REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SYSTEMS TECHNOLOGY INSTITUTE, INC., Petitioner,	**CTA CASE NO. 7984**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 1 7 2013 4:25 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This resolves the Petition for Review filed on October 12, 2009, seeking the cancellation and withdrawal of the assessment against petitioner for alleged deficiency income tax, expanded withholding tax, and value-added tax for fiscal year (FY) 2003 including interest, surcharges, and compromise penalty, in the total amount of Php124,257,764.20.

Petitioner Systems Technology Institute, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at Campus Gateway, Fort Bonifacio, Taguig City.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia,* the power to decide disputed

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[1] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 227

assessments and cancel or abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.

On June 28, 2007, petitioner received a Formal Assessment Notice (FAN) with attached Details of Discrepancies. Respondent found petitioner liable for deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) in the aggregate amount of Php161,835,737.98 for fiscal year ending March 31, 2003.[2]

On July 25, 2007, petitioner filed its request for reconsideration/reinvestigation dated July 23, 2007 against the assessment issued by respondent.[3]

Thereafter, on September 11, 2009, petitioner received a copy of respondent's Final Decision on Disputed Assessment (FDDA) dated August 17, 2009, finding petitioner liable for deficiency income tax, VAT, and EWT for FY 2003 amounting to Php124,257,764.20.[4]

Petitioner appealed the FDDA by filing the instant Petition for Review on October 12, 2009.[5]

Respondent filed her Answer[6] on January 18, 2010, interposing the following defenses:

"***The Right of Respondent to Assess Petitioner the Subject Deficiency Taxes has not yet Prescribed***

5. Petitioner avers that the right of respondent to issue the assessment herein has prescribed invoking Section 203 of the National Internal Revenue Code of 1997 (NIRC of 1997). Petitioner claims that respondent is given only a period of three years after the last day of filing of the return within which to make an assessment for deficiency taxes.

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[2] Par. 3, Stipulated Facts, JSFI, docket, p. 228
[3] Par. 4, Stipulated Facts, JSFI, docket, p. 228
[4] Par. 5, Stipulated Facts, JSFI, docket, p. 228
[5] Docket, p. 1
[6] Docket, pp. 97-121

However, respondent respectfully submits that the peculiar facts of this case deny the merit of petitioner's contention.

A. The Waivers were Executed in Accordance with Law

6. Section 222 of the Tax Code authorizes the taxpayer and the government to extend by mutual agreement the prescriptive periods for the assessment and collection of taxes, Section 222 of the NIRC of 1997 provides, thus:

> 'SEC. 222. Exceptions as to the 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.
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> xxx xxx xxx'

7. It is undisputed here that the assessments were issued within the period of extension sanctioned by law and agreed by the parties through waivers duly executed in accordance with the above provision. However, petitioner now comes and says that the same waivers it executed are invalid for not being duly signed and not specifying the kinds and amounts of tax. Respondent submits that such is not the case.

8. First, it is apparent on its face that the waivers were signed by the duly delegated signatory of respondent.

9. Second, a cursory inspection of the waivers shows that the parties agreed that the extension covered the investigation of ALL INTERNAL REVENUE TAX liabilities for the period ending 31 March 2003. Hence, it would be superfluous to require the specific mention of each type of tax. The use of the word 'all' is tantamount to the specific mention of all those in the same class.

10. Finally, contrary to the allegations of petitioner, there is no requirement under Revenue Memorandum Order (RMO) No. 20-90 to indicate the amount of tax due. Also, it would be useless to indicate the amount due, since at the time of the execution of the waivers, there was no assessment to speak of since the waiver was executed during the investigation stage and petitioner requested for additional time to submit documents. Furthermore, it is respondent's position that the necessity of indicating the amount applies only in case of waivers of the prescriptive period to collect;

B. Petitioner is Estopped from Questioning the Waiver's Validity

11. Granting for the sake of argument that the waivers suffer from an alleged defect, this cannot serve to exculpate petitioner. As indicated in the subject documents, the waivers only served to benefit petitioner. They afforded petitioner a chance to submit documents for any self-serving claim it wanted to make in the administrative investigation. The waivers conceded no benefit to respondent.

12. On the other hand, respondent, acting in good faith, allowed petitioner to continually substantiate its own contentions at the administrative investigation in the spirit of fair play. Now, in the

face of a result it does not agree to, petitioner, in effect disowns the validity of its own actions by attacking the validity of the waivers executed, the same waivers that bought it time to gather the documents it deemed necessary to dispute the possible forthcoming assessment. This should not be allowed for being contrary to the conclusive presumption provided in Section 2 (a) of Rule 131 of the Revised Rules of Court, which provide that,

'Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.'

13. It should be noted that after the alleged defective signing of respondent, petitioner deemed the same valid and took advantage of it by submitting documents. By its own actions, agreeing to the validity of the waivers it executed, petitioner cannot now be permitted to falsify it. This rule is rooted in principles of fairness and equity. This rule exists for the orderly dispensation of justice. Petitioner cannot be allowed to bend these rules to suit its own allegations.

14. As far as respondent is concerned, he firmly believed in the validity of the waivers. It is a fact that petitioner's action of actively participating in the administrative investigation during the periods covered by the waivers led respondent to believe that petitioner likewise upheld the validity of these waivers. Suddenly, in midstream, petitioner then changes its position and questions the validity of the same. This totally smacks of unfairness. This should not be allowed as petitioner must be held estopped. In estoppel by acquiescence, a person is prevented from maintaining a position inconsistent with one in which he has acquiesced. **19 Am Jur 678-679, cited in Tolentino Vol. IV, 1973 Edition)**

15. Also, it should be pointed out that not a squeak was heard from petitioner about these waivers in the administrative investigation of the case. It kept silent and allowed respondent to continue his investigation on the basis of the waivers and documents petitioner submitted. This deafening silence continued even after the assessment was finally issued. This is a classic case of estoppels by silence. As held by the Honorable Supreme Court:

'The principles of equitable estoppel, sometimes called *estoppels in pais,* are made part of our law by Art. 1432 of the Civil Code. Coming under this class is estoppel by silence, which obtains here and as to which it has been held that:

xxx an estoppel may arise from silence as well as from words. 'Estoppel by silence' arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice. Silence may support an estoppel whether the failure to speak is intentional or negligent.

'Inaction or silence may under some circumstances amount to a misrepresentation and concealment of facts, so as to raise an equitable estoppel. When the silence is of such a character and under such circumstances that it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel. This doctrine rests on the principle that if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he should be silent.'

Applying such legal principle, the Honorable Court should again hold petitioner estopped for failing to raise such issue at the administrative level.

C. ***The Withholding Tax Assessment has not Prescribed***

16. Granting for the sake of argument, that the waivers are invalid, still such does not affect the assessment for deficiency withholding taxes.

17. In the withholding tax assessment, it must be stressed that this amount sought to be collected from petitioner is not the tax itself. Logically, it would be ridiculous to collect the said tax from petitioner when no income flowed into its person and jurisprudence affirms the same. In the case of COMMISSIONER OFINTERNAL REVENUE, vs. THE COURT OF APPEALS, COURT OF TAX APPEALS and A. SORIANO CORP., it was provided:

'In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more that an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer – he is the person subject to tax imposed by law; and the payee is the taxing authority. **In other words, the withholding agent is merely a tax collector, not a taxpayer.** Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still impose on and due from the latter. **The agent is not liable for the tax as no wealth flowed into him – he earned no income.** xxx.'

18. In instances of non-payment of the withholding tax, such as the case herein, the liability of the withholding agent becomes separate and distinct from the liability of the person on whom the tax is primarily imposed because the cause of action

against the withholding agent is not for the collection of the tax but for the enforcement of the withholding tax provision of the NIRC of 1997. The same abovecited case provides:

'**the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code**, compliance with which is imposed on the withholding agent and *not* upon the taxpayer.' (emphasis supplied)

19. Clearer than day, in case of breach by the agent of his legal duty, he is assessed **not for the collection of income tax**. He is merely penalized for failure to comply with the withholding tax provision. Therefore, in case of such breach, and no income taxes were withheld by the agent, the agent is penalized. The tax cannot be collected from the agent because as stated in the above case, '(t)he agent is not liable for the tax as no wealth flowed into him – he earned no income.' The cause of action against the withholding agent is not for the collection of the tax but for the enforcement of the withholding tax provision of the NIRC of 1997.

20. Such position is buttressed by Section 251 of the NIRC of 1997 which provides:

'Section 251. Failure of withholding agent to collect and remit tax. – Any person required to collect, account for, and remit any tax imposed by this Code, or who willfully fails to collect such tax, or account for and remit such tax, or willfully assists in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided under this Chapter, be liable upon conviction **to a penalty equal to the total amount of the tax not collected, or not accounted for and remitted.'** (Emphasis supplied)

It is clear that in addition to other penalties provided under the NIRC of 1997, the withholding agent shall be liable to **a penalty** equal to the total amount of tax not collected and remitted. Hence, since the liability of the withholding agent (petitioner herein) is a penalty, then the period of limitation provided in Section 203 of NIRC of 1997 finds no application. The said provision prescribes a limitation only as to the **assessment of taxes, not penalties**.

D. Waivers not Needed in Request for Reinvestigation

21. Again granting the most extreme circumstance that the waivers may be held invalid, still the assessment has not prescribed. It should be noted that petitioner filed with respondent a requests for reinvestigation which the latter obviously acted upon.

22. As provided by law and jurisprudence, petitioner's request for reinvestigation effectively suspended the running of the statute of limitations on assessment and collection of taxes. **Such fact renders any discussion on the validity of the waivers moot and academic as the requests had already extended the period of limitation.** Such was the holding of the Honorable Supreme Court stating:

> 'The Tax Code of 1977, as amended, also recognizes instances when the running of the statute of limitations on the assessment and collection of national internal revenue taxes could be suspended, even in the absence of a waiver, under Section 224 thereof, which reads –
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> > SEC. 224. *Suspension of running of statute.* – The running of the statute of limitation provided in Section[s] 203 and 223 on the making of assessment and the

> beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided,* that, if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.
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> Of particular importance to the present case is one of the circumstances enumerated in Section 224 of the Tax Code of 1977, as amended, wherein the running of the statute of limitations on assessment and collection of taxes is considered suspended 'when the taxpayer requests for a reinvestigation which is granted by the Commissioner.'

As clearly provided by jurisprudence, petitioner's request for reinvestigation which both parties know was acted upon by respondent, suspended the running of the statute of limitations.

The Deficiency Income Tax Assessment was Proper in all Respects

23. As far as the assessment for deficiency Income Tax, the same was derived from petitioner's own documents. The merits of this assessment was exhaustively discussed by respondent in his Final Decision on Disputed Assessment (FDDA) dated 17 August 2009. xxx

xxx xxx xxx

24. Clear as day, the merits of the deficiency income tax assessment on petitioner cannot be denied. Petitioner has failed to present evidence to rebut the same in the administrative investigation of this case. Based on the evidence submitted, no error can be ascribed to respondent's FDDA and as such, it must be sustained by the Honorable Court.

The Deficiency Withholding Tax Assessment was Proper in all Respects

25. As far as the assessment for deficiency withholding tax, the factual basis of the same never in dispute. The merit of this assessment was discussed by respondent in his Final Decision on Disputed Assessment (FDDA) dated 17 August 2009. xxx

xxx xxx xxx

The Deficiency Value Added Tax Assessment was Proper in all Respects

26. As far as the assessment for deficiency value added tax, the same was derived from petitioner's own documents. The merits of this assessment was exhaustively discussed by respondent in his Final Decision on Disputed Assessment (FDDA) dated 17 August 2009. xxx

xxx xxx xxx

> 27. Clear as day, the merits of the deficiency value added tax assessment on petitioner cannot be denied. Petitioner failed to present evidence to rebut the same in the administrative investigation of this case. Based on the evidence submitted, no error can be ascribed to respondent's FDDA and as such, it must be sustained by the Honorable Court. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (*Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995).*"

Thereafter, petitioner filed its *Reply (Re: Respondent's Answer dated 18 January 2010)* through registered mail on February 16, 2010.[7]

The case was set for Pre-Trial Conference on March 18, 2010.[8] The Pre-trial Brief for Respondent[9] was filed on March 11, 2010; while petitioner's Pre-trial Brief[10] was filed on March 15, 2010.

On April 16, 2010, the parties filed their Joint Stipulation of Facts and Issues[11]; which was approved in a Resolution[12] dated April 22, 2010. In the same Resolution, the Court considered the pre-trial terminated and ordered the parties to proceed with the trial on the merits, presenting only evidence not covered by their Joint Stipulation of Facts.

During trial, both parties presented their respective documentary and testimonial evidence.

On December 4, 2012, the case was submitted for decision, considering petitioner's Memorandum[13] filed on November 29, 2012 and respondent's failure to file a Memorandum as per Report[14] dated December 3, 2012 of the Records Division. Nevertheless, respondent

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[7] Docket, pp. 130-141
[8] Notice of Pre-Trial Conference issued on February 24, 2010, docket, p. 144
[9] Docket, pp. 145-162
[10] Docket, pp. 164-183
[11] Docket, pp. 227-240
[12] Docket, p. 246
[13] Docket, pp. 626-693
[14] Docket, p. 695

filed a Motion to Admit Attached Memorandum on December 7, 2012.[15] The Court granted the motion and admitted respondent's Memorandum in a Resolution dated December 13, 2012.[16]

The parties submitted the following issues[17] for this Court's disposition:

> "1. Whether Respondent's assessment for alleged deficiency income tax, EWT and VAT for the fiscal year ending 31 March 2003 is barred by prescription.
>
> 2. Whether, assuming that the assessment is not barred by prescription, Petitioner is liable for deficiency income tax for the fiscal year ending 31 March 2003 in the aggregate amount of Sixty Million Two Hundred Eighty Six Thousand One Hundred Nine Pesos and Seven Centavos (Php60,286,109.07), inclusive of interest and penalties, as stated in respondent's FDDA.
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> 3. Whether, assuming that the assessment is not barred by prescription, Petitioner is liable for deficiency EWT for the fiscal year ending 31 March 2003 in the aggregate amount of Five Hundred Fifty Three Thousand One Hundred Five Pesos and Sixty Seven Centavos (Php553,105.67), inclusive of interest and penalties, as stated in respondent's FDDA.
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> 4. Whether, assuming that the assessment is not barred by prescription, Petitioner is liable for deficiency VAT for the fiscal year ending 31 March 2003 in the aggregate amount of Sixty Three Million Four Hundred Eighteen Thousand Five Hundred Forty Nine Pesos and Forty Six Centavos (Php63,418,549.46), inclusive of interest and penalties, as stated in Respondent's FDDA."

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[15] Docket, pp. 697-700 and 704-748
[16] Docket, p. 754
[17] Stipulated Issues for Trial, JSFI, docket, pp. 238-239

As to the first stipulated issue concerning prescription, the period within which to assess internal revenue taxes is governed by Section 203 of the NIRC of 1997, as amended, which reads:

> "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."

It is clear from the foregoing that the three (3)-year period to assess internal revenue taxes commences from the date of actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, 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.

The instant Petition for Review involves the assessment issued by respondent against petitioner for deficiency expanded withholding tax, deficiency income tax, and deficiency value-added tax for the fiscal year ending March 31, 2003.

Corollary to said Section 203, Section 2.58(A)(2)(a) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-01, requires that withholding tax must be deducted and remitted on a monthly basis, to wit:

> "SECTION 2.58. *Returns and Payment of Taxes Withheld at Source.* —
>
> (A) *Monthly return and payment of taxes* yr

(1) *WHERE TO FILE* — Creditable and final withholding taxes deducted and withheld by the withholding agent shall be paid upon filing a return in duplicate with the authorized agent banks located within the Revenue District Office (RDO) having jurisdiction over the residence or principal place of business of the withholding agent. In places where there is no authorized agent banks, the return shall be filed directly with the Revenue District Officer, Collection Officer or the duly authorized Treasurer of the city or municipality where the withholding agent's residence or principal place of business is located, or where the withholding agent is a corporation, where the principal office is located except in cases where the Commissioner otherwise permits.

(2) *WHEN TO FILE* —

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**.

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above." *(Emphasis supplied)*

Based on the afore-quoted provisions, the dates of filing of the monthly remittance returns of creditable income taxes withheld (Expanded), the reckoning dates of the 3-year period, and the last day to assess are as follows: *gr*

	Exhibit	Dates when the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) were Filed	Reckoning Date of the 3-year period	Last Day to Assess
April 2002	K	May 10, 2002	05/10/02	05/10/05
May 2002	L	June 10, 2002	06/10/02	06/10/05
June 2002	M	July 10, 2002	07/10/02	07/11/05**
July 2002	N	August 12, 2002	08/12/02	08/12/05
August 2002	O	September 10, 2002	09/16/02*	09/16/05
September 2002	P	October 10, 2002	10/15/02	10/17/05**
October 2002	Q	November 14, 2002	11/15/02	11/15/05
November 2002	R	December 16, 2002	12/16/02	12/16/05
December 2002	S	January 15, 2003	01/15/03	01/16/06**
January 2003	T	February 17, 2003	02/17/03	02/17/06
February 2003	U	March 14, 2003	03/17/03*	03/17/06
March 2003	V	April 15, 2003	04/15/03	04/17/06**

* The last day prescribed for filing of the return fell either on a Saturday, Sunday or legal holiday
** The last day of the three-year period fell either on a Saturday or Sunday

As for petitioner's income tax, the return is required to be filed and the payment is required to be made on or before the fifteenth (15th) day of the fourth month following the close of the fiscal year ending March 31, 2003.[18] The Annual Income Tax Return for the fiscal year ending March 31, 2003 was filed on August 15, 2003.[19] Hence, counting from the said date, respondent had until August 15, 2006 within which to assess petitioner for the subject deficiency income tax for the fiscal year ending March 31, 2003.

On the other hand, the law requires that the VAT Return be filed quarterly within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer.[20] In this regard, records reveal that petitioner filed its Quarterly VAT Return covering the period of April to June 2002, July to September 2002, October to December 2002, and January to March 2003 on July 23, 2002[21], October 25, 2002[22], January 24, 2003[23] and May 23, 2003[24], respectively. Hence, respondent had until July 25, 2005, October 25, 2005, January 25, 2006 and May 25, 2006 within which to assess petitioner for deficiency VAT for 1st, 2nd, 3rd, and 4th quarters of the fiscal year ending March 31, 2003, respectively. Jz

[18] In accordance with Section 77(B) of the NIRC of 1997, as amended
[19] Exhibit "F"
[20] Section 114 of the NIRC of 1997, as amended by Republic Act (R.A.) No. 9337
[21] Exhibit "G"
[22] Exhibit "H"
[23] Exhibit "I"
[24] Exhibit "J"

To summarize, the last day for respondent to issue an assessment on petitioner's income tax for fiscal year ending March 31, 2003 would be on **August 15, 2006**. On the other hand, the earliest date for respondent to assess expanded withholding tax for the fiscal year ending March 31, 2003 would be on **May 10, 2005** and the latest date would be on **April 17, 2006**; while the earliest date for respondent to assess value-added tax for the four quarters of the same fiscal year would be on **July 25, 2005** and the latest would be on **May 25, 2006**.

Based on the foregoing dates, it appears that respondent's Final Assessment Notice dated **June 16, 2007** with Formal Assessment Notice and Details of Discrepancies for deficiency income tax, expanded withholding tax, and value-added tax for the fiscal year ending March 31, 2003, which was received by petitioner on **June 28, 2007**[25], were issued beyond the 3-year prescriptive period provided by law.

Nevertheless, respondent invokes the Waivers of the Statute of Limitation under the National Internal Revenue Code executed by petitioner under Section 222(b) of the NIRC of 1997. The said provision states as follows:

> "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." *(Emphasis supplied)*

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[25] Par. 3, Stipulated Facts, JSFI, docket, p. 228

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[26], the Supreme Court enumerated the procedure for the proper execution of the waiver in accordance with Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001, to wit:

> "1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
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> 2. The waiver must 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. **In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**
>
> 3. The waiver should be duly notarized.
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> 4. The CIR or the revenue official authorized by him must 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. **However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.**
>
> **5. 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.**

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

> 6. The waiver must be executed in three 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 must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement." *(Emphasis supplied)*

As mentioned above, one of the requirements for the validity of the waiver is that both the date of execution by the taxpayer and the 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.

The dates of execution by the taxpayer and the dates of acceptance by respondent of the waivers are summarized as follows:

WAIVERS	EXHIBIT	DATE OF EXECUTION	DATE OF ACCEPTANCE
First Waiver	E	May 30, 2006	June 2, 2006
Second Waiver	C	December 12, 2006	December 14, 2006
Third Waiver	D	March 8, 2007	March 9, 2007

Perusal of the records would show that at the time when the first waiver was executed by petitioner and was accepted by respondent, only the period for the assessment of income tax for fiscal year ending March 31, 2003 has not yet prescribed.

Accordingly, the subject waivers may extend the period of assessment only for income tax for fiscal year ending March 31, 2003 and the Court may not consider the waiver to have extended the period of assessment for expanded withholding tax and value-added tax for fiscal year ending March 31, 2003 since the same already lapsed before the execution of the first waiver.

The Court now further determines the validity of the subject waivers for the assessment of income tax for fiscal year ending March 31, 2003. Petitioner alleged that the waivers are invalid because: gr

1. They were not signed by respondent even though the amount involved is more than Php1,000,000.00 and the period to assess deficiency income tax was not yet about to prescribe;

2. There is no proof that petitioner's representative, Mr. Sangalang, was duly authorized to sign the waivers on petitioner's behalf; and

3. The waivers did not specifically state the kind and amount of taxes involved.

As to the first alleged infirmity, the Court finds that the Chief of LTD-Makati, Mr. Virgilio R. Cembrano, the one who signed and accepted the subject waivers, was authorized to sign the waiver pursuant to RDAO No. 05-01. The said RDAO provides in part as follows:

> "B. *For cases in the Large Taxpayers District Office (LTDO)*
>
> The Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in his possession."

Based on the foregoing, the Chief of the LTDO is authorized to sign and accept waivers for cases pending investigation/action in his possession. An examination of the records reveals that the investigation of the subject deficiency taxes was pending with the Large Taxpayers District Office in Makati. Clearly, there is no infirmity as to the authority of the Chief of LTD-Makati, Mr. Virgilio R. Cembrano, the officer who signed and accepted the subject waivers.

As regards the second flaw imputed by petitioner, it was alleged that the BIR Records submitted to this Court do not contain any Board Resolution showing that petitioner authorized Mr. Amiel Sangalang to sign the waivers on its behalf. The absence of any proof that Mr. Sangalang was authorized to sign the waivers would render the subject waivers fatally infirmed.

Respondent, on the other hand, contended that petitioner cannot now deny the authority of its own representative who executed these waivers in the person of Mr. Sangalang. Mr. Sangalang is petitioner's Vice-President for Comptrollership. He was presented in open court and testified under oath that part of his authorized functions as Vice-President for Comptrollership is to supervise the preparation of documents to comply with BIR requirements. He identified and affirmed under oath the waivers he executed under this authority. In sum, petitioner itself validated in open court, under oath, the authority of Mr. Sangalang to execute these waivers on behalf of petitioner.

The Court cannot sustain respondent's assertion that Mr. Sangalang's signature on behalf of petitioner on the said waiver is valid since such act was not accompanied by a written authority from the Board of Directors of petitioner. Let it be stressed that RDAO No. 05-01 requires respondent to ensure the presentation of a written and notarized authority from the taxpayer if such authority was delegated to a representative, to wit:

> "The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The 'WAIVER' should not be accepted by the concerned BIR office and official unless duly notarized."

Nevertheless, even if the Court would consider Mr. Amiel Sangalang as a responsible officer authorized to sign the subject waivers, the Court likewise observed another infirmity in the 3 waivers, specifically, that the subject waivers failed to state the specific kind of tax and the amount of tax due.

In the case entitled *Scandinavian Motors Corporation vs. The Commissioner of Internal Revenue*[27], this Court explained the reason behind the requirement that a waiver must specify the type of tax

[27] CTA Case No. 7269, March 26, 2008

and the amount of tax due, citing *Dole Philippines, Inc. vs. Commissioner of Internal Revenue*[28], thus:

> "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."

Respondent also contended that petitioner's voluntary execution of the series of waivers is a unilateral act. Thus, the waiver executed is valid already in itself. However, let the Court emphasize the ruling of the Supreme Court in the case of *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[29], where the High Court said that:

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

It is clear from the pronouncement of the Supreme Court that the waiver of statutes of limitations is not a unilateral act but rather, an agreement between the taxpayer and the BIR. Thus, respondent's contention that the waiver is a unilateral act and that the same is already valid in itself is bereft of merit. Jr

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[28] CTA Case No. 5705, July 1, 2003, cited in the case of *Philex Mining Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6780, July 31, 2009

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

Significantly, it is worthy to mention that respondent was the one who issued RMO No. 20-90 and RDAO No. 05-01. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[30]

To the Government, its tax officers are obliged to act promptly in the making of assessment so that taxpayers, after the lapse of the period of prescription, would have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents.[31]

Again, it must be pointed out that a waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations 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.[32]

Considering the defects found in the waivers executed by the petitioner, the period to assess or collect taxes was not extended.

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[30] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010

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

[32] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004

Consequently, the assessments were issued by the BIR beyond the three-year period and are considered void.

Notably, respondent also argued that granting that the waivers are invalid, still, such does not affect the assessment for deficiency withholding taxes. According to respondent, petitioner is assessed not for the collection of income tax but merely penalized for failure to comply with the withholding tax provision. Since the liability of the withholding agent (petitioner herein) is a penalty for failure to withhold and remit funds to the government, then the period of limitation provided in Section 203 of the NIRC of 1997 finds no application. The said provision prescribes a limitation only as to the assessment of taxes, not penalties.

In addressing the said issue, perusal of the records of the case would show that respondent assessed petitioner for deficiency expanded withholding tax amounting to Php553,105.67, representing the total EWT still due from petitioner. There was nothing in the Formal Assessment Notice and Final Decision on Disputed Assessment which would show that the said amount was assessed as penalty and not as tax imposed under the NIRC from which the period of limitation for assessment under Section 203 of the NIRC of 1997, as amended, may be applied. Contrary to respondent's assertion, Section 21 of the NIRC of 1997, as amended, provides:

> "SEC. 21. *Sources of Revenue.* — The following taxes, fees and charges are deemed to be national internal revenue taxes:
>
> (a) Income tax;
> (b) Estate and donor's taxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue."

Withholding taxes are taxes withheld from income payments by withholding agents, which is clearly mandated under the NIRC and collected by the BIR.[33] In this case, respondent allegedly found and assessed deficiency expanded withholding tax still due from petitioner. Thus, the assessed deficiency EWT is covered by the period of limitation of assessment and collection under Section 203 of the NIRC of 1997, as amended and consequently, respondent's contention is considered untenable.

Respondent likewise averred that petitioner's request for reinvestigation effectively suspended the running of the statute of limitations on assessment and collection of taxes. Said fact renders any discussion on the validity of the waivers moot and academic as the requests had already extended the period of limitation.

Respondent based her contention on the ruling of the Supreme Court in the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[34], which was quoted in part in her Memorandum filed on December 7, 2012,[35] the pertinent portion of which reads:

> "Of particular importance to the present case is one of the circumstances enumerated in Section 224 of the Tax Code of 1977, as amended, **wherein the running of the statute of limitations on assessment** and collection of taxes **is considered suspended when the taxpayer requests for a reinvestigation which is granted by the Commissioner**."

The Court cannot sustain respondent's assertion.

While the filing of a request for a reinvestigation which is granted by the Commissioner may suspend the running of the statute of limitations on assessment of taxes, records would show that petitioner filed the protest on July 25, 2007 which is clearly beyond the 3-year prescriptive period within which to assess income tax, value-added tax, and expanded withholding tax for the fiscal year ending March 31, 2003. Since at the time the protest was filed, there was already no period to suspend, respondent's contention that the protest effectively suspended the running of the prescriptive period to assess must necessarily fail. *gr*

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[33] Section 57, NIRC of 1997, as amended
[34] G.R. No. 139736, October 17, 2005
[35] Docket, p. 735

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly the assessments against petitioner for deficiency income tax, deficiency expanded withholding tax, and deficiency value-added tax for fiscal year ending March 31, 2003 are hereby **CANCELLED** and **SET ASIDE** on the ground of prescription.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

ROMAN G. DEL ROSARIO
Presiding Justice