REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARWORLD, INC.,
Petitioner,

C.T.A. CASE NO. 6920

Members:

- versus -

Castañeda, Chairman,
Uy, and
Palanca-Enriquez, JJ

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 30 2004

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RESOLUTION

During the pendency of the main case, petitioner filed its **Motion to Cancel Assessments on the Ground of Prescription** which was correspondingly opposed by respondent in his **Opposition** filed in open court on July 16, 2004.

On June 1, 2004, petitioner filed the instant motion and asserts that there exists a "prejudicial issue of whether or not the right of respondent to assess and collect the alleged deficiency income tax

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and VAT for taxable year 1999 is already barred by prescription" which must first be resolved before proceeding with the trial proper.

After a scrutiny of the respective pleadings of the parties, the following arguments and counter-arguments were gathered, to wit:

1. Respondent's opposition to petitioner's motion is basically anchored on his contention that prescription could not be invoked under the premises because the Waiver of the Statute of Limitations executed by petitioner on March 21, 2003 extended the period to assess up to October 15, 2003. Thus, said right of respondent to assess and collect has not yet prescribed;

2. Petitioner argues that the execution of a waiver is immaterial as the same was allegedly executed after the lapse of the three (3)-year prescriptive period provided for in Section 203 of the 1997 National Internal Revenue Code with regards to the alleged deficiency VAT. On the other hand, with respect to the alleged deficiency income tax, said waiver is null and void for two (2) reasons, to wit: (a) it does not show on its face the date of acceptance thereof by respondent; and, (b) it does not show on its face the fact of receipt of a copy thereof by petitioner. Therefore, the subject waiver violates the requirements set forth in RMO No. 20-90; and

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3. In controversion of the foregoing stand of petitioner, respondent cited the *Philippine Journalists, Inc.* case (CA-G.R. SP No. 72128, August 5, 2003) and asserts that the aforesaid reasons stated by petitioner are merely formal requirements that can be dispensed with as the same do not affect the validity of said waiver. Furthermore, the date of execution of said waiver could be reasonably understood as the same date of acceptance since a different date was not otherwise indicated; and

4. Petitioner, in support of its proposition, assails the correctness of the ruling of the Court of Appeals in the above-cited case and argues that said court erred in stating that said requirements are mere formalities and that there is a presumption to the effect that "in the event the date of acceptance of a waiver is not separately indicated, the same is presumed to be the date of execution thereof". It maintains that the aforesaid requirements are in fact "procedural safeguards to protect a taxpayer's substantive rights" and, thus, may not be dispensed with.

In further amplification of its argument, petitioner elaborated in its Reply and Supplemental Reply, received on September 8, 2004 and September 9, 2004, respectively, that this Court is not bound by the ruling of the Court of Appeals for the following reasons:

a. Republic Act No. 9282 has elevated this Honorable Court to the same level as the Court of Appeals;

b. This Honorable Court and the Court of Appeals are now co-equal courts, but because of the nature of their respective jurisdictions, the former is more competent to decide on tax issues;

c. The Supreme Court has yet to rule on the issue, and therefore the same is still unsettled;

d. Lastly, in the Philippine Journalists Case, this Honorable Court was right and the Court of Appeals was wrong, as clearly demonstrated in petitioner's Motion to Cancel Assessment on the Ground of Prescription. We adhere in our country to the doctrine of *stare decisis* for reasons of stability in the law. The doctrine, which is really "adherence to precedents", states that once as (sic) case has been decided one way, then another case, involving exactly the same point in issue, should be decided in the same manner. Of course, when a case has been decided erroneously, such an error must not be perpetuated by blind obedience to the doctrine of *stare decisis*. No matter how sound a doctrine may be, and no matter how long it has been followed through the years, still if found contrary to law, it must be abandoned. The principle of *stare decisis* does not and should not apply when there is a conflict between the precedent and the law (Tan Chong vs. Secretary of Labor, 79 Phil. 249). While stability in the law is eminently to be desired, idolatrous reverence for precedent, simply as precedent, no longer rules. More pregnant than anything else is that the Court shall be right (Phil. Trust Co. vs. Mitchell, 69 Phil. 30).

In addition, petitioner further argued that the pronouncements made in the *Philippine Journalists, Inc.* case, on the issue of the

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validity of such waiver are merely in the nature of an *obiter dictum* and, thus, the same are not to be considered as part of the *ratio decidendi.* It therefore concluded, that the principle of *stare decisis* shall not apply to the aforecited case.

Interestingly, the case under consideration is not the first case brought before Us, presenting issues relative to the implementation and interpretation of Sections 203 and 222 of the 1997 NIRC, as amended. This Court has had the occasion to exhaustively discuss its ruling on the subject in a long line of cases. Section 203 is hereunder quoted for ready reference:

> **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. *(Underscoring supplied)*

Section 222, on the other hand, provides for exceptions as to the period of limitation of assessment and collection of taxes. We quote paragraph (b) thereof as it is relevant to this case, stating:

(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. *(Underscoring supplied)*

Consistent with our rulings in previous cases of similar if not the same issues, We quote hereunder our pronouncement in the case of ***Enron Subic Power Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 6029, November 4, 2003***, to wit:

"Based on the above provisions, if before the expiration of the three-year period to assess, both the Commissioner and the taxpayer agreed in writing that an assessment may still be had after such time, the tax may be assessed **within the period agreed upon**. And the period agreed upon may be extended by subsequent written agreement **made before the expiration of the period previously agreed upon**.

"Thus, the law is quite clear that the three-year prescriptive period to assess may be extended upon mutual agreement by the Commissioner and the taxpayer in writing and such period may still be extended if another written agreement is executed before the expiration of the new period to assess. Meaning to say, the period agreed upon also expires. The Tax Code is quite plain, definite and free from ambiguity on the matter. It does not provide that the prescriptive period to assess may be waived altogether or that there will be no more prescriptive period to assess the taxpayer by the mere execution of the Waiver of Statute of Limitations, as the written agreement between the Commissioner and the taxpayer is so described. x x x

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"In other words, the three-year period to assess is merely **extended** when the Commissioner and the taxpayer execute a Waiver of Statute of Limitations. It is not therefore valid when the waiver totally removes the limit within which to assess a taxpayer of deficiency taxes. x x x" *(Underscoring supplied)*

Furthermore,

"The agreement to 'waive the running of the prescriptive period' should not be interpreted to mean as a waiver of the prescriptive period. After all, what has been waived was merely the **running of the prescriptive period** and not the prescriptive period *per se*. Besides, if we take the agreement to mean as a waiver of the prescriptive period, then the provision of Section 222(b) becomes useless. Expressed otherwise, a law has been made inutile by a mere written agreement of the parties. Indeed, parties may enter into any contract and may establish such stipulations, clauses, terms and conditions as they may deem convenient. However, such stipulations, clauses, terms and conditions must not be contrary to law, morals, good customs, public order, or public policy.

Pursuant, therefore, to Section 222 (b) of the 1997 NIRC, if both the Commissioner of Internal Revenue and the taxpayer agreed in writing for an extension of the period for the assessment of tax, even after such time prescribed by law, then such agreement shall be binding upon them. The only condition set forth in the said Section is that the agreement must be made before the expiration of the period provided by law. The Tax Code does not strictly require any additional detailed requirements, as laid down in RMO No. 20-90.

Obviously, the term "agreement" referred to in Section 222 (b) of the same code merely requires it to be in writing. Consequently, a written agreement duly signed by the parties shall be in full force and effect as long as it is not contrary to law, morals, good customs, public order or public policy.

As defined in the Webster's Third New International Dictionary, the term "agreement", means "the act of agreeing or coming to a mutual arrangement; an arrangement (as between two or more parties) as to a course of action; a contract duly executed and legally binding on the parties entering into it." From the foregoing definition, the agreement contemplated in Section 222 (b) shall be interpreted simply as a written contract for the waiver of the statute of limitations provided for in Section 203, duly executed, entered into and signed by and between two proper parties before the expiration of the time prescribed in the latter provision of law. The law is very clear and precise on the matter, and thus, requires no room for interpretation.

The rationale behind the requirement of the law that the agreement should be in writing before the same can be considered effective and enforceable is to prevent fraud and not to encourage the same. By way of reiteration, a written agreement between the Commissioner of Internal Revenue and the taxpayer, both affixing

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their respective signatures thereon, shall be binding upon them and is deemed to be an effective and valid waiver of the statute of limitations provided for under Section 222 (b) of the 1997 NIRC.

On the issue of the date of acceptance of the waiver, We maintain the stand that the date of respondent's acceptance is the date of execution of the agreement as the latter date shall be understood as the date of the meeting of their minds. Simply, it is the date of the instrument containing the agreement and prestations of the parties. In the absence of any other date indicated regarding the effectivity of the agreement, it is the date the agreement was signed and executed by the parties that shall control.

However, We note that petitioner filed its annual income tax return for taxable year 1999 on April 17, 2000. Accordingly, respondent had until April 17, 2003 within which to exercise its right to assess any income tax deficiencies. This is so, because the subject waiver was executed and agreed upon by the parties before April 17, 2003, and therefore, the right of the respondent to assess petitioner for any income tax deficiencies, if any, has not yet prescribed.

Thus, considering that the subject waiver in the case at bar was made in writing, appears to be executed before the expiration of the three (3)-year period after the last day prescribed by law for the filing of the income tax return, duly signed by the proper parties as provided for by law, and properly dated, this Court rules for its validity with respect to the **waiver of statute of limitations on assessment of deficiency income tax**. Such waiver is binding to the parties.

With respect to the alleged deficiency VAT, We find it important to quote the applicable tax provision in the 1997 NIRC, to wit:

> **Sec. 114. Return and Payment of Value-added Tax.–**
>
> **(A) In General. –** Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts <u>within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer</u>: **Provided, however**, That VAT-registered persons shall pay the value-added tax on a monthly basis. x x x *(Underscoring supplied)*

Pursuant to Section 203, in relation to Section 114 of the 1997 NIRC, the period to assess commences after the last day prescribed by law for the filing of the return. In the case of VAT, it is twenty-five (25) days following the close of each taxable quarter. Hence, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. Therefore, taking into consideration that year

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2000 was a leap year, respondent has the following dates within which to assess petitioner for deficiency VAT:

Period (1999)	Date Filed	Last Day to File Return	Last Day to Assess
1st Quarter	04/26/99	04/25/99	04/25/02
2nd Quarter	07/26/99	07/25/99	07/25/02
3rd Quarter	10/25/99	10/25/99	10/24/02
4th Quarter	01/25/00	01/25/00	01/24/03

Based on the foregoing timetable, We agree with the petitioner that the subject waiver executed on March 21, 2003, cannot suspend the running of the three-year prescriptive period referred to in Section 203 of the Tax Code, as there was no more period to extend.

The law is clear that the taxpayer is required to file a quarterly VAT return not later than twenty-five (25) days following the close of each quarter. A VAT-taxpayer is mandated to file a quarterly return. This is in contrast with corporate income tax where a quarterly income tax return and final or adjustment return is required to be filed. In other words, each taxable quarter shall have its own prescriptive period and not just after twenty-five (25) days following the close of the last quarter for the taxable year. Therefore, the respondent's right to assess and collect from petitioner the alleged VAT deficiencies had long expired when he made the said assessment beyond the period prescribed by law.

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WHEREFORE, premises considered, the instant motion is **PARTIALLY GRANTED**. The subject waiver, dated March 21, 2003, over *deficiency income tax* for taxable year 1999 is valid and binding between the parties. However, the Final Assessment Notice and Formal Letter of Demand issued by the respondent for the alleged deficiency VAT on August 28, 2003 are hereby **CANCELLED** and **SET ASIDE** on the ground of prescription.

Consequently, the parties are hereby **ORDERED** to proceed with the trial, limiting the presentation of their evidence only to relevant matters concerning the assessment for the alleged deficiency income tax.

Accordingly, let this case be set for Pre-trial Conference on February 4, 2005 at 9:00 in the morning.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

Olga P. Enriquez
OLGA P. ENRIQUEZ
Associate Justice

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