REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 404** (CTA Case No. 7397)
-versus-	Present: ACOSTA, *P.J.* CASTAÑEDA JR., BAUTISTA UY, CASANOVA, and PALANCA-ENRIQUEZ, *JJ.*
BANK OF THE PHILIPPINE ISLANDS, Respondent.	Promulgated: MAR 1 1 2009 1:05 p.m.

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DECISION

CASANOVA, J:

This is an appeal, by way of a Petition for Review,[1] filed by the petitioner-Commissioner of Internal Revenue (CIR) from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated April 9, 2008 in CTA Case No. 7397 entitled, *"Bank of the Philippine Islands, vs. Commissioner of Internal Revenue,"* setting aside the Decision dated August 15, 2005 rendered by the CIR and accordingly canceling Assessment No. FAS 5-82 to 86/89-000535 issued against herein respondent-Bank of the Philippine Islands (BPI) in the amount of P3,449,800.60 representing alleged deficiency DST arising out of BPI's SWAP Arrangements for taxable years 1982-1986, and from the

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[1] CTA En Banc Rollo, pp. 6-16.
[2] CTA Second Division Rollo, pp. 149-172.

Resolution[3] (*Assailed Resolution*) dated July 1, 2008 denying CIR's Motion for Reconsideration.

The facts of the case, as culled from the records[4], are as follows:

> "Bank of the Philippine Islands (petitioner) is a banking institution, a corporation duly created and existing under the laws of the Republic of the Philippines, with principal office at Ayala Avenue corner Paseo de Roxas, Makati City.
>
> On the other hand, respondent Commissioner of Internal Revenue is a public officer authorized under the National Internal Revenue Code (NIRC) to examine any taxpayer, including *inter alia* the power to issue tax assessments, evaluate and decide upon protests relative thereto. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.
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> On April 11, 1989, petitioner was issued Demand Letter/Assessment Notice No. FAS 5-82 to 86/89-000535 for its deficiency documentary stamp taxes in the amount of P3,246,856.82, covering taxable years 1982 to 1986, involving petitioner's sales of foreign exchange under the SWAP Arrangements and/or Forward Exchange Agreements it entered into with then Central Bank of the Philippines (now Bangko Sentral ng Pilipinas).[5]
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> On May 18, 1989, petitioner filed with respondent its Letter of Protest, seeking not for a reconsideration of respondent's assessment against it, but rather, 'asking that the assessment issued against it be totally revoked and cancelled.'[6]
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> On August 2, 2005, respondent rendered a Decision which was received by petitioner on December 15, 2005, affirming with finality the subject assessments issued against petitioner for deficiency documentary stamp taxes amounting to P3,449,800.60 plus interest that may have accrued thereon until fully paid; the dispositive portion[7] of which reads:
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>> '**IN VIEW OF ALL THE FOREGOING**, this Office hereby resolved to CANCEL and WITHDRAW Assessment Notice No. FAS-8a to 86/89-000534, demanding payment of deficiency withholding taxes involving the amount of P27,797,056.22 for the taxable years 1982 to 1986. The

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[3] CTA Second Division Rollo, pp. 190-192.
[4] Assailed Decision, pp. 2-3. Supra, note 2.
[5] Par. 3, Joint Stipulation of Facts and Admissions, Second Division Rollo, p. 65.
[6] Par. 4, Joint Stipulation of Facts and Admissions, Second Division Rollo, p. 65.
[7] Par. 6, Joint Stipulation of Facts and Admissions, Second Division Rollo, p. 66.

> deficiency documentary stamp taxes on telegraphic transfer under swap arrangement in the aggregate amount of P3,449,800.60 for taxable years 1982-1986 covered by Assessment Notice No. FAS 5-82 to 86/89-000535 is however REITERATED. Consequently, the **BANK OF PHILIPPINE ISLANDS** is hereby ordered to pay the amount of P3,449,800.60 plus increments that may have accrued thereon, to the Collection Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof shall be effected through summary remedies provided by law."

After trial on the merits, the *CTA Second Division* promulgated a Decision[8] on April 9, 2008, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. The Decision dated August 15, 2005 rendered by the Commissioner of Internal Revenue is hereby **SET ASIDE**. Accordingly, Assessment No. FAS 5-82 to 86/89-000535 is hereby **CANCELLED**.
>
> **SO ORDERED.**"

Not satisfied with the above decision, respondent-CIR (petitioner herein) filed a Motion for Reconsideration[9] on April 29, 2008. In the scheduled hearing on May 22, 2008[10], counsel for BPI did not appear. Thus, said motion was submitted for resolution.

In a Resolution[11] dated July 1, 2008, the *CTA Second Division* denied CIR's Motion for Reconsideration for lack of merit.

On July 22, 2008, CIR filed a Motion for Extension of Time to File Petition for Review[12] with the *CTA En Banc*. In a Resolution[13] dated July 23, 2008, the Court *En Banc* granted the said motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from July 22, 2008, or until August 6,

[8] Supra, note 2.
[9] CTA Second Division Rollo, pp. 173-185.
[10] CTA Second Division Rollo, p. 188.
[11] Supra, note 3.
[12] CTA En Banc Rollo, p. 1-3.
[13] CTA En Banc Rollo, p. 7.

2008, within which to file a Petition for Review. On August 6, 2008, CIR filed the instant Petition for Review[14] with the *CTA En Banc*, praying that the Decision dated April 9, 2008 and the Resolution dated July 1, 2008, in CTA Case No. 7397 entitled, *"Bank of the Philippine Islands vs. Commissioner of Internal Revenue,"* be reversed and another one be rendered ordering BPI to pay the deficiency tax assessment of P3,449,800.60 plus increments representing Documentary Stamp Tax on SWAP Arrangements for taxable years 1982-1986.

Petitioner raised its sole issue[15] in the instant Petition for Review, to wit:

> THE SOLE ISSUE IS WHETHER OR NOT PETITIONER'S RIGHT TO COLLECT THE DEFICIENCY DST ON RESPONDENT'S SWAP TRANSACTION FOR THE PERIOD 1982-1986 HAS ALREADY BEEN BARRED BY PRESCRIPTION.

In support of this issue, petitioner submits that respondent is liable for documentary stamp tax on its SWAP arrangements based on the following arguments/discussions[16]:

A. The Honorable Court erred in arriving at the conclusion that petitioner's authority to collect the deficiency DST on SWAP transactions entered into by respondent BPI has already prescribed.

B. The Honorable Court failed to appreciate the fact that respondent unilaterally waived the prescriptive period for collection by voluntarily executing a waiver of the defense of prescription.

The *CTA En Banc* promulgated a Resolution[17] on September 5, 2008, ordering the respondent to file a Comment on the said Petition for Review. On

[14] Supra, note 1.
[15] Petition for Review *En Banc*, p. 5.
[16] Ibid, pp. 6-9.
[17] CTA En Banc Rollo, p. 48-49.

September 30, 2008, respondent-BPI filed a Comment[18] praying that judgment be rendered dismissing the Petition for Review for utter lack of merit.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

As correctly found by the *CTA Second Division* in the *Assailed Decision* and We quote, to wit:

> "As regards the last issue, it bears stressing that petitioner does not question the timeliness of the issuance of the final assessment notices within the period allowed by law. There is likewise no question as to whether petitioner seasonably filed its protest-letter relative to respondent's final assessment notices.
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> It has been jointly stipulated by the parties that Assessment No. FAS 5-82 to 86/89-00535 was accordingly issued on April 7, 1989 and received by petitioner on April 11, 1989. The only issue now lies on the prescription of the period to collect the deficiency documentary stamp taxes following its assessment.
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> After a careful analysis of the facts of the case, this Court finds that, although petitioner is liable for documentary stamp taxes on its SWAP Arrangements, the effort of respondent to collect on Assessment No. FAS 5-82 to 86/89-000535 is already barred by prescription.
>
> The period for respondent to assess and collect an internal revenue tax is limited to three (3) years by Section 203 of the NIRC of 1977, as amended, which states:
>
>> 'SEC. 203. Period of limitation upon assessment and collection. — Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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 the purposes of this section, a return

[18] CTA En Banc Rollo, pp. 55-59.

filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.'

Evidently, respondent has three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. When respondent validly issues an assessment against a taxpayer for deficiency taxes, within either the three (3) year or ten (10)-year period, then respondent has another three (3) years after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding.

However, the three-year period of limitations on the assessment and collection of national internal revenue taxes as set by Section 203 of the Tax Code of 1977, as amended, can be affected, adjusted, or suspended, in accordance with the following quoted provisions of the same Code:

'SEC. 223. — Exceptions as to period of limitation of assessment and collection of taxes. —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(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.

(c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree.'

'SEC. 224. Suspension of running of statute. — The running of the statute of limitation provided in Section[s] 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.'

Based on paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, the prescriptive periods for assessment and collection of national internal revenue taxes, respectively, could be waived by agreement, to wit:

'SEC. 223. — Exceptions as to period of limitation of assessment and collection of taxes. —

xxx xxx 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

(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing **before the expiration of the three-year period**. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.' (*Emphasis supplied*)

Thus, a Waiver of the Statute of Limitations under the aforementioned paragraphs, to be valid, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon.

The BIR had issued Revenue Memorandum Order (RMO) No. 20-90 on April 4, 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be dealt with administratively.

The pertinent parts of RMO No. 20-90 states:

'1. The **waiver must be in the form identified 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."

In other words, the waiver must be in the following tenor:

WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE[19]

____________ 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

[19] Annex "A", Revenue Memorandum Order No. 20-90, April 4, 1990.

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 ________________

A perusal, however, of the Waivers of the Statute of Limitations[20] executed by petitioner, reveals that the waivers were not even accepted/approved or signed as received by respondent Commissioner. It must be pointed out that the purpose of a Waiver of the Statute of Limitations is to afford the Commissioner or his duly authorized representative ample time to verify whatever tax or taxes which may be found due from petitioner. This waiver, however, does not give the Commissioner or his duly authorized representative an indefinite period of time within which to examine petitioner's alleged deficiency taxes. It is noteworthy that the prescriptive period or statute of limitations benefits both the government and the taxpayer. The government is benefited because tax officers would be obliged to act properly and promptly in

[20] BIR Records, pp. 147 and 194.

making assessments. On the other hand, the taxpayer is benefited because after the lapse of the period of prescription, he would have the feeling of security against unscrupulous tax agents who would find an excuse to inspect the books of the taxpayer to take advantage of every opportunity to abuse law-abiding taxpayers. Without such legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the positive purpose of affording protection to the taxpayer within the contemplation of the law.

Equally important is the fact that not only were the waivers wanting of the required signatures, the same waivers do not even show the **date of acceptance** by the Commissioner. Both the date of execution by the taxpayer and date of acceptance by respondent must be before the expiration of the period of prescription. The date of acceptance is vital because it determines whether or not the acceptance was made within the prescriptive period; for if the acceptance was made after the prescriptive period, the same is ineffectual because there is no more period to extend.

Likewise, Section 224 of the NIRC of 1977, as amended, also recognizes the instances when the running of the Statute of Limitations on the assessment and collection of national internal revenue taxes could be suspended, even in the absence of a waiver. Said section provides that:

> 'SEC. 224. Suspension of running of statute. — The running of the statute of limitation provided in Section[s] 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.'

Section 224 of the NIRC of 1977, as amended, specifically provides that 'when the taxpayer requests for a reinvestigation which is granted by the Commissioner', the running of the statute is suspended.

In relation to the aforementioned Section, Revenue Regulations No. 12-85, issued on November 27, 1985, governs the procedure for protesting an assessment and distinguishes between two types of protest:

'PROTEST TO ASSESSMENT

SEC. 6. Protest. — The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation. . .

xxx xxx xxx

For the purpose of the protest herein —

(a) *Request for reconsideration.* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(b) *Request for reinvestigation.* — refers to a plea of re-evaluation of an assessment on the basis of newly-discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both.'

Based on the above-quoted Section 224 of the Tax Code of 1977, as amended, the running of the prescriptive period for collection of taxes can only be suspended through a request for a reinvestigation, and not through a request for reconsideration. Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited only to the evidence already at hand. Moreover, not only is the type of protest important, equally pertinent is the fact that Article 224 of the NIRC of 1977, as amended, very plainly requires that the request for reinvestigation must be granted by the Commissioner to suspend the running of the prescriptive periods for assessment and collection. The requisite that the BIR Commissioner must first grant the request for reinvestigation before the Statute of Limitations may be suspended is supported by existing jurisprudence.[21] The burden of proof that the taxpayer's request for reinvestigation had been actually granted shall be on respondent Commissioner. The grant may be expressed in

[21] *Republic of the Philippines vs. Felix B. Acebedo*, G.R. No. L-20477, March 29, 1968.

communications with the taxpayer or implied from the actions of respondent or his authorized representatives in response to the request for reinvestigation.[22]

The foregoing discussion is further strengthened by the ruling of the Supreme Court in the case of ***Bank of the Philippine Islands vs. Commissioner of Internal Revenue***[23], where the Highest Tribunal explained thus:

> 'The statute of limitations on collection may only be interrupted or suspended by a valid waiver executed in accordance with paragraph (d) of Section 223 of the Tax Code of 1977, as amended, and the existence of the circumstances enumerated in Section 224 of the same Code, which include a request for reinvestigation granted by the BIR Commissioner.
>
> Even when the request for reconsideration or reinvestigation is not accompanied by a valid waiver or there is no request for reinvestigation that had been granted by the BIR Commissioner, the taxpayer may still be held in estoppel and be prevented from setting up the defense of prescription of the statute of limitations on collection when, by his own repeated requests or positive acts, the Government had been, for good reasons, persuaded to postpone collection to make the taxpayer feel that the demand is not unreasonable or that no harassment or injustice is meant by the Government, as laid down by this Court in the *Suyoc* case.
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> xxx xxx xxx
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> This is a simple case wherein respondent BIR Commissioner and other BIR officials failed to act promptly in resolving and denying the request for reconsideration filed by petitioner BPI and in enforcing collection on the assessment. They presented no reason or explanation as to why it took them almost eight years to address the protest of petitioner BPI. The statute on limitations imposed by the Tax Code precisely intends to protect the taxpayer from such prolonged and unreasonable assessment and investigation by the BIR.'

A careful reading of petitioner's protest letter dated May 18, 1989, however, would reveal that the same did not specifically request for

[22] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.
[23] G.R. No. 139736, October 17, 2005.

> either a reconsideration or reinvestigation. The same protest letter did not raise any question of fact; neither did it offer to present any new evidence. In fact, the protest letter asked for the revocation and cancellation of the subject Assessment No. FAS 5-82 to 86/89-000535 based on questions of law.
>
> In this instant case: (1) the protest filed by petitioner BPI was a request for reconsideration, not a reinvestigation, of the assessment against it; and (2) even granting that the protest of petitioner BPI was a request for reinvestigation, there was no showing that it was granted by respondent Commissioner and that actual reinvestigation had been conducted. Thus, the running of the statute of limitations was not suspended.
>
> To recapitulate, although petitioner is liable for documentary stamp taxes on its SWAP Arrangements, respondent's authority to collect on Assessment No. FAS 5-82 to 86/89-000535 is already barred by prescription."

To reiterate, the validity of the waivers is dependent on their satisfaction of the requirements laid down under RMO 20-90. The Waivers must be duly signed and accepted by the Commissioner of Internal Revenue or other legally authorized BIR officers. Failure of the CIR to accept the Waiver will not grant validity to the said instrument, or bind BPI to its "indication of willingness" to extend the period of assessment or collection.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed April 9, 2008 Decision and July 1, 2008 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in his own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the April 9, 2008 Decision and July 1, 2008 Resolution of the *CTA Second Division* in CTA Case No. 7397 entitled, *"Bank of the*

Philippine Islands vs. Commissioner of Internal Revenue" are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Justice