REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BOVIS LEND LEASE PROJECTS PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6825

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
AUG 23 2007; 1:00 PM

x - x

DECISION

BAUTISTA, J.:

This is a Petition for Review praying for the cancellation and withdrawal of the deficiency income and final withholding tax assessments issued by respondent against petitioner for the calendar year ended December 31, 1997 in the total amounts of **THIRTY THREE MILLION SEVEN HUNDRED FIFTEEN THOUSAND TWO HUNDRED SIXTY NINE AND 16/100 PESOS (P33,715,269.16)** and **THIRTY MILLION ONE HUNDRED EIGHT THOUSAND FOUR HUNDRED NINETY ONE AND 08/100 PESOS (P30,108,491.08)** respectively.

Petitioner Bovis Lend Lease Projects Pte. Ltd., formerly known as "Bovis Asia Pacific Pte. Ltd.", is a resident foreign corporation licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines, particularly, to engage in contracting for professional project and construction management services, under SEC Registration No. AF095-00101 issued on August 22, 1995.[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the National Internal Revenue Code and related statutes, including, among others, the power to cancel disputed assessments; with office address at BIR National Office Building, Diliman, Quezon City.

The antecedent facts of the case are as follows:

On February 5, 2003, petitioner received respondent's Formal Assessment Notice with Assessment Notices Nos. IT-138389-97-03-250 for deficiency income taxes in the amount of P33,715,269.16, and WF-138389-97-03-250 for deficiency withholding taxes in the amount of P30,108,491.08, all dated January 31, 2003 and covering the calendar year ended December 31, 1997.[2]

The alleged tax deficiencies of petitioner are as follows:

A. Deficiency Income Tax

Net Income per return		12,277,203.00
Add: Adjustments per investigation		
Overclaimed Sal and wages	6,174,433.86	
Management Fees	42,575,680.00	48,750,113.86
Net Taxable Income Per Investigation		61,027,316.86
Tax due thereon (35%)		21,359,560.90
Less: Tax Due per return		4,297,021.00
Deficiency Income Tax		17,062,539.90
Add: Interest from 4-16-98 to 3-3-03		16,652,729.26
Total Amount Due		**33,715,269.16**

B. Deficiency Final withholding Tax

Management Fees to NRFC	P42,575,680.00
Tax Rate	35%
Deficiency Final WT	14,901,488.00
Add: Interest from 1-26-98 to 3-3-03	15,207,003.08
Total Amount Due	**30,108,491.08**

[1] Paragraph 1, Amended Petition for Review
[2] Paragraph 1.3, Joint Stipulation of Facts and Simplification of Issues, Records, page 92

On March 7, 2003, petitioner filed its formal protest contesting each item of deficiency income and withholding tax assessments and requested its cancellation and withdrawal. Thereafter, on May 6, 2003, petitioner filed its supplemental protest with additional documents in support of its protest letter in accordance with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent having failed to act on petitioner's protest-letter within 180-days from the date of submission of its supporting documents, petitioner then filed this present Petition for Review on December 2, 2003. It was stipulated by the parties that the Petition for Review was timely filed,[3] in accordance with Section 228 of the NIRC of 1997, as amended.

On February 19, 2004, respondent filed his Answer, raising the following as his Special and Affirmative Defenses:

> "6. The assessments in question were made and issued in accordance with law, rules, and regulations.
>
> 7. It was disclosed that management fees paid to Head Office in the amount of P42,575,680.00 was not subjected to withholding tax, hence, was disallowed and added back to petitioner's gross income pursuant to Section 29(J) of the National Internal Revenue Code (NIRC), as amended.
>
> 8. It was discovered that petitioner has an over claimed salaries and wages amounting to P6,174,433.86 which were disallowed for lack of documentary evidence pursuant to Section 29 of the NIRC, as amended.
>
> 9. The petitioner was assessed of deficiency final withholding tax because its management income payment to Head Office involving the amount of P42,575,680.00 which represents 58% of petitioner's total expenses claimed was not subjected to 35% final withholding tax under Section 25 of the NIRC.
>
> 10. All presumptions are in favor of the correctness of the tax assessment (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)."

Before this case could be submitted for decision, petitioner filed a "Motion for Leave of Court to File and Admit Attached Amended Petition for Review (To Conform to Evidence)"

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[3] Paragraph 1.8, Joint Stipulation of Facts and Simplification of Issues, Records, page 92

on August 15, 2006. Petitioner additionally argued that respondent's right to assess had already prescribed, pursuant to Section 203 of the NIRC of 1997, as amended. Petitioner alleged that the subject waivers executed on January 4, 2001, May 18, 2001 and October 19, 2001, were void for their failure to comply with the provisions of law. Consequently, on September 8, 2006, this Court, in open court, granted petitioner's motion which effectively admitted the attached Amended Petition for Review.

On January 9, 2007, respondent filed his Amended Answer, basically arguing that the Court should not have allowed the Amended Petition for Review because amendment of pleading during the course of trial to raise a new issue when the party had the opportunity to raise the issue at an earlier stage or when it will result in a change of cause of action, defense or theory of the case is improper and violates the principle of justice and fair play. Likewise, amendment to conform to evidence under Section 5, Rule 10 of the Rules of Civil Procedure is appropriate only if the trial of the issues that were not alleged in the pleadings is with the express or implied consent of the parties.

Thereafter, upon the lapse of the period within which the parties were ordered to submit their Memoranda and their failure to file the same, the case was considered submitted for decision on May 11, 2007.

The parties jointly agreed to the following issues[4] for the consideration of the Court, to wit:

"2.1 Whether or not the disallowance of petitioner's management fees payment to its Head Office, a non-resident foreign corporation, in the amount of PHP 42,575,680.00 is proper and legal.

2.2 Whether or not petitioner salaries and wages expense amounting to PHP 6,174,433.86 were supported by the documentary evidence.

2.3 Whether or not petitioner is liable for deficiency income tax and final withholding tax in the respective amounts of PHP 33,715,269.16 and PHP 30,108,491.08 for taxable year 1997."

[4] Joint Stipulation of Facts and Simplification of Issues, Records, pages 93-94

During the course of the trial, and before the case was submitted for decision, this Court admitted petitioner's Amended Petition for Review to conform to evidence wherein petitioner's arguments were modified so as to include the issue of prescription under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Petitioner advanced the following arguments on the issue of prescription of respondent's right to make the above-mentioned assessments:

> *"Although petitioner failed to raise the issue of prescription in its Petition for Review, settled is the rule that prescription can be raised at any stage of the proceedings, even on appeal. (MS & E SHIPPING INC.., represented by DISPLACED INC. vs. COMMISSIONER OF CUSTOMS, CTA CASE NO. 4480, September 30, 1994; Javelosa v. Court of Appeals, 333 Phil 331, 337 (1996); Pasagui v. Villanueva, No. L-21998, 10 November 1975, 68 SCRA 18, 20).*
>
> xxx xxx xxx
>
> Although in the instant case this Honorable Court may *motu proprio* cancel or withdraw the assessments made by Respondent on the ground of prescription, Petitioner nonetheless, raised the issue of prescription during its presentation of evidence during the trial.
>
> xxx xxx xxx
>
> The filing of the above Motion and Amended Petition to Conform to Evidence is allowed under Section 5, Rule 10 of the Revised Rules of Court, which provides:
>
>> ***Section 5. Amendment to conform to or authorize the presentation of evidence. – When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they have been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues.*** *If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The Court may grant a continuance to enable the amendment to be made. (Emphasis and underscoring supplied)*
>
> xxx xxx xxx

During the hearing of this case on July 19, 2005, petitioner thru counsel, presented its Finance Manager, Mila Rivera, to identify and testify on the three (3) *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* executed by and between the Respondent's Bureau and Petitioner. In the said hearing, Ms. Rivera pointed out that at the time Respondent assessed petitioner, its right to assess had already prescribed. xxx" [5]

In this case, as correctly pointed out by petitioner, although the issue of prescription was not raised earlier by petitioner, the same can still be considered by the Court pursuant to Section 5, Rule 10 of the Revised Rules on Civil Procedure, to quote:

"SEC. 5. *Amendment to conform to or authorize presentation of evidence.* — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made."

The Court notes that respondent failed to object[6] to the admissibility of the Waivers of Statute of Limitations[7] offered by petitioner. Respondent's failure to make a timely objection to the introduction of the testimonial and documentary evidence tending to prove that respondent's right to assess the 1997 tax liabilities of petitioner had already prescribed, constitutes an implied consent on the part of respondent to include the issue of prescription in the trial of the case. Hence, the Court can consider the issue in accordance with the aforequoted Section of the Revised Rules on Civil Procedure[8].

At this point, in order for the Court to properly resolve the issue of prescription of the right of respondent to assess petitioner, the issue of whether or not the Waiver of the

[5] Motion for Leave of Court to File and Admit Attached Amended Petition for Review (to Conform to Evidence, pages 165-178
[6] Resolution dated November 24, 2005, Rollo, pp 145-146
[7] Exhibit "SS".
[8] MWSS vs. CA, 143 SCRA 623 [1986]; Pacific Banking Corporation vs. Hon. Rafael T. Mendoza and J.C. Antonio C. Leviste, G.R. No. L-69158, December 29, 1988

Statute of Limitations dated October 19, 2001, and signed by Revenue District Officer Rosemarie Ramos-Ragasa is valid, must also be thoroughly discussed.

Records show that petitioner filed its 1997 Annual Corporate Income Tax Return on December 1, 1998[9]. Pursuant to Section 203 of the NIRC of 1997, as amended, respondent has until November 30, 2001 (the year 2000 being a leap year) within which to assess petitioner of its 1997 income tax liabilities. Records likewise indicate that the Formal Assessment Notices were all dated January 31, 2003, thus, even at first glance, were apparently issued beyond the prescriptive period. Under the same Section 203, it is provided that an assessment notice issued after the lapse of the three (3)-year prescriptive period is no longer valid and effective, except for certain exceptions, one of which is Section 222(b) of the same Code, which provides:

> "Section 222. *Exceptions as to the Period of Limitation of Assessment and Collection of Taxes.* – 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."

In this regard, it becomes necessary for this Court to determine the validity of the Waivers of the Statute of Limitations since the validity of the assessments depends upon the validity of the said waivers.

Petitioner submits that the Waiver of Statute of Limitations, dated October 19, 2001 signed by Rosemarie Ramos-Ragasa[10], is not valid for its failure to comply with the requirements of a valid waiver. In this regard, there being no valid waiver, the subject Assessment Notices issued against petitioner are void for having been issued beyond the 3-year prescriptive period.

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[9] Exhibit "V" and "V-1"
[10] Exhibit "SS"

This Court agrees.

For purposes of clarity, hereunder is a reproduction of the subject waiver:

WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE[11]

I, Ma. Milagros T. Rivera, representing **BOVIS ASIA PACIFIC PTE LTD**, in connection with the investigation of its internal revenue tax liabilities for the year 1997 do hereby waive the defense of prescription under the statute of limitations prescribed in section 203, 223 and other related provisions of the National Internal Revenue Code.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully verify whatever tax or taxes that may be found due from **BOVIS ASIA PACIFIC PTE LTD**, of said year. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admits in advance the correctness of any assessment or assessments which may be made for the subject taxable year nor waives the right to use any of the legal remedies accorded by law to contest assessment.

Executed this October 19, 2001 in Taguig, Metro Manila.

BOVIS ASIA PACIFIC PTE. LTD,

By:

(Signed)

____

Taxpayer

Agreed and Accepted:

(Signed)
ROSEMARIE RAMOS-RAGASA
Revenue District Officer

SUBSCRIBED AND SWORN to before me this 17th day of __ (illegible) 2002 in Taguig, Metro Manila.

GEORGE A. ELIAS
Notary Public
Until December 31, 2003
PTR No. 3882572
01-03-02 Taguig, MM

[11] supra

Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990 prescribes the procedures to be followed in the execution of a valid Waiver of the Statute of Limitations, as follows:

> "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 of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 3. The following revenue officials are authorized to sign the waiver.
>
> A. <u>In the National Office</u>

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

B. In the Regional Offices

1. The Revenue District Officer **with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount**.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

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*)

In other words, the Waiver must be in the following tenor:

WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE[12]

____ in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of ____________________ as ______________ for the years __________, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after re-investigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said

[12] Annex "A", Revenue Memorandum Order No. 20-90, April 4, 1990

Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after ___________, 19___.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this ________ day of ___________ 19 ___, in Quezon City, Philippines.

____
(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date _________________

A perusal, however, of the subject Waiver of the Statute of Limitations dated October 19, 2001, reveals the following defects:

1. The subject Waiver was not signed by the Commissioner of Internal Revenue or by an authorized representative. It was signed by a Revenue District Officer and not by the Commissioner as required by RMO 20-90.
2. The date of acceptance by the Revenue District Officer Rosemarie Ramos-Ragasa was not indicated in the subject Waiver. By failing to indicate in the Waiver the date of acceptance, it cannot be determined with certainty if it was actually accepted before the expiration of the three (3)-year assessment period.

3. It did not specify the kind of tax and the amount of the tax due. On the prescribed form of a Waiver under RMO No. 20-90, it is required that the kind of tax and the amount of the tax due must be indicated. RMO No. 20-90 provides that there should be no deviation from the prescribed form.

4. It likewise failed to indicate the date extending respondent's right to assess petitioner for deficiency internal revenue taxes for the calendar year ended December 31, 1997.

Under these circumstances, acceptance of the Waiver should have been made by the respondent Commissioner of Internal Revenue himself pursuant to Section 3(A)(3) of RMO No. 20-90, in view of the fact that the assessments involved amounted to more than One Million Pesos. A Revenue District Officer is authorized to sign only if the period to assess is about to prescribe.

In the case of **Philippine Journalists, Inc., vs. Commissioner of Internal Revenue**[13], the Supreme Court discussed the nature and laid down the requisites of a valid Waiver of the Statute of Limitations. Aside from stating that RMO No. 20-90 must be strictly followed, the Supreme Court ruled that:

> "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. **It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain**. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. RMO No. 20-90 explains the rationale of a waiver:
>
> ... 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**

[13] G.R. No. 162852, December 16, 2004

assessment/collection of the tax in addition to the ordinary prescriptive period. (Emphasis supplied)

As found by the CTA, the Waiver of Statute of Limitations, signed by petitioner's comptroller on September 22, 1997 is not valid and binding because it does not conform with the provisions of RMO No. 20-90. It did not specify a definite agreed date between the BIR and petitioner, within which the former may assess and collect revenue taxes. Thus, petitioner's waiver became unlimited in time, violating Section 222(b) of the NIRC.

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." (*Emphasis supplied*)

The **date of such acceptance** by the Revenue Bureau should likewise be indicated. Both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription. The date of acceptance is important because it determines whether or not the acceptance was made within the prescriptive period. If the acceptance was made after the prescriptive period, the same is ineffectual since there is no more period to extend. In such a case, respondent's right to assess the petitioner had lapsed. This, likewise, finds corroboration in the same case of **Philippine Journalist, Inc.**[14], thus:

"The other defect noted in this case is the date of acceptance which makes it difficult to fix with certainty if the waiver was actually agreed before the expiration of the three-year prescriptive period. The Court of Appeals held that the date of the execution of the waiver on September 22, 1997 could reasonably be understood as the same date of acceptance by the BIR. Petitioner points out however that Revenue District Officer Sarmiento could not have accepted the waiver yet because she was not the Revenue District Officer of RDO No. 33 on such date. Ms. Sarmiento's transfer and assignment to RDO No. 33 was only signed by the BIR Commissioner on January 16, 1998 as shown by the Revenue Travel Assignment Order No. 14-98. The Court of Tax Appeals noted in its decision that it is unlikely as well that Ms. Sarmiento made the acceptance on January 16, 1998 because

[14] Supra

"Revenue Officials normally have to conduct first an inventory of their pending papers and property responsibilities."

The subject waiver similarly failed to indicate the kind and amount of tax due, which is a clear violation of RMO No. 20-90. This Court had the opportunity to discuss the importance of this requirement in the case of **Dole Philippines, Inc. vs. Commissioner of Internal Revenue**[15], thus:

> "xxx. The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner **to pinpoint which among the proposed tax assessments may subsequently be issued without the petitioner invoking the defense of prescription** (*Pfizer, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003*). If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of (*Solid Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999*). It should be emphasized that RMO No. 20-90 requires specific information. Hence, to substitute the same with general statements is a departure from RMO No. 20-90." (*Emphasis supplied*)

Moreover, the subject Waiver failed to indicate the date of extension of the period to assess. The purpose of a Waiver is to afford the Commissioner or his duly authorized representative ample time to verify whatever tax or taxes which may be found due from petitioner. It, however, does not give the Commissioner or his duly authorized representative an indefinite period of time within which to examine petitioner's alleged deficiency taxes. It is emphasized that the prescriptive period or statute of limitations benefit both the government and the taxpayer. The government is benefited because tax officers would be obliged to act properly and promptly in making assessments. On the other hand, the taxpayer is benefited because after the lapse of the period of prescription, he would have the feeling of security against unscrupulous tax agents who would find an excuse to inspect his books to take advantage of every opportunity to abuse law-abiding taxpayers. Without such legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by

[15] CTA Case No. 5705, July 1, 2003

unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the positive purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law.

Inasmuch as the assailed Waiver of the Statute of Limitations is invalid because of the foregoing defects, consequently, the three-year prescriptive period provided in Section 203 of the NIRC of 1997 was not suspended. Effectively, the subject Assessment Notices all dated and issued on January 31, 2003 are void for having been issued beyond the prescriptive period allowed by law.

In view of the foregoing, this Court deems it no longer necessary to resolve the factual issues raised by the parties.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Assessment Notices issued by respondent against petitioner for deficiency income and final withholding taxes for the calendar year ended December 31, 1997 in the amounts of P33,715,269.16 and P30,108,491.08, respectively, are hereby **CANCELLED** and **DISMISSED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division