REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1050** (CTA Case No. 7984)
-versus-	Present: DEL ROSARIO, *P.J.,* CASTAÑEDA JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
SYSTEMS TECHNOLOGY INSTITUTE, INC., *Respondent.*	Promulgated: SEP 02 2015 2:28 p.m.

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RESOLUTION

For resolution is petitioner's "Motion for Reconsideration (Re: Decision dated 24 March 2015)"[1] filed on April 21, 2015. Petitioner seeks reconsideration of this Court's Decision[2], promulgated on March 24, 2015, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the assailed Decision dated April 17, 2013 and the Resolution dated July 17, 2013 of the Second Division in CTA Case No. 7984 are **AFFIRMED,** and the instant petition for review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner asks the Court *En Banc* to reconsider its Decision dated March 24, 2015 on the following grounds:

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[1] *Rollo*, pp. 327-341.
[2] *Rollo*, pp. 294-314.

1. Withholding tax is not an internal revenue tax but is only a system used to collect income tax in advance, thus, the period within which to assess finds no application in the present case;

2. Assuming without conceding that the period within which to assess finds application in the case at hand, respondent is estopped from assailing the validity of the waivers with respect to the assessments;

3. The waivers of defense of prescription under the statute of limitation are not bilateral but unilateral acts of respondent; and

4. Assuming for the sake of argument that the waiver is a bilateral agreement, then such waivers of defense of prescription under the statute of limitation should bind both contracting parties.

In a Resolution dated May 25, 2015, this Court ordered respondent to file Comment which it did so on July 3, 2015. Respondent, on the other hand, proffers the following counter-arguments:

1. Assessments for deficiency expanded withholding taxes (EWT) are subject to the statute of limitation provided under Section 203, National Internal Revenue Code of 1997 (Tax Code)[3];

2. Respondent is not estopped from questioning the validity of the waivers of the defense of prescription under the statute of limitations in this case;

3. It is established under Philippine Law and jurisprudence that a waiver is a bilateral agreement between the taxpayer and petitioner; and

4. The waivers suffer from technical defects which render them null and void.

After considering the arguments of both parties, it is apparent to this Court that the arguments raised by petitioner in its Motion for Reconsideration are not new. They have been previously discussed and considered in the Decision dated April 17, 2013 and the Resolution dated July 17, 2013 of the Second Division in CTA Case No. 7984. More

[3] Republic Act No. 8424 (1997), as amended.

importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated March 24, 2015.

Assessments for Deficiency EWT are subject to Prescription

Petitioner claims that withholding tax assessments are not an internal revenue tax but, rather, are assessments imposed upon the respondent for its failure to withhold correct taxes that respondent is duty bound to collect as an agent of the government. Therefore, according to petitioner, assessments for deficiency EWT are imprescriptible.

This Court has adequately addressed this issue in the Decision when We held that the ruling of the Supreme Court in *Philippine Guaranty* is not incompatible with the applicability of the statute of limitations under Section 203, Tax Code to EWT. Pertinent excerpts of the Decision are quoted hereunder:

> "However, this Court also believes that the above pronouncement is not incompatible with the applicability of Section 203.
>
> As withholding agent of the Government who failed to withhold, Section 80 mandates that an employer shall be liable to pay the tax together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.
>
> As agent of the taxpayer, the withholding agent is responsible for filing the necessary withholding tax return and remittance of the tax withheld.
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> This dual role of a withholding agent is *sui generis.* Petitioner is splitting hairs when it seeks remedies under the umbrella of one role to the exclusion of the other. **The deficiency payment the Government seeks is an internal revenue tax. As such, as with any taxpayer, Section 203 applies. <u>The Government must issue an assessment in an effort to collect the tax within three (3) years after the last day prescribed by law for filing of the return, or in cases where the return is filed beyond the period prescribed by law, from the day the return was filed.</u>** The rationale for this is further explained in *Bank of the Philippine*

> *Islands vs. Commissioner of Internal Revenue*[4] which states that 'The statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor.'
>
> Section 203 was instituted to benefit the taxpayer, the principal of the withholding agent. This Court sees no reason why a rule that applies to the principal should not apply to the agent as well.
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> In this case, the Government failed to discharge its duty to assess and collect the deficiency EWT in a timely manner. Had it done so, then the liability of the withholding agent for failure to withhold could be properly determined. **It belies logic and reason that liability would attach to the withholding agent when there has yet been no determination that it failed to withhold for lack of a valid and timely assessment.**" *(Emphasis supplied)*

Although withholding agents are made personally liable for their failure to withhold correct taxes, this in no way operates to override the statute of limitations when it comes to issuing deficiency EWT assessments, as held in numerous Supreme Court cases wherein the courts ordered the cancellation of deficiency EWT assessments on the basis of prescription.[5] The due process clause in the 1987 Constitution[6] must be observed. As the Supreme Court has stated in ***Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.***[7]:

> "It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is

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[4] *Rollo*, p. 121.
[5] CIR v. BASF Coating + Inks Phils., Inc., G.R. No. 198677, November 26, 2014, Jo Anna Lee O. Santos v. CIR, CTA Case No. 8214, November 26, 2014; CIR v. Ajinomoto Philippines Corporation, CTA EB Case Nos. 1010 & 1015 (CTA Case No. 7877), November 3, 2014; CIR v. La Flor Dela Isabela, Inc., CTA EB Case No. 951 (CTA Case No. 8154), February 10, 2014; Hermano (San) Miguel Febres Cordero Medical Education Foundation v. Joel L. Tan-Torres, CTA Case No. 8095, December 18, 2013; CIR v. East Asia Power Resources Corporation, CTA EB Case No. 879 (CTA Case No. 7956), June 17, 2013; Quaker Oats Asia, Inc.-Philippine Branch v. CIR, CTA Case No. 7934, December 15, 2011.
[6] Article III, Section 1, 1987 Constitution
[7] G.R. No. 198677, November 26, 2014.

> amply protected by the Bill of Rights under the Constitution."[8]

In affirming the Court in Division's Decision dated April 17, 2013, We emphasize the pertinent excerpts thereof, as follows:

> "In addressing the said issue, perusal of the records of the case would show that respondent[9] assessed petitioner[10] for deficiency expanded withholding tax amounting to Php553,105.67, representing the total EWT still due from petitioner. There was nothing in the Formal Assessment Notice and Final Decision on Disputed Assessment which would show that the said amount was assessed as penalty and not tax as imposed under the NIRC from which the period of limitation for assessment under Section 203 of the NIRC of 1997, as amended, may be applied. Contrary to respondent's assertion, Section 21 of the NIRC of 1997, as amended, provides:
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> 'SEC. 21 *Sources of Revenue.* - The following taxes, fees and charges are deemed to be national internal revenue taxes:
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> (a) Income tax;
> (b) Estate and donor's taxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes;
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.'
>
> Witholding taxes are withheld from income payments by withholding agents, which is clearly mandated under the NIRC and collected by the BIR. In this case, respondent allegedly found and assessed deficiency expanded withholding tax still due from petitioner. Thus, the assessed deficiency EWT is covered by the period of limitation of assessment and collection under Section 203 of the NIRC of 1997, as amended and consequently, respondent's contention is considered untenable.[11]"

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[8] *Id.*
[9] Petitioner herein.
[10] Respondent herein.
[11] CTA-Division Decision, pp. 24-25.

Furthermore, petitioner's argument that Section 204, Tax Code, excludes EWT from the types of internal revenue taxes against which a tax credit certificate (TCC) may be applied or that the exclusion of withholding taxes from the coverage of the tax amnesty program under R.A. No. 9480, as implemented by Revenue Memorandum Circular (RMC) No. 55-2007 proves that the assessed deficiency EWT is a penalty cannot be given credence.

As respondent points out in its Comment, this case neither involves a case for refund or issuance of TCC, nor an application under the tax amnesty program of the Bureau of Internal Revenue (BIR). Moreover, neither Section 204, Tax Code nor R.A. No. 9480, as implemented by RMC No. 55-2007, discusses the applicability of the statute of limitations in cases of withholding tax assessments.

Estoppel Does Not Operate to Bar Respondent From Questioning Waivers.

After this Court's lengthy discussion in Our Decision as regards, petitioner's non-compliance with the provisions of Revised Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, petitioner now argues that her right to issue the assessment on the subject deficiency taxes has not yet prescribed because respondent is estopped from contesting the validity of the waivers.

Petitioner alleges that estoppel has set in because respondent did not question the validity of the first waiver before executing the second and third waivers; and that it allowed Mr. Amiel C. Sangalang to continuously bind respondent on the waivers it executed.[12]

The Court in Division's Decision has already discussed in detail why the doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations considering that there is a detailed procedure for the proper execution of waivers which petitioner is bound to strictly follow, to wit:

> "As correctly cited by petitioner[13] in its Memorandum, 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

[12] MR, pp. 5-6.
[13] Respondent herein.

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 [the] requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied."

We find that this is consistent with the holdings of the Supreme Court in *Commissioner of Internal Revenue v. Kudos Metal Corporation*[14] which mandated the strict application on the procedure for the proper execution of the waivers and *Commissioner of Internal Revenue v. Stanley Works Sales (Phils.), Inc.,*[15] where it was held that that the mere execution of waivers is not sufficient to call the application of estoppel as an exception to the period of limitations under Section 203, Tax Code.

Furthermore, the records show that respondent's witness and Vice-President for Comptrollership, Mr. Amiel Sangalang[16], drafted the waivers based on templates provided to him by petitioner's examiners.[17] More importantly, both RDO No. 20-90 and RDAO NO. 05-01 are issuances by the Commissioner of Internal Revenue. As we mentioned in Our Decision, they were within her powers to amend or abrogate, but certainly, not circumvent. Having caused the defects in the waivers, the petitioner must bear the consequences thereof. It cannot shift the blame to the taxpayer.

We are not persuaded to reconsider Our stance on this matter.

Petitioner's remaining grounds likewise do not persuade. We have discussed at length that waivers are bilateral contracts between the respondent and the government. As such, the waivers require the assent of petitioner in order to be binding. We emphasize the portion of Our Decision discussing this point, thus:

"Petitioner ascribes error to the Second Division in holding waivers to be bilateral. In petitioner's view, waivers are primarily for the benefit of taxpayers, who should then be

[14] G.R. No. 178087, May 5, 2010.
[15] G.R. No. 187589, December 3, 2014.
[16] *Rollo*, pp. 73-74.
[17] Exhibit "J-5", page 2.

disallowed from assailing them. Here again, the petitioner runs against the currents of jurisprudence.

In a case, the Supreme Court described as "flawed" the assumption that a waiver of the statute of limitations is a unilateral act of the taxpayer. The Supreme Court said that:

> '[A waiver] is in fact and in law an agreement between the taxpayer and the BIR. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.[18]'

Even in the face of pronouncements such as the above, from the highest court in the land, the petitioner adamantly insists that a waiver is 'a unilateral undertaking" because "[a] waiver of the statute of limitations is not executed by two (2) parties but rather it is only executed by a taxpayer at his own instance where he relinquishes his statutory right. That is all that is needed and the waiver is perfected. It is a one party undertaking.'

Petitioner seems oblivious to the fact that the bilateral nature of a waiver is fixed by Sec. 222(b) of the NIRC, not just by RMO No. 20-90. Sec. 222(b) allows an exception to the period of limitation of assessment of taxes, thus:

> 'If before the expiration of the time prescribed in the preceding section 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

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[18] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

agreement made before the expiration of the period previously agreed upon.'

RMO No. 20-90 adds: "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."

It is clear from the above-cited provisions of Sec. 122(b) of the NIRC and RMO No. 20-90 that a waiver is in the nature of a contract. By its definition as "a meeting of minds between two persons"[19] (or more), a contract cannot be unilateral.

Petitioner makes much of its belief that the holding in the *Philippine Journalists, Inc.* that a waiver is bilateral is an isolated case, and was based on "an erroneous appreciation of an internal control issuance of the BIR."[20]

To the contrary, that holding in 2004 in *Philippine Journalists, Inc.* was not only reiterated but even given added weight in *CIR vs. FMF Development Corporation* in 2008, where the Supreme Court said: '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.'"

As a last resort, petitioner argues that even assuming that the waivers are bilateral agreements, the same should bind both contracting parties, and since respondent knowingly permitted Mr. Sangalang to act on its behalf, it intended to give effect to the waivers. Consequently, the validity of the waivers may no longer be impugned.

This argument is merely a different version of petitioner's estoppel argument which we have already discussed above. Furthermore, it has been established that petitioner did not secure any written authorization that Mr. Sangalang had the authority to sign the waivers on behalf of respondent. The absence of such written authorization renders the waivers fatally infirm. Since the waivers were invalid, they did not interrupt the maximum three-year period for assessing taxes.

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[19] Article 1305, Civil Code.
[20] Petition, p. 31.

WHEREFORE, given the foregoing, petitioner's "Motion for Reconsideration (Re: Decision dated 24 March 2015)" is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice