REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SYSTEMS TECHNOLOGY INSTITUTE, INC.,
Respondent.

CTA EB No. 1050
(CTA Case No. 7984)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 24 2015
x- 2:30 p.m. - x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review anent the Resolution dated July 17, 2013 of the Second Division of this Court in CTA Case No. 7984, denying herein petitioner's Motion for Reconsideration of the Decision dated April 17, 2013. The said Decision, as upheld by the Resolution, denied the assessments of deficiency income tax, deficiency value-added tax, and deficiency expanded withholding tax made by the petitioner on the ground of prescription.

THE PARTIES

The petitioner is the duly-appointed Commissioner of Internal Revenue (CIR), vested by law with authority to exercise the functions, powers and duties of the said office, including the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the National Internal Revenue Code of 1997 (NIRC) and other tax laws, rules and regulations. She may be served

summons, pleadings and other processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The respondent is a domestic corporation duly organized and existing under Philippine laws. It holds principal office at Campus Gateway, Fort Bonifacio, Taguig City. It may be served summons, pleadings and other processes through its counsels at Salvador and Associates, Units 815-816, 8th Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

JURISDICTIONAL FACTS

On April 17, 2013, the Second Division of this Court promulgated its Decision in CTA Case No. 7984 (*Systems Technology Institute, Inc. vs. Commissioner of Internal Revenue*). Inasmuch as the Decision was adverse to her, the Commissioner of Internal Revenue (CIR) moved for its reconsideration on May 9, 2013.

The Motion for Reconsideration was denied by Resolution dated July 17, 2013. The CIR received this Resolution on July 22, 2013, and had fifteen (15) days therefrom, or until August 6, 2013, within which to file a petition for review. On August 6, 2013, the CIR filed a Motion for Extension of Time to File Petition for Review, seeking an additional fifteen (15) days, until August 21, 2013 for the purpose. This Motion was granted on August 7, 2013 by En Banc Resolution; the CIR was given the extension asked for, until August 21, 2013. As the last day of the period fell on Ninoy Aquino Day which had been declared as a special non-working day by Proclamation No. 459 dated August 16, 2012, as published in the *Official Gazette*, the CIR filed the instant petition on August 22, 2013, the next working day.

FACTUAL ANTECEDENTS

Respondent STI filed its Amended Annual Income Tax Return for FY 2003 on August 15, 2003; its Quarterly VAT Returns on July 23, 2002, October 25, 2002, January 24, 2003, and May 23, 2003; and its BIR Form 1601E for EWT, monthly from May 10, 2002 to April 15, 2003.

STI's Amiel C. Sangalang signed on May 30, 2006 a Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC, with the proviso that the assessment and collection of taxes of FY 2003 shall come "no later than December 31, 2006." This was accepted by Virgilio R. Cembrano, Large Taxpayers District Officer of Makati, on June 2, 2006, on which date it was notarized. The period was extended to March 31, 2007 by another waiver dated December 12, 2006, also signed by Sangalang and

accepted by Cembrano and notarized on the same date. A third waiver executed on March 8, 2007 by the same signatories extended the period to June 30, 2007.

On June 28, 2007, respondent STI received a Formal Assessment Notice (FAN) from the petitioner. STI was assessed for deficiency income tax, VAT and EWT for fiscal year 2003, in the aggregate amount of ₱161,835,737.98.

On July 25, 2007, respondent filed a request for reconsideration/reinvestigation dated July 23, 2007.

On September 11, 2009, respondent received from the petitioner the Final Decision on Disputed Assessment (FDDA) dated August 17, 2009, finding STI liable for deficiency income tax, VAT and EWT in the lesser amount of ₱124,257,764.20.

On October 12, 2009, respondent appealed to this Court against the FDDA. The appeal, by petition for review, was docketed as CTA Case No. 7984, and was heard by the Second Division.

On April 17, 2013, the Second Division promulgated its Decision denying the assessment on the ground of prescription, as follows:

> "While the filing of a request for a reinvestigation which is granted by the Commissioner may suspend the running of the statute of limitations on assessment of taxes, records would show that petitioner filed the protest on July 25, 2007 which is clearly beyond the 3-year prescriptive period within which to assess income tax, value-added tax, and expanded withholding tax for the fiscal year ending March 31, 2003. Since at the time the protest was filed, there was already no period to suspend, respondent's contention that the protest effectively suspended the running of the prescriptive period to assess must necessarily fail.
>
> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly the assessments against petitioner for deficiency income tax, deficiency expanded withholding tax, and deficiency value-added tax for fiscal year ending March 31, 2003 are hereby **CANCELLED** and **SET ASIDE** on the ground of prescription.[1]

On May 9, 2013, petitioner filed her Motion for Reconsideration.

[1] Decision in CTA Case No. 7984, pp. 25-26.

On July 17, 2013, the Second Division denied petitioner's Motion for Reconsideration.

Hence, this Petition for Review.

ISSUES

The petitioner imputes eight errors to the Second Division, enumerated and simplified below. The CIR alleges that the Second Division erred in:

(1) Barring the petitioner from raising a new argument on an extant issue in her Motion for Reconsideration of the Decision dated 17 April 2013.

(2) Not applying Section 222(A) of the NIRC.

(3) Not holding that a withholding tax assessment is not a tax and therefore not covered by the prescriptive period to assess taxes.

(4) Holding that payment is the key principle in the RCBC case, without which RCBC is not applicable to the instant case.

(5) Holding that non-compliance with the provisions of RMO No. 20-90 and RDAO No. 05-01 results in invalidating a waiver of the statute of limitations executed under Section 222 of the NIRC.

(6) Holding that the non-indication in the waivers of the specific kind of tax and the amount thereof invalidates the waivers executed under Section 222 of the NIRC.

(7)Holding that waivers are bilateral in nature

(8) Disregarding the fact that the factual and legal bases of the deficiency assessments remain undisputed and unassailed.

While *We* find that most of these assigned errors fault the Second Division for adhering to jurisprudential precedents set by the Supreme Court, at bottom, the issue is simpler: whether or not the petitioner's deficiency tax assessments against the respondent – whatever the taxes covered and the amounts thereof are – were made within the period prescribed by law.

APPLICABLE LAWS

The laws applicable to the case are relevant provisions of the NIRC, primarily Sections 203, 222, 223, and 248, as well as issuances of the petitioner, particularly Revenue Memorandum Order No. 20-90 and Revenue Delegation Authority Order No. 05-01. Most central to this case is Section 203, which reads as follows:

> "**Section 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."

DISCUSSION

I.

The first two assigned errors are intertwined. Petitioner asserts that the Second Division should not have barred her from raising the matter of fraud in her Motion for Reconsideration, and that had the Second Division allowed her to do so, then it should have held Section 222(a) of the NIRC, with its ten-year prescriptive period, applicable to the assailed assessments of deficiency taxes, instead of Section 203 with its shorter three-year time-bar.

Section 222(a) of the NIRC Not Applicable

Petitioner assails the Second Division for not applying Section 222(a) of the NIRC to the case. This provision states:

> "**Section 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed

> without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

We find no reason to modify or reverse the holding of the Second Division on this issue in its Resolution. The Second Division held:

> "As to respondent's allegation of falsity in the return, it appears that respondent is now invoking the provision under Section 222(a) of the NIRC of 1997, as amended, which provides for a period of 10 years to assess in case of a false or fraudulent return with intent to evade tax or of failure to file a return.
>
> However, a careful perusal of the records of this case would show that respondent failed to allege in its Formal Assessment Notice and Final Decision on Disputed Assessment any falsity or fraud in the return filed by petitioner. Also, it may be noted that while respondent argued that a waiver of the statute of limitations could have been foregone by respondent's examiners considering that there is falsity or deviation from the truth in the return filed by petitioner, the said averment was raised for the first time in her Motion for Reconsideration and was never interposed in her Answer or Memorandum.
>
> x x x
>
> Considering that the allegation of falsity in the return is a mere afterthought of respondent in trying to justify the issuance of the assessment beyond the three-year period provided by law to assess and that there is nothing in the Formal Assessment Notice and Final Decision on Disputed Assessment which would warrant the application of the exception provided under Section 222(a) of the NIRC of 1997, as amended, respondent's allegation of falsity in the return is bereft of merit.[2]"

The CIR responds to the foregoing, in the instant petition, by describing the Second Division's foregoing logic as "flawed", pointing out that the Resolution cited no legal authority to support the holding that parties are proscribed from raising new arguments in a motion for reconsideration. She further asserts that this is precisely because parties can legally propound new

[2] Second Division Resolution in CTA Case No. 7984, p. 4.

arguments on an existing issue in their motion for reconsideration of a decision by the trial court.[3]

Petitioner is far from correct. The disallowance by the Second Division of a change in theory of the case at that late stage is more of a matter of due process. The Supreme Court elaborated in *Rizal Commercial Banking Corporation vs. CIR*[4], thus:

> "It is only in the instant motion for reconsideration that petitioner raised the issue of prescription, which is not allowed. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process. This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.[5]"

The CIR, however, in the instant petition, denies that she raised the issue of falsity or fraud for the first time in her Motion for Reconsideration. The CIR argues that this issue should be deemed included in the "general defense" made in her Answer and Memorandum, that "The assessments for fiscal year 2003 deficiency Income Tax, Witholding Tax and Value Added Tax in the aggregate amount of P124,257,764.20 were issued in accordance with law, jurisprudence and regulations." She posits that "this general defense easily subsumes the argument raised (in the motion for reconsideration) that the assessment was validly issued under Section 222(a) of the NIRC."[6]

This contention is untenable, and is not supported by the evidence.

First, nowhere in the FAN and FDDA is there any specific mention of Section 222(a) of the NIRC. Sec. 228 of the NIRC requires: "The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

Second, had there been falsity or fraud, the FAN and FDDA should have levied the 50% surcharge or fraud penalty under Sec. 248(B) of the NIRC.

---

[3] Petition, p. 13.
[4] G.R. No. 168498, April 24, 2007. Citations omitted.
[5] *Id.*
[6] Petition, p. 14.

However, what was imposed in the FAN was not the 50% fraud penalty, but the 25% surcharge which, under Sec. 248(A), has nothing to do with fraud.

The *undated* FAN[7] contained this explanation: "The 25% surcharge has been imposed pursuant to the Provisions of Section 248(A) of the National Internal Revenue Tax Code (sic), as amended by RA 8424 x x x." The FDDA dated August 17, 2009, on the other hand, contained no entry on any surcharge, except on page 10, where the surcharge imposed was *zero*; there was, however, mention of a compromise penalty, under Sec. 255 of the NIRC. Sec. 255 of the NIRC, however, does not deal with falsity or fraud, but with "failure to file return, supply correct and accurate information, pay tax withheld and remit tax and refund excess taxes withheld on compensation."

Third, in the CIR's petition itself, while there appeared to be sizeable penalties on the deficiency taxes enumerated, their legal bases are unclear. And in the explanations for the disallowances and the assessments, no mention of fraud can be found.[8]

In the face of the foregoing, the Court finds the petitioner's allegation of fraud inconsistent with the entries made in the FAN and FDDA. The FAN and the FDDA are the *best evidence* of their contents which – unfortunately for the petitioner – do not allege fraud, make no mention of Section 222(a) of the NIRC, and do not impose the 50% fraud penalty but merely a 25% surcharge. Thus, by asserting in her Answer and Memorandum in CTA Case No. 7984, and reiterating in the instant petition, the "general defense" that the FAN and FDDA "were issued in accordance with law, jurisprudence and regulations," petitioner is refuting her subsequent allegation of fraud.

We therefore hold that the Second Division committed no error in not applying Section 222(a) of the NIRC in lieu of Section 203.

II

The third assigned error alleges that the Second Division erred in not holding that a withholding tax assessment is not a tax and therefore not covered by the prescriptive period to assess taxes.

Assessment of Deficiency EWT Can be Barred by Prescription.

[7] Annex "A" of STI in CTA Case No. 7984.
[8] See Petition, pp. 3-10.

The CIR insists that deficiency withholding tax is *not a tax*, the assessment and collection of which can prescribe in three years under Sec. 203 of the NIRC, but a *penalty*. The petitioner invokes for support the case of *National Development Company vs. Commissioner of Internal Revenue.*[9]

Closer scrutiny of petitioner's cited case, *NDC vs. CIR*, will show that it dealt neither with prescription nor a tax assessment, but with a warrant of distraint and levy for failure to withhold tax on interest remitted to Japanese shipbuilders. Moreover, *NDC vs. CIR* was decided under a much older version of the NIRC, which was as amended by R.A. 2343 of June 20, 1959.

More significantly, the CIR's key excerpt from *NDC vs. CIR* -- "**In effect, therefore, the imposition of the deficiency taxes on the NDC is a *penalty* for its failure to withhold the same from the Japanese shipbuilders**."-- is clearly *obiter dictum.*

The Withholding Tax System is more sufficiently explained in *Philippine Guaranty Co., Inc. vs. Commissioner of Internal Revenue*[10] wherein the Supreme Court declared that:

> "The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. **Thus, the withholding agent is constituted the agent of both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer.** The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable to law." *(Emphasis ours)*

However, this Court also believes that the above pronouncement is not incompatible with the applicability of Section 203.

As withholding agent of the Government who failed to withhold, Section 80 mandates that an employer shall be liable to pay the tax together

[9] G.R. No. L-53961, June 30, 1987.
[10] G.R. No. L-22074, September 6, 1965, as cited in Filipinas Synthetic Fiber Corporation vs. Court of Appeals, Court of Appeals and CIR, G.R. No. 118498 & 124377, October 12, 1999.

with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.

As agent of the taxpayer, the withholding agent is responsible for filing the necessary withholding tax return and remittance of the tax withheld.

This dual role of a withholding agent is *sui generis*. Petitioner is splitting hairs when it seeks remedies under the umbrella of one role to the exclusion of the other. The deficiency payment the Government seeks is an internal revenue tax. As such, as with any taxpayer, Section 203 applies. The Government must issue an assessment in an effort to collect the tax within three (3) years after the last day prescribed by law for filing of the return, or in cases where the return is filed beyond the period prescribed by law, from the day the return was filed. The rationale for this is further explained in *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[11] which states that "The statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor."

Section 203 was instituted to benefit the taxpayer, the principal of the withholding agent. This Court sees no reason why a rule that applies to the principal should not apply to the agent as well.

In this case, the Government failed to discharge its duty to assess and collect the deficiency EWT in a timely manner. Had it done so, then the liability of the withholding agent for failure to withhold could be properly determined. It belies logic and reason that liability would attach to the withholding agent when there has yet been no determination that it failed to withhold for lack of a valid and timely assessment.

Significantly, because the respondent's request for reconsideration/reinvestigation of the FAN was granted, the petitioner invoked Section 223 of the NIRC as a defense against prescription. Section 223 reads as follows:

> "**Section 223.** *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for tbe period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the

[11] *Rollo*, p. 121.

> return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines."

It is noteworthy that Sec. 223 uses the clause "any deficiency," rather than "any tax deficiency." "Any deficiency" is broad enough to encompass deficiency EWT, even if the deficiency is in the *process* of withholding by the agent rather than in the *amount* withheld from the taxpayer. The legal maxim that "when the law does not distinguish, neither should the court," applies in this case.[12] However, it can also readily be seen that Sec. 223 applies to the assessment of "any deficiency", rather than a *penalty*, which the petitioner considers deficiency EWT to be.

Sec. 222(a), which the petitioner also invokes in support of extending the prescription period to ten (10) years on the basis of a false or fraudulent return, provides for exceptions to the period of limitation of assessment and collection of *taxes*, not *penalties*. Thus, by insisting that deficiency EWT is a penalty and not a tax, petitioner's invocation of Sec. 222(a) is rendered misplaced.

III.

In petitioner's fourth assignment of error, she asserts that the Second Division erred in holding that payment is the key principle in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*,[13] without which *RCBC* -- which would have estopped STI from questioning the validity of its waivers of the statute of limitations -- is not applicable to the instant case.

RCBC Case Not Decisive of the Instant Petition.

The petitioner insists that because STI benefitted from the waivers, STI is estopped from impugning their validity, following the *RCBC* principle. Petitioner alleges that STI benefitted in the form of reduced assessments, which STI purportedly "embraced."[14]

---

[12] *Irene V. Cruz, et al. vs. Commission on Audit*, G.R. No. 134740, October 23, 2001, *en banc*, citing *Salonga vs. The Executive Secretary*, G. R. No. 138698, October 10, 2000.
[13] G.R. No. 170257, September 7, 2011.
[14] Petition, p. 21.

The Second Division held:

> "It must be clarified that in the RCBC case, the High Court found that RCBC impliedly admitted the validity of the questioned waivers through its partial payment of the revised assessments, issued within the extended period provided in those waivers. The Supreme Court ruled that had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period; then, it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers were invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC was estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.
>
> In other words, the subsequent action of RCBC in the aforementioned case, specifically its immediate payment of the revised assessment, was considered by the High Court as an implied admission of the validity of the waivers.
>
> Clearly, the above-cited case does not apply in the instant Petition since nothing in the records of the case would show that the petitioner paid the reduced assessment.[15]"

The Supreme Court's disquisition on the issue -- of whether RCBC, by paying the other tax assessment covered by the waivers of the statute of limitations, is rendered estopped from questioning the validity of the said waivers -- consisted of just two paragraphs.

Petitioner would now want us to extrapolate from *RCBC*, to extend its application of estoppel to the instant petition, even if there has been no payment of the reduced assessment. Petitioner posits that STI benefitted from the waivers by obtaining a reduction of the assessments during the period of the waivers, and that STI's "embracing" of such benefit is sufficient for estoppel to arise.

It is clear to us, however, that the estoppel upheld in *RCBC* truly arose solely from the act of *payment*. It is irrelevant whether the assessment was reduced or not; the difference between the original and the revised assessment

[15] Second Division Resolution in CTA Case No. 7984, p. 8.

was not an issue that the Supreme Court decided in *RCBC*. Significantly, the Supreme Court stated in *RCBC*: "Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment." Clearly, the reduction of the taxes, by itself, did not give rise to estoppel; it was the payment thereof that proved fatal to RCBC's subsequent invocation of the invalidity of the waivers.

In *RCBC*, payment of the reduced assessment -- *nothing less than payment* -- gave rise to *implied admission* of the validity of the waivers. In the instant case, there was no such payment.

Moreover, it has been held that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes, where the BIR fails to strictly follow the detailed procedure for the proper execution of the waiver.[16]

We therefore conclude that the Second Division committed no reversible error in finding *RCBC* not applicable to the instant case.

IV

In her fifth assigned error, the petitioner claims that the Second Division erred when it held that non-compliance with the provisions of RMO No. 20-90 and RDAO No. 05-01 results in invalidating a waiver of the statute of limitations executed under Section 222 of the NIRC.

Petitioner's sixth and seventh assignments of errors both also involve waivers. First, petitioner imputes error to the Second Division when it held that the non-indication in the waivers of the specific kind of tax and the amount thereof invalidates the waivers executed under Section 222 of the NIRC. Second, the Second Division allegedly erred when it held waivers to be bilateral in nature.

We shall discuss these points together.

Petitioner claims that "the current state of jurisprudence on the matter of waivers is quite lamentable. She explains:

> "There is this seeming absolute subservience to the provisions of two (2) revenue issuances over and above what the

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

> law and common sense dictates. What makes it even more appalling is the fact that both RMO No. 20-90 and RDAO No. 05-01 were merely issued for internal control purposes by petitioner and not to expand the law."

Such being the current state of jurisprudence, petitioner could have repealed or revised these two issuances years ago. Revenue Memorandum Order No. 20-90 was issued way back on April 4, 1990, and Revenue Delegation Authority Order No. 05-01 was issued on August 2, 2001. Revenue Memorandum Orders and Revenue Delegation Authority Orders are issuances made by the Commissioner of Internal Revenue. They are within her power to amend or abrogate.

There have been various instances where the Supreme Court struck down waivers because of failures by the BIR to comply with the requirements of RMO No. 20-90. The cases where the Supreme Court held waivers to be invalid for failure to strictly comply with the provisions of RMO No. 20-90 include the following:

(1) *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 162852, December 16, 2004), where the Supreme Court reversed and set aside the holdings of the Court of Appeals that the requirements and procedures laid down in RMO No. 20-90 are only formal in nature and did not invalidate the waiver that was signed even if the requirements were not strictly observed.

(2) *Commissioner of Internal Revenue vs. FMF Development Corporation* (G.R. No. 167765, June 30, 2008), where the CIR contended that the waiver was validly executed mainly because it complied with Section 222(b) of the NIRC; the waiver was in writing, signed by the taxpayer and the Commissioner, and executed within the three-year prescriptive period; the requirements in RMO No. 20-90 are merely directory, thus, the indication of the dates of execution and acceptance of the waiver, by the taxpayer and the BIR, respectively, are not required by law; there is no provision in RMO No. 20-90 stating that a waiver may be invalidated upon failure of the BIR to furnish the taxpayer a copy of the waiver; the respondent's execution of the waiver was a renunciation of its right to invoke prescription; and the government cannot be estopped by the mistakes committed by its revenue officer in the enforcement of RMO No. 20-90.

(3) *Commissioner of Internal Revenue vs. Kudos Metal Corporation* (G.R. No. 178087, May 5, 2010), where the CIR unsuccessfully argued that the respondent was estopped from invoking prescription since by executing the waivers, it was respondent which asked for additional time to submit the required documents.

Given that the Supreme Court has consistently emphasized the need for strict compliance with the requirements of RMO No. 20-90, this Court cannot be expected to excuse non-compliance by the petitioner. RMO No. 20-90 itself mandates that the procedure for execution of the waiver shall be strictly followed, and that any revenue official who fails to comply therewith, resulting in the prescription of the right to assess and collect, shall be administratively dealt with.[17]

The rule is that provisions on the statute of limitations on assessment and collection of taxes shall be construed and applied liberally in favor of the taxpayer and strictly against the Government.[18] Petitioner's demand for liberality in her favor, while seeking strict enforcement of the rule against taxpayers, would result in a reversal of this rule without statutory basis, which reversal we cannot countenance.

Waiver Does Not Bar Right to Invoke Prescription

Petitioner's obsession with the waivers apparently stems from her theory that the waivers bar the respondent from invoking prescription to thwart the assessments.

It has been held, however, that "a waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally."[19]

Waivers are Bilateral

Petitioner ascribes error to the Second Division in holding waivers to be bilateral. In petitioner's view, waivers are primarily for the benefit of taxpayers, who should then be disallowed from assailing them. Here again, the petitioner runs against the currents of jurisprudence.

---

[17] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.
[18] *Ibid.*
[19] *Ibid.*

In a case, the Supreme Court described as "flawed" the assumption that a waiver of the statute of limitations is a unilateral act of the taxpayer. The Supreme Court said that:

> "[A waiver] 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.[20]"

Even in the face of pronouncements such as the above, from the highest court in the land, the petitioner adamantly insists that a waiver is "a unilateral undertaking" because "[a] waiver of the statute of limitations is not executed by two (2) parties but rather it is only executed by a taxpayer at his own instance where he relinquishes his statutory right. That is all that is needed and the waiver is perfected. It is a one party undertaking."

Petitioner seems oblivious to the fact that the bilateral nature of a waiver is fixed by Sec. 222(b) of the NIRC, not just by RMO No. 20-90. Sec. 222(b) allows an exception to the period of limitation of assessment of taxes, thus:

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

RMO No. 20-90 adds: "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."

It is clear from the above-cited provisions of Sec. 122(b) of the NIRC and RMO No. 20-90 that a waiver is in the nature of a contract. By its definition as "a meeting of minds between two persons"[21] (or more), a contract cannot be unilateral.

---

[20] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[21] Article 1305, Civil Code.

Petitioner makes much of its belief that the holding in the *Philippine Journalists, Inc.* that a waiver is bilateral is an isolated case, and was based on "an erroneous appreciation of an internal control issuance of the BIR."[22]

To the contrary, that holding in 2004 in *Philippine Journalists, Inc.* was not only reiterated but even given added weight in *CIR vs. FMF Development Corporation* in 2008, where the Supreme Court said: "Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement."

Defective Waivers Did Not Interrupt Prescriptive Period

What is the effect of an incomplete and defective waiver? The three-year prescriptive period is not tolled or extended and continues to run.[23] Due to the defects in the waivers, the period to assess or collect taxes is not extended.[24]

Had the waivers in this case been valid and had they come into effect in time, prescription would not have set in. STI admitted receiving the FAN on June 28, 2007, and sought its reconsideration/reinvestigation on July 25, 2007. On September 11, 2009, STI received the FDDA dated August 17, 2009.

Respondent STI filed its Amended Annual Income Tax Return for FY 2003 on August 15, 2003; its Quarterly VAT Returns on July 23, 2002, October 25, 2002, January 24, 2003, and May 23, 2003; and its BIR Form 1601E for EWT monthly from May 10, 2002 to April 15, 2003. Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later.

As the party defending against prescription, it is incumbent on the BIR to establish which of these came later: the deadline for the filing of the returns, or the dates when the returns were actually filed. Otherwise, the three-year periods for assessing deficiency income tax, deficiency VAT, and deficiency EWT should be reckoned as follows, from the dates the returns were filed: as to income tax, prescription would have set in by August 15, 2006; as to quarterly VAT, on July 23, 2005, October 25, 2005, January 24, 2006, and May 23, 2006, and as to monthly EWT, from May 10, 2005 to April 15, 2006.

---

[22] Petition, p. 31.
[23] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, supra.*
[24] *Commissianer of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

The first waiver, if valid, would have been effective from June 2, 2006 to December 31, 2006. The second waiver would have extended the period on December 12, 2006 to March 31, 2007. The third waiver would have further extended the period from March 8, 2007 to June 30, 2007.

By the time the first waiver took effect on June 2, 2006, the periods for assessing deficiency VAT and deficiency EWT had prescribed, on May 23, 2006 and April 15, 2006, respectively. Thus, the first waiver would have applied only to deficiency income tax – if the waiver was valid. The second and third waivers, also if valid, would subsequently have extended the period of assessment of deficiency income tax.

However, the Second Division held all of the three (3) waivers to be invalid, because STI's signatory thereto, Amiel C. Sangalang, had no notarized written authority from STI's board of directors. Petitioner described this invalidation as "strange," and would have us accept as sufficient Mr. Sangalang's testimony in court as STI's vice president for comptrollership.[25] What the Court finds strange, however, is petitioner's stubborn and unlearning adherence to positions that Supreme Court rulings had already discredited. In 2010, for example, the Supreme Court had already invalidated a waiver for having been signed by a taxpayer's accountant without the corporation's notarized authorization. The Supreme Court said at the time:

> "x x x 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.[26]"

The Supreme Court so ruled based on the procedures for the proper execution of a waiver, as laid down by RMO No. 20-90 and RDAO 05-01, particularly the following:

> "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."

[25] Petition, p. 29.
[26] *CIR vs. Kudos Metal Corporation, supra.*

STI also assailed the validity of the waivers because they were not signed as accepted by the CIR herself as required by RMO No. 20-90, and they did not specify the kinds and amounts of the taxes assessed.

Although RMO No. 20-90 requires that the CIR herself shall sign acceptance of waivers in tax cases involving more than one million pesos, the authority therefor has since been delegated to specific officials and offices. Under RDAO No. 05-01, the assistant commissioner for the Large Taxpayers Service is authorized to sign the waiver. In the instant case, however, the waivers were all signed for the CIR only by Virgilio R. Cembrano, Large Taxpayers District Officer of Makati.

Having sufficiently established the invalidity of the waivers, we do not find it necessary anymore to discuss the failure to specify the kinds and amounts of the taxes assessed.

The waivers being invalid, they did not interrupt the maximum three-year period for assessing taxes. As to the assessment of deficiency VAT and deficiency EWT, there was nothing more to interrupt, because the respective periods therefor had already prescribed by the time the first waiver took effect on June 2, 2006. Because the first and succeeding waivers were invalid, they did not interrupt the period for assessing deficiency income tax, which period ended on August 15, 2006, well ahead of STI's receipt of the FAN on June 28, 2007 and of the FDDA on September 11, 2009.

Thus, when the respondent protested the FAN and filed a request for reconsideration/reinvestigation on July 25, 2007, the reconsideration/reinvestigation granted by the petitioner likewise came too late to interrupt the prescriptive periods for the three assessments. Under Sec. 224 of the NIRC, the granting by the CIR of a request for reinvestigation would have suspended the running of the statute of limitations.

VI

Validity of Assessment Does Not Bar Defense of Prescription

In petitioner's eighth and last assigned error, she contends that the Second Division disregarded the fact that the factual and legal bases of the deficiency assessments remain undisputed and unassailed.

It is not true that the factual and legal bases of the deficiency assessments are undisputed and unassailed. STI vigorously protested the FAN

and sought reconsideration/reinvestigation, and despite the reduction of the assessment as contained in the FDDA, STI still appealed the matter to this Court.

And even assuming that the factual and legal bases of the deficiency assessments remain undisputed, that by itself is not decisive, where prescription supervenes.

> "To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.[27]"

The foregoing disquisition leads to the ineluctable conclusion that indeed, as determined by the Second Division, prescription had set in against the assessments for deficiency income tax, deficiency VAT and deficiency EWT.

WHEREFORE, premises considered, the assailed Decision dated April 17, 2013 and the Resolution dated July 17, 2013 of the Second Division in CTA Case No. 7984 are **AFFIRMED**, and the instant petition for review is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

---

[27] *Commissioner of Internal Revenue vs .Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice