REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 180
(C.T.A. Case No. 7044)

Present:

-versus-

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

KUDOS METAL CORPORATION,
Respondent.

Promulgated:
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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue praying for the reversal of:

1.) The Resolution of the Second Division of this Court ("Court in Division") promulgated on October 4, 2005 in C.T.A. Case No. 7044 entitled *"Kudos Metal Corporation vs. Commissioner of Internal Revenue"* which granted herein respondent's Motion for Preferential Resolution on the Issue of Prescription and ordered the cancellation and withdrawal of the corresponding assessment notices for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation and other penalties; and

2.) The Resolution of the Court in Division promulgated on April 18, 2006 denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

Based on the parties' Joint Stipulation of Facts and Issues dated January 31, 2005[1] and submitted on March 1, 2005, the relevant antecedents are as follows:

Herein petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) tasked with the assessment and collection of internal revenue taxes. He holds office at the BIR, BIR-National Office Building, Agham Road, Diliman, Quezon City.

Herein respondent is a corporation organized and existing under the laws of the Republic of the Philippines, with principal address at 414 Lavezares Street, Tondo Manila.

[1]Joint Stipulation of Facts and Issues dated January 31, 2005 which was approved in a Resolution dated March 8, 2005, *page 206- 210, CTA Records*.

On April 15, 1999, respondent filed its annual income tax return for the calendar year 1998.

On November 12, 2003, respondent received a Formal Letter of Demand with accompanying Assessment Notices for taxable calendar year 1998, dated September 26, 2003.

A "Protest on Various Tax Assessments" was filed on December 3, 2003 by respondent, the receipt of which was acknowledged by the BIR in its letter dated December 22, 2003.

On February 2, 2004, respondent submitted its "Legal Arguments and Documents in Support of Protests against Various Assessments."

On July 29, 2004, respondent received a "Final Decision on Disputed Assessment" dated June 22, 2004 and signed by the Honorable Jose Mario C. Buñag, BIR Deputy Commissioner for the Legal and Inspection Group, seeking to collect from respondent the following:

Kind of Tax	**Amount**
Income Tax	P 9,693,897.85
VAT	13,962,460.90
EWT	1,712,336.76
Withholding Tax –Compensation	247,353.24
Other – Penalties	8,000.00
Total	**P25,624,048.76**

On August 27, 2004, respondent seasonably filed a Petition for Review with the Court in Division pursuant to Section 11 of the Court of Tax Appeals Charter, Republic Act No. 1125 as amended by Republic Act No. 9282.[2]

On October 14, 2004, petitioner filed its Answer after it was granted two extensions of time to file the same by the Court in Division.[3]

After the termination of the Pre-trial, the initial presentation of evidence for respondent began.

On April 11, 2005, respondent filed an Urgent Motion for Preferential Resolution of the Issue on Prescription arguing therein that:[4]

1. The assessment made by petitioner dated September 26, 2003 and received by the respondent on November 12, 2003, for taxable calendar year 1998, is barred by the three (3) year prescriptive period under Section 203 of the Tax Code and the issue of prescription was seasonably raised at the initial stage by the respondent;

2. Petitioner's own evidence shows that the period within which it can make a valid assessment has prescribed;

3. In the first waiver dated December 10, 2001, while made within the statutory 3-year prescriptive period, it was clearly agreed upon that the period of limitation shall not extend beyond December 31, 2002; and

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[2] Page 1 to 151, CTA Records.
[3] Page 161 to 165, CTA Records.
[4] Page 219 to 230, CTA Records.

4. The subsequent waiver made by Nelia Pasco and the BIR, represented by Assistant Commissioner Percival T. Salazar, was executed only on February 18, 2003, or thirty nine (39) days after the lapse of the period of limitation agreed upon in the first waiver which is December 31, 2002.

On June 23, 2005, the Court in Division issued an Order denying petitioner's Motion for Second Extension of Time to File Comment and submitting for resolution respondent's Urgent Motion for Preferential Resolution of the Issue on Prescription.

On June 30, 2005, petitioner filed an Omnibus Motion praying that its Comment be admitted.

The Ruling of the Court in Division

On October 4, 2005, the Court in Division issued a Resolution which granted petitioner's Omnibus Motion and admitted petitioner's Comment. The Court in Division also ruled that the subject first waiver was not valid and binding for failure to comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90. Firstly, it is the Commissioner of Internal Revenue and not the Assistant Commissioner who is authorized to sign the waiver. Secondly, the waiver failed to indicate the date of acceptance. Lastly, the fact of receipt by the taxpayer of his file copy of the waiver was not indicated in the original copy. The waiver was held to be incomplete and defective, thus, it did not toll the running of the 3-year prescriptive period to assess provided under Section 203 of the 1997 Tax Code. Hence, the subject assessment notices were issued beyond the said prescriptive period.

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The dispositive portion of the said Resolution is as follows:

> "**IN VIEW OF THE FOREGOING**, the present Petition for Review is hereby **DISMISSED**. The Formal Demand Letter and Assessment Notices Nos. TFD-98-IT-156-03, TFD-98-VT-157-03, TFD-98-WT-158-03, TFD-98-EWT-159-03 and TFD-98-CP-160-03 are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Undaunted, petitioner filed a Motion for Reconsideration of the abovementioned Resolution on November 2, 2005 which was denied by the Court in Division in its Resolution dated April 18, 2006, in this wise:

> "**WHEREFORE**, finding no valid or compelling reason to modify, much less reverse the Resolution dated October 4, 2005, the Court **RESOLVES** to **DENY** respondent's Motion for Reconsideration.
>
> **SO ORDERED**."

Hence, the present recourse by petitioner.

The Issue

The sole issue in this petition for review is whether or not petitioner's right to assess respondent is barred by prescription.

Petitioner's Arguments

Petitioner avers that there was substantial compliance with the law in the execution of the subject waivers of the defense of prescription under the statute of limitations of the Tax Code, hence, the same are valid.

In particular, petitioner argues that the first waiver extending the period to assess to December 31, 2002, was executed and signed by Mrs. Nelia Pasco, the duly authorized representative of respondent. According to petitioner, Mrs. Pasco personally appeared before the Office of the Notary Public who notarized the said waiver on January 22, 2002. The said waiver was also duly signed and accepted for the Commissioner of Internal Revenue by Percival T. Salazar, Assistant Commissioner, Enforcement Service. Under Revenue Delegation Authority Order (RDAO) No. 5-2001 dated August 2, 2001, the Assistant Commissioner – Enforcement Service is an authorized signatory of the waiver. Petitioner also posits that the date of acceptance of the first waiver is January 22, 2002 when the same was duly notarized.

Anent the second waiver, petitioner alleges that "it was the respondent who initiated the execution of the waivers and requested the BIR for its acceptance and conformity. Thus, any minor defects, such as the lapse of thirty nine (39) days before the second waiver was executed, is deemed immaterial and of no consequence to the validity of the waiver. It is submitted that any subsequent action of the respondent seeking the nullification or invalidity of the same to the disadvantage of the petitioner, who merely acquiesced to the request of the respondent in extending the audit period, and consequently the prescriptive period to assess, as provided in the Tax Code, is action in bad faith. Hence, respondent's contention in seeking the nullification of the waivers executed no less by the respondent cannot be used as a defense on the ground of estoppel."[5]

Respondent's Counter-Arguments

Respondent, in its Comment, contends that Mrs. Pasco has no written authority from respondent's Board of Directors to waive the corporation's right under the Tax Code. Such lack of such authority precludes her from compromising or

[5] Page 13 to 14, Petition for Review.

waiving whatever rights the corporation has under the law and whatever document she purportedly executed cannot bind respondent. The lack of such authority from the taxpayer therefore invalidates the waivers for being non-compliant with both Revenue Memorandum Order (RMO) No. 20-90 and RDAO 5-2001. Thus, the subject waivers did not toll the running of the prescriptive period.

Respondent also posits that the second waiver is invalid for two reasons. First, it was executed by Mrs. Pasco, without the written and notarized authority from the taxpayer. Second, assuming *arguendo* that the first waiver was valid, the second waiver was executed on February 18, 2003 which is after the expiration of the alleged period agreed upon in the first waiver *(December 31, 2002).* Consequently, the assessments covered by the Formal Letter of Demand dated September 26, 2003 which was received by respondent on November 12, 2003 were issued beyond the reglementary period mandated by law.

The Ruling of the Court En Banc

The petition is devoid of merit. We sustain the ruling of the Court in Division that the government's right to assess the taxes involved in this case had prescribed.

The period for the BIR to assess an internal revenue tax is limited to three years by Section 203 of the 1997 Tax Code, the exact language of which is as follows:

> "***SEC. 203. Period of Limitation Upon Assessment.*** — 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."

According to the Supreme Court, the legislative intent behind the said statutory limitation is to protect taxpayers from any unreasonable examination, investigation or assessment as it held in a recent case:

> "Though the statute of limitations on assessment and collection of national internal revenue taxes benefits both the Government and the taxpayer, **it principally intends to afford protection to the taxpayer against unreasonable investigation. The indefinite extension of the period for assessment is unreasonable because it deprives the said taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.**" [6] (Emphasis supplied)

To afford even better protection to the taxpayer against unreasonable investigation, the 1997 Tax Code identifies, specifically in Sections 222 and 223 thereof, the circumstances when the prescriptive periods for assessing and collecting taxes could be suspended or interrupted.

Under paragraphs (b) and (d) of Section 222 of the 1997 Tax Code, the prescriptive periods for assessment and collection of national internal revenue taxes, respectively, could be waived by agreement, *to wit* —

> "**SEC. 222. — Exceptions as to Period of Limitation of Assessment and Collection of Taxes**. —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer 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.**

[6] Bank of the Philippine Islands v. Commissioner of Internal Revenue, G.R. No. 139736, October 17, 2005.

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> (d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) – year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon." (Emphasis supplied)

The foregoing exceptions are to be strictly construed as declared by the High Tribunal in this wise:

> "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**." [7] (Emphasis supplied)

Furthermore, it is well-settled that the waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due.[8] It bears emphasis that the waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally.[9]

A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 222 of the 1997 Tax Code must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period

[7] Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.) and the Court of Appeals, G.R. No. 104171, February 24, 1999.
[8] Bank of the Philippine Islands v. Commissioner of Internal Revenue, *supra*, note 6.
[9] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 447 SCRA 214.

beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon.

In relation to the foregoing, the BIR issued RMO No. 20-90 on April 4, 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be administratively dealt with.

On August 2, 2001, the BIR also issued RDAO No. 05-01 for the delegation of the authority to sign and accept the Waiver of the Defense of Prescription under the Statute of Limitations prescribed in Sections 203, 222 and other related provisions of the Tax Code of 1997.

In the present case, the Court in Division invalidated the first waiver, hence it no longer ruled on the validity of the second waiver. It ruled as follows:

> "Furthermore, the Court finds that the first Waiver of the Statute of Limitations is not valid and binding for failure to comply with the provisions of RMO 20-90, to wit:
>
> First, the Assistant Commissioner is not the revenue official authorized to sign the waiver, as the tax case involves more than P1,000,000.00. In this regard, only the Commissioner is authorized to enter into agreement with the petitioner in extending the period of assessment;
>
> Second, the waiver failed to indicate the date of acceptance. Such date of acceptance is necessary to determine whether the acceptance was made within the prescriptive period;
>
> Third, the fact of receipt by the taxpayer of his file copy was not indicated on the original copy. 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 also of the acceptance by the BIR and the perfection of the agreement."

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While the Court *En Banc* agrees with the second and third grounds for invalidating the first waiver, it finds that the Assistant Commissioner of the Enforcement Service is authorized to sign the waiver pursuant to RDAO No. 05-01, which provides in part as follows:

"A. For National Office cases

Designated Revenue Official

1.	**Assistant Commissioner (ACIR), Enforcement Service**	**For tax fraud and policy cases**
2.	ACIR, Large Taxpayers Service	For large taxpayers cases other than those cases falling under Subsection B hereof
3.	ACIR, Legal Service	For cases pending verification and awaiting resolution of certain legal issues prior to prescription and for issuance/compliance of Subpoena Duces Tecum
4.	ACIR, Assessment Service (AS)	For cases which are pending in or subject to review or approval by the ACIR, AS

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(Emphasis supplied)"

Based on the foregoing, the Assistant Commissioner, Enforcement Service is authorized to sign waivers in tax fraud cases. A perusal of the records reveals that the investigation of the subject deficiency taxes in this case was conducted by the National Investigation Division of the BIR, which was formerly named the Tax Fraud Division.[10] Thus, the subject assessment is a tax fraud case.

[10] Page 20 to 26, CTA Records.

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Nevertheless, the first waiver is still invalid based on the second and third grounds stated by the Court in Division. Hence, it did not extend the prescriptive period to assess.

Moreover, assuming *arguendo* that the first waiver is valid, the second waiver is invalid for violating Section 222(b) of the 1997 Tax Code which mandates that the period agreed upon in a waiver of the statute of limitations can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. As previously discussed, the exceptions to the law on prescription must be strictly construed.

In the case at bar, the period agreed upon in the subject first waiver expired on ***December 31, 2002***. The second waiver in the instant case which was supposed to extend the period to assess to December 31, 2003 was executed on February 18, 2003 and was notarized on February 19, 2003. Clearly, the second waiver was executed after the expiration of the first period agreed upon. Consequently, the same could not have tolled the 3-year prescriptive period to assess.

Since the second waiver is legally infirm, there was no valid extension of the period from December 31, 2002 to December 31, 2003 within which petitioner may issue an assessment notice. Thus, the Formal Letter of Demand dated September 26, 2003 with accompanying Assessment Notices Nos. TFD-98-IT-156-03, TFD-98-VT-157-03, TFD-98-WT-158-03, TFD-98-EWT-159-03 and TFD-98-CP-160-03 was already time-barred.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Resolutions promulgated on October 4, 2005 and April 18, 2006, respectively are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ON LEAVE
ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice