REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MARUKA ENTERPRISES, INC.,
Respondent.

EB No. 105
(C.T.A. CASE NO. 5977)
Members:
ACOSTA, PJ.
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ:
Promulgated:

JUN 0 1 2006 [signature]

x - x

DECISION

CASANOVA, J:

This is a Petition for Review of the Decision dated February 2, 2005 of the Court of Tax Appeal's Second Division in CTA Case No. 5977, entitled "Maruka Enterprises Incorporated vs. Commissioner of Internal Revenue", granting herein respondent's Petition for Review. In effect, the deficiency income tax, value-added tax and expanded withholding tax assessments issued by the Bureau of Internal Revenue for the taxable year 1994, in the aggregate amount of P11,216,208.04 were cancelled and withdrawn; and of the Resolution dated June 15, 2005, denying the Commissioner of Internal Revenue's "Motion for Reconsideration" for lack of merit.

The facts of the case as culled from the records are as follows:

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with office address at the Ground Floor, JM Building, South Superhighway corner Rockefeller Street, Makati City.

Respondent is engaged in the importation and sale of various machinery and equipment.

On April 7, 1995, respondent filed with the BIR its Annual Income Tax Return for the taxable year 1994.

Petitioner issued Letter of Authority No. 26713 dated September 6, 1995 authorizing Revenue Officers Monica Zamora and Group Supervisor A. Goco Jr., to examine the books of accounts and other accounting records of respondent for all internal revenue taxes for the calendar year 1994.

On February 3, 1999, respondent received Final Assessment Notices (FANS) numbered 0000049-94-99-471, 02-294-94B-99-B2-471 and 0000049-94-99- 471 all dated January 15, 1999 covering alleged deficiency Income, VAT and Expanded Withholding Tax in the total amount of P11,216,208.04. The alleged tax deficiencies of the respondent are as follows:

A. Deficiency Income Tax (Exhibit 9)

Net Income disclosed by the return as audited		P204,672.00
Add: Discrepancies per investigation		
Undeclared income	P9,394,545.16	
Salaries and wages	1,588,686.67	
Retainer's/Consultancy Fees	153,257.50	
Bad Debts	176,949.80	11,313,439.13
Taxable Income per Investigation		P 11,518,111.13
Income Tax due thereon		4,031,338.90
Less: Tax Credits		
Payments per BIR Form 1702Q	P78,715.41	
Tax Credits-prior year	7,080.00	71,635.41
Deficiency Income Tax		P3,959,703.49
Add: Interest from 4-15-95 to 1-15-99		2,960,274.33
Compromise		25,000.00
Total Amount Due		P6,944,977.82

B. Alleged Deficiency VAT (Exhibit 11)

Net Sales		P17,056,049.23
Proceeds from sale of Transportation equipment		124,000.00
Indent Commissions		13,978,059.85
Undeclared Sales		8,534,697.82
Total Discrepancies/Adjustment		P39,692,806.90
Output Tax Due Thereon		3,969,280.69
Less: Output Tax per VAT Return Filed	P1,683,594.40	
Input Tax Disallowed	63,983.38	1,619,611.02
Deficiency Output Tax		2,349,669.67
Add: Interest from 1-20-95 to 1-15-99		1,864,932.82
Compromise Penalty		25,000.00
Total Amount Due		P4,239,602.49

C. Alleged Deficiency Withholding Tax (Exhibit 13)

On Retainer's/Consultancy Fees:	
Per Financial Statements	P473,374.00
Per Alpha List	320,116.50
	153,257.50
10% Tax Due thereon- Def. EWT	15,325.75
Interest per 1-10-95 to 1-15-99	12,301.98
Compromise	4,000.00
Total Amount Due	P31,627.73

On March 5, 1999, through its external auditors, respondent filed its protest-letter dated February 18, 1999(Exhibit F) with the petitioner. Said protest-letter contested each item of deficiency tax assessments and requested for the reconsideration and reinvestigation of the subject alleged deficiency assessments. Thereafter, on May 4, 1999 respondent submitted certain documents to support its protest letter in accordance with Section 228 of the NIRC, as amended.

Petitioner failed to act on respondent's protest-letter as of October 31, 1999, which is the 180th day from submission of respondent's supporting documents.

On December 1, 1999, respondent filed a Petition for Review with the Court of Tax Appeals, docketed as CTA Case No. 5977, entitled "Maruka Enterprises Inc., vs. Commissioner of Internal Revenue". The CTA Second Division promulgated a Decision dated February 2, 2005, granting respondent's Petition for Review. Thus, the assessments issued by the BIR against the respondent for deficiency income tax, Value-Added Tax and Expanded Withholding Tax for the year 1994 were cancelled and set aside. Petitioner filed a "Motion for Reconsideration" on March 9, 2005 which was denied by the Second Division in a Resolution promulgated on June 15, 2005.

Hence this petition filed with the CTA *En Banc* where petitioner raised the following Assignment of Errors/Issues:

ASSIGNMENT OF ERRORS:

I.

THE HONORABLE SECOND DIVISION OF THE CTA ERRED IN HOLDING THAT THE SUBJECT ASSESSMENTS ISSUED BY THE BIR AGAINST HEREIN RESPONDENT HAS NOT BECOME FINAL, EXECUTORY AND DEMANDABLE.

II.

THE HONORABLE SECOND DIVISION OF THE CTA ERRED IN HOLDING THAT THE THREE-YEAR PRESCRIPTIVE PERIOD PROVIDED UNDER SECTION 203 OF THE 1997 NIRC WAS NOT SUSPENDED, DESPITE OF THE UNDISPUTED FACT THAT RESPONDENT IN ITS LETTER-PROTEST DATED FEBRUARY 18, 1999 HAS OBVIOUSLY REQUESTED FOR THE RECONSIDERATION AND REINVESTIGATION OF THE SUBJECT DEFICIENCY TAX ASSESSMENTS FOR TAXABLE YEAR 1994.

ISSUES:

I.

WHETHER OR NOT THE SUBJECT DEFICIENCY TAX ASSESSMENTS ISSUED BY THE BIR AGAINST HEREIN RESPONDENT FOR TAXABLE YEAR 1994 HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

II.

IF THE SUBJECT DEFICIENCY TAX ASSESSMENTS HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE, WHETHER OR NOT, THE HONORABLE SECOND DIVISION OF THE CTA HAS JURISDICTION TO ACT ON THE PETITION FOR REVIEW FILED BY HEREIN RESPONDENT IN CTA CASE NO. 5977.

III.

WHETHER OR NOT THE REQUEST OF RESPONDENT IN ITS LETTER-PROTEST DATED FEBRUARY 18, 1999 FOR THE RECONSIDERATION AND REINVESTIGATION OF THE SUBJECT DEFICIENCY TAX ASSESSMENTS FOR TAXABLE YEAR 1994 HAS SUSPENDED THE THREE-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 203 OF THE NIRC, WITHIN WHICH THE BIR MAY MAKE AN ASSESSMENT.

After a careful and thorough perusal, evaluation and study of the instant Petition for Review, the Court *En Banc* finds no cogent reason to disturb the Decision of the CTA Second Division promulgated on February 2, 2005, and the Resolution dated June 15, 2005. What the instant Petition asks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had been resolved and extensively discussed in the assailed Decision and Resolution.

Pertinent in the resolution of the first issue raised in the instant petition is Section 203 of the 1997 NIRC, as amended, in relation to Section 222 (b), quoted hereunder for easy 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.

Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

(a) 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.

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx."

(*Emphasis supplied.*)

Under the foregoing provisions, there has to be a valid Waiver of the Statute of Limitations executed by the taxpayer and accepted by the Commissioner of the Internal Revenue or the revenue official authorized by him. The Waiver of the Statute of Limitations dated November 10, 1997 signed by Alberto Reyes (Exhibit 1), on behalf of the respondent, is null and void for failure to comply with the requirements set under Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990, as follows:

"Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:

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

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

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*)

Section 1 of RMO No. 20-90 requires that the waiver must be in the form identified therein and that there should be NO deviation from such form. Section 2 thereof requires that soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, 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. And that 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. Likewise, the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

For purposes of clarity, hereunder is a reproduction of the subject waiver:

WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE

Jm Bldg. Ground Floor,

Maruka Enterprises, Inc.	South Superhighway, Makati City
(Name of Taxpayer)	(Address)

in consideration of the approval by the Commissioner of Internal Revenue of our request for extension of time within which to present the required documents for business and income tax purposes involving the year 1994, 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 collections of the taxes which may be found due and any increments thereto 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 of 1989, but not after January 15, 1999.

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/it for the periods abovementioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit of 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.

Executed this 10th day of November, 1997, in _______________.

MARUKA ENTERPRISES, INC.
By:

(Signed)
ALBERTO L. REYES

(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:
Commissioner of Internal Revenue
(signed)
EDWIN R. ABELLA
Revenue District Officer
R.D.O. no. 48, West Makati

(*Exhibit I, CTA Records, p. 180; Exhibit 14, BIR Records, p. 163*)

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

WAIVER OF THE STATUTE OF LIMITATIONS
UNDER THE NATIONAL INTERNAL REVENUE CODE

_________________________________ 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 _________________________ 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 reinvestigation 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 before 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 ______________________

(*Annex "A", Revenue Memorandum Order No. 20-90, April 4, 1990*)

A scrutiny of the assailed waiver revealed the following defects:

a. The Waiver of Statute of Limitations was not signed by the Commissioner of Internal Revenue as required by RMO No. 20-90;

b. The date of acceptance by the Revenue District Officer Edwin R. Abella was not indicated therein;

c. Respondent was not provided with a copy of the subject Waiver of Statute of Limitations as shown by the lack of an acknowledgment receipt on the original copy attached to the BIR docket of the case; and

d. The subject Waiver of Statute of Limitations did not specify the kind of tax and the amount of the tax due.

In the case of ***PHILIPPINE JOURNALISTS, INC., VS. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 162852, December 16, 2004***, the Supreme Court discussed the nature and laid down the requisites of a valid Waiver of the Statute of Limitations. Aside from stating that RMO No. 20-90 must be strictly followed, the Supreme Court ruled:

> "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. RMO No. 20-90 explains the rationale of a waiver:
>
>> . . . 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 in addition to the ordinary prescriptive period. (*Emphasis supplied*)
>
> As found by the CTA, the Waiver of Statute of Limitations, signed by petitioner's comptroller on September 22, 1997 is not valid and binding because it does not conform with the provisions of RMO No. 20-90. It did not specify a definite agreed date between the BIR and

> petitioner, within which the former may assess and collect revenue taxes. Thus, petitioner's waiver became unlimited in time, violating Section 222(b) of the NIRC.
>
> The waiver is also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No. 20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (P1,000,000.00) and executed almost seven months before the expiration of the three-year prescription period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR."

In the instant case, the Waiver of Statute of Limitations was executed by the respondent's authorized representative on November 10, 1997. Petitioner had more than five (5) months to accept or agree to the Waiver that was submitted by the respondent, considering that the 3-year prescriptive period for assessment is up to April 15, 1998. Applying the ruling of the Supreme Court in the ***Philippine Journalists*** case, the period to assess, is NOT about to prescribe. Therefore, the condition imposed by Section 3 B (1) of RMO No. 20-90 which would authorize the Revenue District Officer, to make the acceptance did not exist at the time the petitioner executed the assailed waiver. There was no urgency since respondent had more than 5 months to accept the Waiver. Under these circumstances, acceptance of the waiver should have been made by the petitioner Commissioner of Internal Revenue himself pursuant to Section 3 A (3) of RMO No. 20 90, in view of the fact that the assessments involved amounted to more than one million pesos.

Another defect of the assailed Waiver of Statute of Limitations is that it does not contain the date of acceptance by the respondent. This defect was made worse by erasures on the Waiver. The Waiver shows that on the space where the acceptance by the Commissioner of Internal Revenue or other authorized officer, should be indicated, the name Leonardo B. Albar, Revenue

District Officer, TIN 134-679-404, as well as the signature affixed thereon have been erased by applying some typewriter correction fluid. However, despite such erasures, the details remained visible and legible (*Exhibit 14, BIR Records, p. 163*). Below the erased portion, the name Edwin R. Abella, Revenue District Officer, R.D.O. no. 48, West Makati was typewritten and a signature was affixed thereon. The lack of a date of acceptance coupled with the erasures mentioned made petitioner's position, i.e. that the date of acceptance is the same as the date of execution of the waiver, untenable. The date of acceptance is important because it determines whether or not the acceptance was made within the prescriptive period. If the acceptance was made after the prescriptive period, the same is ineffectual since there is no more period to extend. In such a case, petitioner's right to assess the respondent had lapsed.

Section 4 of RMO No. 20-90 requires that a copy shall be given to the taxpayer and the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy. A review of the BIR records revealed that, indeed, the original copy of the Waiver of the Statute of Limitations (*Exhibit 14*) does not contain any acknowledgment receipt made by the respondent. On this point, the Supreme Court also ruled in the same case of ***Philippine Journalists, Inc.***, *supra*, that:

> "Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason copies are furnished is for a party to be notified of the existence of a document event or proceeding.
>
> The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it 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."

With respect to the last defect noted by the Court, that the subject waiver did not indicate the kind and amount of tax due is a clear violation of RMO No. 20-90. This Court had the opportunity to discuss the importance of this requirement in the case of ***DOLE PHILIPPINES, INC, vs. COMMISSIONER Of INTERNAL REVENUE, CTA CASE NO. 5705, July 1, 2003***, thus:

> "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 issued without the petitioner invoking the defense of prescription (*Pfizer, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003*). 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."

In addition, the tenor of the Waiver of the Statute of Limitations signed by petitioner's authorized representative varies significantly from what is required by RMO No. 20-90. The questioned waiver speaks of a request for extension of time within which to present the required documents whereas the waiver required by RMO No. 20-90 deals with approval by the Commissioner of Internal Revenue of the taxpayer's request for re-investigation and/or reconsideration of his/its pending internal revenue case. Moreover, the intent and purpose of the waiver which is to afford the Commissioner of Internal Revenue ample time to carefully consider the protest filed by the taxpayer against the assessment notice has been totally removed from the wordings of the assailed waiver.

With regard to the second issue raised in the instant petition, petitioner argued that the deficiency income tax, Value-added tax and expanded withholding tax assessments issued by the BIR to herein respondent has already become final, executory and demandable for its failure to submit all relevant documents in support of its protest within the 60-day period. Hence, the CTA Second Division has no jurisdiction to act on the Petition for Review filed by the respondent in CTA Case No. 5977.

This argument is untenable.

First of all, the facts of the case would reveal that respondent-Maruka had submitted documents on May 4, 1999 to support its February 18, 1999 protest letter received by the petitioner on March 5, 1999, in accordance with the provisions of Section 228 of the 1997 NIRC, as amended, quoted as follows:

> "**Sec. 228. Protesting of Assessment**. – Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final." (*Emphasis supplied*)

Secondly, assuming that respondent indeed failed to submit its supporting documents, such non-submission would only deprive the respondent of the chance to further contest the assessment notice issued by the petitioner. It must be emphasized that petitioner is not the proper party to decide whether or not the documents submitted are essential to support the protest of the taxpayer. This is to prevent the petitioner from abusing the exercise of his otherwise unlimited power to tax the respondent.

On the last issue, petitioner argued that the request of respondent in its letter-protest dated February 18, 1999 for the reconsideration and reinvestigation of the subject deficiency tax assessments for taxable year 1994 has suspended the three-year prescriptive period under Section 203 of the NIRC, as amended, within which the BIR may make an assessment.

Still, We are not swayed.

As shown by the records of the case, respondent filed its Annual Corporate Income Tax for the taxable year 1994 on April 15, 1995. Pursuant to Section 203 of the 1997 NIRC, as amended, petitioner had until April 15, 1998 to assess respondent of its 1994 income tax liabilities. The Final Assessment Notice for the 1994 tax liabilities of respondent was issued by petitioner on January 15, 1999. Evidently, petitioner had slept on his rights to assess respondent. Petitioner maintains that a Waiver of the Statute of Limitations was executed on November 10, 1997, which was supposedly for the purpose of extending petitioner's period to assess the subject tax liability until January 15, 1999.

Section 203 of the 1997 NIRC, as amended, presupposes that the assessment notice sought to be reinvestigated and/or reconsidered is a valid assessment. As discussed above, the subject assessment notices were issued by the petitioner outside the prescriptive period. Logically, no amount of request for a reinvestigation and/or reconsideration would make a void assessment valid. The defective waiver did not in any way extend petitioner's right to assess.

WHEREFORE, premises considered, the assailed Decision and Resolution of the Second Division is hereby **AFFIRMED *in toto,*** and the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Official Business)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Sec 13, Art. VIII of the 1987 Constitution, it is hereby certified that the conclusions in the above decision was reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice