# Republic of the Philippines
# COURT OF TAX APPEALS
# Quezon City

## ***SECOND DIVISION***

**GUOCO HOLDINGS (PHILIPPINES), INC.,**
Petitioner,

**C.T.A. CASE NO. 6122**

Members:

- versus -

**Castañeda, Jr.**, *Chairman*
**Uy**, and
**Palanca-Enriquez**, *JJ.*

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:

AUG 3 1 2005

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## ***DECISION***

**UY, *J*.:**

This case seeks for the cancellation of Assessment Notice No. LA # 132858-FY95-99-540 dated August 26, 1999 with Details of Discrepancies dated August 23, 1999 assessing petitioner of deficiency income taxes and expanded withholding taxes in the amounts of **THREE HUNDRED EIGHTY EIGHT MILLION TWO HUNDED FOURTEEN THOUSAND SIX HUNDRED SIXTY NINE AND 60/100 PESOS (P388,214,669.60), and FIVE MILLION TWO**

**HUNDRED FIFTY FOUR THOUSAND FIVE HUNDRED FIFTY FIVE AND 56/100 PESOS (P5,254,555.56)** respectively, including surcharges and interests for the taxable fiscal year ending June 30, 1995.

## THE FACTS

The undisputed facts as culled from the records of the case are as follows:

Petitioner, Guoco Holdings (Philippines), Inc., is a non-life insurance company duly organized and existing by virtue and under Philippines laws with principal offices and business address at 17/F, BA Lepanto Building, 8747 Paseo de Roxas, Makati City. Respondent is the duly appointed Commissioner of Internal Revenue, vested by law to decide disputed assessments and to enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws.

On October 16, 1995, petitioner filed its Annual Corporate Income tax for the fiscal year ending June 30, 1995. Respondent subsequently issued a Letter of Authority No. 132858 dated January 29, 1997, authorizing its examiners under Group Supervisor Myrna de Ocampo to investigate petitioner's income and other internal revenue tax liabilities for taxable year ended June 30, 1995.

On May 20, 1999, petitioner was provided a copy of the Memorandum dated November 11, 1998 issued by Group Supervisor, Myrna de Ocampo, with findings that petitioner had deficiency income and expanded withholding tax liabilities (Records, pp. 11-15). Consequently on June 30, 1999, petitioner contested the findings of the Bureau's examiners before respondent's Revenue

District Office No. 50, and requested for the cancellation of the proposed deficiency income and expanded withholding tax assessments in the amounts of P355,543,138.00 and P5,185,499.88, respectively (Records, p. 16).

On August 27, 1999, petitioner received respondent's Demand Letter and Assessment Notice No. LA # 132858-FY95-99-540 with the Details of Discrepancies, all issued by the Regional Director for Revenue Region No. 8, Ms. Virginia L. Trinidad, covering the tax liabilities of petitioner for the taxable year ending June 30, 1995, in the amounts of P388,214,669.60 and P5,254,555.56 (Records, pp. 19-23). The deficiency income tax assessment in the amounts of P388,214,669.60 allegedly arose from the disallowances of the following:

1. *Unexplained excess of Cash Disbursement over cash receipts in the amount of P527,793,614.96* - in violation to Section 28 (2) of the National Internal Revenue Code.

2. *Professional and Management fees in the amount of P25,295,121.14* – Section 9 of Revenue Regulations No. 6 - 78 and 5-82 required the withholding of tax on Professional and Management fees otherwise no deduction of said expense will be allowed.

3. *Representation expense in the amount of P2,217,552.00* – no proof that this expense was actually incurred by the taxpayer in violation to Section 29 (a) of National Internal Revenue Code.

4. *Other unallowable expense in the amount of P1,466,906.31* – no proof that this expense was actually incurred by the taxpayer in violation to Section 29 (a) of the national Internal Revenue Code.

On the other hand, the deficiency expanded withholding tax of

P5,254,555.56 inclusive of surcharges and interests, allegedly arose from the findings of the respondent that petitioner failed to withhold the 10% tax on professional and management fees of P25,295,121.14.

An administrative protest was filed by petitioner on September 24, 1999 (Records, pp. 24 -29). In a letter dated November 5, 1999, petitioner was informed that its protest was forwarded to respondent's Revenue District Office No. 50 for appropriate action.

Respondent's Revenue District Office No. 50, through Tax Verification Notice No. TVN1999 00010281 dated November 18, 1999, wrote petitioner requesting the submission of all documents in support of its administrative protest (Records, p. 30). On November 23, 1999, petitioner complied with said request and submitted all relevant documents in support of its administrative protest (Records, pp. 31-40).

Its protest not having been acted upon by respondent after the lapse of 180 days from November 23, 1999, when it submitted all pertinent and relevant documents relative to its protest to respondent, petitioner filed the instant Petition for Review on June 19, 2000, pursuant to Section 228 of the 1997 National Internal Revenue Code.

On July 27, 2000, respondent filed his Answer, alleging, among others, that the assessments in question were made and issued in accordance with existing rules and regulations, as well as in accordance with the requirements provided for under Section 228 of the 1997 Tax Code. Allegedly, the details of discrepancies containing facts and the law upon which the assessments were based were duly stated in the adverted assessments and demand letters issued to petitioner. Respondent maintains that under Revenue Memorandum Order No. 20-90, dated April 4, 1990, the Revenue District Officer with respect to tax cases still pending investigation in their district is authorized to sign and accept in behalf of the Commissioner the Waiver of the Statute of Limitations executed by the taxpayer and that prescription, being a matter of defense, the burden is on the taxpayer to prove that the full period of limitation has expired (Querol vs. Coll., L-16705, October 30, 1962) because all presumptions are in favor of the correctness of the tax assessment (Interprovincial Autobus, Inc. vs. Collector of Internal Revenue, 98 Phil 290).

## THE ISSUES

The parties jointly stipulated on the following issues:

1. Whether or not the excess of cash disbursements over the cash receipts, if any, constitute unreported income.

2. Whether or not petitioner withheld the proper withholding tax on the professional and management fees of P25,295,121.14 and may be allowed to claim said fees as deductions.

3. Whether or not the representation and other expenses in the amount of P2,217,552.00 and P1,466,906.31, respectively, are properly supported by proof (Joint Stipulation of Facts, Records, pp. 74-78, at p. 77).

## THIS COURT'S RULING

At the outset, it must be stressed that "internal revenue taxes are self-assessing and no further assessment by the government is required to create the tax liability. An assessment, however, is not altogether inconsequential; it is relevant in the proper pursuit of judicial and extrajudicial remedies to enforce the taxpayer's liabilities and certain matters that relate to it, such as the imposition of surcharges and interest, and in the application of statutes of limitations and in the establishment of tax liens *(Vitug and Acosta, Tax Law and Jurisprudence, 1st Edition, [1997], p. 267).*

The ultimate purpose of assessment is to ascertain the amount that each taxpayer is to pay (Commissioner v. Pascor Realty and Development Corporation, 309 SCRA 402). An assessment is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof (Commissioner v. Ayala Securities Corporation, 70 SCRA 204). Assessments made beyond the prescribed period would not be binding on the taxpayer (Commissioner v. Ayala Securities Corporation, 70 SCRA 204).

In view thereof, the Court finds necessity to determine the timeliness of Assessment No. LA # 132858-FY95-99-540, as well as the validity of the Waivers of the Statute of Limitation, executed by the parties.

Although prescription was not defined as an issue in the Joint Stipulation of Facts, it appears that petitioner, nonetheless raised this matter in the instant

Petition for Review stating that the right of the respondent to assess h[illegible], prescribed (Petition for Review, par. 5, Records, pp. 1-10, at p. 5). Allegedly, petitioner's income tax return for the taxable year ended June 30, 1995 was filed on October 16, 1995. Assessment Notice No. LA # 132858-FY95-99-540 dated August 26, 1999 was issued and mailed only on the same date, which was beyond the three-year period for the assessment of any internal revenue tax as provided in Section 203 of the Tax Code, as amended. Accordingly, the right of the respondent to assess the petitioner for any deficiency internal revenue taxes is already barred by prescription. Moreover, in petitioner's Protest Letter dated November 23, 1999, prescription was the first ground raised in contesting the subject assessments.

This Court resolves to grant the instant petition.

A Statute of Limitations is "any law which fixes the time within which parties may take judicial action or else be thereafter barred from enforcing them (Barron's Law Dictionary, 2003 Edition, pp 492-493). The Statute of Limitation, or specifically, the period of limitation upon assessment and collection of national internal revenue taxes are set forth in Section 203 of the National Internal Revenue Code (or NIRC) of 1997, as amended, quoted hereunder, 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*)."

Consequently, an assessment notice issued after the lapse of the three (3)-year prescriptive period is no longer valid and effective subject to certain exceptions provided under Section 222 of the NIRC, one of which is subsection (b) thereof, to wit:

> "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 **has agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon**. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

In the instant case, petitioner's Annual Income Tax Return for the fiscal year ended June 30, 1995 was filed on October 16, 1995. Applying the provisions of Section 203 of the 1997 NIRC, respondent had 3 years therefrom, or until October 16, 1998, within which to legally issue the subject Assessment Notice. A careful scrutiny of the records of the case however, shows that Assessment Notice No. LA # 132858-FY95-99-540 was issued and released only on August 26, 1999, which is clearly beyond the three (3)-year prescriptive period allowed by law.

Respondent, on the other hand, controverts petitioner's assertion that the right to issue subject assessment notice has prescribed and invokes application of the exception to the period of limitation of assessment and collection of taxes mentioned in Sec. 222 (b) of the 1997 NIRC, as amended. It offered in evidence, copies of the Waivers of the Statute of Limitations executed both by the petitioner and the respondent, to wit: the first Waiver executed on October 2, 1998 extending the period within which the BIR may assess and collect taxes until November 15, 1998 *(Exhibit "3", BIR Records, p. 395);* the second Waiver executed on November 13, 1998 extending the period of limitation to until January 31, 1999 *(Exhibit "5", BIR Records, p. 410);* the third Waiver executed on June 7, 1999 extending the period of limitation to until June 30, 1999 (*(Exhibit "9", BIR Records, p. 577)*; and the fourth Waiver was executed on May 24, 1999 extending the period of limitation until August 29, 1999 *(Exhibit "10", BIR Records, p. 581).* These Waivers were signed by petitioner's representative, Ernesto T. Diaz, its Group Financial Controller, and Edmundo A. Vasquez, respondent's Revenue District Officer.

Evidently from the parties' respective claims and defenses, the validity of the Assessment Notice and Demand Letter issued by respondent against petitioner rests highly upon the validity of the execution of the subject Waivers of the Statute of Limitations, most especially, the first Waiver.

Revenue Memorandum Order No. 20-90, provides, that the Waiver must be in the following tenor:

**"WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE**

______________________________________________ ______ in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of ______________________________________ as __________________ for the years ______________, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after re-investigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after ____________, 19___.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does

he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this _______ day of ______________ 19 ___, in Quezon City, Philippines.

_______________________________

(Taxpayer or Authorized Representative)

**ACCEPTED AND AGREED TO:**

Commissioner of Internal Revenue
Date ______________________"

*(Annex A, Revenue Memorandum Order 20-90, April 4, 1990)*

Furthermore, under the same RMO No. 20-90, the following requisites must be likewise be complied with, thus:

> "1. The **waiver must be in the form identified as Annex "A" hereof**. This form may be reproduced by the Office concerned but **there should be no deviation from such form.** The phrase 'but not after ____________19___ should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated**. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

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

A. In the National Office

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|---|---|---|
| 1. | ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices.<br><br>In the absence of the ACIR, the Head Executive Assistant may sign the waiver. | For tax cases involving not more than P500,000.00 |
| 2. | Deputy Commissioner | For tax cases involving more than P500,000.00 but not more than P1M |
| 3. | Commissioner | For tax cases involving more than P1M |

B. In the Regional Offices

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

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

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

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

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

For purposes of clarity, hereunder is a reproduction of the first Waiver, printed on petitioner's letterhead:

**WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE**

Guoco Holdings (Phils) Inc., in relation to the examination of its books of account for the taxable year ended June 30, 1995, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collections of the taxes which may be found due after the examination/reinvestigation at any time before or after the lapse of the period of limitations fixed by the aforecited provisions, but not after **November 15, 1998.**

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue and his authorized agents ample time to conduct the examination/ reinvestigation of the tax liabilities for subject period. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the findings of the revenue examiners which may be made for the period aforementioned: nor does it waive the right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this **2nd** day of **October** , 1998, in Makati city, Metro Manila, Philippines.

**Guoco Holdings (Phils.) Inc.**

By:

(signed)
**ERNESTO T. DIAZ**
**Group Financial Controller**
**Authorized Signature**

**AGREED AND ACCEPTED BY:**

(signed)
EDMUNDO A. VASQUEZ
REVENUE DISTRICT OFFICER
**BEETHOVEN RUALO**
**Commissioner of Internal Revenue**

The Court finds the following deviations from the requisites laid down in Revenue Memorandum Order No. 20-90 in the subject Waivers:

a. The Waivers of Statute of Limitations were not signed by the Commissioner of Internal Revenue as required by RMO No. 20-90;

b. There is no showing that petitioner was provided with a copy of the first as well as the subsequent subject Waivers of Statute of Limitations as there was no acknowledgment receipt on the original copies thereof, attached to the BIR docket of the case; and

c. The subject Waivers of Statute of Limitations did not specify the kind of tax and the amount of the tax due.

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The first Waiver of the Statute of Limitations was executed by the petitioner's authorized representative on October 2, 1998. Respondent had more or less the period of two (2) weeks to accept or agree to the Waiver that was submitted by the petitioner as the three (3)-year prescriptive period for assessment was to prescribe on October 15, 1998.

However, Section 3 (B)(1) of RMO No. 20-90 authorizes the Revenue District Officer to make the acceptance as in the case at bar, when the period to assess/collect is about to prescribe, regardless of the amount. Thus, this deviation is legally allowed as an exception to the general rule.

With respect to the failure of the respondent to furnish the petitioner with a copy of the Waiver, as evidenced by the absence of any form of acknowledgment by the petitioner's authorized representative on the original copies of the Waivers of the Statute of Limitations, the Supreme Court ruled in the case of ***Philippine Journalists, Inc. v. Commissioner of Internal Revenue that*** "under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. x x x x **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**

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**existence of the document but of the acceptance by the BIR and the perfection of the agreement** (G.R. No. 162852, December 16, 2004)."

Lastly, the Court notes that the subject Waivers did not indicate the kind and amount of tax due in clear violation of RMO No. 20-90. The execution of a Waiver of the Statute of Limitations presupposes that there is already an initial finding by the respondent as to the tax liabilities of the taxpayer/petitioner, or else, there would be nothing to waive. Moreover, the requirement to specify the kind of tax and amount is for the purpose of limiting the conditions of the waivers with regard to only those taxes and amounts as specified therein. This is to protect both the taxpayer and the government, in the sense that, the parties are particularly apprised of the subject matter of the waivers.

In this regard, this Court had the opportunity to discuss the importance of this requirement in the case of ***Dole Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5705, July 1, 2003,*** thus:

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

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Based on the foregoing discussions, the Court finds the first Waiver document to be incomplete and defective. It is incomplete due to the failure of the Waiver to state the kind of tax and the amount of the tax due, and defective, for failure to show or indicate in the original copy of the Waiver, the fact of receipt by the petitioner-taxpayer of its file copy.

Therefore, the three-year prescriptive period to assess and collect taxes was neither tolled nor extended. Having been ineffectual and invalid, the subsequent Waivers of the Statute of Limitations executed to allegedly extend the period of prescription were likewise invalid. The subsequent executions of the Waivers did not in any way cure the invalidity of the first Waiver. Consequently, because there was no valid waiver to speak of in the first place, it naturally follows that there was no period subsequently extended by the execution of the second, third and fourth Waivers. Consequently, the subject Demand Letter and Assessment Notice No. LA #132858-FY95-99-540 dated August 26, 1999 are null and void for having been issued beyond the prescriptive period allowed by law.

It must be remembered that 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 (***Ouano v. Court of Appeals, G.R. No. 129279, 4 March 2003, 398 SCRA 525).***

In view thereof, a discussion of the validity and legality of the assailed assessments has become moot and unnecessary (Commissioner v. Philippine American Life Insurance Co., 244 SCRA 446).

**WHEREFORE**, premises considered, the subject Petition for Review is hereby **GRANTED.** Accordingly, the Demand Letter and Assessment Notice No. LA #132858-FY95-99-540 assessing petitioner of deficiency income and expanded withholding taxes in the amounts of P388,214,669.60 and P5,254,555.56, respectively, are hereby **SET ASIDE** and declared **NULL and VOID** on the ground of prescription.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

*WE CONCUR:*

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Chairman

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

# 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.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Chairman