Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC
* * * * * * * *

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ALCON LABORATORIES, INC.,
Respondent.

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

Present:

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

Promulgated:

FEB 27 2015 2:51 p.m.

x---x

RESOLUTION

CASTAÑEDA, JR., J.:

For joint resolution are petitioner's "Motion for Reconsideration" filed on November 11, 2014 and respondent's "Motion to Admit (Petitioner's[1] Comment dated 2 February 2015)" with attached Comment thereon filed on February 3, 2015.

In the motion to admit, respondent stresses that on January 23, 2015, it received a copy of the resolution ordering it to file comment within 10 days. Having finished the same on its 10th day or on February 2, 2015, the attached comment was not timely filed through registered mail. Respondent also emphasized that the motion was not intended to delay this case.

[1] Should be read as "Respondent's".

In the interest of substantial justice, we resolve to admit respondent's comment and the latter will now form part of the record of the case.

Anent petitioner's Motion for Reconsideration, she raises the following grounds:

> WITH ALL DUE RESPECT, THE HONORABLE COURT EN BANC ERRED WHEN IT HELD THAT THE AUTHORITY OF PETITIONER TO ASSESS RESPONDENT FOR DEFICIENCY INCOME TAX, VALUE ADDED TAX AND EXPANDED WITHHOLDING TAX FOR TAXABLE YEAR 2004 HAS ALREADY PRESCRIBED [;] [and]
>
> THE GOVERNMENT IS NOT BOUND BY THE ERRORS COMMITTED BY ITS AGENTS [.]

In her first assignment of error, petitioner insists that prior to the expiration of petitioner's right to assess respondent, a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code was executed by respondent. In fact, a copy of the said waiver was duly received by respondent through its Finance Manager, Antonio H. Miguel and was accepted by petitioner. With such valid waiver, her right to assess has not prescribed.

Respondent counters in its comment that the Waiver of the Defense of Prescription Under the Statute of Limitations is marred with irregularities since the Court in Division, as affirmed by this Court validly identified the defects surrounding its execution. Also, even assuming that Mr. Miguel indeed executed said waiver, the same cannot withstand the test of validity since the date as to when petitioner's Revenue Officer accepted it was not clearly indicated on its face. Respondent relied on the ruling of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[2] where the Supreme Court held that the date of acceptance must be strictly complied with in order for the waiver to be valid.

Petitioner's argument is unavailing. Section 222 of the National Internal Revenue Code, as amended,[3] provides in relevant part that the period to assess and collect taxes may be extended upon a written agreement between the Commissioner

---

[2] G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[3] SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*. –

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

of Internal Revenue and the taxpayer before the three-year prescriptive period sets in. That written agreement is in the form of a Waiver of the Defense of Prescription Under the Statute of Limitations as provided in RMO 20-90 and RDAO 05-01. This was elaborated in *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[4] where the Supreme Court had the occasion to lay down the requisites of a valid waiver, to wit:

> 1. The waiver must be in proper form prescribed by RMO 20-90. The phrase "but not after ________ 19 ______", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. **In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**
>
> 3. **The waiver should be duly notarized.**
>
> 4. **The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before the signing of 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 the 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**

[4] G.R. No. 178087, May 5, 2010, 620 SCRA 232, 243-244.

> **notified of the acceptance of the BIR and the perfection of the agreement**. (With emphasis)

Under this factual milieu, it shows that the waiver was not duly notarized prior to the Revenue District Officer's acceptance. It was likewise disclosed that the alleged receipt of respondent's Finance Manager was dubious given that Mr. Miguel's signature which appears on the lower left portion of the waiver is not a clear cut indication that it was indeed received. In fact, Mr. Miguel did not personally acknowledge the execution of the questioned waiver before the notary public. As held in *Commissioner of Internal Revenue v. FMF Development Corporation*,[5] a waiver which failed to indicate the date of acceptance shall not extend the prescriptive period as provided in RMO No. 20-90:

> Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. x x x **it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement**. (Emphasis added)

Other defects which brought about its infirmity were also identified such as the inconsistency on the details of the notarial register apparently as a result of alterations and erasures and the discrepancy between the dates the Community Tax Certificate was issued and the waiver's date of issuance. At this juncture, the ruling in *Philippine Journalists*[6] finds support in the recent holding of the High Court in *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated*,[7] where it further elaborated on the significance of a valid waiver:

> In *Philippine Journalist[s], Inc. v. Commissioner of Internal Revenue*, the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. **Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate**

---

[5] G.R. No. 167765, June 30, 2008, 556 SCRA 698, 708-709.
[6] Supra at note 2.
[7] G.R. No. 187589, December 3, 2014.

> **cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. The right would prescribe absent any showing of a valid extension of the period set by law.**
>
> To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to, or by disagreeing with the extension. **A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription, but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due**. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.
>
> Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. **A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government**. (Emphasis added)

Lastly, petitioner's invocation that the government is not bound by the errors or mistakes committed by its agents is bereft of basis. This time-honored rule is not without exceptions. For one, the rule on non-estoppel of the government is not designed to perpetrate an injustice,[8] especially if this is founded on an issuance that is tainted with irregularity. As squarely held in the *FMF Development*[9] ruling:

> Consequently, petitioner cannot rely on its invocation of the rule that the government cannot be estopped by the mistakes of its revenue officers in the enforcement of RMO No. 20-90 because the law on prescription should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law. To the Government, its tax officers are obliged to act promptly

---

[8] *Leca Realty Corporation v. Republic of the Philippines,* G.R. Nos. 155605 & 160179, September 27, 2006, 503 SCRA 563.
[9] Supra at note 5.

> in the making of assessment so that taxpayers, after the lapse of the period of prescription, would have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents. (Underscoring added)

WHEREFORE, petitioner's "Motion for Reconsideration" is **DENIED** for lack of merit. On the other hand, respondent's "Motion to Admit (Petitioner's Comment dated 2 February 2015)" is **GRANTED** and the attached comment is **ADMITTED** in the interest of substantial justice.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice