REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

INTEL TECHNOLOGY PHILIPPINES, INC., Petitioner,	**C.T.A. CASE NO. 7226**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 27 2007 3:00 p.m.

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RESOLUTION

For resolution is petitioner's **"Omnibus Motion For Early Resolution On The Issue of Prescription and Postponement of Hearing"** filed on February 24, 2006, praying that the assessments against petitioner be cancelled and withdrawn on the ground of prescription. Respondent failed to file her comment/opposition thereto despite notice.

The pertinent facts, as culled from the records, are as follows:

Petitioner received from respondent an Audit Notice (BIR Form No. 1920) dated April 24, 2002 with Case No. 116000671946 and OCN No. ?AN0000000561 authorizing the examination of petitioner's books of

584

accounts and other accounting records for Calendar Year 2000.[1]

Petitioner executed five waivers of the defense of prescription under the statute of limitations.[2] The details of each waiver are as follows:

a) Waiver dated January 13, 2003 extending the period to assess not later than June 30, 2003, filed with the respondent on January 16, 2003;[3]

b) Waiver dated June 09, 2003 extending the period to assess not later than March 31, 2004;[4]

c) Waiver dated November 28, 2003 extending the period to assess not later than September 30, 2004, filed on December 3, 2003;[5]

d) Waiver dated March 08, 2004 extending the period to assess till December 31, 2004, filed on March 09, 2004;[6] and

e) Waiver dated May 03, 2004 extending the period to assess till December 31, 2004 filed on May 04, 2004.[7]

On June 28, 2004, petitioner received from respondent the Final Assessment Notices (FAN) dated May 28, 2004 for deficiency value-added tax (VAT) and expanded withholding tax (EWT) in the amounts of ₱41,886,669.00 and ₱104,906,691.26, respectively.[8]

On July 28, 2004, petitioner filed a Letter Protest against the assessments, with the Office of the Deputy Commissioner, Large Taxpayers Services.[9]

On September 23, 2004, petitioner submitted additional documents in

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[1] Par. 1 of the Joint Stipulation of Facts; docket, p. 118. See also Exhibit "A.
[2] Par. 6 of the Joint Stipulation of Facts; *ibid.*, p. 118.
[3] Exhibit "B."
[4] Exhibit "SS."
[5] Exhibit "C."
[6] Exhibit "D."
[7] Exhibit "E."
[8] Par. 7 of the Joint Stipulation of Facts; docket, p. 119. See also Exhibits "G" & "H."
[9] Par. 9 of the Joint Stipulation of Facts; *ibid.* See also Exhibit "J."

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support of its Letter Protest to respondent. On March 22, 2005, petitioner filed a Supplemental Protest.[10]

Due to respondent's inaction of the Letter protest, petitioner filed the instant Petition for Review before this Court on April 21, 2005.[11]

In the course of the trial, petitioner filed the instant "Omnibus Motion for Early Resolution on the Issue of Prescription" on the VAT and EWT Assessments.

After a careful evaluation and consideration of petitioner's arguments and the evidence presented, the Court finds merit in the motion.

The prescription of assessments is provided under Section 203 of the National Internal Revenue Code of 1997, as amended, (hereafter "NIRC of 1997, as amended'), which reads:

> "**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".

In this case, records show that petitioner filed its quarterly VAT returns on the following dates:[12]

QUARTER	DATE FILED	LAST DAY TO FILE RETURN	LAST DAY WITHIN WHICH TO ASSESS
First	April 25, 2000	April 25, 2000	April 25, 2003
Second	July 24, 2000	July 25, 2000	July 25, 2003
Third	Original Return:	October 25, 2000	October 27, 2003

[10] Par. 10 of the Joint Stipulation of Facts; *ibid.* See also Exhibits "K."
[11] Par. 11 of the Joint Stipulation of Facts; *ibid.*

[12] Exhibits "FF," "II," "LL," and "PP."

	October 25, 2000 Amended Return: November 9, 2000		
Fourth	January 25, 2001	January 25, 2001	January 26, 2004

On the other hand, petitioner filed its EWT returns on the following dates:[13]

MONTH	**DATE FILED**	**LAST DAY TO FILE RETURN**	**LAST DAY OF PRESCRIPTIVE PERIOD**
January	February 24, 2000	February 25, 2000	February 25, 2003
February	March 27, 2000	March 27, 2000	March 27, 2003
March	April 25, 2000	April 25, 2000	April 25, 2003
April	May 25, 2000	May 25, 2000	May 26, 2003
May	June 26, 2000	June 26, 2000	June 25, 2003
June	July 24, 2000	July 25, 2000	July 25, 2003
July	August 24,2000	August 25,2000	August 25,2003
August	September 21, 2000	September 25, 2000	September 25, 2003
September	October 25, 2000	October 25, 2000	October 27, 2003
October	November 23, 2000	November 27, 2000	November 25, 2003
November	December 21, 2000	December 26, 2000	December 26, 2003
December	January 25, 2001	January 25, 2001	January 26, 2004

Considering that the FAN was received on June 28, 2004, respondent's right to assess petitioner for deficiency value-added and expanded withholding taxes had already prescribed.

The Waivers of the Defense of Prescription Under the Statute of Limitations did not extend the period within which respondent can assess petitioner for deficiency taxes. In this regard, Sec. 222(B) of the NIRC of 1997, as amended, provides:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*
>
> xxx xxx."
>
> (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

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[13] Exhibits "RR" to "CC."

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> 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.
>
> xxx xxx."

In *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,*[14] the Supreme Court provided the requisites for a valid waiver, as follows:

> "A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. The BIR had issued Revenue Memorandum Order (RMO) No. 20-90 on 04 April 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be administratively dealt with."

Corollary thereto, Revenue Memorandum Order 20-90 lays down the procedure for the proper execution of the 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.
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> 2. The waiver shall be signed by the taxpayer himself

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[14] 473 SCRA 205.

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.
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> 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."

Pursuant to the foregoing ruling and provisions, the Court finds the waivers in question defective on the following grounds:

1) the waivers were not signed by the Commissioner of Internal Revenue considering that the assessed amount exceeds P1,000,000.00;
2) as regards the waivers executed on June 09, 2003 and November 28, 2003, respondent failed to indicate the date of its acceptance of the waiver; and
3) petitioner was not furnished copies of the waivers executed on January 13, 2003, June 09, 2003, November 28, 2003, and March 08, 2004 by respondent.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[15] the Supreme Court ruled:

> "The waiver is also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No. 20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (P1,000,000.00) and executed almost seven months before the expiration of the three-year prescriptive period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR."

The instant case involves an assessment of deficiency value-added tax (VAT) and expanded withholding tax (EWT) in the amounts of

[15] 447 SCRA 214.

590

₱41,886,669.00 and ₱104,906,691.26,[16] respectively. Considering that this case involves taxes amounting to more than P1,000,000.00, Revenue Memorandum Order No. 20-90 requires the Commissioner of Internal Revenue to sign for the Bureau of Internal Revenue. In this case, the waivers were signed by the following:

Date Executed	Exhibit Number	Signatory
January 13, 2003	Exhibit "1"	Edwin Abella (Assistant Commissioner Large Taxpayer Service
June 09, 2003	Exhibit "2"	Estelita C. Aguirre (Deputy Commissioner, OIC Large Taxpayer Service)
November 28, 2003	Exhibit "3"	Armi S. Linsangan (Chief, LT Audit & Investigation Division I)
March 08, 2004	Exhibit "4"	Teresita M. Dizon (Chief, LT Audit & Investigation Division I)

Furthermore, the waivers did not indicate the dates of acceptance by the Commissioner. In the same case of Philippine Journalists, *supra,* the Supreme Court, applying the same RMO No. 20-90, ruled:

> "Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason copies are furnished is for a party to be notified of the existence of a document, event or proceeding.
>
> The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.

[16] Exhibits "G" and"H."

591

> The waiver document is incomplete and defective and thus the three-year prescriptive period was not tolled or extended and continued to run until April 17, 1998. Consequently, the Assessment/Demand No. 33-1-000757-94 issued on December 9, 1998 was invalid because it was issued beyond the three (3) year period. In the same manner, Warrant of Distraint and/or Levy No. 33-06-046 which petitioner received on March 28, 2000 is also null and void for having been issued pursuant to an invalid assessment."

Finally, records show that petitioner was not furnished copies of the waivers signed by the Commissioner of Internal Revenue. Considering that the waivers were not signed by the Commissioner himself and petitioner was not furnished copies of the waivers duly accepted by the Commissioner, pursuant to RMO No. 20-90, said waivers are null and void, and as such, did not extend the period within which to assess petitioner.

WHEREFORE, petitioner's motion is hereby **GRANTED.** Accordingly, the Final Assessment Notices dated May 28, 2004 for deficiency value-added and expanded withholding taxes against petitioner are hereby **CANCELLED** and **SET ASIDE** for having been issued beyond the prescriptive period.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

532