REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILAM PLANS, INC.,
Petitioner,

CTA CASE NO. 6992

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

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 17 2012
ABFernando 2:30p.m.

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DECISION

COTANGCO-MANALASTAS, *J.*:

STATEMENT OF THE CASE

This case involves a Petition for Review and a Supplement (To Petition for Review) praying for the cancellation and withdrawal of the Final Assessment Notice (FAN) with attached Assessment Notices Nos. TFD-97-INC-068-03, TFD-97-VAT-069-03, and TFD-97-W/T-070-03[1] issued against petitioner and the Final Decision on Disputed Assessment (FDDA) dated June 14, 2004 holding petitioner liable for deficiency income tax, value-added tax (VAT) and withholding tax, inclusive of

[1] Annex "F", Petition for Review, docket, pp. 50 to 54.

surcharge and interest, in the total amount of P667,542,122.58, for calendar year ending December 31, 1997.

STATEMENT OF FACTS

Philam Plans, Inc. (petitioner) is a pre-need corporation duly organized and existing under and by virtue of Philippines laws, with office address at the 6th Floor, Philamlife Building, United Nations Avenue, Ermita, Manila.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), charged with the duty of assessing and collecting internal revenue taxes. She holds office at the BIR National Office Bldg., Agham Road, Diliman, Quezon City.

Petitioner filed its Monthly Remittance Returns of Income Taxes Withheld (BIR Form 1601) and remitted the withholding tax due therein for the taxable year ending December 31, 1997 on the following dates:

Month (1997)	Date of Filing of Return and Remittance of Withholding Tax
January	February 25, 1997[3]
February	March 25, 1997[4]
March	April 25, 1997[5]
April	May 25, 1997[6]
May	June 25, 1997[7]
June	July 25, 1997[8]
July	August 25, 1997[9]
August	September 25, 1997[10]
September	October 24, 1997[11]

[2] The Parties, Petition for Review, docket, p. 1; The Parties, Petitioner's Memorandum, docket, p. 1822.
[3] Exhibits "J", "J-1", "K", "K-1", "L", and "L-1", docket, pp. 1610 to 1612.
[4] Exhibits "M", "M-1", "N", "N-1", "O", and "O-1", docket, pp. 1613 to 1615.
[5] Exhibits "P", "P-1", "Q", "Q-1", "R", and "R-1", docket, pp. 1616 to 1619.
[6] Exhibits "S", "T", and "U", docket, pp. 1620 to 1624.
[7] Exhibits "V", "V-1", "W", "W-1", "X" and "X-1", docket, pp. 1625 to 1629.
[8] Exhibits "Y" and "Y-1", docket, pp. 1630 to 1632.
[9] Exhibits "Z" and "Z-1", docket, pp. 1633 to 1634.
[10] Exhibits "AA" and "AA-1", docket, pp. 1635 to 1637.
[11] Exhibits "BB" and "BB-1", docket, pp. 1638 to 1640.

October	November 25, 1997[12]
November	December 29, 1997[13]
December	January 26, 1998[14]

On April 17, 2000, petitioner received a copy of the BIR Letter of Authority (LOA) No. 00059015 dated April 12, 2000 in connection with the examination of petitioner's books of accounts and other accounting records for the taxable year ending December 31, 1997.[15]

On April 18, 2000, Mr. Lorenzo L. Blanco, petitioner's then Assistant Vice-President (AVP), executed a Waiver of the Statute of Limitations extending the period of assessment of taxes for taxable year ending December 31, 1997 until June 30, 2001 (First Waiver).[16]

On July 18, 2001, Mr. Blanco executed another Waiver of the Statute of Limitations extending the period of assessment of taxes for taxable year ending December 31, 1997 until December 31, 2002 (Second Waiver).[17]

On May 13, 2002, Mr. Blanco executed another Waiver of the Statute of Limitations extending the period of assessment of taxes for taxable year ending December 31, 1997 until September 30, 2003 (Third Waiver).[18]

On November 19, 2002, Mr. Blanco executed a Waiver of the Statute of Limitations extending the period of assessment of taxes for taxable year ending December 31, 1997 until May 30, 2003 (Fourth Waiver).[19]

[12] Exhibits "CC" and "CC-1", docket, pp. 1641 to 1643.
[13] Exhibits "DD" and "DD-1", docket, pp. 1644 to 1646.
[14] Exhibits "EE" and "EE-1", docket, pp. 1647 to 1649.
[15] Par. 2.11, Statement of the Facts, Petition for Review, docket, p. 7; Par. 2.13, Supplement to the Statement of Facts, Supplement (To Petition for Review), docket, p. 284.
[16] Exhibit "A"; Exhibit "5", docket, p. 1605.
[17] Exhibit "B"; Exhibit "18", docket, p. 1606.
[18] Exhibits "C" and Exhibit "16", docket, p. 1607.

On August 8, 2003, petitioner received the undated FAN with attached Assessment Notices Nos. TFD-97-INC-068-03, TFD-97-VAT-069-03, and TFD-97-W/T-070-03 (Assessment Notices) from the BIR for alleged deficiency taxes for the taxable year ending December 31, 1997.[20]

Petitioner filed a protest to the FAN on September 3, 2003 and submitted the required supporting documents to the protest on November 3, 2003.[21]

As of May 1, 2004, the BIR had not decided on the Protest.[22]

On May 25, 2004, petitioner filed with this Court the instant Petition for Review docketed as CTA Case No. 6992.

On August 4, 2004, respondent filed her Answer[23] to the Petition for Review and raised the following Special and Affirmative Defenses:

> "5. The instant Petition for Review is devoid of cause of action. Among the allegations of the petitioner in paragraphs 1.4 and 1.5 of the petition is that 'as of May 1, 2004, the BIR had not decided on the Protest', and that based on this circumstance, 'the protest is deemed denied', entitling them 30 days from 01 May 2004 within which to appeal to this Honorable Court. However, the records of the case reveal that on 03 September 2003, petitioner timely filed a protest to the Final Assessment Notice of the Bureau. On the basis of this protest, re-investigation of the case was granted, and the taxpayer was informed of this development, in a letter dated 19 January 2004. Investigation ensued, and in a letter dated 01 March 2004, acknowledged as received by Lorenzo Blanco, a representative of the petitioner, the Bureau advised petitioner of the report of the re-investigation, with supporting working papers, of the tax case. This letter likewise gave petitioner 10 days within which to submit documents in controversion of the findings. Though representatives of the petitioners attended several preliminary conferences, they failed to put forward arguments/documents to overturn the findings of the investigator. Consequently, on 14 June 2004, after the filing of the instant petition, petitioner received the final decision on the 1997 disputed tax assessment.

[19] Exhibit "D" and Exhibit "17", docket, p. 1608.
[20] Annex "F", Petition for Review, docket, pp. 50 to 54; Par. 1, Statement of Admitted or Undisputed Facts, Joint Stipulation of Facts and Statement of Issues (JSFSI), docket, p. 1497.
[21] Pars. 2 and 3, Statement of Admitted or Undisputed Facts, JSFSI, docket, pp. 1497-1498.
[22] Par. 4, Statement of Admitted or Undisputed Facts, JSFSI, docket, p. 1498.
[23] Docket, pp. 88 to 94.

It is clear from the foregoing that as early as 01 March 2004, the petitioner was aware of the re-investigation being conducted by respondent. In fact, petitioner knew that a revised Final Assessment was forthcoming as a result of the re-investigation, and petitioner attended several Preliminary Conferences. Clearly, these circumstances cannot be taken as inaction on the part of the Commissioner, which will trigger the 'deemed denial' situation envisioned under Section 7 (a) (2) of RA 1125, as amended by RA 9282.

On this basis, the decision of the Commissioner on the re-investigation, duly received by petitioner on 14 June 2004, is the decision which can be the subject of an appeal to this Honorable Court. Since the assessment assailed in this instant petition is not the final decision of the respondent, the present petition is without cause of action and ought to be dismissed outright.

6. The 14 June 2004 decision of the respondent found the petitioner to have grossly understated its gross profit subject to income tax by more than 30%. The realized gross profit per re-investigation amounts to Php849,329,997.11, while the realized gross profit appearing per income tax return of petitioner is Php454,797,342.00. There clearly was underdeclaration in the amount of Php394,532,655.11, or 86.75% of its gross profit.

7. This falsity in the return is sufficient indication of petitioner's intent to evade the payment of taxes. On this basis, the respondent imposed the surcharge of 50%. Accordingly, Section 222 (a) of the NIRC is the prescriptive period applicable in the instant case. Clearly then, the assessment has not yet prescribed.

8. Moreover, the records of the BIR show that on 06 April 2001, a representative of the petitioner, Lorenzo L. Blanco, executed a Waiver of the Statute of Limitation, until 31 December 2001. Contrary to the allegations of the petitioner, the waiver states that petitioner 'consents to the Assessment and/or Collection of the tax/taxes which may be found due after examination/re-investigation' (emphasis ours). Clearly the import of said statement is to allow the respondent to examine the books of petitioner for all kinds of taxes for taxable year 1997.

9. In another document dated 18 July 2001, Lorenzo L. Blanco likewise executed for petitioner a Waiver of the Statute of Limitation until 31 December 2002. In this waiver, petitioner likewise consented to the assessment of taxes which may be found due after investigation.

10. On 19 November 2002, another waiver was executed by Lorenzo L. Blanco consenting to the assessment/payment of taxes which may be found due after investigation until 30 May 2003.

11. In a notarized document dated 20 May 2003, Lorenzo L. Blanco executed another waiver consenting to the assessment /payment of taxes which may be found due after investigation until 30 September 2003.

12. To say the least, the recital of the petitioner as to the waivers executed is 'inaccurate' and tends to misrepresent upon this Honorable Court that the waivers were executed after the lapse of the extensions stipulated in the previous waivers.

13. The other objection raised against the waivers, i.e., they did not indicate the date of acceptance by the BIR, lacks merit. The dates of the waivers are presumed to be the dates of acceptance thereof pursuant to Section 3 (u), Rule 131 of the Rules of Court.

14. The contention that the assessment does not state the facts and the law upon which the assessment is based is without merit. Mere allegations of vagueness and confusion in the mind of petitioner will not invalidate an assessment for failure to substantially comply with Section 228 of NIRC.

15. This case has been thoroughly examined by no less than two (2) examiners. The request for re-investigation and the subsequent investigation conducted threw open the whole case and yielded more discovery of irregularities in petitioner's tax declarations and account keeping. This was uncovered when the investigating examiner discovered from original copies of 1997 Daily Collection Reports company receipts of Php1.016 Billion as against declared 'Realized Gross Profit' per income tax return of only Php454,797,342.00. Some disallowed items were due to petitioner's charging of prior year's expense to current operations. The other disallowed expenses were for failure to withhold the appropriate tax on its income payment at source in accordance with Sections 58 and 81 of the NIRC.

16. Moreover, it is presumed that tax assessments are correctly and legally made. The burden of assailing the same rests on the party alleging irregularity. In the instant case, the burden is made more onerous by the fact that re-investigation has already been conducted, and more deficiency taxes were uncovered."

On September 8, 2004, petitioner filed a Reply (To Respondent's Answer dated 30 July 2004)[24].

Meanwhile, on June 15, 2004, petitioner received from respondent the FDDA dated June 14, 2004, finding petitioner liable for deficiency income tax, deficiency

[24] Docket, pp. 106 to 112.

VAT and deficiency withholding tax, inclusive of interest and surcharge, in the total amount P667,542,122.58.[25]

On July 15, 2004, petitioner filed with this Court a "Petition for Review *Ex Abundante Ad Cautelam*" docketed as CTA Case No. 7025, appealing the FDDA dated June 14, 2004.[26]

On November 17, 2004, respondent filed a "Motion for Consolidation" of CTA Case Nos. 6992 and 7025"[27], while petitioner submitted an "Opposition (To Respondent's Motion for Consolidation dated 15 November 2004)"[28]. In a Resolution[29] dated February 11, 2005, this Court ruled as follows:

> "**WHEREFORE**, considering that there is already a pending Petition for Review docketed as CTA Case No. 6992, the subsequent Petition for Review docketed as CTA Case No. 7025 is hereby **DISMISSED** and, consequently, the Motion for Consolidation is now rendered moot."

On March 7, 2005, petitioner filed a "Motion for Reconsideration (Of the Resolution dated 11 February 2005)"[30]. In a Resolution[31] dated August 16, 2005, this Court ruled on petitioner's Motion for Reconsideration as follows:

> "WHEREFORE, premises considered, the Motion for Reconsideration is **PARTIALLY GRANTED** in so far as the dismissal of CTA Case No. 7025 by the First Division of the Court. The matter is referred to the Second Division for appropriate action. However, the Motion to Consolidate the second case, CTA Case No. 7025, with the above-entitled case is hereby **DENIED**."

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[25] Exhibit "15", BIR Records, pp. 1543 to 1549; Par. 6, Statement of Admitted or Undisputed Facts, JSFSI, docket, p. 1498.
[26] Par. 1.3, Supplement (To Petition for Review), docket, p. 278.
[27] Docket, pp. 172 to 176.
[28] Posted on December 20, 2004, docket, pp. 191 to 196.
[29] Docket, pp. 199 to 203.
[30] Docket, pp. 205 to 222.
[31] Docket, pp. 226 to 228.

On October 11, 2005, respondent filed an "Omnibus Motion to Dismiss the Instant Petition for Review and to Cite Petitioner for Direct Contempt", praying for this Court to issue an order dismissing the instant Petition for Review with prejudice, and citing petitioner and counsel for direct contempt for willful violation of the rule against forum-shopping.[32] Petitioner filed an Opposition (To Respondent's Omnibus Motion to Dismiss and to Cite Petitioner for Direct Contempt)[33] on November 9, 2005.

Meanwhile, on November 22, 2005, petitioner filed a "Motion for Leave to File and to Admit Attached Supplement to the Petition for Review."[34] In the Supplement (To Petition for Review)[35], petitioner prays for the following:

> "WHEREFORE, it is respectfully prayed to this Honorable Court that:
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> 1. It should first determine whether or not Respondent has jurisdiction to issue the Final Decision dated 14 June 2004;
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> 2. After due notice and hearing, judgment be rendered setting aside and declaring *void* the Final Assessment Notice and/or the Final Decision dated 14 June 2004, both issued by the Respondent Commissioner of Internal Revenue;
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> 3. In the event that the Final Decision is declared as having been validly issued, after due hearing, that judgment be rendered declaring Petitioner as not liable to the deficiency income, VAT and expanded withholding taxes, including interests and surcharges, and that the aforementioned deficiency tax assessments be considered as cancelled and withdrawn."

In a Resolution dated January 23, 2006, this Court confirmed the order given on January 13, 2006, whereby respondent's "Omnibus Motion to Dismiss the Instant Petition for Review and to Cite Petitioner for Direct Contempt" was denied. In said

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[32] Docket, pp. 232 to 237.
[33] Docket, pp. 250 to 267.
[34] Docket, pp. 269 to 309.
[35] Docket, pp. 276 to 309.

Resolution, the Court also granted petitioner's "Motion for Leave to File and to Admit Attached Supplement to the Petition for Review." The dispositive portion of said Resolution states:

> "**WHEREFORE**, Petitioner's 'Supplement (To Petition for Review)' filed on November 22, 2005 is hereby **ADMITTED**. Respondent is hereby **ORDERED** to file an Amended Answer within fifteen (15) days from receipt of this Resolution." [36]

On March 10, 2006, respondent filed an "Answer to the Supplement to the Petition for Review."[37] In said Answer, respondent reiterated the Special and Affirmative Defenses raised in her "Answer" to the Petition for Review filed on August 4, 2004, and in addition thereto, raised the following Special and Affirmative Defenses:

> "9. Granting *arguendo* that the four waivers are defective, still the assessments were issued within the reglementary period because the request of the petitioner for the re-investigation of the case was given due course. The period spent for the re-investigation of the case, is not included in the counting of the period granted to the respondent to issue the assessments."

On March 31, 2006, petitioner filed its "Reply (To Respondent's Answer to the Supplement to the Petition for Review)"[38].

On May 11, 2006, petitioner filed a "Motion to Resolve Issue of Jurisdiction", praying that the FDDA dated June 14, 2004 be declared as null and void for having been issued by respondent without jurisdiction.[39] On June 9, 2006, respondent filed her "Comment on Petitioner's Motion to Resolve Issue of Jurisdiction."[40] On July 18,

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[36] Docket, p. 343
[37] Docket, pp. 356 to 371
[38] Docket, pp. 382 to 393
[39] Docket, pp. 420 to 431
[40] Docket, pp. 437 to 442

2006, this Court issued a Resolution[41] denying petitioner's motion. Pertinent portions of said Resolution are quoted below:

> "This Court resolves to rule in favor of the respondent.
>
> First and foremost, there is nothing in the law which specifically provides that once an appeal of the decision of the respondent is taken to this Court, the office of the respondent loses its jurisdiction to issue a final decision on the disputed assessment. In fact, even if a petition for review has already been filed with this Court, the respondent is still not precluded from issuing a final decision on the disputed assessment xxx. However, this does not necessarily mean that the final decision on the disputed assessment issued by the respondent after an appeal for his inaction has already been filed will prevail over the findings of the Court. xxx
>
> xxx the inaction of the respondent on the protest of the petitioner shall be deemed a denial for purposes only of allowing the petitioner to elevate its appeal to this Court and does not necessarily constitute the final decision of the respondent. In other words, a final decision may still yet to be issued by the respondent, subject to this Court's review."

On August 16, 2006, petitioner filed a "Motion for Reconsideration" of this Court's Resolution dated July 18, 2006.[42] In a Resolution[43] dated October 23, 2006, this Court denied petitioner's Motion for Reconsideration and ruled that the basic issues raised therein have been previously considered and passed upon by this Court in the assailed Resolution; thus, there is no cogent or valid reason to reverse or modify Resolution dated July 18, 2006.

On November 15, 2006, petitioner filed with this Court *En Banc* a Petition for Review, which was docketed as CTA EB No. 222; praying that the First Division's Resolutions dated July 18, 2006 and October 23, 2006 be reconsidered and set aside and another one be issued declaring as null and void the FDDA dated June 14, 2004

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[41] Docket, pp. 445 to 447
[42] Docket, pp. 463 to 473.
[43] Docket, pp. 479 to 481.

for having been issued by respondent without jurisdiction.[44] On January 16, 2007, respondent filed a "Comment" praying that the Petition for Review be dismissed for being *pro forma* and for lack of merit.[45] On July 3, 2007, this Court *En Banc* rendered a Decision[46] holding that respondent still has the authority to issue the FDDA despite petitioner's filing of its Petition for Review before this Court. The dispositive portion of the Court *En Banc's* decision is quoted below:

> "**WHEREFORE**, in the light of all the foregoing, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. The Resolutions dated July 18, 2006 and October 23, 2006 both promulgated by the *First Division* of this Court are hereby **AFFIRMED**."

Subsequently, petitioner filed with the Supreme Court a "Petition for Review on Certiorari" assailing the Decision dated July 3, 2007 of this Court *En Banc* in CTA EB No. 222 (CTA Case No. 6992), which was docketed as G.R. No. 178690.[47] On June 3, 2008, respondent filed a "Comment" thereto.[48] On September 8, 2008, the Supreme Court issued a Resolution[49] denying the Petition for Review, to wit:

> "Considering the allegations, issues and arguments adduced in the petition for review on certiorari and the comment thereon, the Court resolves to **DENY** the petition for failure to sufficiently show any reversible error in the assailed decision to warrant the exercise of this Court's discretionary appellate jurisdiction."

On October 30, 2008, petitioner filed a Motion for Reconsideration[50] of the Supreme Court's Resolution dated September 8, 2008, which the Supreme Court

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[44] Docket, pp. 499 to 522.
[45] Docket, pp. 757 to 758.
[46] Docket, pp. 765 to 773.
[47] Docket, pp. 802 to 824.
[48] Docket, pp. 1152 to 1155.
[49] Docket, p. 1174.
[50] Docket, pp. 1176 to 1188.

denied with finality in a Resolution[51] dated November 17, 2008. Consequently, the Supreme Court Resolution dated September 8, 2008 became final and executory on January 13, 2009.[52]

On April 20, 2009, petitioner filed an "Omnibus Motion" with attached "Amended and Supplemental Pre-trial Brief" before this Court, manifesting that on December 26, 2007, petitioner filed its application for tax amnesty under Republic Act (RA) No. 9480, or the "Tax Amnesty Program" and submitting the pertinent documents in connection with its availment of the benefits of the Tax Amnesty Program, for the consideration of this Court. Petitioner likewise prayed that an order be issued: (a) finding that, only insofar as petitioner's alleged deficiency VAT and income tax liabilities are concerned, the case is considered withdrawn, closed and terminated, subject to the provisions of RA No. 9480; and, (b) admitting the attached Amended and Supplemental Pre-Trial Brief of petitioner and setting the case for pre-trial. [53]

On April 24, 2009, petitioner presented as witness, Ms. Ma. Merlinda C. Bustamante, to prove that petitioner legally availed of the Tax Amnesty Program, paid the amnesty tax, and that it fully complied with the requirements of the law. Ms. Bustamante also identified the documents marked as Exhibits "A" to "H", inclusive of sub-markings.[54]

[51] Docket, pp. 1190 to 1191.
[52] Docket, p. 1198.
[53] Docket, pp. 1222 to 1226, 1293 to 1299.
[54] Minutes of the Hearing dated April 24, 2009, docket, p. 1300.

On April 29, 2009, petitioner filed a "Formal Offer of Evidence (of full compliance with the requirements of R.A. 9480)."[55] On May 6, 2009, respondent filed her "Comment (Re: Petitioner's Formal Offer of Evidence)."[56] In a Resolution[57] dated August 3, 2009, this Court admitted petitioner's Exhibits "A" to "H", inclusive of sub-markings; and consequently, granted petitioner's "Omnibus Motion" filed on April 20, 2009. The dispositive portion of said Resolution is quoted below:

> "**WHEREFORE**, the assessments for deficiency Income Tax and Value-Added Tax for the taxable year 1997 are hereby **CANCELLED** and **SET ASIDE** solely in view of petitioner's availment of the Tax Amnesty under R.A. 9480.
>
> As regards the assessment for deficiency withholding tax for the taxable year 1997 issued against petitioner, let this case be set for a pre-trial conference on August 14, 2009, at 9:00 a.m. in the session hall of this Court.
>
> Petitioner's Amended Pre-trial Brief is hereby **ADMITTED**.
>
> **SO ORDERED**."

During trial, the parties presented and formally offered their respective witnesses and documentary evidence insofar as the deficiency withholding tax for the taxable year ending December 31, 1997 is concerned.

The case was submitted for decision on November 18, 2011, taking into consideration petitioner's "Memorandum" filed on October 13, 2011 and the "Memorandum (For Respondent)" filed on November 8, 2011.[58]

STATEMENT OF ISSUES

The parties submitted the following issues[59] for this Court's resolution:

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[55] Docket, pp. 1302 to 1306.
[56] Docket, pp. 1308 to 1310.
[57] Docket, pp. 1391 to 1392.
[58] Docket, p. 1873.

"1. Whether the FAN was issued within the 3-year period prescribed by the Tax Code.

2. Whether PPI[60] is liable for deficiency CWT.

3. Whether PPI is liable to pay twenty five percent (25%) surcharge and twenty percent (20%) annual interest for its alleged late payment of CWT from 15 June 2004 until full payment, pursuant to Sections 248 and 249 of the Tax Code."

DISCUSSION/RULING

This Court shall resolve first the issue of whether the FAN was issued within the three-year prescriptive period prescribed by the 1977 Tax Code, as amended, as the resolution thereof will determine the necessity of addressing the other legal and factual issues stipulated in the instant case.

Section 203 of the 1977 Tax Code, as amended (Section 203 of the NIRC of 1997), provides that respondent has three (3) years to assess and collect an internal revenue tax, to wit:

> "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."

It is already settled that the three-year prescriptive period for expanded withholding tax shall commence to run from the last day for filing of the Monthly

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[59] Statement of Issues to be Tried or Resolved, JSFSI, docket, p. 1498.
[60] Petitioner.

Remittance Return of Income Taxes Withheld.[61] Thus, in determining the last day for respondent to assess petitioner of deficiency CWT for the taxable year ending December 31, 1997, we should examine the applicable provisions of the 1977 Tax Code, as amended, as well as the implementing rules and regulations issued by the BIR to ascertain the reckoning of the three-year prescriptive period. The applicable provision is Section 51(a) of the 1977 Tax Code, as amended, which was implemented by Section 1 of Revenue Regulations (RR) No. 05-85, as amended by RR No. 03-93, and further amended by RR No. 18-93[62], specifying the period for the filing of monthly return and remittance of taxes withheld.

Section 51 of the 1977 Tax Code, as amended, provides:

> "SECTION 51. *Returns and payment of taxes withheld at source.* —
>
> (a) *Quarterly returns and payment of taxes withheld.* - Taxes deducted and withheld under Section fifty-three (now 50) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which the withholding was made."

Section 1 of Revenue Regulations No. 18-93 states:

[61] *Avon Products Mfg., Inc. vs. The Commissioner of Internal Revenue*, CTA Case No. 5908, January 20, 2005; *Corporate Information Solutions, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 5919, December 1, 2003; *HPCO Agridev Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6355, July 18, 2002.

[62] Provides for the time and manner of filing withholding tax returns and remittances of creditable and final income taxes withheld by Large Taxpayers.

"SECTION 1. Section 2 of Revenue Regulations No. 5-85, as amended by Revenue Regulations No. 3-93, is hereby further amended to read as follows:

'Sec. 2. *Monthly Return and Remittance of Taxes Withheld.* — Taxes deducted and withheld on:

(i) compensation income;

(ii) income payments subject to the creditable (expanded) withholding taxes; and

(iii) income subject to final withholding taxes.

shall be remitted within ten (10) days after the end of each calendar month with the filing of appropriate return (BIR Form 1743-W). However, taxes withheld from the last compensation/income payment for the calendar year (December) shall be remitted on or before the 25th of January of the succeeding year. *Provided, further,* that taxes withheld by Large Taxpayers, as identified and notified by the Bureau of Internal Revenue pursuant to Republic Act No. 7646, as implemented by Revenue Regulations No. 12-93, shall be remitted within twenty-five (25) days after the end of each calendar month with the filing of appropriate return (BIR Form 1743-W)."

Based on the dates of filing of petitioner's Monthly Remittance Returns of Income Taxes Withheld for the taxable year ending December 31, 1997 and the remittance of the corresponding CWT to the BIR, respondent has the following dates within which to issue her assessment against petitioner for any deficiency taxes:

Month (1997)	**Date of Filing of Return and Remittance of Withholding Tax**	**Last Day to Assess**
January	February 25, 1997	February 25, 2000
February	March 25, 1997	March 24, 2000
March	April 25, 1997	April 24, 2000
April	May 25, 1997	May 24, 2000
May	June 25, 1997	June 26, 2000[63]
June	July 25, 1997	July 24, 2000
July	August 25, 1997	August 24, 2000
August	September 25, 1997	September 25, 2000[64]

[63] June 24, 2000 fell on a Saturday.
[64] September 24, 2000 fell on a Sunday.

September	October 24, 1997	October 24, 2000
October	November 25, 1997	November 24, 2000
November	December 29, 1997	December 28, 2000
December	January 26, 1998	January 25, 2001

Respondent does not dispute that the FAN and the Assessment Notices for alleged deficiency income tax, VAT and withholding tax/CWT were received by petitioner only on August 8, 2003.[65] This Court notes that the FAN and the Assessment Notices were not dated, though there are rubber stamp imprints on the copy of the FAN offered by respondent as evidence (Exhibit "14")[66], which show the following information: (a) Received, Enforcement Service, Bureau of Internal Revenue, July 31, 2003; and (b) Received, Tax Fraud Division, Bureau of Internal Revenue, August 4, 2003.

Based on the dates of filing of the Monthly Remittance Returns of Income Taxes Withheld for the taxable year ending December 31, 1997, and considering the dates that appear on the face of the FAN offered by respondent as evidence as well as the date when petitioner received its copy of the FAN and the Assessment Notices, it is clear that the FAN and the Assessment Notices were issued beyond the prescriptive period allowed under Section 203 of the 1977 Tax Code, as amended.

However, it should be pointed out that the same Section 203 of the 1977 Tax Code, as amended, provides that an assessment notice may be issued after the lapse of the three-year prescriptive period as long as the instances under Section 223 of the 1997 Tax Code, as amended (now Section 222 of the NIRC of 1997, as amended), are present. Under Section 223(b) of the 1977 Tax Code, as amended, the taxpayer

[65] Par. 1, Statement of Admitted or Undisputed Facts, JSFSI, docket, p. 1497.
[66] BIR Records, p. 915.

and the Revenue Commissioner may stipulate in writing to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon. Section 223(b) of the 1977 Tax Code, as amended, is quoted as follows:

> "SECTION 223. *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 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."

During trial, petitioner and respondent both presented and offered as evidence four (4) Waivers of Statute of Limitations, which were executed by Mr. Lorenzo L. Blanco, to wit:

Waiver of Statute of Limitations	**Petitioner's Exhibit**	**Respondent's Exhibit**
1. Dated April 18, 2000, extending the original three-year prescriptive period to assess until June 30, 2001	"A"	"5"
2. Dated July 18, 2001, extending the prescriptive period to assess until December 31, 2002	"B"	"18"
3. Dated May 13, 2002 (notarized on May 20, 2003), extending the prescriptive period to assess until September 30, 2003	"C"	"16"
4. Dated November 19, 2002, extending the prescriptive period to assess until May 30, 2003	"D"	"17"

In support of its defense of prescription, petitioner submits that the four Waivers of the Statute of Limitations executed by the parties are invalid since said waivers were not executed in accordance with Section 223(b) of the 1977 Tax Code, as amended, as well as, Revenue Memorandum Order (RMO) No. 20-90.

On the other hand, respondent alleges in her Memorandum that the Waivers of the Statute of Limitations executed by petitioner are valid and binding as they fully met the essential requirements for validity under Articles 1305, 1306 and 1315 of the Civil Code of the Philippines. Respondent also argues that if there were indeed flaws and defects in the Waivers of the Statute of Limitations as claimed by petitioner, petitioner should have invoked the same before the BIR or at the time when the case is still within the administrative level. Respondent claims that petitioner is estopped from raising the issue of prescription for the first time on appeal. Similarly, respondent states in her Answer to the Supplement to Petition for Review that on the assumption that the four waivers are defective, still the assessments were issued within the reglementary period because the request of petitioner for the reinvestigation of the case was given due course and as such, the period spent for the reinvestigation of the case should not be included in the counting of the three-year period for respondent to issue the assessments. Respondent further avers that when petitioner availed of the Tax Amnesty Program, petitioner in effect binds itself to the assessment.

Assuming that the First Waiver is valid, since it was issued only on April 18, 2000, it did not have the effect of extending the original prescriptive period to assess petitioner for deficiency CWT for the months ending January 31, 1997 and February

28, 1997. The right of the BIR to assess petitioner for deficiency CWT for the months ending January 31, 1997 and February 28, 1997 had already prescribed prior to the execution of the First Waiver on April 18, 2000 as shown below:

Month (1997)	**Date of Filing of Return and Remittance of Withholding Tax**	**Last Day to Assess**
January	February 25, 1997	February 25, 2000
February	March 25, 1997	March 24, 2000

Thus, this Court can rule outright that the FAN and Assessment Notices, in so far as they assess petitioner for deficiency withholding tax for the months ending January 31, 1997 and February 28, 1997, are void.

This Court shall now determine the validity of the four Waivers of the Statute of Limitations to determine whether they validly extended the three-year prescriptive period to assess petitioner for deficiency CWT for the months of March 1997 to December 1997.

A careful perusal of the protest letter filed by petitioner with the BIR would reveal that the issues on the validity of the Waiver as well as the prescription of the BIR's right to assess petitioner were not raised therein. Petitioner, however, explicitly raised the issue of prescription in the Petition for Review and the Supplement to the Petition for Review based on the invalidity of the four Waivers of the Statutes of Limitations. Respondent, in her Answer to the Petition for Review and her Answer to the Supplement to the Petition for Review, did not object to petitioner's allegation of prescription. In fact, in her Answers, respondent raised special and affirmative defenses to establish that the Waivers of the Statute of Limitations validly extended the three-year prescriptive period to assess. Also, a review of the Joint Stipulation of Facts and Statement of Issues would indicate that one of the issues agreed upon by the parties is whether the FAN was issued within the three-year prescriptive period to assess. With its inclusion in the Statement of Issues in the parties' Joint Stipulation of Facts and Statement of Issues, respondent evidently agreed to include the issue of prescription as part of the issues to be resolved in this case.

In addition, respondent did not object to the admissibility of the four Waivers of the Statute of Limitations when petitioner presented and offered them in evidence. Section 36 of Rule 132 of the Rules of Court on Evidence provides when objections to evidence may be made, to wit:

> "SEC. 36. *Objection.* — Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.
>
> In any case, the grounds for the objections must be specified. (36a)"

The right to object to the admissibility of evidence is a mere privilege. As such the parties may waive such right, expressly or impliedly. Evidence introduced without objection, whether or not such evidence is testimonial, documentary, real or circumstantial, becomes part of the record of the case and the parties are amenable to any favorable and unfavorable effects resulting therefrom.[67] Respondent, by his failure to timely object on the admissibility of the four Waivers of the Statute of

[67] *Commissioner of Internal Revenue vs. Bovis Lend Lease Projects Pte Ltd*, CTA EB No. 374, June 22, 2009.

Limitations, cannot now question the right of petitioner to raise issue of prescription on the ground that the Waivers are void.

Anent respondent's position that even assuming *arguendo* that the four waivers are defective, the assessments were still issued within the reglementary period because the request of petitioner for the reinvestigation of the case was given due course and the period spent for the reinvestigation of the case should not be included in the counting of the three-year period for respondent to issue the assessments. Respondent is mistaken. As admitted by respondent in her Answer[68], petitioner filed its protest on September 3, 2003 against the FAN and on the basis of said Protest, the BIR conducted a reinvestigation of the case. Clearly, when the reinvestigation was conducted, the three-year prescriptive period to issue the assessment had already lapsed. Consequently, there was no more three-year prescriptive period to assess that could have been tolled or suspended by the period during which the BIR was conducting a reinvestigation. At most, what would be suspended was the three-year prescriptive period for the BIR to collect the taxes assessed.

Respondent further contends that petitioner's availment of the Tax Amnesty Program in effect binds petitioner to the assessment pursuant to the ruling of this Court *En Banc* in *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[69], where this Court *En Banc* held:

> "Petitioner cannot question the validity of the waivers with respect to the deficiency onshore and documentary stamp taxes when it paid the deficiency taxes assessed for income tax, gross receipts tax, final withholding tax, expanded withholding tax and documentary stamp tax

[68] Docket, pp. 88 to 94.
[69] CTA EB No. 83 (CTA Case No. 6201), July 27, 2005.

all of which were covered by the same waivers if petitioner really believes that the waivers were not valid and the subject assessments were issued by the respondent out of time, then it should not have made any payments.

In one case, the Supreme Court ruled that a party is estopped from raising the issue of payment of the 25% ad valorem tax by claiming that there was no removal of pyrite from the mine site where it paid the same for the tax year. In the same way, We cannot allow petitioner to question the waivers covering the same recomputed assessed taxes and it paying the same while at the same time to assail the other assessed taxes it refused to pay."

This Court does not agree with respondent.

In the case of *Commissioner of Internal Revenue vs. Philex Mining Corporation*[70], this Court *En Banc* has already resolved the issue on whether or not a taxpayer's availment of the tax amnesty automatically means that a taxpayer admits the validity of any prior assessments or waivers. Relevant portions of the decision are quoted below:

"The Court *En Banc* quotes with approval the disquisition made by the Court in Division in the Resolution dated December 19, 2009, to wit:

Section 1 of R.A. No. 9480 provides that the tax amnesty covers all national internal revenue taxes for taxable year 2005 and prior years, with or without assessments, that have remained unpaid as of December 31, 2005. **Clearly, the availment of the said tax amnesty does not necessarily mean that a taxpayer admits the validity of any prior assessments and waivers, as argued by respondent; since the tax amnesty covers even those without any assessment.** The law does not impose such conditions, save for the taxpayer to satisfy all the qualification requirements. (*Boldfacing supplied*)

In addition, with the findings that the waivers were null and void which consequently failed to extend the period within which the CIR may assess PMC for any deficiency taxes, the assessment issued therefor was made outside of the prescribed period and is thus, void. Therefore, **PMC's availment of the tax amnesty program would fall under those without any assessments required**." (*Emphasis supplied*)

[70] CTA EB No. 578, June 28, 2010.

Based on the above-cited case, respondent erred in concluding that petitioner's availment of the Tax Amnesty Program automatically meant that petitioner has acquiesced to the validity of the FAN and the Assessment Notices.

This Court carefully scrutinized the four Waivers of the Statute of Limitations which were presented and offered in evidence by both petitioner and respondent to determine their compliance with the strict requirements laid down in RMO No. 20-90. The Court noted the following:

Requirements for a Valid Waiver	**First Waiver Exhibit "A"/ Exhibit "5"**	**Second Waiver Exhibit "B"/ Exhibit "18"**	**Third Waiver Exhibit "C"/ Exhibit 16**	**Fourth Waiver Exhibit "D"/ Exhibit 17**
1. Date of execution	April 18, 2000	July 18, 2001	May 13, 2002 (notarized on May 20, 2003)	November 19, 2002
2. Period of limitation	June 30, 2001	December 31, 2002	September 30, 2003	May 30, 2003
3. Signed and accepted by	Ms. Virginia L. Trinidad, Assistant Commissioner, Large Taxpayers Service	Ms. Virginia L. Trinidad, Assistant Commissioner, Large Taxpayers Service	Mr. Percival T. Salazar, Assistant Commissioner, Enforcement Service	Mr. Percival T. Salazar, Assistant Commissioner, Enforcement Service
4. Date of acceptance by the BIR is indicated in the waiver	Not indicated on the face of the Waiver	Not indicated on the face of the Waiver	Not indicated on the face of the Waiver	Not indicated on the face of the Waiver
5. Fact of receipt by petitioner of the accepted copy of the waiver is indicated in the original	Not indicated on the face of the Waiver	Not indicated on the face of the Waiver	Not indicated on the face of the Waiver	Not indicated on the face of the Waiver

It is incumbent upon this Court to first pass upon the validity of the First Waiver (Exhibit "A"/Exhibit "5") for if this Court finds that the First Waiver is not valid and binding between petitioner and respondent, it is no longer necessary for the Court to determine the validity of the subsequent Waivers of the Statute of Limitations (Second Waiver to Fourth Waiver[71]) as the same served no purpose. In such a case, the subsequent waivers had no binding effect as there was nothing to extend in the very first place.[72]

The BIR issued RMO No. 20-90 dated April 4, 1990 in order to guide the BIR and the taxpayers on the procedures in the execution of waivers. Pertinent portions of RMO No. 20-90 are quoted below:

> "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**:
>
> 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.

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[71] Exhibits "B", "C", and "D" and Exhibits "18", "16", and "17", docket, pp. 1606 to 1608.

[72] *Pelican, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 5997, May 16, 2003; *Starpack Philippines Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6486, April 21, 2005.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

xxx xxx xxx

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

A. In the National Office

1. ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	For tax cases involving not more than P500,000.00
2. Deputy Commissioner	For tax cases involving more than P500,000.00 but not more than P1M
3. Commissioner	For tax cases involving more than P1M

xxx xxx xxx

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**

5. **The foregoing procedures shall be strictly followed.** Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with." (*Emphasis supplied*)

Time and again, this Court has maintained its position on the matter, wherein this Court pronounced that:

> "It bears stressing that RMO 20-90 is directed to all concerned internal revenue officers. **The said RMO even provides that the procedures found therein should be strictly followed, under pain of being administratively dealt with should non-compliance result to prescription of the right to assess/collect**."[73] *(Emphasis supplied)*

The strict compliance with the requirements provided for in RMO No. 20-90 has been upheld by the Supreme Court in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[74]. The High Court in reversing the decision of the Court of Appeals promulgated on August 5, 2003, and reinstating this Court's decision promulgated on May 14, 2002, ruled that:

> "The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period of assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. . .
>
> xxx xxx xxx
>
> RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. **A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed**, xxx" (*Emphasis supplied*)

Based on the foregoing, this Court has determined with certainty that the First Waiver executed by petitioner on April 18, 2000 (Exhibit "A"/Exhibit "5") is without any binding effect on petitioner for reasons discussed below.

First, the First Waiver was not signed by the BIR Commissioner. RMO No. 20-90 specifically requires that for tax cases involving more than P1,000,000.00, the revenue officer authorized to sign a waiver is only the BIR Commissioner. As aptly

[73] *DOLE Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 5705, July 1, 2003, citing *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6108, May 14, 2002.
[74] G.R. No. 162852, December 16, 2004

pointed out by petitioner, when the First Waiver was executed on April 18, 2000, Revenue Delegation Authority Order (RDAO) No. 05-01 was not yet in effect. Thus, Ms. Virginia L. Trinidad, the Assistant Commissioner of the Large Taxpayers Service, was not authorized to sign and accept the First Waiver.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[75], the Highest Tribunal, in holding that the waiver signed by the taxpayer is not valid for, among others, the reason that the waiver was not accepted by the authorized revenue officer, ruled as follows:

> "The waiver is also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No. 20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (P1,000,000.00) and executed almost seven months before the expiration of the three-year prescription period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR.
>
> The case of *Commissioner of Internal Revenue v. Court of Appeals*, dealt with waivers that were not signed by the Commissioner but were argued to have been given implied consent by the BIR. We invalidated the subject waivers and ruled:
>
> 'Petitioner's submission is inaccurate. . . .
>
> xxx xxx xxx
>
> The Court of Appeals itself also passed upon the validity of the waivers executed by Carnation, observing thus:
>
> We cannot go along with the petitioner's theory. Section 319 of the Tax Code earlier quoted is clear and explicit that the waiver of the five-year prescriptive period must be in writing and signed by both the BIR Commissioner and the taxpayer.
>
> Here, the three waivers signed by Carnation do not bear the written consent of the BIR Commissioner as required by law.

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[75] *Supra.*

We agree with the CTA in holding 'these 'waivers' to be invalid and without any binding effect on petitioner (Carnation) for the reason that there was no consent by the respondent (Commissioner of Internal Revenue).'

xxx xxx xxx

For sure, no such written agreement concerning the said three waivers exists between the petitioner and private respondent Carnation.

xxx xxx xxx

What is more, the waivers in question reveal that they are in no wise unequivocal, and therefore necessitates for its binding effect the concurrence of the Commissioner of Internal Revenue. . . . *On this basis neither implied consent can be presumed nor can it be contended that the waiver required under Sec. 319 of the Tax Code is one which is unilateral nor can it be said that concurrence to such an agreement is a mere formality because it is the very signatures of both the Commissioner of Internal Revenue and the taxpayer which give birth to such a valid agreement.*"

Likewise, in the case of *Starpack Philippines Corporation vs. Commissioner of Internal Revenue*[76], this Court ruled that the waiver executed by petitioner and accepted by the Assistant Commissioner of Internal Revenue is not binding between petitioner and the Revenue Commissioner due to failure of the latter to accept and sign the same himself. Relevant portions of this Court's decision are quoted below:

"In the present case, the subject assessment involves a total amount of P62,527,167.91 as deficiency VAT, definitely a tax case involving more than P1,000,000.00. Notwithstanding the fact that the waiver executed on January 10, 2000 *(Exhibit 'O')* was just ten (10) days before the period to assess was about to prescribe, this Court is given no choice but to interpret the provisions of RMO No. 20-90 to the letter.

We note that the subject provisions of RMO No. 20-90 distinguish those revenue officials assigned in the National and Regional offices who are authorized to sign the waiver. By segregating the revenue officials, logic dictates that the qualification provided therein, particularly the phrase *'about to prescribe regardless of amount'*, is applicable only to the revenue officials enumerated under paragraph 'B' thereof, titled: 'In the Regional Offices'. It does not include those revenue officials enumerated under paragraph 'A' thereof, titled: 'In the National Office', which

[76] CTA Case No. 6486, April 21, 2005

> includes the Assistant Commissioner of Internal Revenue. **As a matter of fact, the authority granted to revenue officials enumerated under paragraph 'A' is actually qualified depending upon the amount involved in a particular tax case. Therefore, revenue officials in the National office could not be authorized to sign a waiver, regardless of the amount involved, by mere implication.** It is of no moment that they have a higher rank in position compared to the revenue officials in the Regional offices, as insisted upon by respondent. The said revenue memorandum could have easily provided the same if that was the intention.
>
> In adopting the interpretation above-stated and after applying the foregoing jurisprudence, **it is without a doubt that the aforesaid waiver *(Exhibit 'O')*, which was signed by the Assistant Commissioner of Internal Revenue *(Exhibit 'O-2')*, is not binding between the petitioner and the Commissioner due to failure of the latter to accept and sign the same himself.** Consequently, as there was no valid waiver *(Exhibit 'O')* executed by the petitioner before the expiration of the time prescribed by law for the assessment of the VAT, the waivers subsequently executed *(Exhibits 'P' to 'T')* after the prescribed period had no binding effect as there was nothing to extend in the first place." (*Emphasis supplied*)

In the instant case, the assessment emanated from the National Office and the amount of which exceeds P1,000,000.00. Based on the clear wordings of RMO No. 20-90, the First Waiver should have been accepted and signed by the BIR Commissioner herself. Since the First Waiver was signed only by the Assistant Commissioner of the Large Taxpayers Service, the First Waiver is not binding between petitioner and the CIR; hence, it could not extend the original three-year prescriptive period to issue the assessment. Furthermore, while RDAO No. 05-01 authorizes the Assistant Commissioner to sign and accept waivers, RDAO No. 05-01 was issued only on August 2, 2001 and took effect only after the execution of the First Waiver. In other words, at the time that petitioner issued the First Waiver, the authorized revenue officer to sign and accept the same was the CIR pursuant to RMO No. 20-90.

Second, even assuming that the Assistant Commissioner of the Large Taxpayers Service had the authority to sign and accept the Waiver, still the First Waiver is invalid for it failed to indicate the date of its acceptance by Ms. Trinidad. This requirement is necessary to determine whether the Waiver was validly accepted before the expiration of the original three-year prescriptive period.

The Supreme Court applied RMO No. 20-90 in the case of *Commissioner of Internal Revenue vs. FMF Development Corporation*[77], when it ruled that the waiver executed by the taxpayer was defective and did not validly extend the original three-year prescriptive period for the reason, among others, that the waiver did not contain the date of acceptance by the BIR Commissioner; a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period, to wit:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.
>
> An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides:
>
> 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.

[77] G.R. No. 167765, June 30, 2008

xxx xxx xxx

The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222 (b), the following procedures should be followed:

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

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, **the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

xxx xxx xxx

Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. xxx **it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.** Bear in mind that the **waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement.**" (*Emphasis supplied*)

Likewise, in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[78], the Supreme Court applied RMO No. 20-90 in holding that the waivers executed by the taxpayer were defective and did not validly extend the

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

original three-year prescriptive period on the basis, among others, that the waivers failed to indicate the date of acceptance.

Third, the fact of receipt of the First Waiver by petitioner was not indicated in the original copy of the First Waiver (Exhibit "A"/Exhibit "5"). It is to be noted that under RMO No. 20-90, the waiver must be executed in three (3) copies, the second copy of which is for the taxpayer. It is likewise required that the fact of receipt by the taxpayer of his/her file copy be indicated in the original copy. Again, respondent failed to comply with this requisite.

This Court cannot over emphasize the fact that RMO No. 20-90 is directed to all concerned internal revenue officers and it clearly requires that the procedures found therein should be strictly followed. The First Waiver, formally offered to this Court as evidence by both petitioner and respondent, does not show on its face the fact of receipt by petitioner of the duly accepted First Waiver in violation of the strict requirement imposed by RMO No. 20-90. Respondent did not formally offer any other copy of the First Waiver, which would show the fact of receipt by petitioner of its file copy. Pursuant to Section 34 of Rule 132 of the Rules of Court on Evidence, this Court shall consider no evidence which has not been formally offered.

Clearly, the First Waiver is not binding between petitioner and respondent due to its failure to strictly comply with the requirements of RMO No. 20-90. As there was no valid waiver (First Waiver[79]) executed by petitioner before the expiration of the period prescribed by law for the assessment of the deficiency withholding tax/CWT for the taxable year ending December 31, 1997, the waivers

[79] Exhibit "A" and Exhibit "5", docket, p. 1605

(Second Waiver, Third Waiver and Fourth Waiver[80]) subsequently executed after the prescribed period were likewise not valid and binding. The Second Waiver, Third Waiver and Fourth Waiver cannot be considered as "subsequent written agreement(s) made before the expiration of the period previously agreed upon" referred to in the second sentence of the earlier quoted Section 223(b) of the 1977 Tax Code, as amended, as there is no "period previously agreed" to speak of.

Finally, even assuming *arguendo* that the First Waiver is valid, it extended the three-year prescriptive period until June 30, 2001 only. The Second Waiver (Exhibit "B"/Exhibit "18") was executed on July 18, 2001 or eighteen (18) days after the expiration of the extended period indicated in the First Waiver. Hence, the Second Waiver is invalid for violating Section 223(b) of the 1977 Tax Code, as amended, 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. Consequently, as the Second Waiver was not executed by petitioner before the expiration of the period extended by the First Waiver, the waivers subsequently executed after the Second Waiver did not likewise have any binding effect as there was nothing to extend in the first place.

Accordingly, this Court holds that since the four Waivers of the Statutes of Limitations are not valid and binding, the three-year period prescribed by law to issue an assessment was not extended. Therefore, the FAN and Assessment Notices, which were received by petitioner on August 8, 2003, are void for they were issued beyond the prescriptive period provided under Section 203 of the 1977 Tax

[80] Exhibits "B", "C", and "D" and Exhibits "18", "16", and "17", docket, pp. 1606 to 1608

Code, as amended. As a consequence, the FDDA dated June 14, 2004, which sprung from the void FAN and Assessment Notices, is likewise void and should be set aside.

In view of the foregoing, this Court finds the remaining stipulated issues, more particularly, the merits of the subject assessment, no longer necessary for the disposition of this case.

WHEREFORE, premises considered, the instant Petition for Review and the Supplement (To Petition for Review) are hereby **GRANTED**. Accordingly, the Final Assessment Notice and the Assessment Notices are hereby **CANCELLED** and **WITHDRAWN** for being issued beyond the prescriptive period allowed by law. Consequently, the Final Decision on Disputed Assessment dated June 14, 2004 demanding payment of assessed deficiency withholding tax plus interest in the total amount of P15,293,391.99 for taxable year ending December 31, 1997 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, 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.

ERNESTO D. ACOSTA
Presiding Justice