REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LUZON PACKAGING PRODUCTS, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5016

LIWAYWAY VINZONS-CHATO, IN HER CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 23 1997

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DECISION

This case involves a deficiency income tax assessment in the amount of P490,744.19 for the fiscal year ended June 30, 1989.

The facts, as borne by the pleadings and records of the case, are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in the business of manufacturing packaging products. Its principal office is located at Meycauayan, Bulacan.

For the fiscal year ended June 30, 1989, petitioner filed its annual income tax return on October 10, 1989 reflecting an income tax payment in the amount of P437,344.00 (Exh. BB, p. 170, BIR records).

On November 21, 1990, Revenue Officer Antonio C. Navarro was authorized to examine the books of accounts of petitioner for income and documentary stamp tax liabilities for fiscal years ending June 30, 1988 and 1989. (Exh. "1", Respondent, BIR records, p. 88).

On September 30, 1992, petitioner executed a "Waiver Of The Defense of Prescription Under the Statute Of Limitations Of The National Internal Revenue Code", extending the period within which respondent can assess petitioner up to December 31, 1992 (Exhs. Z and Z-1, Petitioner's Rebuttal of Exhibits, BIR records, p. 90). This waiver was signed by the representative of petitioner but not by the Commissioner of Internal Revenue. Subsequently, another waiver was executed by the petitioner which was undated and this time the period to assess was extended up to June 30, 1993 (Exhs. AA and AA-1, Petitioner's Rebuttal of Exhibits, BIR records, p. 91). This second waiver was signed by Mr. Rolando N. España, Assistant Vice President/Chief, Financial Officer, In behalf of the petitioner and by Mr. Bernardo A. Frianeza, Assistant Revenue Service Chief, Special Operations Service, in behalf of the respondent.

On April 20, 1993, petitioner received assessment notices bearing Assessment Numbers FAS-2-89-93-001635 and FAS-2-89-93-001636 finding petitioner liable for deficiency income and expanded withholding taxes, respectively, detailed as follows:

<u>1989 Deficiency Income Tax</u>

Basic Tax	P225,621.00
Add: 25% surcharge	56,405.25
interest	192,717.94
compromise penalty	16,000.00
Total deficiency income tax	P490,744.19

<u>1989 Deficiency E.W.T</u>

Basic Tax	P 3,000.00
Add: 25% surcharge	750.00
25% Int. (7.11.89 to 3.16.93)	2,760.00
compromise penalty	1,000.00
Total deficiency E. W. T.	P 7,510.00

These assessment notices were covered by a demand letter, dated April 7, 1993, which was received by the petitioner on even date. The deficiency income tax arose from the revenue officer's disallowance of interest expense from petitioner's gross income relative to its back-to-back loan transactions.

In a letter, dated May 5, 1993, petitioner protested the deficiency income tax assessment issued by the respondent. (Exh. "B", Petitioner, CTA records p. 7).

Petitioner did not make any protest on the assessment for deficiency expanded withholding tax.

On July 7, 1993, petitioner received an undated letter denying its protest for lack of legal basis. (Exh. "C", Petitioner, CTA records p. 10).

Hence, this appeal on August 4, 1993.

While the case was pending trial, the assessment for deficiency expanded withholding tax was settled by petitioner on August 26, 1993. (Exhs. "T", "W", "W-1" and "X", Petitioner, CTA records pp. 77, 80 and 81).

The main issue for resolution by this Court is whether or not petitioner is liable for deficiency income tax as assessed.

Before we delve on this issue, we should first resolve a corollary issue which is whether or not the assessment for deficiency income tax was issued beyond the three-year period allowed by law.

Petitioner contends that the assessment for deficiency income tax is null and void for having been issued beyond the three-year period allowed by law. Petitioner filed its 1989 final adjustment return for fiscal year ending June 30, 1989 on October 10, 1989. Respondent issued her assessment against petitioner only on April 7, 1993.

To shed light on this controversy, we shall quote the applicable provisions of the Tax Code particularly Sections 203 and 70(b), thus:

> Sec. 203. ***Period of limitation upon assessment and collection.*** - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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-year period shall be counted from the day the return was filed. For the 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.
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> Sec. 70. (a) xxx.
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> (b) Time of filing the income tax return. - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.
>
> (c) xxx.

Based on the above provisos, respondent can only issue her assessment within three years from the last day required by law for an annual adjustment return to be filed. Thus, for fiscal year ended June 30, 1989, petitioner is required to file its final adjustment return on or before October 15, 1989. It is evident that petitioner filed its annual income tax return on October 10, 1989. However, for purposes of counting the three-year period to assess, the 1989 income tax return of petitioner is considered filed on October 16, 1989, the last day allowed by law for taxpayers having a fiscal year ending June 30, 1989 to file their final adjustment return because October 15, 1989 fell on a Sunday. Respondent, therefore had up to October 15, 1992 to issue her assessment[1]. However, the assessment for deficiency income tax was issued only on April 7, 1993. Clearly, the three-year prescriptive period had already lapsed pursuant to Section 203 of the Tax Code.

This Court also noted that there were two "Waivers" (of the defense of prescription under the statute of limitations of the National Internal Revenue Code) entered into by the petitioner pursuant to the provision of Section 223(b) of the Tax Code which reads as follows:

> Sec. 223. xxx
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> (b) If before the expiration of the time prescribed in the preceding section 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

[1]Pursuant to Article 13 of the Civil Code, a year is composed of 365 days. Since 1992 was a leap year, the 1,095th day (365 x 3 years) is October 15, 1992.

> 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 first waiver extended the period of assessment up to December 31, 1992 and the second waiver extended it up to June 30, 1993. However, these waivers have no binding effect. The first waiver was not valid because the Commissioner (or his duly authorized representative) did not give his consent as evidenced by the fact that he did not sign the document. The fact that it was left unsigned by the Commissioner signifies that there was no valid agreement to stop the running of the period of limitations. Section 223(b) of the National Internal Revenue Code clearly provides that both the Commissioner and the taxpayer must agree in writing on the period agreed upon. Since the Commissioner did not affix her signature, the document is ineffective. As we held in the case of **Boise Cascade Philippines, Inc. v. Commissioner of Internal Revenue**, C.T.A. Case No. 2858, **March 30, 1987:**[2]

> The law is clear and explicit that a valid waiver of the statute of limitation provided for in the above-quoted provision of the law

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[2]This case was ruled by the Supreme Court (Second Division) as final and executory per resolution dated January 19, 1988, in the case entitled Commissioner of Internal Revenue v. Boise Cascade Philippines, Inc., et al., G.R. No. 79872.

[referring to what was Section 319(b) of the 1981 Tax Code and is now Section 223(b)] requires that the said waiver must be in writing and must be both signed by the Commissioner of Internal Revenue and the taxpayer. A close scrutiny of the aforesaid waiver of the statute of limitation (Exh. L., p. 173, BIR rec., Folder I) shows that Revenue District Officer Sixto J. Javier had merely attested the aforesaid waiver; that aforesaid officer did not sign the waiver either for or by virtue of the authority of the Commissioner of Internal Revenue. Clearly, for all legal intents and purposes of the above law, Section 332 of the National Internal Revenue Code, there was no valid waiver executed by herein Commissioner of Internal Revenue and petitioner to stop the running of the period within which to validly assess the tax in question.

In the instant case, the language of said statute of limitation being plain and unambiguous, it conveys a clear and definite meaning, and therefore, said statute must simply be applied and never to be interpreted.

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In the case at bar, the law is clear and definite that it is only the Commissioner of Internal Revenue,[3] who is specially named by said provision of Section 332(b) of the Tax Code, as the one who can sign the waiver of the statute of limitation, and since the Commissioner has not signed the waiver, there is, therefore, no consummation or valid waiver which may suspend the running of the period within which to assess the tax in question. (Collector v. Solano, GRL-11475, July 31, 1958, p. 6.7). Consequently, respondent's assessment which was made more than five years [now three years] from the filing of petitioner's amended

[3]At present, various officials are authorized by the Commissioner to enter into a valid waiver per Revenue Memorandum Order No. 20-90 depending on the amount involved.

> income tax return on January 12, 1967 for the taxable year 1966 has prescribed. (pp. 30-32).

This ruling was also adopted in the case of **Carnation Phils., Inc. (now merged with Nestle Phils., Inc.) v. Commissioner of Internal** Revenue, CTA Case No. **4263, January 26, 1993**, where we impart:

> Notwithstanding the fact that the records show that petitioner, through its Senior Vice president Jaime Lardizabal, signed three waivers the statute of limitations under the Tax Code on separate dates (October 13, 1986, March 16, 1987 and May 18, 1987). We find these "waivers" to be invalid and without any binding effect on petitioner for the reason that there was no consent by the respondent (Commissioner of Internal Revenue) and no period was set or agreed upon for subsequent assessment.
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> xxx xxx xxx
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> Therefore, the Court finds that there is no waiver of the statute of limitations validly entered into by the petitioner and respondent. Consequently, petitioner cannot be deemed estopped from raising the defense of prescription against the assessments on the ground of its signing of the two "waivers" presented as Exhibits "B" and "B-1" in the case at bar. (pp. 8-10)

It is very clear that in order to give effect to a waiver of the defense of prescription under Sec. 223(b) of the National Internal Revenue Code, it must be both signed by the Commissioner of Internal Revenue and the taxpayer. The fact that the waiver executed on September 30, 1992 was signed by the representative of the petitioner and not by the Commissioner, the period to assess was never extended. The waiver was not consummated and therefore was invalid and void.

As regards the second waiver executed by the petitioner, the same was of no consequence since the first waiver was not valid. Thus, the period to assess was not suspended by petitioner's execution of the first waiver more so by the second waiver. As required by Section 223 the second waiver must be executed before the expiration of the period previously agreed upon. Inasmuch as there is no valid waiver previously agreed upon, no valid extension can be made. The law bars the respondent in issuing the subject assessment.

Thus, finding the deficiency income tax assessment issued beyond the three-year period prescribed under Sec. 203 of the Tax Code, there is no need to delve on the other issue involved in this case.

WHEREFORE, finding the petition for review meritorious, the assessment for deficiency income tax in the amount of P490,744.19 for fiscal year ending June 30, 1989 is hereby declared null and void for having been issued beyond the three-year period provided for by law.

ACCORDINGLY, respondent is hereby ORDERED to CANCEL the 1989 assessment for deficiency income tax issued to petitioner.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals