REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 888** (CTA Case No. 7934)
- versus-	Present: Del Rosario, *PJ,* Castañeda,Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
QUAKER OATS ASIA, INC. - PHILIPPINE BRANCH *Respondent.*	Promulgated: JUL 29 2013

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DECISION

COTANGCO-MANALASTAS, J.:

This case involves an assessment made by petitioner against respondent for deficiency income and expanded withholding taxes in the amounts of P4,870,611.49 and P8,048.23, respectively, inclusive of interest, for the calendar year 2001, which were cancelled and set aside by the CTA First Division on the ground that said assessments were issued beyond the three-year prescriptive period under Section 203 of the National Internal Revenue Code of 1997.

The Facts[1]

Petitioner is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including, *inter alia*, the power to decide disputed

[1] *Rollo*, C.T.A. EB Case No. 888, pp. 7-10.

provisions of the National Internal Revenue Code (NIRC) of 1997, other tax laws, rules and regulations. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent is the Philippine branch of a foreign corporation, duly licensed to do business in the Philippines by the Securities and Exchange Commission. It holds office in the Philippines at the 21st Floor LKG Tower, 6801 Ayala Avenue, Makati City.

On October 2, 2003, respondent received the Letter of Authority No. 2000-00069158 dated September 8, 2003 authorizing the examination of respondent's books of accounts and other accounting records for income and withholding taxes for the period January 1 to December 31, 2001.

Subsequently, respondent executed a "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" (Waiver), extending the prescriptive period up to September 30, 2005. The said waiver was notarized on January 14, 2005 and was accepted by the Revenue District Officer, Mr. Raul Vicente L. Recto.

On September 26, 2005, respondent received the Preliminary Assessment Notice (PAN) issued on September 14, 2005, assessing respondent for deficiency income tax in the amount of P4,797,015.58 and deficiency expanded withholding tax in the amount of P7,942.01, inclusive of interest, surcharges and penalties.

Before respondent could respond to the PAN, it received the Formal Letter of Demand (FLD) No. 43725 dated September 30, 2005 and the corresponding assessment notices on October 7, 2005. The FLD increased the deficiency income tax assessment to P4,870,611.49 and the deficiency EWT assessment to P8,048.23.

On November 3, 2005, respondent filed its protest dated October 21, 2005, arguing, among others, that the FLD and assessment notices were issued after the lapse of the three (3) year period to assess deficiency taxes for the year 2001, pursuant to Section 203 of the 1997 Tax Code.

Respondent filed a petition for review on June 22, 2009 seeking the cancellation of the assessments for taxable year 2001, while herein petitioner filed its answer on August 25, 2009. After trial, the CTA First Division disposed of the case in its Decision dated December 15, 2011, as follows:

> "WHEREFORE, the instant Petition for Review is hereby GRANTED. Accordingly, the assessments for deficiency income tax and deficiency expanded withholding tax in the aggregate amount of P4,878,659.72 for taxable year 2001 are hereby CANCELLED and SET ASIDE for being issued beyond the three-year prescriptive period under Section 203 of the NIRC of 1997."[2]

Petitioner's motion for reconsideration was likewise denied in the Resolution dated March 20, 2012.

Issues

Petitioner raises the following issues:

> Whether the First Division of the Honorable Court erred when it held that the right of petitioner to make an assessment for income tax and expanded withholding tax for taxable year 2001 has already prescribed.
>
> Whether respondent was denied due process of law when the FLD was issued even before it could respond to the PAN.
>
> Whether the PAN and FLD contain the facts and law upon which the assessment were made as required by law, regulations and jurisprudence.
>
> Whether respondent has sufficient tax credits in taxable year 2001 to offset against any income tax liabilities it might have in the said taxable year. ƒ

[2] *Rollo*, p. 40.

> Assuming that the assessment on deficiency expanded withholding tax pertains to the payment to Philippine Ports Authority (PPA), whether the brokerage fees, wharfage dues and arrastre paid to PPA are subject to expanded withholding tax.[3]

Ruling of the Court

The deficiency tax assessments for taxable year 2001 were cancelled and withdrawn by the CTA First Division for having been issued beyond the three-year prescriptive period under Section 203 of the NIRC of 1997.

Petitioner argues that the deficiency tax assessments were timely since the period to assess the subject income tax and withholding tax liabilities was extended by the Waiver executed by respondent. Petitioner does not dispute that the assessment was issued beyond the three-year period as provided under Section 203 of the NIRC of 1997. Respondent, on the other hand, argues that the period to assess was not extended since the waiver was defective.

Indeed, the issues hinge on the validity of the waiver executed by respondent.

A perusal of petitioner's arguments reveals that the same are a mere rehash of its arguments in its memorandum and motion for reconsideration before the CTA First Division. The same have been considered and extensively discussed in the Decision and Resolution of the CTA First Division.

This Court finds no cogent or compelling reason to modify, much less reverse, the findings of the CTA First Division.

The following defects were found on the waiver, which renders the waiver invalid under Revenue Memorandum Order (RMO) No. 20-90, and Revenue Delegation Authority Order (RDAO) No. 05-01:

1. The waiver failed to state the date of execution by the taxpayer.

[3] *Rollo*, p. 11.

2. The waiver failed to state the date of acceptance by the BIR.

3. There is no indication that the taxpayer was furnished a copy of the BIR-accepted waiver.

As discussed by the CTA First Division:

> "...the subject Waiver fails to state the date of execution by the taxpayer and the date of acceptance by the BIR. It must be emphasized that the date of acceptance by the BIR is necessary to determine whether the Waiver was validly accepted before the expiration of the original three-year period. Moreover, it was never established that the Office accepting the Waiver has been furnished with the third copy thereof. Lastly, there is no indication in the original copy of the said Waiver of the fact of receipt by petitioner. This information is likewise important '*to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement*."[4] (*citations omitted*)

The CTA First Division cited *Commissioner of Internal Revenue vs. FMF Development Corporation*[5] (FMF case), where the Supreme Court held:

> "Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. Firstly, **it was not proven that respondent (taxpayer) was furnished a copy of the BIR-accepted waiver**. x x x x x. **Lastly, it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period**. Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement."

Thus, the CTA First Division concluded, and We find no reason to reverse the same:

> "It is clear from the foregoing that a Waiver is defective if it is not proven that the taxpayer was furnished with a copy of the BIR-accepted waiver. Thus,

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[4] *Rollo*, pp. 39-40.
[5] G.R. No. 167765, June 30, 2008.

there is no merit in respondent's (now, petitioner) contention that petitioner (now, respondent) need not have a copy of the Waiver upon the reason that it is very much aware of the Waiver and its contents. While it may be true that petitioner, through its representative, is the one who executed the subject Waiver and perforce aware of its contents, it is still necessary for petitioner to be informed of the acceptance by the BIR of such fact. The fact of receipt by petitioner of the Waiver after the acceptance of the BIR cannot be disregarded for being superfluous, since that would '*show that the taxpayer was notified of the acceptance of the BIR*' and more importantly, of '*the perfection of the agreement.*'

In the same vein, equally important is the indication of the date of acceptance by the BIR on the Waiver. According to the FMF case, such is '*a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.*' Thus, if the date of acceptance by the BIR is lacking, the Waiver is defective and correspondingly, will not extend the said prescriptive period of three (3) years under Section 203 of the NIRC of 1997, x x x x x.

We find it hard to believe that Revenue District Officer (RDO) Raul Vicente L. Recto was present during the notarization of the subject Waiver. This is so because the record of this case is bereft of any indication that '*the parties*' thereto (i.e., the representative of petitioner and the said RDO) '*appeared before the Notary Public and subscribed to and affirmed the veracity*' thereof. In fact, the Acknowledgment of the Notary Public is to the effect that it is only the representative of petitioner who appeared before him, x x x x x .The foregoing Acknowledgement is very clear that the person who appeared before the Notary Public is the one '*who executed the foregoing waiver for and in behalf of the said taxpayer*', which can only be taken to mean as referring to the representative of petitioner and not RDO Recto.

Furthermore, RDO Recto could not have '*subscribed to and affirmed the veracity*' of the subject Waiver because the acceptance of the BIR, as a matter of procedure, cannot be had unless and until the same has been earlier notarized as manifested in Revenue Delegation Authority Order No. 05-01, to wit:

> 'The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify the acceptance of the same. In case the

> authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. **The 'WAIVER' should not be accepted by the concerned BIR office and official <u>unless duly notarized</u>.**" (*Emphasis supplied*)
>
> Thus, since this Court is entertaining grave doubts as to whether RDO Recto was present during the notarization of the subject Waiver, it cannot be presumed that the date of notarization of the same is also the date of acceptance by the BIR.
>
> Apropos, the importance of knowing the date of acceptance by the BIR rests on the requirement that the Waiver must be entered into before the expiration of the three-year prescriptive period on the right of the respondent to assess tax, pursuant to Section 222(b) of the NIRC of 1997, to wit:
>
> > "SEC. 222. *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 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 agreements made before the expiration of the period previously agreed upon."
>
> Based on the foregoing, the agreement between the Commissioner and the taxpayer must be made before, not after, the expiration of the original period, for it does not authorize extension once prescription has attached. [6] (*Citations omitted*)

With the defective waiver, the prescriptive period was not extended. Thus, the last day to assess respondent for deficiency income and withholding taxes, under the normal prescriptive period, are as follows: /-

[6] *Rollo*, pp. 44-47.

Period covered	Exhibit	Date of actual filing	Date of filing as required by law	Last day to assess
Income Tax				
Annual ITR	G	April 4, 2002	April 15, 2002	April 15, 2005
EWT				
January	CC-1	February 12, 2001	February 12, 2001	February 12, 2004
February	CC-2	March 12, 2001	March 12, 2001	March 12, 2004
March	CC-3	April 10, 2001	April 10, 2001	April 10, 2004
April	CC-4	May 10, 2001	May 10, 2001	May 10, 2004
May	CC-5	June 11, 2001	June 11, 2001	June 11, 2004
June	CC-6	July 10, 2001	July 10, 2001	July 10, 2004
July	CC-7	August 9, 2001	August 10, 2001	August 10, 2004
August	CC-8	September 10, 2001	September 10, 2001	September 10, 2004
September	CC-9	October 10, 2001	October 10, 2001	October 10, 2004
October	CC-10	November12, 2001	November12, 2001	November12, 2004
November	CC-11	December 10, 2001	December 10, 2001	December 10, 2004
December	CC-12	January 10, 2002	January 15, 2002	January 15, 2005

Considering that petitioner does not dispute that the Formal Letter of Demand and assessment notices were issued on September 30, 2005 and was received by petitioner only on October 7, 2005, the same were clearly issued beyond the three-year period allowed by Section 203 of the NIRC of 1997.

The remaining issues will no longer be discussed for being moot.

WHEREFORE, the instant Petition for Review is **DISMISSED** for lack of merit. The assailed Decision and Resolution, dated December 15, 2011 and March 20, 2012, respectively, of the CTA First Division are hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice