REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6780

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
JUL 3 1 2009
4:27 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by Philex Mining Corporation, praying for the cancellation and withdrawal of the deficiency tax assessments for taxable year 1998 in the total amount of P771,203,814.81, but later reduced to the amount of P549,513,286.94[1], inclusive of increments.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with main office at No. 27 Brixton and Fairlane Streets, Pasig City. It is principally engaged in mining operations.[2]

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[1] Supplemental Petition for Review, *rollo*, pp. 156-170.
[2] Pars. 1 and 2, Admitted Facts From the Parties Pleadings, Stipulation of Facts and Issues, *rollo*, p. 255.

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including, among others, the power to cancel disputed internal revenue assessments. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On August 14, 2001, petitioner signed a Waiver of the Statute of Limitations under the National Internal Revenue Code (NIRC).[3] Subsequently, in a letter dated January 2, 2002, Ms. Virginia L. Trinidad, Assistant Commissioner for the Large Taxpayers Service, invited petitioner for an informal conference regarding its various deficiency taxes found as a result of tax investigation.[4]

On June 7, 2002, a Memorandum was submitted to Assistant Commissioner Virginia L. Trinidad by Revenue Officers Renato H. Garganera, Jonas P. Punzal, and Ma. Luisa M. Lim.[5] The subject of the said Memorandum is the investigation report regarding petitioner's tax deficiencies for taxable year 1998.

On June 24, 2002, petitioner signed a second Waiver of the Statute of Limitation, while pending resolution of its protest.[6]

On November 27, 2002, petitioner received from respondent a Formal Letter of Demand, Assessment Notices, and Details of Discrepancies dated November 19, 2002, requiring petitioner to pay its alleged deficiency taxes for

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[3] Par. 2a, Additional Stipulations, *rollo*, p. 277.
[4] Exhibit "J".
[5] Exhibit "K".
[6] Exhibit "L".

taxable year 1998 in the total amount of P777,203,814.81, inclusive of interests and penalties.[7]

On December 26, 2002, petitioner protested the foregoing Formal Letter of Demand and Assessment Notices and requested that the same be canceled and withdrawn after reinvestigation.[8]

On February 21 and 24, 2003, petitioner submitted all relevant documents and manifested additional arguments in support of its protest.[9]

Due to respondent's inaction, petitioner appealed to this Court on September 22, 2003, pursuant to Section 228 of the NIRC.

On February 17, 2004, petitioner received from respondent his "Final Decision on Disputed Assessment" dated February 3, 2004, reducing the assessed deficiency taxes from P771,203,814.81 to P549,513,286.94, inclusive of increments.[10]

In view of respondent's issuance of the Final Decision, petitioner manifested that it be given a period of thirty (30) days to file a Supplemental Petition for Review to reflect the reduction of the amount covered by the disputed assessment. This was granted by the Court and petitioner filed its Supplemental Petition for Review on March 22, 2004.

On May 17, 2004, respondent filed his Answer[11] to the Supplemental Petition for Review and raised the following Special and Affirmative Defenses:

> "13. Unaccounted Depreciation Expense in the amount of P63,106,132.31 was disallowed pursuant to Section 34 F of the Tax Code. Jr

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[7] Exhibit "A".
[8] Exhibit "E".
[9] Exhibits "F" and "G".
[10] Exhibit "H".
[11] *Rollo*, 190-198.

14. Interest expense incurred in the amount of P72,179,276.00 relative to loans incurred but used by inter-related companies was disallowed for not being ordinary and necessary in the conduct of the business pursuant to Section 34 of the Tax Code.

15. Expense on forex loss incurred from loans and extended to sister/related corporations in the amount of P76,769,191.48 was disallowed pursuant to Section 34 of the Tax Code.

16. Provision for back wages charged to Miscellaneous Expense in the amount of P23,800,000.00 and P21,100,000.00 which were deducted from taxable revenue were disallowed pursuant to Section 34 of the Tax Code.

17. Miscellaneous Income earned from incentive granted by the BOI due to the construction of KIA's Road, not subjected to income tax but was not supported with the previous entries made to book the said construction in order to determine the correctness of the entries in the current year, was assessed pursuant to Section 32 of the Tax Code.

18. Salaries and wages not duly documented in the amount of P888,399,346.00 were disallowed pursuant to Section 34, 34K & 80 of the Tax Code. Section 6 of the Tax Code does not allow amending of returns if notice of audit or investigation has been actually served. Regrouping of accounts was, in effect, amending the return previously filed while the Letter or Authority was already served.

19. Condoned income from management fee resulted to the disallowance of the expenses relative to the services rendered. The gross profit ratio was applied to arrive at the value to be disallowed in the amount of P20,014,363.64 pursuant to Section 34 of the Tax Code.

20. Accelerated deductions which had exceeded the 25% limit set forth by the law pursuant to Presidential Decree 1353, in the amount of P114,161,945.68, was disallowed pursuant to Section 34(G)(2) of the Tax Code.

21. Unidentified revenue amounting to P9,394,158.80 in the Income Tax Return was subjected to value-added output tax pursuant to Section 106 of the Tax Code. *ja*

22. Revenue identified and accounted but not subjected to value-added tax in the amount of P94,566,243.80 was assessed pursuant to Section 106 of the Tax Code.

23. Disposal of assets not subjected to value-added tax in the amount of P3,344,436.30 was assessed pursuant to Section 106 of the Tax Code.

24. Value-added output tax on excise tax assessment in paragraph 21 hereof was assessed in the total amount of P164,304.73, or output tax of P16,430.47, pursuant to Section 106 of the Tax Code.

25. Input Tax pertaining to prior years in the amount of P9,203,814.21 was disallowed pursuant to Sections 110 and 113 of the Tax Code.

26. Income from Management Fee which was condoned resulted to disallowance of expenses arising from the services rendered amounting to P20,014,363.64, or input tax of P2,001,436.36, computed based on gross profit rate to determine the expenses for disallowance pursuant to Section 110 of the Tax Code.

27. Input Tax claimed per schedule in the amount of P10,227,079.87 was disallowed pursuant to Sections 110 and 113 of the Tax Code.

28. For failure to secure approved zero-rating on sale to PASAR pursuant to Revenue Regulations No. 2-88, input tax in the amount of P33,094,411.67 allocable thereto was disallowed pursuant to Section 110 of the Tax Code.

29. Sales of mineral products in the amount of P8,215,236.48 credited to other income is subject to Excise Tax pursuant to Section 151 of the Tax Code.

30. Ocean freight on sale to PASAR which amounted to P11,344,809.29 should be part of the taxable base of excise tax pursuant to Section 5(A) and (B) of Revenue Regulations 13-94.

31. Payment of professional fees made to Atty. Gayo and Molintas in the amount of P2,000,000.00 were not subjected to the 10% expanded withholding tax, hence, assessed pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

32. Income payments amounting P473,725,023.85 were not subjected to one percent (1%) creditable withholding tax pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

33. Under-remittance of withholding taxes in the amount of P67,912.61 was assessed pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

34. Accrual of Professional Fee amounting to P8,482,308.66 was subjected to five percent (5%) expanded withholding tax pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

35. Rental Fee charged to the account of PADCAL amounting to P1,141,052.00 was subjected to five (5%) expanded withholding tax pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

36. Income payment on contracts charged to the account of PADCAL amounting to P4,362,052.00 was subjected to one (1%) expanded withholding tax pursuant to Section 57(B) of the Tax Code as implemented by Revenue Regulations No. 2-98.

37. Director's Fee included in the reconciliation submitted to reconcile salaries and wages in the amount of P6,052,003.00 was subjected to Expanded Withholding Tax pursuant to the provisions of Revenue Regulations 2-98.

38. Payment of GEMCOM (NRFC) in the amount of P303,222.80 which was part of the submitted reconciliation for professional and consultancy fee was subjected to final withholding tax pursuant to Section 2.57-1(I) of Revenue Regulations 2-98.

39. Penalties for late remittance of Fringe Benefit Tax in the amount of P41,865.00 were imposed pursuant to Sections 248 and 249 of the Tax Code.

40. Petitioner failed to maintain the required Official Register Book (ORB) pursuant to Revenue Regulations No. 13-94, hence, compromise penalty in the amount of P12,000.00 was imposed pursuant to Section 250 of the Tax Code.

41. Finally, it is a well-settled rule in taxation that assessments are prima facie presumed correct and made in good faith.

> The taxpayer has the duty of proving otherwise and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

Petitioner filed its Formal Offer of Evidence[12] on May 18, 2006; while respondent filed his Formal Offer of Evidence[13] on June 21, 2007.

Petitioner filed its Memorandum on December 17, 2007 and respondent filed his Memorandum on December 28, 2007. Thereafter, the case was submitted for decision on January 31, 2008.

Petitioner however filed a Manifestation and Motion[14] on April 1, 2008, alleging that it availed of the tax amnesty program of the government, pursuant to Republic Act No. 9480. Finding merit in petitioner's availment of said tax amnesty, this Court granted the same on August 15, 2008, leaving the issues pertaining to the propriety of the assessments on expanded and final withholding taxes for resolution.

Due to petitioner's availment of tax amnesty, the following are the remaining issues for this Court's decision:

A. Whether or not the right of respondent to issue the subject tax assessments against petitioner had prescribed despite the execution of the Waiver of Statute of Limitations.

B. Expanded Withholding Tax

   1. Whether or not the professional fee to Atty. Gapo and Malintas in the amount of P2,000,000 should be subject to the 10% withholding tax.
   2. Whether or not there were income payments not subjected to one percent (1%) creditable withholding tax.
   3. Whether or not there was under-remittance of withholding taxes in the amount of P67,912.61.
   4. Whether or not the professional fee in the amount of P8,482,308.66 was subjected to expanded withholding tax.

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[12] *Rollo*, pp. 380-383.
[13] *Rollo*, pp. 741-746.
[14] *Rollo*, pp. 930-932.

Petitioner argues that the aforementioned Waivers are null and void in view of the provisions of Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990, which prescribes the following procedures for the proper and valid execution of a Waiver of the Statute of Limitations:

"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.

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 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.	For tax cases involving not more than P500,000.00

> 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."

The parties may however stipulate in writing to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon in conformity with Section 222(b) of the NIRC, which provides:

> "**SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –**
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

Respondent controverts petitioner's assertion that the right to issue subject Assessment Notice has prescribed and invokes the application of the afore-quoted Section 222(b) of the NIRC of 1997, as amended. It manifested and offered in evidence copies of the Waivers of the Statute of Limitations executed by the parties, namely: the First Waiver executed on August 14, 2001, extending the period within which the BIR may assess any deficiency taxes until June 30, 2002; the Second Waiver executed on June 24, 2002, extending the period of limitation to December 31, 2002.

5. Whether or not petitioner failed to subject to 1% expanded withholding tax the amount of P4,362,052 relating to income payment on contracts charged to the account of PADCAL.
6. Whether or not it is proper to subject to expanded withholding tax the amount of P6,052,003.00, considering this is a new matter not included in the original assessment.

C. Final Withholding Tax

1. Whether or not payment to GENCOM in the amount of P303,222.00 should be subjected to Final Withholding Tax, considering that this is a new matter not included in the original assessment.

D. Whether or not there was regrouping of accounts. If there was regrouping of accounts, whether or not the same was, in effect, an amendment of the return within the meaning of Section 6(A) of the NIRC.

E. Whether or not the right of respondent to assess petitioner for alleged deficiency withholding tax for the months of January to August 1998 had already prescribed.

F. Whether or not petitioner is liable for deficiency expanded withholding and final withholding taxes for taxable year 1998.[15]

One of the issues for this Court's resolution is the alleged expiration of the period for respondent to assess petitioner for deficiency withholding tax due to the purported invalidity of the Waiver of Statue of Limitations executed by petitioner.

In order to protect taxpayers from unreasonable investigation and from indefinite issuance of assessments, the law allows assessment of internal revenue taxes only within a period of three (3) years from the last day prescribed by law for the filing of a return or from the day when the return was filed, whichever is later, as provided in Section 203 of the NIRC, which reads:

> "**SEC. 203. Period of Limitations Upon Assessment and Collection.** – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day

[15] Stipulated Issues, Stipulation of Facts and Issues, *rollo*, pp. 263-265.

In the absence of the ACIR, the Head Executive Assistant may sign the waiver.

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

xxx xxx xxx

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*)

The validity of the Formal Letter of Demand and Assessment Notice issued by respondent against petitioner rests highly upon the validity of the execution of the subject Waivers of the Statute of Limitations, especially, the First Waiver.

For purposes of clarity, hereunder is a reproduction of the subject First Waiver[16]:

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

I, Alfredo A. Figueras, representing Philex Mining Corporation in consideration of the approval by the Commissioner of Internal Revenue of our request for the

[16] Exhibit "I", *rollo*, p. 280.

extension of time within which to present the required documents in connection with the investigation and/or consideration of our pending internal revenue tax liabilities for the taxable year ended December 31, 1998, 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 of 1997, and consent to the assessment and/or collections of the tax/es which may be found due after investigation and consideration, and any increments thereto, at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and to her relevant provisions of the National Internal Revenue Code, but not later than June 30, 2002.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment/s which may be made against it for the period/s abovementioned, nor does it waive its right to use any legal remedies afforded by law to ensure a credit or refund on such tax that may be assessed and paid for the same period pursuant to the provisions of Sections 204 and 230 of the National Internal Revenue Code 1997. The period of suspension agreed upon may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this 14th day of August 2001 in Pasig City.

(Signed)
ALFREDO A. FIGUERAS
SVP-Finance/Treasurer

ACCEPTED AND AGREED TO:

RENE G. BANEZ
Commissioner of Internal Revenue

By:
(Signed)
VIRGINIA L. TRINIDAD
Assistant Commissioner, Large Taxpayers Service

The pertinent parts of the Second Waiver[17] executed on June 24, 2002 read:

> WAIVER OF THE STATUTE OF LIMITATIONS
> UNDER THE NATIONAL INTERNAL REVENUE CODE
>
> I, ALFREDO A. FIGUERAS of PHILEX MINING CORPORATION request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of all its internal revenue tax liabilities for the year 1998. I hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of the tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code, but not later than December 31, 2002.
>
> The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the rights to use any legal remedies accorded by law to secure a credit or refund on such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.
>
> The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue.
>
> Executed this 24th day of June, 2002 in Pasig City, Philippines.
>
> (Signed)
> ALFREDO A. FIGUERAS
> TAXPAYER OR DULY AUTHORIZED SIGNATORY
>
> SVP-Finance/Treasurer
> POSITION

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[17] Exhibit "L", *rollo*, p. 288.

Eileen C. Rodriguez
WITNESS

ACCEPTED BY:

RENE G. BANEZ
Commissioner of Internal Revenue

By:

(signed)
EDWIN R. ABELLA
Assistant Commissioner
Large Taxpayers Service
OFFICE

6 – 24 - 02
DATE

Under Revenue Memorandum Order No. 20-90, the waiver[18] 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 reinvestigation 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.

[18] Annex "A", RMO No. 20-90, April 4, 1990

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

____
(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date ______________________"

In addition, Section 1 of RMO No. 20-90 requires that the waiver must be in the **form identified therein and that there should be no deviation from such form**. Section 2 thereof requires that soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue **or** the revenue official **authorized** by him, shall **sign** the waiver indicating that the BIR has accepted and agreed to the waiver. The **date of such acceptance by the BIR should be indicated**. Both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription; and that 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. Likewise, the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

In the instant case, a scrutiny of the assailed Waivers reveals the following defects:

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

2. The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad of the First Waiver was not indicated therein;

3. The First and Second Waivers of Statute of Limitations did not specify the kind of tax and the amount of the tax due; and

4. The tenor of the Waiver of the Statute of Limitations signed by petitioner's authorized representative varies significantly from what is required by RMO No. 20-90. The questioned waiver speaks of a request for extension of time within which to present additional documents whereas the waiver contemplated by RMO No. 20-90 deals with approval by the Commissioner of Internal Revenue of the taxpayer's request for re-investigation and/or reconsideration of his/its pending internal revenue case.

In the landmark case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[19], the Honorable Supreme Court discussed the nature and laid down the requisites of a valid Waiver of the Statute of Limitations in the following manner:

> "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be **strictly** construed. RMO No. 20-90 explains the rationale of a waiver:
>
> > . . . The phrase 'but not after ___________ 19___' should be filled up. This indicates the

[19] G.R. No. 162852, December 16, 2004.

> 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.* (Emphasis supplied)

> As found by the CTA, the Waiver of Statute of Limitations, signed by petitioner's comptroller on September 22, 1997 is not valid and binding because it does not conform with the provisions of RMO No. 20-90. It did not specify a definite agreed date between the BIR and petitioner, within which the former may assess and collect revenue taxes. Thus, petitioner's waiver became unlimited in time, violating Section 222(b) of the NIRC.

> 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 prescription period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR."

Here, the First and Second Waivers of the Statute of Limitations did not contain the date of acceptance by respondent. This defect makes it difficult to settle the issue of whether the waivers were actually agreed or executed before the expiration of the three-year prescriptive period. The date of acceptance is material because it determines whether or not the acceptance was made within the prescriptive period;[20] that if the acceptance was made after the prescriptive period, the same is ineffectual since there is no more period to extend. ge

[20] *Commissioner of Internal Revenue vs. Maruka Enterprises, Inc.*, C.T.A. EB. Case No. 105, June 1, 2006 and *Maruka Enterprises, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 5977, February 2, 2005.

This opinion finds support in the above-cited case of *Philippine Journalists, Inc.*[21], where the High Tribunal explained:

> "The other defect noted in this case is the date of acceptance which makes it difficult to fix with certainty if the waiver was actually agreed before the expiration of the three-year prescriptive period. The Court of Appeals held that the date of the execution of the waiver on September 22, 1997 could reasonably be understood as the same date of acceptance by the BIR. Petitioner points out however that Revenue District Officer Sarmiento could not have accepted the waiver yet because she was not the Revenue District Officer of RDO No. 33 on such date. Ms. Sarmiento's transfer and assignment to RDO No. 33 was only signed by the BIR Commissioner on January 16, 1998 as shown by the Revenue Travel Assignment Order No. 14-98. The Court of Tax Appeals noted in its decision that it is unlikely as well that Ms. Sarmiento made the acceptance on January 16, 1998 because 'Revenue Officials normally have to conduct first an inventory of their pending papers and property responsibilities'."

With respect to the defect that the subject Waivers did not indicate the kind and amount of tax due, the same is a clear violation of RMO No. 20-90. This Court had the opportunity to discuss the importance of this requirement in the case of *Dole Philippines Inc. vs. Commissioner of Internal Revenue*[22] in this wise:

> "xxx. The 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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[21] *Supra.*
[22] CTA Case No. 5705, July 1, 2003.

The First and Second Waivers of the Statute of Limitations are clearly defective and invalid, which has the effect of not tolling the running of the three-year prescriptive period for the assessment of the purported tax liabilities of petitioner. Accordingly, the Formal Letter of Demand and Assessment Notices dated November 19, 2002 and received by petitioner on November 27, 2002 are void for having been issued beyond the period allowed by law.

While Section 222 of the NIRC of 1997 provides for certain exceptions as to the period of limitation, *viz.*, in case of false or fraudulent return with intent to evade tax or in case of failure to file a return, such is not attendant in this case to warrant extension of the prescriptive period to ten (10) years.

A perusal of the Final Decision on Disputed Assessment[23] received by petitioner on February 17, 2004, shows that respondent computed the deficiency expanded withholding tax and final withholding tax assessments, as follows:

EXPANDED WITHHOLDING TAX				
Total Amount of EWT during the year				P11,540,230.50
Add:				
1.	Professional Fee to Atty. Gayo	P 2,000,000.00	10%	P 200,000.00
2.	Income payment not subjected to EWT	473,725,023.85	1%	4,737,250.24
3.	Under-remittance of EWT Tax			67,912.61
4.	Accruals of Professional Fee	8,482,308.66	5%	424,115.43
5.	Rental Fee not subjected to EWT	1,141,052.00	5%	57,052.60
6.	Income payment at PORO point not subjected to EWT	4,362,052.00	1%	43,620.52
7.	Director's Fee not subjected to EWT	6,052,003.00	10%	605,200.30
				P 6,135,151.70
Total EWT due per investigation				P 17,675,382.20
Less: Paid per return				***11,540,230.50***
Deficiency EWT-Basic				P 6,135,151.70
Add:	Interest 1/25/99-12/25/03 (.9833)			6,032,694.67
	Compromise Penalty			25,000.00
Deficiency EWT				**P 12,192,846.37**

[23] Exhibit "H".

FINAL WITHHOLDING TAX			
Total Amount of FWT during the year			P 14,166,411.72
Add:			
Payment to GEMCOM (NRFC) not subjected to final tax as per reconciliation submitted by the taxpayer during the protest	303,222.80	34%	103,095.75
Total FWT due per investigation			P 14,269,507.47
Less: Paid per return			***14,166,411.72***
Deficiency FWT-Basic			P 103,095.75
Add: Interest 1/25/99-12/25/03 (.9833)			101,374.05
Compromise Penalty			16,000.00
Deficiency FWT			**P 220,469.80**

Based on the above computations, respondent deducted the amounts of P11,540,230.50 and P14,166,411.72, representing expanded withholding tax (EWT) and final withholding tax (FWT) paid per Returns, respectively, in arriving at the deficiency EWT and FWT assessments of P12,192,846.37 and P220,469.80, respectively. This means that respondent recognized that petitioner filed Monthly Remittance Returns of Income Taxes Withheld covering its EWT and FWT liabilities for taxable year 1998 and correspondingly made payments in the respective amounts of P11,540,230.50 and P14,166,411.72, detailed as follows:

Page No. of BIR Records	Period Covered	Date of Remittance/ Filing of Return	Amount Remitted	
			EWT	FWT
236 to 238	Jan. 1998	2/25/1998	P 752,036.50	P -
233 to 235	Feb. 1998	3/25/1998	691,873.21	1,221,810.50
231, 232, 298, 299, 295, 296	March 1998	4/27/1998	944,150.29	1,714,437.96
288 to 293	April 1998	5/25/1998	1,374,504.53	922,436.90
279, 282, 285	May 1998	6/26/1998	1,086,529.13	1,725,584.33
270, 273, 276	June 1998	7/27/1998	1,112,592.48	1,058,092.43
261, 264 & 267	July 1998	8/25/1998	1,082,022.29	1,723,235.34
252, 255 & 258	Aug. 1998	9/25/1998	1,209,666.62	95,530.10
245, 247 & 249	Sept. 1998	10/26/1998	940,055.90	3,533,304.12

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237, 240 & 242	Oct. 1998	11/25/1998	807,331.81	919,405.36
228, 231 & 234	Nov. 1998	12/28/1998	845,685.41	1,043,441.79
219 & 222	Dec. 1998	1/25/1999	693,782.33	209,132.89
			P11,540,230.50	**P14,166,411.72**

Moreover, respondent applied the three-year period when he asked petitioner to sign and accomplish the defective Waivers. If the prescriptive period for the said taxes was ten (10) years, then respondent should not have required a waiver when he made an assessment. Records likewise show that petitioner indeed filed its Returns for the said taxes and that respondent did not allege much less prove that the Returns were false or fraudulent as contemplated under Section 222 of the NIRC of 1997. Therefore, the applicable prescriptive period for the subject deficiency EWT and FWT assessments is three (3) years as provided under Section 203 of the NIRC of 1997.

Pursuant to the aforecited Section 203 of the NIRC of 1997, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. In the case of petitioner's EWT and FWT liabilities, the return is required to be filed and the payment is to be made within twenty-five (25) days after the end of each month.[24] In other words, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. Accordingly, respondent

[24] Section 2.58(A)(2)(b) of Revenue Regulations No. 2-98.

had until the following dates within which to assess petitioner for the subject deficiency EWT and FWT for taxable year 1998:

Period Covered	Amount Remitted		Date of Filing of Return	Last Day to File Return	Last Day to Assess
	EWT	FWT			
Jan. 1998	P 752,036.50	P -	2/25/1998	2/25/1998	02/26/2001[25]
Feb. 1998	691,873.21	1,221,810.50	3/25/1998	3/25/1998	03/26/2001[26]
March 1998	944,150.29	1,714,437.96	4/27/1998	4/27/1998[27]	04/27/2001
April 1998	1,374,504.53	922,436.90	5/25/1998	05/25/1998	05/25/2001
May 1998	1,086,529.13	1,725,584.33	6/26/1998	06/25/1998	06/25/2001
June 1998	1,112,592.48	1,058,092.43	7/27/1998	07/27/1998[28]	07/27/2001
July 1998	1,082,022.29	1,723,235.34	8/25/1998	08/25/1998	08/27/2001[29]
Aug. 1998	1,209,666.62	95,530.10	9/25/1998	09/25/1998	09/25/2001
Sept. 1998	940,055.90	3,533,304.12	10/26/1998	10/26/1998[30]	10/26/2001
Oct. 1998	807,331.81	919,405.36	11/25/1998	11/25/1998	11/26/2001[31]
Nov. 1998	845,685.41	1,043,441.79	12/28/1998	12/28/1998[32]	12/28/2001
Dec. 1998	693,782.33	209,132.89	1/25/1999	01/25/1999	01/25/2002
TOTAL	**P11,540,230.50**	**P14,166,411.72**			

Evidently, the Formal Letter of Demand and Assessment Notice received by petitioner on November 27, 2002[33] are beyond the three-year prescriptive period within which respondent could make an assessment for deficiency EWT and FWT for taxable year 1998.

In view of the above ruling, this Court now deems it unnecessary to resolve the other issues.

WHEREFORE, considering that petitioner has duly complied with the tax amnesty law under R.A. 9480 as to income, value-added, excise taxes and penalty; and prescription has set in with regards to expanded and final withholding taxes all covering taxable year 1998, the instant Petition for

[25] The 25th day following the end of the month fell on a Sunday.
[26] The 25th day following the end of the month fell on a Sunday.
[27] The 25th day following the end of the month fell on a Saturday.
[28] The 25th day following the end of the month fell on a Saturday.
[29] The 25th day following the end of the month fell on a Saturday.
[30] The 25th day following the end of the month fell on a Sunday.
[31] The 25th day following the end of the month fell on a Sunday.
[32] The 25th day following the end of the month fell on a legal holiday.
[33] Exhibits "A" and "B"; par. 4, Admitted Facts from the Parties' Pleadings, Stipulation of Facts and Issues, *rollo*, p. 256.

Review is hereby **GRANTED**. Accordingly, premises considered, the Formal Letter of Demand and Assessment Notices dated November 19, 2002 issued by respondent against petitioner for said deficiency taxes in the total amount of P549,513,286.94 for taxable year 1998 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

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

ERNESTO D. ACOSTA
Presiding Justice