REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ALCON LABORATORIES (PHILIPPINES), INC., Petitioner,	C.T.A. CASE NO. 7987
	Members:
- versus -	UY, *Chairperson and* FABON-VICTORINO, JJ
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 10 2013 ; 3:00 p.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review dated October 23, 2009 filed by petitioner Alcon Laboratories (Philippines), Inc., challenges the assessments for deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT) in the amounts of Php44,671,434.99, Php4,826,473.56, and Php624,814.36, respectively, issued by respondent through Revenue Region No. 7, appearing in the Formal Letter of Demand[1] (FLD) and Assessment Notices[2] dated December 22, 2008.

Petitioner Alcon Laboratories (Philippines), Inc. is a domestic corporation with principal office 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,

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[1] Exhibit "R"; Exhibit "8", BIR Records, pp. 124 to 127.
[2] Exhibits "9", "10" and "11", BIR Records, pp. 128 to 130.

purchase, import, distribute, sell or lease surgical, medical, optical equipment, instruments, and accessories.[3]

On the other hand, respondent Commissioner of Internal Revenue (CIR), has the authority to decide disputed assessments, subject to review on appeal by the Court of Tax Appeals.[4]

On April 12, 2005, petitioner 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.[5]

For taxable year ending December 31, 2004, petitioner also filed its Quarterly VAT Returns (BIR Form No. 2550Q)[6] and Monthly Remittance Returns of Expanded Withholding Tax (BIR Form No. 1601-E)[7] on the following dates:

Quarter	**Date of Filing of BIR Form No. 2550Q**
First Quarter of 2004	April 6, 2004[8]
Second Quarter of 2004	July 9, 2004[9]
Third Quarter of 2004	October 19, 2004[10]
Fourth Quarter of 2004	January 27, 2005[11]
Month	**Date of Filing of BIR Form No. 1601-E**
January 2004	February 10, 2004[12]
February 2004	March 10, 2004[13]
March 2004	April 6, 2004[14]
April 2004	May 7, 2004[15]
May 2004	June 3, 2004[16]

[3] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 117.
[4] Par. 2, Stipulation of Facts, JSFI docket pp. 117 to 118.
[5] Par. 10, Stipulation of Facts, JSFI docket p. 119; Exhibits "A" and "A-1".
[6] Par. 12, Stipulation of Facts, JSFI, docket, p. 119.
[7] Par. 13, Stipulation of Facts, JSFI, docket, p. 119.
[8] Exhibits "B" and "B-1".
[9] Exhibits "C" and "C-1".
[10] Exhibits "D" and "D-1".
[11] Exhibits "E" and "E-1".
[12] Exhibits "F" and "F-1".
[13] Exhibits "G" and "G-1".
[14] Exhibits "H" and "H-1".
[15] Exhibits "I" and "I-1".
[16] Exhibits "J" and "J-1".

June 2004	July 6, 2004[17]
July 2004	August 6, 2004[18]
August 2004	September 10, 2004[19]
September 2004	October 14, 2004[20]
October 2004	November 8, 2004[21]
November 2004	December 14, 2004[22]
December 2004	January 12, 2005[23]

On November 17, 2005, petitioner received a copy of the Letter of Authority (LOA) No. 2000 00090845[24] 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 petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2004 to December 31, 2004.[25]

Petitioner's Finance Manager, Antonio H. Miguel, executed a "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code"[26] extending the prescriptive period to assess petitioner for deficiency internal revenue taxes for the year ending December 31, 2004 to December 31, 2008.

On December 5, 2008, respondent issued a Preliminary Assessment Notice[27] (PAN) dated September 16, 2005, assessing petitioner for deficiency income tax, VAT, and EWT for the year ending December 31, 2004.

On December 23, 2008, respondent sent through registered mail a Final Letter of Demand(FLD)[28] with

[17] Exhibits "K" and "K-1".
[18] Exhibits "L" and "L-1".
[19] Exhibits "M" and "M-1".
[20] Exhibits "N" and "N-1".
[21] Exhibits "O" and "O-1".
[22] Exhibits "P and "P-1".
[23] Exhibits "Q" and "Q-1".
[24] Exhibit 1", BIR Records, p. 1.
[25] *Id.*
[26] Exhibit "T"; Exhibit "2", BIR Records, p. 101.
[27] Exhibit "7", BIR Records, pp. 120 to 123.
[28] Exhibit "R"; Exhibit "8", BIR Records, pp. 124 to 127.

Assessment Notices[29] dated December 22, 2008, assessing petitioner the same tax deficiencies in the total amount of Php50,122,722.91, 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**

Petitioner received the FLD and Assessment Notices on December 29, 2008.[30]

On January 28, 2009, petitioner filed with Revenue Region No. 7 a protest letter dated January 28, 2009.[31]

On March 27 and 30, 2008, petitioner submitted to Revenue Region No. 7 the documents in support of its protest.[32]

On October 26, 2009, petitioner filed the instant Petition for Review on account of respondent's inaction.[33]

On December 28, 2009, respondent filed her Answer[34] 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

[29] Exhibits "9", "10" and "11", BIR Records, pp. 128 to 130.
[30] Par. 4, Stipulation of Facts, JSFI, docket, p. 118; Exhibit "S", inclusive of sub-marking.
[31] Par. 5, Stipulation of Facts, JSFI, docket, p. 118.
[32] Par. 6, Stipulation of Facts, JSFI, docket p. 118
[33] Par. 7, Stipulation of Facts, JSFI, docket p. 118; Petition for Review, docket, pp. 1 to 32.
[34] Answer, docket, pp. 81 to 85.

of 1997, as amended, since petitioner, through its Finance Manager Antonio H. Miguel, executed a Waiver of the Defense of Prescription pursuant to Section 222(b) of the NIRC.

Finally, respondent 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,[35] the Court approved the parties' Joint Stipulation Of Facts And Issues[36] dated February 26, 2010 and deemed the pre-trial terminated.

In support of its case, petitioner 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, petitioner filed its Annual Income Tax Return for the year 2004. Petitioner 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, petitioner 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 respondent as indicated in the FLD dated December 22, 2008 and received by petitioner on December 29, 2008, have already prescribed having been issued beyond the three (3)- year prescriptive period mandated by law.

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[35] Docket, p. 137.
[36] Docket pp. 117-122.

Further, the Waiver of the Statute of Limitations which he signed in his capacity as Finance Manager of petitioner, 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 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 witness 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[37] 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 petitioner's books of accounts.

Attorney Jaime V. Cruz basically declared[38] that as petitioner's legal counsel, he secured the BIR approval on petitioner'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.

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[37] Judicial Affidavit dated January 14, 2011 acknowledged on January 17, 2011.
[38] Judicial Affidavit dated February 21, 2011, Exhibit A^4.

Respondent sole witness Revenue Officer Marilyn A. King testified[39] that she conducted the investigation and examination of petitioner's books of accounts pertaining to this case. On January 10, 2007, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations extending respondent's right to assess it for taxable year 2004 until December 31, 2008. Petitioner 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 petitioner'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 petitioner. 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 petitioner 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 respondent. 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 acknowledgement by the notary public in the Waiver contains the Community Tax Certificate of the affiant for the year 2008. The year 2008 in the acknowledgement 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 respondent on January 10, 2007. After notarization, she served a copy of the Waiver to petitioner through Antonio H. Miguel. The erasures and alteration in

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[39] Judicial Affidavit dated March 15, 2012, Exhibit 13

the acknowledgement 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.[40]

STATEMENT OF ISSUES

The parties submitted the following issues[41] for the resolution of the Court:

> a) Whether respondent's right to assess petitioner the alleged deficiency income tax, VAT and EWT is barred by prescription.
>
> b) Whether petitioner signed, was given and actually received a copy of the Waiver.
>
> c) Assuming that petitioner signed, was given and actually received a copy of the alleged Waiver, whether the alleged Waiver is invalid and defective.
>
> d) Whether the deficiency income tax assessment has legal and factual basis.
>
> e) Whether the deficiency VAT assessment has legal and factual basis.
>
> f) Whether the deficiency EWT assessment has legal and factual basis.

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[40] Resolution dated August 29, 2012, Volume II, docket, p. 815.
[41] Statement of the Issues, Joint Stipulation of Facts and Issues, docket, p. 120.

DISCUSSION/RULING

As in other assessment cases, the timeliness of the filing of the petition for review must first be ascertained.

Section 228 of the National Internal Revenue Code (NIRC), as amended, is instructive, thus:

> SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manger as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within

> thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)- day period; otherwise, the decision shall become final, executory and demandable.

It has been stipulated that petitioner received the FLD dated December 22, 2008 with Assessment Notices on December 29, 2008.[42] Thus, petitioner seasonably filed its protest with BIR Revenue Region NO. 7[43] on January 28, 2009, or within thirty (30) days from such receipt pursuant to the above provision.

On March 27 and 30, 2009, or within the 60-day period prescribed under Section 228, petitioner submitted to Revenue Region No. 7 the documents in support of its protest.[44]

From March 30, 2009, the last day for the submission of supporting documents, respondent had 180 days or until September 26, 2009 to act on the protest. Thereafter, petitioner had 30 days or until October 26, 2009 within which to appeal to the CTA. Evidently, the instant Petition for Review was timely filed with the Court on October 26, 2009.

On the issue that the subject assessment has prescribed rendering the Court without any authority to determine the petition, Section 203 of the NIRC, as amended, relevantly provides as follows:

> SEC. 203. *Period of Limitation Upon Assessment and Collection*. - Except as provided in Section 222, **internal revenue taxes shall be assessed within three**

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[42] Par. 4, Stipulation of Facts, JSFI, docket p. 118
[43] Par. 5, Stipulation of Facts, JSFI, docket p. 118
[44] Par. 6, Stipulation of Facts, JSFI, docket p. 118; the last day to submit relevant supporting documents in support of the protest fell on a Sunday, on March 29, 2009, thus, petitioner had until March 30, 2009, the next succeeding business day, within which to submit the supporting documents

> **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-year period shall be counted from the day the return was filed**. For purposes of this section, **a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**. (*Emphasis supplied*)

Clearly, internal revenue taxes must be assessed within three years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later.[45]

Pursuant to Section 77 of the NIRC[46], as amended, a taxpayer must file its annual income tax return on or before the fifteenth (15th) day of the fourth month following the close of the fiscal year. In this case, petitioner filed its Annual ITR for taxable year 2004 on April 12, 2005.[47] Applying Section 203, the BIR had until April 15, 2008, within which to assess petitioner for deficiency income tax for taxable year 2004.

With regard to VAT, Section 114(A) of the NIRC, [48] as amended, and Revenue Regulations (RR) No. 07-95[49], as

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[45] Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008.
[46] Sec. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* - 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.
[47] Exhibits "A" and "A-1".
[48] "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.
Xxx xxx xxx."
[49] "SEC. 4.110-1. Filing of return and payment of VAT. —

amended by RR No. 08-02, requires that Quarterly VAT Returns be filed within twenty-five (25) days following the close of each taxable quarter. Below is the summary of the dates of filing of petitioner's Quarterly VAT Returns and the corresponding dates within which respondent should assess petitioner for deficiency VAT for the four quarters of the year 2004, to wit:

Period	Date of Filing of BIR Form No. 2550Q	Last Day of Filing as Required by Law	Last Day to Assess
First Quarter of 2004	April 6, 2004[50]	April 26, 2004[51]	April 26, 2007
Second Quarter of 2004	July 9, 2004[52]	July 26, 2004[53]	July 26, 2007
Third Quarter of 2004	October 19, 2004[54]	October 25, 2004	October 25, 2007
Fourth Quarter of 2004	January 27, 2005[55]	January 25, 2005	January 28, 2008[56]

Insofar as EWT is concerned, RR No. 02-98[57], as amended by RR No. 06-01, requires the filing of the monthly

"A) Filing of Return. — Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of the taxable quarter using the latest version (April 2002 (ENCS) version) of Quarterly VAT Return (BIR Form 2550Q-April 2002 (ENCS)) hereto attached as Annex "A". The term "taxable quarter" shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e., calendar quarter or fiscal quarter).
Xxx xxx xxx."

50 Exhibits "B" and "B-1".
51 April 25, 2004 fell on a Sunday.
52 Exhibits "C" and "C-1".
53 July 25, 2004 fell on a Sunday.
54 Exhibits "D" and "D-1".
55 Exhibits "E" and "E-1".
56 January 27, 2008 fell on a Sunday.
57 "Sec. 2.58 - Returns and Payment of Taxes Withheld at Source.
(A) Monthly return and payment of taxes
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."

withholding tax returns within ten (10) days after the end of each month for the months of January until November, while that for the month of December should be filed on or before January 15 of the following year. The dates of the filing of petitioner's Monthly EWT Returns as well as the last day for respondent to assess for deficiency EWT are summarized below, *viz*:

Month Covered	Date of Filing of BIR Form No. 1601-E	Last Day of Filing as Required by Law	Last Day to Assess
January 2004	February 10, 2004[58]	February 10, 2004	February 12, 2007[59]
February 2004	March 10, 2004[60]	March 10, 2004	March 12, 2007[61]
March 2004	April 6, 2004[62]	April 12, 2004[63]	April 12, 2007
April 2004	May 7, 2004[64]	May 10, 2004	May 10, 2007
May 2004	June 3, 2004[65]	June 10, 2004	June 11, 2007[66]
June 2004	July 6, 2004[67]	July 12, 2004[68]	July 12, 2007
July 2004	August 6, 2004[69]	August 10, 2004	August 10, 2007
August 2004	September 10, 2004[70]	September 10, 2004	September 10, 2007
September 2004	October 14, 2004[71]	October 11, 2004[72]	October 15, 2007[73]
October 2004	November 8, 2004[74]	November 10, 2004	November 12, 2007[75]
November 2004	December 14, 2004[76]	December 10, 2004	December 14, 2007
December 2004	January 12, 2005[77]	January 17, 2005[78]	January 17, 2008

[58] Exhibits "F" and "F-1".
[59] February 10, 2007 fell on a Saturday.
[60] Exhibits "G" and "G-1".
[61] March 10, 2007 fell on a Saturday.
[62] Exhibits "H" and "H-1".
[63] April 10, 2004 fell on a Saturday.
[64] Exhibits "I" and "I-1".
[65] Exhibits "J" and "J-1".
[66] June 10, 2007 fell on a Sunday.
[67] Exhibits "K" and "K-1".
[68] July 10, 2004 fell on a Saturday.
[69] Exhibits "L" and "L-1".
[70] Exhibits "M" and "M-1".
[71] Exhibits "N" and "N-1".
[72] October 10, 2004 fell on a Sunday.
[73] October 14, 2007 fell on a Sunday.
[74] Exhibits "O" and "O-1".
[75] November 10, 2007 fell on a Saturday.
[76] Exhibits "P and "P-1".
[77] Exhibits "Q" and "Q-1".
[78] January 15, 2005 fell on a Saturday.

Therefore, the last day for respondent 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[79] and the Assessment Notices,[80] for alleged deficiency income tax, VAT, and EWT for the year 2004 were sent by respondent through registered mail only on December 23, 2008[81] and was received by petitioner only on December 29, 2008.[82] *A fortiori*, the subject assessments were issued beyond the three-year prescriptive period allowed under Section 203 of the NIRC, as amended.

In the futile attempt to extend the three (3)-year prescriptive period to assess, respondent claimed that petitioner through its Finance Manager, Antonio H. Miguel, executed a Waiver of the Defense of Prescription.[83] The pertinent details of the said Waiver are summarized, as follows:

Extended Date of Prescription	Date of Execution	Date of Acceptance by BIR	Date of Acknowledgment	BIR Signatory	Fact/Date of Receipt by Petitioner
December 31, 2008	January 10, 2007	None	January 10, 2007/Community Tax Certificate of Mr. Miguel appears to have been issued on January 6, 2008	Benito B. Wong, Revenue District Officer of RDO No. 042	Signature of Mr. Miguel appears on the face of the Waiver/No indication as to petitioner's date of receipt of its copy of the accepted Waiver

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[79] Exhibit 8, BIR Record pp. 126-127.
[80] Exhibits "9", "10" and "11", BIR Records, pp. 128 to 130.
[81] Para 3, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, p. 118.
[82] Par. 4, Stipulation of Facts, JSFI, docket, p. 118; Exhibit "S".
[83] Exhibit "T"; Exhibit "2", BIR Records, p. 101.

Section 222(b) of the NIRC of 1997, as amended, provides:

> **SEC. 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -
>
> xxx xxx xxx
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon**. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. (*Emphasis supplied*)

Pursuant to the foregoing provision, the period to assess and collect taxes may be extended only upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the road map for the proper execution of the 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.
>
> 3. The waiver should be duly notarized.
>
> 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 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.[84]

On the basis of the foregoing, 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. The argument of respondent's witness, Marilyn A. King, that the date of acceptance of the Waiver by Revenue District Officer Wong need not be indicated on the space provided

[84] Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 05, 2010.

since the date of acceptance is the same as the date of execution of the Waiver is by no means acceptable.

Settled is the rule that in order for Waivers to be valid, the date of acceptance by respondent must be specifically indicated.[85] It determines whether or not the acceptance was made within the prescriptive period; if the acceptance was made after the prescriptive period, the same is ineffectual because there is no period to extend.[86]

The strict compliance with the requirement that the date when the Waiver was accepted by the CIR or his duly authorized official be indicated was emphasized by the Supreme Court in the following manner:

> The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period of assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. . .
>
> xxx xxx xxx
>
> RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. **A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed**, thus:

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[85] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010; *Commissioner of Internal Revenue vs. FMF Development Corporation*, G. R. No. 167765, June 30, 2008; *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[86] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, CTA Case No. 7397, April 9, 2008.

> In the execution of said waiver, the following procedures should be followed:
>
> 1. The waiver **must be** in the form identified hereof. This form may be reproduced by the Office concerned **but there should be no deviation from such form. The phrase 'but not after ___________ 19___' should be filled up...**
>
> 2. xxx
>
> Soon 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.** xxx [87] (*Emphasis supplied*)

In another case, the Supreme Court reiterated its ruling as follows:

> Soon 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.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be <u>before</u> the expiration of the period of prescription or <u>before</u> the lapse of the

[87] Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

> period agreed upon in case a subsequent agreement is executed.
>
> xxx xxx xxx
>
> Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. xxx xxx **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. [88] (Emphasis supplied)

Respondent's allegation that the delay in the conduct of the investigation was mainly and primarily attributable to petitioner who requested to delay and defer the investigation is not credible. Not only that respondent failed to substantiate it but more importantly, any delay by the taxpayer is not an excuse for respondent to issue the assessment beyond the prescriptive period, thus it was ruled:

> Conversely, in this case, the assessments were issued beyond the prescribed period. Also, **there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments**.
>
> x x x x x x x x x

w/

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

> **As to the alleged delay of the respondent to furnish the BIR of the required documents, this cannot be taken against respondent. Neither can the BIR use this as an excuse for issuing the assessments beyond the three-year period because with or without the required documents, the CIR has the power to make assessments based on the best evidence obtainable.** [89] (*Emphasis supplied*)

The Court cannot also subscribe to respondent's contention that the essential elements of a valid waiver pursuant to Article 6 of the New Civil Code are present in this case.

It must be pointed out that the execution of the Waiver is governed not by the general provisions of the New Civil Code but by the NIRC, as amended, following the basic principle in statutory construction that a special law prevails over a general law.[90]

Finally, the subject Waiver has other infirmities which cannot just be ignored as it will render the legal provisions on the matter inutile to the prejudice of the taxpayers.

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 respondent'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.[91] For

[89] Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 05, 2010.
[90] *Id.*
[91] Transcript of Stenographic Notes (TSN), April 19, 2012, pp. 29 to 30.

another, petitioners' 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 petitioner, which is a requirement for its validity. While a signature of Antonio H. Miguel appears on the lower portion of the Waiver,[92] 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 petitioner supposedly received the accepted Waiver was likewise not indicated.

The date of alleged execution and notarization of the Waiver on January 10, 2007 is also dubious given that the Community Tax Certificate (CTC) of the affiant used in Acknowledgment of the Waiver was issued on January 6, 2008. The claim of respondent'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,[93] and the Deed of Sale dated December 19, 2008[94] submitted by petitioner 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 petitioner, the Waiver could not have been executed on January 10, 2007 because 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:

[92] Exhibit "2-A", BIR Records, p. 101.
[93] Exhibit U
[94] Exhibit V

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

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.[95]

Since the Waiver is not valid and produces no legal effect, the exception provided under Section 222(b) of the NIRC of 1997, as amended, finds no application in this case. As such, the original three-year prescriptive period to issue the deficiency income tax, VAT, and EWT assessment as required under Section 203 of the NIRC of 1997, as amended, shall apply. The FLD and Assessment Notices dated December 22, 2008, are therefore void for being issued beyond the prescriptive period provided under Section 203 of the NIRC of 1997, as amended.

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

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[95] *Commissioner of Internal Revenue vs. Intel Technology Philippines, Inc.*, C.T.A. E.B. Case No. 379, November 18, 2008, citing *Ouano v. Court of Appeals*, G.R. No. 129279, 4 March 2003, 398 SCRA 525, citing *People v. Donato*, G.R. No. 72969, 5 June 1991, 198 SCRA 130, cited in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

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.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

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.

ERLINDA P. UY
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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