Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

TAISHO HIZON MANUFACTURING, INC.,
Petitioner,

- versus -

COMMISIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7031

Members:

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, *JJ*.

Promulgated:

MAY 24 2005

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RESOLUTION

This resolves petitioner's "MOTION FOR EARLY RESOLUTION OF THE ISSUE OF PRESCRIPTION" filed on February 15, 2005.

Paragraph 2 of the motion states that the parties entered into a *Joint Stipulation of Facts*, as follows:

> "a. Petitioner filed its annual income tax return for taxable year 1998 on April 13, 1999;
>
> "b. Petitioner filed the December, 1998 return, the last of its monthly remittance return of Income Taxes withheld for the year 1998 on January 25, 1999;
>
> "c. On May 21, 2003 or over four (4) years from the time petitioner filed its returns (for Income Tax, Expanded Withholding Tax and VAT), petitioner executed a waiver of the Defense of Prescription under the Statute of Limitations of the Internal Revenue Code;
>
> "xxx xxx xxx

"d. The May 21, 2003 waiver of the defense of prescription under the statute of limitations was executed more than (3) years from the filing of Petitioner's 1998 annual income tax return.

"e. The May 21, 2003 waiver of defense of prescription under the statute of limitations was executed more than (3) years from the filing of Petitioner's VAT returns for all the quarters of 1998.

"f. The May 21, 2003 waiver of defense of prescription under the statute of limitations was executed more than (3) years from the filing of Petitioner's EWT returns for all the months of 1998.

"g. The May 21, 2003 waiver of defense of prescription under the statute of limitations was executed more than (3) years from the filing of Petitioner's remittance returns for income taxes withheld for all the months of 1998.

"h. The existence of the Preliminary Assessment Notice dated November 5, 2003."

On his part, respondent did not file any comment and/or objection to the motion.

Petitioner contends that the records of the case would readily reveal that the assessment of the alleged tax liabilities of petitioner was executed and issued over the 3-year prescriptive period provided for under Section 203 of the National Internal Revenue Code (hereafter "NIRC"). Petitioner claims that the waiver which was executed beyond the prescriptive 3-year period did not have the effect of extending the period to assess and collect under Section 230 of the NIRC. According to petitioner, the preliminary assessment dated November 5, 2003 is null and void for having been issued after prescription has set in as the waiver did not extend the period to assess.

Petitioner's contentions are meritorious.

Our tax law provides a statute of limitation in the collection of taxes for the purpose of safeguarding the taxpayers from unreasonable examination, investigation or assessment (*B.F. Goodrich Phils., Inc. vs. CIR, 303 SCRA 546 [1999]*). In this regard, the right of the government to assess taxes is provided in Section 203 of the NIRC, as amended, which provides:

"**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 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." *(Emphasis supplied.)*

In the present case, records show the following facts presented in a tabular form:

	Date Return Filed	Last Date to File Return	Last Day to Assess
INCOME TAX	4/13/1999	4/15/1999	4/15/2002*
EXPANDED WITHHOLDING TAX Penalty for over remittance of Withholding Tax on Corp.	1/25/2000	1/25/2000	1/24/2003
VALUE ADDED TAX	1/25/1999	1/25/1999	1/24/2002

*April 14, 2002 fell on a Sunday and year 2000 was a leap year.

It is clear that prescription has set in when respondent issued the Preliminary Assessment dated November 5, 2003. Thus, respondent can no longer assess and collect deficiency taxes from petitioner. The Waiver of the Statute of Limitations is null and void as the same was executed by the parties only on May 21, 2003 after prescription has set in. *(Republic v. Felix Acebedo*, 22 SCRA 1356 [1968]). In this regard, Section 222 (b) of the Tax Code provides:

> "(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 Ours.)*

Pursuant to the aforecited provision, a Waiver of the Statute of Limitations may be extended upon agreement of the respondent and the taxpayer. However, such agreement must be made before, not after, the expiration of the original period. The clear import of the provision is that it does not authorize extension once prescription has attached (*Republic v. Lim De Yu*, 10 SCRA 737 [1964]).

The instant case involves the assessment of deficiency income tax, expanded withholding tax, and VAT for the calendar year 1998. Respondent has 3 years from the dates the subject returns were filed by the petitioner within which to assess the latter of its deficiency taxes. As regards the deficiency income tax, the last day to assess was on April 18, 2000, for the deficiency expanded withholding tax, the last day to assess was on April 15, 2000, and as regards the deficiency VAT, the last day to assess was on January 24, 2002. The Preliminary Assessment Notice having been issued only on November 5, 2003, and the subject waiver being null and void for having been executed beyond the 3-year prescriptive period, it is clear that the right to assess petitioner of deficiency taxes had long expired.

WHEREFORE, premises considered, the assessment issued against petitioner for deficiency income tax in the amount of P4,500,487.23, deficiency expanded withholding tax in the amount of P5,144.10 and deficiency Value Added Tax in the amount of P35,949.69 covering the year 1998 is hereby **CANCELLED** and **SET ASIDE.** The compromise penalty in the amount of P25,000 is likewise cancelled for lack of basis.

SO ORDERED.

(On leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice