REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ASIAN TRANSMISSION CORPORATION, Petitioner,	**CTA CASE NO. 8476**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 13 2015 3:02 pm

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RESOLUTION

CASANOVA, *J.*:

For this Court's resolution are the following motions:

1. Respondent's **Motion for Reconsideration (Decision dated November 28, 2014)** filed on December 16, 2014; and

2. Petitioner's **Motion to Admit Opposition (To Respondent's Motion for Reconsideration dated 16 December 2014)**.

Prefatorily, the Court, in the interest of substantial justice, **GRANTS** petitioner's Motion to Admit Opposition (To Respondent's Motion for Reconsideration dated 16 December 2014) and accordingly **ADMITS** the attached Opposition (To Respondent's Motion for Reconsideration dated 16 December 2014).

The Court shall now determine the merits of respondent's Motion for Reconsideration.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in view thereof, the Petition for Review is hereby **GRANTED**. Accordingly, the deficiency withholding tax on compensation in the amount of P67,722,419.38, expanded withholding tax in the amount of P7,436,545.83 and final withholding tax in the amount of P537,651.55, or in the total amount of P75,696,616.75 for taxable year 2002, are hereby declared **CANCELLED, WITHDRAWN** and **WITH NO FORCE AND EFFECT**.
>
> **SO ORDERED.**"

In her motion, respondent avers that 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. Respondent likewise argues that assuming that the period within which to assess is applicable, petitioner is estopped from assailing the validity of the waivers of the defense of prescription. Alternatively, respondent asserts that the waivers are valid and binding between the parties.

On the other hand, petitioner points out that the present motion does not contain new or persuasive arguments. Nonetheless, petitioner argues that the "clean hands doctrine" finds application to this case and the exceptions to the law on prescription should be strictly construed against the government.

The arguments of both parties can be summarized into three issues, namely: (1) whether or not the period of limitation is applicable to withholding taxes; (2) whether or not petitioner is estopped from assailing the validity of the waivers; and (3) whether or not the waivers are valid and binding between the parties.

Whether or not the period of limitation is applicable to withholding taxes

Respondent argues that a withholding tax is not an internal revenue tax because it is a mere system where tax is collected in advance before it reaches the hands of the income recipient. The obligation of petitioner is to withhold and remit the correct tax as withholding agent of the government. Therefore, petitioner is not a statutory taxpayer but an agent of the government in the collection of taxes inasmuch as the relationship created is one of agency where the withholding agent holds the funds in trust for the government.

Respondent cites Section 251[1] of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to the ruling of the Supreme Court in the case of *Filipinas Synthetic Fiber Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*[2]. Respondent explains that the concept of a withholding tax on income implies that the amount of the tax withheld comes from the income earned by the taxpayer. For failure to withhold and remit the expanded withholding tax due, petitioner was assessed by respondent for deficiency expanded withholding taxes in its capacity as a withholding agent and not in its personality as a taxpayer.

On the other hand, petitioner argues that, in the case of *Ong BengGui vs. Commissioner of Internal Revenue*[3], a withholding agent is considered a taxpayer under the NIRC of 1997, as amended. In the said case, it was held that a withholding agent is allowed to institute a claim for refund. Thus, petitioner posits that the prescriptive period provided under the NIRC of 1997, as amended, also applies to withholding agents. Moreover, petitioner maintains that, following respondent's line of reasoning, it would appear that the collection of withholding taxes should be instituted through an ordinary collection case before the regular courts under the provisions of the Civil Code, and not through assessment and collection under the NIRC of 1997, as amended.

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[1] SEC. 251.*Failure of a Withholding Agent to Collect and Remit Tax.* – Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

[2] G.R. Nos. 118498 and 124377, October 12, 1999.

[3] CTA Case No. 8410, September 8, 2014.

Section 203 of the NIRC of 1997, as amended, provides:

> "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." *(Emphasis supplied)*

In relation thereto, Section 21 of the NIRC of 1997, as amended, provides what are deemed to be national internal revenue taxes, to wit:

> "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; and
> (g) **Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue**."*(Emphasis supplied)*

Based on the foregoing, Section 203 provides that the 3-year period of limitation applies to internal revenue taxes. For purposes of determining what are deemed to be internal revenue taxes, Section 21 provides an enumeration of the different kinds of internal revenue taxes, which include *such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.*

In relation thereto, Section 57[4] of the NIRC of 1997, as amended, requires the withholding of certain internal revenue taxes, among which is the subject of the present case. In other words, withholding taxes are internal revenue taxes imposed upon a taxpayer but are subject to withholding under Section 57 of the NIRC of 1997, as amended. Upon withholding thereof, the BIR collects the same from the withholding agents.

Even though being coined as *withholding taxes*, these taxes are no different from other internal revenue taxes, except that they are subject to the withholding scheme imposed by the NIRC of 1997, as amended. Be that as it may, withholding taxes are still taxes imposed and collected by the BIR, which effectively place it within the ambit of Section 21 as quoted above. Considering the foregoing, the Court finds no merit in respondent's argument that a withholding tax is not covered by the 3-year period of limitation under Section 203 of the NIRC of 1997, as amended.

Whether or not petitioner is estopped from assailing the validity of the waivers

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[4]SEC. 57. *Withholding of Tax at Source.–*

(A) *Withholding of Final Tax on Certain Incomes.* - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5), 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

(B) *Withholding of Creditable Tax at Source.* - The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

(C) *Tax-free Covenant Bonds.* - In any case where bonds, mortgages, deeds of trust or other similar obligations of domestic or resident foreign corporations, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed in this Title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the Philippines, or any state or country, the obligor shall deduct and withhold a tax equal to thirty percent (30%) of the interest or other payment upon those bonds, mortgages, deeds of trust or other obligations, whether the interest or other payments are payable annually or at shorter or longer periods, and whether the bonds, securities or obligations had been or will be issued or marketed, and the interest or other payment thereon paid, within or without the Philippines, if the interest or other payment is payable to a nonresident alien or to a citizen or resident of the Philippines.

Respondent argues that petitioner should be placed in estoppel since, even though petitioner executed nine (9) waivers, it did not question the validity of the waivers during the informal conference, in the protest letter, and in its administrative appeal before respondent. Petitioner instead promised or agreed to submit more supporting documents. Furthermore, petitioner availed of the Tax Amnesty Program pursuant to Republic Act (RA) No. 9480, as implemented by Revenue Memorandum Circular (RMC) No. 55-2007. If not for the execution of the waivers and the granting of additional period for petitioner to submit its supporting documents, the assessments for taxable year 2002 would have been issued and would then become final and executory.

On the other hand, petitioner avers that the "clean hands doctrine" is applicable in this case because the waivers were prepared by the employees of respondent and were executed upon their request.

The issue on whether petitioner should be considered in estoppel was already squarely addressed in this Court's Decision dated November 28, 2014. For easy reference, the Court quotes the pertinent portions of the assailed Decision,to wit:

> "In *Kudos Metal Corporation Case*, the following defects were found in the Waiver of Prescription: (1) the waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent; (2) the waivers failed to indicate the date of acceptance; and (3) the fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers. Incidentally, the petitioner CIR therein raised the defense of estoppel as against the respondent.
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> Ruling in favor of the respondent corporation, the Supreme Court held that:
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> > '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 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 them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.
>
> Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.'

Applying the said ruling in the case at bench, ATC is not estopped from raising the invalidity of the subject Waivers as the BIR in this case caused the defects thereof, *to wit:* the subject Waivers were notarized by their own employee who was not validly commissioned to perform notarial acts; it failed to indicate the date of its acceptance; it failed to specify the amount of and particular tax involved; and the respondent CIR failed to sign the Waivers despite the clear mandate of RMO 20-90. As such, the invalid Waivers did not operate to toll or extend the three-year period of prescription."

To reiterate, the defects in the subject waivers were primarily caused by respondent. The fact that petitioner executed nine waivers and that it did not raise their invalidity in the administrative level do not militate against the fact that respondent caused their invalidity. Moreover, the said waivers should be carefully and strictly construed, being in derogation of the taxpayer's right against prolonged and unscrupulous investigations. Considering the foregoing, the Court is not persuaded to abandon its earlier ruling that petitioner is not estopped from assailing the validity of the subject waivers.

Whether or not the waivers are valid and binding between the parties

Finally, respondent asserts the following in arguing that the subject waivers are valid and binding between the parties:

1. Revenue Delegation Authority Order (RDAO) No. 05-01 authorizes the Assistant Commissioner for the Large Taxpayers Service to sign and accept the waivers;

2. Defect in the notarization does not *ipso facto* invalidate the document;

3. Revenue Memorandum Order (RMO) No. 20-90 and RDAO No. 05-01 do not require that the type of tax and the amount of the tax due should be specified; and,

4. Failure of the waivers to indicate the date of acceptance by the BIR may be dispensed with or disregarded.

With respect to the authority to sign the waivers, RDAO No. 05-01 provides that the following officers have the authority to sign:

"A. *For National Office cases*

Designated Revenue Official

1. Assistant Commissioner(ACIR), Enforcement Service	- For tax fraud and policy cases
2. ACIR, Large Taxpayers Service	- For large taxpayers cases other than those cases falling under Subsection B hereof
3. ACIR, Legal Service	- For cases pending verification and awaiting resolution of certain legal issues prior to prescription and for issuance/compliance of Subpoena DucesTecum
4. ACIR, Assessment Service (AS)	- For cases which are pending in or subject to review or approval by the ACIR, AS
5.ACIR, Collection Service	- For cases pending action in the Collection Service

B. *For cases in the Large Taxpayers District Office (LTDO)*

The Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in his possession."

Based on the foregoing, the ACIR-Large Taxpayers Service is authorized to sign the waivers for large taxpayers cases. A perusal of the records shows that the waivers dated September 8, 2004[5], March 3, 2005[6], March 21, 2006[7], and April 18, 2007[8], were all duly signed by former Assistant Commissioners. As such, these waivers complied with the provisions of RMO No. 20-90 in relation to RDAO No. 05-01, as far as the authority to sign is concerned.

However, an examination of the waivers executed on November 10, 2005[9], October 25, 2007[10], and May 30, 2008[11], reveals that the same were signed not by the ACIR-Large Taxpayers Service, but by a certain Elvira Vera, Head Revenue Executive a

[5]Exhibit "B".
[6]Exhibit "C".
[7]Exhibits "E" and "F".
[8]Exhibit "G".
[9]Exhibit "D".
[10]Exhibit "H".
[11]Exhibit "I".

Assistant of the Excise Tax Group; hence, these waivers remain invalid.

With respect to respondent's assertion that RMO No. 20-90 and RDAO No. 05-01 do not require that the type of tax and the amount of the tax due should be specified, RMO No. 20-90 in relation to RDAO No. 05-01, specifically provides:

> 1. **The waiver must be in the proper form prescribed by RMO 20-90**. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.*(Emphasis supplied)*

The proper form prescribed by RMO No. 20-90 is set forth as follows:

> "**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 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___. *(Emphasis supplied)*
>
> 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 _______________"

RDAO No. 05-01 and RMO No. 20-90 state that the waiver must be in the proper form prescribed therein. Meanwhile, the proper form prescribed mandates that the type of tax and the tax amount due must be supplied.

Thus, contrary to respondent's assertion, the type of tax and the tax amount due should have been indicated in order not to invalidate the waivers executed by petitioner. Considering however, that respondent failed to provide the type of tax and the tax amount due in the subject waivers, the same remain invalid.

With regard to the defective notarization and the failure of respondent to indicate the date of acceptance of the waivers, suffice it to state that in the *Kudos Metal Corporation case*[12], the Supreme

[12]G.R. No. 178087, May 5, 2010, as cited in the Decision dated November 28, 2014.

Court stressed that since the waivers are, by their nature, in derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, they must be carefully and strictly construed. Hence, the defective notarization and respondent's failure to indicate the date of acceptance of the subject waivers render the same invalid.

In sum, the Court finds no cogent reason to deviate from its earlier ruling that respondent's right to assess had already prescribed due to the invalidity of the subject waivers.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice