Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

UNIVERSAL WEAVERS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8566

Members:

DEL ROSARIO, *Chairperson*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 11 2015 ; 3:45 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review filed on November 5, 2012 which seeks the cancellation and withdrawal of respondent's tax assessments against petitioner for the taxable year 2006 for deficiency income tax, expanded withholding tax and documentary stamp tax, with compromise penalty, in the total amount of ₱4,385,392.98.

THE FACTS

Petitioner Universal Weavers Corporation is a corporation duly organized and existing under and by virtue of Philippine laws and registered with the Philippine Economic Zone Authority (PEZA).[1]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), charged with the duty of assessing and collecting internal revenue taxes.

[1] Joint Stipulation of Facts and Issue (JSFI), Par. 1.1, Docket, Vol. 1, p. 546.

On December 3, 2007, the OIC-Regional Director for Revenue Region No. 4 - San Fernando, Pampanga, Zenaida G. Garcia, issued a Letter of Authority (LOA) No. 00074245, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2006 to December 31, 2006.[2]

On December 10, 2007, petitioner received a "First Request for Presentation of Records" dated December 6, 2007, issued by Revenue District Officer (RDO) Elisa B. Pellejera of Revenue District Office No. 20 - Balanga City, Bataan, requesting certain documents and records to be made available to the said RDO.[3]

Thereafter, the Notices for Informal Conference were issued by RDO Pellejera on September 18, 2008[4] and March 16, 2009,[5] respectively.

A notarized Waiver of Statute of Limitations dated September 16, 2009 was executed by petitioner's AVP-Plant Controller, Ms. Anita P. Sabado, extending the period of assessment of all internal revenue tax liabilities for the taxable year 2006 without indicating the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription (First Waiver).[6]

On November 5, 2010, Mr. Wilfrido C. Rodriguez, petitioner's Director, executed another notarized Waiver of the Statute of Limitations extending the period of assessment of taxes for the taxable year 2006 until December 31, 2011 (Second Waiver).[7]

On September 9, 2011, petitioner received a Preliminary Assessment Notice (PAN)[8] dated August 12, 2011 issued by Regional Director Romulo L. Aguila, Jr. of Revenue Region No. 4 of the Bureau of Internal Revenue (BIR), assessing petitioner of deficiency income tax, expanded withholding tax and documentary stamp tax for the calendar year 2006 as follows:

[2] Exhibit "1", BIR Records, p. 136.
[3] Exhibit "2", BIR Records, p. 171.
[4] Received by petitioner on September 25, 2008, Exhibit "3", BIR Records, p. 392.
[5] Received by petitioner on April 14, 2009, Exhibit "6", BIR Records, p. 934.
[6] Annex A of Exhibit "9", BIR Records, p. 968.
[7] Exhibit "9", BIR Records, p. 969.
[8] Exhibit "A", Docket, Vol. 1, pp. 30-40; Exhibit "12", BIR Records, pp. 1010-1021.

Deficiency Income Tax	**35%**	**5%**
Taxable net income per audit	₱ 219,098.82	₱152,265,089.04
Income tax due	₱ 76,684.59	₱ 7,613,254.45
Total income tax due		₱ 7,689,939.04
Less: Tax paid		5,460,078.20
Balance		2,229,860.84
20% Interest p.a.		1,969,710.41
TOTAL AMOUNT DUE & COLLECTIBLE		**₱ 4,199,571.25**

Deficiency Expanded Withholding Tax	
Deficiency expanded withholding tax due	₱ 8,462.00
20% Interest p.a.	7,897.87
TOTAL AMOUNT DUE & COLLECTIBLE	**₱ 16,359.87**

Deficiency Documentary Stamp Tax	
Documentary Stamp Tax	₱ 19,527.32
25% Surcharge	4,881.83
20% Interest p.a.	17,249.13
TOTAL AMOUNT DUE & COLLECTIBLE	**₱ 41,658.28**

Compromise Penalty (RMO 19-2007)	
Compromise penalty on deficiency income tax	₱ 25,000.00
Compromise penalty on deficiency expanded withholding tax	2,000.00
Compromise penalty on deficiency documentary stamp tax	4,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	**₱ 31,000.00**

In a letter dated September 23, 2011,[9] petitioner filed its administrative protest on the PAN and further requested for immediate reinvestigation and/or reconsideration thereof.

On October 18, 2011, petitioner's AVP-Plant Controller, Ms. Anita P. Sabado, executed another notarized Waiver of the Statute of Limitations extending the period of assessment of taxes for the taxable year 2006 until December 31, 2012 (Third Waiver).[10]

On January 13, 2012, petitioner received the Formal Letter of Demand (FLD) dated January 3, 2012 with attached Assessment Notices from the BIR for alleged deficiency taxes for the calendar year 2006,[11] as follows:

Deficiency Income Tax	**35%**	**5%**
Taxable net income per audit	₱ 219,098.82	₱152,265,089.04
Income tax due	₱ 76,684.59	₱ 7,613,254.45
Total income tax due		₱ 7,689,939.04
Less: Tax paid		5,460,078.20
Balance		2,229,860.84
20% Interest p.a.		2,155,532.14

[9] Exhibit "B", Docket, Vol. II, pp. 711-716.
[10] Exhibit "17", BIR Records, p. 1058.
[11] JSFI, Par. 1.4, Docket, Vol. 1, p. 547; Exhibit "C", Docket, Vol. 1, pp. 47-62; Exhibits "18" to "18-D", BIR Records, pp. 1062-1086.

TOTAL AMOUNT DUE & COLLECTIBLE		**P 4,385,392.98**
Deficiency Expanded Withholding Tax		
Deficiency expanded withholding tax due	P	8,462.00
20% Interest p.a.		8,603.03
TOTAL AMOUNT DUE & COLLECTIBLE	**P**	**17,065.03**
Deficiency Documentary Stamp Tax		
Documentary Stamp Tax	P	19,527.32
25% Surcharge		4,881.83
20% Interest p.a.		18,876.41
TOTAL AMOUNT DUE & COLLECTIBLE	**P**	**43,285.56**
Compromise Penalty (RMO 19-2007)		
Compromise penalty on deficiency income tax	P	25,000.00
Compromise penalty on deficiency expanded withholding tax		2,000.00
Compromise penalty on deficiency documentary stamp tax		4,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	**P**	**31,000.00**

On February 10, 2012, petitioner filed its Protest[12] on the FLD dated January 3, 2012. Thereafter, petitioner filed its supporting documents on April 10, 2012.[13]

Due to respondent's alleged inaction within 180 days from submission of its supporting documents, petitioner timely filed the instant petition for review on November 5, 2012.

In her Answer,[14] respondent argues, among others, that petitioner was accorded due process in the assessment of its tax deficiencies for the calendar year 2006. In fact, she avers that the requirement of notice and opportunity to be heard were complied with when it was notified of its tax deficiencies in the issuance and receipt of (i) the LOA with request for presentation of records; (ii) the Notice of Informal Conference with detailed computation of its tax deficiencies; (iii) the PAN and FLD with attached details of discrepancies. Respondent further pointed out that petitioner executed several Waivers of Defense of Prescription asking for more time to submit the supporting documents required in the investigation of its internal revenue tax liabilities. Thus, respondent claims that petitioner's act of filing its administrative protest belies its claim that it was deprived of due process.

[12] Exhibit "D", Docket, Vol. II, pp. 730-735; BIR Records, pp. 1101-1106.
[13] Exhibit "E", Docket, Vol. II, pp. 736.
[14] Filed on January 28, 2013, Docket, Vol. 1, pp. 181-189.

Petitioner, on the other hand, filed its Reply[15] and asserts, among others, that the due process requirement affording the right to be heard was not satisfied when the respondent returned its supporting documents on the protest without just cause. Petitioner opines that respondent's disregard of its basic right to adduce its own evidence renders the deficiency tax assessments void, in violation to the due process guaranty in administrative proceedings enshrined in the landmark case of *Ang Tibay v. CIR, 69 Phil. 635*. Petitioner further states that respondent's deficiency tax assessments based on mere assumptions, without providing the facts and the law on which they were based, contradict the mandate of the law and regulations, which warrants the cancellation and withdrawal of the same.

During trial, the parties respectively presented their documentary and testimonial evidence. In compliance with the Court's Resolution dated March 18, 2014,[16] respondent filed a Manifestation on April 25, 2014[17] stating that she is adopting the arguments she raised in her Answer as her Memorandum, while petitioner filed its Memorandum on April 29, 2014.[18] Thereafter, the case was submitted for decision.[19]

THE ISSUES

The parties stipulated the following issues for the resolution of this Court, to wit:[20]

1. Whether the deficiency tax assessments against petitioner should be cancelled and withdrawn for failure of respondent to comply with the due process requirements under the Tax Code and Revenue Regulation No. 12-99;

2. Whether petitioner is liable to pay deficiency income tax, expanded withholding tax, documentary stamp tax and compromise penalty in the amount of Four Million Three

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[15] Filed on February 4, 2013, Docket, Vol. 1, pp. 194-197.
[16] Docket, Vol. III, pp. 1396-1397.
[17] Docket, Vol. III, pp. 1398-1401.
[18] Docket, Vol. III, pp. 1402-1420.
[19] Docket, Vol. III, p. 1422.
[20] JSFI, Docket, Vol. 1, p. 547

Hundred Eighty Five Thousand Three Hundred Ninety Two Pesos and 98/100 (₱4,385,392.98) for the period January 1, 2006 to December 31, 2006.

THE COURT'S RULING

We grant the instant petition for review on the ground of prescription.

Section 203 of the NIRC of 1997, as amended,[21] provides for a three-year period for the BIR to assess and collect any deficiency internal revenue tax from a taxpayer, reckoned 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. What is essential in determining prescription is that the facts demonstrating the lapse of the prescriptive period were sufficiently and satisfactorily apparent on the record either in the allegations of the complaint, or otherwise established by the evidence.[22]

As an exception to the above-cited rule, *Section 222 (b) and (d) of the NIRC of 1997, as amended*, explicitly provides that the period of limitation of assessment and collection of taxes may be extended through execution of a written agreement between the Commissioner and the taxpayer before the expiration of the three-year period, thus:

> SEC. 222. – *Exceptions as to period of limitation of assessment and collection of taxes.* –
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> xxx
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> (b) If before the expiration of the time prescribed in the preceding section 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

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[21] SEC. 203. *Period of limitation upon assessment and collection.* – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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-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.

[22] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 181836, July 9, 2014.

may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

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(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

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Corollary thereto, *Revenue Memorandum Order (RMO) No. 20-90* was issued on April 4, 1990 in order to provide guidelines in the proper execution of the Waiver of the Statute of Limitations under the NIRC. Thereafter, a new waiver form was introduced in Revenue Delegation Authority Order (RDAO) No. 05-01 on August 2, 2001 which similarly authorized subordinate officials to sign the said waivers.

Subsequently, Revenue Memorandum Circular (RMC) No. 06-05 issued on February 2, 2005 circularizes the salient features of the decision of the Supreme Court in the case of ***Philippine Journalists, Inc. v. Commissioner of Internal Revenue***,[23] wherein the significance of strict compliance with the procedure for proper execution of waiver of statute of limitations was emphasized, to wit:

"1. A waiver of the statute of limitations under the Tax Code must conform strictly with the provisions of Revenue Memorandum Order No. 20-90 in order to be valid and binding.

1.1. The waiver must specify a definite agreed date between the BIR and the taxpayer within which the former may assess and collect revenue taxes.

1.2. The waiver must be accepted by the Commissioner of Internal Revenue or his duly authorized representative, and the date of acceptance must be indicated.

1.3. The taxpayer must be furnished a copy of the waiver accepted by the BIR.

[23] G.R. No. 162852, December 16, 2004.

2. A waiver of statute of limitations under the Tax Code, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.

3. A waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. 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.

4. A waiver of the statute of limitations is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties." [Emphasis supplied.]

In a later case of ***Commissioner of Internal Revenue v. Kudos Metal Corporation***,[24] the Supreme Court reiterates the procedure for the proper execution of the waiver pursuant to RMO 20-90 and RDAO 05-01, 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 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. *c*

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

> 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."

Interestingly, the Supreme Court held in the same case of ***Commissioner of Internal Revenue v. Kudos Metal Corporation,***[25] that the BIR cannot apply the doctrine of estoppel to cover its failure to comply with the procedures for proper execution of waiver of statute of limitations under *RMO 20-90* and *RDAO 05-01*. The pertinent portion of which reads:

> "**The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow.** As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right *[La Naval Drug Corporation v. Court of Appeals, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87]*. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy *[Ouano v. Court of Appeals, 446 Phil. 690, 708 (2003)]*. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate *[C & S Fishfarm Corporation v. Court of Appeals, 442 Phil. 279, 290 (2002)]*. Simply put, the doctrine of estoppel must be sparingly applied.
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> Moreover, **the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued.** As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. **Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer.** To stress, a waiver of the

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

> statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed *[Philippine Journalist, Inc. v. Commissioner of Internal Revenue, supra note 19 at 231-232].*" [Emphasis supplied.]

Applying the foregoing precepts in the instant case reveals that the three (3) waivers executed between the parties are invalid and without binding effect for the reasons herein stated:

1. The First Waiver[26] failed to specify the expiry date or a definite agreed date between the BIR and petitioner, within which the former may assess and collect revenue taxes. Also, both the date of execution by the taxpayer and date of acceptance by the Bureau were not indicated.

2. The Second Waiver[27] failed to indicate the date of acceptance by Revenue District Officer Atty. Abencio T. Torres.

3. The Third Waiver[28] failed to indicate the date of acceptance by Revenue District Officer Roberto S. Bucoy.

It bears stressing that failure to specify the expiry date within which the BIR may assess and collect revenue taxes renders the prescriptive period of the First Waiver infinite or unlimited in time in violation of Section 222(b) of the NIRC of 1997, as amended.[29] On this score alone, the period to assess or collect taxes was not extended.

Anent the requisite date of acceptance by the Bureau, the Supreme Court, in a catena of cases,[30] consistently held that the date of acceptance by the BIR Commissioner or her authorized representative is necessary for the validity of the

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[26] *Supra* note 6.
[27] *Supra* note 7.
[28] *Supra* note 10.
[29] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004.
[30] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004. ; *Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008; Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 5, 2010.*

Waiver of Statute of Limitations as the said requisite determines whether the waiver was validly accepted before the expiration of the original three-year prescriptive period.

Consequently, the Second and Third Waivers are invalid for violating Section 222 (b) of the NIRC of 1997, as amended, which mandates that the period agreed upon in a waiver of the statute of limitations can still be extended by subsequent written agreement made before the expiration of the period previously agreed upon. Considering that the First Waiver failed to indicate the date of expiry, it necessarily follows that the waivers subsequently executed after the First Waiver did not likewise have any binding effect as there was nothing to extend in the first place.

In view of the foregoing infirmities in the said waivers, the period to assess or collect taxes was not extended. Consequently, assessments issued by the BIR beyond the three-year period are void.

In the instant case, it is undisputed that petitioner received the FLD dated January 3, 2012 with attached Assessment Notices for alleged deficiency income tax, expanded withholding tax, and documentary stamp tax, with compromise penalty covering the calendar year 2006 only on January 13, 2012 or way beyond the 3-year prescriptive period provided by law. Clearly then, the foregoing assessments issued by respondent have already prescribed and should be set aside for being void.

While the issue of prescription was not raised as a defense by petitioner, the Court is mandated to dismiss the claim pursuant to Section 1, Rule 9 of the Revised Rules of Court which reads:

> Section 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by prior judgment or **by the statute of limitations, the court shall dismiss the claim**. [Emphasis supplied]

Thus, in ***Bank of the Philippine Islands v. Commissioner of Internal Revenue***,[31] the Supreme Court denied the right of the BIR to collect the assessed deficiency tax on the ground of prescription, *viz*:

> "**If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense.** In *Heirs of Valientes v. Ramas [G.R. No. 157852, 15 December 2010, 638 SCRA 444]*, we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, **when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time**." [Emphasis supplied.]

In view of the dismissal of the instant case on the ground of prescription, there is no more need to determine the validity of the assessment.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Demand and Final Assessment Notice No. 020-0704010876 is hereby ordered **CANCELLED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

[31] G.R. No. 181836, July 9, 2014.

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.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice