REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

EAST ASIA POWER RESOURCES CORPORATION, Petitioner,	**CTA CASE NO. 7936**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 06 2012 4:05 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This case involves a Petition for Review filed to appeal the inaction of the Commissioner of Internal Revenue on the letter of protest filed by petitioner on November 26, 2008 against the Formal Letter of Demand (FLD) No. F43-004 dated November 17, 2008 with attached Assessment Notices for alleged deficiency income tax and deficiency value-added tax (VAT) in the total amount of P6,048,221.54 for calendar year 2004.

Petitioner East Asia Power Resources Corporation is a corporation organized and existing under and by virtue of the laws of the Philippines, with principal place of business at Ground Floor PFDA Building, Navotas Fish Port Complex, Navotas City.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked, among others, to collect national internal revenue taxes. Respondent may be served with court processes at the BIR National Office Building, Diliman, Quezon City.

On April 15, 2005, two of petitioner's clients-payors, East Asia Diesel Power Corporation (EADPC) and Duracom Mobile Power Corporation (DMPC), filed with the BIR Certificates of Creditable Tax Withheld at Source (CCTW or CCTWS) which they issued to petitioner for the first quarter of the year 2004. Under the first quarter CCTW[1] of petitioner submitted by EADPC, the total amount of tax withheld appears as P1,204,895.82 and the income payments for the first and third months amount to P2,677,546.30 and P2,677,546.20, respectively, while the second month shows an amount of P5,355,092.60. On the other hand, under the first quarter CCTW[2] of petitioner issued by DMPC, the tax withheld amounts to P2,409,791.61 and the income payments for the first and third months amount to P5,355,092.50 and P5,355,092.33, respectively, while the income payment for the second month amounts to P10,710,185.10.

Subsequently, EADPC and DMPC realized the errors in the entries they made in the first quarter CCTWS which they issued to petitioner. Thus, on April 29, 2005, both EADPC and DMPC filed with the BIR amended

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[1] Exhibit "A", docket, p. 370
[2] Exhibit "A-1", docket, p. 372

CCTWS[3] to reflect the corrected amount of income payments to petitioner for the second month of the first quarter with notation: "THIS SUPERSEDES PREVIOUS CERTIFICATE ISSUED". The amount of income payments for the second month of the first quarter as indicated on petitioner's CCTW filed by EADPC was corrected from P5,355,092.60 to P2,677,546.30; while the CCTW filed by DMPC was corrected from P10,710,185.10 to P5,355,092.60.[4]

On April 29, 2005, petitioner filed its income tax return for calendar year 2004 with the BIR Revenue District Office (RDO) No. 43-Pasig City, reporting a total receipts of P96,391,667.00 and a total tax overpayment of P34,273,121.00.[5]

On November 23, 2005, petitioner received Letter of Authority (LOA) No. 00009792 dated November 10, 2005 issued by BIR Revenue Region No. 7, RDO No. 43, authorizing its officers to examine the books of accounts of petitioner covering calendar year 2004. Attached to the LOA is a letter dated November 16, 2005, requesting petitioner's books of accounts, financial statements, and other related accounting records and supporting documents.[6]

Petitioner complied with the requests of the BIR by furnishing the latter its book of accounts, financial statements and other pertinent documents as enumerated in the letter dated November 16, 2005.[7]

On July 3, 2007, petitioner received a Revalidation Notice dated May 7, 2007 from the BIR RDO No. 43-Pasig City, informing the former that LOA No. 00009792 dated November 10, 2005 has been revalidated on the ground that

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[3] Exhibits "B" and "B-1", docket, pp. 374 to 375
[4] Par. 2, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 248
[5] Exhibit "C", docket, p. 376
[6] Exhibit "1", docket, p. 582; Par. 4, Stipulated Facts, JSFI, docket, p. 249
[7] Par. 5, Stipulated Facts, JSFI, docket, p. 249

the "investigation is still on-going" but without specifying the date of its effectivity.[8]

On January 18, 2008, petitioner, through its Group Controller, Jaime B. Robles, Jr., executed a *pro forma* Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (hereafter referred to as the "Waiver"). Petitioner submitted the Waiver to the BIR RDO No. 43-Pasig City. However, said Waiver was not signed by respondent or any of her deputies to express acceptance or approval thereof.[9]

On October 30, 2008, petitioner received a Preliminary Assessment Notice (PAN) dated October 21, 2008 from respondent, through the Regional Director of BIR Revenue Region No. 7, informing petitioner of the deficiency tax findings for calendar year 2004.[10]

On November 13, 2008, petitioner filed a letter of Reply of even date disputing the deficiency taxes found in the above-mentioned PAN and contending that no tax deficiency should be assessed by providing its own computation of the taxes due for calendar year 2004. Petitioner also submitted pertinent Sales Invoices to support its contentions.[11]

On November 21, 2008, petitioner received FLD No. F43-004 dated November 17, 2008 with attached Assessment Notices[12] demanding payment of the alleged deficiency taxes, inclusive of interest, to wit:

TAX TYPE	AMOUNT	PERIOD
Income Tax	P4,579,399.76	2004
Value-added Tax	P1,468,821.78	2004

[8] Par. 6, Stipulated Facts, JSFI, docket, p. 249
[9] Exhibits "D" and "D-1", docket, p. 381; Exhibit "P", docket, pp. 482 to 483; Exhibit "3", docket, p. 587; Pars. 7 and 8, Stipulated Facts, JSFI, docket, p. 250
[10] Exhibit "E", docket, pp. 382 to 384; Exhibit "4", docket, pp. 588 to 590
[11] Exhibits "F" to "F-29", docket, pp. 388 to 417; Par. 9, Stipulated Facts, JSFI, docket, p. 250
[12] Exhibits "G" to "G-3", docket, pp. 418 to 422; Exhibits "5" to "7", docket, pp. 591 to 595

On November 26, 2008, petitioner filed a letter of protest of even date with respondent, through the BIR Revenue Region No. 7, contesting the afore-mentioned assessments and praying for reconsideration thereof by making reference to the letter Reply dated November 13, 2008.[13]

Despite the lapse of one hundred eighty (180) days from petitioner's submission of its letter of protest dated November 26, 2008, respondent failed to act upon the same. Hence, petitioner filed the instant Petition for Review before this Court on June 24, 2009.

On August 17, 2009, respondent filed her Answer[14] and raised the following arguments:

> "5.The assessments for calendar year 2004 in the amounts of P4,579,399.76 and P1,468,821.78 for deficiency income and value-added taxes, respectively, were issued in accordance with law and regulations. The factual and legal bases of the assessments are contained in the Final Assessment Notices.
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> 6. Verification disclosed that the receipts per BIR Form No. 2307 were not fully reported in the financial statements, as per analysis hereunder, which resulted to an underdeclaration of taxable receipts. Therefore, the unrecorded portion has been added to petitioner's taxable income pursuant to Section 31 of the 1997 Tax Code, as amended, to wit:

Receipts per BIR Form 2307	P 104,424,302.00
Receipts per ITR	96,391,667.00
Unreported receipts	**P 8,032,635.00**

> 7. Verification disclosed that income payments per BIR Form No. 1601-E was greater than the amount in the alphalist, as per analysis hereunder, wherein the total difference was considered as unaccounted source which led to the inference that part of petitioner's income have not been declared as enunciated by the Court in the case of *Perez vs. CTA & CIR, L-10507 dated May 30, 1958*. Therefore, the

[13] Exhibits "H" and "H-1", docket, p. 423
[14] Docket, pp. 144 to 149

amount is added to petitioner's reported taxable income pursuant to Section 31 of the 1997 Tax Code, as amended, to wit:

Income payments per BIR Form No.1601-E	P43,039,720.22
Income payments per Alphalist	42,817,966.68
Unaccounted source of cash	**P 221,753.54**

8. Verification disclosed that the aforementioned receipts, shall be subjected to 10% value-added tax pursuant to Sections 106 and 108 of the 1997 Tax Code, as amended.

9. Verification disclosed that these aforementioned receipts per BIR Form No. 2307 were not fully reported in the Financial Statements, wherein the difference is considered as unaccounted income subject to 10% pursuant to Sections 106 and 108 of the 1997 Tax Code, as amended.

10. Verification disclosed that revenues per Financial Statements was not subjected to value-added tax, as per analysis hereunder, therefore, assessed pursuant to Section 108 of the 1997 Tax Code, as amended, to wit:

Receipts per FS:		
Management service fees	P96,391,667.00	
Others – net	1,340,138.00	P 97,731,805.00
Receipts per VAT returns		97,728,030.32
Receipts not subjected to VAT		**P 3,774.68**

11. Finally, well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith *(Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671)*. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

During trial, the parties presented and formally offered their respective witnesses and documentary evidence. *jc*

The case was submitted for decision on December 9, 2011, taking into consideration petitioner's Memorandum filed on November 9, 2011 and respondent's Memorandum filed on December 6, 2011.[15]

The parties submitted the following issues[16] for the Court's resolution:

> "1. Whether or not the subject deficiency tax assessments have already prescribed; and
>
> 2. Whether or not petitioner EAPRC is liable to pay respondent the subject deficiency tax assessments."

The Court finds it appropriate to rule first on the validity of the Waiver executed by petitioner as it will necessarily determine whether the right of respondent to assess petitioner for deficiency income tax and VAT for the year 2004 has already prescribed or not.

Section 203 of the National Internal Revenue Code (NIRC) provides that respondent has three (3) years to assess and collect an internal revenue tax, 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."

Section 222(b) of the NIRC of 1997 provides, however, that the three-year prescriptive period may be waived upon agreement in writing by both the Revenue Commissioner and the taxpayer. Section 222(b) states as follows:

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[15] Resolution dated December 9, 2011, docket, p. 659
[16] Stipulated Issues, JSFI, docket, p. 253

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

The BIR issued Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990 in order to guide the BIR and the taxpayers on the procedures in the execution of waivers. The BIR also issued Revenue Memorandum Circular (RMC) No. 06-2005 dated February 2, 2005, emphasizing strict compliance with the provisions of RMO No. 20-90 for a waiver of the statute of limitations executed pursuant to Section 222(b) of the NIRC to be valid and binding. Said RMC No. 06-2005 was issued to circularize the salient features of the Supreme Court's decision in the case of *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[17].

The Highest Tribunal applied RMO No. 20-90 in the case of *Commissioner of Internal Revenue vs. FMF Development Corporation*[18], when it ruled that the waiver executed by the taxpayer was defective and did not validly extend the original three-year prescriptive period. Firstly, it was not proven that therein respondent was furnished a copy of the BIR-accepted waiver. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Revenue Commissioner as mandated by the Tax Code and RMO No. 20-90, considering that the case involves an

[17] G.R. No. 162852, December 16, 2004
[18] G.R. No. 167765, June 30, 2008

amount of more than P1,000,000.00 and the period to assess is not yet about to prescribe. Lastly, it did not contain the date of acceptance by the BIR Commissioner, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Pertinent portions of the Supreme Court's decision are quoted hereunder for ready reference:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.
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> An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides:
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> xxx xxx xxx
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> > (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.
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> xxx xxx xxx
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> The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222 (b), the following procedures should be followed:

1. The waiver must be in the form identified as Annex 'A' hereof. . .

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 <u>before</u> the expiration of the period of prescription or <u>before</u> 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. <u>In the National Office</u>

xxx xxx xxx

3. Commissioner	**For tax cases involving more than P1M**

B. <u>In the Regional Offices</u>

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.

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).
>
> Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. **Firstly, it was not proven that respondent was furnished a copy of the BIR-accepted waiver**. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Commissioner as mandated by the NIRC and RMO No. 20-90, considering that the case involves an amount of more than P1 million, and the period to assess is not yet about to prescribe. **Lastly, it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period**. Bear in mind that the **waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement**." (*Emphasis supplied*)

Likewise, in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[19], the Supreme Court applied RMO No. 20-90 in holding that the waivers executed by the taxpayer were defective and did not validly extend the original three-year prescriptive period. Firstly, the waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent. Secondly, the waivers failed to indicate the date of acceptance. Thirdly, the fact of receipt by respondent of its file copy was not indicated in the original copies of the waivers.

In the present case, Mr. Jaime B. Robles, petitioner's then Group Controller, executed the Waiver on January 18, 2008. Said Waiver states that petitioner waives the defense of prescription under the statute of limitations prescribed in Sections 203 and 222 of the NIRC, and other related provisions of the NIRC, and consents to the assessment and/or collection of

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[19] G.R. No. 178087, May 5, 2010

tax or taxes of the year 2004, which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitation fixed by said sections of the NIRC but not later than December 31, 2008.[20]

In their "Joint Stipulation of Facts and Issues" filed with the Court on October 19, 2009, both petitioner and respondent admitted that the Waiver executed by Mr. Robles on January 18, 2008 was not signed by respondent or any of her deputies to express acceptance or approval thereof.[21]

During trial, petitioner presented a version of said Waiver *(Exhibit "D")* which shows that it was not accepted and signed by respondent or by the Revenue District Officer.[22] On the other hand, during her turn to present evidence, respondent presented another version of the Waiver *(Exhibit "3")* executed by Mr. Robles, which was apparently accepted and signed by Revenue District Officer Florante R. Aninag.[23]

Considering that petitioner and respondent presented two different versions of the Waiver, the Court has to closely examine both of them to determine which Waiver is valid for purposes of extending the three-year prescriptive period to assess petitioner for deficiency tax liabilities.

Upon close scrutiny of the two versions of the Waiver, the Court finds that both of them are defective, as shown below: *je*

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[20] Exhibits "D" and "D-1", docket, p. 381; Exhibit "3", docket, p. 587
[21] Par. 8, Stipulated Facts, JSFI, docket, p. 250
[22] Exhibit "D", docket, p. 381; Exhibit "P", pp. 482 to 483
[23] Exhibit "3", docket, p. 587

Requirements for a valid Waiver	Petitioner's Exhibit "D"	Respondent's Exhibit "3"
1. Executed and signed by	Jaime B. Robles, Jr., Controller	Jaime B. Robles, Jr., Controller
2. Date of execution	18-Jan-08	18-Jan-08
3. Period of limitation	31-Dec-08	31-Dec-08
4. Signed and accepted by	None	Florante R. Aninag, Revenue District Officer
5. Date of acceptance by the BIR	Not indicated	Not indicated
6. Fact of receipt by petitioner of the accepted copy of the Waiver	Not indicated	Not indicated

Based on the foregoing, the Court finds that the Waiver executed by petitioner's representative is indeed defective and cannot validly extend the original three-year prescriptive period for respondent to issue an assessment.

Petitioner's **Exhibit "D"** failed to strictly comply with the requirements provided under RMO No. 20-90 in relation to RMC No. 06-2005. Petitioner's version of the Waiver is not valid since it was not signed and accepted by Revenue District Officer Aninag thereby violating the requirement under Section 2 of RMO No. 20-90 in relation to Item 1.2 of RMC No. 06-2005. In the case of *Commissioner of Internal Revenue vs. Court of Appeals, et al.*[24] the Supreme Court explained that in order for waivers to be valid and binding, the concurrence of the BIR Commissioner is necessary. The Court quotes relevant portions of the Supreme Court's decision, to wit:

> "Petitioner BIR Commissioner contends that the waivers signed by Carnation were valid although not signed by the BIR Commissioner because (a) when the BIR agents/examiners extended the period to audit and investigate Carnation's tax returns, the BIR gave its implied consent to such waivers; (b) the signature of the Commissioner is a mere formality and the lack of it does not vitiate the binding effect of the waivers; and (c) that a waiver is not a contract but a unilateral act of renouncing one's right to avail of the defense of prescription and remains binding in accordance with the terms and conditions set forth in the

[24] G.R. No. 115712, February 25, 1999

waiver.

Petitioner's submission is inaccurate. xxx

The Court of Appeals itself also passed upon the validity of the waivers executed by Carnation, observing thus:

> 'We cannot go along with the petitioner's theory. Section 319 of the Tax code earlier quoted is clear and explicit that **the waiver of the five-year prescriptive period must be in writing and signed by both the BIR Commissioner and the taxpayer**.
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> 'Here, the three waivers signed by Carnation do not bear the written consent of the BIR Commissioner as required by law.
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> 'We agree with the CTA in holding 'these 'waivers' to be invalid and without any binding effect on petitioner (Carnation) for the reason that there was no consent by the respondent (Commissioner of Internal Revenue).'

The ruling of the Supreme Court in *Collector of Internal Revenue vs. Solano* is in point, thus:

> 'x x x **The only agreement that could have suspended the running of the prescriptive period for the collection of the tax in question is, as correctly pointed out by the Court of Tax Appeals, a written agreement between Solano and the Collector, entered into before the expiration of the five-year prescriptive period, extending the limitation prescribed by law**.'
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> 'For sure, no such written agreement concerning the said three waivers exists between the petitioner and private respondent Carnation." (*Emphasis supplied*)

Logically, since petitioner's **Exhibit "D"** was not signed by Revenue District Officer Aninag, it also does not contain the date of its acceptance by said Revenue District Officer. Lastly, petitioner's **Exhibit "D"** does not bear the fact of receipt by petitioner of the duly accepted Waiver.

On the other hand, while **Exhibit "3"** or respondent's version of the Waiver appears to have been signed and accepted by Revenue District Officer Aninag, it is still void because it does not show the date when

Revenue District Officer Aninag accepted the Waiver. This requirement is necessary to determine whether the Waiver was validly accepted before the expiration of the original three-year prescriptive period. In the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[25], this Court emphasized that both the date of execution by the taxpayer and the date of acceptance by respondent must be indicated. The date of acceptance is very crucial because it determines whether or not the acceptance was made within the prescriptive period. The Court also stressed that if the acceptance of the waiver was made after the prescriptive period, the same is ineffectual because there is no more period to extend. The significant part of the Court's decision is quoted as follows:

> "Equally important is the fact that not only were the waivers wanting of the required signatures, the same waivers do not even show the **date of acceptance** by the Commissioner. **Both the date of execution by the taxpayer and date of acceptance by respondent must be before the expiration of the period of prescription. The date of acceptance is vital because it determines whether or not the acceptance was made within the prescriptive period; for if the acceptance was made after the prescriptive period, the same is ineffectual because there is no more period to extend.**" *(Emphasis supplied)*

In addition, respondent's **Exhibit "3"** does not indicate the fact that petitioner received its file copy of the Waiver after the BIR's acceptance thereof. Respondent also failed to prove, during trial, that petitioner was furnished a copy of said Waiver after its acceptance. Section 4 of RMO No. 20-90 clearly mandates that the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy. In addition, Item 1.3 of RMC No.

[25] CTA Case No. 7397, April 9, 2008

06-2005 provides that the taxpayer must be furnished a copy of the waiver accepted by the BIR.

In the landmark case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[26], the High Court explained the importance of furnishing the taxpayer of the duly accepted copy of the waiver, in this wise:

> "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.
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> 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**." (*Emphasis supplied*)

Furthermore, the Supreme Court also ruled in the afore-cited case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* that since the waiver was defective, the running of the prescriptive period was not suspended. It likewise made a categorical pronouncement on the strict interpretation of the waiver of the statute of limitations, in the following manner:

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

"**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 rational of a waiver:" (*Emphasis supplied*)

In fine, since both petitioner's **Exhibit "D"** and respondent's **Exhibit "3"** failed to comply strictly with the requirements imposed under RMO No. 20-90 and RMC No. 06-2005 neither of them is valid and binding. And since the two versions of the Waiver were incomplete and defective, the three-year prescriptive period was not tolled nor extended; hence, the prescriptive period continued to run until April 29, 2008. Consequently, the subject Formal Letter of Demand No. F43-004 dated November 17, 2008 and the attached Assessment Notices, which were received by petitioner on November 21, 2008, are void because they were issued beyond the three-year period to assess internal revenue taxes as provided under Section 203 of the NIRC of 1997.

Based on the foregoing, the Court deems it no longer necessary to resolve the other issue.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand No. F43-004 dated November 17, 2008 and the attached Assessment Notices demanding payment of assessed deficiency income tax in the amount of P4,579,399.76 and deficiency VAT of P1,468,821.78 for the year 2004 are hereby **CANCELLED**.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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