



Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1087
(CTA Case No. 7987)

Present:

-versus-

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

ALCON LABORATORIES, INC.,
Respondent.

Promulgated:

SEP 30 2014

X-----

DECISION

CASTAÑEDA, JR., J:

Petitioner Commissioner of Internal Revenue is now before us seeking for the reversal or setting aside of the Decision¹ dated July 10, 2013 of the Court of Tax Appeals-Special First Division (Court in Division) and its Resolution² dated October 23, 2013 denying petitioner's motion for reconsideration on the decision in CTA Case No. 7987. The Court in Division ruled for the cancellation and withdrawal of the Formal Letter of Demand with Assessment Notices No. F42-008 dated December 22, 2008 for being issued beyond the prescriptive period. The decretal portion of the impugned decision and resolution reads: *gr*

¹ Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice Erlinda P. Uy. *Rollo*, pp. 14-37.

² *Id.* at 39-42.

Decision dated July 10, 2013:

WHEREFORE, the Petition for Review dated October 23, 2009 filed by petitioner **ALCON LABORATORIES (PHILIPPINES), INC.** is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Assessment Notices No. F42-008 dated December 22, 2008, finding petitioner liable for deficiency income tax in the total amount of P44,671,434.99, value-added tax in the total amount of P4,826,473.56, and expanded withholding tax in the total amount of P624,814.36, inclusive of interest, are hereby **CANCELLED** and **WITHDRAWN** for being issued beyond the prescriptive period allowed by law.

SO ORDERED.³

Resolution dated October 23, 2013:

WHEREFORE, the Motion for Reconsideration dated August 12, 2013 filed by respondent Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

SO ORDERED.⁴

THE PARTIES

Petitioner is the Commissioner of Internal Revenue (CIR), duly appointed to perform the duties of her office, including, *inter alia*, the power to decide disputed assessments, subject to review on appeal by the Court of Tax Appeals.⁵

Respondent Alcon Laboratories (Philippines), Inc. is a domestic corporation with principal office address located at 3rd Floor, LGI Bldg., Ortigas Avenue, Greenhills, San Juan, Metro Manila. It is duly registered with the Securities and Exchange Commission primarily to develop, manufacture, purchase, import, distribute, sell or lease surgical, medical, optical equipment, instruments, and accessories.⁶ 

³ Id. at 35-36.

⁴ Id. at 41.

⁵ Id. at 5.

⁶ Id.

THE FACTS

The antecedents as summarized by the Court in Division are uncontroverted.

On April 12, 2005, respondent timely filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (ITR) (BIR Form No. 1702) for taxable year ending December 31, 2004.

For taxable year ending December 31, 2004, respondent also filed its Quarterly VAT Returns (BIR Form No. 2550Q) and Monthly Remittance Returns of Expanded Withholding Tax (BIR Form No. 1601-E) on the following dates:

Quarter	Date of Filing of BIR Form No. 2550Q
First Quarter of 2004	April 6, 2004
Second Quarter of 2004	July 9, 2004
Third Quarter of 2004	October 19, 2004
Fourth Quarter of 2004	January 27, 2005
Month	Date of Filing of BIR Form No. 1601-E
January 2004	February 10, 2004
February 2004	March 10, 2004
March 2004	April 6, 2004
April 2004	May 7, 2004
May 2004	June 3, 2004
June 2004	July 6, 2004
July 2004	August 6, 2004
August 2004	September 10, 2004
September 2004	October 14, 2004
October 2004	November 8, 2004
November 2004	December 14, 2004
December 2004	January 12, 2005

On November 17, 2005, respondent received a copy of the Letter of Authority (LOA) No. 2000 00090845 dated November 9, 2005 signed by Regional Director Nestor S. Valeroso of Revenue Region No. 7, authorizing Revenue Officer Marilyn A. King and Group Supervisor Lourdes D. Narvaez of Revenue District Office (RDO) No. 042 to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2004 to December 31, 2004.

Respondent's Finance Manager, Antonio H. Miguel, executed a "Waiver of the Defense of Prescription under the Statue (sic) of Limitations of the National 

Internal Revenue Code" extending the prescriptive period to assess respondent for deficiency internal revenue taxes for the year ending December 31, 2004 to December 31, 2008.

On December 5, 2008, petitioner issued a Preliminary Assessment Notice (PAN) dated September 16, 2005 assessing respondent for deficiency income tax, VAT, and EWT for the year ending December 31, 2004.

On December 23, 2008, petitioner sent through registered mail a Final Letter of Demand (FLD) with Assessment Notices dated December 22, 2008, assessing respondent the same tax deficiencies in the total amount of P50,122,722.91, inclusive of interest, for the year ending December 31, 2004, broken down as follows:

Nature of Tax	Basic Tax	Interest	Total
Income Tax	P25,452,815.75	P19,218,619.24	P44,671,434.99
VAT	P2,683,007.69	P2,143,465.87	P4,826,473.56
EWT	P346,486.24	P278,328.12	P624,814.36
Total			P50,122,722.91

Respondent received the FLD and Assessment Notices on December 29, 2008.

On January 28, 2009, respondent filed with the Revenue Region No. 7 a protest letter dated January 28, 2009.

On March 27 and 30, 2009, respondent submitted to the Revenue Region No. 7 the documents in support of its protest.

On October 26, 2009, respondent filed the instant Petition for Review on account of petitioner's inaction.

On December 28, 2009, petitioner filed her Answer to the Petition for Review basically contending that the subject assessments were issued in accordance with law and regulations, and that petitioner was apprised of the factual and legal bases of the said assessments in the Formal Letter of Demand and Assessment Notices.

Further, the assessments were issued within the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended, since respondent through its Finance Manager Antonio H. Miguel, executed a Waiver of the Defense of Prescription pursuant to Section 222(b) of the NIRC. *je*

Finally, petitioner invoked the rule that tax assessments by tax examiners are presumed correct and made in good faith, and should thus be upheld.

In the Resolution dated March 8, 2010, the Court approved the parties' Joint Stipulation of Facts and Issues dated February 26, 2010 and deemed the pre-trial terminated.

In support of its case, respondent presented its former Finance Manager Antonio H. Miguel, Independent Certified Public Accountant (ICPA) Mary Ann C. Capuchino, and Atty. Jose Jaime V. Cruz.

In his testimony, witness Antonio H. Miguel declared that the subject assessments for deficiency income tax, VAT, and EWT for taxable year 2004 are already barred by prescription.

He testified that on April 13, 2005, respondent filed its Annual Income Tax Return for the year 2004. Respondent also filed its Quarterly VAT Returns on April 6, 2004, July 9, 2004, October 19, 2004, and January 24, 2005 for the 1st, 2nd, 3rd, and 4th quarters of 2004. As to EWT for 2004, respondent filed its Monthly Remittance Returns, the last of which was on January 15, 2005 for the month of December. The filing of the returns was allegedly simultaneous with the payment of the tax.

On the basis of the foregoing, the assessments issued by petitioner as indicated in the FLD dated December 22, 2008 and received by respondent on December 29, 2008, have already prescribed having been issued beyond the three (3)-year prescriptive period mandated by law.

Further, the Waiver of the Statute of Limitations which he signed in his capacity as Finance Manager of respondent, in 2007 is invalid. He recalled that he signed a blank *pro forma* Waiver sometime in 2008 and not on January 10, 2007, as evidence[d] by the use of his 2008 Community Tax Certificate in the acknowledgment portion of the document. The blank Waiver did not have the date of execution, signatures of the witnesses and the CIR on the spaces provided for such information. Most importantly, he never appeared before the notary public in Taytay, Rizal where the Waiver appeared to have been notarized. He was not also furnished with a copy of the blank *pro forma* Waiver even after it was accomplished. He also invited the attention of the Court to the bottom portion of the Waiver wherein the year 2008 was erased and altered to appear as 2007.

He emphasized on recall that the subject assessment has no factual basis as it was based on mere inferences and surmises contrary to the evidence presented. 

Witness Mary Ann C. Capuchino, the Court-commissioned ICPA, in essence testified that both her Partial Report dated August 20, 2010 and Final and Consolidated Report dated September 22, 2010 contain her finding that the alleged unpaid deficiency income tax, VAT and EWT are founded on the wrong premise and can be reconciled using respondent's books of accounts.

Attorney Jaime V. Cruz basically declared that as respondent's legal counsel, he secured the BIR approval on respondent's Employee Retirement Plan in 2009, as evidenced by a Letter dated September 10, 2009 from the BIR. Thus, the said Employee Retirement Plan qualifies as a reasonable private benefit plan with the corresponding tax exemption. Prior approval to the plan was given in 1999 but the most recent was given by the BIR in 2009. Hence, it qualifies as a reasonable private benefit plan in 2004, which was covered by the subject assessments for deficiency taxes making it tax exempt.

Petitioner[s] sole witness Revenue Officer Marilyn A. King testified that she conducted the investigation and examination of respondent's books of accounts pertaining to this case. On January 10, 2007, respondent executed a Waiver of the Defense of Prescription under the Statute of Limitations extending petitioner's right to assess it for taxable year 2004 until December 31, 2008. Respondent was furnished with a copy of the said Waiver through its Finance Manager, Antonio H. Miguel, who affixed his signature at the bottom portion of the BIR's copy to signify his receipt. The receiving signature of Antonio H. Miguel in the Waiver is the same as that appearing in respondent's 2004 Annual Income Tax Return filed with the BIR.

In her Memorandum Report dated July 14, 2008 with attached Revenue Officer's Report, she recommended the issuance of assessments against respondent. Thereafter, a PAN with Details of Discrepancies dated December 5, 2008, and FLD with Details of Discrepancies and Assessment Notices dated December 22, 2008, [were] issued against respondent for deficiency income tax, VAT and EWT for the year 2004.

Revenue Officer Marilyn A. King admitted that the subject Waiver did not indicate the date of acceptance by the petitioner. The receiving signature at the bottom portion of the Waiver did not also contain the printed name of the person receiving it, or date, or the term "received" to indicate receipt. She also admitted that the acknowledgment by the notary public in the Waiver contains the Community Tax Certificate of the affiant for the year 2008. The year 2008 in the acknowledgment portion of the Waiver likewise contain erasure and alteration to make it appear as 2007. Finally, affiant Antonio Miguel was not present when the Waiver was presented to the Notary Public for notarization.

According to the witness, she brought the Waiver to the Revenue District Officer for acceptance. He signed it in behalf of petitioner on January 10, 2007. After notarization, she served a copy of the Waiver to respondent through Antonio H. 

Miguel. The erasures and alteration in the acknowledgment portion of the Waiver were typographical errors she committed in the preparation of the Waiver.

After the parties filed their respective memoranda, the case was submitted for decision on August 29, 2012.

On July 10, 2013, the Court in Division rendered a decision granting the petition.⁷ Unfazed, petitioner sought for reconsideration but the same was denied for lack of merit.⁸ Hence, the petitioner elevated her present recourse before the Court *en banc*.

On February 3, 2014, this Court ordered the respondent to file its comment within ten days from receipt.⁹ However, the latter instead moved for an extension of 10 days to file the same.¹⁰ Thus, in a minute resolution dated March 4, 2014, the Court granted the extension sought for and accordingly allowed the respondent until March 10, 2014 to comment on the petition.¹¹

With the respondent's comment filed on March 10, 2014,¹² the Court issued a resolution dated March 31, 2014 giving due course to the petition for review. In addition, the same resolution likewise ordered both parties to file their respective Memoranda within 30 days from receipt.¹³

On July 24, 2014, the Court issued a resolution submitting the instant case for decision taking into consideration respondent's memorandum and *sans* petitioner's memorandum.¹⁴

THE ISSUES

In assailing the findings of the Court in Division, petitioner submits her assignment of errors for the Court's consideration, to wit:

THE SPECIAL FIRST DIVISION OF THE HONORABLE
COURT ERRED WHEN IT HELD THAT THE AUTHORITY OF
PETITIONER TO ASSESS RESPONDENT FOR DEFICIENCY
INCOME TAX, VALUE ADDED TAX AND EXPANDED *Je*

⁷ Id. at 14-37.

⁸ Id. at 39-42.

⁹ Id. at 47-48.

¹⁰ Id. at 49-53.

¹¹ Id. at 54.

¹² Id. at 55-62.

¹³ Id. at 65-66.

¹⁴ Id. at 83-84.

WITHHOLDING TAX FOR TAXABLE YEAR 2004 HAS
ALREADY PRESCRIBED[;] and

THE GOVERNMENT IS NOT BOUND BY THE ERRORS
COMMITTED BY ITS AGENTS.

On the first issue, petitioner faults the Court in Division by maintaining that prior to the expiration of petitioner's right to assess respondent for income tax, VAT and EWT deficiencies for taxable year 2004, the latter had executed a Waiver of the Defense of Prescription under the Statute of Limitations in accordance with the National Internal Revenue Code (NIRC) as amended. This in effect led petitioner to conclude that the subject assessment/s for taxable year 2004 has not yet prescribed. Petitioner even anchors her claim that the respondent in fact received the waiver through its Finance Manager, Mr. Antonio H. Miguel. Petitioner therefore impresses this Court that the Waiver is valid in all fours since it was executed before the expiration of petitioner's right to assess; was duly acknowledged by the respondent, and such waiver is executed in accordance with Article 6 of the New Civil Code.

Respondent however counters that there is no valid waiver to speak of since its issuance is tainted with irregularities and suffers from sheer invalidity. Respondent further argued that even assuming that the respondent indeed executed the subject waiver, it still suffers from infirmity since the Revenue Officer omitted to indicate in the waiver the date of its acceptance citing the Supreme Court ruling in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,¹⁵ which provides that one of the essential requisites for a waiver to be valid is that the date of acceptance must be duly indicated. Finally, respondent points out that the findings of fact of the Court in Division are entitled to great weight and thus, should be sustained.

Anent the second issue, petitioner posits that granting for the sake of argument that the waiver is indeed invalid, the government, nonetheless, is not bound by the errors committed by its agents citing the Supreme Court ruling in *Commissioner of Internal Revenue v. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*.¹⁶ She hastens to add that errors committed by its agents cannot render the government in estoppel especially in matters involving taxation. This is also consistent with the pronouncement of the Supreme Court in *Commissioner of Internal Revenue v. Manila Banker's Life Insurance Corporation*¹⁷ that errors of certain administrative officers should never be allowed to jeopardize the government's financial position. Lastly, petitioner postulates that tax assessments by tax examiners are presumed correct and made in good faith, and that it is incumbent upon the respondent to prove any irregularities in the performance of their duties. Failure to overcome such burden renders the findings

Jr

¹⁵ G.R. No. 162852, December 16, 2004, 447 SCRA 214.

¹⁶ G.R. No. 106611, July 21, 1994, 234 SCRA 348.

¹⁷ G.R. No. 169103, March 16, 2011, 645 SCRA 500.

made by her examiners and approved by their respective superior officers as correct that can no longer be disturbed. This, according to petitioner, is founded on the principle that all presumptions are in favor of the correctness of tax assessments.

Conversely, respondent argued that the cited *Citytrust* case does not squarely apply in this case since petitioner was accorded an opportunity to present its side. According to respondent, although the Supreme Court ruled that the Commissioner is not bound by the mistakes of her agents, the High Court nonetheless applied estoppel due to the fact that the Solicitor General is constrained to move for several postponements due to her agent's own mistake and negligence for not promptly transmitting the necessary records despite repeated requests. Such scenario is not present in this case since petitioner's sole witness was not prevented from testifying on the alleged execution of the waiver in question. Moreover, neither is the ruling in *Manila Banker's* applicable considering that the case involves a discussion on the Commissioner's failure to raise an argument at the earliest possible time.

THE COURT'S RULING

The petition lacks merit.

Pertinent to the orderly resolution of this main contention is Sec. 222(b) of the National Internal Revenue Code, as amended which explicitly provides:

SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

X X X X

(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 previously agreed upon.

X X X X

In consonance with the abovementioned provision, Section 203 of the NIRC, as amended, provides that internal revenue taxes must be assessed within three years reckoned from the period fixed by law for filing of the tax return or the actual date of filing, whichever is later. Petitioner insists that the Waiver were issued within the prescriptive period. However, the Court in Division found otherwise when it disposed: 

Therefore, the last day for [petitioner] to issue an assessment for year 2004 was on April 15, 2008 for income tax, on January 28, 2008, at the latest for VAT, and on January 17, 2008, at the latest for EWT.

It is undisputed that the FLD and Assessment Notices, for allegedly deficiency income tax, VAT and EWT for the year 2004 were sent by respondent through registered mail only on December 23, 2008 and was received by [respondent] only on December 29, 2008. *A fortiori*, the subject assessments were issued beyond the prescriptive period allowed under Section 203 of the NIRC, as amended.

Having ruled that petitioner's right to assess had already prescribed, she now insists on the validity of the Waiver of the Defense Statute of Limitations based on Section 222(b) of the NIRC, as amended. Thus, central to the issue in this case is the validity of the "Waiver of the Defense of Statue(sic) of Limitations under the National Internal Revenue Code."¹⁸

Section 222 of the NIRC, as amended, provides that the period to assess and collect taxes may be extended upon a written agreement between the Commissioner of Internal Revenue and the taxpayer to be executed before the three-year prescriptive period. In *Commissioner of Internal Revenue v. Kudos Metal Corporation*,¹⁹ the Supreme Court laid down the requisites of a valid waiver pursuant to RMO 20-90 and RDAO 05-01, to wit:

1. The waiver must be in 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.**
3. **The waiver should be duly notarized.** 

¹⁸ Exhibit "T" for the respondent and Exhibit "2" for the petitioner.

¹⁹ G.R. No. 178087, May 5, 2010, 620 SCRA 232, 243-244.

- 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 the signing the waiver, the CIR or the revenue official 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 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)

A perusal the questioned Waiver in relation to the requisites enumerated in the *Kudos* ruling would demonstrate that the same suffers from infirmities. Thus, even assuming that the Waiver was indeed issued within the prescriptive period, the same is of no moment. As found by the Court in Division which we quote:

x x x the Waiver allegedly executed by Antonio H. Miguel is not valid and produces no legal effect as the date of its acceptance by Revenue District Officer Wong is not indicated on the face of the Waiver. x x x

x x x x

For one, the Waiver was signed by Revenue District Officer Wong prior to its notarization, in violation of the specific requirement of RDAO No. 05-01 that the CIR or the revenue official authorized by the CIR to sign the Waiver should ensure that the Waiver is duly notarized before it is accepted. In this case, the Waiver was not duly notarized prior to its acceptance by Revenue District Officer Wong. No less than [petitioner's] witness, Marilyn A. King admitted without pretension that she 

was the one who presented the Waiver to the Notary Public for notarization after it was signed and accepted by Revenue District Officer Wong. For another, [respondent's] Finance Manager, Antonio H. Miguel, was not present and did not personally acknowledge the execution of the Waiver before the Notary Public.

Also not clearly established is the fact of receipt of the waiver by [respondent], which is a requirement for its validity. While a signature of Antonio H. Miguel appears on the lower portion of the Waiver, there is no indication that such signature was meant to indicate his receipt of the Waiver after alleged acceptance by Revenue District Officer Wong. The date when [respondent] supposedly received the accepted Waiver was not likewise indicated.

The date of alleged execution and notarization of the Waiver on January 10, 2007 is also dubious given that the Community Tax Certificate of the affiant used in Acknowledgment of the Waiver was issued on January 6, 2008. The claim of [petitioner's] witness, Marilyn A. King, that it was just a typographical error, fails to convince the Court.

Based on the evidence, in particular the Memorandum of Agreement dated September 26, 2008, and the Deed of Sale dated December 19, 2008 submitted by [respondent] wherein the same CTC was used, it is clear that the CTC of the affiant used in the Waiver was indeed issued only in 2008. As correctly pointed out by the [respondent], the Waiver could not have been executed on January 10, 2007 because of the affiant's CTC therein was issued only on January 6, 2008 or almost one (1) year after the date of the alleged notarization of the Waiver.

Lastly, this Court noted that the portion of the Acknowledgment relative to the "Doc. No.", "Page No.", "Book No.", and "Series of" was altered or erased. A close scrutiny of the Waiver reveals that the details on the "Doc. No.", "Page No.", "Book No." and "Series of" were altered and replaced with the following:

Details of Notary Public's Register	Prior to Alteration	After Alteration
Doc. No.	12	12
Page No.	199	37

je

Book No.	XXI	XVI
Series of	2008	2007

In fine, the year when the Waiver was executed and notarized was changed from 2008 to 2007.

Therefore, pertinent to the evidentiary findings of the Court in Division, we are convinced that the Waiver in question failed to satisfy the requirements of Sec. 222(b) of the NIRC, as amended for purposes of extending the three-year prescriptive period. At this juncture, we agree with the Court in Division by concluding:

This Court could not just turn a blind eye and ignore these irregularities which make the Waiver highly questionable, and therefore, invalid. This is all the more emphasized by the fact that a Waiver of the Statute of Limitations under the NIRC is not an ordinary agreement, as it is, to a certain extent, a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.

To be sure, the Supreme Court in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,²⁰ pronounced that "[s]oon 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.**" A similar ruling was succinctly stated in *Commissioner of Internal Revenue v. FMF Development Corporation*²¹ and added:

Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. **x x x 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. (With emphasis) 

²⁰ *Supra* at note 15, p. 226.
²¹ G.R. No. 167765, June 30, 2008, 556 SCRA 698, 708-709.

Moreover, petitioner cannot validly invoke *Commissioner of Internal Revenue v. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*,²² as her basis for estoppel. True, the High Court in *Citytrust* may have ruled that the Government is not bound by the errors committed by its agents, but the Supreme Court in its *ratio decidendi*, found that the delay is attributable to the unavailability of the necessary records when it is their turn to present evidence. Such delay was due to the fault of the Refund Audit Division of the Bureau of Internal Revenue. For this reason, the Office of the Solicitor General was constrained to move for several postponements and concluded in effect that the Commissioner of Internal Revenue was deprived of his day in Court.

The same *Citytrust* ruling however stressed that “[a]lthough the Government may generally be estopped through the affirmative acts of public officers acting within their authority, their neglect or omission of public duties as exemplified in this case will not and should not produce that effect,” we see neither rhyme nor reason to apply *Citytrust* as there is no apparent neglect or omission on the part of the petitioner in pursuing this case. Instead, the ruling of the Supreme Court in *Kudos* is *apropos*:

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 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 x x x indicate the date of acceptance x x x 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 

²² *Supra* at note 16.

security against prolonged and unscrupulous investigations, must be carefully and strictly construed.
(Emphasis supplied)

Petitioner's insinuation that the waiver in question is consistent with Article 6 of the New Civil Code has no leg to stand on. Art. 222(b) of the NIRC, as amended is very clear when it categorically stated that a waiver for purposes of extending the three-year prescriptive period must be agreed upon in writing. Therefore, no statutory construction or interpretation is needed. It is settled that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. The Court has no choice but to see to it that its mandate is obeyed.²³

Neither can we deviate from guidelines set forth in *Kudos* on the proper execution of Waivers of the Defense of the Statute of Limitations vis-à-vis Art. 222(b). We are no less guided by the elementary principle that "[t]he Supreme Court by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings."²⁴

Petitioner's reliance that the government cannot be held in estoppel as provided in *Commissioner of Internal Revenue v. Manila Banker's Life Insurance Corporation*²⁵ is misplaced since it revolves on the Commissioner's failure to raise an argument at the earliest possible time. Certainly, insofar as this case is concerned, this is not the scenario that we are tasked to pass upon.

Finally, petitioner's asseveration of the time honored principle that tax assessments are presumed correct and made in good faith as held in *Commissioner of Internal Revenue v. Bank of Philippine Islands*,²⁶ fails to support her thesis. Notably, such presumption was overthrown given that the irregularities surrounding the issuance of the Waiver were clearly proven.

WHEREFORE, the instant petition is **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution on the Motion for Reconsideration in CTA Case No. 7987 are **AFFIRMED**. *jr*

²³ *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005, 462 SCRA 197, 220.

²⁴ *Firestone Ceramics, Inc., et al., v. Court of Appeals*, G.R. Nos. 127022 & 127245, September 2, 1999, 313 SCRA 522, 543.

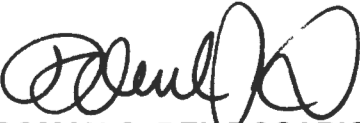
²⁵ *Supra* at note 17.

²⁶ G.R. No. 134062, April 17, 2007, 521 SCRA 373.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

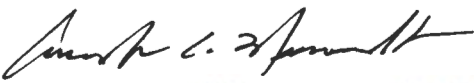

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice

(On leave)
ESPERANZA R. FAISON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On leave)
MA. BEL EN 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