Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

DOLE PHILS., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8155

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAR 2 1 2014
4:30 p.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed by petitioner-Dole Phils., Inc., seeking for the reversal of the Decision rendered by the Commissioner of Internal Revenue dated July 20, 2010, denying petitioner's protest of assessment and demanding payment in the total amount of One Hundred Forty Six Million Seven Hundred Twenty One Thousand Ten and 90/100 Pesos (₱146,721,010.90), inclusive of interest, representing alleged deficiency income and sales taxes for the taxable year 1986.

Dole Phils., Inc. ("petitioner") is a corporation organized and existing under Philippine laws with principal business address at 6750 Ayala Avenue, Makati City.[2] It is engaged in the business of manufacturing food products,[3] which include, among others, planting, growing, cultivating and harvesting pineapples and other agricultural crops and raising and breeding cattle and other kinds of animals.

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[1] Docket, pp. 1-15
[2] Paragraph 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket p. 93
[3] Exhibit "O"

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested with authority to carry out all the functions, duties and responsibilities of the Bureau of Internal Revenue (BIR) including *inter alia*, the power to decide, approve and grant claims for refund or tax credit of internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City where she may be served with summons and other legal processes.

Pursuant to a Letter of Authority (LOA) No. 0014562[4] dated October 30, 1987, respondent's revenue officers examined petitioner's books of account and other accounting records for internal revenue taxes covering taxable year 1986.[5]

To extend the prescriptive period for the assessment and/or collection of internal revenue taxes covering taxable year 1986, petitioner executed four (4) Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code.[6]

As a result of the examination respondent issued Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024[7] dated November 24, 1993 and demanded payment of deficiency income and sales taxes for taxable year 1986 in the aggregate amount of ₱146,721,010.90, inclusive of penalties and surcharges, computed as follows:

Deficiency Income Tax	₱ 50,562,398.00
Surcharges (25%)	12,640,599.50
Interest	83,219,386.80
Compromise	15,000.00
Total	**₱146,437,384.30**
Deficiency Sales Tax	₱ 93,963.40
Surcharges	23,490.85
Interest	160,172.35
Compromise	6,000.00
Total	**₱ 283,626.60**[8]

[4] Par. 13, JSFI, Summary of Admitted Facts, Docket pp. 93-98; Exhibit "P"
[5] Par. 4, JSFI, Summary of Admitted Facts, Docket p. 94
[6] Exhibit "O", "O-1", "O-2" and "O-3"
[7] Exhibit "R-1"; Par. 13, JSFI, Summary of Admitted Facts, Docket pp. 93-98
[8] Par. 5, Summary of Admitted Facts, JSFI, Docket p. 94

On January 15, 1994, petitioner filed a protest[9] to the BIR and requested withdrawal and cancellation of the deficiency income tax assessment for lack of legal and factual bases.[10] On the same day, petitioner filed a letter-application[11] to the Revenue National Approval Committee-BIR for Compromise Settlement/Abatement of Penalties, under Revenue Memorandum Order (RMO) No. 54-93, doubting the validity of the assessment issued against it. Petitioner offered to pay the amount of ₱93,963.40 representing its alleged basic sales tax due.[12]

On February 11, 1994, respondent approved[13] petitioner's application for compromise settlement but reversed itself in an Order[14] dated August 14, 1995 due to petitioner's failure to pay the compromise amount within the prescribed period.[15] Thereafter, on June 6, 2003, petitioner sought reconsideration of said order on the ground of substantial justice and reiterated its request to compromise the deficiency sales tax and pay the amount of ₱93,963.40.[16]

On October 30, 2003, the Assistant Commissioner, Collection Service denied the request and ordered petitioner to pay the deficiency sales tax amounting to ₱283,626.60 exclusive of penalties, surcharge and interest.[17]
Then on November 3, 2003, the entire case docket was forwarded to the Appellate Legal Division, Legal Service for resolution of the legal issues and for collection of said deficiency sales tax.[18]

On June 27, 2007, a Warrant of Distraint and/or Levy[19] was issued against petitioner demanding payment of ₱146,700,010.90 covering both deficiency income tax and deficiency sales tax assessments.

Meanwhile, on February 19, 2007, Republic Act (R.A.) No. 9480[20] otherwise known as "Tax Amnesty Act of 2007", was enacted granting tax amnesty for all unpaid national internal revenue taxes as of

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[9] Exhibit "S"
[10] Par. 6, Summary of Admitted Facts, JSFI, Docket p. 95
[11] Exhibit "S-1"
[12] Par. 7, Summary of Admitted Facts, JSFI, Docket p. 95
[13] Exhibit "T"
[14] Exhibit "T-1"
[15] Par. 8, Summary of Admitted Facts, JSFI, Docket p. 95
[16] Par. 9, Summary of Admitted Facts, JSFI, Docket pp. 93-98
[17] Par. 10, Summary of Admitted Facts, JSFI, Docket pp. 93-98
[18] Par. 11, Summary of Admitted Facts, JSFI, Docket pp. 95-96
[19] Par. 13, Summary of Admitted Facts, JSFI, Docket p. 96
[20] Entitled "An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years"

December 31, 2005 and prior years, with or without assessment issued therefor. To avail itself of the tax amnesty, the taxpayer shall file with the BIR a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005 and pay the applicable amnesty tax within six months from the effectivity of Act's implementing rules and regulations.[21]

On February 22, 2008, Revenue Memorandum Circular (RMC) No. 19-2008[22] was issued by the BIR, setting the deadline for the filing of the availment of Tax Amnesty on March 6, 2008 pursuant to R.A. No. 9480.

Thus, on March 6, 2008 petitioner availed itself of the tax amnesty under R.A. No. 9480 by filing with Revenue District Office (RDO) No. 122, Revenue Region No. 17 a Notice of Availment of Tax Amnesty[23] and Tax Amnesty Return (BIR Form 2116).[24] Petitioner's SALN[25] as of December 31, 2005 was also attached thereto accompanied by the Tax Amnesty Payment Form (BIR Form 0617)[26] having the amount of ₱606,115.00 as payment thereof.[27]

Nonetheless, on July 20, 2010, the CIR issued a final decision[28] denying petitioner's protest of assessment and demanded payment for deficiency income and sales taxes for taxable year 1986 in the aggregate amount of ₱146,721,010.90, plus interest that have accrued thereon until actual date of payment, within thirty (30) days from receipt thereof.[29] Thereafter, LT District Officer Amparo M. Duque wrote to petitioner on August 10, 2010, informing the latter that a decision has been issued by the CIR which constitutes as "the FINAL DECISION of this Office on the matter".[30] Petitioner received said letter on August 13, 2010.[31]

Aggrieved thereby, petitioner filed the instant Petition for Review[32] on September 13, 2010.

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[21] Section 2, R.A. No. 9480
[22] Circularizing the Full Text of "A Basic Guide on the Tax Amnesty Act of 2007" for Taxpayers Who Wish to Avail of the Tax Amnesty pursuant to Republic Act No. 9480 (Tax Amnesty Act of 2007)
[23] Exhibit "A"
[24] Exhibit "B"
[25] Exhibit "D"
[26] Exhibit "C"
[27] Exhibit "E"
[28] Par. 13, Summary of Admitted Facts, JSFI, Docket p. 96; Exhibit "U"
[29] Par. 12, Summary of Admitted Facts, JSFI, Docket p. 96
[30] Exhibit "V"
[31] Exhibit "V-1"
[32] Docket pp. 1-15

On October 29, 2010, respondent filed her Answer[33] raising the following special and affirmative defenses:

> "6. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses;
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> **PETITIONER IS LIABLE FOR DEFICEINCY INCOME AND SALES TAXES**
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> 7. As explained by respondent in her final decision on petitioner's protest against Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024, petitioner was basically assessed the deficiency income tax because it reported in its 1986 Income Tax Return (ITR) the business expense incurred in the year 1985.
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> 8. This fact was duly verified from petitioner's Notes to 1986 Financial Statements which revealed that said business expense pertains to the loss incurred in 1985, but was not accrued and charged to the 1985 income.
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> 9. Settled is the rule that a business expense may only be claimed as deduction when it is ordinary and necessary, **paid or incurred during the taxable year** in carrying on the trade or business of the taxpayer and duly supported by records or pertinent papers.
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> 10. It should be noted that the expense claimed by petitioner against its gross income pertains to different years. The said expense was actually incurred in 1985, but was only claimed by petitioner against its 1986 gross income.
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> 11. Petitioner also failed to present the necessary records or pertinent papers to substantiate the deduction claimed in its 1986 ITR.
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> 12. Consequently, petitioner's taxable income for the year 1986 was understated, thus, petitioner was held liable for deficiency income tax amounting to ₱146,437,384.30.
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> 13. Moreover, petitioner's failure to pay within the prescribed period the amount of ₱93,963.40, representing compromise settlement of deficiency sales tax for the year 1986, constrained respondent to collect the original deficiency sales tax amounting to ₱283,626.60 due from petitioner.
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> 14. In which case, petitioner is liable for both deficiency income and sales tax.

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[33] Docket pp. 57-62

UNDER R.A. 9480, PETITIONER IS NOT AUTOMATICALLY IMMMUNE FROM PAYMENT OF TAXES FOR TAXABLE YEAR 2005 AND PRIOR YEARS

15. Petitioner has yet to present and prove to the Honorable Court that it fully complied with the requirements set forth under Republic Act (RA) 9480, otherwise known as "Tax Amnesty Act of 2007" before it can claim that it is immune from payment of taxes for taxable year 2005 and prior years.

16. Under RA 9480, all immunities and privileges shall not apply where the taxpayer failed to file a Statement of Assets, Liabilities and Networth (SALN) and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of 30% or more.

17. The Honorable Supreme Court in the case of *Bibiano V. Bañas, Jr. vs. Court of Appeals*, et al. ruled that:

> A tax amnesty, much like a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty, like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority." *(Citations omitted)*

On November 3, 2010, this Court issued a Notice of Pre-Trial Conference[34] setting the case for pre-trial conference on December 3, 2010 at 1:30 in the afternoon. Respondent filed her Pre-Trial Brief[35] on November 23, 2010 while petitioner submitted its Pre-Trail Brief[36] on November 30, 2010.

Thereafter, both petitioner and respondent submitted their Joint Stipulation of Facts and Issues[37] on January 5, 2011. After finding everything in order, this Court issued a Pre-Trial Order[38] on January 28, 2011, declaring the pre-trial terminated and ordering petitioner to proceed with the initial presentation of its evidence.

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[34] Docket p. 64
[35] Docket pp. 65-73
[36] Docket pp. 74-83
[37] Docket pp. 93-98
[38] Docket pp. 109-114

After which trial ensued. On February 20, 2012, the parties filed their Additional Joint Stipulation of Facts[39] which this Court approved in its February 23, 2012 Resolution.[40]

On March 27, 2012, petitioner filed a Motion for Leave of Court (To admit attached Motion to submit case for Preliminary Determination of the Issues of Prescription and Availment of Tax Amnesty with Formal Offer of Evidence).[41] In response, respondent filed two (2) comments, the first[42] filed on May 11, 2012 which pertains to petitioner's motion and the other[43] on July 25, 2012 anent petitioner's formal offer of evidence.

In the July 20, 2012 Resolution,[44] this Court denied petitioner's motion stating that since said motion is essentially a motion for summary judgment, the court found genuine issues of fact that may only be settled through the conduct of a full blown trial on the merits.

On August 23, 2012, this Court issued another Resolution admitting petitioner's Exhibits "A" to "FF", inclusive of sub-markings, and ordering respondent to proceed with her presentation of evidence.

On June 28, 2013, respondent filed her Formal Offer of Evidence,[45] offering Exhibits "1" to "11-a", inclusive of sub-markings. Petitioner filed its Comment to Respondent's Formal Offer of Evidence[46] on July 12, 2013. Accordingly, this Court, in the July 29, 2013 resolution[47] admitted all exhibits formally offered by respondent and gave both parties a period of thirty (30) days upon receipt thereof within which to submit their respective memorandum.

In compliance, petitioner submitted its Memorandum[48] on September 30, 2013, while respondent submitted her Memorandum[49]

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[39] Docket pp. 220-221
[40] Docket p. 223
[41] Docket pp. 224-226
[42] Comment [Re: Motion for Leave of Court (To admit attached Motion to submit case for Preliminary Determination of the Issues of Prescription and Availment of Tax Amnesty with Formal Offer of Evidence) and Comment (Re: Manifestation and Motion to Admit Hard Copies of Original) Exhibits], Docket pp. 346-369
[43] Comment (Re: Petitioner's Formal Offer of Evidence), Docket pp. 389-392
[44] Docket pp. 373-388
[45] Docket pp. 469-473
[46] Docket pp. 474-480
[47] Docket pp. 482-483
[48] Docket pp. 499-514
[49] Docket pp. 515-532

on October 29, 2013. Petitioner filed a Reply-Memorandum[50] on November 11, 2013.

Consequently, this Court, in the November 12, 2013 Resolution,[51] deemed the case submitted for decision.

The issues[52] stipulated by the parties for this Court's resolution are as follow:

1. Whether petitioner is liable for deficiency income and sales taxes for year 1986 amounting to ₱146,721,010.90;

2. Whether petitioner complied with all the requirements to avail itself of tax amnesty under R.A. No. 9480;

3. Whether petitioner is among the entities disqualified to avail of tax amnesty under R.A. No. 9480;

4. Whether petitioner is immune from payment of deficiency income and sales taxes for year 1986 amounting to ₱146,721,010.90 pursuant to R.A. No. 9480; and

5. Whether Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024 dated November 24, 1993 were issued against petitioner within the period prescribed by law.

The foregoing issues boil down to one major issue, *viz*, "Whether or not petitioner is liable to pay the aggregate amount of ₱146,721,010.90, inclusive of interest, representing deficiency income and sales taxes for taxable year 1986". With that, this court deems it best to first discuss the propriety of the assessment issued against petitioner.

Petitioner maintains that the three (3) year period mandated by law within which respondent could validly assess petitioner for deficiency income and sales taxes had already prescribed. The reason being is that the waivers of the defense of prescription it executed with

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[50] Docket pp. 533-542
[51] Docket p. 543
[52] Summary of Issues, JSFI, Docket pp. 96-97

respondent are invalid due to certain defects, specifically the lack of signature and date of acceptance by respondent or her duly authorized representatives.

On the other hand, respondent believes otherwise. She posits that since execution of the waivers are beneficial to taxpayers for it provides enough time to gather voluminous documents for the conduct of audit by respondent, it is quite unfair that in cases where an adverse FAN is issued against said taxpayer the very same waiver utilized for its advantage will now be used to question the validity of said waivers. Respondent further alleges that petitioner's failure to challenge the legality of the waivers in its administrative protest operates as an estoppel on its part to challenge the same, and by its act of applying for compromise for its deficiency sales tax under RMO 54-93 is tantamount to acknowledging the validity of respondent's assessments.

After a careful and thorough evaluation, this Court finds for the petitioner.

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires that respondent must make an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond the three-year prescriptive period shall not be valid save only in certain cases under Section 222 of the NIRC of 1997, as amended, to wit:

> "**SEC. 203.** ***Period of Limitation upon Assessment and Collection.*** - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
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> x x x x x x x x x."
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> "**SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*** -
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding

in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(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.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

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

(e) *Provided, however*, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." (Underscoring Ours)

As can be gleaned above, the regular three-year prescriptive period can be extended. One of which is upon a written agreement between the tax authorities and taxpayer through the execution of a waiver of defense of prescription.

In line with this, RMO No. 20-90[53] dated April 4, 1990 as amended by Revenue Delegation Authority Order ("RDAO") No. 05-01[54] dated August 2, 2001, was issued which provided the procedures that should be followed for the proper execution of the waiver. The relevant provisions of RMO No. 20-90 read thus:

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

[54] Entitled "Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription under the Statute of Limitations"

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 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. x x x x x x x x x

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.

However, since RDAO No. 05-01 took effect only on August 2, 2001 and the waivers of the defense of prescription in the instant case were executed on August 30, 1989,[55] August 21, 1990,[56] June 6, 1991,[57] and February 17, 1993[58], respectively, said RDAO is not yet applicable. Thus, in accordance with the clarification made by the CIR, Kim S. Jacinto-Henares, in RMC No. 29-2012[59] dated June 29, 2012, the waiver form to be used shall be what is provided under RMO No. 20-90 and not RDAO No. 05-01.

In the instant case, the following were noted in the waivers executed by petitioner, to wit:

> (1) There is a deviation from the form of the waiver prescribed under RMO No. 20-90. Sec. 1 of said RMO provides as follows:
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> > "1. The waiver must be in the form identified as Annex 'A' hereof. This form may be reproduced by the Office concerned <u>but there should be no deviation from such forum</u>". (Underscoring supplied)
>
> The waivers did not state the amount of assessed taxes as required under the prescribed form.
>
> (2) The waivers failed to comply with the requirement that the CIR or duly authorized revenue officer shall sign the waiver to indicate his/her agreement and acceptance of the waiver and the date of such acceptance.

Clearly, the waivers executed by petitioner were defective and, therefore, no valid agreement between petitioner and respondent can be construed to have taken place. A 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.[60]

A perusal of the August 30, 1989, August 21, 1990, June 6, 1991, and February 17, 1993 waivers show that only the August 30, 1989 waiver is deemed acceptable because at that time strict compliance with

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[55] Exhibit "Q"
[56] Exhibit "Q-1"
[57] Exhibit "Q-2"
[58] Exhibit "Q-3"
[59] Entitled "Waiver of the Defense of Prescription under the Statute of Limitations"
[60] Supra, citing CIR vs. CA, G.R. No. 115712, February 25, 1999

the form and execution of waivers are not yet mandatory. It was only on April 4, 1990 when RMO 20-90 was issued that strict compliance with the prescribed form of waiver is required. Nonetheless, the subsequent August 21, 1990, June 6, 1991, and February 17, 1993 waivers are invalid for failing to comply with the form and procedures laid down in the said RMO.

Based on the August 30, 1989 waiver, respondent has until September 30, 1990 within which to assess petitioner. However, it was only on November 24, 1993 when respondent issued Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024[61] to petitioner. In other words, respondent's assessments are fifty-five (55) days overdue.

As pronounced in the case of *Commissioner of Internal Revenue vs. FMF Development Corporation,*[62] the Supreme Court held that:

> "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. <u>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.</u>" (Underscoring Ours)

With regard to respondent's claim of estoppel against petitioner, the Supreme Court discussed that the doctrine of estoppel is something which should not be used to accomplish a wrong or secure an undue advantage. It held in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[63] that

> "The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. <u>It should be resorted to solely as a means of preventing injustice and</u>

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[61] Exhibit "R-1"; Pars. 5 and 13, Summary of Admitted Facts, JSFI, Docket pp. 94 and 96
[62] G.R. No. 167765, June 30, 2008
[63] G.R. No. 178087, May 5, 2010

> should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.
>
> Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed." *(Citations omitted and Underscoring Ours)*

The mere act of applying for compromise does not necessarily equate to abandonment of any claim for validity of the assessments and waivers. It is the act of immediately paying the tax assessment covered by the waivers of the statute of limitations that renders the taxpayer estopped from questioning the validity of said waivers.[64] As correctly pointed out by petitioner, it has not paid any portion of the assessed taxes[65] and it did not receive any benefit from its offer of compromise to warrant estoppel on its part since the approval thereof was subsequently withdrawn by respondent.

Hence, due to the defect in the August 21, 1990, June 6, 1991, and February 17, 1993 waivers, the period to assess the tax was not further extended. Consequently, the Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024 dated November 24, 1993 and Final Decision dated July 20, 2010 bear no effect since it was issued beyond the three-year prescriptive period provided for by law.

Having thus concluded, this Court finds it unnecessary to determine the merit of the other issues raised in the petition in view of the finding that respondent's right to assess petitioner for deficiency income and sales taxes for the taxable year 1986 has already prescribed.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the decision rendered by the Commissioner of Internal Revenue dated July 20, 2010 is **REVERSED**

[64] Rizal Commercial Banking Corporation vs. CIR, G.R. No.170257, September 7, 2011
[65] Exhibit "Z", Q&A nos. 33-37, p.7

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

and the Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024 dated November 24, 1993 demanding payment in the total amount of One Hundred Forty Six Million Seven Hundred Twenty One Thousand Ten and 90/100 Pesos (₱146,721,010.90), inclusive of interest, representing alleged deficiency income and sales taxes for the taxable year 1986 are hereby **CANCELLED** and **WITHDRAWN** due to prescription.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division