REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

INTEL TECHNOLOGY PHILIPPINES, INC.,
Respondent.

C.T.A. EB No. 379
(CTA Case No. 7226)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:
NOV 18 2008 Apolinario
2:25 p.m.

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DECISION

ACOSTA, P.J.:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law." [1]

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[1] *Republic of the Phils. v. Ablaza, 108 Phil. 1105.*

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This is a Petition for Review filed on April 11, 2008, seeking to set aside the Resolutions issued by the Court of Tax Appeals' Second Division dated November 27, 2007 and March 4, 2008, granting herein respondent's "Omnibus Motion for Early Resolution on the Issue of Prescription and Postponement of Hearing" and denying herein petitioner's Motion for Reconsideration, respectively, rendered in CTA Case No. 7226 entitled "*Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*".

The Second Division found the pertinent facts to be as follows:

> "Petitioner [herein respondent] received from respondent [herein petitioner] an Audit Notice (BIR Form No. 1920) dated April 24, 2002 with Case No. 116000671946 and OCN No. 8AN0000000561 authorizing the examination of petitioner's books of accounts and other accounting records for Calendar Year 2000.[2]
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> Petitioner [herein respondent] executed five waivers of the defense of prescription under the statute of limitations. The details of each waiver are as follows:
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> a) Waiver dated January 13, 2003 extending the period to assess not later than June 30, 2003, filed with the respondent on January 16, 2003;[3]
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> b) Waiver dated June 09, 2003 extending the period to assess not later than March 31, 2004;[4]
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> c) Waiver dated November 28, 2003 extending the period to assess not later than September 30, 2004, filed on December 3, 2003;[5]
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> d) Waiver dated March 08, 2004 extending the period to assess till December 31, 2004, filed on March 09, 2004;[6] and
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> e) Waiver dated May 03, 2004 extending the period to assess till December 31, 2004 filed on May 04, 2004.[7]

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[2] *Exhibit "A."*
[3] *Exhibit "B."*
[4] *Exhibit "SS."*
[5] *Exhibit "C."*
[6] *Exhibit "D."*
[7] *Exhibit "E."*

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> On June 28, 2004, petitioner [herein respondent] received from respondent [herein petitioner] the Final Assessment Notices (FAN) dated May 28, 2004 for deficiency value-added tax (VAT) and expanded withholding tax (EWT) in the amounts of ₱41,886,669.00 and ₱104,906,691.26, respectively.[8]
>
> On July 28, 2004, petitioner [herein respondent] filed a Letter Protest against the assessments, with the Office of the Deputy Commissioner, Large Taxpayers Services.[9]
>
> On September 23, 2004, petitioner [herein respondent] submitted additional documents in support of its Letter Protest to respondent [herein petitioner]. On March 22, 2005, petitioner filed a Supplemental Protest.[10]"[11]

Due to petitioner's alleged inaction, respondent filed a Petition for Review with the Court of Tax Appeals on April 21, 2005 which was raffled to the Second Division. During the trial at the Division Level, respondent filed, on February 24, 2006, an "Omnibus Motion for Early Resolution on the Issue of Prescription xxx" on the VAT and EWT Assessments.

The Second Division found merit in the said Motion and cancelled the Final Assessment Notices dated May 28, 2004 for deficiency value-added and expanded withholding taxes against respondent, on the ground of prescription. Then, on March 4, 2008, the Second Division denied petitioner's Motion for Reconsideration for lack of merit. Hence, this petition which is anchored on the following grounds:

I.

> THE HONORABLE COURT ERRED IN RULING THAT THE WAIVERS EXECUTED ON JUNE 9, 2003 AND NOVEMBER 28, 2003 WERE VOID BECAUSE RESPONDENT FAILED TO INDICATE THEREIN THE DATE OF ACCEPTANCE OF THE WAIVER.

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[8] *Exhibits "G" & "H."*
[9] *Exhibit "J."*
[10] *Exhibit "K."*
[11] *En Banc Rollo pages 18-20.*

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II.

THE HONORABLE COURT ERRED IN RULING THAT THE WAIVERS EXECUTED ON JANUARY 13, 2003, JUNE 9, 2003, NOVEMBER 28, 2003 AND MARCH 4, 2004 WERE VOID DUE TO THE FAILURE OF RESPONDENT *[sic]* TO FURNISH PETITIONER *[sic]* COPIES THEREOF.

Petitioner argues that the waivers executed on several occasions are in the nature of agreements; hence, only the essential elements of a contract are necessary for its validity. According to petitioner, contracts require only the presence of three essential elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. In this case, petitioner maintains that respondent knows the object and the consideration of the agreement. It knows that by entering into the agreement, the period to assess was extended. No violence, intimidation, or undue influence was employed to compel respondent to execute the agreements. Petitioner claims that on the contrary, it was respondent who executed the agreement and requested petitioner to agree to the extension of the period to assess, to give it more time to gather evidence in support of its protest.

Petitioner further avers that respondent cannot impugn the validity of the agreement; as respondent, together with petitioner, through their duly authorized representatives, appeared before the Notary Public on several occasions and acknowledged that the agreements to extend the period to assess was their free and voluntary act. Indubitably, respondent was aware of the acceptance of the agreement to extend the period to assess.

Petitioner thus posits that the noted flaws do not affect the validity of the subject waivers because the presence of the essential elements of a contract in them and their due execution before the Notary Public are badges of a valid and binding agreement.

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In view of the above, petitioner prays the this Court set aside the Resolution promulgated by the Second Division on March 4, 2008 and sustain the validity of the waivers executed by respondent.

In its Memorandum filed on July 16, 2008, respondent avers that the failure to indicate the date of acceptance in the subject waivers invalidate the same. Petitioner's own Revenue Memorandum Order (RMO) No. 20-90 provide the requisites of a valid Waiver of Statute of Limitations, among which, is the said date of acceptance. Respondent, citing *Philippine Journalists, Inc., vs. Commissioner of Internal Revenue*[12]and *Commissioner of Internal Revenue vs. FMF Development Corporation*[13], maintains that RMO No. 20-90 must be strictly followed; that failure to indicate the date of acceptance results in an incomplete and defective waiver, such that the three-year prescriptive period was not extended.

Respondent also argues that further violating of RMO No. 20-90 is the failure of petitioner to furnish it copies thereof. The fact that petitioner allegedly accepted the five waivers was never communicated to respondent. Moreover, petitioner never presented evidence that respondent received the waivers, as accepted. In this regard, respondent maintains that it's Global Tax and Trade Group Manager testified that it was never informed of the acceptance, if there was any.[14]

According to respondent, a Waiver of Statute of Limitations is not a unilateral act of the taxpayer but an agreement between the Bureau of Internal Revenue (BIR) and the taxpayer, thus the acceptance thereof must be communicated by the BIR to the taxpayer by furnishing the latter a copy. Such communication cannot be assumed.

Respondent contends that the validity of a waiver is not governed by the provisions of the Civil Code of the Philippines but by the National Internal Revenue

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[12] *G.R. No. 162852, December 16, 2004.*
[13] *G.R. No.167765, June 30, 2008.*
[14] *Judicial Affidavit dated May 24, 2006 of Atty. Charlene O. Ang.*

Code (NIRC). Thus, the allegation that an agreement to extend the period to assess has only three elements is erroneous, as it is contrary to the provisions of Section 223 of the NIRC and RMO No. 20-90. The NIRC being a special law prevails over a general law.

Moreover, respondent claims that the Chief of the Large Taxpayers Audit and Investigation Division I (LTAID I) is not an authorized representative of the Commissioner of Internal Revenue to accept an offer of a waiver under the circumstances at hand. Under RMO No. 20-90, which implements Section 203 and 222(b), the revenue officer authorized to sign a waiver, for tax cases involving more than one million pesos, is no less than the Commissioner. Even following Revenue Delegation Authority Order (RDAO) No. 05-01, the Chief of the LTAID I is still not authorized to accept such waivers. This fact adds basis to declare the waivers incomplete and defective.

On July 31, 2008, petitioner filed a Memorandum reiterating the arguments set forth in the instant Petition for Review.

With the parties' submission of their Memoranda, the case was submitted for decision on August 6, 2008.

This Court finds the arguments of petitioner clearly without merit.

As discussed in the assailed Resolution rendered by the Second Division, the prescription of assessments is provided under Section 203 of the NIRC. It provides:

> "**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

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return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day".

In this case, records disclose that respondent filed its quarterly VAT returns on the following dates:[15]

QUARTER	DATE FILED	LAST DAY TO FILE RETURN	LAST DAY WITHIN WHICH TO ASSESS
First	April 25, 2000	April 25, 2000	April 25, 2003
Second	July 24, 2000	July 25, 2000	July 25, 2003
Third	Original Return: October 25, 2000 Amended Return: November 9, 2000	October 25, 2000	October 27, 2003
Fourth	January 25, 2001	January 25, 2001	January 26, 2004

On the other hand, respondent filed its EWT returns on the following dates:[16]

MONTH	DATE FILED	LAST DAY TO FILE RETURN	LAST DAY OF PRESCRIPTIVE PERIOD
January	February 24, 2000	February 25, 2000	February 25, 2003
February	March 27, 2000	March 27, 2000	March 27, 2003
March	April 25, 2000	April 25, 2000	April 25, 2003
April	May 25, 2000	May 25, 2000	May 26, 2003
May	June 26, 2000	June 26, 2000	June 25, 2003
June	July 24, 2000	July 25, 2000	July 25, 2003
July	August 24,2000	August 25,2000	August 25,2003
August	September 21, 2000	September 25, 2000	September 25, 2003
September	October 25, 2000	October 25, 2000	October 27, 2003
October	November 23, 2000	November 27, 2000	November 25, 2003
November	December 21, 2000	December 26, 2000	December 26, 2003
December	January 25, 2001	January 25, 2001	January 26, 2004

[15] *Exhibits "FF," "II," "LL," and "PP."*
[16] *Exhibits "RR" to "CC."*

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Considering that the Final Assessment Notices (FAN) was received on June 28, 2004, petitioner's right to assess respondent for deficiency value-added and expanded withholding taxes had already prescribed. Further, the waivers executed by respondent did not extend the period within which to assess deficiency taxes. Applicable are Section 222(B) of the NIRC and Revenue Memorandum Order (RMO) No. 20-90.

Sec. 222(B) of the NIRC reads:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*- 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.
>
> xxx xxx xxx."

RMO No. 20-90 lays down the procedure for the proper execution of the Waiver of the Statute of Limitations, as follows:

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

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

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

A. In the National Office

1.	ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. 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."

As aptly quoted by the Second Division, the Supreme Court has enumerated the requirements for a valid waiver to be:

> "A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. The BIR had issued Revenue Memorandum Order (RMO) No. 20-90 on 04 April 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be administratively dealt with."

Following the above, the Second Division correctly found the waivers in question defective on the following grounds:

1) the waivers were not signed by the Commissioner of Internal Revenue considering that the assessed amount exceeds P1,000,000.00;
2) as regards the waivers executed on June 09, 2003 and November 28, 2003, respondent failed to indicate the date of its acceptance of the waiver; and
3) petitioner was not furnished copies of the waivers executed on January 13, 2003, June 09, 2003, November 28, 2003, and March 08, 2004 by respondent.

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Petitioner cannot correctly argue that as all the essential elements of a contract exists, the waiver should be declared valid. A waiver of the statute of limitations under the NIRC, is not an ordinary agreement, according to the Supreme Court, it is 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.[17] It is governed not by the general provisions of the New Civil Code but by the National Internal Revenue Code following the basic principle in statutory construction that a special law prevails over a general law.

The Supreme Court in the landmark case *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[18] laid to rest the issue on the necessity of full compliance with the requisites provided by the law on waivers. Affirming this Court, the Supreme Court categorically declared that waiver is not valid and binding when it does not conform to the provisions of RMO No. 20-90. As to the requirement of the correct revenue official who signs on behalf of the government, it was said that:

> "The waiver is also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No. 20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (P1,000,000.00) and executed almost seven months before the expiration of the three-year prescriptive period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR."

Here, involved is an assessment for deficiency value-added tax (VAT) and for expanded withholding tax (EWT) in the amounts of ₱41,886,669.00 and ₱104,906,691.26,[19] respectively. Considering that this case involves taxes amounting

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[17] *Ouano v. Court of Appeals, G.R. No. 129279, 4 March 2003, 398 SCRA 525, citing People v. Donato, G.R. No. 72969, 5 June 1991, 198 SCRA 130, cited in Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, supra.*
[18] *supra.*
[19] *Exhibits "G" and "H."*

to more than P1,000,000.00, Revenue Memorandum Order No. 20-90 requires the Commissioner of Internal Revenue to sign for the Bureau of Internal Revenue. In this case, in violation of the said RMO, the waivers were signed by the following:

Date Executed	**Exhibit Number**	**Signatory**
January 13, 2003	Exhibit "1"	Edwin Abella (Assistant Commissioner Large Taxpayer Service
June 09, 2003	Exhibit "2"	Estelita C. Aguirre (Deputy Commissioner, OIC Large Taxpayer Service)
November 28, 2003	Exhibit "3"	Armi S. Linsangan (Chief, LT Audit & Investigation Division I)
March 08, 2004	Exhibit "4"	Teresita M. Dizon (Chief, LT Audit & Investigation Division I)

In the same case of Philippine Journalists[20], the Supreme Court, applying the same RMO No. 20-90, ruled:

> "Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason copies are furnished is for a party to be notified of the existence of a document, event or proceeding.
>
> The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. 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.

[20] *supra.*

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> The waiver document is incomplete and defective and thus the three-year prescriptive period was not tolled or extended and continued to run until April 17, 1998. Consequently, the Assessment/Demand No. 33-1-000757-94 issued on December 9, 1998 was invalid because it was issued beyond the three (3) year period. In the same manner, Warrant of Distraint and/or Levy No. 33-06-046 which petitioner received on March 28, 2000 is also null and void for having been issued pursuant to an invalid assessment."

Records also show that petitioner was not furnished copies of the waivers signed by the Commissioner of Internal Revenue. Thus, as correctly found by the Second Division, considering that the waivers were not signed by the Commissioner himself and respondent was not furnished copies of the waivers duly accepted by the Commissioner, pursuant to RMO No. 20-90, said waivers are null and void, and did not extend the period within which to assess petitioner.

ACCORDINGLY, as there appears to be no valid reason to deviate from the findings of the Second Division, the instant Petition for Review is hereby **DENIED** and the assailed Resolutions dated November 27, 2007 and March 4, 2008 are **AFFIRMED** *in toto*. The Final Assessment Notices against respondent for deficiency value-added tax and expanded withholding taxes are **CANCELLED** and **SET ASIDE** on the ground of prescription.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, 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*.

ERNESTO D. ACOSTA
Presiding Justice

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