REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TRADERS AUTOCENTER, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6919

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 18 2004

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RESOLUTION

This resolves petitioner's **Motion to Cancel Assessment on the Ground of Prescription** and respondent's **Comment** thereto.

On May 24, 2004, petitioner filed the instant motion asserting that there exists a "prejudicial issue of whether or not the right of respondent to assess and to collect the alleged deficiency income tax for taxable year 1999 is already barred by prescription" which must be resolved before proceeding with the trial proper.

As a background, petitioner was assessed for deficiency income tax for the calendar year 1999. It requested for reinvestigation and it also executed a Waiver of Statute of Limitations on March 21, 2003 which was accepted and agreed to by OIC Asst. Regional Director Romeo P. Buan. Subsequently, respondent issued a preliminary assessment notice for deficiency income tax penalties to petitioner for its failure to file quarterly income tax, use of unregistered books and registration fees.

Petitioner is now contesting the said waiver and argues that the waiver is void as it failed to conform to the requirements set forth in RMO No. 20-90, to wit: (a) it does not show on its face the date of acceptance thereof by respondent; and (b) it does not show on its face the fact of receipt of a copy thereof by petitioner. It also cited the Court's ruling that a waiver suffering from legal infirmities is invalid and, hence, there is no valid extension of the period within which respondent may issue an assessment notice as found in the following cases: *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (CTA Case No. 6108, May 14, 2002); *FMF Development Corporation vs. Commissioner of Internal Revenue* (CTA Case No. 6153, March 20, 2003); *Pfizer vs. Commissioner of Internal Revenue* (CTA Case No. 6135, April 21, 2003); and, *Pelican vs. vs. Commissioner of Internal Revenue* (CTA Case No. 5997, May 16, 2003).

In opposing petitioner's motion, respondent argues that the right of respondent to assess and collect deficiency tax has not yet prescribed because the Waiver of the Statute of Limitations executed by petitioner on March 21, 2003 extended the period of assessment up to October 15, 2003. Citing *Commissioner of Internal Revenue vs. Philippine Journalists, Inc.* (CA-G.R. SP No. 72128, August 5, 2003), he asserts that the grounds raised by petitioner are merely formal in nature and do not affect the validity of the said waiver.

In its Reply filed on September 1, 2004, petitioner posits that this Court is not stringently tied up with the opinion of the Court of Appeals in the aforecited *Philippine Journalists, Inc.* case and, in its own language, advanced the following reasons:

> "a. Republic Act No. 9282 has elevated this Honorable Court to the same level as the Court of Appeals;
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> b. This Honorable Court and the Court of Appeals are now co-equal courts, but because of the nature of their respective jurisdictions, the former is more competent to decide on tax issues;
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> c. The Supreme Court has yet to rule on the issue, and therefore the same is still unsettled;
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> d. Lastly, in the Philippine Journalists Case, this Honorable Court was right and the Court of Appeals was wrong, as clearly demonstrated in petitioner's Motion to Cancel Assessment on the Ground of Prescription. We adhere in our country to the doctrine of *stare decisis* for

> reasons of stability in the law. The doctrine, which is really 'adherence to precedents', states that once as (sic) case has been decided one way, then another case, involving exactly the same point in issue, should be decided in the same manner. Of course, when a case has been decided erroneously, such an error must not be perpetuated by blind obedience to the doctrine of *stare decisis*. No matter how sound a doctrine may be, and no matter how long it has been followed through the years, still if found contrary to law, it must be abandoned. The principle of *stare decisis* does not and should not apply when there is a conflict between the precedent and the law (*Tan Chong vs. Secretary of Labor, 79 Phil. 249*). While stability in the law is eminently to be desired, idolatrous reverence for precedent, simply as precedent, no longer rules. More pregnant than anything else is that the court shall be right (*Phil. Trust Co. vs. Mitchell, 69 Phil. 30*)."

Furthermore, in its Supplemental Reply filed on September 9, 2004, petitioner added that the pronouncement made in the *Philippine Journalists, Inc.* case regarding the issue of the validity of a waiver is merely an *obiter dictum*. Thus, the same should not to be considered as part of the *ratio decidendi* and does not establish a jurisprudence which may be applied in the present case.

In resolving the issue raised at bar, this Court finds it relevant to quote hereunder Section 203 of the 1997 National Internal Revenue Code, as amended. Thus:

> **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. 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 supplied)*

However, Section 222 thereof provides for exceptions on the period of limitation of assessment and collection of taxes. We quote:

> (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. *(Underscoring supplied)*

To begin with, we must define what is an "agreement" referred to in the above-quoted paragraph in our Tax Code. An "agreement" is defined in the Webster's Third New International Dictionary as "the act of agreeing or coming to a mutual arrangement; an arrangement (as between two or more parties) as to a course of action; a contract duly executed and legally binding on the parties entering into it." From the foregoing, the "agreement" contemplated in Section 222(b) shall be interpreted simply as a written contract for the waiver of the statute of limitations as provided for in Section 203. Such written contract must be duly executed, entered into and signed by and between the taxpayer and the Commissioner of Internal Revenue before the expiration of time prescribed in the tax code. No other formalities are required. It need not even be in a public instrument or made under oath.

In the case of ***Enron Subic Power Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 6029, November 4, 2003***, this Court enunciated:

> Based on the above provisions, if before the expiration of the three-year period to assess, both the Commissioner and the taxpayer agreed in writing that an assessment may still be had after such time, the tax may be assessed **within the period agreed upon**. And the period agreed upon may be extended by subsequent written agreement **made before the expiration of the period previously agreed upon**.
>
> Thus, the law is quite clear that the three-year prescriptive period to assess may be extended upon mutual agreement by the Commissioner and the taxpayer in writing and such period may still be extended if another written agreement is executed before the expiration of the new period to assess. Meaning to say, the period agreed upon also expires. The Tax Code is quite plain, definite and free from ambiguity on the matter. It does not provide that the prescriptive period to assess may be waived altogether or that there will be no more prescriptive period to assess the taxpayer by the mere execution of the Waiver of Statute of Limitations, as the written agreement between the Commissioner and the taxpayer is so described. x x x
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> In other words, the three-year period to assess is merely **extended** when the Commissioner and the taxpayer execute a Waiver of Statute of Limitations. It is not therefore valid when the waiver totally removes the limit within which

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to assess a taxpayer of deficiency taxes. xxx" *(Underscoring supplied)*

Moreover,

"The agreement to 'waive the running of the prescriptive period' should not be interpreted to mean as a waiver of the prescriptive period. After all, what has been waived was merely the **running of the prescriptive period** and not the prescriptive period *per se*. Besides, if we take the agreement to mean as a waiver of the prescriptive period, then the provision of Section 222(b) becomes useless. Expressed otherwise, a law has been made inutile by a mere written agreement of the parties. Indeed, parties may enter into any contract and may establish such stipulations, clauses, terms and conditions as they may deem convenient. However, such stipulations, clauses, terms and conditions must not be contrary to law, morals, good customs, public order, or public policy."

To reiterate, Section 222 (b) of the 1997 NIRC clearly provides that both the Commissioner of Internal Revenue and the taxpayer may agree in writing that the tax may be assessed within the period agreed upon provided that such agreement is executed prior to the expiration of the period to make an assessment. The law does not strictly require any additional or detailed requirements like those set forth in RMO No. 20-90. Such written agreement duly signed by the parties shall be given full force and effect as long as it is not contrary to law, morals, good customs, public order or public policy.

With respect to the date of respondent's acceptance of the waiver, the Court holds that the date the waiver was signed by petitioner as stated thereon shall be deemed as the date the waiver was accepted by respondent. In this respect, we are persuaded by the Court of Appeals' opinion found in *CIR vs. Philippine Journalists, Inc.* (supra.). This is consistent with the court's practice of according due respect to the decisions of the appellate court which have persuasive effect in disposing of tax cases submitted for resolution or decision.

On the other arguments raised by petitioner, the Court recognized the ruling of the Supreme Court in the case of ***Teodora L. Vda. De Miranda y Otros vs. Feliciano Imperial y Juana de Imperial, No. 49090, February 28, 1947 (77 Phil. 1066)*** that decisions of the Supreme Court and the unreversed decisions of the Court of Appeals on cases of first impression establish jurisprudence or doctrines in the Philippines *(Paras on Civil Code of the Philippines, Book I, 13th Ed., 1994, p.61).* Further, "this rule does not militate against the fact that a conclusion or pronouncement of the Court of Appeals which covers a point of law still undecided in the Philippines may still serve as a *judicial guide* to the inferior Courts. It is even possible that such conclusion or pronouncement can be raised to the status of a doctrine, if after it has been subjected to test in the crucible of analysis and revision, the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence" ***(Teodora L. Vda. De Miranda y Otros vs. Feliciano Imperial y Juana de Imperial, supra; Gaw Sin Gee v. Market Master of the Divisoria Market, et al., C.A., 46 O.G. 2617; Paras on Civil Code of the Philippines, Book I, 13th Ed., 1994, pp.64-65)***.

However, it is also a recognized and well-settled principle that the Supreme Court will not set aside the conclusion reached by this Court which is dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject ***(Luzon Stevedoring Corp. vs. Court of Tax Appeals & The Commissioner of Internal Revenue, L-30232, July 29, 1988)***.

Considering the enactment of Republic Act No. 9282, which has elevated this court on the same level as that of the Court of Appeals, Our conclusions or pronouncements may also serve as a *judicial guide* to the inferior courts, and eventually be considered as a doctrine if the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.

In sum, considering that the subject waiver in the case at bar was made in writing and it appears that it was executed before the expiration of the three (3)-year prescription period, this Court rules for its validity and, thus, concludes that the same shall be binding upon both parties.

WHEREFORE, this court hereby **RESOLVES TO DENY** the instant motion for lack of merit. The parties are hereby **ORDERED** to proceed with the trial limiting the presentation of their evidence only to relevant matters that have not been covered by their "Joint Stipulation of Facts and Issues" filed on August 23, 2004.

Accordingly, let this case be set for hearing on January 19, 2005 at 9:00 a.m. for the initial presentation of evidence for the petitioner.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
(Chairman)

Olga P. Enriquez
OLGA P. ENRIQUEZ
Associate Justice

ERLINDA P. UY
Associate Justice

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