REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

\- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8350

Members:
BAUTISTA, *Chairperson, and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
FEB 12 2014 11:50 a.m.

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DECISION

BAUTISTA, J.:

The Petition for Review,[1] filed on October 7, 2011, pursuant to Section 228 of the 1997 National Internal Revenue Code, as amended,[2] and Section 7(a)(1) of Republic Act No. 1125,[3] as amended by Republic Act No. 9282, and Republic Act No. 9503, seeks for the Court to:

a. Suspend the collection of the disputed tax assessment and/or enjoin respondent from enforcing the subject Warrant of Distraint and/or Levy;

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[1] *Records*, (CTA Case No. 8350), pp. 6-90, with Annexes.

[2] SEC. 228. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[3] SEC. 7. Jurisdiction. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

b. Declare the assessment for alleged income tax liability for the year 1986 in the total amount of ₱19,202,589.97 as prescribed; and

c. Order the cancellation of the subject Final Assessment Notice, Assessment Notice, and Warrant of Distraint and/or Levy.

FACTS OF THE CASE

Petitioner, Bank of the Philippine Islands, is a domestic corporation duly registered with the Securities and Exchange Commission ("SEC").

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered under the National Internal Revenue Code to authorize the examination of any taxpayer and the assessment of the correct amount of tax as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue ("BIR"), with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 1987, Citytrust Banking Corporation ("CBC") filed its Annual Income Tax Returns for its Regular Banking Unit,[4] and Foreign Currency Deposit Unit,[5] for the taxable year 1986.

On August 11, 1989, July 12, 1990, and November 8, 1990, CBC executed Waivers of the Statute of Limitations under the National Internal Revenue Code.[6]

On March 7, 1991, respondent issued a Pre-Assessment Notice ("PAN") against CBC for deficiency taxes, among which is for deficiency Income Tax for taxable year 1986 in the total amount of

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[4] *Exhibit "I."*
[5] *Exhibit "K."* BIR stamped received on April 15, 1986.
[6] *Exhibits "B," "C"* and *"D."*

₱19,202,589.97;[7] on April 22, 1991, counsel for CBC filed its Protest against the said PAN.[8]

On May 6, 1991, respondent issued a Letter,[9] with attached Assessment Notices,[10] demanding for the payment of the subject deficiency taxes within thirty (30) days from receipt thereof; on May 27, 1991, counsel for CBC filed its Protest against the said assessments,[11] and on February 17, 1992, counsel for CBC filed another Protest thereto.[12]

On February 5, 1992, respondent issued a Letter addressed to CBC, requesting for the payment of its tax liabilities, within ten (10) days from receipt thereof.[13]

On March 29, 1994, counsel for CBC issued a Letter addressed to respondent, offering a compromise settlement on its deficiency Income Tax assessment for taxable year 1986;[14] with attached Application for Compromise Settlement/Abatement of Penalties under Revenue Memorandum Order ("RMO") No. 45-93, in the amount of ₱1,721,503.40, or twenty percent (20%) of the subject assessment,[15] which was received on the next day, March 30, 1994.

On May 2, 1994, counsel for CBC issued a Letter addressed to respondent, reiterating its Letter of offer for compromise settlement dated March 29, 1994 and Application for Compromise Settlement/Abatement of Penalties under RMO No. 45-93.[16]

On October 12, 1994, respondent approved the earlier mentioned Application for Compromise Settlement of CBC, provided that one hundred percent (100%) of its deficiency Income Tax assessment for the

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[7] BIR Records, pp. 554-556.
[8] BIR Records, p. 560.
[9] *Exhibit "E."*
[10] *Exhibits "E-1"* to *"E-9."*
[11] *Exhibit "F."*
[12] *Exhibit "G."*
[13] *Exhibit "SSS"; Exhibit "10."*
[14] *Exhibit "FFF."*
[15] BIR Records, p. 595.
[16] *Exhibit "GGG."*

year 1986, or in the amount of ₱8,607,517.00, be paid within fifteen (15) days from receipt thereof.[17]

On November 28, 1994, counsel for CBC issued a Letter addressed to respondent, requesting for a reconsideration of the approved amount as compromise settlement, and offering to pay the amount of ₱1,600,000.00 as full and final settlement of the subject assessment.[18]

On March 8, 1995, counsel for CBC issued a Letter addressed to respondent, reiterating its request for reconsideration in its Letter dated November 28, 1994, and offering to increase its full and final settlement in the amount of ₱3,200,000.00.[19]

On March 28, 1995, respondent again approved the Application for Compromise Settlement of CBC dated March 30, 1994, provided that the latter pays the amount of ₱8,607,517.00, within fifteen (15) days from receipt thereof.[20]

On May 4, 1995, counsel for CBC issued another Letter addressed to respondent, requesting for a final reconsideration, and reiterating its offer of compromise in the amount of ₱3,200,000.00.[21]

On July 14, 1995, respondent, however, disapproved the Application for Compromise Settlement of CBC dated March 30, 1994.[22]

On July 27, 1995, CBC issued a Letter addressed to respondent, requesting for reconsideration and offering to pay the increased amount of ₱4,303,758.50.[23]

On October 4, 1996, the SEC approved the Articles of Merger between petitioner and CBC, with the former as the surviving corporation.[24]

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[17] *Exhibit "HHH."*
[18] *Exhibit "III."*
[19] *Exhibit "JJJ."*
[20] BIR Records, p. 631.
[21] *Exhibit "KKK."*
[22] *Exhibit "LLL"; Exhibit "9."*
[23] *Exhibit "MMM."*
[24] *Exhibit "A."*

On May 26, 2011, respondent issued a Notice of Denial addressed to petitioner, requesting for the payment of CBC's deficiency Income Tax for the taxable year 1986, within fifteen (15) days from receipt thereof.[25]

On July 28, 2011, respondent issued another Letter addressed to petitioner, denying the offer of compromise penalty, and requesting for the payment of the amount of ₱19,202,589.97, plus all increments incident to delinquency pursuant to Sections 248(A)(3) and 249(C)(3) of the 1997 National Internal Revenue Code, as amended.[26]

On September 21, 2011, respondent issued a Warrant of Distraint and/or Levy against petitioner.[27]

And on October 7, 2011, petitioner filed the present Petition for Review.[28]

On December 2, 2011, respondent filed her Answer,[29] interposing, *inter alia*:

1) That the Court has no jurisdiction to take cognizance of the present case for failure of petitioner to elevate its claim within the then prescribed period under the 1977 National Internal Revenue Code;

2) That petitioner is liable to pay deficiency Income Tax for the taxable year 1986 for its failure to present contrary evidence against the subject assessment;

3) That the denial of petitioner's offer of compromise settlement cannot be utilized to set up the defense of prescription considering that the assessment had already

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[25] *Exhibit "6."*
[26] *Exhibit "PPP."*
[27] *Exhibit "H"; Exhibit "5."*
[28] *Supra*, note 1.
[29] *Records*, pp. 104-128, with Annexes.

become final and executory for its failure to timely file its judicial appeal; and

4) That the assessment was issued within the prescribed period under the 1977 National Internal Revenue Code, taking into consideration the Waivers of Statute of Limitations executed by petitioner.

On January 24, 2012, petitioner filed its Reply (To Respondent's Attached Answer).[30]

On March 23, 2012, the parties filed their Joint Stipulation of Facts and Issues.[31] While, on April 16, 2012, the Court issued the Pre-Trial Order.[32]

Trial ensued. Both parties presented and offered their respective documentary and testimonial evidence.

On March 18, 2013,[33] the case was submitted for decision, taking into consideration the Memoranda filed by respondent[34] and petitioner.[35]

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

1. WHETHER OR NOT THE RIGHT OF RESPONDENT TO ASSESS DEFICIENCY INCOME TAX FOR 1986 HAD ALREADY PRESCRIBED PURSUANT TO THE TAX CODE OF 1977;

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[30] *Id.*, at pp. 142-156.
[31] *Id.*, at pp. 184-187.
[32] *Id.*, at pp. 191-195.
[33] *Id.*, at p. 459.
[34] *Id.*, at pp. 403-424.
[35] *Id.*, at pp. 426-457.

2. WHETHER OR NOT THE RIGHT OF RESPONDENT TO COLLECT THE ALLEGED DEFICIENCY INCOME TAX FOR 1986 HAD ALREADY PRESCRIBED;

3. WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY INCOME TAX AND INCREMENTS FOR 1986;

4. WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT CASE; and

5. WHETHER OR NOT THE ASSESSMENT NOTICE ISSUED AGAINST PETITIONER [HAD BECOME] FINAL AND EXECUTORY.[36]

RULING OF THE COURT

The Court finds the Petition for Review meritorious.

To begin with, the Court has jurisdiction over the case at bench pursuant to Section 7 of Republic Act No. 1125,[37] as amended by RA No. 9282,[38] and RA No. 9503,[39] to quote:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other**

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[36] *Id.*, at p. 185.

[37] An Act Creating the Court of Tax Appeals, as amended.

[38] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[39] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals and for Other Purposes.

laws administered by the Bureau of Internal Revenue." (*Boldfacing supplied.*)

In the noted case of *Philippines Journalists, Inc., v. Commissioner of Internal Revenue*,[40] the Supreme Court has distinctly pointed out as follows:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*,[41] we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*,[42] the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court."

Clearly from the foregoing, petitioner can validly assail the Warrant of Distraint and/or Levy dated September 21, 2011,[43] issued by respondent to this Court, when the former filed the present Petition for Review on October 7, 2011.[44]

And to proceed, the Court takes into consideration that the disputed deficiency Income Tax involves taxable year 1986, and that Republic Act No. 8424, entitled *"An Act Amending the National Internal Revenue Code, as amended,"* or the 1997 National Internal Revenue Code

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[40] G.R. No. 162852, December 15, 2004, 488 Phil. 218.
[41] *Ibid.*, citing *111 Phil. 197 (1961).*
[42] *Ibid.*, citing *G.R. No. 115712, February 25, 1999, 303 SCRA 614.*
[43] *Exhibit "H"; Exhibit "5."*
[44] *Supra*, note 1.

("NIRC"), as amended, took effect only on January 1, 1998, then the applicable provision evidently is Section 203 of the 1977 Tax Code, as amended, which provides as follows:

> "SECTION 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."

The above-quoted provision mandates the BIR to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the return, or the actual date of filing of the return, whichever is later. Thus, an assessment issued after the three (3)-year period is deemed void.

Accordingly, the provisions in filing the required return, as well as, in reckoning the earlier mentioned three (3)-year period are Sections 45 and 70 of the 1977 Tax Code, as amended, to quote:

> "SECTION 45. *Corporation returns.* – (a) *Requirements.* – Every corporation, subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter IX of this Title. The return shall be filed by the president, vice-president or other principal assistant treasurer.
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> xxx xxx xxx
>
> SECTION 70. xxx
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> (b) *Time of filing the income tax return.* – The corporate quarterly declaration shall be filed within (60) days following the close of each of the first three quarter 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) *Time of payment of the income tax.* – The income tax due on the corporate quarterly returns and the final income tax returns computed in accordance with Sections 68 and 69 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner of Internal Revenue."

Applying therefore the foregoing provisions with that of the evidence on record - CBC filed its Annual Income Tax Returns for taxable year 1986 on April 15, 1987[45] - respondent had until April 15, 1990, within which to issue an assessment against CBC. And respondent issued the PAN,[46] and the Letter with attached Assessment Notices,[47] only on March 7, 1991, and May 6, 1991, respectively; apparently, beyond the prescribed three (3)-year period.

Nonetheless, Waivers of the Statute of Limitations under the National Internal Revenue Code were executed on August 11, 1989, July 12, 1990, and November 8, 1990.[48]

Relevant thereto is Section 223 of the 1977 Tax Code, to quote:

"SECTION 223. *Exceptions as to period of limitation of assessment and collection of taxes.* – xxx

(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 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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[45] *Exhibits "I"* and *"K."*
[46] BIR Records, pp. 554-556.
[47] *Exhibits "E," "E-1"* to *"E-9."*
[48] *Exhibits "B," "C"* and *"D."*

> (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 three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon."

And Revenue Memorandum Order ("RMO") No. 20-90,[49] dated April 4, 1990, provides as follows:

> "Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:
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> > 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase 'but not after _____ 19 ___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
> >
> > 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
> >
> > Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall

[49] Entitled "Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code."

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sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

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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.

This Revenue Memorandum Order shall take effect immediately."

While the quoted RMO provides for an immediate effectivity, Revenue Memorandum Circular ("RMC") No. 20-86,[50] dated July 24, 1986 must still be observed, to quote:

"TO: All Internal Revenue Officers and Others Concerned

It has been observed that one of the problem areas bearing on compliance with internal revenue tax rules and regulations is lack or insufficiency of due notice to the tax-paying public. Unless there is due notice, due compliance therewith may not be reasonably expected. And most importantly, their strict enforcement could possibly suffer from legal infirmity in the light

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[50] Entitled "Notice, Publication and Effectivity of Internal Revenue Tax Rules and Regulations."

of the Constitutional provision on 'due process of law' and the essence of the Civil Code provision concerning effectivity of laws, whereby due notice is a basic requirement (*Sec. 1, ART. IV, Constitution; ART. 2, New Civil Code*).

In order that there shall be a just enforcement of rules and regulations, in conformity with the said basic element of due process, the following procedures are hereby prescribed for the drafting, issuance and implementation of the said Revenue Tax Issuances:

> 1. This circular shall apply only to (a) Revenue Regulations; (b) Revenue Audit Memorandum Orders; and (c) Revenue Memorandum Circulars and Revenue Memorandum Orders bearing on internal revenue tax rules and regulations.
>
> 2. Except when the law otherwise expressly provides, the aforesaid internal revenue tax issuances shall not begin to be operative until after due notice thereof may be fairly presumed.
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> Due notice of the said issuances may be fairly presumed only after the following procedures have been taken:
>
>> 2.1 The Records Division of the National Office shall furnish, thru registered mail, all of the following business and professional organizations with the corresponding revenue tax issuance:
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>> xxx xxx xxx
>>
>> 2.2 The provisions of paragraph 2.1 shall not be deemed an exclusion of other person or persons who may request for a copy of the corresponding revenue issuance from the Bureau of Internal Revenue.
>>
>> 2.3 The Bureau shall issue a press release about the new revenue issuance in any newspaper or newspapers of general

circulation. The press release shall cover the highlights or features thereof.

2.4 Effectivity date for enforcement of the new revenue issuance shall take place thirty (30) days from the date the revenue issuance has been sent thru registered mail to the organizations enumerated under paragraph 2.1 hereof.

3. Procedures for dating of revenue tax issuances. - Per ANNEX 'A' hereof, the revenue issuance shall be dated as follows:

3.1 The following information shall be shown at the upper left hand portion, first page, of the revenue issuance:

xxx xxx xxx

3.2 The Records Division shall indicate in the upper right hand portion, first page, or the revenue issuance the effectivity date thereof which shall be thirty (30) days from the date copies of the issuance have been sent to the organizations enumerated under paragraph 2.1 hereof.

Before sending copies of the revenue issuance, the Records Division shall already indicate its effectivity date in the manner and form as shown in ANNEX 'A' hereof.

4. Proof of (a) mailing of the revenue issuance to the organizations enumerated under paragraph 2.1 hereof, and (b) copy of the required press release, shall be attached to the original copy of the revenue issuance, which shall be filed by the Records Division for future reference.

5. Strict compliance with the foregoing procedures is enjoined."

From the foregoing, the Court notes that the Waiver of the Statute of Limitations under the National Internal Revenue Code dated August 11, 1989, was executed even before the issuance of RMO No. 20-90 on April 4, 1990; while the Waivers of the Statute of Limitations under the National Internal Revenue Code dated July 12, 1990, and November 8, 1990, were executed during the effectivity of the said RMO. Therefore, the Waiver dated August 11, 1989 is beyond the ambit of RMO No. 20-90, while the Waivers dated July 12, 1990 and November 8, 1990 are clearly covered by the strict compliance under the said RMO.

With that, the Waiver dated August 11, 1989, has effectively extended, as agreed upon by the parties, the prescribed period until August 31, 1990. On the other hand, taking into consideration that RMO No. 20-90 had already been in effect, the Waivers dated July 12, 1990 and November 8, 1990 had failed to extend the same period.

It need not be stressed that in the case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[51] the Supreme Court has extensively provided the detailed procedure for the proper execution of the Waiver of the Statute of Limitation, which respondent itself issued.

Thus, the PAN dated March 7, 1991, as well as the Assessment Notices dated May 6, 1991, were clearly made beyond the prescribed period provided by the 1977 Tax Code.

Having caused the defects in the subject Waivers, respondent must bear the consequence.[52]

The Court finding that the Waivers dated July 12, 1990 and November 8, 1990, had failed to extend the three (3)-year mandatory prescriptive period, making the PAN dated March 7, 1991, and the Assessment Notices dated May 6, 1991, issued beyond the said required period, hereby declares the Warrant of Distraint and/or Levy dated September 21, 2011, as null and void.

[51] G.R. No. 178087, May 5, 2010, 620 SCRA 232.
[52] *Ibid.*

And even in *arguendo* that the Waivers had effectively extended the three (3)-year period within which respondent can validly issue an assessment against CBC, making the PAN dated March 7, 1991, and the Assessment Notices dated May 6, 1991, issued within the required period, the period to collect cannot be extended until September 21, 2011, when respondent issued the Warrant of Distraint and/or Levy against petitioner,[53] in the absence of any exceptions provided either under the then Section 223 of the 1977 Tax Code, or the present Section 222 of the 1997 NIRC, as amended, in the case at bench. Thus, respondent can validly collect only within a prescribed period following the assessment - three (3) years during the effectivity of the 1977 Tax Code, or five (5) years in the 1997 NIRC, as amended.

The Court, taking into consideration the approved merger between CBC and petitioner on October 4, 1996, with the latter as the surviving corporation,[54] petitioner necessarily then stepped into the shoe of CBC.

In sum, the Court hereby declares the Warrant of Distraint and/or Levy dated September 21, 2011, as null and void. The Court deems the resolution of the other issues unnecessary.

WHEREFORE, the Petition for Review is hereby **GRANTED.** Accordingly, the Warrant of Distraint and/or Levy dated September 21, 2011 is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[53] *Exhibit "H"; Exhibit "5."*
[54] *Exhibit "A."*

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice