REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LA FLOR DELA ISABELA, INC., Petitioner,	C.T.A. CASE NOS. 8132
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 25 2012 ; 2:00 p.m.

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DECISION

Fabon-Victorino, J.:

In a bid to challenge the Final Decision on Disputed Assessment dated May 24, 2010, issued by respondent Commissioner of Internal Revenue involving deficiency expanded withholding tax in the aggregate amount of P1,756,292.07 for taxable year 2000, petitioner La Flor Dela Isabela, Inc. lodged the instant Petition for Review on July 19, 2010.

The facts as stipulated by the parties in their Joint Stipulation of Facts and Issues approved by the Court on October 28, 2010 are as follows:

Petitioner is a duly organized and existing domestic corporation with principal office address at Km. 14 West Service Road, Paranaque City.[1] On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), and holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner filed with the BIR its monthly expanded withholding tax returns for taxable year 2000 on the following dates, which cover the remittance of its monthly expanded withholding tax payments, thus:[2]

PERIOD	DATE FILED
January	April 07, 2000
February	April 07, 2000
March	May 02, 2000
April	May 24, 2000
May	July 14,2000
June	August 18, 2000
July	September 25, 2000
August	October 19, 2000
September	October 25, 2000

[1] Par. 1.1, Facts, Joint Stipulation of Facts and Issues (JSFI) dated October 15, 2010, docket p. 100.
[2] Par. 1.3, Facts, JSFI, docket, pp. 100-101; Exhibits "B" to "M".

October	November 24, 2000
November	January 23, 2001
December	February 15, 2001

On February 8, 2001, petitioner filed with the BIR its Annual Information Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1604-E), covering the summary of remittances of expanded withholding tax payments.[3] The document summarized the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form 1601-E) filed by petitioner for the year 2000.[4] The existence of this document as well as the monthly withholding tax returns was admitted.

On December 15, 2004, respondent issued a Preliminary Assessment Notice (PAN) and a Final Assessment Notice (FAN) on January 24, 2005.[5]

Sometime in October 2007, petitioner availed of the tax amnesty which excludes the deficiency withholding taxes subject of the instant case.

[3] Par. 1.4, Facts, JSFI, docket, p. 101; Exhibit "N".
[4] Exhibits "B" to "M".
[5] Pars. 1.6 and 1.7, Facts, JSFI, docket, pp. 101-102.

On May 24, 2010,[6] respondent issued the subject Final Decision on Disputed Assessment (FDDA) covering deficiency expanded withholding tax in the aggregate amount of P1,756,292.07, inclusive of interest and penalties, for taxable year 2000.[7] The FDDA was received by petitioner on June 18, 2010.[8]

On July 19, 2010, petitioner filed the instant Petition for Review.

In her Answer[9] filed on August 20, 2010, respondent prays to dismiss the Petition for Review moored on the following Special and Affirmative Defenses:

> 5. The taxes were assessed within the period allowed by law. Section 203 of the Tax Code of 1997 states:
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> > '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

[6] Exhibit "A".
[7] Par. 1.9, Facts, JSFI, docket, p. 102
[8] Exhibit "A".
[9] Docket, pp. 53-69.

> 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.'

6. Section 222 (b) of the Tax Code of 1997 clearly states the period to assess can be validly extended beyond the three (3) year period provided for in Section 203 of the same law with the execution of a waiver, to wit:

> '(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.'

7. The validity of the waiver could not be impugned so long as it was executed in compliance with Revenue Memorandum Order No. 20-90 as amended by Revenue Delegation Authority Order No. 05-01.

8. In the case of *'Commissioner of Internal Revenue vs. Kudos Metal Corporation*[10]', the Supreme Court stated:

> RMO 20-90 and RDAO 05-01 lay down the following procedures for the proper execution of the waiver of the prescriptive period:
>
> (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 the tax after the regular three-year period of prescription must be filled up;
>
> (2) The waiver must be signed by the taxpayer himself or his duly authorized representative; in the case of a corporation,

[10] G.R. No. 178087, May 5, 2010.

> the waiver must be signed by any of its responsible officials; if the authority is delegated by the taxpayer to a representative, such should be in writing and duly notarized;
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> (3) The waiver should be duly notarized;
>
> (4) The Commissioner of Internal Revenue (CIR) or the revenue official authorized by him must sign the waiver indicating that the Bureau of Internal Revenue (BIR) has accepted and agreed to the waiver; the date of the BIR's acceptance should be indicated; 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 BIR 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; and
>
> (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.

9. Based on BIR records, petitioner executed two (2) waivers, both of which were executed prior to the lapse of prescriptive period provided for under the law.

10. The first waiver executed on January 16, 2003 which was signed by Cesar C. Maranan, Accounting Manager of petitioner who also received a copy of the same. The same was accepted on behalf of respondent by Edwin R. Abella, Assistant Commissioner Large Taxpayer Service who was authorized to sign the same

under RDAO 05-01. Moreover, the first waiver was duly notarized. By virtue of this waiver, the period to assess the internal tax liabilities for the year 2000 was extended until September 2004. This waiver was executed within the three (3) year period provided for in the law for the Bureau of Internal Revenue to assess. Since petitioner filed its BIR Form 1604-E on February 2, 2001, the Bureau of Internal Revenue had until February 2, 2004 to validly execute the waiver. Attached hereto is the said waiver dated January 16, 2003 as Annex '1' and is made an integral part hereof.

11. The second waiver was executed on July 21, 2004 signed by Cesar Maranan, Accounting Manager of petitioner who also received a copy thereof. It was accepted in behalf of respondent by Manuel V. Mapoy, Chief LT Audit & Investigation Division II. The second waiver was also duly notarized. This waiver was executed within the validity of the period provided in the first waiver or until September 2004. Thus, the execution of the second waiver on July 21, 2004 was well within the period allowed to execute the same. Attached hereto is the said waiver dated January 16, 2003 as Annex '2' and is made an integral part hereof.

12. Respondent also submits that the waivers remained valid invoking the doctrine of *laches.* In the case of *'Spouses Morris Carpo and Socorro Carpo vs. Ayala Land, Incorporated'*[11] the Supreme Court stated:

> By laches is meant the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. It does not involve mere lapse or passage of time, but is principally an impediment to the assertion or enforcement of a right, which has become under the circumstances inequitable or unfair to permit (citing Caltex (Philippines), Inc. vs. Court of Appeals).

13. In this instance, *laches* have set in. Petitioner failed to assert the defense of prescription to refute the execution of the second waiver. It also failed to raise the issue when respondent issued the Preliminary Assessment Notice. Instead, petitioner chose to vigorously protest the assessment before respondent and in subsequent

[11] G.R. No. 166577, February 3, 2010.

correspondences thereon. Petitioner's acts unequivocally show that it did not believe respondent's assessment has prescribed.

14. The *laches* of petitioner is also made manifest in its action of receiving the Preliminary Assessment Notice dated December 15, 2004 which it received through its Accounting Manager Cesar Maranan on December 16, 2004. The Formal Letter of Demand with attached Final Assessment Notice dated January 24, 2005 was also received by petitioner through its Accounting Manager Cesar Maranan on January 27, 2005 without the defense of prescription being raised.

15. Instead of asserting prescription in response to respondent's Formal Letter of Demand, petitioner through its Accounting Manager Cesar Maranan filed a protest questioning the computations in the Assessment and Formal Letter of Demand as evidenced in letters received by respondent on February 18, 2005, March 21, 2005 and April 14, 2005. Petitioner's letters made no mention of the defense of prescription. Attached hereto as Annexes '3', '4' and '5' are copies of petitioner's protest letters and are made integral parts hereof.

16. Another opportunity to assert the defense of prescription presented itself to petitioner when respondent granted petitioner's protest. However, instead of raising prescription as a defense, petitioner requested respondent for reinvestigation of the assessment. This is evidenced by Tax Verification Notice dated April 28, 2005 issued by respondent granting petitioner's request for reinvestigation. Attached hereto as Annex '6' is a copy of the said Tax Verification Notice and is made an integral part hereof.

17. Thereafter, petitioner reiterated its protest of the Formal Letter of Demand in a letter dated August 27, 2006 addressed to Assistant Commissioner Nestor S. Valleroso of the Large Taxpayer Service. In this letter, petitioner again failed to raise the defense of prescription. Attached hereto as Annex '7' is a copy of said letter and is made an integral part hereof.

18. All told, petitioner through its negligence or omission as borne by the records is guilty of *laches*. Consequently, petitioner must not be permitted to rely on the defense of prescription due to *laches* for having

unreasonable delay in raising the issue before the respondent on multiple occasions.

19. In the case of *Continental Micronesia, Inc. – Philippine Branch vs. Commissioner of Internal Revenue*[12], the Honorable Court stated:

> 'To emphasize, the Supreme Court in the case of Collector of Internal Revenue vs. Suyoc Consolidated Mining Company, et al. held that 'there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts, the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government.'

20. Throughout this period, petitioner remained silent and did not raise in any action or protest before the Bureau of Internal Revenue on the matter of prescription with respect to the assailed assessment. On the other hand, petitioner through various letters repeatedly requested respondent to reinvestigate the findings of the assessment. Petitioner should not be permitted to claim that the actions have prescribed after leading respondent to re-evaluate its protests on multiple occasions.

21. Alternatively, petitioner's availment of Tax Amnesty on October 4, 2007 clearly is incompatible with its claim that the assessment has prescribed. In availing of the benefits of tax amnesty afforded by Republic Act No. 9480, petitioner has recognized the validity of the assessment made against it. Attached hereto as Annex '8' is a copy of respondent's Notice of Availment of Tax Amnesty and is made an integral part hereof.

22. As aptly ruled by the Honorable Court En Banc in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[13]:

> 'Petitioner cannot question the validity of the waivers with respect to the deficiency onshore and documentary stamp taxes when it paid the deficiency taxes assessed for

[12] CTA EB No. 213, August 3, 2007.
[13] CTA EB No. 83 (CTA Case No. 6201), July 27, 2005.

income tax, gross receipts tax, final withholding tax, expanded withholding tax and documentary stamp tax all of which were covered by the same waivers if petitioner really believes that the waivers were not valid and the subject assessments were issued by the respondent out of time, then it should not have made any payments.

In one case, the Supreme Court ruled that a party is estopped from raising the issue of payment of the 25% ad valorem tax by claiming that there was no removal of pyrite from the mine site where it paid the same for the tax year. In the same way, We cannot allow petitioner to question the waivers covering the same recomputed assessed taxes and it paying the same while at the same time to assail the other assessed taxes it refused to pay.

To reiterate, petitioner received a letter of authority relative to the examination of all its internal revenue taxes from January 1, 1995 to December 31, 1995. On January 23, 1997, it executed waivers extending the period to assess up to December 31, 2000. On January 27, 2000, an undated letter of demand with fourteen (14) assessment notices attached were issued by the respondent. On December 6, 2000, petitioner received another formal demand letter with recomputed assessments. On the same day, petitioner paid the deficiency taxes assessed except for the onshore tax and documentary stamp tax on special savings account.

In disputing the assessments for these onshore and documentary stamp taxes, petitioner now assails the validity of the waivers which covered all the other assessed taxes it already paid.

We hold that petitioner is estopped from questioning the validity of the waivers. Its act in paying the assessed taxes covered by the same waivers is conclusive that the assessments were valid. Petitioner cannot now deny their validity. This court cannot countenance petitioner's act of adopting inconsistent postures regarding the waivers.'

23. The doctrine enunciated in the aforementioned case is applicable in this case. In this instance, the amnesty paid for by petitioner covered the assessment from which its petition arose. In fact, the assessment issued by respondent deleted items which were within the coverage of the tax amnesty applied for by petitioner. Consequently, the resulting assessment covered only deficiency withholding taxes which were outside the ambit of the tax amnesty. As provided for in Section 8 (1) of Republic Act No. 9480:

'**SEC. 8. *Exceptions.*** – The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

1. Withholding agents with respect to their withholding tax liabilities;'

24. After petitioner has received and accepted certain benefits, as a result of its availment of the said amnesty, it should not be permitted to question the assessments that remained as a result thereof. A party shall not, after its opportunity to enjoy the benefits of an agreement, be allowed later to dispute the same, when the terms thereof ultimately would prove to operate against its hopeful expectations. This is a settled rule in this jurisdiction.

25. In the case of '*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[14]', the Supreme Court stated:

'In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such

[14] G.R. No. 168498, April 24, 2007.

> decision. However, these options are mutually exclusive, and resort to one bars the application of the other.'

26. In this case, petitioner has elected the second option. It decided to await the final decision on disputed assessment of respondent on its protest. This is borne by the fact that petitioner failed to file a petition for review before the Honorable Court of Tax Appeals within 30 days after the expiration of the 180-day period.

27. As per BIR records, the last letter of petitioner with respondent was on August 27, 2006. Counting 30 days period from the expiration of the 180-day period, petitioner ought to have filed its petition for review on March 25, 2007 if it elected the first option. Having failed to elect the first option, the petitioner is deemed to have elected the second option. Consequently, petitioner is entitled to appeal before the Court of Tax Appeals within 30 days from the issuance of the Final Decision on Disputed Assessment by respondent.

28. There was no inordinate delay on the part of respondent in resolving petitioner's letter protest and collecting the deficiency EWT.

29. As per BIR records, petitioner availed of Tax Amnesty under Republic Act No. 9480 on October 4, 2007. In addition, petitioner paid deficiency withholding tax on compensation amounting to P439,118.51 on July 27, 2005. Consequently, respondent had to reassess the protest in light of the actions taken by petitioner. In consonance with the requirements of due process, the actions taken by petitioner were factored in by respondent in arriving at her decision.

30. Again, the case of '*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[15]' is instructive. To wit:

> 'Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. Also, petitioner's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final,

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[15] *Ibid.*

> executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.'

31. Additionally, the doctrine enunciated in the case of *Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc.*[16] is applicable in this case. In the cited case, the taxpayer raised the defense of prescription against the efforts of the Commissioner of Internal Revenue to assess and collect the taxes. The Supreme Court ruled against the taxpayer as it found that there was a valid request for reinvestigation. To wit:

> 'In another case, this Court stated that the statutory period of limitation for collection may be interrupted if by the taxpayer's repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government (citing *Commissioner of Internal Revenue v. Consolidated Mining Co., G.R. No. 11527, November 29, 1968).'*

32. Similarly, petitioner in this case, has by its own action caused the delay in the resolution of the protest. The execution of no less than 2 valid waivers are a testament to this in addition to its piece-meal approach in settling its tax obligations as borne by its partial payment.

33. Furthermore, contrary to the position taken by petitioner, when Article 235 of the Tax Code of 1997 speaks of preservation of all books of accounts until the last day prescribed in Section 203, the same must be understood to be in conjunction with Section 222 (b) and (d). It is humbly submitted that whenever there is a valid extension of the prescriptive period, the obligation of the taxpayer to maintain its books of accounts subsists.

34. In this instance, the obligation of petitioner to maintain its book of accounts remained until the full resolution of its protest as there was a valid waiver. To reiterate, petitioner having validly executed two (2)

[16] G.R. No. 76281, September 30, 1991.

> waivers which extended the period to assess the internal revenue taxes for the year 2000 also extended petitioner's obligation to maintain and preserve its books of accounts for the said year.
>
> 35. In any case, since what is sought to be collected from petitioner are penalties for failure to withhold and remit taxes, the period of limitation provided in Section 203 of the Tax Code of 1997 finds no application.
>
> 36. Finally, 'it is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. It is the lifeblood of the government and so should be collected without unnecessary hindrance.'[17]

In compliance with the Notice of Pre-Trial Conference dated August 24, 2010, respondent filed her Pre-Trial Brief on September 6, 2010,[18] while petitioner, on September 28, 2010.[19] Thereafter, the parties filed their Joint Stipulation of Facts and Issues[20] dated October 15, 2010 which the Court approved on October 28, 2010.

During the scheduled initial presentation of evidence for petitioner on November 9, 2010, petitioner, through counsel, manifested that presentation of evidence might no longer be warranted given that the facts of the case had already been stipulated by the parties as indicated in their Joint Stipulation of

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[17] *Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc.*, G.R. No. 76281, September 30, 1991.
[18] Docket, pp. 85-90.
[19] Docket pp. 93-97.
[20] Docket, pp. 100-103.

Facts and Issues dated October 15, 2010. As prayed for, petitioner was granted fifteen (15) days within which to formally offer its evidence and the same period of time for respondent to file comment thereon. From receipt of the resolution on the Formal Offer of Evidence, petitioner was granted ten (10) days to file its proposed Motion for Judgment on the Pleadings and respondent with the same period to comment.

Petitioner filed its Formal Offer of Evidence dated November 20, 2010,[21] which the Court resolved on February 16, 2011.[22]

On March 4, 2011, petitioner filed a Motion for Judgment on the Pleadings which the Court denied for lack of merit through its Resolution promulgated on May 13, 2011. In the same Resolution, the Court set respondent's initial presentation of evidence on June 23, 2011, at 9 o'clock in the morning.

After several postponements, the last of which was with warning, respondent filed a Manifestation on August 17, 2011,[23] to say that she would no longer present any evidence for her

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[21] Docket, pp. 122-128.
[22] Docket pp. 139-140.
[23] Docket, pp. 158-160.

defense since the issues raised in the case "involved questions of law" and for this reason she asked for "thirty (30) days from September 1, 2011 or until October 1, 2011, within which to submit her memorandum." The Court noted the Manifestation in its Resolution of August 22, 2011.[24]

On October 3, 2011, or after the lapse of the period granted to file memorandum, respondent filed a Manifestation adopting her Answer as her Memorandum. On the other hand, petitioner failed to file any hence, the case was submitted for decision on October 10, 2011.[25]

The parties submitted the following issues[26] for the resolution of the Court, to wit:

> 2.1. Whether or not respondent's right to issue deficiency expanded withholding tax assessment for the taxable year 2000 had prescribed.
>
> 2.2. Whether or not respondent's right to collect the alleged deficiency withholding tax assessment had already prescribed.

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[24] Docket, p. 163.
[25] Docket, p. 168.
[26] Issues, JSFI, docket, p. 102.

2.3. Whether or not *laches* prevents petitioner from asserting the defense of prescription.

2.4. Whether or not petitioner's availment of the tax amnesty on 4 October 2007 rendered the assessment final.

DISCUSSION

Section 203 of the National Internal Revenue Code (NIRC) of 1997 explicitly provides the period within which the government can issue an assessment of internal revenue taxes, *viz.*:

> 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.

Clear as a day that the government has **three (3) years** from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later, to assess internal revenue taxes. An assessment notice issued after the prescribed three-year period is no longer valid and effective.[27]

Relevant to the foregoing is Section 58 of the NIRC, which provides the period and venue for filing the returns and taxes withheld as source. It reads as follows:

> SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
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> The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.
>
> The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed

[27] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

> and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided*, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.

Corollary to the above provision is Revenue Regulations (RR) No. 2-98 dated April 17, 1998, as amended by RR No. 06-01 dated July 31, 2001, which states, viz.:

> SECTION 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.

w/

Thus, for withholding tax liabilities, the three-year period within which respondent can validly issue an assessment is reckoned from: (a) the last day required by law for filing a monthly remittance return, which is ten (10) days after the end of each calendar month, except for December, in which case the return shall be filed fifteen (15) days after the end of said month; or (b) the date of actual filing of the return, whichever is later.[28]

In the present case, respondent had until the following dates within which to assess petitioner for the subject deficiency expanded withholding tax for taxable year 2000:

Month	Last Day to File	Date Filed	Last Day to Assess
January	Feb. 10, 2000	April 7, 2000	April 7, 2003
February	March 10, 2000	April 7, 2000	April 7, 2003
March	April 10, 2000	May 2, 2000	May 2, 2003
April	May 10, 2000	May 24, 2000	May 24, 2003
May	June 10, 2000	July 14, 2000	July 14, 2003
June	July 10, 2000	Aug. 18, 2000	Aug. 18, 2003
July	Aug. 10, 2000	Sept. 25, 2000	Sept. 25, 2003
August	Sept. 10, 2000	Oct. 19, 2000	Oct. 19, 2003
September	Oct. 10, 2000	Oct. 25, 2000	Oct. 25, 2003
October	Nov. 10, 2000	Nov. 24, 2000	Nov. 24, 2003
November	Dec. 10, 2000	Jan. 23, 2001	Jan. 23, 2004
December	Jan. 15, 2001	Feb. 15, 2001	Feb. 15, 2004

[28] *Commissioner of Internal Revenue vs. Philex Mining Corporation*, CTA EB No. 578, June 28, 2010.

The table shows that the three-year prescriptive period to assess the deficiency expanded withholding tax is reckoned from the dates of the actual filing of the monthly expanded withholding tax returns, as they were filed after the deadline prescribed by law.

Based on the stipulation of the parties, the only assessment notice issued by respondent that petitioner received specifically on June 18, 2010, is the FDDA dated May 24, 2010.[29] Obviously, the FDDA was issued beyond the three-year prescriptive period mandated under Section 203 of the NIRC, as amended.

While it was stipulated that respondent issued a PAN dated December 15, 2004 as well as a FAN dated January 24, 2005,[30] and that Under Section 4, Rule 129 of the Rules of Court, these judicial admissions made by the parties during the pre-trial conference requires no proof,[31] there is no iota of evidence to prove that these assessment notices were properly placed in a sealed envelopes addressed to petitioner, officially released from the responsible office of respondent, served personally or

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[29] Exhibit "A".
[30] Par 1.7, Facts, JSFI, docket p.102.
[31] Toshiba Information Equipment (Phils.), Inc. vs. CIR, G.R. No. 157594, March 15, 2010.

through registered mail and finally received by petitioner or its duly authorized representative in due course on a date certain.

Jurisprudence has it that if the taxpayer denies having received an assessment from respondent, as in the case at bar, it is incumbent upon the latter to prove to the satisfaction of the Court that such notice was indeed received by the taxpayer-addressee. On account of petitioner's insistence that the only notice of assessment it received from respondent was the FDDA, the burden of proof is shifted to respondent to establish that petitioner indeed received the PAN and the FAN either personally or in the due course of mail. The Highest Tribunal further states, thus:

> The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the letter was indeed received by the addressee.[32] Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*[33]:
>
> > The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts

[32] Republic vs. Court of Appeals, 149 SCRA 351.
[33] 13 SCRA 104, January 30, 1965.

> are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie.[34]

This ruling was reiterated in the case of *Barcelon, Roxas Securities, Inc. (now Known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, where the Supreme Court held that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[35]

To prove the fact of mailing, respondent could have presented the registry receipt issued by the Philippine Postal Office or the Registry Return Card duly signed by petitioner or its

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[34] VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269.
[35] G.R. NO. 157064, August 07, 2006.

duly authorized representative. In this regard, the Supreme Court ruled, viz.:

> What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the petitioner or its authorized representative. And if said documents cannot be located, respondent at the very least should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This Court does not put much credence to the self-serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:
>
> > "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.[36]

It is worth to note that respondent never endeavored to present evidence in support of her defense arguing that only legal issues were there for the Court to resolve. But there were factual issues which needed presentation of evidence. The

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[36] Nava vs. CIR, 13 SCRA 104, January 30, 1965.

allegations of respondent in her lone pleading, i.e. Answer, are not proof, they are just contentions without any probative value.

The failure of the respondent to prove receipt of the assessment by petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue assessment against petitioner for the taxable year 2000 had already prescribed.[37]

Even granting for the sake of argument that the PAN and the FAN were sent by respondent to petitioner on the dates they were issued, viz., December 15, 2004 and on January 24, 2005, respectively, and that they were received by petitioner on even dates,[38] still the assessment in said PAN and FAN were issued beyond the three-year prescriptive period mandated by law. This being the case, the right of the government to assess the deficiency taxes for taxable year 2000 is deemed barred by prescription.

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[37] Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR CTA Case 4885, August 22, 1996.

[38] While inadmissible for not having been authenticated and attested to by a competent witness, and for not having been marked and formally offered in evidence, based on the original copy of the FAN dated January 24, 2005 in the BIR Record, pp. 688-691 (or pp. 325-328) the subject FAN was received by petitioner on January 27, 2005.

On the alleged waivers executed by petitioner which according to respondent effectively extended the three-year period for assessment and collection of taxes, Section 222 (b) of the NIRC provides:

> 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 previously agreed upon.
>
> x x x x

Thus, the period to assess and collect taxes may be extended upon a written agreement executed between respondent and the taxpayer, such as petitioner, before the expiration of the original three-year period.[39] The extension of the original three-year period is done through a valid waiver wherein the taxpayer and the BIR both agreed in writing that the

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

period to issue an assessment and collect the taxes due is extended to an agreed upon date.[40]

It must however be emphasized that respondent opted not to adduce any evidence to prove her defense contained in her Answer. In other words, respondent failed to prove that there were such waivers or agreement duly executed by petitioner and accepted by her or her duly authorized representative extending the three-year prescriptive period to assess respondent of tax liabilities for taxable year 2000.

While in her Answer dated August 20, 2010, respondent attached two (2) documents denominated as Waivers of the Statute of Limitation under the National Internal Revenue Code,[41] they were merely photocopies which were hardly legible for appreciation. To be sure, they are inadmissible under the Best Evidence Rule. While the originals of the same documents[42] appear to be part of the BIR Record submitted to the Court, the fact remains that they have not been authenticated by a competent witness and have not been formally offered for the

[40] Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008.
[41] Annex 1 & 2, docket pp. 71-72.
[42] BIR Record, pp. 375 and 695.

comment or objection by petitioner and ultimately for the appreciation of the Court.

It has been held that no evidentiary value can be given to documents which have not been formally offered, even when the same appear in the record of the BIR submitted to the Court, thus:

> Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.[43]

Even if the settled doctrine on the matter are disregarded, and the two (2) Waivers are admitted, still the subject assessment was undeniably issued beyond the three-year prescriptive period in view of the fact that the second Waiver utterly failed to comply with the requisites to validly extend respondent's period to assess.

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[43] Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation,*[44] the Supreme Court enumerates the requirements of a validly executed waiver of the statute of limitations, to wit:

> xxx RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure 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**

[44] G.R. No. 178087, May 5, 2010

> **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. *(Emphasis supplied)*

From the BIR record, the first Waiver[45] appears to have been executed on January 16, 2003, hence, would extend the period of limitation until September 2004. The second Waiver,[46] appears to have been executed on July 21, 2004 and would therefore extend the period of limitation until March 31, 2005. However, a perusal of the second Waiver[47] reveals that the same bears no date of acceptance by the Commissioner or her duly authorized representative. This particular date of acceptance would determine whether the same was validly accepted before the expiration of the period previously agreed upon in the first Waiver.[48] Settled is the rule that a waiver is a bilateral agreement, thus, necessitating the very signatures of both the

[45] BIR Record, p. 375.
[46] BIR Record, p. 695.
[47] BIR Record, p. 695.
[48] BIR Record, p. 375.

Commissioner and the taxpayer to give birth to a valid agreement.[49] Precisely, in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[50], the High Court ruled that the waivers executed by respondent therein were defective in view of the infirmities noted, including the fact that the waivers failed to indicate the date of acceptance.

For 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. x x x 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.[51] The prescriptive period on when to assess taxes benefits both the government and the taxpayer. Exceptions extending the period to assess must, therefore, be strictly

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[49] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.
[50] *Supra.*
[51] Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

construed.[52]

Effectively therefore, the second Waiver[53] failed to extend the period to assess from September 2004 as indicated in the first Waiver.[54] Hence, the assessment in the Final Assessment Notice dated January 24, 2005, issued beyond the period agreed upon in the first extension, is null and void.

As to the issue of whether the availment of tax amnesty on October 4, 2007 rendered the assessment final, suffice it to say that this issue has long been settled by the Court *En Banc* in the case of *Commissioner of Internal Revenue vs. Philex Mining Corporation,*[55] thus:

> Evidently, from the provisions of the Tax Amnesty Law and the Order issued by the Secretary of Finance, in coordination with the CIR itself, the argument that PMC is estopped from assailing the validity of the waivers by availing of the tax amnesty program has no leg to stand on.
>
> The Court *En Banc* quotes with approval the disquisition made by the Court in Division in the Resolution dated December 19, 2009, to wit:
>
>> Section 1 of R.A. No. 9480 provides that the tax amnesty covers all national internal revenue taxes for taxable year 2005

[52] Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 05, 2010.
[53] BIR Record, p. 695.
[54] BIR Record, p. 375.
[55] CTA EB No. 578, June 28, 2010.

> and prior years, with or without assessments, that have remained unpaid as of December 31, 2005. **Clearly, the availment of the said tax amnesty does not necessarily mean that a taxpayer admits the validity of any prior assessments and waivers, as argued by respondent; since the tax amnesty covers even those without any assessment. The law does not impose such conditions, save for the taxpayer to satisfy all the qualification requirements**. *(Boldfacing supplied)*

Anent respondent's argument that laches had set in after petitioner at the administrative level allegedly failed to timely assert prescription, the same deserve scant consideration.

Laches is the failure or negligence to assert a right within a reasonable time, giving rise to a presumption that a party has abandoned it or declined to assert it. It is not a mere question of lapse or passage of time but is principally a question of the inequity or unfairness of permitting a right or claim to be asserted.[56] In invoking the doctrine of estoppel by laches, respondent must show not only unjustified inaction but also some unfair injury that might result unless the action is barred.[57]

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[56] *Republic of the Philippines vs. Unimex Micro-Electronics, GmBH,* G.R. No. 166309-10, March 9, 2007.

[57] *Republic of the Philippines vs. Honorable Sandiganbayan, et al.,* G.R. No. 152154, July 15, 2003.

The doctrine of laches is based upon grounds of public policy and equity. It is invoked to discourage stale claims but is entirely addressed to the sound discretion of the court. Since it is an equitable doctrine, its application is likewise controlled by reasonable considerations. Thus, the better rule is that courts, under the principle of equity, should not be bound by the doctrine of laches if wrong or injustice will result. In fine, laches does not apply.

WHEREFORE, the Petition for Review dated July 18, 2010, filed by petitioner La Flor Dela Isabela, Inc., is hereby **GRANTED**. Accordingly, the assessment for deficiency expanded withholding tax in the aggregate amount of P1,756,292.07, covering taxable year 2000, is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
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