Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

UNION CEMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 6842

For: Cancellation and Withdrawal of Assessment for Deficiency Income Tax

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
JAN 1 8 2012
10:25 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on December 30, 2003 by Union Cement Corporation as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in

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1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2]. It involves the cancellation and withdrawal of the assessment against petitioner for deficiency income tax, including the interest and compromise penalty imposed thereon, in the total amount of ₱97,698,105.26.

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x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. The principal office of petitioner is located at Phinma Plaza, 39 Plaza Drive, Rockwell Center, Makati City. It is a duly registered taxpayer with the Bureau of Internal Revenue (BIR) with Tax Identification No. 205-927-879.

Respondent is the official charged with the duty to assess and collect internal revenue taxes, as well as granted with the power to cancel disputed assessments. She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner was involved in a two-step merger. The first merger involved three (3) cement manufacturing companies, namely, Davao Union Cement Corporation (DUCC), Bacnotan Cement Corporation (BCC), and Hi-Cement Corporation (HCC); with the latter as the surviving corporation and using "Union Cement Corporation" as its new corporate name upon the effective date of merger. The second merger involved petitioner Union Cement Corporation and three marketing companies, namely, Atlas Cement Marketing Corporation (ACMC), Davao Union Marketing Corporation (DUMC), and Bacnotan Marketing Corporation

(BMC). Pursuant to law, petitioner Union Cement Corporation, as the surviving corporation, assumed all the rights and obligations of the merged corporations. The subject of the assessment in the instant case pertains to the business operations of BMC.

On January 11, 2001, the Securities and Exchange Commission (SEC) approved the Articles and Plan of Merger executed by and among BMC, ACMC, DUMC and petitioner, with petitioner as the surviving corporation. Prior to the effective date of the merger, BMC, as a separate and distinct corporate entity, was engaged in the business of buying, selling, transporting, and warehousing of cement.

On March 28, 2003, petitioner received from respondent a Preliminary Assessment Notice (PAN) dated March 12, 2003 pertaining to the business operations of BMC, informing petitioner of BMC's alleged income tax and value-added tax liabilities for the period covering June 1999 to April 22, 2000 in the aggregate amount of ₱107,439,917.94, broken down as follows:

Kind of Tax	Basic Tax plus Interest and Compromise Penalty	Period Covered
Income	₱ 97,698,105.26	June 1999 to December 31, 1999
Value-added Tax	9,741,812.68	January 2000 to April 2000
Total	₱107,439,917.94	

On April 14, 2003, petitioner protested the said PAN for lack of factual and legal bases. On the same day, petitioner signed a waiver of the defense of prescription under the statute of limitations, extending the period to assess up to June 30, 2003. On the part of respondent, a certain Ms. Flor Mercado signed the waiver for Atty. Edwin R. Abella, Assistant Commissioner-BIR Large Taxpayers Service.

On June 30, 2003, petitioner received from respondent a Formal Letter of Demand with the attached "Details of Discrepancies" and Audit Result Assessment Notice with Assessment Number LTDO 122 IT-1999-0000, all dated June 16, 2003, for deficiency income tax covering the period June 1, 1999 to December 31, 1999 and signed by Deputy Commissioner Estelita C. Aguirre, Officer-in-Charge (OIC) of the Large Taxpayers Service. The total assessment amounts to ₱97,698,105.26, inclusive of interest and compromise penalty.

The assessment purportedly arose from the following:

a. Underdeclaration of salaries and wages in the amount of ₱2,104,146.51 based on the salaries and wages declared by BMC in its alpha list, which showed an amount less than that declared by BMC in its financial statements;

b. Undeclared sales of ₱48,536,479.05 based on the total sales recorded by BMC in its general ledger, which showed a sales amount higher than the sales recorded in petitioner's financial statements;

c. Undeclared income by understating income payment to contractors and sub-contractors of ₱150,770,101.00 based on a comparison of BMC's alpha list and financial statements; and

d. Disallowance of professional fees in the amount of ₱395,711.00 for under-withholding and commission expenses of ₱541,025.00 for non-withholding of taxes.

On July 10, 2003, petitioner filed a protest through its Senior Vice President–Comptroller Rene S. Ong, requesting the withdrawal and cancellation of the said assessment. Subsequent to the filing of the protest, petitioner submitted documents to respondent in support of its protest, as evidenced by a letter dated August 12, 2003.

On December 4, 2003, or within one hundred eighty (180) days from the date of filing of the foregoing protest, petitioner received a letter dated October 14, 2003 with the heading "Final Decision on Disputed Assessment" signed by Deputy Commissioner Estelita C. Aguirre, OIC–

Large Taxpayers Service of the Bureau of Internal Revenue, denying petitioner's protest for allegedly lacking factual and legal bases.

Thus, on December 30, 2003, petitioner filed this appeal on the subject Final Decision on Disputed Assessment by way of a Petition for Review.

On February 23, 2004, respondent filed her Answer with the following special and affirmative defenses:

> "3. Petitioner was assessed deficiency income tax in the total amount of *₱97,698,205.27* for the taxable period from June to December of 1999 and VAT in the amount of *₱9,741,812.68* for the period covering January to April of 2000. The deficiency income tax assessment arose from the findings of discrepancy as a result of reconciliation of petitioner's sales per ledger as against its financial statement and its salaries and wages per Alpha List vis-à-vis Financial Statement and disallowance of Professional Fees and Commission expenses as well as for under-withholding and no-withholding of taxes;
>
> 3.a Sales per general ledger as against Financial Statement uncovered understatement of sales in the amount of *₱48,536,479.05* as shown below:

Sales per General Ledger	₱1,097,976,326.05
Sales per Financial Statement	₱1,049,439,847.00
Discrepancy	₱ 48,536,479.05

> 3.b Salaries and wages per Financial Statement as against Alpha List showed discrepancy in the amount of ₱2,104,146.51, as shown below:

Per Alpha List	₱15,310,956.97
Sales per Financial Statement	₱13,206,810.46
Discrepancy	₱ 2,104,146.51

3.c Furthermore, reconciliation of Income payment to Contractor/sub-contractor showed discrepancy in the amount of ₱ 150,255,252.56 to wit:

Per Alpha List	₱ 151,770,101.00
Sales per Financial Statement	₱ 1,514,491.00
Discrepancy	₱ 150,255,252.56

3.d Disallowance of Professional Fees and Commission Expenses in the amounts of ₱395,711.40 and ₱541,025.00 respectively for under-withholding and non-withholding of taxes thereon;

4. Likewise, the deficiency VAT assessment in the amount of *₱9,741,812.68* arose from understatement of sales in the amount *₱59,898,980.90* from the reconciliation of Sales per General ledger as against petitioner's VAT Returns;

5. Petitioner assails the validity of the Waiver of the Defense of Prescription for alleged failure to comply with the requisites of a valid waiver under Revenue Delegation Authority Order (RDAO) No. 05-2001. *We disagree*. Under RDAO No. 05-2001, for cases in the Large Taxpayers District Office (LTDO), the Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in his possession. The waiver in question was signed and accepted by Flor M. Mercado, the Acting Chief of the LTDO. Furthermore, what is surprising is the fact that petitioner did not raise in the administrative level the issue regarding the validity of the waiver executed. Neither in its protest against the Preliminary Assessment Notice (PAN) nor in its protest against the Formal Assessment Notice (FAN), did it question the waiver. It was only in this instant Petition for Review that petitioner opted to assail or contest the validity of the waiver for alleged failure to comply with the above RDAO. Such being the case, petitioner is now barred from questioning or assailing the validity of the waiver for the first time on appeal;

6. The assessments were issued within the period agreed upon between petitioner and respondent;

7. The assessments were issued in accordance with law and regulations.

8. Finally, it is a well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of

> proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

Thereafter, on April 16, 2004, the case was set for pre-trial conference. Petitioner filed its Pre-trial Brief on April 13, 2004; while respondent filed her Pre-trial Brief on April 15, 2004.

On May 12, 2004, the parties filed with this Court their Joint Stipulation of Facts and Issues, which was later approved in a Resolution dated June 10, 2004. In the same Resolution, the pre-trial conference was deemed terminated.

Upon motion, Ms. Leticia C. Tagle was commissioned as the Independent Certified Public Accountant (ICPA) to conduct the actual examination, evaluation and audit of the voluminous documents to be offered and presented by petitioner in the instant case.

Thereafter, trial proceeded, during which petitioner presented three (3) witnesses, namely: Randy B. Pineda, Leticia C. Tagle, and Atty. Victoria T. Tomelden.

On May 11, 2007, petitioner filed its Formal Offer of Evidence with Motion for Re-Marking of Exhibits.

Petitioner's documentary evidence which were formally offered and admitted are as follows:

Exhibit	Description
A	Articles and Plan of Merger dated 10 April 2000 between Petitioner Atlas Cement Marketing Corporation, Davao Union Marketing Corporation and Bacnotan Marketing Corporation ("BMC")
B	Preliminary Assessment Notice dated 12 March 2003, with attached Details of Discrepancies
C	Petitioner's reply dated 11 April 2003 addressed to the Deputy Commissioner of the Large Taxpayers Service (4 pages)
D	Waiver of the Statute of Limitations Under the National Internal Revenue Code dated 14 April 2003
E	Formal Letter of Demand dated 16 June 2003, with attached Details of Discrepancy and Assessment Notices
F	Petitioner's protest dated 10 July 2003 addressed to the Deputy Commissioner of the Large Taxpayers Service
G	Petitioner's Letter dated 12 August 2003 addressed to the Deputy Commissioner of the Large Taxpayers Service
H	Final Decision on Disputed Assessment dated 14 October 2003
I-1	Abatement Program Payment Form (Pursuant to RR Nos. 12-2002 and 17-2002) dated 9 June 2003 for ₱64,634.81
I-2	BIR Tax Payment Deposit Slip evidencing Petitioner's payment of ₱64,631.81 for deficiency EWT on professional fees and commission expenses
I-3	Schedule entitled: "Bacnotan Marketing Corporation: Analysis of EWT Deficiency for

	the period January, 1999 to April 2000" attached to Exhibit "I-1"
J	Annual Income Tax Return of Petitioner (BMC) for the year ended 31 December 1999 with attached Account Information Form
J-1	Signature over the name "Antonio B. Alvarez" on page 3 of Exhibit "J"
J-2	Signature over the name "Mario B. Casupanan" on page 3 of Exhibit "J"
J-3	Portion of Exhibit "J" (at page 3) – Salaries and Alllowances/Others – 10,907,201
K and K-1	Portion of BMC's General Ledger for 1 to 31 August 1999
K-2 to K-6	Portion of BMC's Subsidiary Ledger for 1 January to 31 December 1999 (5 pages)
K-14	Journal Voucher No. 9908-011 for the month of August 1999 appearing on Exhibit "K-1"
L	Voluntary Assessment and Abatement Program Application Form (BIR Form 2111V) dated 6 June 2003 in the amount of ₱6,627,900.59
L-a	Signature over the name Joseph R. San Juan on Exhibit "L"
L-1	Computation Sheet for VAAP Availment for ₱56,204.18, with attached schedule entitle: "Bacnotan Marketing Corporation: Analysis of Deficiency VAT for the period January, 1999 to April 2000" attached to Exhibit "L-1"
L-1-a	Signature over the name Joseph R. San Juan on Exhibit "L-1"
L-2	Voluntary Assessment Abatement Program Payment Form (BIR Form No. 0611) for ₱9,718,490.23
L-2-a	Signature over the name Joseph R. San Juan on Exhibit "L-2"
L-3	BIR Tax Payment Deposit Slip evidencing Petitioner's payment of ₱9,718,490.23

L-4	Check No. 0000001230 dated 9 June 2003 for ₱9,718,490.23
M to M^{11}	General Ledger – Sales (June to December 1999)
N to N^{28}	Subsidiary Ledger – Sales (June to December 1999)
O to O^{7}	General Ledger – Accounts Receivable (June to December 1999)
P to P^{21}	Subsidiary Ledger – Accounts Receivable (June to December 1999)
Q and Q^{2}	General Ledger – Arrastre & Freight Payable (June to December 1999)
R to R^{65}	Subsidiary Ledger – Arrastre & Freight Payable (June to December 1999)
S to S^{3}	Respondent's Schedule of Cash/Account Sales (June to December 1999)
T-1 to T-1^{1}	BMC's Analysis of A/R Trade – Debit (June to December 1999)
T-2 to T-2^{7}	BMC's Reconciliation of Sales (June to December 1999)
U-1 to U-20^{128}	Journal Vouchers (June to December 1999)
$U9^{2}$ to $U9^{30}$	Various Journal Vouchers for the period June 1999 to December 1999
U-13^{1} to U-13^{8}	Various Journal Vouchers for the period June 1999 to December 1999 substantiating Other Deductions to Sales
U-16^{1} to U-16^{12}	Various Journal Vouchers for the period June 1999 to December 1999 substantiating Reclassification to Sales Discounts
V-1^{6} to V-1^{318}	Debit Memos (June 1999) – Baguio (with attached Schedule)
V-2^{1} to V-2^{314}	Debit Memos (July 1999) Baguio (with attached Schedule)

V-3^{1} to V-3^{292}	Debit Memos (August 1999) Baguio (with attached Schedule)
V-4^{1} to V-4^{296}	Debit Memos (September 1999) Baguio (with attached Schedule)
V-5^{1} to V-5^{292}	Debit Memos (October 1999) Baguio (with attached Schedule)
V-6^{7} to V-6^{317}	Debit Memos (November 1999) Baguio (with attached Schedule)
V-7^{1} to V-7^{305}	Debit Memos (December 1999) Baguio (with attached Schedule)
W-1^{4} to W-1^{142}	Debit Memos (June 1999) Pangasinan (with attached Schedule)
W-2^{1} to W-2^{42}	Debit Memos (July 1999) Pangasinan (with attached Schedule)
W-3^{1} to W-3^{83}	Debit Memos (August 1999) Pangasinan (with attached Schedule)
W-4^{1} to W-4^{112}	Debit Memos (September 1999) Pangasinan (with attached Schedule)
W-5^{1} to W-5^{95}	Debit Memos (October 1999) Pangasinan (with attached Schedule)
W-6^{1} to W-6^{138}	Debit Memos (November 1999) Pangasinan (with attached Schedule)
W-7^{1} to W-7^{51}	Debit Memos (December 1999) Pangasinan (with attached Schedule)
X-1^{1} to X-1^{7}	Debit Memos (June 1999) Isabela (with attached Schedule)
X-2^{2} to X-2^{13}	Debit Memos (July 1999) Isabela (with attached Schedule)
X-3^{2} to X-3^{10}	Debit Memos (August 1999) Isabela (with attached Schedule)
X-4^{2} to X-4^{23}	Debit Memos (September 1999) Isabela (with attached Schedule)
X-5^{2} to X-5^{34}	Debit Memos (October 1999) Isabela (with attached Schedule)

X-6^{3} to X-6^{87}	Debit Memos (November 1999) Isabela (with attached Schedule)
Y-1^{2} to Y-1^{48}	Debit Memos (June 1999) La Union (with attached Schedule)
Y-2^{1} to Y-2^{31}	Debit Memos (July 1999) La Union (with attached Schedule)
Y-3^{1} to Y-3^{30}	Debit Memos (August 1999) La Union (with attached Schedule)
Y-4^{1} to Y-4^{59}	Debit Memos (September 1999) La Union (with attached Schedule)
Y-5^{1} to Y-5^{44}	Debit Memos (October 1999) La Union (with attached Schedule)
Y-6^{2} to Y-6^{53}	Debit Memos (November 1999) La Union (with attached Schedule)
Y-7^{1} to Y-7^{31}	Debit Memos (December 1999) La Union (with attached Schedule)
Z-1^{1} to Z-1^{57}	Debit Memos (June 1999) Laoag (with attached Schedule)
Z-2^{2} to Z-2^{61}	Debit Memos (July 1999) Laoag (with attached Schedule)
Z-3^{1} to Z-3^{127}	Debit Memos (August 1999) Laoag (with attached Schedule)
Z-4 to Z-4^{105}	Debit Memos (September 1999) Laoag (with attached Schedule)
Z-5^{2} to Z-5^{85}	Debit Memos (October 1999) Laoag (with attached Schedule)
Z-6^{1} to Z-6^{72}	Debit Memos (November 1999) Laoag (with attached Schedule)
Z-7^{1} to Z-7^{100}	Debit Memos (December 1999) Laoag (with attached Schedule)
AA-1^{2} to AA-1^{75}	Debit Memos (June 1999) Tugegarao (with attached Schedule)

AA-2^{1} to AA-2^{66}	Debit Memos (July 1999) Tugegarao (with attached Schedule)
AA-4^{2} to AA-4^{40}	Debit Memos (August 1999) Tugegarao (with attached Schedule)
AA-5^{2} to AA-5^{43}	Debit Memos (October 1999) Tugegarao (with attached Schedule)
AA-6^{3} to AA-6^{84}	Debit Memos (November 1999) Tugegarao (with attached Schedule)
AA-7^{1} to AA-7^{56}	Debit Memos (December 1999) Tugegarao (with attached Schedule)
BB-1^{1} to BB-1^{36}	Debit Memos (June 1999) Vigan (with attached Schedule)
BB-2^{1} to BB-2^{63}	Debit Memos (July 1999) Vigan (with attached Schedule)
BB-3^{1} to BB-3^{79}	Debit Memos (August 1999) Vigan (with attached Schedule)
BB-4^{1} to BB-4^{78}	Debit Memos (September 1999) Vigan (with attached Schedule)
BB-5^{1} to BB-5^{102}	Debit Memos (October 1999) Vigan (with attached Schedule)
BB-6^{1} to BB-6^{99}	Debit Memos (November 1999) Vigan (with attached Schedule)
BB-7^{1} to BB-7^{108}	Debit Memos (December 1999) Vigan (with attached Schedule)
CC-1^{2} to CC-1^{95}	Credit Memos (June 1999) (with attached List of Credit Memos and other supporting documents)
CC-2^{1} to CC-2^{132}	Credit Memos (July 1999) (with attached List of Credit Memos and other supporting documents)
CC-3 to CC-3^{246}	Credit Memos (August 1999) (with attached List of Credit Memos and other supporting documents)

CC-4 to CC-4[196]	Credit Memos (September 1999) (with attached List of Credit Memos and other supporting documents)
CC-5[1] to CC-5[453]	Credit Memos (October 1999) (with attached List of Credit Memos and other supporting documents)
CC-6[1] to CC-6[609]	Credit Memos (November 1999) (with attached List of Credit Memos and other supporting documents)
CC-7[2] to CC-7[476]	Credit Memos (December1999) (with attached List of Credit Memos and other supporting documents)
DD-2[614] to DD-2[785]	List of Check Vouchers (June 1999) (with attached Check Vouchers and other supporting documents)
DD-3 to DD-3[895]	List of Check Vouchers (July 1999) (with attached Check Vouchers and other supporting documents)
DD-4 to DD-4[385]	List of Check Vouchers (August 1999) (with attached Check Vouchers and other supporting documents)
DD-5[123] to DD-5[818]	List of Check Vouchers (September 1999) (with attached Check Vouchers and other supporting documents)
DD-6 and DD-6[70] to DD-6[357]	List of Check Vouchers (October 1999) (with attached Check Vouchers and other supporting documents)
DD-7[1] to DD-7[1468]	List of Check Vouchers (November 1999) (with attached Check Vouchers and other supporting documents)
DD-8, DD-8[14] to DD-8[250]	List of Check Vouchers (December 1999) (with attached Check Vouchers and other supporting documents)
EE-1 to EE-1[192]	List of No Documents Attached (June to December 1999) (with attached Check Vouchers)

FF-1[1] to FF-1[840]	List of Check Vouchers (January 2000) (with attached Check Vouchers and other supporting documents)
FF-2 to FF-2[92]	List of Check Vouchers (February 2000) (with attached Check Vouchers and other supporting documents)
GG to GG[307]	DM/CM Rebates Sales Adjustment Book (June to December 1999)
HH	Auditor's Analysis of A/R & Reconciliation of Sales (June to December 1999)
II to II[10]	Petitioner's (BMC's) Financial Statement for the year ended December 31, 1999
JJ to JJ[8]	Petitioner's (BMC's) Annual Income Tax Return for the period June to December 1999
KK	Independent CPA Report dated 13 February 2006
OO	Page 2687 of BIR Docket, Reconciliation of Income Payment Subject to EWT per FS vs. Alpha List, prepared by the BIR
PP	Page 2536 of BIR Docket, Schedule of Administrative Expenses of BMC for CY 1999 prepared by BIR
PP-1	Repairs and Maintenance Expenses-₱601,105.87
QQ	Page 2537 of BIR Docket, Schedule of Selling Expenses of BMC for CY 1999 prepared by BIR
QQ-1	Repairs and Maintenance Expenses – ₱372,717.57
RR	BMC's Summary Schedule of Operating Expenses for CY 1999
RR-1	Subsidiary Ledger for BMC's Selling Expenses from January 1, 1999 to December 31, 1999

RR-2	Subsidiary Ledger for BMC's Administrative Expenses from January 1, 1999 to December 31, 1999
SS	Schedule of Monthly Payments for Expanded Withholding Taxes paid by Bacnotan Marketing Corporation from January, 1999 to December, 1999
TT	Monthly Remittance Return of Income Taxes Withheld for January 1999 filed by BMC (La Union Office) on 10 February 1999, with attached Debit Advice from Pilipinas Bank
TT-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
UU	Monthly Remittance Return of Income Taxes Withheld for February 1999 filed by BMC (La Union Office) on 10 March 1999, with attached Debit Advice from Pilipinas Bank
UU-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
VV	Monthly Remittance Return of Income Taxes Withheld for March 1999 filed by BMC (La Union Office) on 12 April 1999, with attached Debit Advice from Pilipinas Bank
VV-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
WW	Monthly Remittance Return of Income Taxes Withheld for April 1999, filed by BMC (La Union Office), with attached Debit Advice from Pilipinas Bank dated 10 May 1999
XX	Monthly Remittance Return of Income Taxes Withheld for May 1999, filed by BMC (La Union Office) on 10 June 1999, with attached Debit Advice from Pilipinas Bank
XX-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.

YY	Monthly Remittance Return of Income Taxes Withheld for June 1999, filed by BMC (La Union Office) with attached Debit Advice from Pilipinas Bank dated 12 July 1999
YY-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
ZZ	Monthly Remittance Return of Income Taxes Withheld for July 1999 filed by BMC (La Union Office) on 10 August 1999, with attached Debit Advice from Pilipinas Bank
ZZ-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
AAA	Monthly Remittance Return of Income Taxes Withheld for August 1999 filed by BMC (La Union Office) in September 1999
AAA-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
BBB	Monthly Remittance Return of Income Taxes Withheld for September 1999 filed by BMC (La Union Office) on 11 October 1999, with attached Debit Advice from Pilipinas Bank
BBB-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
CCC	Monthly Remittance Return of Income Taxes Withheld for October 1999 filed by BMC (La Union Office) on 11 November 1999, with attached Debit Advice from Pilipinas Bank
CCC-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
DDD	Monthly Remittance Return of Income Taxes Withheld for November 1999 filed by BMC (La Union Office) on 10 December 1999, with attached Debit Advice from Pilipinas Bank
DDD-1	Signature of Mr. Manuel C. Gaerlan, Jr.

EEE	Monthly Remittance Return of Income Taxes Withheld for December 1999 filed by BMC (La Union Office) on 10 January 1999, with attached Debit Advice from Pilipinas Bank
EEE-1	Signature of Mr. Iliseo I. Labatorio, for Mr. Manuel C. Gaerlan, Jr.
FFF	Monthly Remittance Return of Income Taxes Withheld for January 1999 filed by BMC (Makati Office) on 10 February 1999
FFF-1	Signature of Rizalina Andrada, for Mr. Ricardo G. De Guzman
GGG	Monthly Remittance Return of Income Taxes Withheld for February 1999 filed by BMC (Makati Office) on 10 March 1999
GGG-1	Signature of Mr. Ricardo G. De Guzman
HHH	Monthly Remittance Return of Income Taxes Withheld for March 1999 filed by BMC (Makati Office) on 8 April 1999
HHH-1	Signature of Mr. Ricardo G. De Guzman
III	Monthly Remittance Return of Income Taxes Withheld for April 1999 filed by BMC (Makati Office) on 10 May 1999
III-1	Signature of Ricardo G. De Guzman
JJJ	Monthly Remittance Return of Income Taxes Withheld for May 1999 filed by BMC (Makati Office) on 10 June 1999
JJJ-1	Signature of Ms. Rizalina Andrada, for Mr. Ricardo G. De Guzman
KKK	Monthly Remittance Return of Income Taxes Withheld for June 1999 filed by BMC (Makati Office) on 12 July 1999
KKK-1	Signature of Ms. Cecil Arenillo, for Mr. Ricardo G. De Guzman

LLL	Monthly Remittance Return of Income Taxes Withheld for July 1999 filed by BMC (Makati Office) on 10 August 1999
LLL-1	Signature of Mr. Ricardo G. De Guzman
MMM	Monthly Remittance Return of Income Taxes Withheld for August 1999 filed by BMC (Makati Office) on 10 September 1999
MMM-1	Signature of Mr. Ricardo G. De Guzman
NNN	Monthly Remittance Return of Income Taxes Withheld for September 1999 filed by BMC (Makati Office) on 11 October 1999
NNN-1	Signature of Ms. Rizalina Andrada, for Mr. Ricardo G. De Guzman
OOO	Monthly Remittance Return of Income Taxes Withheld for October 1999 filed by BMC (Makati Office) on 10 November 1999
OOO-1	Signature of Mr. Arturo Mendizabel
PPP	Monthly Remittance Return of Income Taxes Withheld for November 1999 filed by BMC (Makati Office) on 10 December 1999
PPP-1	Signature of Mr. Arturo Mendizabel
QQQ	Monthly Remittance Return of Income Taxes Withheld for December 1999 filed by BMC (Makati Office) on 3 March 2000
QQQ-1	Signature of Rizalina Andrada, for Mr. Rene S. Ong
RRR	Mr. Benito B. Wong's Letter dated 13 July 2006
SSS	Sworn Statement of Mr. Randy Pineda dated 4 August 2006
SSS-1	Signature over the name "Randy B. Pineda" on page 9 of Exh. "SSS"
SSS-2	Amended Sworn Statement of Mr. Randy Pineda dated 13 September 2006

SSS-3	Signature over the name "Randy B. Pineda" on page 8 of Exh. "SSS-2"
TTT	Subsidiary Ledger for BMC's Withholding Tax Payable from 1 January 1999 to 31 December 1999
UUU	Amended Sworn Statement of Ms. Leticia C. Tagle dated 15 February 2007
UUU-1	Signature over the name "Leticia C. Tagle" on page 8 of Exhibit "UUU"
VVV	Sworn Statement of Atty. Victoria T. Tomelden dated 14 September 2006
VVV-1	Signature over the name "Victoria T. Tomelden" on page 13 of Exhibit "VVV"
WWW	Supplemental Sworn Statement of Atty. Victoria T. Tomelden dated 15 February 2007
WWW-1	Signature over the name "Victoria T. Tomelden" on page 3 of Exhibit "WWW"
XXX	Final Amended Report of the Independent CPA dated 13 February 2007
XXX-1	Signature over the name "Leticia C. Tagle" on page 13 of Exhibit "XXX"
YYY	Supplemental Sworn Statement of Ms. Leticia C. Tagle dated January 19, 2010
YYY-1	Signature over the name "Leticia C. Tagle" on page 3 of Exhibit "YYY"
AAAA	Supplemental Sworn Statement of Ms. Leticia C. Tagle dated 18 March 2011
AAAA-1	Signature of Ms. Leticia C. Tagle appearing on page 14 of Exh. "BBBB"
BBBB	Supplemental Sworn Statement of Atty. Victoria T. Tomelden dated 18 March 2011
BBBB-1	Signature of Atty. Victoria T. Tomelden appearing on page 2 of Exh. "AAAA"

Respondent presented only one (1) witness in the person of Rufo B. Ranario.

On August 4, 2009, respondent filed the Formal Offer of Documentary Evidence, to which petitioner filed its Comment on September 1, 2009.

The documentary evidence formally offered by respondent, and which were all admitted are as follows:

Exhibit	Description
1	Memorandum Report dated September 1, 2000 approved by Flor M. Mercado, Acting LT District
2	Formal Letter of Demand dated June 16, 2003
2-A	Date of receipt of the aforesaid FLD by Eduard Padilla, petitioner's authorized representative
3	Assessment Notice dated June 16, 2003
6-A	Date of receipt of the Final Decision on Disputed Assessment by Randy Pineda, petitioner's authorized representative
8	Preliminary Assessment Notice together with Details of Discrepancies and Audit Result/Assessment Notice
9	Supplemental Judicial Affidavit of Rufo B. Ranario dated April 20, 2010
9-A	Signature of Rufo B. Ranario
10	Letter of Authority No. 00061677 dated March 14, 2002 for taxable year Jan. 1, 1999 to April 27, 2000 issued to Revenue Officer R. Ranario

	et. al. of the Large Taxpayers District Office-Makati
10-A	Date of receipt of the Letter of Authority No. 00061677 on March 25, 2002 duly received by V.L. Nievera, petitioner's authorized representatives
11	Checklist of Mandatory Requirements addressed to petitioner
11-A	Date of receipt of the aforesaid Checklist March 25, 2002 duly received by V.I. Nievera, petitioner's authorized representative
12	Second Request for the Presentation of Books of Accounts and Other Accounting Records dated April 23, 2002 by RDO Flor M. Mercado
12-A	Date of receipt of the aforesaid Second Request on April 23, 2002 duly received by petitioner's authorized representative
13	Letter dated June 8, 2002 addressed to petitioner re: Schedule of Investigation of books of accounts in their plant at Bacnotan Steel, San Fernando, La Union
13-A	Date of receipt of the aforesaid letter on June 10, 2002 by Joseph R. San Juan, petitioner's authorized representative
14	Request for Informal Conference dated September 28, 2002 signed by E.R. Abella, Assistant Commissioner, Large Taxpayers Service
14-A	Date of receipt of the aforesaid Notice on November 22, 2002 by Joseph R. San Juan, petitioner's authorized representative
15	Waiver of Statute of Limitation executed on April 14, 2003 by Rene S. Ong, SVP-Comptroller
17	Memorandum for CIR re: Recommendation for Final Assessment Notice dated June 16, 2003 by Nelson Boongaling & Rufo B. Ranario

18	Memorandum for CIR re: Recommendation for the issuance of FDD Signed by R. Ranario et. al.
19	Supplemental Judicial Affidavit of Rufo B. Ranario dated July 5, 2010
19-A	Signature of Rufo B. Ranario

Petitioner submitted its Memorandum on June 27, 2011; while respondent filed her Memorandum (for Respondent) on July 7, 2011.

On July 8, 2011, the instant case was deemed submitted for decision.

The parties submitted the following issues for this Court's disposition:

"1. Whether or not petitioner underdeclared its salaries and wages in the amount of ₱2,104,146.51 per Alpha list vis-à-vis Financial Statement.

1.1 Whether or not the alleged 'underdeclared salaries and wages' amounting to ₱2,104,146.51 actually represent salaries and wages paid to petitioner's delivery drivers.

1.2 Whether or not petitioner actually charged the above salaries and wages as part of its direct costs.

1.3 Whether or not petitioner's alleged failure to declare the above-stated amount as part of its deductible expenses resulted to an underdeclaration of its net taxable income, and consequently, to lower income tax liability.

2. Whether or not the deficiency assessment arising from the findings of discrepancy as a result of the reconciliation of petitioner's sales in the amount of ₱48,536,479.05 per ledger as against its financial statement is proper.

2.1 Whether or not the alleged 'underdeclared sales' amounting to ₱48,536,479.05 actually represent freight or hauling charges which petitioner paid on behalf of its customers.

2.2 Whether or not the freight and hauling charges should be considered part of petitioner's gross sales.

2.3 Assuming that the freight and hauling charges should be considered part of petitioner's gross sales, whether or not petitioner is entitled to deduct therefrom the amount disbursed by petitioner to the cement haulers corresponding to the latter's freight and hauling charges.

2.4 Whether or not petitioner's alleged failure to declare the above-stated amount as part of its gross sales resulted to an underdeclaration of its net taxable income, and consequently, to lower income tax liability.

3. Whether or not petitioner understated its income payment to contractors and sub-contractors in the amount of ₱150,770,101.00

3.1 Whether or not the alleged 'underdeclared income' amounting to ₱150,255,252.56 actually represents petitioner's income payments to various contractors for pier, stevedoring and hauling services.

3.2 Whether or not the above income payments to various contractors should be considered part of petitioner's gross income.

3.3 Assuming that the income payment to various contractors should form part of petitioner's gross income, whether or not petitioner is entitled to deduct therefrom the amount disbursed by petitioner to such contractors corresponding to the latter's pier, stevedoring and hauling services.

3.4 Whether or not petitioner's alleged failure to declare the above-stated amount as part of its gross income resulted to an underdeclaration of its net taxable income, and consequently, to lower income tax liability.

4. Whether or not the disallowance of professional fees, for under-withholding and commission expenses, for non-withholding of taxes, is proper.

   4.1 Whether or not petitioner actually availed of the Voluntary Assessment and Abatement Program (VAAP) relative to its deficiency expanded withholding taxes (EWT) on professional fees amounting to ₱395,711 and commission expenses amounting to ₱541,025.

   4.2 Whether or not petitioner is allowed to deduct as expenses the professional fees and commission expenses above-stated, following it availment of the VAAP relative to the said fees.

5. Whether or not the deficiency VAT Assessment as a result of the alleged understatement of sales in the amount of ₱59,898,980.00 from the reconciliation of sales per General ledger as against its VAT returns in the total amount of ₱9,741,812.68, is proper.

   5.1 Whether or not petitioner is liable for any deficiency VAT Assessment in the total amount of ₱9,741,812.68, despite the absence of any such assessment in the Formal Letter of Demand and Audit Result Assessment Notice Number LTDO 122 IT-1999-0000, dated June 16, 2003.

6. Whether or not the assessment was issued within the prescriptive period.

   6.1 Whether or not the Waiver of the Defense of Prescription complies with the requisites of a valid waiver under Revenue Delegation Authority (RDAO) No. 05-01.

   6.2 Whether or not petitioner can assail the validity of the waiver of the Defense of Prescription for the first time on appeal."

Based on the foregoing stipulated issues, the basic question that arises is whether the assessment was issued within the prescriptive period.

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the period within which assessment can be validly made, to wit:

> "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."

Section 222(b) of the NIRC of 1997 provides however that the three-year prescriptive period may be extended upon agreement in writing by both the Commissioner of Internal Revenue and the taxpayer. Section 222(b) states as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx 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 assessment after such time, the tax may

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

In the instant case, while there appears to be a Waiver of the Statute of Limitations[3] executed by petitioner which may extend the prescriptive period provided under Section 203 of the NIRC of 1997, as amended, petitioner claims that the said waiver is defective.

Respondent maintains that petitioner is now barred from questioning the validity of the said waiver considering that the same is being raised for the first time on appeal. One of the cases invoked by respondent is the case of *Salvador A. Fernandez vs. Cristina D. Amagna,*[4] wherein the Supreme Court held that:

> "Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic considerations of fair play, justice and due process underlie the rule. **It would be unfair to the adverse party who would have no opportunity to present evidence in contra to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.**" (*Emphasis supplied*)

This Court cannot subscribe to respondent's assertion.

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[3] Exhibit "D"

[4] G.R. No. 152614, September 30, 2009, citing the case of *Ulep vs. Court of Appeals, G. R. No. 125254, October 11, 2005*

In the case of *Boston Bank of the Philippines, (formerly Bank of Commerce) vs. Perla P. Manalo and Carlos Manalo, Jr.*,[5] the Supreme Court held that the Court may consider an issue not raised during the trial when there is plain error. Although a factual issue was not raised in the trial court, such issue may still be considered and resolved by the Court in the interest of substantial justice, if it finds that to do so is necessary to arrive at a just decision, or when an issue is closely related to an issue raised in the trial court and the Court of Appeals and is necessary for a just and complete resolution of the case. When the trial court decides a case in favor of a party on certain grounds, the Court may base its decision upon some other points, which the trial court or appellate court ignored or erroneously decided in favor of a party.

Likewise, in the case of *Robert Dino vs. Maria Luisa Judal-Loot, et al.,*[6] it was held that the Court is clothed with ample authority to entertain issues or matters not raised in the lower courts in the interest of

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[5] G.R. No. 158149, February 9, 2006
[6] G.R. No. 170912, April 19, 2010

substantial justice[7], further citing the case of *Casa Filipina Realty Corporation vs. Office of the President, et al.*[8], which said:

> "[T]he trend in modern-day procedure is to accord the courts broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for resolution which the parties failed to raise or which the lower court ignored. Since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties." *(Emphasis supplied)*

Consequently, the principle relied upon by respondent is not without exception.

It must be emphasized that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[9]

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[7] G.R. No. 170912, April 19, 2010
[8] G.R. No. 99346, February 7, 1995
[9] *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005; *Dizon vs. Court of Tax Appeals and Commissioner of Internal Revenue,* G.R. No. 140944, April 30, 2008

Clearly, respondent had the opportunity to present evidence to contradict petitioner's assertion and to prove that the waiver was validly executed. Besides, the validity issue of the waiver was included in the parties' Joint Stipulation of Facts and Issues. In other words, respondent will not be prejudiced if this Court will address and determine the validity of the subject waiver. Thus, this Court may resolve the issue of prescription even if the same was not raised in the administrative protest filed by petitioner.

The next question is whether the subject waiver complied with the requisites provided under Revenue Memorandum Order (RMO) No. 20-90. The pertinent portions of the said RMO read:

> "REVENUE MEMORANDUM ORDER NO. 20-90
>
> Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code
>
> To: All Internal Revenue Officers and Others Concerned
>
> Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:

1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase 'but not after ______ 19 ___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

   Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

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

7. In the National Office

xxx xxx xxx

3. Commissioner — For tax cases involving more than P1M

B. In the Regional Offices

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

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

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

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

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

In relation thereto, Revenue Delegation Authority Order (RDAO) No. 05-01 further provides:

"REVENUE DELEGATION AUTHORITY ORDER NO. 05-01

xxx xxx xxx

I. *Revenue Officials Authorized to Sign the Waiver*

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

10. For National Office cases

Designated Revenue Official

xxx xxx xxx

2. ACIR, Large Taxpayers Service	For large taxpayers cases other than those cases falling under Subsection B hereof

xxx xxx xxx

B. *For cases in the Large Taxpayers District Office (LTDO)*

The Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in his possession.

C. *For Regional cases*

Designated Revenue Official

1. Revenue District Officer	Cases pending investigation/ verification/reinvestigation in the Revenue District Offices
2. Regional Director	Cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director" (*Emphasis supplied*)

Considering the requisites provided under the afore-quoted BIR issuances, there are infirmities in the execution of the subject waiver, which are as follows:

1. The waiver was signed by Ms. Flor Mercado for then Assistant Commissioner of the BIR Large Taxpayers Service, Atty. Edwin R. Abella;

2. The original copy of the waiver does not indicate the fact of receipt by the taxpayer of his/her file copy of the waiver; and

3. The subject waiver failed to indicate the specific kind of tax and the amount of tax due.

As to the authority of Ms. Flor Mercado to sign the subject waiver, a perusal of the records of the instant case would show that respondent failed to present documentary evidence to support her claim that Ms. Mercado, under the circumstances, was authorized to sign the waiver.

Even assuming, *arguendo*, that Ms. Flor Mercado had the authority to sign the subject waiver, there are other infirmities on the said waiver, particularly, the lack of date of receipt by petitioner of its copy of the approved waiver and failure to state the specific kind of tax and the amount of tax due.

Paragraph 4 of RMO No. 20-90 specifically provides that 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. It is further provided that the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy.[10]

In the instant case, there is nothing in the waiver submitted to this Court which would show that petitioner was furnished with a copy of the approved and accepted waiver. This is admitted by respondent's witness during the hearing held on August 2, 2010, the significant portions of which state:

> "ATTY. IBAZETA
>
> Okay.
>
> Q So, this is for taxable year 1999. You stated that petitioner gave you a Waiver of the Statute of Limitations for the year 1999, covering this period, which you marked as Exhibit '15'
>
> MR. RANARIO
>
> A Yes.
>
> xxx xxx xxx
>
> ATTY. IBAZETA
>
> Okay.
>
> Q But, is it not true that this document has no receiving stamp of the taxpayer?
>
> MR. RANARIO
>
> A It has no receiving stamp but the fact that you are... (*Interrupted*)

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[10] *United Parcel Service Co. (Philippine Branch) vs. Commissioner of Internal Revenue,* CTA Case No. 7667, August 18, 2010

ATTY. IBAZETA

Thank you, Mr. Witness. That's fine, please. So, the answer is, 'No, there is no receiving stamp.'

Q And in fact there is no, unlike the other documents, there is no sign received by any member of petitioner? There is none, correct?

MR. RANARIO

A There is no record that it was received." [11] (*Emphasis supplied*)

Suffice it to say that there is compliance with the provision of RMO No. 20-90 only if 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.[12]

Moreover, the absence of proof that the taxpayer was furnished a copy of the approved and accepted waiver cannot be remedied by the fact that at the time of the Court proceedings, the taxpayer was able to bring before the Court its own copy of the waiver.[13] There being no indication in

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[11] Transcript of Stenographic Notes, August 2, 2010, pp. 40-42

[12] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004

[13] *United Parcel Service Co. (Philippine Branch) vs. Commissioner of Internal Revenue,* CTA Case No. 7667, August 18, 2010

the subject waiver that the same was received by petitioner, the said waiver shall be considered defective.

Further, the waiver failed to state the specific kind of tax and the amount of tax due.

In the cases entitled *Scandinavian Motors Corporation vs. The Commissioner of Internal Revenue* [14] and *Dole Philippines Inc. vs. Commissioner of Internal Revenue*[15], this Court explained the reason for the requirement that a waiver must specify the type of tax and the amount of tax due, thus:

> "The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner to pinpoint which among the proposed tax assessments may subsequently be issued without the petitioner invoking the defense of prescription (*Pfizer, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003*). If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of (*Solid Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999*). It should be emphasized that RMO No. 20-90 requires specific information. Hence, to substitute the same with general statements is a departure from RMO No. 20-90."

As regards respondent's averment that petitioner is already estopped from questioning the validity of the subject waiver, it is worthy to

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[14] CTA Case No. 7269, March 26, 2008
[15] CTA Case No. 5705, July 1, 2003

emphasize that the doctrine of estoppel cannot be applied in the instant 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. The doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. Hence, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. 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. Simply put, the doctrine of estoppel must be sparingly applied.[16]

Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO No. 20-90 and RDAO No. 05-01, which the BIR itself issued. Having caused the defects in the waiver, the BIR must bear the consequence. It cannot shift the blame to the taxpayer.

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

Needless to say, a waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. Corollarily, the exceptions to the law on prescription should perforce be strictly construed.[17]

Considering all the defects in the subject waiver of the statute of limitation, the three-year prescriptive period was not tolled or extended.

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[17] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004

Pursuant to the afore-cited Section 203 of the NIRC of 1997, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. In the case of petitioner's income tax, the return is required to be filed and the payment must be made on or before the fifteenth (15th) day of April following the close of the taxable year 1999.[18] In other words, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. Thus, counting from April 17, 2000, the date when petitioner filed its Annual Income Tax Return for the taxable year 1999[19], respondent had until April 17, 2003 within which to assess petitioner for deficiency income tax for the period covering June 1 to December 31 of the taxable year 1999. However, the Formal Letter of Demand and Assessment Notice No. LTDO 122 IT-1999-0000 dated June

[18] In accordance with Section 77(B) of the NIRC of 1997, as amended
[19] Exhibit "J"

16, 2003 was received by petitioner on June 30, 2003.[20] Evidently, the assessment was made beyond the 3-year prescriptive period provided by law and thus, is considered void.

Since the assessment subject of the instant Petition for Review is now deemed null and void for having been issued beyond the prescriptive period, the resolution of the remaining stipulated issues is now considered moot.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. LTDO 122 IT-1999-0000 covering deficiency income tax in the amount of ₱97,698,105.26 for the taxable period June 1, 1999 to December 31, 1999 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

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[20] Exhibits "E" and "2"; Par. 6, Facts, JSFI, Docket, p. 105

A T T E S T A T I O N

I attest 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.

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

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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