REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

- versus -

JGC CORPORATION MANILA-ROHQ,

Respondent.

CTA EB CASE NO. 1026
(CTA Case No. 7983)

Present:

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

Promulgated:

APR 01 2014 9:05 a.m.

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DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue on July 4, 2013 seeking the reversal and setting aside of the Decision[1] dated March 13, 2013 and the Resolution[2] dated June 4, 2013 of the former Second Division[3] of this Court in CTA Case No. 7983, entitled *JGC Corporation Manila-ROHQ vs. Commissioner of Internal Revenue.*

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[1] *Rollo*, pp. 25 to 43.
[2] *Rollo*, pp. 45 to 50.
[3] Composed of Senior Associate Justice Juanito C. Castañeda, Jr. as Chairperson, Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla.

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED** and the assessments issued against petitioner for deficiency income tax for the taxable period 2003 in the aggregate amount of TWO MILLION FOUR HUNDRED THIRTY SEVEN THOUSAND THREE HUNDRED FIFTY-FIVE AND 2/100 PESOS (P2,437,355.02) are hereby **CANCELLED** and **WITHDRAWN** for being issued beyond the prescriptive period allowed by law. Accordingly, respondent's Final Decision on Disputed Assessment issued on August 26, 2009 is hereby **REVERSED** and **SET ASIDE** for having been issued pursuant to an invalid assessment.
>
> **SO ORDERED**."

Assailed Resolution:

> "**WHEREFORE**, there being no new matters or issues advanced by respondent in her Motion which may compel this Court to reverse, modify or amend the Assailed Decision of the CTA Second Division, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR) is the official of the Republic of the Philippines charged with the duty of assessing and collecting internal revenue taxes. She holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.[4]

Respondent JGC Corporation Manila-ROHQ (JGC) is a Regional Operating Headquarters duly registered with and licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines, with principal place of business at JGC Bldg., 2109 Prime St., Madrigal Business Park, Ayala Alabang, Muntinlupa City.[5] cym

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[4] Petition for Review, *Rollo*, p. 6.
[5] *Id.*

THE FACTS

Respondent JGC filed its Annual Income Tax Return (Annual ITR) for taxable year 2003 on April 13, 2004.[6]

On July 1, 2005, petitioner CIR issued Letter of Authority No. 00045892 [7] for the examination of the books of accounts and other accounting records of respondent JGC for **"All Internal Revenue Taxes (VAT Refund/TCC)"** for the period January 1, 2003 to December 31, 2003.

In the course of said examination, respondent JGC (through its authorized representative, Admin. Manager Araceli Pascual), executed two (2) Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code.[8] The First Waiver which was executed on March 22, 2007 extended petitioner CIR's period to assess respondent JGC for *"all internal revenue tax"* to **December 31, 2007**. On the other hand, the Second Waiver which was executed on December 15, 2007 extended petitioner CIR's period to assess respondent JGC for *"value-added tax liability/refund"* to **December 31, 2008**.

On November 17, 2008, respondent JGC received a Preliminary Assessment Notice (PAN) on its alleged deficiency tax liability for taxable year 2003.[9] On November 28, 2008, respondent JGC filed a reply to the PAN.[10]

On December 11, 2008, respondent JGC received the Formal Assessment Notice [11] (FAN) dated December 8, 2008, with attached Assessment Notice and Details of Discrepancies,[12] issued by petitioner CIR, assessing respondent JGC for *deficiency income tax* for taxable year 2003. On December 19, 2008, respondent JGC filed a protest[13] to the FAN.

[6] Exhibit "W".
[7] Exhibit "2".
[8] Exhibits "E" and "F"; Exhibits "8" and "10".
[9] Exhibit "C".
[10] Exhibit "G".
[11] Exhibit "12".
[12] Exhibit "12-B".
[13] Exhibit "H".

On September 3, 2009, respondent JGC received the Final Decision on Disputed Assessment (FDDA) [14] dated August 26, 2009 finding respondent JGC liable for deficiency income tax for taxable year 2003.

On October 2, 2009, respondent JGC filed its Petition for Review before the Court in Division appealing the aforesaid FDDA.

On January 6, 2010, respondent filed her Answer and raised the following special and affirmative defenses: (a) a comparison made on respondent JGC's financial statement against its alphalist reveals an unaccounted expense amounting to ₱11,310,051.10 which was treated by the BIR as undeclared income pursuant to the decision of the Supreme Court in the case of *Perez vs. CTA and CIR, L-10507 dated 30 May 1958*; (b) records show that respondent JGC failed to substantiate its purchases in the total amount of ₱334,380.59; pursuant to Section 34 (A)(b) of the National Internal Revenue Code of 1997 (1997 NIRC), such purchases should be disallowed as deduction; (c) considering that respondent JGC failed to raise the defense of prescription of the assessment at the administrative level, it cannot be raised for the first time on appeal; and, (d) since 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.

After trial, the Court in Division issued the assailed Decision granting the petition for review and cancelling and withdrawing the deficiency tax assessment issued against respondent JGC. Aggrieved, petitioner CIR filed a Motion for Reconsideration on April 1, 2013 which was however denied by the Court in Division in the assailed Resolution.

Hence, petitioner CIR filed the subject Petition for Review before the Court *En Banc* on July 4, 2013, and raised the following issues for the Court *En Banc*'s resolution:

1. Whether or not the Court in Division erred in holding that the two (2) Waivers executed by respondent JGC on March 22, 2007 and December 15, 2007, respectively, were valid.

2. Whether or not the Court in Division erred in holding that the right of the BIR to assess respondent JGC for deficiency income tax for taxable year 2013 has already prescribed.

[14] Exhibit "I"; Exhibit "16".

3. Whether or not the Court in Division failed to consider the argument of petitioner CIR that respondent JGC cannot be permitted to raise for the first time on appeal the alleged invalidity of the two (2) Waivers executed by respondent JGC on March 22, 2007 and December 15, 2007, respectively, in view of the fact that respondent JGC failed to raise such issue in the administrative level of the BIR.[15]

After the filing of respondent JGC's Comment on September 19, 2013, the Court *En Banc* required both parties to submit their respective memoranda within thirty (30) days from notice.[16] Respondent JGC filed its Memorandum[17] on November 27, 2013. Petitioner CIR, on the other hand, filed a Manifestation and Motion[18] on November 27, 2013 wherein petitioner CIR manifested and moved that she is adopting all factual and legal arguments found in her Petition for Review dated July 2, 2013 which was filed with the Court *En Banc* on July 4, 2013, as well as the documentary and testimonial evidence found in the records of this case, as part of her memorandum. On January 15, 2014, the Court *En Banc* submitted the case for decision.[19]

THE PARTIES' ARGUMENTS

Petitioner CIR's Arguments

In insisting that the right of the BIR to assess respondent JGC for its income tax liability for taxable year 2003 has not prescribed, petitioner CIR argues that the two (2) Waivers executed by respondent JGC on March 22, 2007 and December 15, 2007, respectively, were valid and binding as the same were made following the format prescribed under Revenue Delegated Authority Order (RDAO) No. 05-01 dated August 2, 2001, which amended, deleted and repealed the required format under Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990 that then required the waiver to specify the type of tax and their respective amounts of deficiency tax due. OM

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[15] Petition for Review, *Rollo*, p. 9.
[16] Resolution dated October 1, 2013, *Rollo*, pp. 78 to 79.
[17] *Rollo*, pp. 80 to 99.
[18] *Rollo*, pp. 101 to 103.
[19] *Rollo*, unpaginated.

Petitioner CIR further contends that the requirements imposed by the Court in Division that a copy of the accepted waiver by the CIR or her duly authorized representative must be furnished and personally received by the person who executed and signed the waiver for and in behalf of respondent JGC, and that the same must be furnished to respondent JGC within the agreed period as provided in the First Waiver, are not legally imposed under Section 222 of the 1997 NIRC, RMO No. 20-90 and RDAO No. 05-01.

Finally, petitioner CIR avers that respondent JGC cannot raise for the first time on appeal the alleged invalidity of the two (2) Waivers it has executed, for it failed to raise such issue in the administrative level.

Respondent JGC's Counter-Arguments

Respondent JGC posits that the Court in Division correctly ruled that the two (2) Waivers executed by respondent JGC are void as the same were executed not in accordance with the format prescribed under RMO No. 20-90 since the types and amounts of alleged deficiency taxes due were not indicated therein. Since RDAO No. 05-01 is an assignment order internal to revenue officers, it cannot supersede RMO No. 20-90 which is a notice to all taxpayers anent the requirements for the execution of a valid waiver.

Respondent JGC explains that a waiver is a contract between the taxpayer and the BIR. Thus, the authorized signatory who signed the waiver must be the same signatory who should be notified of the BIR's acceptance of the waiver. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver as accepted by the BIR. The failure of petitioner CIR to furnish respondent JGC of its copy of the BIR-accepted Second Waiver made respondent JGC unaware of what transpired to the Second Waiver. There is no meeting of the minds and no agreement to speak of and necessarily, there is no extension of the prescriptive period to assess respondent JGC for deficiency taxes.

With regard to petitioner CIR's contention that respondent JGC cannot raise the issue of prescription and validity of waiver for the first time on appeal, respondent JGC argues that, pursuant to the decisions of the Supreme Court and the Court of Tax Appeals (CTA), the doctrine of estoppel cannot be applied 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.

Lastly, respondent JGC reiterated that the deficiency tax assessment against it lacks legal and factual bases.

THE RULING OF THE COURT EN BANC

Pursuant to Section 203 of the 1997 NIRC, as amended, petitioner CIR has three (3) years to assess and collect an internal revenue tax, *viz.*:

> "**SEC. 203**. *Period of Limitation Upon Assessment and Collection*. - Except as provided in Section 222, **internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That **in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed**. For 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**."(Emphases supplied)

Stated otherwise, the three-year period within which an assessment may be made shall be reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. Truth to tell, the government is mandated to assess deficiency 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.[20]

To determine the last day for petitioner CIR to assess respondent JGC for deficiency income tax for the calendar year ending December 31, 2003, this Court *En Banc* shall first ascertain the date when the three-year prescriptive period should be reckoned.

In accordance with Section 77 of the 1997 NIRC,[21] as amended, respondent filed its Annual ITR for taxable year ending December 31, 2003 om

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

[21] Sec. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax*. –
(A) Xxx xxx xxx.
(B) *Time of Filing the 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.

on April 13, 2004.[22] Thus, applying Section 203 of the 1997 NIRC, as amended, and *sans* any waiver of the defense of prescription executed by respondent JGC, the BIR had until **April 16, 2007**[23] within which to issue the FAN, Assessment Notice and Details of Discrepancies for purposes of assessing respondent JGC for deficiency income tax for taxable year ending December 31, 2003.

Records reveal that on December 11, 2008, respondent JGC received the FAN dated **December 8, 2008**, with attached Assessment Notice and Details of Discrepancies, issued by petitioner CIR. Based on the date of filing of respondent JGC's Annual ITR, it is clear that the FAN, Assessment Notice and Details of Discrepancies were issued beyond the three-year prescriptive period allowed under Section 203 of the 1997 NIRC, as amended.

Since the FAN, Assessment Notice and Details of Discrepancies were issued beyond the three-year prescriptive period, the Court *En Banc* shall resolve the issue of whether or not the two (2) Waivers validly extended the three-year prescriptive period to assess respondent JGC for deficiency income tax for the taxable year ending December 31, 2003.

Upon perusal of the two (2) Waivers, the Court *En Banc* finds that the two (2) Waivers did not extend petitioner's right to assess respondent JGC for deficiency income tax until December 31, 2008.

Assuming that the two (2) Waivers were executed in strict compliance with the requirements set forth in RMO No. 20-90 and RDAO No. 05-01, the First Waiver extended petitioner's right to assess respondent JGC for **"all internal revenue taxes"** until **December 31, 2007** only. On the other hand, the Second Waiver extended petitioner CIR's right to assess respondent JGC for **"value added tax liability/refund"** until **December 31, 2008**.

Thus, for all intents and purposes, petitioner CIR had until **December 31, 2007** only within which to issue the FAN, Assessment Notice and Details of Discrepancies, for purposes of assessing respondent JGC for **deficiency income tax, together with other internal revenue taxes, for taxable year ending December 31, 2003**. The Second Waiver did not operate to extend petitioner CIR's right to assess respondent JGC for

[22] Exhibit "W".
[23] April 15, 2007 fell on a Sunday.

deficiency income tax until December 31, 2008 as the extension was limited specifically to **"value added tax liability/refund"**.

Accordingly, the FAN, Assessment Notice and Details of Discrepancies, which were issued on December 8, 2008, are void for being issued beyond the prescriptive period provided under Section 203 of the 1997 NIRC, as amended, and the extended period stated in the First Waiver.

In view of the foregoing disquisition, the denial of the subject Petition for Review is warranted. The remaining stipulated issues need not be discussed by the Court *En Banc*.

WHEREFORE, premises considered, the Petition for Review filed by the Commissioner of Internal Revenue on July 4, 2013 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Elvira
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice