REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

SOLID CITY INDUSTRIAL AND COMM'L CORP. (MERGED WITH SOLID LAGUNA CORP.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6720

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
AUG 07 2008; 9:00am

x - x

DECISION

BAUTISTA, J.:

This case seeks the cancellation and withdrawal of the deficiency income tax, value-added tax, withholding tax on compensation, and documentary stamp tax assessments issued by respondent against petitioner in the total amount of **ELEVEN MILLION THREE HUNDRED EIGHTY NINE THOUSAND TWO HUNDRED FORTY AND 37/100 PESOS (P11,389,240.37)** covering the taxable year 1998.

Solid City Industrial and Commercial Corporation (Petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Petitioner had merged with Solid Laguna Corporation in 2001, with the latter as the surviving company. Its business address is at 2000 East Service Road, Bicutan, Paranaque City.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau Internal Revenue (BIR), vested with the authority to act as such, including, among others, to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provisions of the National Internal Revenue Code (NIRC). He may be served with summons and other legal processes of this Court at his office, located at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 21, 1999, respondent's authorized representative issued a Letter of Authority addressed to petitioner for the examination of its books of accounts and other accounting records for all internal revenue taxes covering the period from January 1 to December 31, 1998.

Subsequently, Formal Assessment Notices for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and documentary stamp tax, all numbered 0019857-98-02-059 and dated September 9, 2002, were received by petitioner on September 12, 2002.

Petitioner was assessed[1] the following:

A. Deficiency Income Tax				
Net Loss per Income Tax Return			P	(8,718,459.00)
Add: Discrepancies Per Investigation				
Deemed Sales	P	3,888,109.78		
Solid Group Expense		1,578,622.89		
Income Payment not subject to EWT		172,695.28		
Undeclared Gross Profit		9,949,888.51		
Various Expenses	P	1,033,676.53	P	16,622,992.00
Taxable Income per Investigation				7,904,533.00
Income Tax Due (34%)				2,687,541.56
Less: Payments made during the year				-
Basic Deficiency Income Tax				2,687,541.56
Add: Interest from 01-16-99 to 10-10-02				1,873,302.74
TOTAL AMOUNT DUE				**4,560,844.30**
B. Deficiency Value-added Tax				
Total Sales per investigation			P	78,066,687.73
Less: Allowable Export Sales (local)				
Insung	P	718,069.04		
ADB		66,020.00		

[1] Annexes "A" to "F", Petition for Review

Leotax		2,026,287.00		2,810,376.04
Total Sales subject to VAT per investigation			P	75,256,311.69
Output Tax thereon (10%)			P	7,525,631.17
Less: Input tax per investigation				
Input taxes for the period 1998	P	3,640,782.87		
Input taxes carried over to 1998		498,182.63		4,138,965.50
Value-added Tax Due			P	3,386,665.67
Less: Payments made during the year				-
Basic Deficiency Value-added Tax				3,386,665.67
Add: Interest from 01-26-99 to 10-10-02				2,511,390.77
TOTAL AMOUNT DUE			**P**	**5,898,056.44**
C. Deficiency Withholding Tax on Compensation				
Compensation Income per F/S			P	18,009,897.36
Compensation Income per Alpha List				17,712,718.63
Amount of compensation not subject to withholding tax			P	297,178.73
Withholding Tax Due on compensation at composite rate .17795			P	23,172.53
Add: Under Remittance of the Tax Withheld				
Amount of tax due per alpha list	P	1,381,149.68		
Less: Amount remitted		1,373,418.66		7,731.02
Total Basic Def. W/holding Tax on Compensation			P	30,903.55
Add: Interest from 01-26-99 to 10-10-02				22,916.61
TOTAL AMOUNT DUE			**P**	**53,820.16**
D. Deficiency Expanded Withholding Tax				
Amount paid to Contractors			P	118,323.17
Watchmen & Janitorial Service				54,372.11
Total			P	172,695.28
Deficiency Expanded Withholding Tax			P	1,726.95
Add: Under remittance of EWT				
Tax Due per Alpha List		631,218.60		
Amount remitted		530,187.87		101,030.73
Total basic deficiency withholding tax			P	102,757.68
Add: Interest from 01-26-99 to 10-10-02				76,200.00
TOTAL AMOUNT DUE			**P**	**178,957.68**
E. Deficiency Documentary Stamp Tax				
Basic Deficiency DST			P	558,049.43
Add: Surcharge				139,512.36
TOTAL AMOUNT DUE			**P**	**697,561.79**

On October 11, 2002, petitioner in a letter dated October 9, 2002 duly protested the said assessment notices through its tax consultant. On December 10, 2002, petitioner submitted documents in support of its protest.

Since petitioner received no reply from respondent and before it could be barred by prescription; petitioner filed this instant Petition for Review on July 8, 2003.

In his Answer posted on September 10, 2003, respondent raised the following Special and Affirmative Defenses:

> "5. That the investigation of the petitioner's internal revenue tax liabilities for the year 1998 revealed a tax obligation of Php11,389,240.37 as deficiency income tax, value-added tax, withholding tax on compensation and documentary stamp tax, inclusive of interest and surcharges;
>
> 6. That the subject deficiency tax assessments were issued in accordance with law and pertinent regulations and has complied with the provisions of Section 228 of the National Internal Revenue Code relative to the taxpayer being informed in writing of the facts and law in which the assessment is based, the same is contained in the 'Details of Discrepancies' dated September 9, 2002;
>
> 7. That the deficiency assessments were based on the following:
>
> A. Deficiency income tax in the amount of Php4,560,844.30 inclusive of increments, was assessed on the basis of the following:
>
> a. Deemed Sales – Verification disclosed that transfer of finished goods, raw materials and scrap to sister company at transfer, use or consumption not in the course of business are considered as deemed sales pursuant to Section 106(B)(1) of the 1997 Tax Code.
>
> b. Solid Group, Inc. charged to Solid City – Verification disclosed that petitioner failed to substantiate the above-mentioned expense with pertinent documents and papers in violation of the provisions of Section 34(A)(1)(b) of the 1997 Tax Code.
>
> c. Income payment subjected to EWT – Verification disclosed that petitioner failed to withhold and remit the corresponding tax due arising from income payments in the aggregate amounts of Php172,695.28 made during the year. The same were disallowed as deductions against petitioner's gross income in conformity with the provisions of Section 2.58.5 of Revenue Regulations No. 2-98 in relation to Section 34(K) of the 1997 Tax Code.
>
> d. Undeclared Gross Profit amounting to Php9,949,888.51 – Verification disclosed that there is an abrupt decrease of gross profit rate

of fourteen percent (14%) from twenty-one percent (21%) in 1997 dropped to seven percent (7%) in 1998. Due to non-submission of evidence to support the abrupt decrease, petitioner was assessed based on the best obtainable pursuant to Section 6(B) of the 1997 Tax Code.

B. Deficiency Value Added Tax in the amount of Php5,898,056.44 inclusive of increments, was assessed on the basis of the sales made to KITA Corporation which were subjected to VAT for the reason that the word Zero-Rated were only typewritten on the invoice which is in violation of Revenue Audit Memorandum Order 1-99 Value-Added Tax Audit Manual which provides that the word 'Zero-rated' must be printed on the invoice covering Zero-rated sales. Further, KITA Corporation is not one of those certified by the Board of Investment per list certified by EPZA.

C. Deficiency Withholding Tax in the amount of Php232,777.84 inclusive of increments, were assessed on the basis of the following:

1. Withholding tax on compensation (Php66,044.08) – There is under withholding of tax on payment of salaries and wages of Php297,178.73

2. Expanded Withholding Tax(Php186,788.90) – Verification disclosed that petitioner did not withhold income payments made to watchman and janitorial services which is in violation of Revenue Regulations No. 2-98.

D. Deficiency Documentary Stamp Tax in the amount of Php697,561.79 inclusive of increments was assessed on the basis of lease contracts and advances to affiliates and under payment of DST pursuant to Section 194 of the 1997 Tax Code.

8. Deficiency income tax has been assessed based on the best evidence obtainable. The Supreme Court in the case of **Mariano Zamora vs. Collector of Internal Revenue** held that it is the legal obligation of the taxpayer to support his/her tax return filed with the corresponding accounting records, otherwise, the Commissioner of Internal Revenue or his duly authorized representative may be assessed the proper tax based on the best evidence obtainable.

9. That all presumptions are in favor of the correctness of tax assessments and the burden of proof to prove otherwise is upon the petitioner."

During the trial of the case, and before the same was submitted for decision, petitioner filed an Omnibus Motion (a) For Leave of Court to Admit Amended Petition for Review, (b) To Allow Presentation of Additional Evidence and/or Rebuttal Evidence, and (c) To Defer Submission of Petitioner's Supplemental Formal Offer of Evidence on September 18, 2006.

The Court admitted petitioner's Amended Petition for Review and allowed petitioner to present additional evidence in support of its allegation of prescription. Petitioner's Amended Petition for Review laid down, among others, the issue of prescription on the ground that the Waivers of the Statute of Limitations executed were defective, invalid, and void.

After trial, this case was submitted for decision on January 23, 2008.

The parties initially stipulated the following issues[2] for this Court's resolution:

"1. Whether or not the Formal Assessment Notices No. 0019857-98-02-059 are valid;

2. Whether or not the best obtainable rule can be applied when other documents are available for verification;

3. Whether or not the transfer of finished goods, raw materials, and scrap to sister company at transfer, use or consumption not in the course of business of goods or properties originally intended for sale in the course of business are considered as deemed sales pursuant to Section 106(B)(1) of the Tax Code;

4. Whether or not Petitioner has a 'Solid Group Expense' in the amount of P1,578,622.89 which Petitioner failed to substantiate with pertinent documents, hence, should be disallowed as deduction from gross income;

5. Whether or not Petitioner failed to withhold and remit withholding tax due in the amount of P172,695.28 made during the year;

6. Whether or not Petitioner has an undeclared gross profit in the amount of P9,949,888.51;

7. Whether or not typing the word 'Zero-rated' on the receipt complies with the requirement of RAMO 1-99, which requires that 'zero-rated must be

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[2] Stipulation of Issues, Joint Stipulation of Facts and Issues, pages 82-83

printed on the invoice covering zero-rated sales' to qualify the sales as zero-rated;

8. Whether or not Petitioner failed to withhold taxes on compensation in the amount of P297,178.73;

9. Whether or not Petitioner failed to withhold taxes on income payments made to watchman and janitorial services in the amount of P186,788.90;

10. Whether or not there was documentary stamp tax due on Petitioner on lease contracts and advances to affiliates; and

11. Whether or not Petitioner is liable for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and documentary stamp tax assessments in the amounts of P4,560,844.30, P5,898,056.44, P53,820.16, P178,957.68, and P697,561.79, respectively, inclusive of surcharges and interests for taxable year 1998, covered under Final Assessment Notices No. 0019857-98-02-059 all dated September 9, 2002."

However, with the filing of petitioner's Amended Petition for Review, which was duly admitted by this Court, the issue of whether or not respondent's right to assess petitioner for deficiency taxes has already prescribed would have to be included.

Before tackling the other stipulated issues, this Court deems it proper to first discuss the validity of the questioned assessments, in relation to the validity of the alleged waivers executed by the parties.

Pertinent to the resolution of this issue is Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, which states:

> "**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 the 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."

From the foregoing legal provision, respondent has three (3) years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, within which to assess national internal revenue taxes.

Records of the case would show that petitioner filed its 1998 Annual Corporate Income Tax Return on April 15, 1999[3]. Pursuant to the aforementioned Section, respondent had until **April 14, 2002**[4] within which to assess petitioner of its 1997 income tax liabilities.

Records likewise indicate that petitioner filed its Quarterly Value-added Tax Returns on April 20, 1998[5], July 20, 1998[6], October 20, 1998[7], and January 25, 1999[8]. In this regard, respondent had until **April 19, 2001**, **July 19, 2001**, **October 19, 2001**, and **January 24, 2002**, covering the 1st, 2nd, 3rd, and 4th Quarters of the taxable year 1998, respectively, to issue his assessment against petitioner for any deficiency VAT liabilities.

As regards petitioner's Monthly Remittance Returns on Income Tax Withheld for the taxable year 1998, petitioner filed the same as follows:

Monthly Remittance Returns of Income Taxes Withheld for the Taxable Year 1998	Date of Filing[9]	Last Day of Issuance of Final Assessment
January	February 10, 1998	**February 09, 2001**
February	March 10, 1998	**March 09, 2001**
March	April 08, 1998	**April 07, 2001**
April	May 12, 1998	**May 11, 2001**
May	June 10, 1998	**June 09, 2001**
June	July 09, 1998	**July 08, 2001**
July	August 10, 1998	**August 09, 2001**
August	September 09, 1998	**September 08, 2001**
September	October 09, 1998	**October 08, 2001**
October	November 09, 1998	**November 08, 2001**
November	December 09, 1998	**December 08, 2001**
December	January 25, 1999	**January 24, 2002**

[3] Exhibit "T"
[4] The year 2000 being a leap year
[5] For the 1st Quarter of 1998; Exhibit "B"
[6] For the 2nd Quarter of 1998; Exhibit "C"
[7] For the 3rd Quarter of 1998; Exhibit "D"
[8] For the 4th Quarter of 1998; Exhibit "E"
[9] Exhibits "G" to "R"

Based on the dates of filing of petitioner's Monthly Remittance Returns of Income Taxes Withheld for the taxable year 1998, respondent had until January 24, 2002, at the latest, within which to issue his assessment against petitioner for any deficiency taxes.

It is not disputed that the Formal Assessment Notices all numbered 0019857-98-02-059 for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and documentary stamp tax were issued on **September 9, 2002**. Apparently, these assessment notices were issued beyond the prescriptive period. However, the same Section 203 of the NIRC of 1997, as amended, provides that an assessment notice may be issued after the lapse of the 3-year prescriptive period provided that the instances under Section 222(b) of the same Code are present:

> **"Section 222. Exceptions as to the Period of Limitation of Assessment and Collection of Taxes. –**
>
> (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."

In this regard, it becomes necessary for this Court to determine the validity of the Waivers of the Statute of Limitations since respondent's right to assess petitioner for deficiency taxes depends on them.

In support of its defense of prescription, petitioner submits that the first Waiver of the Statute of Limitations executed on December 20, 2001[10] allegedly extending respondent's period to assess, is invalid, since although it was signed by its Comptroller/Accounting Department Head, Ms. Lalaine R. Montesa, the same was not signed by respondent or any of his authorized representatives. On the other hand, the second Waiver of the Statue of Limitations executed on February 27, 2002 to further extend

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[10] Exhibit "OO"

respondent's period to assess until September 30, 2002 is likewise invalid, because it failed to comply with the conditions enumerated by the Supreme Court in the case of **Philippine Journalists, Inc. vs. Commissioner of Internal Revenue**[11]. Hence, there being no valid waivers to extend respondent's period to assess petitioner for deficiency taxes, the subject Formal Assessment Notices are void for having been issued beyond the three-year prescriptive period.

This Court agrees.

For purposes of clarity, hereunder is a reproduction of the first waiver allegedly executed by the parties:

"WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE[12]

I, Lalaine R. Montesa, representing Solid City, with business address at 2000 East Service Road, Bicutan, Paranaque City request for the approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its **Income, Value-Added Tax (VAT), Withholding Tax** liabilities for the year 1998. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sec. 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitation fixed be said sections of the National Internal Revenue Code but not later than February 28, 2002.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayers represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any of the legal remedies afforded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.

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[11] G.R. No. 162852, December 16, 2004
[12] Exhibit "OO"

The period so stated herein may be extended by subsequent waiver in accordance with the existing rules and regulations of the Bureau of Internal Revenue.

Executed this 20th day of December, 2001 in Paranaque, Metro Manila, Philippines.

By:

(Signed)

Lalaine R. Montesa

Authorized Representative

Comptroller

Accepted by:

COMMISSIONER OF INTERNAL REVENUE

xxx xxx xxx"

The second Waiver of the Statute of Limitations was written as follows:

"WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE[13]

I, Lalaine R. Montesa, representing Solid City Industrial & Commercial Corp., with business address at 2000 East Service Road, Bicutan, Paranaque City request for the approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its **Income, Value Added Tax (VAT), Withholding Tax** liabilities for the year 1998. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sec. 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitation fixed be said sections of the National Internal Revenue Code but not later than September 30, 2002.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayers represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by

[13] Exhibit "PP"

law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.

The period so stated herein may be extended by subsequent waiver in accordance with the existing rules and regulations of the Bureau of Internal Revenue.

Executed this 27th day of February, 2002 in Paranaque, Metro Manila, Philippines.

(Signed)
Lalaine Montesa
Accounting Dept. Head

Accepted by:

COMMISSIONER OF INTERNAL REVENUE

(Signed)
By: ANTONIO I. ORTEGA
Regional Director

xxx xxx xxx"

Relative to the execution of valid waivers, Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990 prescribes the procedures to be followed in the execution of a Waiver of the Statute of Limitations, as follows:

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**. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax **in addition** to the ordinary prescriptive period.

2. **The waiver shall 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.

   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 before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

1.	ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	For tax cases involving not more than P500,000.00
2.	Deputy Commissioner	For tax cases involving more than P500,000.00 but not more than P1M
3.	Commissioner	For tax cases involving more than P1M

B. In the Regional Offices

1. **The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount**.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

4. The waiver must be executed in three (3) 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 shall be indicated in the original copy.**

5. **The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with.**" (*Emphasis supplied*)

In other words, a valid waiver must conform to the following format:

WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE[14]

____ in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of ________________________ as ______________ for the years ____________, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after re-investigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after ___________, 19___.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

[14] Annex "A", Revenue Memorandum Order No. 20-90, April 4, 1990

Executed this ________ day of ___________ 19 ___, in Quezon City, Philippines.

____

(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date ________________________

A perusal, however, of the subject Waivers of the Statute of Limitations reveals the following defects:

1. The first waiver[15] which was supposed to extend respondent's period to assess to February 28, 2002 was not signed by nor accepted by respondent or any of his authorized representative;

2. The second waiver[16] which was supposed to further extend respondent's period to assess to September 30, 2002 did not bear the date of receipt by respondent or his authorized representative;

3. The second waiver was signed by the Regional Director and not the Commissioner of Internal Revenue, in violation of RMO No. 20-90;

4. The subject Waivers of Statute of Limitations[17] did not specify the amount of the taxes due; and

5. Both waivers failed to comply with the required format pursuant to RMO No. 20-90.

In the case of **Philippine Journalists, Inc., vs. Commissioner of Internal Revenue**[18], the Supreme Court discussed the rationale behind the strict compliance of the requisites in executing of a valid Waiver of the Statute of Limitations, to wit:

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[15] Exhibit "OO"
[16] Exhibit "PP"
[17] Exhibits "OO" and "PP"
[18] G.R. No. 162852, December 16, 2004

"**A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.** The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. **It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection.** As a corollary, the exceptions to the law on prescription should perforce be strictly construed. xxx" (*Emphasis supplied*)

Verily, all details required for the validity of a waiver should be satisfied. In this case, the vital information of the **date of acceptance** by respondent of the waiver does not appear. As a waiver is an agreement between the parties, failure to agree and accept would effectively mean that no waiver is executed; no agreement or meeting of the minds ever existed. Moreover, both the date of the execution of the waiver by the taxpayer and the date of acceptance by the Bureau of Internal Revenue should be before the expiration of the period of prescription, or before the lapse of the three-year prescriptive period pursuant to Section 203 of the NIRC of 1997, as amended; for the date of acceptance would determine whether or not the acceptance by respondent was made within the prescriptive period. Failure to meet these conditions, the waiver becomes void, *viz.*, it is as if no waiver has been executed to extend the period to assess or collect. In such a case, any assessment issued beyond the period prescribed under Section 203 of the NIRC of 1997, as amended, shall be void.

Since the first waiver was defective; effectively, respondent's period to assess was not extended. The first waiver, being void from its inception, it was as if no waiver to extend the period to assess was ever executed.

Going now to the issue of validity of the second waiver. The second waiver could not have an effect of extending the period to assess considering that the same is in itself infirmed with defects. For one, the second waiver **failed to follow the prescribed format** as required under RMO No. 20-90; which specifically states that there "should be no deviation from such form". Second, the second waiver, although signed by Regional Director Antonio I. Ortega, **did not bear the date of acceptance** by respondent. As previously discussed, the date of acceptance plays an important role in the validity of the waiver since this determines whether the waiver was executed within the period allowed by law to issue an assessment. Consequently, if the same was executed after the expiration of the period to assess, then there would not have been any period to extend. Third, there is **no mention of the amount of taxes** subject of the assessments. The purpose of stating the amount of tax due is for petitioner to identify which among the proposed tax assessments may be issued without violating the period of prescription. Neglect to indicate the amount of taxes will again invalidate the waiver. It should be emphasized that RMO No. 20-90 requires specific information; hence, to substitute the same with general statements is a departure from the said order.

Lastly, the **signatory** of the second waiver is the Regional Director. In this case, it should have been the Commissioner himself considering that the amount of assessed taxes is more than one million pesos, pursuant to RMO No. 20-90.

Due to respondent's failure to issue the assessment notices within three years from the date petitioner filed its income tax, value-added tax, withholding tax, and documentary stamp tax returns, and the invalidity of the first and second Waivers of the Statute of Limitations, his period to assess had already prescribed. Effectively, the September 9, 2002 assessment notices for deficiency taxes are void for having been issued beyond the prescriptive period allowed by law.

In view of the foregoing, this Court deems it no longer necessary to resolve the other issues raised by the parties.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, **Formal Assessment Notices No. 0019857-98-02-059** all dated September 9, 2002 issued by respondent against petitioner for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and documentary stamp tax for the taxable period 1998 in the aggregate amount of **ELEVEN MILLION THREE HUNDRED EIGHTY NINE THOUSAND TWO HUNDRED FORTY AND 37/100 PESOS (P11,389,240.37)** are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division