REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

NIKKEN PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 8205**
-versus-	Members: **BAUTISTA,** *Chairperson* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 24 2013 ABFernando 11:42 a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

STATEMENT OF THE CASE

Before the Court is a Petition for Review filed on December 22, 2010, seeking the cancellation and withdrawal of the assessment against petitioner for deficiency expanded withholding tax and deficiency final withholding tax including interest, surcharges and compromise penalty imposed thereon, in the amounts of One Million Nine Hundred Twenty-Three Thousand Nine Hundred Fifty-One Pesos and 59/100 (P1,923,951.59) and Forty-Seven Thousand Seventy-Eight Pesos and 74/100 (P47,078.74), respectively, for taxable year 2005.

STATEMENT OF FACTS

Petitioner Nikken Philippines, Inc. is a domestic corporation organized and existing under Philippine laws.[1] It is engaged in the business of buying, selling, distributing, and marketing at wholesale various kinds of health support products and accessories, including entering into contracts

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 324.

for the acquisition and sale and importation and exportation of these products.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) tasked with the assessment and collection of internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On January 7, 2009, Ms. Concepcion Turingan, the Comptroller of petitioner, executed a waiver of the statute of limitations in connection with the reinvestigation of petitioner's tax deficiency liabilities.[3]

Petitioner thereafter received on October 14, 2009 from respondent the Preliminary Assessment Notice (PAN) dated September 28, 2009 with findings of deficiency expanded withholding tax and final withholding tax for the calendar year ending December 31, 2005.[4] Petitioner submitted its Position Paper to protest respondent's PAN on October 29, 2009.[5]

Subsequently, on October 30, 2009, respondent issued a Formal Letter of Demand and Assessment Notice (FAN). This was received by petitioner on November 16, 2009.[6]

Aggrieved by the FAN issued by respondent, petitioner submitted its protest to respondent's FAN on December 14, 2009. All supporting documents were likewise submitted by petitioner on the same date.[7]

On November 25, 2010, petitioner received the Final Decision on Disputed Assessment denying petitioner's protest and ordering the collection of the assessed deficiency expanded and final withholding taxes as indicated therein.[8]

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[2] Par. 1.1, Stipulation of Facts, JSFI, docket, p. 324.
[3] Par. 4, Stipulation of Facts, JSFI, docket, p. 325; Exhibits "B" and "4".
[4] Par. 3, Stipulation of Facts, JSFI, docket, p. 325; Exhibit "A".
[5] Par. 5, Stipulation of Facts, JSFI, docket, p. 325; Exhibit "C".
[6] Par. 6, Stipulation of Facts, JSFI, docket, p. 325; Exhibit "D".
[7] Par. 7, Stipulation of Facts, JSFI, docket, p. 325; Exhibit "E".
[8] Par. 8, Stipulation of Facts, JSFI, docket, p. 325; Exhibit "F".

Petitioner appealed the said Final Decision with this Court by filing the instant Petition for Review on December 22, 2010.

Respondent, on the other hand, filed her Answer[9] on January 31, 2011, interposing the following defenses:

> "4. All presumptions are in favor of the correctness of the assessment. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed.
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> 5. The Final Decision on Disputed Assessment (FDDA) and Formal Letter of Demand and Assessment Notice (FAN) dated 25 November 2010 and 30 October 2009 respectively were issued in compliance with the provisions of Section 228 of the National Internal Revenue Code (NIRC) and in accordance to existing Revenue Rules and Regulations in relation to the right of the taxpayer and in the instant case, the petitioner to be informed of the factual and legal bases upon which the assessments were made;
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> 6. The herein Petitioner was fully appraised of the facts and law on which the Final Assessment was issued. The Formal Letter of Demand and Assessment Notice (FAN) and the Final Decision on Disputed Assessment (FDDA) which were all sent to the Petitioner provide in detail the manner of computation, the facts and provisions of the law, rules and regulations on which the assessments were based;
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> 7. As a rule, taxes are imprescriptible as they are the lifeblood of the government. However, among the exceptions to the doctrine of imprescriptibility is ***Section 203 of the National Internal Revenue Code (NIRC)*** which provides that:
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> *'Internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return or if filed after the last day, within three (3) years from date of actual filing. XXX'*
>
> 8. But it is more often misunderstood that this exception applies to the withholding of taxes; /

[9] Docket, pp. 260 267.

9. Withholding of taxes is just a manner of collecting taxes due from a taxpayer and therefore not covered by Sec. 203 of NIRC. As a matter of fact, the last paragraph of ***Section 81 of NIRC*** provides that and to quote:

> *'The taxes deducted and withheld by employers shall be held in a special fund in trust for the Government until the same are paid to the said collecting agents.'*

10. In the case of *National Development Company v. Commissioner of Internal Revenue,* the Supreme Court discussed verily the nature of withholding taxes:

> *'The petitioner also forgets that it is not the NDC that is being taxed. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold.*
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> *In effect, therefore, **the imposition of deficiency taxes on the NDC is a penalty for its failure to withhold the same from the Japanese shipbuilders**. Such liability is imposed by Section 53 (c) of the Tax Code.'*

11. Whereas ***Section 53 (c) of the then Tax Code*** provides and to quote:

> *'Every person required to deduct and withhold any tax this section shall make return thereof, in duplicate, on or before the fifteen day of April of each year, and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.'*

12. Furthermore, in *Philippine Guaranty Co. v. The Commissioner of Internal Revenue,* the High Court quoted with approval the following regulation of the BIR on the responsibilities of withholding agents:

'In case of doubt, a withholding agent may always protect himself by withholding the tax due and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding, the withholding agent may thereupon remit the amount of a tax withheld.

13. Having said that the **imposition of deficiency taxes is a penalty for the failure of the taxpayer to withhold the same** and assuming arguendo that withholding taxes is subject to prescription, still the Respondent BIR has the demandable right to assess and collect the said taxes within the period provided by law;

14. **Section 281 of NIRC** provides for the ***Prescription for Violation of any Provision of this Code***:

'All violations of any provision of this Code shall prescribe after five (5) years.

Prescription shall begin to run from the day of the commission of the violation of the law and if the same be not known at the time from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall not run when the offender is absent from the Philippines.'

15. In the case at bar, prescription shall begin to run from the discovery of the failure of the taxpayer to withhold the deficiency taxes that is when the Respondent BIR sent the notice informing the taxpayer of the deficiency or when the Preliminary Assessment Notice (PAN) was issued on 28 September 2009;

16. Having said all of those, Respondent BIR still has the demandable right to assess and collect the deficiency withholding taxes;

17. On the other hand, assuming arguendo that withholding taxes are covered by Section 203 of NIRC, still the respondent BIR assessed the said taxes within the period provided by law;

18. It should be taken into account that Petitioner filed Monthly Withholding Tax Returns but failed to file the Annual Information Return which is required by ***Section 58 (C) of the NIRC*** which respectively provides that:

> *'Every withholding agent required to deduct and withhold taxes shall submit to the Commissioner an Annual information return containing the list of payees and income payments, amounts of taxes withheld from each payee and such other pertinent information as may be required by the Commissioner. In the case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year and for creditable withholding taxes, not later than March 1 of the year following the year for which the annual report is being submitted. XXX.'*

19. Petitioner asserts that for purposes of determining the prescriptive period, the last day to assess should be reckoned from the separate dates of filing the monthly returns and not from the filing of the Annual Information Return;

20. However, Petitioner's understanding of the requirement of monthly filing of returns as provided by Revenue Regulations No. 26-2002 will replace the filing of Annual Information Return is bereft of any merit. It is not safe to make an assumption that for purposes of determining the prescriptive period, the last day to assess should be reckoned from the separate dates of filing the monthly returns and not from the filing of an Annual Information Return. The requirement of the former is just an additional requirement on top of the filing of the latter which is required by law;

21. It should be stressed further that Revenue Regulations No. 26-2002 does not expressly provides that filing of returns under the said regulations will relieve the taxpayer from its obligation to file the Annual Information Return;

22. It is a well-settled rule of statutory construction that repeals of statutes by implication are not favored. The presumption is against conflicting statutes and therefore, every effort must be used to make all acts stand and if, by any reasonable construction, they can be reconciled, the later act will not operate as a repeal of the earlier.

23. Furthermore, the rule of statutory construction provides that in the issuance of rules and regulations, the law itself cannot be extended, **nor its terms and provisions restricted**. Hence, in case of discrepancy or conflict between the basic law and the regulations issued to implement it, the former prevails over the latter.

24. Moreover, the failure to file Annual Information Return is punishable under Section 250 of NIRC. As a matter of fact, the penalty of failure to file such return is indicated on the second (2nd) page of BIR Form No. 1604-E;

25. And therefore, the non-filing of the Annual Information Return does not commence the running of the prescriptive period;

26. Having said that the actions of the Respondent BIR are within the prescribed period, it follows that the waiver of statute of limitations agreed upon by both Petitioner and Respondent is valid and effective;

27. Petitioner's assertion that the waiver executed by Ms. Concepcion Turingan on 7 January 2009 was done without the notarized written authority of the corporation is bereft of any merit.

28. Under the *Doctrine of Apparent Authority* which was discussed verily in the case of *Violeta Banate, et. al. v. Philippine Countryside Rural Bank,* the Court pronounced that:

> *"The authority of a corporate officer or agent in dealing with third persons may be actual or apparent. Actual authority is either express or implied. The extent of an agent's express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved or their benefits accepted by his principal. The doctrine of 'apparent authority,' on the other hand, with special reference to banks, had long been recognized in this jurisdiction. The existence of apparent authority may be ascertained through:*
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> *1) The general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him: or*

> 2) *The acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.*
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> 29. In the case at bar, Petitioner protested the validity of the waiver only on 14 December 2009 when the latter sent their protest on the Formal Letter of Demand and Assessment Notice (FAN). It was not even raised when they protested on the Preliminary Assessment Notice (PAN) on 29 October 2009;
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> 30. If Mrs. Turingan's act was unauthorized by the corporation as the Petitioner claimed, they could have raised it as early as possible. Accordingly, the authority to act for and to bind a corporation may be presumed from acts of recognition on other instances when the power was exercised without any objection from its board or shareholders." *(Citations omitted)*

Meanwhile, petitioner filed a Motion to Admit Attached Reply[10] on February 14, 2011. Thus, in a Resolution dated February 18, 2011, the said motion was granted and the attached Reply was admitted.[11]

The case was set for pre-trial conference on February 24, 2011.[12] Petitioner filed its Pre-Trial Brief[13] on February 21, 2011; while respondent filed her Pre-Trial Brief[14] on February 21, 2011.

On March 4, 2011, the parties filed with this Court their Joint Stipulation of Facts and Issues.[15] The pre-trial conference was then terminated as per the Pre-Trial Order[16] issued by the Court dated March 16, 2011.

Trial proceeded, giving both parties the opportunity to present their respective documentary and testimonial evidence.

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[10] Docket, pp. 269-279.
[11] Docket, p. 293.
[12] Notice of Pre-Trial Conference issued on February 1, 2011, docket, p. 268.
[13] Docket, pp. 294-309.
[14] Docket, pp. 310-313.
[15] Docket, pp. 324 328.
[16] Docket, pp. 361 369.

The case was submitted for decision on November 12, 2012[17], considering petitioner's Memorandum[18] filed on October 4, 2012 and respondent's Memorandum[19] filed on November 7, 2012.

STATEMENT OF ISSUES

The parties submitted the following issues[20] for this Court's disposition:

> "1. Whether or not Respondent's right to assess Petitioner deficiency expanded withholding taxes and deficiency final withholding taxes have prescribed thus barring the right of the Respondent to collect taxes from the Petitioner.
>
> 2. Whether or not the waiver of the statute of limitations agreed to by Petitioner and Respondent is valid and effective.
>
> 3. Whether or not the assessment issued by Respondent is void and lacked legal and factual bases since certain income payments made by Petitioner should not be subjected to withholding tax."

RULING OF THE COURT

In resolving the first stipulated issue concerning the lapse of the period prescribed by law to assess and collect taxes, the Court found relevant Section 203 of the NIRC of 1997, which 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

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[17] Docket, p. 969.
[18] Docket, pp. 929-954.
[19] Docket, pp. 960 967.
[20] Docket, p. 327.

> 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."

Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This rule governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[21]

Corollary to Section 203 is Section 2.58(A)(2)(a) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-03, which requires that the withholding tax be deducted and remitted on a monthly basis, *viz.*:

> "SECTION 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.
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> (A) *Monthly return and payment of taxes withheld at source.* —
>
> (1) . . .
>
> (2) WHEN TO FILE —
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; and except for the final capital gains tax on the sale or other onerous disposition of real property

[21] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.

considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located."

Based on the above-mentioned provisions and the dates of filing of the monthly remittance returns of creditable income taxes withheld (Expanded) and of final income taxes withheld[22], the reckoning dates of the 3-year period and the last day to assess are summarized hereunder:

2005	Dates when the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) were Filed	Reckoning Date of the 3-year period	Last Day to Assess
January	02/14/05	02/14/05	02/14/08
February	03/08/05	03/10/05	03/10/08
March	04/07/05	04/11/05*	04/11/08
April	05/05/05	05/10/05	05/12/08**
May	06/06/05	06/10/05	06/10/08
June	07/07/05	07/11/05*	07/11/08
July	08/08/05	08/10/05	08/11/08**
August	09/07/05	09/12/05*	09/12/08
September	10/06/05	10/10/05	10/10/08
October	11/08/05	11/10/05	11/10/08
November	12/09/05	12/12/05*	12/12/08
December	01/19/06	01/19/06	01/19/09

2005	Dates when the Monthly Remittance Returns of Final Income Taxes Withheld were Filed	Reckoning Date of the 3-year period	Last Day to Assess
January	02/14/05	02/14/05	02/14/08
February	03/08/05	03/10/05	03/10/08

[22] Pars. 11 and 12, Stipulation of Facts, JSFI, docket, pp. 326-327.

March	04/07/05	04/11/05*	04/11/08
April	05/09/05	05/10/05	05/12/08**
May	06/06/05	06/10/05	06/10/08
June	07/07/05	07/11/05*	07/11/08
July	08/08/05	08/10/05	08/11/08**
August	09/07/05	09/12/05*	09/12/08
September	10/06/05	10/10/05	10/10/08
October	11/10/05	11/10/05	11/10/08
November	12/09/05	12/12/05*	12/12/08
December	01/19/06	01/19/06	01/19/09

* The 10th day following the end of the month of withholding fell either on a Saturday, Sunday or legal holiday

** The last day of the three-year period fell either on a Saturday or Sunday

Records of the case would show that the last day to assess the subject taxes pertaining to the last month of taxable year 2005 is on January 19, 2009 and the Final Assessment Notice with the Formal Letter of Demand dated October 30, 2009 was received by petitioner only on November 16, 2009. While it appears that the assessments issued by respondent were made beyond the three-year period provided by law to assess, respondent nevertheless contends that a waiver of the statutes of limitation was executed by her and petitioner on January 7, 2009, which validly extended the period for assessment of the subject taxes.

Respondent is referring to the exception to the three-year prescriptive period on the assessment of taxes as found in Section 222(b) of the NIRC of 1997, which provides:

> "(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

Thus, to be considered as a valid waiver of the statute of limitations under Section 222(b) of the NIRC of 1997, the waiver 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.

Applying the foregoing, the Court observed that the period for assessment of deficiency expanded and final withholding taxes for the periods of January to November 2005 already expired at the time when the subject waiver was executed, thus, there is no period to extend. Consequently, only the period of assessment for the final and expanded withholding taxes for December 2005 may be extended considering that the subject waiver, executed on January 7, 2009[23], was executed before the expiration of the ordinary prescriptive period for its assessment, the last day of which is January 19, 2009.

Now, in determining further whether the waiver validly extended the period of assessment for the final and expanded withholding taxes pertaining to the month of December 2005, the Court found applicable the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[24], which laid down the procedure for the proper execution of a waiver, to wit:

> "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.
>
> 2. The waiver must 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. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> 3. The waiver should be duly notarized.
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> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. **However, before signing the waiver, the CIR or the revenue official**

[23] Exhibits "B" and "4".
[24] G.R. No. 178087, May 5, 2010.

authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. 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.

6. The waiver must be executed in three 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 must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.**" *(Emphasis supplied)*

According to petitioner, the waiver was signed by Ms. Concepcion Turingan, the Comptroller of petitioner. However, the waiver was executed without the notarized written authority of Ms. Turingan to sign on behalf of petitioner. In opposition, respondent argued that Ms. Turingan is the Comptroller of petitioner and obviously one of the responsible officials contemplated by the Revenue Memorandum Order (RMO).

The Court cannot sustain respondent's assertion that Ms. Concepcion Turingan's signature on the said waiver on behalf of petitioner is valid since such act was not accompanied by a written authority from the Board of Directors of petitioner. Let it be stressed that Revenue Delegation Authority Order (RDAO) No. 05-01 requires respondent to ensure the presentation of a written and notarized authority from the taxpayer if such authority was delegated to a representative, 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 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 unless duly notarized."

Also, even assuming that the waiver was signed by a duly authorized representative, the waiver is still invalid since the waiver submitted to this Court, which also formed part of the BIR records and admitted as evidence for respondent, failed to show that petitioner was furnished with the copy of the approved and accepted waiver.

Paragraph 4 of RMO No. 20-90 specifically provides that the waiver must be executed in three 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. It is likewise required that the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy.

In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[25], the Supreme Court expounded on the importance of furnishing the taxpayer a copy of such document in the following manner:

> "Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason copies are furnished is for a party to be notified of the existence of a document, event or proceeding.
>
> The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement."

Here, the waiver is defective considering that the fact of receipt by petitioner of its file copy of the waiver was not

[25] G.R. No. 162852, December 16, 2004.

indicated in the original copy and no other evidence was presented to prove the fact of receipt of the waiver accepted by respondent.

In the same case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[26], the High Court made similar findings as it also considered as infirmities the lack of notarized written authority of the taxpayer corporation's accountant as its representative to sign the waiver on behalf of the corporation; and the failure to indicate in the original copies of the waivers the fact of receipt by the taxpayer of its file copy. The pertinent portions of the said decision read:

> "A perusal of the waivers executed by respondent's accountant reveals the following infirmities:
>
> 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.
>
> 3. **The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers.**
>
> **Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void.**" *(Emphasis supplied)*

At this juncture, it must be pointed out that "[a] waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription xxx. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the

[26] *Supra.*, note 24.

language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed."[27]

In view of the above-cited infirmities of the waiver, the period to assess or collect taxes was not extended. Accordingly, the assessments for deficiency expanded withholding tax and deficiency final withholding tax against petitioner for taxable year 2005 were issued beyond the three-year period provided by law.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Assessment Notices issued on October 30, 2009, the Final Decision on Disputed Assessment for the payment of Deficiency Expanded Withholding Tax of P1,923,951.59, and Deficiency Final Withholding Tax of P47,078.74, including surcharges, interest and compromise penalty for taxable year 2005 are hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

I CONCUR:

LOVELL R. BAUTISTA
Associate Justice

[27] *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue, supra.*, note 25.

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice