REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SUNJIN PHILIPPINES CORPORATION, Petitioner,	CTA Case No. 8278
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 10 2015 4:25 p.m.

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DECISION

***Fabon-Victorino, J.*:**

This is a *Petition for Review*[1] filed by Sunjin Philippines Corporation on April 15, 2011, seeking to cancel and set aside the (1) Formal Letter of Demand No. 31873 with Assessment Notice dated February 25, 2011, assessing it of alleged deficiency expanded withholding tax (EWT) of ₱3,644,827.91; and (2) Formal Letter of Demand No. 19231 dated February 25, 2011, for the payment of ₱25,000.00, as compromise penalty for failure to pay EWT on time, both issued by respondent Commissioner of Internal Revenue.

First, the facts.

Petitioner is a domestic corporation, with principal office at No. 102 Barangay Partida, Norzagaray, Bulacan, Philippines.[2]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to

[1] Docket, pp. 1-14.
[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 236.

decide administrative tax cases, including disputed assessments. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 1, 2006, petitioner received from respondent a Letter of Authority (LOA) No. 00033497[3] dated May 29, 2006 authorizing the examination of its books of accounts and other accounting records for all internal revenue liabilities for taxable year 2005. With the LOA is a letter request dated May 30, 2006 for petitioner's books of accounts, financial statements and other related accounting records and supporting documents.

On November 21, 2006, petitioner received a *Notice of Informal Conference*[4] dated November 20, 2006 with attached *Computation of Deficiency Taxes*.

After the Informal Conference on January 26, 2007, petitioner submitted a *Position Paper*[5] on March 29, 2007, disputing respondent's *Computation of Deficiency Taxes.*

On July 13, 2007, petitioner received from respondent a *Supplemental Letter*[6] dated June 25, 2007, indicating additional findings on its internal revenue tax liabilities for the year ending December 31, 2005. In its *Reply*[7] filed on September 17, 2007, petitioner again disputed its alleged deficiency tax and moved that it be cancelled and withdrawn.

On November 24, 2008, petitioner through its President, Mr. Han Joo Lee, executed a *Waiver of the Defense of Prescription Under the Statute of Limitations of the* NIRC, as amended, [8] extending the period of assessment until September 30, 2009.

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[3] Exhibit "A", docket, p. 303; Exhibit "1", BIR records, p. 37.
[4] Exhibit "B", docket, p. 305.
[5] Exhibits "C", docket, pp. 312.
[6] Exhibit "D", docket, pp. 334 to 341.
[7] Exhibit "E", docket, pp. 342 to 367.
[8] Exhibits "FF" to "FF-4", docket, p. 455.

On May 13, 2009, respondent's revenue officer requested petitioner through its accountant, Ms. Lourdes S. Bernabe, to receive a copy of the Waiver in the BIR office.[9]

On July 28, 2009, petitioner received the Pre-Assessment Notice (PAN)[10] dated July 22, 2009, for alleged deficiency internal revenue taxes in the sum of ₱37,128,752.54, inclusive of penalties.

On August 12, 2009, petitioner protested[11] the PAN.

On October 13, 2009 petitioner received from respondent a Formal Letter of Demand No. 30551[12] with attached Assessment Notices (BIR Form No. 1708),[13] finding it liable for deficiency Income Tax (IT), Expanded Withholding Tax (EWT), Final Withholding Tax - Royalty (FWT-Royalty), and Fringe Benefit Tax (FBT) in the aggregate amount of ₱41,538,150.54. A separate Formal Letter of Demand No. 18345[14] was likewise issued for the payment of compromise penalties of ₱150,000, if there was an intention to settle the tax obligation extra-judicially. Both documents were issued on September 28, 2009.

On November 11, 2009, petitioner protested[15] the FAN.

On November 11, 2009, respondent, through Revenue Officer (RO) Ariston Spinoza de Guzman issued a Tax Verification Notice No. 169075[16] for the reinvestigation of petitioner's tax liability for taxable year 2005.

On November 24, 2009, petitioner executed a *Taxpayer's Agreement*[17] indicating its acceptance of the proposed assessment and obliged to pay the total amount of ₱1,003,748.52. Petitioner paid the tax deficiencies in the reduced amount of ₱1,003,748.52,[18] after Revenue District

[9] Par. 7, Stipulation of Facts, JSFI, docket, p. 237.
[10] Exhibit "G", docket, p. 369.
[11] Exhibits "H", docket, p. 372.
[12] Exhibits "I", "J" and "K", docket, pp. 386, 389 and 392-393, respectively.
[13] Exhibits "I-1", "J-1", "K-1" and "K-2", docket, pp. 387, 390, 394 and 395, respectively.
[14] Exhibit "L", docket, p. 399.
[15] Exhibit "M", docket, pp. 401 to 416.
[16] Exhibit "11", BIR records, p. 933.
[17] Exhibit "N".
[18] Exhibits "O", "O-1", "P", "P-1", "Q", "Q-1", "R" and "R-1".

Officer Orlando V. Chio approved the said *Taxpayer's Agreement.*[19]

Notwithstanding such payment, Regional Director Arnel D. Guballa, in a *Memorandum* dated August 4, 2010, directed Revenue Officer Ariston de Guzman to conduct further audit to assess/collect from petitioner deficiency EWT from all its purchases of agricultural products pursuant to Revenue Memorandum Circular No. 44-2007 dated July 6, 2007.[20]

On August 26, 2010, petitioner received a letter from respondent dated August 23, 2010, demanding payment for deficiency EWT from purchases of agricultural products amounting to ₱6,881,884.15.

In its letter-reply[21] dated September 1, 2010, petitioner demanded the immediate cancellation of the aforesaid tax assessment stating that its failure to withhold income taxes was by virtue of the instruction in Revenue Regulations No. 3-2004 dated March 1, 2004, suspending the implementation of withholding tax on income payments made to suppliers of agricultural products.

On November 4, 2010, respondent sent a letter[22] reiterating her demand to pay the deficiency EWT to which petitioner replied[23] reiterating that the said deficiency EWT lacks factual and legal bases.

On March 17, 2011, petitioner received respondent's final decision[24] finding it liable for deficiency EWT from its purchases of agricultural products. Attached thereto was the Formal Letter of Demand No. 31873 with Assessment Notice for deficiency EWT and the Formal Letter of Demand No. 19231 for compromise penalty, all dated February 25, 2011.[25]

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[19] Exhibit "N-4".
[20] Exhibit "10", BIR records, p. 1188.
[21] Exhibit "15", BIR records, p. 1190.
[22] Exhibits "17" and "17-a", BIR records, p. 1201.
[23] Exhibit "18", BIR records, p. 1203.
[24] Exhibit "S", docket, pp. 426-427.
[25] Exhibits "S-1", S-2", and "S-3", docket, pp. 428 to 430.

Hence, petitioner timely filed the instant *Petition for Review* before the Court on April 15, 2011.

In her *Answer*[26] posted on June 21, 2011, respondent points out that pursuant to Section 2.57.2(S) of Revenue Regulations No. 2-98, as amended, petitioner, as a top 10,000 corporation, is liable to withhold creditable income tax from income payments made to their local suppliers of goods. Moreover, while petitioner filed a protest against the deficiency EWT assessment, the same is ineffectual since it failed to indicate the facts and law upon which it was based rendering the same final, executory and demandable. Lastly, the fact that petitioner was furnished with copies of the accepted Waivers only on May 13, 2009 did not invalidate such Waiver as such requirement is merely formal in nature.

After the *Pre-trial Conference*, a Pre-Trial Order was issued[27] based on the parties' *Joint Stipulation of Facts and Issues*[28].

In support of its position, petitioner presented its Finance and Accounting Team Leader **Lourdes S. Bernabe.** She declared in her Judicial Affidavit[29] that she is responsible for petitioner's financial operations and reporting with government regulatory agencies such as BIR and Securities and Exchange Commission (SEC).

On June 1, 2006, petitioner received LOA No. 33497 for the examination of petitioner's books of accounts and other accounting records covering all internal revenue liabilities for taxable year 2005. This was followed by a Notice of Informal Conference dated November 20, 2006 stating that after the examination, petitioner was found liable to pay deficiency taxes of ₱27,607,169.84, inclusive of increments for the year 2005. On January 26, 2007, the parties had an Informal Conference. On March 29, 2007, petitioner submitted a position paper pertaining to its alleged

[26] Docket, pp. 187 to 194.
[27] Docket, p. 253.
[28] Docket, pp. 236 to 240.
[29] Exhibit "GG", docket, pp. 456-466.

deficiency tax assessments attached to the Notice of Informal Conference.

On June 25, 2007, respondent issued a Supplemental Letter finding petitioner liable for additional internal revenue tax liabilities to which petitioner replied on August 16, 2007.

On November 24, 2008, petitioner, through its President Han Joo Lee, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC, extending the period of assessment until September 30, 2009. Although the notarized Waiver was submitted to respondent on November 28, 2008, it was invalid since a copy of which bearing the signature of respondent's authorized representative was received by petitioner only on May 13, 2009 or beyond the 3-year prescriptive period provided under the Tax Code, hence, it did not extend the right of respondent to assess and collect the alleged tax deficiencies. Petitioner believes that the said Waiver was signed only on May 13, 2009, since respondent's authorized representative wanted to sign it only in the presence of petitioner's representative.

On July 22, 2009, respondent issued the PAN followed by the FAN on September 28, 2009.

On November 11, 2009, or within the period prescribed under Section 228 of the Tax Code, petitioner protested the FAN through a request for reinvestigation/reconsideration. After the re-evaluation and re-examination by the revenue officer, petitioner agreed and paid the deficiency tax assessment in the total amount of ₱1,003,748.52, including increments, for taxable year 2005.

On March 17, 2011, petitioner received a Letter dated February 14, 2011, partly denying its protest. Attached to said Letter is Formal Letter of Demand No. 31873 with Assessment Notice dated February 25, 2011, for deficiency EWT of ₱3,644,827.91, inclusive of interest and Formal Letter of Demand No. 19231 dated February 25, 2011, to pay compromise penalty of ₱25,000.00 for failure to pay the EWT on time.

On cross, witness Bernabe clarified that when she submitted the Waiver on November 28, 2008, a copy thereof was not return to her. A copy of the Waiver with the signature of Revenue District Officer Rolando Chio was furnished petitioner only on May 13, 2009. She added that petitioner is listed as one of the top ten thousand (10,000) companies of the Philippines.

Petitioner thereafter rested as indicated in the Resolution[30] of February 9, 2012.

For her part, respondent presented Revenue Officers Angelina Salapare, Concepcion E. Defuntorum, and Ariston S. De Guzman, as witnesses.

In her Judicial Affidavit[31], **RO Angelina Salapare** stated that she was among the authorized investigators /examiners in petitioner's internal revenue tax liabilities for the period January 1, 2005 to December 31, 2005. Their audit revealed that petitioner was liable for deficiency IT, VAT, WT, FBT, DST, and WVAT on Royalties in the total amount of ₱25,350,756.76. In their Memorandum, they recommended the issuance of PAN against petitioner.

RO Concepcion E. Defuntorum, also by way of a Judicial Affidavit[32], testified that she reviewed the findings of the investigating team on petitioner's internal revenue tax liabilities for taxable year 2005. Thereafter, she prepared the PAN with Details of Discrepancies, the FAN and Formal Letters of Demand against petitioner. Petitioner protested the FAN, hence the case docket was referred back for reinvestigation. After the reinvestigation, the case docket was returned to her for review. She then prepared a Memorandum for Regional Director Arnel Guballa for the assessment and collection of petitioner's deficiency EWT on its purchases of agricultural products.

In his Judicial Affidavit,[33] witness **RO Ariston S. De Guzman**, confirmed that pursuant to Tax Verification Notice

[30] Docket, pp. 475-476.
[31] Exhibit "20", docket pp. 486-487.
[32] Exhibit "21" docket, pp. 499-503.
[33] Exhibit "19" docket, pp. 649-656..

No. 00169075 dated November 11, 2009, petitioner's case docket was assigned to him for reinvestigation. Petitioner assailed the assessments on IT, EWT, FWT, and FBT. However, petitioner failed to state in its protest letter, a statement of facts and/or law in support of its protest rendering the assessment final, executory and demandable.

Witness further declared that pursuant to petitioner's request for reinvestigation, he examined the records and documents submitted by petitioner and forwarded the docket to the Assessment Division for review of his findings. Upon review, petitioner was found liable for deficiency EWT for failure to withhold the 1% EWT on its purchases of agricultural products. Demand for payment was made in the letter dated August 23, 2010. For petitioner's refusal to pay, the Regional Director instructed to collect the deficiency EWT on petitioner's purchases of agricultural products.

Respondent rested her case after the Court admitted all her exhibits in the Resolution[34] dated July 29, 2013.

On August 8, 2013, petitioner filed a *Motion to Present Rebuttal Evidence*[35], which the Court granted per Resolution[36] dated October 10, 2013.

On February 24, 2014, petitioner recalled to the witness stand **Lourdes S. Bernabe**, who testified by way of a Judicial Affidavit[37] that the PAN dated July 22, 2009, as well as, the FAN dated September 28, 2009, did not contain specific assessment for EWT on agricultural suppliers.

On June 30, 2014, the Court admitted petitioner's additional exhibits.[38]

On September 10, 2014[39], the instant case was submitted for decision considering petitioner's

[34] Docket, p. 763.
[35] Docket, pp. 764-766.
[36] Docket, pp. 778-781.
[37] Exhibit "JJ", docket, pp. 793-798.
[38] Exhibits "JJ" and "JJ-1".
[39] Resolution, docket, p. 899.

Memorandum[40] filed on August 5, 2014 and respondent's *Memorandum*[41] filed on September 3, 2014.

THE ISSUES

The parties submitted the following issues[42] for the determination of the Court, to wit:

1. Whether or not the Waiver of Defense of Prescription signed by petitioner on 24 November 2008 is validly executed;

2. Whether or not the right of the respondent Commissioner to make an assessment has prescribed;

3. Whether or not payments made by the Petitioner to agricultural suppliers for taxable year 2005 are subject to one percent (1%) EWT;

4. Assuming, payments to agricultural suppliers are subject to EWT, whether or not the EWT Assessment on Petitioner's purchases from local Agricultural suppliers had already become final, executory and demandable;

5. Whether or not the PAN dated July 22, 2009 indicates or specifies that the assessment for deficiency expanded withholding tax (EWT) pertains to payments to agricultural suppliers;

6. Whether or not the FAN dated September 28, 2009 indicates or specifies that the assessment for deficiency expanded withholding tax (EWT) pertains to payments to agricultural suppliers;

7. Whether or not the FAN dated September 28, 2009 is validly issued;

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[40] Docket, pp. 855 to 876.
[41] Docket, pp. 884 to 897.
[42] Issues, JSFI, docket, pp. 238 to 239.

8. Whether or not Section 246 of the Tax Code on non-retroactivity of rulings, rules and regulations or circulars may apply to RMC-4407 regarding payments to agricultural suppliers; and

9. Whether the Petitioner is liable for the deficiency Expanded Withholding Tax for taxable year 2005 in the amount of Three Million Six Hundred Fourteen Thousand Eight Hundred Twenty Seven and 92/100 Philippine Pesos (₱3,614,827.92) plus 25% surcharge, and 20% delinquency interest as provided in Sections 248 and 249 of the NIRC of 1997.

THE COURT'S RULING

The timeliness of the filing of the Petition for Review must first be ascertained.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, relevantly states, thus:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to

> said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Emphasis supplied*)

It is undisputed that on March 17, 2011, petitioner received respondent's final decision[43] on the disputed assessment. Thus, based on the afore-quoted provision, petitioner had thirty (30) days from March 17, 2011 or until April 16, 2011 within which to appeal respondent's denial. Evidently, the instant Petition for Review was seasonably filed on April 15, 2011.

Now, on the merits of the case.

Petitioner claims that the Waiver of the Defense of Prescription is invalid as it did not strictly comply with Revenue Memorandum Order (RMO) No. 20-90. Allegedly, when the Waiver was notarized and submitted to respondent

[43] Exhibit "S".

on November 28, 2008, it was yet to be signed by respondent. It also alleges that respondent signed the Waiver only on May 13, 2009 when its representative went to the BIR office to receive a copy of the same. Petitioner claims that since respondent accepted the Waiver only on May 13, 2009, which was clearly beyond the prescriptive period provided under Section 222(b) in relation with Section 203 of the NIRC of 1997, as amended, the three-year period within which to make an assessment was not extended. Thus, the right of respondent to assess petitioner has prescribed.

Respondent counters that the Waiver was duly executed. She contends that petitioner admitted in its *Petition for Review* that her authorized representative accepted the Waiver before the expiration of the prescriptive period. She further explains that under RMO No. 20-90 it is not required that the taxpayer's copy must be received before the expiration of the prescriptive period.

The Court finds for the petitioner.

Section 203 of the NIRC of 1997, as amended, requires that respondent should issue an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond the three-year prescriptive period shall not be valid save certain cases in Section 222 of the NIRC of 1997, as amended, 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. (*Emphasis supplied*)

xxx xxx xxx

SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*. —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(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.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint

> or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
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> (e) Provided, however, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree. (*Emphasis supplied*)

Hence, respondent ordinarily has a period of three (3) years within which to assess internal revenue taxes, any assessment notice issued beyond the three-year prescriptive period shall not be valid. However, such rule is subject to certain exceptions, one of which is upon a written agreement between the tax authorities and taxpayer through the execution of a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[44] the Supreme Court enumerated the procedure for the proper execution of the waiver in accordance with RMO No. 20-90[45] 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.

[44] G.R. No. 178087, May 5, 2010.
[45] Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code

> 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.
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> 3. The waiver should be duly notarized.
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> 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. <u>The date of such acceptance by the BIR should be indicated</u>**. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
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> 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.
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> 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*)

A careful examination of the Waiver executed by Mr. Han Joo Lee readily shows that it is defective and cannot validly extend the original three (3) year prescriptive period for respondent to assess. The said Waiver **failed to indicate the date of acceptance** by Revenue District Officer Orlando V. Chio.

In the case of *Commissioner of Internal Revenue vs. FMF Development Corporation*[46], the Supreme Court held that the date of acceptance by the Commissioner of Internal Revenue is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. The High Court further pronounced that RMO No. 20-90 must be strictly followed, to wit:

> Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. Firstly, it was not proven that respondent was furnished a copy of the BIR-accepted waiver. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Commissioner as mandated by the NIRC and RMO No. 20-90, considering that the case involves an amount of more than P1 million, and the period to assess is not yet about to prescribe. Lastly, **it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.** Bear in mind that the **waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement.**
>
> Petitioner contends that the procedures in RMO No. 20-90 are merely directory and that the execution of a waiver was a renunciation of respondent's right to invoke prescription. We do not agree. **RMO No. 20-90 must be strictly followed.**

[46] G.R. No. 167765, June 30, 2008.

> In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* we ruled that a **waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.** The waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal. Notably, in this case, the waiver became unlimited in time because it did not specify a definite date, agreed upon between the BIR and respondent, within which the former may assess and collect taxes. It also had no binding effect on respondent because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality. *(Emphasis supplied)*

Hence, considering the defect in the subject Waiver, the period to assess petitioner's internal revenue tax liabilities for taxable year 2005 was not extended. Consequently, the FAN issued on September 28, 2009 is null and void for having been issued beyond the three-year period prescribed under Section 203 of the NIRC of 1997, as amended. Necessarily, the subsequent FAN issued for alleged deficiency EWT for taxable year 2005 on February 25, 2011, as a result of the reinvestigation conducted on the original FAN, is likewise null and void.

In view of the above findings, a discussion of the other issues raised is no longer necessary.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand No. 31873 with Assessment Notice dated February 25, 2011, assessing petitioner Sunjin Philippines Corporation for deficiency Expanded Withholding Tax for taxable year 2005 in the amount of ₱3,644,827.91; and the Formal Letter of Demand No. 19231 dated February 25, 2011, demanding the payment of ₱25,000.00 as compromise penalty for failure to pay Expanded Withholding Tax on time, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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.

ROMAN G. DEL ROSARIO
Presiding Justice