REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DOLE PHILIPPINES, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5705

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 0 1 2003

x- -x

DECISION

This case involves assessments for alleged deficiency income tax and value-added tax in the total amount of P56,048,030.21for the calendar year ended December 31, 1993.

The facts as borne out by the records of the case are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office address at Polomolok, South Cotabato (*par. 1, Facts Admitted page 67, CTA records*). For the year 1993, petitioner filed its Corporation Annual Income Tax Return on April 15, 1994 with respondent's collection agent bank, UCPB-Marbel Branch *(Exhibits G to G-2)*. Petitioner likewise filed its quarterly VAT returns for the same year as follows:

Period	Exh.	Date filed
January to March 1993	L	04-20-93
April to June 1993	L-1	07-20-93
July to September 1993	L-2	10-20-93
October to December 1993	L-3	01-20-94

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On July 5, 1994, petitioner received Letter of Authority No. 50699 dated July 1, 1994, issued by Revenue District Officer Mr. Perfecto L. Aranas, of Revenue District No. 111, Bureau of Internal Revenue *(page 905, BIR records)*. The said letter authorized Revenue Officers Manuel Delfin, Alberto Pombo, Jacinto Omila, Lucy Abrasia, Evelyn Mallillin, Jose Jore, and Mateo Leysa to examine petitioner's books of accounts and other accounting records for income tax, VAT, documentary stamp and other percentage taxes for the taxable year 1993. On March 24, 1995, after the lapse of one hundred twenty (120) days without a report of investigation submitted, the aforesaid letter of authority was revalidated by Letter of Authority No. 50784, received by petitioner on April 20, 1995 *(page 908, BIR records)* which was further revalidated by Letter of Authority No. 50929 dated February 16, 1996 and received by petitioner on February 27, 1996 (*page 965, BIR records*).

On January 14, 1997, petitioner signed a Waiver of the Statute of Limitations extending the period to assess up to April 30, 1997 *(Exhibits C to C-2)*. The waiver was signed by Revenue District Officer Orlando V. Chio pursuant to Revenue Memorandum Order No. 20-90 dated April 4, 1990 *(pages 449 & 450, CTA records).*

On April 29, 1997, respondent issued A Ten (10) Day Preliminary Assessment Notice covering the proposed deficiency income and value-added taxes *(page 1,000, BIR records)* found against petitioner. It was received by petitioner on May 7, 1997 *(page 1,005, BIR records)*. On June 2, 1997, respondent issued final assessment notices together with a demand letter covering the following deficiency tax assessments, to wit: *(pages 1,001, 1,003 & 1,004, BIR records)*

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Deficiency Income Tax
Assessment No. 111-14-93-000001/97

Net Income Per Return	P	12,124,839.00
Add: Discrepancies		43,396,669.19
Net Income Per Investigation	P	55,521,508.19
Less: Exemptions		-
Net Taxable Income	P	55,521,508.19
Tax Due	P	19,432,528.00
Less: Allowable Tax Credits		-
Total Tax Due	P	19,432,528.00
Less: Total Payments Made Per Return		4,243,694.00
Deficiency Tax Due	P	15,188,834.00
Add: 25% Surcharge		3,797,208.50
20% Interest (4/16/94 to 6/30/97)		12,178,348.88
Compromise Penalty		25,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P	31,189,391.38

Deficiency Value-Added Tax
Assessment No. L/D#0124-93/97(VAT)

Value Added Tax Due	P	11,107,498.09
Add: 25% Surcharge		2,776,874.52
20% Interest (7/20/93 to 6/30/97)		10,949,266.22
Compromise Penalty		25,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P	24,858,638.83

The foregoing assessment notices together with the corresponding demand letter were all received by petitioner on June 16, 1997.

On June 30, 1997, petitioner filed its protest letter with the respondent's Assessment Division, Revenue Region No. 18 (Cotabato City), Bureau of Internal Revenue, contesting the bases of each of the aforementioned deficiency tax assessments *(Annex D, Petition for Review, page 10, CTA records).*

On December 6, 1998, petitioner received a letter from Regional Director Mama B. Marzoc of Revenue Region No. 18, Cotabato City, denying its administrative protest

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for the deficiency income and value-added taxes *(par.5, Facts Admitted, page 68, CTA records)*.

On December 29, 1998, petitioner filed the instant petition for review pursuant to Section 228 of the Tax Code, as amended.

This case was submitted for decision on January 28, 2003 after both parties presented their respective memorandum.

The jointly stipulated issues to be resolved by the court are the following:

> 1. Whether or not the following audit adjustments in petitioner's Annual Corporate Income Tax Return for calendar year 1993 should be allowed as legitimate and valid adjustments to arrive at the correct taxable net income for said year: a) Auditors' adjustment per AJE No. 2 – P3,309,602.93; b) Auditor's adjustment per AJE No. 1 – P2,258,032.56; c) Writedown of deferred charges – P11,142,659.00; and d) Unsupported carton tax – P26,686,375.00
>
> 2. Whether of not the following transactions of petitioner for taxable year 1993 are subject to a 10% VAT: a) Pulp Sales to Delnor – P4,035,859.22; b) Pulp Sales to Monterey – P4,154,897.42; c) Local Sales – Seafoods – P909,407.90; d) Local Sales – Tropifresh – P2,982,921.30; e) STANFILCO Charges to Growers – P99,297,334.78; and f) Giveaways – P3,968,453.19.

Before we delve on the foregoing issues, it is necessary to address first the issue of prescription raised by petitioner in its memorandum, the resolution of which will determine the necessity of discussing the legal and factual issues raised in the instant case. Although the issue of prescription was not raised by the parties in their pleadings, the same can be considered by the court pursuant to Section 5, Rule 10 of the Revised Rules on Civil Procedure, to quote:

> **SEC. 5.** ***Amendment to conform to or authorize presentation of evidence.*** – When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all

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> respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

The court noted that respondent failed to object to the admissibility of the Waiver of Statute of Limitations *(Exhibit C, inclusive of submarkings)* offered by petitioner for the purpose of proving that the assessment was issued beyond the three period prescribed under Section 203 of the Tax Code. Hence, the court can consider the issue with the implied consent of the respondent in accordance with the aforequoted section of the Revised Rules on Civil Procedure ***(MWSS vs. CA, 143 SCRA 623 [1986] and Pacific Banking Corporation vs. Hon. Rafael T. Mendoza and J.C. Antonio C. Leviste, G.R. No. L-69158, December 29, 1988)***. The issue of prescription was properly in the case and no amendment of pleadings was necessary ***(Peral Assurance Co., Ltd. vs. First Liberty National Bank 140 F. (2) 200 cited in Francisco, Ricardo J., Civil Procedure, Volume I, 2001 Ed., page 378; see also Northern Cement Corporation vs. Intermediate Appellate Court and Shipside Incorporated, G.R. No. L-68636, February 29, 1988 and Lucio R. Cruz vs. Court of Appeals and Conrado Q. Salonga, G.R. No. 79962, December 10, 1990)***.

Petitioner averred that the right of respondent to assess deficiency internal revenue taxes for the calendar year 1993 had already prescribed inasmuch as the assessment notices were issued beyond the three-year period allowed under Section 203 of the Tax Code, as amended, which provides:

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> **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-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. (*Underlining supplied*)

As stated earlier, the 1993 Corporation Annual Income Tax Return of petitioner was filed on April 15, 1994 (*Exhibit G*) and its respective 1993 quarterly VAT returns were filed on the following dates:

Period Covered	Exh.	Date Filed
1st Quarter 1993	L	04-20-93
2nd Quarter 1993	L-1	07-20-93
3rd Quarter 1993	L-2	10-20-93
4th Quarter 1993	L-3	01-20-94

Since the assessments were issued only on June 2, 1997, the same were issued beyond the three-year period allowed by law.

Respondent, on the other hand, argued that the assessment notices were timely issued considering that petitioner, on January 14, 1997, executed a "Waiver of Statute of Limitations" extending the period to assess the 1993 internal revenue tax liabilities up to April 30, 1997, pursuant to Section 223 of the National Internal Revenue Code which provides:

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Section 223. ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –***

(a) xxx

(b) 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 agreement made before the expiration of the period previously agreed upon.

xxx xxx xxx

Hence, the subject assessment notices and demand letter for 1993 internal revenue taxes issued against petitioner were not time-barred.

Petitioner, however, questions the validity of the aforementioned waiver on the following grounds:

1. The waiver was not signed by the Commissioner;
2. The waiver failed to specify the taxes covered by the extension; and
3. There was no date of acceptance by the bureau.

Petitioner asserted that a waiver to be valid must be signed by both the Commissioner and petitioner pursuant to Section 223(b) of the Tax Code. Because it was only signed by Revenue District Officer Orlando V. Chio, and not by the Commissioner himself, petitioner claims that the waiver is invalid. Thus, the running of the period of limitations to assess was not interrupted. Petitioner further asserted that although Revenue District Officer Chio is authorized to sign the waiver under RMO 20-90, he however exceeded his authority. Under RMO 20-90, a Revenue District Officer is only authorized to sign a waiver with respect to "tax cases still pending investigation, and the

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period to assess is about to prescribe regardless of the amount". However, it is not evident in the subject waiver that the period of the assessment was about to prescribe because it merely specified the sums of "1993 BIR INVESTIGATION".

We agree with the petitioner.

Even without passing on the issue of the validity of the waiver, the subject assessments were clearly issued beyond the period allowed by law. It is to be noted that the subject assessment notices and demand letter were issued by the respondent on June 2, 1997 while the waiver of the statute of limitations (*granting for the sake of argument that the same is valid*) only extended the period to assess up to April 30, 1997. There exists a blatant failure on the part of the respondent's revenue officers to timely issue the assessment notices within the period agreed upon. The defense of prescription is a safeguard for both the taxpayer and the government of their respective rights against assessment of internal revenue taxes. "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of the taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer "***(Republic vs. Ablaza, 108 Phil. 1105 [1960]).***

However, for academic discussion, the court will rule on the validity of the subject waiver of the statute of limitations that was executed by petitioner.

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For easy reference, the provisions of RMO No. 20-90 are hereby reproduced:

"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

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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*)

A careful perusal of the questioned Waiver of the Statute of Limitations led this court to consider the same without any binding effect. As correctly pointed out by petitioner, the accomplished waiver failed to meet the qualities of a valid waiver.

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

> ____ 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 re-investigation 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 <u>before</u> 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 _________________

A simple comparison of the accomplished waiver with that of the prescribed form would patently show the deviations. Indeed, petitioner did not state in the subject waiver the kind of tax and the amount of the tax due which is required in the prescribed form. 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.

It is also apparent that the waiver failed to state the date of the acceptance by the Bureau of Internal Revenue which under Revenue Memorandum Order No. 20-90 should likewise be indicated. We, therefore, cannot determine with certainty if the waiver was accepted before the expiration of the three-year assessment period. It is likewise noted that the remaining copy of the waiver filed in the BIR records does not even bear the name and signature of Revenue District Officer Orlando V. Chio *(page 967, BIR records).*

It bears stressing that RMO No. 20-90 is directed to all concerned internal revenue officers. The said RMO even provides that the procedures found therein should be strictly followed, under pain of being administratively dealt with should non-compliance result to prescription of the right to assess/collect. The officer who signed the waiver ought to have known the procedures to follow in executing a waiver, for it is the

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only way to extend the BIR's right to assess/collect which could be barred by prescription. ***(Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6108, promulgated on May 14, 2002).***

With respect, however, to the argument of petitioner that the waiver is invalid because it was not signed by the Commissioner himself, the same does not hold water. Revenue District Officer Orlando V. Chio is a responsible revenue officer authorized by RMO No. 20-90 to sign waiver of the statute of limitations. However, his signature cannot cure the invalidity of the waivers because of the other infirmities present.

Having concluded that the waiver is not valid, the assessment notices and demand letter dated June 2, 1997 were issued beyond the three (3) year period prescribed by law or even beyond April 30, 1997, the period agreed upon in the waiver (*granting it is valid*), to wit:

1993 Deficiency Income Tax

Date of Filing	Last Day of the Three-Year Period Allowed by Law	Date of the Issuance of Assessment Notice
04-15-94	04-14-97	06-02-97

1993 Deficiency Value-Added Tax

Period	Date of Filing	Last Day of the Three -Year Period Allowed by Law	Date of the Issuance of Assessment Notice
1st Qtr.	04-20-93	04-19-96	06-02-97
2nd Qtr.	07-20-93	07-19-96	06-02-97
3rd Qtr.	10-20-93	10-19-96	06-02-97
4th Qtr.	01-20-94	01-19-97	06-02-97

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In view of this, the court finds it no longer necessary to dwell on the merits of the assessments.

WHEREFORE, in the light of the foregoing, the instant petition for review is ***GRANTED***. Accordingly, the deficiency assessments issued by respondent against petitioner for income tax and value-added tax in the total amount of P56,048,030.21 are hereby **CANCELLED** and **WITHDRAWN** due to prescription.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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