REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

UNIVERSAL WEAVERS CORPORATION, Petitioner,	**CTA CASE NO. 8566**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 10 2015 ; 10:46 a.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution is respondent's **Motion for Reconsideration (Re: Decision dated 11 May 2015)**, filed on June 2, 2015, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration on the May 11, 2015 Decision)**, filed on June 9, 2015.

Respondent seeks reconsideration of the Court's Decision dated May 11, 2015, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Demand and Final Assessment Notice No. 020-0704010876 is hereby ordered **CANCELLED**.
>
> **SO ORDERED**."

The instant motion is anchored on the sole ground that the Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC) of 1997 executed by the parties were valid, thus, the period to assess petitioner for deficiency taxes was extended.

Respondent contends that the two waivers executed on November 5, 2010 and September 9, 2011[1], cured or ratified the formal defects on the first waiver executed on September 16, 2009. Respondent claims that it was the intention of both parties to extend the period of assessment until December 31, 2010, and the same was reinforced by the execution of the second waiver on November 5, 2010, a month before the expiration of the supposed first waiver. Moreover, respondent points out that the government should not be made to suffer for any oversight made by its agent, citing the case of *Commissioner of Internal Revenue v. CA, Citytrust Banking Corporation and CTA*[2]. The omission of the expiry date in the first waiver should not allegedly prejudice the interest of the government when it was most probably a mere inadvertence on the part of the Revenue Officer who should have indicated therein the expiry date of the period to assess.

Petitioner, on the other hand, opposes the aforesaid motion for being a rehash of what has been squarely dealt with in the assailed Decision, *i.e.,* validity of the waivers and non-application of the doctrine of estoppel. Petitioner also expresses that the cited case in the respondent's motion has nothing to do with waivers of prescription.

After a thorough evaluation and careful study of the parties' arguments, the Court finds for the petitioner. The issues raised in the respondent's motion have been extensively passed upon in the assailed Decision. At any rate, it is worthy to emphasize the ruling of the Court that the three waivers executed by the parties were invalid for *failure to strictly comply* with the procedure for proper execution of the Waiver of the Statute of Limitations, *viz*:

> "1. The First Waiver failed to specify the expiry date or a definite agreed date between the BIR and petitioner, within which the former may assess and collect revenue

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[1] This should be October 18, 2011.
[2] G.R. No. 106611, July 21, 1994.

> taxes. Also, both the date of execution by the taxpayer and date of acceptance by the Bureau were not indicated.
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> 2. The Second Waiver failed to indicate the date of acceptance by Revenue District Officer Atty. Abencio T. Torres.
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> 3. The Third Waiver failed to indicate the date of acceptance by Revenue District Officer Roberto S. Bucoy."[3]

Further, the Court reiterates that considering the First Waiver failed to indicate the date of expiry, it necessarily follows that the waivers subsequently executed after the First Waiver did not likewise have any binding effect as there was nothing to extend in the first place.

In the recent case of *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated*,[4] the Supreme Court underscores once again the strict compliance with the requirements of a valid waiver, it held:

> "The statute of limitations on the right to assess and collect a tax means that once the period established by law for the assessment and collection of taxes has lapsed, the government's corresponding right to enforce that action is barred by provision of law.
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> The period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222 (b) of the NIRC. In relation to the implementation of this provision, the CIR issued Revenue Memorandum Order (RMO) No. 20-90 on 4 April 1990 to provide guidelines on the proper execution of the Waiver of the Statute of Limitations. In the execution of this waiver, the following procedures should be followed:
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> xxx xxx xxx

[3] Page 10 of the Assailed Decision dated May 11, 2015.
[4] G.R. No. 187589, December 3, 2014.

> In *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. **The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.**
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> To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally."[5]

As regards respondent's argument that the government should not be made to suffer for any oversight made by its agent, the Court finds it unmeritorious. In the case of *Commissioner of Internal Revenue v. FMF Development Corporation*[6], the Supreme Court reminds respondent that it cannot invoke the rule that the government cannot be estopped by the mistakes of its revenue officers in the enforcement of the guidelines on the proper execution of the Waiver of the Statute of Limitations contained in the Revenue Memorandum Order (RMO) No. 20-90, to wit:

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[5] *Ibid.*

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

> "Consequently, petitioner cannot rely on its invocation of the rule that the government cannot be estopped by the mistakes of its revenue officers in the enforcement of RMO No. 20-90 because the law on prescription should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law. To the Government, its tax officers are obliged to act promptly in the making of assessment so that taxpayers, after the lapse of the period of prescription, would have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents."[7]

In sum, "although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government."[8] Thus, there is no compelling reason to disturb the assailed Decision.

WHEREFORE, in view of the foregoing, respondent's **Motion for Reconsideration (Re: Decision dated 11 May 2015)** is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[7] *Ibid.*
[8] *Supra*, note 3.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice