REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EAST ASIA POWER RESOURCES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

CTA Case No. 7956

Members:

CASTAÑEDA JR., Chairperson
CASANOVA,
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 2 6 2011 9:15 a.m.

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DECISION

Casanova, J.:

Before us, is a Petition for Review filed by the petitioner praying for the cancellation of respondent's assessment for deficiency income tax of Php3,410,498.71 and deficiency expanded withholding tax of Php10,709.73, or a total of Php3,421,208.44 for the calendar year 2003.

Petitioner East Asia Power Resources Corporation (EAPRC) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with address at Ground Floor, PFDA Building, Navotas Fishport Complex, Navotas City.[1]

Respondent Commissioner of Internal Revenue (Commissioner) is the public officer authorized under the National Internal Revenue Code of 1997 (NIRC) with the power to decide disputed assessments arising under said law and other laws or portions thereof administered by the Bureau of Internal Revenue (BIR). He holds office at the 5th Floor, Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons, notices and other court processes.

On April 27, 2004, petitioner filed its income tax return for the calendar year 2003 with the BIR-RDO No. 43, Pasig City, reporting a total tax overpayment of Php 22,096,342.00.[2]

On August 11, 2004, petitioner received Letter of Authority (LOA) No. 00088088 dated August 6, 2004 from the BIR, Revenue Region No. 7, Revenue District Office No. 43, Pasig City (BIR-RDO No. 43).[3]

Petitioner complied with the requests of the BIR-RDO No. 43 by furnishing the latter its book of accounts, financial statements and other pertinent documents as enumerated in The List of Requirements attached to LOA No. 00088088 dated August 6, 2004. Thus, the examination of the petitioner proceeded.[4]

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[1] Par. 5, The Parties, Petition for Review, Docket, p. 8
[2] Part. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Ibid, p. 205
[3] Par. 2, Stipulated Facts, JSFI, Ibid, pp. 205-206
[4] Par. 3, Stipulated Facts, JSFI, Ibid, p. 206

Petitioner then, through its Group Controller, Jaime B. Robles Jr., executed two (2) Waivers of the Defense of Prescription Under the Statute of Limitations of the NIRC dated March 22, 2006 and April 26, 2006, respectively[5].

On September 15, 2008, petitioner received a Pre-Assessment Notice (PAN) dated September 5, 2008 from respondent, through the Regional Director of BIR, Revenue Region No. 7, informing the former of the deficiency tax findings for the calendar year 2003 on Income Tax and Expanded Withholding Tax in the amount of Php3,294,023.88 and Php10,353.13, inclusive of interest from April 16, 2004 to August 30, 2008, respectively.[6]

On September 26, 2008, petitioner filed a letter of Reply of even date disputing the deficiency taxes found in the PAN by presenting its computation to account for the said deficiency taxes.[7]

On December 8, 2008, petitioner received, through registered mail, a Formal Letter of Demand F43-018 dated November 28, 2008 with attached Assessment Notices demanding payment of assessed deficiency income tax in the amount of Php3,410,498.71 and deficiency expanded withholding tax of Php10,709.73 for the calendar year 2003, both inclusive of interest from April 16, 2004 to December 29, 2008 which is a mere reiteration of the PAN dated September 5, 2008.[8]

On January 6, 2009, petitioner timely filed a letter of protest to respondent.

Despite the lapse of one hundred eighty (180) days from the submission of petitioner's letter of protest dated January 6, 2009, respondent failed to act upon the a

[5] Exhibit "B" and "B-1"
[6] Par. 7, Stipulated Facts, JSFI, Docket, p. 207
[7] Par. 8, Stipulated Facts, JSFI, Ibid, p. 207
[8] Par. 9, Stipulated Facts, JSFI, Id., pp. 207-208

same. The 180-day period lapsed on July 5, 2009[9], thus, petitioner filed this Petition for Review on August 4, 2009.[10]

In her Answer,[11] respondent raised the following special and affirmative defenses:

> "4. The assessments for calendar year 2003 in the amounts of P3,410,498.71 and P10,709.73 for deficiency income and expanded withholding taxes, respectively, were issued in accordance with law and regulations. The factual and legal bases of the assessments are contained in the Final Assessment Notices.
>
> 5. Verification disclosed that the salaries and wages per alphalist compared to amounts reported in the financial statements is construed as unaccounted source of income, thus, considered as undeclared income pursuant to the ruling enunciated in the case of Perez vs. CTA and CIR, L-10507 dated May 30, 1958, to wit;

Salaries and wages per FS/ITR	P12,982,053.00	
Less: Fringe benefit expense	1,064,540.71	
Fringe benefit tax	639,112.34	
SSS, employer cost	116,315.40	
Pag-ibig, employer cost	11,500.00	
Medical health insurance	64,652.73	11,085,931.82
Salaries and wages per alphalist		12,776,904.24
Unaccounted salaries and wages		**1,690,972.42**

> 6. Verification disclosed that income payments per alphalist compared to amounts reported in the financial statements is construed as unaccounted source of income, thus, considered as undeclared income pursuant to the ruling in the case of Perez vs. CTA and CIR, L-10507 dated May 30, 1958, to wit:

	Per FS	Per alphalist	Unaccounted
Professonal fees	5,438,782.69		
Management fees	29,109,210.41		
Total Professional fees per FS/ITR	34,547,993.10	37,945,718.09	3,397,724.99
Fringe benefit Expense	1,064,540.71	1,358,113.73	293,573.02
Unaccounted income payments			**3,691,298.01**

[9] Par. 14, Stipulated Facts, JSFI, Id. p. 209
[10] Id., pp. 4-40
[11] Id., 114-119

7. Verification disclosed that petitioner failed to subject the total rentals to expanded withholding tax, hence, disallowed as deductions from gross income pursuant to Section 34 (K) of the 1997 Tax Code, as amended, to wit:

Income payments	Per F/S	Per Alphalist	Not subjected
Rentals	2,251,259.99	2,143,691.19	**107,568.80**

8. Verification disclosed that these aforementioned receipts per BIR Form No. 2307 were not fully reported in the Financial Statements, wherein the difference is considered as unaccounted income subject to 10% pursuant to Sections 106 and 108 of the 1997 Tax Code, as amended.

9. Verification disclosed that portion of rentals was not subjected to withholding tax, hence, assessed pursuant to Revenue Regulation No. 2-98, as amended, to wit:

Income payments	Not subjected	Rate	EWT due
Rentals	107,568.80	5%	5,378.44
			5,378.44

10. Finally, well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith (*Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671).* It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that 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. 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."

Trial proceeded wherein petitioner presented and offered its testimonial and documentary evidence. This case is submitted [12] for decision, taking into

[12] Id., p. 765

consideration petitioner's "Memorandum"[13] and respondent's "Memorandum"[14] filed on filed on August 10, 2011 and September 12, 2011, respectively.

The issues, as stated in the Joint Stipulation of Facts and Issues, are the following:

1. Whether or not the subject deficiency tax assessments have already prescribed?
2. Whether or not petitioner EAPRC is liable to pay respondent the subject deficiency tax assessments?

Pursuant to Section 203 of the NIRC, respondent has three years, counted from the date of the actual filing of the return or from the last date prescribed by law for filing of return, whichever comes later, to assess a national internal revenue tax.[15]

Section 203 of the NIRC provides:

> "**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."

Petitioner contends that the assessment issued against it by the respondent was made beyond the prescriptive period provided in Section 203 of the NIRC.

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[13] Id., pp. 709-747
[14] Id., pp. 771-779
[15] Bank of the Philippine Islands vs. Commissioner of Internal Revenue, G.R. No. 139736, October 17, 2005

Furthermore, assuming that the prescription has not yet set in due to the executed Waivers of Statute of Limitations, the said waivers were nonetheless invalid for failure to strictly comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90.

This Court finds it necessary to first determine the validity of the waiver executed by the petitioner to determine whether the right of respondent to assess petitioner has already prescribed.

Under Section 222(b) of the NIRC, the three year prescriptive period stated in Section 203 of the NIRC may be waived through an agreement in writing executed by the taxpayer and the Commissioner. Section 222(b) of the NIRC provides:

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

Corollary thereto, Revenue Memorandum Order (RMO) No. 20-90, implementing Section 222(b) of the NIRC, enumerates the procedure in executing waivers of the Statute of Limitations. Failure to strictly comply with the provisions of RMO No. 20-90 makes the waiver defective and will not extend the original three-year prescriptive period under Sec. 203 of the NIRC. The Supreme Court, in the case of *Commissioner of Internal Revenue vs. FMF Development Corporation,*[16] provides:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.
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> An exception to the three-year prescriptive period on the assessment of taxes is Section 222(b) of the NIRC, which provides:
>
> xxx xxx 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
>
> The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222(b), the following procedures should be followed:
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> 1. The waiver must be in the form identified as Annex 'A' hereof....

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[16] G.R. No. 167765, June 30, 2008

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.

xxx xxx xxx

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)

Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. Firstly, it was not proven that respondent was furnished a copy of the BIR-accepted waiver. Secondly, the waiver was signed by a revenue district officer, when it should have been signed only by the Commissioner as mandated by the NIRC and RMO No. 20-90, considering that the case involves an amount of more than P1 million, and the period to assess is not yet about to prescribe. Lastly, it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement."

Based on the foregoing, it is clear that there is a need to indicate in the Waiver of Statute of Limitations the date of execution by the taxpayer and the date of acceptance by respondent. The date of acceptance must be indicated to determine whether the waiver was validly accepted before the expiration of the original three-year period. If the acceptance was made beyond the prescriptive period, the waiver is defective and cannot validly extend the original three-year period for the respondent to issue an assessment.[17] In this case, petitioner, through its Controller, Jaime B. Robles, Jr., executed two "Waivers of the Defense of Prescription" under the Statute of Limitations of the National Internal Revenue Code". These documents were accepted by Revenue District Officer, Raul Vicente L. Recto, who failed to indicate his date of acceptance as prescribed by RMO No. 20-90. Hence, the waivers were defective and could not validly extend the original three-year prescriptive period wherein respondent may assess the petitioner.

Having determined that the waivers executed by the petitioner were defective, We shall now proceed to determine on whether or not respondent is barred from assessing petitioner on the ground of prescription.

In the case at bench, petitioner filed its Annual Income Tax Return for calendar year 2003 on April 27, 2004.[18] Counting three years from the filing thereof, in accordance with Section 203 of the NIRC, respondent has until April 27, 2007 to assess petitioner for deficiency internal revenue taxes. Considering that the assessment notices were received by petitioner only on December 8, 2008 – almost eight (8) months from the last time allowed by law for respondent to issue an assessment, such assessments, therefore, were already barred by prescription.

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[17] United Parcel Service Co. (Philippine Branch), vs. Commissioner of Internal Revenue, CTA Case No. 7667, August 18, 2010
[18] Exhibit "A"

Having determined that the subject assessment notices have been issued beyond the prescriptive period provided under the law, this Court finds it unnecessary to resolve the other issues in this case.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand No. F43-018 dated November 28, 2008 is hereby **CANCELLED** and **SET ASIDE** for being barred by prescription.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice