REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TRANSITIONS OPTICAL PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8442

Members:

DEL ROSARIO, *P.J.*,
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 01 2014; 3:40 p.m.

x - x

DECISION

UY, *J.*:

Before this Court is the Petition for Review filed on March 16, 2012 by Transitions Optical Philippines, Inc., petitioner, against the Commissioner of Internal Revenue, respondent, seeking to annul, reverse and set aside the Final Assessment Notice, the Formal Letter of Demand, and the Final Decision on Disputed Assessment which found petitioner liable for the following deficiency taxes for taxable year 2004, to wit:

TAX TYPE	AMOUNT
Income Tax	P 3,153,371.04
Value-added Tax	1,231,393.47
Expanded Withholding Tax	175,339.51
Final Tax on Royalty	14,026,247.90
Final Tax on Interest Income	1,115,497.76
TOTAL	P19,701,849.68[1]

[1] The total sum indicated in the FAN, FLD and FDDA states P19,614,438.97 but the correct total sum is P19,701,849.68.

THE FACTS

Petitioner Transitions Optical Philippines, Inc. is a corporation organized and existing under Philippines laws, and may be served with notices and other processes at Blk 4, Lot 1, Star Ave., Laguna International Industrial Park, Laguna Philippines, or through its counsels at 301, Third Floor, Reliance Center, C5 Road, Barangay Ugong, Pasig City.[2]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), the government agency charged with implementing the National Internal Revenue Code (NIRC) and collecting all internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

On April 28, 2006, petitioner received from Revenue Region No. 9, San Pablo City, of the BIR, a Letter of Authority No. 00098746 dated March 23, 2006[4] signed by then OIC-Regional Director Corazon C. Pangcog, authorizing Revenue Officer Jocelyn Santos and Levi Visaya, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2004 to December 31, 2004.

On October 9, 2007, a purported Waiver of the Defense of Prescription was executed by the parties[5], followed by another purported Waiver of the Defense of Prescription executed on June 3, 2008.[6]

Thereafter, respondent, through Regional Director Jaime B. Santiago, issued a Preliminary Assessment Notice (PAN) dated November 11, 2008, assessing petitioner for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) and final tax for taxable year 2004.[7] Relative thereto, petitioner filed a written protest[8] to the PAN on November 26, 2008 arguing that it is not liable for the assessed deficiency taxes.

---

[2]Par.1.1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, pp. 345-346
[3]Par. 1.2, Admitted Facts, JSFI, Docket, Vol. I,p. 346
[4]Par. 2.1.1, Stipulated Facts, JSFI, Docket, Vol. I, p. 347; Exhibit "1"
[5] Par. 2.1.2, Stipulated Facts, JSFI, Docket, Vol. I, p. 347
[6]Par. 2.1.3, Stipulated Facts, JSFI, Docket, Vol. I,p. 347
[7]Par.2.1.4, Stipulated Facts, JSFI, Docket, Vol. I, p. 347; Exhibit "E", Docket,Vol. II,pp. 640-642
[8] Exhibit "F", Docket, Vol. II, pp. 643-646

Respondent, again through Regional Director Jamie B. Santiago, subsequently issued a Final Assessment Notice (FAN) and a Formal Letter of Demand (FLD) dated November 28, 2008[9], assessing petitioner for deficiency income tax, VAT, EWT and final tax for taxable year 2004 in the total amount of P19,701,849.68.

Petitioner filed its Protest Letter dated December 8, 2008 against the FAN, alleging that the year being audited in the FAN has already prescribed at the time that the FAN was mailed on December 2, 2008.[10] In its Supplemental Protest, petitioner further pointed out that the FAN is deemed void because the return period indicated in the FAN is 2006, which is a mistake as the assessment covers calendar year 2004.[11]

Thereafter, respondent, through Regional Director Jose N. Tan, issued a Final Decision on Disputed Assessment dated January 24, 2012[12], holding that petitioner remains liable for deficiency taxes in the total amount of P19,614,438.97, broken down as follows: income tax (P3,153,371.04), VAT (P1,231,393.47), EWT (P175,339.51), final tax on royalty (P14,026,247.90) and final tax on interest income (P1,115,497.76) for taxable year 2004.

Aggrieved by respondent's decision, petitioner filed the instant Petition for Review on March 16, 2012.[13] On March 27, 2012, petitioner filed a Motion for Leave To Admit Amended Petition for Review, attaching thereto an Amended Petition for Review,[14] which was granted by the Court in the Resolution dated May 7, 2012.[15]

Respondent filed her Answer[16] on May 7, 2012, interposing the following defenses:

> "7. The Preliminary Assessment Notice, Final Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment were issued in accordance with law, rules and jurisprudence.

---

[9] Exhibits "H", Docket, Vol. II, pp. 727-729
[10] Exhibit "J", Docket, Vol. II, p. 731
[11] Exhibit "K", Docket, Vol. II, p. 732
[12] Par. 2.1.6, Stipulated Facts, JSFI, Docket, Vol.I, p. 347; Exhibit "L", Docket,Vol. II, pp. 740-742
[13] Docket, Vol. I, pp. 6-33
[14] Docket, Vol. I, pp. 154-180
[15] Docket, Vol. I, pp. 305-306
[16] Docket, Vol.I, pp. 307-316

7.1 The contention of prescription by petitioner is inappropriate since a 'Waiver of the Defense of Prescription' was executed extending the period of assessment.

7.2 Petitioner's claim that its Finance Manager is unauthorized to execute the waiver is just a mere afterthought, as a matter of fact it is blatant in her job title that her functions includes tax matters concerning petitioner.

7.3 Petitioner executed the first waiver through its Finance Manager Pamela Theresa D. Abad and then again executed a subsequent one through Finance Director Suzanne B. Mondonedo as admitted in the Petition for Review of petitioner. It is quite illogical for the petitioner to impugn the validity of the waiver when it twice executed the said document. It did not bother questioning the validity of the first waiver, what is worse it executed another waiver which is a clear acquiescence on the part of the petitioner.

7.4 A party, having performed affirmative acts upon which another person based his subsequent action, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter. This is a clear case of estoppel.

7.5 In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* the Supreme Court held:

> 'A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the

> BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. 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.'

7.6 The waiver of the Statute of Limitations can never be used as an instrument of malice. However, the doctrine of the above stated case was never meant to favour one party over another were both were at fault.

8. Alternatively, RMO 20-90 is purely internal in nature which was not even published for it to be applied. The doctrine as above stated needs to be revisited and clearly be reconsidered to avoid prejudice to the respondent.

9. By virtue of a Letter of Authority, Revenue Officers were authorized to examine the book of accounts and other accounting records of petitioner for the taxable year 2004. The following is a summary of the finding of the examiner as a result of the investigation conducted by virtue of Letter of Authority No. 00098746 dated 23 March 2006, to wit:

Tax Type	**Observation**
INCOME TAX	On 01 August 2004, the ITH related to the company's original registration with PEZA has expired and therefore, will not be subjected to the income tax rate of 5% of gross income. There were disallowable expenses pursuant to tax incentive provision in Section 2 of Republic Act No. 7916, such expenses were charged to cost of sales to arrive at taxable gross income.
VALUE ADDED TAX	Sale of property and equipment was not subjected to Value Added Tax. The transaction was not part of the registered activity and no VAT Returns filed during the taxable period, hence assessed to VAT pursuant to RMC No. 74-99 and RMO 1-90.

My

EXPANDED WITHHOLDING TAX	Part of Rental Expense was not subjected to Expanded Withholding Tax, it resulted to deficiency pursuant to RR 2-98 as amended by RR-2001.
FINAL TAX ON ROYALTY	The company entered into a Technical Service Agreement with its parent company, Transitions Optical Holdings, B.V., Netherlands. The Final Tax on Royalty paid during the taxable period was P244,120.90. Royalty fees are computed at 2% of the net sales of the product sold. During the taxable period, the total net sales were P2,712,198,115.00 and found out that the final tax on royalty paid was underpaid/withhold. It resulted to deficiency Final Tax of P14,054,141.85 inclusive of increments pursuant to VAT Ruling No. 100-99 dated Sept. 16, 1999 and VAT Ruling No. 119-99 dated Dec. 10. 1999 which states that Royalty is VAT exempt but subject to Final Withholding Tax. Under RP-Netherlands tax treaty 15% is the final tax rate.
FINAL TAX ON INTEREST INCOME	Pursuant to RMO No. 63-99, the company was assessed Final Tax on Interest Income on Advances to Affiliates not subjected to Final Tax.

10. The contention of petitioner that Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) were served outside the prescriptive period is untenable. The transmittal letter prepared by the Administrative Division showing the stamp 'registered' by the San Pablo City Post Office on 28 November 2012 proves that the FAN and FLD were actually mailed on 28 November 2012. Since it was already delivered to the post office for mailing, proper service requirement was already complied within the prescriptive period.

11. The actual delivery of the FAN and FLD to the post office complies with the requirement under the Rules of Court with regard to service by mail of notices and other papers. Rule 13, Section 7 thereof provides:

> 'Sec. 7. Service by Mail. – Service by registered mail shall be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with

> instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.'

12. For purposes of prescription, an assessment is deemed made when the notice is released, mailed or sent by the Commissioner to the taxpayer. Failure of the taxpayer to receive the assessment within the prescriptive period will not affect the validity of the assessment if it was made and released within the period.

13. The actual posting thereof is now within the exclusive control of the San Pablo City Post Office and it appears that the mail matters were actually processed by the post office on 02 December 2008 for the reason that 28 November 2008 fell on a Friday and the next working day which is 01 December 2008 was declared as Special Holiday. Under this premise, the respondent cannot be faulted if the same were posted for mailing only on 02 December 2008.

14. Contrary to the allegation of the petitioner regarding the Final Assessment Notice and Formal Letter of Demand which covered different taxable years. The indication of the year 2006 in the FAN instead of the year 2004 does not render the FAN null and void. Section 3.1.4 of Revenue Regulations No. 12-99 provides:

> 3.1.4 Formal letter of Demand and Assessment Notice. –The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. xxx

15. The purported defect of the Final Assessment Notice is not too material so as to defeat the requirement of the law in informing petitioner of the basis of its deficiency taxes for the taxable year 2004. Although the Audit Result/Assessment Notice for Value Added Tax, Expanded Withholding Tax, Final Tax on Royalty and Final Tax on Interest Income indicated the taxable year 2006, the Audit Result/Assessment Notice for Income Tax was clear that petitioner is assessed for the taxable period of 2004. The Formal Letter of Demand sent to petitioner is very clear on the facts, laws, rules and regulations on which assessment is based and clearly indicates that the deficiency internal revenue taxes referred to is for the taxable year 2004. The Formal Letter of Demand issued complied with the requirements provided for by law.

16. The variation of date is merely a clerical error that may be cured by taking into consideration the application of liberal interpretation of each and every detail contained therein. The rule on liberal construction is employed in order to give life to the rule that revenue laws are to be construed in favour of the government whose survival depends on the contribution that taxpayer give. The Formal Letter of Demand is also equivocal that the assessment refers to taxable year 2004.

17. Petitioner cannot simply excuse itself by alleging that it is misled by the Audit Result/Assessment Notice because from the time that it was given a Notice of Informal Conference and the subsequent documents issued by Respondent, the former was properly apprised of the fact that the same refers to the taxable year 2004.

18. Petitioner must likewise prove that the Petition for Review was filed within thirty (30) days from receipt of the Final Decision on Disputed Assessment.

19. Based on the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. Worthy of note, are the words of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands*:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'" *(Citations omitted)*

Thereafter, the Court set the case for pre-trial conference on June 7, 2012.[17] As directed by the Court, the parties filed their Joint Stipulation of Facts and Issues (JSFI) on June 22, 2012[18], and the same was approved by the Court in the Resolution dated June 28, 2012[19].

During trial, both parties presented their respective evidence. Upon termination thereof, this case was submitted for decision on March 12, 2014[20] taking into consideration petitioner's Memorandum filed through registered mail on January 6, 2014[21], and respondent's Memorandum filed on March 4, 2014.[22]

Hence, this decision.

THE ISSUES

The parties submitted the following issues[23] for this Court's resolution:

> "3.1.1. Whether there was a valid waiver of the defense of prescription under the statute of limitations of the NIRC based on existing rules, guidelines, and jurisprudence in either or both the first and second waiver.

---

[17] Minutes of Pre-Trial Conference held on June 7, 2012, Docket, Vol. I, p. 336
[18] Docket, Vol. I, pp. 345-349
[19] Docket, Vol. I, p. 350
[20] Docket, Vol.I, p. 1051
[21] Docket, Vol.II, pp. 989-1027
[22] Docket, Vol.II, pp. 1034-1048
[23] Issues to be resolved, JSFI, Docket, Vol. I, p. 348

3.1.2. Whether the FAN and FLD were properly and timely served before the expiration of either or both waivers based on existing rules, guidelines, and jurisprudence.

3.1.3. Whether the FAN and FLD, as written, sufficiently complied with the requirements under Section 228 of the NIRC and whether the assessment has factual and legal bases.

3.1.4. Whether petitioner is liable to pay deficiency tax liabilities representing Income Tax, Value Added Tax, Expanded Withholding Tax; Final Tax on Royalty, and Final Tax on Interest Income for the calendar year 2004, as well as penalty, deficiency and delinquency interest as provided in Sections 248 and 249 of the NIRC."

THE COURT'S RULING

The instant Petition for Review involves the assessment issued by respondent against petitioner dated November 28, 2008[24] for deficiency income tax, deficiency VAT, deficiency EWT, deficiency final tax on royalty and deficiency final tax on interest income for taxable year 2004.

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the period of limitation upon assessment and collection of taxes, 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

[24] Formal Letter of Demand, petitioner's Exhibit "H", and respondent's Exhibit "9", inclusive of sub-markings

> 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." *(Underscoring supplied)*

It is clear from the foregoing that the three (3)-year period to assess internal revenue taxes commences from the period fixed by law for the filing of the tax return, or the date of actual filing of return, whichever comes later. Accordingly, 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.

This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Necessarily therefore, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[25]

In this case, considering that the returns filed by petitioner were not presented before the Court, the counting of the prescriptive period is reckoned from the last day prescribed by law for filing the returns. The deficiency taxes involved in this case pertain to income tax, value-added tax, expanded withholding tax, and final tax on royalty and final tax on interest income. The pertinent laws relative to the assessment of said deficiency taxes are as follows:

Period to assess deficiency Income Tax:

In the case of income tax, petitioner is required to file its return and the payment is to be made, on or before the fifteenth (15th) day of April following the close of the taxable year pursuant to Section 77 (B) and (C) of the NIRC of 1997, as amended, to wit:

---

[25] Commissioner of Internal Revenue v. FMF Development Corporation, G.R. No. 167765, June 30, 2008

"***SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax***. –

xxx xxx xxx

(B) Time of Filing of Income Tax Return. – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15^{th}) day of April, or on or before the fifteenth (15^{th}) day of the fourth (4^{th}) month following the close of the fiscal year, as the case may be.

(C) Time of Payment of the Income Tax. – The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner."[26]

Counting from April 15, 2005, the last day for the filing of petitioner's Income Tax Return for taxable year 2004, respondent had until April 15, 2008 within which to assess petitioner for deficiency income tax, if any, for taxable year 2004.

Period to assess deficiency Value Added Tax or VAT:

With respect to value-added tax, the law requires that the VAT Return must be filed quarterly within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer pursuant to the provisions of Section 114 of the NIRC of 1997, which pertinently read as follows:

"**Sec. 114. Return and Payment of Value-Added Tax. –**

(A) **In General** – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer:

[26] Section 77(B) of the NIRC of 1997, as amended,

> *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."[27]

In the instant case, the dates to file Quarterly VAT Returns for the four quarters of 2004 were on April 25, 2004, July 25, 2004, October 25, 2004, and January 25, 2005. Hence, respondent had until April 25, 2007, July 25, 2007, October 25, 2007, and January 25, 2008 within which to assess petitioner for deficiency VAT for the first, second, third and fourth quarters of taxable year 2004, respectively.

Period to assess deficiency Expanded Withholding Tax (EWT) and Final Withholding Tax (FWT):

As regards respondent's assessments against petitioner for deficiency Expanded Withholding Tax (EWT) and Final Withholding Tax (FWT), Section 2.58(A)(2)(a) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-01[28], requires that withholding taxes must be deducted and remitted on a monthly basis, to wit:

> "**SECTION 2.58.Returns and Payment of Taxes Withheld at Source.-**
>
> *(A)Monthly return and payment of taxes withheld at soured. -*
>
> xxx xxx xxx
>
> (2) *WHEN TO FILE-*
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, <u>within ten (10) days after the end of each</u>

[27] Section 114 of the NIRC of 1997, as amended by R.A. No. 9337
[28] Implementing Republic Act No. 8424, "An Act Amending the national Internal Revenue Code, as amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

> month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year." *(Underscoring supplied)*

In the case of Expanded Withholding Tax and Final Withholding Tax on royalty and interest income, considering that withholding taxes are deducted and remitted on a monthly basis, the earliest date to file the EWT and FWT Returns for the month of January, 2004 was on February 10, 2004, every 10th day of the month thereafter, except for the month of December, 2004, wherein the latest time to assess was on January 15, 2005. Thus, counting three (3) years from the said dates, the assessment of EWT and FWT for taxable year 2004 must be issued on the following dates:

Period covered	**Last day to Assess under Sec. 203 of NIRC of 1997**
January 2004	February 12, 2007[29]
February 2004	March 12, 2007[30]
March 2004	April 10, 2007
April 2004	May 10, 2007
May 2004	June 11, 2007[31]
June 2004	July 10, 2007
July 2004	August 10, 2007
August 2004	September 10, 2007
September 2004	October 10, 2007
October 2004	November 12, 2007[32]
November 2004	December 10, 2007
December 2004	January 15, 2008

Notably, the envelope bearing the FAN and the FLD was stamped with the date December 4, 2008.[33] The foregoing notwithstanding, respondent submits that the FAN and the FLD were delivered on November 28, 2008 to the Administrative Division for mailing.[34]

Taking into consideration however the aforementioned prescriptive periods to assess subject deficiency taxes, it becomes

[29] February 10, 2007 fell on a Saturday
[30] March 10, 2007 fell on a Saturday
[31] June 10, 2007 fell on a Sunday
[32] November 10, 2007 fell on a Saturday
[33] Exhibit "I", Docket, Vol. II, p. 730
[34] Exhibit "22", Docket, Vol. II, p. 925

immaterial whether the FAN and FLD were actually mailed either on December 4, 2008 or November 28, 2008, because it is readily apparent that the assessments for the subject deficiency Income Tax, VAT, EWT, and final tax for taxable year 2004 were made beyond the 3-year prescriptive period provided by law.

In her Answer, respondent stresses that petitioner's contention of prescription is inappropriate considering that a "Waiver of the Defense of prescription" was executed extending the period of assessment. Respondent claims that the first Waiver executed on October 9, 2007, extended the period to assess to June 20, 2008, and the second Waiver executed on June 2, 2008, extended the period to assess to November 30, 2008.

The exception to the three-year prescriptive period on the assessment of taxes under Section 203 of the NIRC of 1997 invoked by respondent is provided under Section 222(b) of the same Code, and it reads 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."

The foregoing provision authorizes the extension of the original three-year period through the execution of a valid "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code", where the taxpayer and the Bureau of Internal Revenue enters into a written agreement to extend the period to an agreed date for the issuance of an assessment and the collection of taxes due.

In this case, while there appears to be Waivers[35] executed by petitioner which may have extended the prescriptive period provided under Section 203 of the NIRC of 1997, as amended, We agree with petitioner that the said Waivers are defective.

In determining whether the two Waivers were validly executed by herein parties, the pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[36] *(Kudos case)*, is instructive. Said case provides the requirements or the procedure for the proper execution of waivers in accordance with Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001, to wit:

> "1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. **In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. **However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and**

---

35 Petitioner's Exhibits "C" and "D", Docket, Vol. II, pp. 636-639; Respondent's Exhibits "3" and "6", BIR Records, pp. 397-398 and 460-461, respectively

36 G.R. No. 178087, May 5, 2010

executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.**"*(Emphases supplied)*

Taking into consideration the requisites provided under the afore-quoted jurisprudence, the Court hereby notes the following infirmities in the execution of the subject Waivers:

1. The written and notarized authorities of petitioner's representatives, to sign for and on its behalf, namely : the first Waiver by Pamela Theresa D. Abad, and the second Waiver by Suzanne B. Mondoñedo, were not secured by respondent's revenue officers concerned, and the same were not presented in court;

2. The subject Waivers failed to indicate the date of acceptance by respondent's authorized representative, Myrna S. Leonida;

3. The original copies of the Waivers do not indicate the fact of receipt by the taxpayer of its file copy of the Waivers.

Respondent argues that petitioner's allegation that its Finance Manager was not authorized to execute the Waiver is just a mere afterthought considering that it is in her job title that her functions include tax matters concerning petitioner. Respondent also alleges that it is illogical for petitioner to impugn the validity of the Waiver when it twice executed the said document; and from that, petitioner was able to benefit from the assailed Waivers inasmuch as it was able to submit additional documents to support its stand against respondent's assessment.

Respondent cites the Supreme Court's ruling in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[37] *(RCBC case),* wherein the Supreme Court ruled that the taxpayer is estopped from questioning the validity of the waivers considering that the taxpayer's subsequent action in that case effectively belied its insistence that the waivers are invalid. Respondent also adds that petitioner never questioned the Waivers' validity in its protest to the PAN, protest to the FAN and supplemental protest to the FAN; and that petitioner itself recognized the validity of the waivers in its protest to the FAN.

As regards the first infirmity observed by the Court pertaining to the authority of the persons who signed the subject Waivers, the Court cannot sustain respondent's assertion that petitioner is estopped from raising the absence of written and notarized authorities of Ms. Abad and Ms. Mondoñedo's to sign the subject Waivers to assail the validity of said Waivers considering that the duty to secure the submission of the required written notarized authority from petitioner rests upon respondent or her authorized revenue officer.

Specifically, Revenue Delegation Authority Order (RDAO) No. 05-01 requires respondent to ensure the presentation of a written and notarized authority from the taxpayer if such authority was delegated to a representative, to wit:

> "The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. **In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The 'WAIVER' should not be accepted by the concerned BIR office and official unless duly notarized.**" *(Emphasis supplied)*

---

[37] G.R. No. 170257, September 7, 2011

Going to the second observed infirmity by the Court, as previously mentioned, another requirement for the proper execution of waivers is that both the date of execution by the taxpayer and the date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

In this case, the dates of acceptance by the BIR of the two (2) Waivers were not indicated. Thus, the Court is unable to make a definite determination as to whether or not the date of acceptance of the first Waiver was before the expiration of the period of prescription, or whether the date of acceptance of the second Waiver was before the lapse of the period agreed upon in the first Waiver.

Lastly, with regard to the third observed infirmity, the fact of receipt by the taxpayer of his/her file copy of the subject Waivers, paragraph 4 of RMO No. 20-90 specifically provides that the waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer, and the third copy for the office accepting the waiver. It is further provided that the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy.

A perusal of the original copies of the two (2) Waivers found in the BIR Records of this case, specifically Exhibits "3" and "6"[38], fail to show therein the fact of receipt by petitioner of its file copy of the subject Waivers.

It must be emphasized that 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.[39]

As regards respondent's allegation that the doctrine of estoppel is applicable in this case, it must be pointed out that in the *Kudos case,* the High Court ruled that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the

[38] BIR Records, pp. 397-398, and 460-461, respectively
[39] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004

assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow.

The High Tribunal further emphasized that 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. Similarly in this case, the BIR in the *Kudos case* failed to verify whether a notarized written authority was given by the taxpayer to its accountant, and to indicate the date of acceptance and the receipt by the taxpayer of the waivers. Thus, the High Court ruled that the BIR, having caused the defects in the waivers, must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[40]

Furthermore, this Court cannot sustain respondent's application of the *RCBC case* to the case at bar.

It must be clarified that in the *RCBC case,* the Supreme Court found that RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. The pertinent portion of the *RCBC case* reads:

> "Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. 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 are 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 is estopped from questioning the validity of the waivers. To hold otherwise

---

[40] *Ibid.*

> 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."[41]

From the foregoing, the subsequent action of RCBC, specifically, its immediate payment of the revised assessment that was issued within the extended period in the waivers, was considered by the High Court as an implied admission of the validity of the waivers.

On the other hand, records show that there was no reduced assessment issued by respondent within the extended period provided in the assailed Waivers. There was likewise no payment made by petitioner of any reduced assessment in this case. Considering that respondent failed to establish any subsequent action on the part of petitioner similar to the factual circumstances in the *RCBC case* which would prove that petitioner impliedly admitted the validity of the subject waivers and that petitioner actually benefited from the extended period, the doctrine of estoppel clearly finds no application in the instant case.

At this juncture, it must be stressed that to the Government, its tax officers are obliged to act promptly in the making of assessment so that taxpayers, after the lapse of the period of prescription, would have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents.[42]

Again, 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 not a waiver of the right to invoke the defense of prescription. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean

---

[41] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011

[42] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008

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. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[43]

Considering the defects found in the Waivers executed by petitioner, the periods to assess the subject taxes were not extended. Consequently, the assessment dated November 28, 2008[44] was issued by the BIR beyond the three-year period and, thus, are considered void.

Furthermore, even assuming for the sake of argument, that petitioner is estopped from questioning the validity of the subject Waivers, records show that the assailed assessment dated November 28, 2008 was mailed beyond the period agreed upon in the 2nd waiver, which was until November 30, 2008.

Section 3 of Rule 13 of the Rules of Court provides that the date of mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court.[45]

In this case, the date indicated in the envelope/mail matter containing the FAN and the FLD is December 4, 2008[46], which is considered as the date of their mailing. Clearly, such date is beyond the period agreed upon in the 2nd waiver within which to issue the assessment, which is until November 30, 2008.

MY

---

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

[44] Exhibits "9" and its sub-markings

[45] SEC. 3. *Manner of filing.*- The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court.The envelope shall be attached to the record of the case.

[46] Exhibit "I", docket, p. 730

Respondent counters that the FAN and the FLD were already delivered to the post office for mailing on November 28, 2008 but were actually processed by the post office on December 2, 2008 since December 1, 2008 was declared a Special Holiday. Thus, respondent insists that the subject assessment was made before the lapse of the period provided in the 2nd Waiver, or until November 30, 2008.

We disagree with respondent.

A thorough evaluation of the records reveal that said allegations are not supported by adequate evidence.

The testimony of respondent's witness, Dario A. Consignado, Jr., that he brought the mail matter containing the FAN/FLD to the post office on November 28, 2008[47] is self-serving, and the same is not corroborated by any other evidence to prove that the FAN and the FLD were indeed mailed on November 28, 2008. The Certification marked as Exhibit 22 for respondent[48] merely certified that the FAN issued to petitioner was delivered to its Administrative Division for mailing on November 28, 2008. To the mind of the Court, this Certification is not sufficient evidence to prove that the actual date of mailing was November 28, 2008.

It is imperative for respondent to satisfactorily prove the release, mailing or sending of the FAN and the FLD as held by the Supreme Court in the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[49], the pertinent portion of which reads:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959) **this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or**

[47]Exhibit "23", docket, pp.920-923
[48]Exhibit "22", docket, p. 925
[49]G.R. No. 157064, August 7, 2006, citing *Nava vs. Commissioner of Internal Revenue,*13 SCRA 104, January 30, 1965

> **control, without adequate supporting evidence cannot suffice**; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense."*(Emphasis supplied)*

In summary therefore, the Court hereby finds the subject Waivers to be defective and therefore void. Nevertheless, granting for the sake of argument that the subject Waivers were validly executed, for failure of respondent however to present adequate supporting evidence to prove that it issued the FAN and the FLD within the extended period agreed upon in the 2nd Waiver, the subject assessment must be cancelled for being issued beyond the prescriptive period provided by law to assess.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment finding petitioner Transitions Optical Philippines, Inc. liable for deficiency income tax, deficiency expanded withholding tax, deficiency value-added tax and deficiency final tax for taxable year 2004 in the total amount of **P19,701,849.68**[50] are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

---

[50] The correct total sum for the following deficiency taxes: income tax - P3,153,371.04; VAT – P1,231,393.47; EWT – P175,339.51; Final Tax on Royalty – P14,026,247.90; Final Tax on Interest Income – P1,115,497.76 is P19,701,849.68 while the total amount of P19,614,438.97 indicated in the FAN, FLD and FDDA is incorrect .

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice