REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

JO ANNA LEE O. SANTOS represented by JOSEFINO R. SANTOS, Petitioner,	CTA Case No. 8214
-versus-	Members: BAUTISTA, Chairperson FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE represented by REVENUE DISTRICT OFFICER, REVENUE DISTRICT OFFICE NO. 25B, Sta. Maria, Bulacan, Respondent.	Promulgated: NOV 26 2014 4:16 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This is an appeal pursuant to Section 7(a)(3) of Republic Act (R.A.) No. 1125, as amended,[1] otherwise known as "An Act Creating the Court of Tax Appeals", in relation to Section 4(a) Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[2] seeking the reversal and the setting aside of the Letter-Decision dated November 24, 2010 of respondent Commissioner of Internal Revenue through her Revenue Officer (RO) Ray Anthony O. Geli of Revenue District Office (RDO) No. 25A which denied petitioner Jo Anna Lee O. Santos' Motion for Reconsideration dated November 17, 2010, wherein petitioner moved for reconsideration of the tax lien on its property dated

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[1] "**Section 7. Jurisdiction.** - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

[2] "**RULE 8, Sec. 4. *Where to appeal; mode of appeal.* –**

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal."

October 30, 2010 in the total amount of Ten Million Two Hundred Ninety-Six Thousand Nine Hundred Twenty Nine and 18/100 Pesos (₱10,296,929.18), allegedly representing petitioner's deficiency Income Tax (IT), Value Added Tax (VAT) and Expanded Withholding Tax (EWT) for taxable year 2005.

THE FACTS

Petitioner Jo Anna Lee O. Santos is of legal age, single, and resident of Bonga Menor, Bustos, Bulacan. She is represented by her father, Josefino R. Santos, also of legal age, married and resident of Bonga Menor, Bustos, Bulacan, by virtue of a Special Power of Attorney dated November 16, 2010.[3]

Petitioner is the proprietor of Saint Paul Petron Station located at Donacion, Angat, Bulacan.[4]

Respondent Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. Respondent may be served with summons, notices and other legal processes of this Honorable Court at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Pursuant to the Letter of Authority No. 2007-00006162[5] dated December 12, 2007, the BIR-Revenue Region No. 5 issued a Final Assessment Notice[6] (FAN) on December 4, 2009 against petitioner for alleged deficiency internal revenue tax liabilities for taxable year 2005, described as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	₱ 5,179,005.25	-	₱ 3,926,203.88	₱ 9,105,209.13
Value Added Tax	640,453.46	-	514,091.99	1,154,545.45
Expanded Withholding Tax	3,000.00	750.00	2,424.60	6,174.60
		TOTAL AMOUNT DUE		**₱ 10,265,929.18**

Claiming that no administrative protest was made thereon by petitioner, respondent issued on March 10, 2010, a Preliminary Collection Letter[7] (PCL),

[3] Paragraph 1, Stipulation of Facts, Pre-Trial Order (PTO), *Docket*, pp. 185-186.
[4] Par. 2, Stipulation of Facts, PTO, *Docket*, p. 186.
[5] Exhibit "1" for the Respondent.
[6] Exhibits "F" to "H".
[7] Exhibit "I".

demanding payment of the aforementioned deficiency taxes but, now, with Compromise Penalty of Thirty-One Thousand Pesos (₱31,000.00) which brings the total amount to Ten Million Two Hundred Ninety-Six Thousand Nine Hundred Twenty Nine and 18/100 Pesos (₱10,296,929.18).

On March 22, 2010, respondent issued a Final Notice Before Seizure[8] to petitioner notifying the latter to make necessary settlement of her tax liabilities. Still having no response from petitioner, respondent issued on May 14, 2010, a Warrant of Distraint and/or Levy.[9]

On October 20, 2010, respondent issued a Notice of Tax Lien[10] notifying the Registry of Deeds, Meycauayan, Bulacan of the BIR's intention to establish a lien or encumbrance in favor of the government of petitioner's property covered by Transfer of Certificate Title (TCT) No. T369883(M).[11]

Thereafter, on November 17, 2010, petitioner filed a Motion for Reconsideration[12] on respondent's Notice of Tax Lien, asserting prescription, lack of factual basis for the assessment of deficiency taxes, non-receipt of previous notices, and that the levied property is not solely owned by the taxpayer as grounds for the cancellation of respondent's tax lien on the subject property.

On December 9, 2010, petitioner received respondent's Letter-Decision[13] dated November 24, 2010, denying petitioner's motion for reconsideration.

Aggrieved thereby, petitioner filed the instant Petition for Review[14] with prayer for issuance of Temporary Restraining Order (TRO) on January 7, 2011 with the Court of Tax Appeals (CTA).

In the February 28, 2011 Resolution,[15] this Court gave petitioner the opportunity to be heard and present evidence for the Suspension of the Implementation of the Warrant of Distraint and/or Levy dated May 14, 2010.

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[8] Exhibit "M".
[9] Exhibit "N".
[10] Exhibit "O".
[11] Exhibit "Q".
[12] Exhibits "B" to "B-8".
[13] Exhibit "A" and "A-1".
[14] *Docket*, pp. 1-40.
[15] *Docket*, p. 58.

Accordingly, on March 14, 2011, petitioner filed a Memorandum in Support of the Prayer for Temporary Restraining Order,[16] while respondent filed her Memorandum on March 25, 2011.[17]

Meanwhile, on March 25, 2011, respondent filed her Answer to the Petition for Review[18], stating the following special and affirmative defenses, to wit:

> "x x x
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> 13. Assessments are *prima facie* presumed correct and made in good faith. All presumptions are in favor of tax assessments. The assessments issued against the petitioner are valid and correct and the petitioner has the burden of proof to impugn their validity. Tax assessments by revenue examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise, and in addition, the Supreme Court also said in *Gutierrez vs. Villegas,* that assessments duly made by a BIR examiner and approved by his/her supervisors will not be disturbed.
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> 14. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right.
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> 15. The assessments issued against the petitioner were arrived at pursuant to Revenue Memorandum Circular No. 23-2000 dated November 27, 2000, which provides that in absence of accounting records or other necessary documents for the determination of taxpayer's deficiency internal revenue tax liabilities, the assessment of the tax shall be determined based on the "best evidence obtainable".
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> 16. It is interesting to note that the alleged Certifications from Petron Corporation presented by the petitioner for the FIRST time during its Motion for Reconsideration which was filed already beyond the prescribed period under Section 228, would reveal that there is a discrepancy on what has been declared by the petitioner in her income statement for taxable year 2005 and on the amount that was certified to by Petron Corporation as petitioner's purchases for the year 2005. As per

[16] *Docket*, pp. 63-72.
[17] *Docket*, pp. 74-78.
[18] *Docket*, pp. 79-87.

petitioner's income Statement for the year ended December 31, 2005, it is declared that Purchases amounted to ₱32,147,177.80, whereas, as per the alleged certification from Petron Corporation, the purchases made by the petitioner amounted to ₱35,120,811.31. Did the petitioner intentionally, deliberately cause the discrepancy? And now, petitioner is trying to impress upon this honorable Court of Tax Appeals that the assessments issued against her are void. This should not be allowed.

17. Section 228 of the National Internal Revenue Code of 1997, as amended, provides that: Assessment may be protested to administratively by filing a Request for Reconsideration or Reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as maybe prescribed by implementing rules and regulations, and within sixty (60) days from the filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

The Final Assessment Notice against petitioner was issued on December 4, 2009, and the same was received by petitioner on January 11, 2010. The petitioner should have filed its request for reinvestigation or reconsideration within thirty (30) days from January 11, 2010.

When the petitioner filed her motion for reconsideration on November 17, 2010, the motion for reconsideration is *(sic)* clearly filed out of time. The assessments have long become final and executory. In essence, there are really no disputed assessments to speak of. Hence, there really is no basis for the petitioner's petition for review.

There is a need to admit that when the Revenue District Office No. 25-B-Sta. Maria, Bulacan resolved to deny the motion for reconsideration filed by petitioner, the latter succeeded in her fishing expedition, it paved and opened the way for the petitioner to file her Petition for Review before this Honorable Court of Tax Appeals. However, petitioner failed to remember the elementary principle in political and administrative law, that is; the State cannot be estopped by the neglect or error of its agents and officers. The rule of estoppel cannot be invoked by the taxpayer in order to preclude the collection of taxes that is rightfully due the government.

18. In an effort to destroy the validity of the Final assessment Notice in this case, the petitioner resorted to denial of

> her having signed a waiver of the defense of prescription under the Statute of Limitations. The petitioner would want this honorable Court of Tax Appeals to believe that she is not aware of any waiver. But to this, the Bureau of Internal Revenue is certain that there is indeed a valid waiver and it was duly signed by the petitioner.
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> 19. The petitioner having slept on her right to protest the assessments within the prescribed period, the subject deficiency assessments have become final and executory, hence, there being no disputed assessment to speak of, the right to appeal before this honorable Court of Tax Appeals has no jurisdiction to review assessments that have become final, executory and demandable." *(Citations omitted)*

On April 11, 2011, petitioner filed a Reply.[19] Then, on April 12, 2011, this Court rendered a Resolution[20] granting petitioner's prayer for the suspension of the implementation of the Warrant of Distraint and/or Levy on the condition that petitioner files a surety bond equivalent to one and half (1 ½) times the amount sought to be collected.

Thereafter, on May 6, 2011, respondent filed a Motion for Reconsideration[21] praying that the April 12, 2011 resolution be set aside and a new one be issued denying petitioner's motion to suspend the implementation of the Warrant of Distraint and/or Levy.

On May 24, 2011, petitioner filed a Comment on Respondent's Motion for Reconsideration with Ex-Parte Motion to Set Case for Pre-Trial[22] moving that the case be set for Pre-Trial considering that the issues had been joined since respondent already filed her Answer.

In the Resolution[23] dated July 20, 2011, this Court denied respondent's motion for reconsideration and set the case for pre-trial on August 12, 2011 at 9:00 a.m.

On August 5, 2011, respondent filed Respondent's Pre-Trial Brief.[24]

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[19] *Docket*, pp. 88-93.
[20] *Docket*, pp. 95-102.
[21] *Docket*, pp. 103-106.
[22] *Docket*, pp. 109-111.
[23] *Docket*, pp. 114-118.
[24] *Docket*, pp. 119-124.

During the August 12, 2011 hearing, petitioner's counsel failed to appear despite due notice and likewise failed to file a Pre-Trial Brief. Thus, this Court granted respondent's motion for the dismissal of the present case for failure to prosecute.

Petitioner then filed through registered mail on September 7, 2011 her Motion for Reconsideration,[25] which was received by this Court on September 13, 2011, claiming that her counsel's failure to appear was due to the fact that counsel received the Notice of Resolution dated July 21, 2011 and the Resolution promulgated on July 20, 2011, scheduling the pre-trial on August 12, 2011, only on August 16, 2011. Petitioner further attached her Petitioner's Pre-Trial Brief[26] in the said motion.

This Court, in the Resolution[27] dated September 7, 2011, granted petitioner's motion for reconsideration solely in the interest of substantial justice so as to give petitioner a final opportunity to prosecute her case even though there was no indication from the record confirming petitioners' alleged belated receipt of the notice of pre-trial conference. Accordingly, on October 25, 2011, this Court issued a Notice of Pre-Trial Conference[28] setting the case for Pre-Trial Conference on November 25, 2011 at 9:00 a.m.

On November 11, 2011, in compliance with the Notice of Pre-Trial Conference, respondent filed Respondent's Pre-Trial Brief,[29] while petitioner posted Petitioner's Amended Pre-Trial Brief[30] on December 1, 2011. Then, on February 23, 2012, this Court issued a Pre-Trial Order declaring the Pre-Trial Conference as terminated and ordered petitioner to proceed with her presentation of evidence.

Manifesting that her next witness, Ms. Concepcion Buenaventura, was no longer connected with Buenaventura and Associates Accounting Firm, petitioner filed on June 18, 2012 a Motion for Issuance of *Subpoena Duces Tecum & Ad Testificandum.*[31] On June 22, 2012, this Court granted petitioner's motion and issued the corresponding subpoena.

On August 14, 2012 petitioner filed her Formal Offer of Evidence,[32] offering exhibits "A" to "T-2", inclusive of sub-markings. In response,

[25] *Docket*, pp. 136-138.
[26] *Docket*, pp. 129-135.
[27] *Docket*, pp. 145-148.
[28] *Docket*, pp. 149-150.
[29] *Docket*, pp. 151-155.
[30] *Docket*, pp. 162-168.
[31] *Docket*, pp.208-211.
[32] *Docket*, pp. 220-258.

respondent filed her Comment/Objection (Re: Petitioner's Formal Offer of Evidence)[33] on October 5, 2012 stating that she had no objection to the admission of said exhibits without however admitting their relevancy, materiality and the purpose for which they were being offered. Acting thereon, the Court issued a Resolution[34] on November 9, 2012, admitting most of the exhibits offered, save for exhibits "D", "E" and "R" for being mere photocopies.

Then, after several resettings, Respondent filed Respondent's Formal Offer of Documentary Evidence[35] on July 12, 2013 offering exhibits "1" to "11", inclusive of sub-markings. In response thereto, petitioner filed her Comment on Respondent's Formal Offer[36] on August 14, 2013. In the August 22, 2013 Resolution,[37] this Court admitted all exhibits offered by respondent, save for Exhibits "9", "10" and "11" for failing to comply with the requirements under Section 3 of Administrative Matter (A.M.) No. 12-8-8-SC, otherwise known as the Judicial Affidavit Rule.

On September 10, 2013, respondent filed a Motion for Reconsideration[38] seeking the reconsideration of the August 22, 2013 Resolution by admitting the denied exhibits. Respondent begged the indulgence of this Court claiming that it was mere oversight on the part of respondent's counsel. On the other hand, petitioner filed her Comment on Respondent's Motion for Reconsideration[39] on October 25, 2013 asserting strict interpretation of the said Rule by denying respondent's motion.

In the November 13, 2013 Resolution,[40] this Court ordered respondent to submit replacement judicial affidavits within ten (10) days from notice thereof in accordance with Section 10 of A.M. No. 12-8-8-SC and held the determination of respondent's motion for reconsideration in abeyance pending compliance therewith.

On November 28, 2013, respondent filed the said replacement judicial affidavits[41] in compliance with the said Resolution. Consequently, in the December 17, 2013 Resolution,[42] this Court approved respondent's replacement judicial affidavits thereby admitting the previously denied Exhibits "9", "10" and "11". In view of the said Resolution, this Court, in the January

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[33] *Docket*, pp. 269-271.
[34] *Docket*, pp. 275-276.
[35] *Docket*, pp. 336-341.
[36] *Docket*, pp. 348-352.
[37] *Docket*, pp. 354-355.
[38] *Docket*, pp. 356-362.
[39] *Docket*, pp. 366-369.
[40] *Docket*, pp. 371-374.
[41] *Docket*, pp. 375-401.
[42] *Docket*, pp. 403-404.

2, 2014 Resolution[43], ordered both parties to submit their respective memoranda within thirty (30) days from notice thereof.

Accordingly, respondent filed Memorandum for the Respondent[44] on February 6, 2014 while petitioner submitted Memorandum for the Petitioner[45] on February 26, 2014.

With the filing of the parties' respective memoranda, this Court in the February 28, 2014 Resolution[46] deemed the case submitted for decision.

THE ISSUES

The issues stipulated[47] by the parties are as follows:

1. Whether legal and factual grounds exist to justify invalidation of the assessments made by respondent against petitioner;

2. Whether the administrative protest was seasonably filed by the Petitioner pursuant to Section 228 of the National Revenue Code of 1997, as amended;

3. Whether petitioner signed the Waiver of Statute of Limitations dated September 10, 2008, pertaining to petitioner's internal revenue tax liabilities for taxable year 2005; and

4. Whether the deficiency assessments for taxable year 2005 against the petitioner have become final, executory and demandable.

THE RULING OF THE COURT

The instant issues presented by the parties ultimately boil down to the validity of respondent's assessments against the petitioner. Thus, this Court deems it best to address the issues by presenting them in their chronological sequence of events.

Section 203 of the 1997 NIRC, as amended, mandates that respondent should make an assessment for deficiency taxes within three (3) years from the

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[43] *Docket*, p. 406.
[44] *Docket*, pp. 407-414.
[45] *Docket*, pp. 415-428.
[46] *Docket*, p. 430.
[47] Issues, PTO, *Docket*, p. 188.

last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three-year prescriptive period shall not be valid save in certain cases enumerated under Section 222 of the same code, to wit:

> "**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.
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> 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." *(Underscoring Ours)*
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> "**SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –***
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in 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.
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> The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period.
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> The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
>
> (e) *Provided, however,* That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." *(Underscoring Ours)*

As stated in the above cited provisions, respondent ordinarily has a period of three (3) years within which to assess internal revenue taxes, any assessment notice issued beyond the three-year prescriptive period shall not be valid. However, such rule is subject to certain exceptions, one of which is upon a written agreement between the tax authorities and taxpayer through the execution of a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.

In the instant case, respondent claims that petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code[48] on September 10, 2008. On the other hand, petitioner assails the validity of the waiver on the ground that she never read nor signed the said waiver and did not even appear personally before the notary public when the said document was notarized. Petitioner asserts that it was impossible for her to have signed the assailed waiver since she was studying medicine at that time and it was actually the accounting firm, Buenaventura and Associates, who was attending to all matters regarding the BIR's tax requirements.

This Court finds petitioner's assertions bereft of merit.

Close scrutiny of the documents presented by both parties in their respective Formal Offer of Evidence shows that petitioner's Special Power of Attorney,[49] Letter of Taxpayer Jo Anna Lee Santos, dated June 13, 2009, addressed to the Chief Legal Division Bureau of Internal Revenue,[50] Letter,

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[48] Exhibit "2" for the Respondent.
[49] Exhibit "C".
[50] Exhibit "L".

dated November 8, 2010, of Taxpayer Jo Anna Lee Santos addressed to the BIR Revenue District Office, Sta. Maria, Bulacan,[51] and respondent's Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code,[52] all bear the same signature marking written above petitioner's name, Jo Anna Lee Santos; thereby establishing the logical conclusion that the assailed waiver was indeed executed and duly signed by the petitioner.

Moreover, as correctly pointed out by respondent, the specific denials made against the assailed waiver should have been made by petitioner herself, Jo Anna Lee Santos, and not her appointed agent since she is the one who has the personal knowledge of the circumstances relative to such assertions.

Thus, all told, this Court believes that the assailed Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code was duly executed by petitioner Jo Anna Lee Santos and respondent's revenue officers.

Nonetheless, closer scrutiny of the disputed waiver revealed that the date of acceptance by the Commissioner of Internal Revenue, or the revenue official authorized by her to accept the waiver on her behalf, was not indicated in the said waiver.

In line with this, RMO No. 20-90[53] dated April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01[54] dated August 2, 2001 were issued to set the rules for the proper execution of the waiver; hence:

> "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;
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> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative;
>
> 3. The waiver must be duly notarized;

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[51] Exhibit "P".
[52] Exhibit "2" for the Respondent.
[53] Entitled "Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code".
[54] Entitled "Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription under the Statute of Limitations".

4. The Commissioner of Internal Revenue or the revenue official authorized by him must sign the waiver indicating the BIR's acceptance and agreement to the waiver. **The date of such acceptance by the BIR should be indicated**;

5. Both the date of execution by the taxpayer and the date of acceptance by the BIR should be prior to the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed; and

6. The waiver must be 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.[55]" *(Emphasis ours)*

It must be stressed that failure to comply with the above mentioned rules would render the waiver invalid and would not extend the prescriptive period.

We find, therefore, that the waiver[56] executed by petitioner is invalid for failing to comply with the fourth requirement mentioned above, which states that soon after the waiver is signed by the taxpayer, the CIR or the duly authorized revenue officer to sign on her behalf, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver and that the date of such acceptance by the Bureau must be indicated therein as well. Unfortunately, given the defect noted, no valid agreement between petitioner and respondent could have taken place.

A waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer.[57]

Having found that the Waiver of the Defense of Prescription under the Statute of Limitations has no force of law, this Court shall now determine the prescriptive period within which respondent may assess petitioner. Considering that the taxes involved in respondent's assessments are petitioner's income tax, value added tax, and expanded withholding tax for the taxable year

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[55] *Philippine Journalist, Inc. vs. CIR*, G.R. No. 162852, December 16, 2004.
[56] Exhibits "2".
[57] Supra 54, *citing CIR vs. CA*, G.R. No. 115712, February 25, 1999.

2005, the three (3) years mandated by law from which respondent may assess petitioner shall be counted as follows:

Income Tax

In relation thereto, Sec. 77(B) of the NIRC of 1997, as amended, provides that the three (3) years shall commence from the fifteenth (15th) day of April, or the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

> "**SEC. 77.** ***Place and Time of Filing and Payment of Quarterly Corporate Income Tax. –***
>
> xxx xxx xxx
>
> (B) Time of Filing the Income Tax Return. - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year.
>
> The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be."

Value Added Tax

In case of VAT, the filing of Quarterly VAT Returns must be made within twenty-five (25) days after the close of each taxable quarter prescribed for each taxpayer. Hence, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed by law for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. Corollary thereto, Section 114 (A) of the NIRC of 1997, as amended, provides:

> "**SEC. 114.** ***Return and Payment of Value-Added Tax. -***
>
> (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for

> each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis."

Expanded Withholding Tax

Section 58 of the 1997 NIRC, as amended, provides that:

> "SEC. 58. ***Returns and Payment of Taxes Withheld at Source.***
>
> *(A) Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
>
> The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers. The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: Provided, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government."

Further, Sections 2.58(A)(2) and 2.81 of Revenue Regulations No. 2-98 dated April17, 1998,[58] as amended by Revenue Regulations No. 06-01 dated July 31, 2001,[59] and Revenue Regulations No. 17-03 dated March 31, 2003[60] provide for the period for filing the required returns, scilicet:

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[58] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended, "Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Tax".

[59] Amending Pertinent Provisions of Revenue Regulations Nos. 1-98, 2-98, as Amended, and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon And Others.

"REVENUE REGULATIONS NO. 06-01

xxx xxx xxx

SECTION 4. *Time for Filing of Withholding Tax and Value-Added Tax Returns and the Payment of Taxes Due Thereon.* - The time for filing of the various tax returns as indicated below and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to the existing regulations, as presented below.

(1) Sections 2.58(A)(2) and 2.81 of Revenue Regulations No. 298, as amended, are hereby further amended to read as follows:

xxx xxx xxx

> "SECTION 2.81. FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COMPENSATION (FORM NO. 1601). - Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; provided, however, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year; Provided, however, that with respect to taxpayers, whether large or non-large, who availed of the EFPS, the deadline for electronically filing the aforesaid withholding tax return and paying the tax

[60] Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulation No. 14-2000; and for Other Purposes.

due thereon via the EFPS shall be five (5) days later than the deadlines set above."

"REVENUE REGULATIONS NO. 17-03

xxx xxx xxx

SECTION 5. *Returns And Payments Of Taxes Withheld At Source.*-Section 2.58 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:
"Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) Monthly return and payment of taxes withheld at source.

xxx xxx xxx

(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 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.

Nonetheless, in case of disposition of real property classified as capital asset by an individual to the government, the tax to be imposed shall be determined either under the normal income tax rate imposed in Sec. 24(A) or under a final capital gains tax of six percent (6%) imposed under Sec. 24(D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows the seller's filed income tax return reflecting the result of the subject real estate transaction.

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof."

From the foregoing, the three (3) year prescriptive period is reckoned on the tenth (10th) day of the month following the month the withholding was made, except for taxes withheld for the month of December which shall be filed and paid on or before January 15 of the succeeding year or the actual date of filing of such return, whichever comes later.

In summation, the table below will help shed light in reckoning the three (3) year period within which to assess petitioner:

Deficiency Taxes	Last Day to File Return	Last Day to Assess
IT	April 15, 2006[61]	April 15, 2009
VAT	April 25, 2005[62]	April 25, 2008
	July 25, 2005	July 25, 2008
	October 25, 2005	October 25, 2008
	January 25, 2006	January 25, 2009
EWT	February 10, 2005[63]	February 10, 2008
	March 10, 2005	March 10, 2008
	April 10, 2005	April 10, 2008

[61] **SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax. –**
xxx *xxx* *xxx*
(B) Time of Filing the Income Tax Return. - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year.
The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be. *xxx*

[62] **SEC. 114. Return and Payment of Value-Added Tax. -**
(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer. Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

[63] **Revenue Regulations No. 06-01**, "Amending Pertinent Provisions of Revenue Regulations Nos. 1-98, 2-98, as Amended, and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon And Others".

	May 10, 2005	May 10, 2008
	June 10, 2005	June 10, 2008
	July 10, 2005	July 10, 2008
	August 10, 2005	August 10, 2008
	September 10, 2005	September 10, 2008
	October 10, 2005	October 10, 2008
	November 10, 2005	November 10, 2008
	December 10, 2005	December 10, 2008
	January 15, 2006	January 15, 2009

Bearing in mind that respondent only issued the Final Assessment Notices on December 09, 2009,[64] and considering that assessments are deemed made when notice to this effect is released, mailed or sent to the taxpayer,[65] the three (3) year period within which to asses a taxpayer shall be counted therefrom. Thus, respondent could have only started assessing petitioner from December 09, 2006. Seeing that petitioner filed her Annual Income Tax Return on April 12, 2006,[66] which, as shown in the table above, is the latest date among the three assessed taxes mandated by law within which to pay an internal revenue tax; respondent's assessments are three (3) years, seven (7) months and twenty-four (24) days overdue.

As pronounced in the case of *Commissioner of Internal Revenue vs. FMF Development Corporation,*[67] the Supreme Court held that:

> "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 mandate 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. <u>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.</u>" *(Underscoring ours)*

Time and again, this Court has reiterated that for the purpose of safeguarding taxpayers from any unreasonable examination, investigation or

[64] Exhibits "F" to "H".
[65] *Republic of the Philippines vs. Limaco & De Guzman Commercial Co., Inc., et al.,* G.R. No. L13081, August 31, 1962; *Nava vs. Commissioner of Internal Revenue*, G.R. No. L-19470, January 30, 1965; *Basilan Estates, Inc. vs. Commissioner of Internal Revenue, et al., G.R. No.L-22492, September 5, 1967.*
[66] Exhibit "D".
[67] G.R. No. 167765, June 30, 2008.

assessment, our tax law provides a statute of limitations in the assessment of taxes. Thus, being a remedial measure, the exceptions to the law on prescription should perforce be strictly construed.[68]

Having thus concluded, this Court finds it unnecessary to determine the merit of the other issues raised in the petition, in view of the finding that respondent's right to assess petitioner for deficiency income, value added, and expanded withholding taxes for the taxable year 2005 has already prescribed.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Letter-Decision dated November 24, 2010 rendered by the Revenue District Officer of RDO No. 25-B of Revenue Region No. 5 is **REVERSED** and the Notice of Tax Lien dated October 20, 2010 served at the Register of Deeds, Meycauyan, Bulacan for Transfer Certificate of Title No. T-369883 is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[68] *CIR vs. B.F. Goodrich Phils. and CA*, G.R. No. 104171, February 24, 1999.

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 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court in Division before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice