extending the period to assess the 1995 internal revenue tax liabilities up to September 15, 1999, pursuant to Section 222(b) of the 1997 Tax Code which provides:

> **Section 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –***
>
> (a) 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.
>
> xxx xxx xxx

Hence, all the subject assessment notices and demand letters for 1995 internal revenue taxes issued against petitioner were not time-barred.

However, petitioner questions the validity of the aforementioned waiver on the following grounds:

472

1. Both the first and second waivers were not signed by the Commissioner;
2. The waivers failed to specifically state the kind of tax and the amount of tax due which should be subject of the waiver;
3. There was no date of acceptance by the bureau; and
4. There was no proof that the signed copies of the waivers were sent to petitioner.

Petitioner asserted that a waiver to be valid must be signed by both the Commissioner and petitioner pursuant to Section 222 of the Tax Code. Inasmuch as it was only signed by Revenue District Officer Edmundo A. Vasquez, and not by the Commissioner himself, petitioner claims that the waiver it is invalid. Thus, the running of the period of limitations to assess was not interrupted. Since the first waiver is invalid, the second waiver executed on October 14, 1999 did not also extend the period of limitations. Petitioner further asserted that both the first and second waivers failed to comply with the requisites and formalities of a valid waiver as provided in Revenue Memorandum Order No. 20-90 dated April 4, 1990.

The primordial issue submitted for determination is whether or not the deficiency tax assessments issued against petitioner on September 14, 1999 for the fiscal year ended November 30, 1995 in the original amount of P304,516,403.56 were issued beyond the three-year period prescribed under Section 203 of the Tax Code, as amended. Corollarily, the court must first rule on the validity of the first and second waivers of the statute of limitations which were executed by petitioner.

For easy reference, the provisions of RMO No. 20-90 are hereby reproduced:

"In the execution of said waiver, the following procedures **should be followed**:

473

1. The waiver must be in the form identified as Annex "A" hereof. <u>This form may be reproduced by the Office concerned but there should be no deviation from such form</u>. 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 <u>in addition</u> 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 <u>before</u> the expiration of the period of prescription or <u>before</u> 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. <u>In the National Office</u>

1.	ACIRs for Collection, Special Operations, 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.	For tax cases involving not more than P500,000.00
2.	Deputy Commissioner	For tax cases involving more than P500,000.00 but not more than P1M
3.	Commissioner	For tax cases involving more than P1M

474

B. In the Regional Offices

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. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with." (*Emphasis supplied*)

After a cursory examination of the questioned Waivers of the Statute of Limitations, this court considers both to be without any binding effect. As correctly pointed out by petitioner, both the accomplished waivers failed to meet the qualities of a valid waiver.

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

____ 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 ____________________________

4H

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 subsequent agreement in writing made <u>before</u> 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 _________________

A simple comparison of the accomplished waivers with that of the prescribed form would patently show the deviations. Indeed, petitioner did not state in the subject waivers the kind of tax and the amount of the tax due which is required in the prescribed form. The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner to pinpoint which among the proposed tax assessments may subsequently be

476

issued without the petitioner invoking the defense of pescription. If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of ***(Solid Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999)***. It should be emphasized that RMO No. 20-90 requires specific information. Hence, to substitute the same with general statements is a departure from RMO No. 20-90.

It is also apparent that the waivers failed to state the date of the acceptance by the Bureau of Internal Revenue which under Revenue Memorandum Order No. 20-90 should likewise be indicated. We, therefore, cannot determine with certainty if the first waiver was actually accepted before the expiration of the three-year assessment period. What is interesting though is a yellow "post it" note affixed on the face of the assessment slip *(page 1,091, BIR records)* which states

RDO.
Please sign waiver
pp. 989-990
Waiver – Sept. 15, 1999

The above notation shows that as of April 8, 1999, the date when the preliminary report of investigation was assigned to the Chief, Assessment Division of Revenue Region 8 for her review, the first waiver was still unsigned. The waiver was probably signed during the interregnum period between April 8, 1999 and April 28, 1999, the date when the assessment report was approved by said Chief, Assessment Branch for issuance of corresponding pre-assessment notices. If the waiver was signed at the earliest on April 8, 1999, the same was also accepted on that date. Therefore, all the assessment notices were issued beyond the three year period, to wit:

477

Period Covered	Kind of Tax	Date of Filing	End of Three Year Period	Earliest Date of Acceptance
FY Nov. 30, 1995	Income	03-15-96	03-15-99	04-08-99
Oct. to Dec. 1994	VAT	01-20-95	01-20-98	04-08-99
Jan. to Mar. 1995	VAT	04-20-95	04-20-98	04-08-99
Apr. to June 1995	VAT	07-20-95	07-20-98	04-08-99
July to Sept. 1995	VAT	10-20-95	10-20-98	04-08-99
Oct. to Dec. 1995	VAT	01-22-96	01-22-99	04-08-99

Since the first waiver was inoperative, it follows then that the second waiver was also ineffective ***(Luzon Packaging Products, Inc. vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5016, promulgated on June 23, 1997; Carnation Phils., Inc. (now merged with Nestle Phils., Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 4263, promulgated on January 26, 1993).***

Finally, petitioner was not furnished copies of the accomplished waivers. This is evident because the original copy of the waiver does not show the fact of receipt by the petitioner of its file copy, which fact of receipt is also required under the same revenue memorandum order. Although the first waiver appears to have a signature on the upper right hand corner, the same is not the signature of the petitioner but an employee of the respondent who was tasked to accept the accomplished waiver submitted by petitioner. The said signature is the same signature appearing on the face of the protest letter filed by petitioner on October 23, 1995 *(page 1,051, BIR records)*. Thus, there is a blatant procedural error on the part of respondent's officers in accepting a form different from that which they themselves prescribed. Under RMO No. 20-90, the waiver must be executed in three (3) copies, the second copy of which is for the taxpayer. The failure of respondent to furnish petitioner of its copy of the waiver made petitioner unaware of what transpired to the waiver. Hence, there is no meeting of minds and no agreement to speak of and necessarily there is no extension of the prescriptive period.

It bears stressing that RMO No. 20-90 is directed to all concerned internal revenue officers. The said RMO even provides that the procedures stated therein should be strictly followed, under pain of being administratively dealt with should non-compliance result to prescription of the right to assess/collect. The officer who signed the waiver ought to have known the procedures to follow in executing a waiver, for it is the only way to extend the BIR's right to assess/collect ***(Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6108, promulgated on May 14, 2002).***

With respect, however, to the argument of petitioner that the waivers are invalid for they were not signed by the Commissioner himself, the same does not hold water. Revenue District Officer Edmundo E. Vasquez is a responsible revenue officer authorized by RMO No. 20-90 to sign waivers of the statute of limitations. However, his signatures cannot cure the invalidity of the waivers because of the other infirmities present.

Having concluded that the first and second waivers are not valid, then the assessments notices and demand letters dated September 14, 1999 were issued beyond the three (3) year period prescribed by law, a total of almost three years and six months having lapsed from the time petitioner's annual income tax return was filed on March 15, 1996 up to the time of the issuance of the subject deficiency tax assessments on September 14, 1999.

In view of this, the court finds it no longer necessary to dwell on the merits of the assessments.

WHEREFORE, in the light of the foregoing, the instant petition for review is ***GRANTED***. Accordingly, the deficiency assessments issued by respondent against petitioner for income tax and value-added tax in the amounts of P18,217,037.82 and P34,678,093.00, respectively, are hereby **CANCELLED** and **WITHDRAWN** due to prescription.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

480

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

481