REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB NO. 887 (C.T.A. Case No. 7936)
	Present:
- versus -	DEL ROSARIO, PJ CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, JJ.
EAST ASIA POWER RESOURCES CORPORATION, Respondent.	Promulgated: JUN 19 2013 AAApolinario 8:00 a.m.

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DECISION

Fabon-Victorino, J.:

This suit involves a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) that seeks to reverse and set aside the Decision[2] dated February 6, 2012 and the Resolution[3] dated March 26, 2012 of the Court in Division cancelling assessment for deficiency income tax of Php 4,579,399.76 and deficiency value added tax (VAT) of Php 1,468,821.78 for taxable year 2004 she issued against respondent East Asia Power Resources Corporation.

[1] *En Banc* docket, pp. 5-19.
[2] *Id.*, pp. 22-40.
[3] *Id.*, pp. 41-48.

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), authorized to collect national internal revenue taxes with office located at BIR National Office Building, Diliman, Quezon City.

Respondent East Asia Power Resources Corporation is a duly organized and existing domestic corporation with principal place of business at the Ground Floor PFDA Building, Navotas Fish Port Complex, Navotas City.

It appears that on April 15, 2005, respondent's clients, East Asia Diesel Power Corporation (EADPC) and Duracom Mobile Power Corporation (DMPC), filed with the BIR Certificates of Creditable Tax Withheld at Source (CCTW) which they issued to respondent for the first quarter of 2004. In the CCTW for first quarter of 2004 submitted by EADPC, the total amount of tax withheld appears as Php1,204,895.82 with income payments for the first, second and third months in the amounts of Php2,677,546.30 Php5,355,092.60 and Php2,677,546.20, respectively.

In the CCTW for the first quarter of 2004 issued by DMPC to respondent, the tax withheld was Php2,409,791.61 and the income payments for the first, second and third months amount to Php5,355,092.50, Php10,710,185.10 and Php5,355,092.33, respectively.

On April 29, 2005, EADPC and DMPC filed with the BIR amended CCTWs to rectify the erroneous income payments they indicated in respondent's CCTWs for the second month of the first quarter of 2004 with notation: "THIS SUPERSEDES PREVIOUS CERTIFICATE ISSUED". Respondent's CCTW filed by EADPC was corrected from Php5,355,092.60 to Php2,677,546.30; while the CCTW filed by DMPC was corrected from Php10,710,185.10 to Php5,355,092.60.

On even date, respondent filed with the BIR Revenue District Office (RDO) No. 43-Pasig City its income tax return for calendar year 2004 indicating therein a total receipts of Php96,391,667.00 and a total tax overpayment of Php34,273,121.00.

On November 23, 2005, respondent received Letter of Authority (LOA) No. 00009792 dated November 10, 2005 issued by BIR Revenue Region No. 7, RDO No. 43, authorizing the examination of its books of accounts covering calendar year 2004. Together with the LOA is a letter request dated November 16, 2005, for respondent's books of accounts, financial statements, other related and supporting accounting records and documents.

Despite compliance, respondent, on July 3, 2007, received from the same office a Revalidation Notice dated May 7, 2007 informing it that LOA No. 00009792 dated November 10, 2005 has been revalidated given that the "investigation is still on-going" without indicating a specified date for the purpose.

On January 18, 2008, respondent, through its Group Controller, Jaime B. Robles, Jr., executed and submitted a Waiver of the Defense of Prescription to the BIR RDO No. 43-Pasig City. The Waiver however was not signed by either petitioner or any of her deputies to indicate acceptance or approval of the same.

On October 30, 2008, respondent received from petitioner a Preliminary Assessment Notice (PAN) dated October 21, 2008, indicating its tax deficiencies for calendar year 2004.

In a letter dated November 13, 2008 filed on even date, respondent disputed the tax deficiencies alleged in PAN providing respondent with its own computation of the taxes due for calendar year 2004 and supporting Sales Invoices.

On November 21, 2008, respondent received Final Letter of Demand (FLD) No. F43-004 dated November 17, 2008 with attached Assessment Notices for the payment of the tax deficiencies, inclusive of interest, as follows:

TAX TYPE	AMOUNT	PERIOD
Income Tax	P4,579,399.76	2004
Value-added Tax	P1,468,821.78	2004

On November 26, 2008, respondent filed a formal protest against the assessments and prayed for a reconsideration of respondent's findings.

On June 24, 2009, respondent elevated its case with the Court in Division citing petitioner's inaction on its protest.

On August 17, 2009, petitioner filed her Answer contending among others that the assailed assessments for calendar year 2004 issued against respondent were in accordance with law and regulations; that an examination of respondent's documents revealed unreported taxable receipts in the amount of Php 8,032,635.00 and unaccounted source of cash amounting to Php 221,753.54 leading to an inference that part of petitioner's income have not been declared; that per her computation, respondent's receipt in the amount of Php3,774.678 was not subjected to VAT; and that tax assessments are presumed correct and made by tax examiners in good faith and that respondent has the burden to prove the contrary.

On February 6, 2012, the Court in Division rendered the assailed Decision in favor of respondent, in this wise:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand No. F43-004 dated November 17, 2008 and the attached Assessment Notices demanding payment of assessed deficiency income tax in the amount of P4,579,399.76 and deficiency VAT of P1,468,821.78 for the year 2004 are hereby **CANCELLED**.
>
> **SO ORDERED.**

In its decision, the Court in Division gave premium to Revenue Memorandum Circular (RMC) No. 06-2005 dated February 2, 2005, on strict compliance with the provisions of Revenue Memorandum Order (RMO) No. 20-90 for a waiver of the statute of limitations executed pursuant to Section 222(b) of the National Internal Revenue Code (NIRC) of 1997 to be valid and binding. The Court in Division ratiocinated that since the two versions of Waivers presented by the parties failed to comply strictly with the requirements imposed under RMO No. 20-90, neither of them was valid and binding as to prevent the running to the three-year prescriptive period to issue an assessment. Hence, the FLD dated November 17, 2008 with attached Assessment Notices received by respondent on November 21, 2008 is void having been issued beyond the three-year period provided under Section 203 of the NIRC, as amended.

In a Resolution dated March 26, 2012, respondent's Motion for Reconsideration was denied.

Hence, this instant *Petition for Review* before the Court *En Banc.*

The Issues

In challenging the Decision, petitioner raises the following issues:

I. WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED WHEN IT HELD THAT THE SUBJECT DEFICIENCY TAX ASSESSMENTS HAVE ALREADY PRESCRIBED; and

II. WHETHER OR NOT RESPONDENT IS LIABLE TO PAY PETITIONER THE SUBJECT DEFICIENCY TAX ASSESSMENTS.

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Petitioner submits that the Waiver dated January 18, 2008 was valid and effectively extended her right to issue the subject deficiency assessments for calendar year 2004 until December 2008, for the following reasons: 1) although the Waiver did not show the date when the Revenue District Officer (RDO) accepted it, the date of its notarization may be reasonably deemed as the date of the acceptance; 2) the signature and the date at the bottom portion of the Waiver would show it was actually received by petitioner on January 21, 2008 and since respondent executed the said Waiver, it need not have a copy thereof as it was already aware of its existence and contents; 3) even granting that the subject Waiver failed to meet all the requisites laid down by RMO No. 20-90, the lapses would not affect its validity since the requisites under RMO No. 20-90 are merely formal in nature. What is crucial is that it was reduced into writing, signed by the parties, and executed before the expiration of the three (3) year period to assess; 4) all the elements of a valid waiver under Article 6 of the New Civil Code are present in the subject Waiver; and 5) respondent, through its Group Controller, Jaime B Robles, Jr., executed the subject Waiver voluntarily and knowingly, aware of its consequences, it is already estopped from impugning the validity of the said Waiver.

Petitioner likewise submits that respondent's failure to file a petition for review with the Court of Tax Appeals (CTA) within the reglementary period rendered the subject assessment final, executory and demandable, thereby precluding it from raising the issue of prescription and questioning the legality or validity of the assessment. Besides, the protest filed by respondent was only for reconsideration and not for reinvestigation since it did not adduce additional documents or evidence in support of its position. That being the case, the Petition for Review should have been filed with the CTA before the lapse of the thirty (30) days from the date of filing of its letter of protest with the Bureau of Internal Revenue (BIR).

Again, petitioner asserts that tax assessments are presumed correct and made by tax examiners in good faith, and the taxpayer has the burden to prove otherwise.

In its Comment dated June 13, 2012, respondent believes that the Court in Division was correct when it ruled that the subject deficiency tax assessments were already barred by prescription. It argues that its income tax return for the calendar year 2004 was filed on April 29, 2005. Hence, petitioner had until April 29, 2008 to issue an assessment pursuant to Section 203 in relation to Section 223 of the NIRC of 1997. However, it was only on November 21, 2008 that petitioner issued the subject assessment or about seven months after the lapse of the three-year prescriptive period.

Further, the Waiver of Statute of Limitations executed on January 18, 2008 cannot operate to suspend the running of the prescriptive period for it was not in accordance with the requirements of RMO No. 20-90. Petitioner's theory that the date of notarization of the Waiver constitutes respondent's acceptance is not correct simply because the date of notarization appearing in the waiver signifies the date when the affiant personally appeared before the notary public to affirm under oath that he/she voluntarily executed the document. It does not signify the conformity or approval of petitioner to the Waiver.

Insofar as petitioner's contention that respondent is already estopped from impugning the validity of the waiver and that the requisites laid down in RMO No. 20-90 are merely formal in nature, the Court in Division in its Resolution dated March 26, 2012 citing the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[4], already held that estoppel does not apply in cases of this nature.

Moreover, the provisions of the NIRC and RMO No. 20-90 apply and not Article 6 of the Civil Code in determining the validity of the subject waiver of the statute of limitations.

Respondent also contends that the income tax assessment amounting to Php4,579,399.76 is devoid of factual and legal bases. The alleged unreported receipts of Php8,032,638.80 and unaccounted source of cash of

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

Php221,753.54 have no basis as it reported all its gross receipts to the BIR for the year 2004 as shown by the various Sales Invoices.[5] BIR Forms No, 2307 filed on April 29, 2005 would show that it has no unreported receipts of Php8,032,638.80.

As per the unaccounted source of cash of Php221,753.54, respondent avers that it was due to the application of the increase rates of withholding tax from 10% to 15% for the year 2004 pursuant to RMC No. 72-2004. The increase in withholding tax rate prompted it to make the necessary adjustment, such that in the imposition of the additional 5%, the tax base was repeatedly entered just to cover for the increase. This double recording of the same tax base overstated the yearend total of its BIR Form No. 1601E when consolidated.

The same is also true with regard the subject VAT assessment amounting to Php1,468,821.78. As stated above, the subject assessment is mainly based on BIR's finding that it has unreported receipts of Php8,032,638.54 and unaccounted source of cash of Php221,753.54.

Finally, on the alleged receipts not subjected to VAT amounting to Php3,774.68, respondent argues that the said amount is not actually subject to VAT as it is composed of dividend income from Philippine Long Distance Telephone Company (PLDT) and penalty for late payment of office rental.

Ruling of the Court En Banc

The instant *Petition for Review* has no leg to stand on.

A cursory reading of the record of the case readily reveals that no new matters or issues have been raised and that the instant Petition for Review deals with the very same issues which have been thoroughly passed upon by the Court in Division and clearly discussed in the assailed

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[5] Exhibits "f" to "F-29".

Decision of February 6, 2012 and sustained in the Resolution of March 26, 2012.

The Court En Banc is in agreement with the Court in Division in its ruling pertaining to the invalidity of the Waiver of the Statute of Limitations dated January 18, 2008, in its Resolution disposing petitioner's Motion for Reconsideration[6], to wit:

> First, the date of notarization cannot be regarded as the date of acceptance for the same refers to different aspects, as the notary public is distinct from respondent Commissioner of Internal Revenue who is authorized by law to accept Waivers of the Statute of Limitations.
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> Furthermore, a close perusal of the two versions of the Waiver reveals that nothing is indicated in both 'Acknowledgment' portions thereof to establish that Revenue District Officer Aninag appeared before the notary public and acknowledged his acceptance of the Waiver. Both 'Acknowledgment' only mentioned that Jaime B. Robles, Jr., with Community Tax Certificate Number 12640429 personally appeared before the notary public on January 18, 2008 and acknowledged the execution of the Waiver.
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> Second, the Court cannot give due credence on respondent's claim that the Waiver (respondent's Exhibit "3") was actually received by petitioner on January 21, 2008, as evidenced by a signature and a date appearing on the bottom portion thereof. A careful perusal of Exhibit "3" would show that a signature and a date (1-21-08) can indeed be found on the left side of the notary public's name and signature. However, during trial, respondent's witness confirmed that he was not the one who

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[6] *Rollo*, pp. 681-689.

furnished petitioner with the copy of the Waiver. Respondent's witness did not also identify the subject signature and date, and more importantly, respondent's witness did not testify on the relevance of said signature and date to the instant case.

Respondent should not expect the Court, as it is not the Court's duty, to guess and conclude that said date and signature prove that petitioner was furnished a copy of the Waiver. It is incumbent upon respondent to establish the significance of said signature and date to this case.

Relative to respondent's argument that petitioner is already estopped from impugning the validity of the Waiver, the Court likewise finds the same bereft of merit.

In the case of Commissioner of Internal Revenue vs. Kudos Metal Corporation, the Supreme Court already ruled that estoppel does not apply in this kind of case. Pertinent portions of the Supreme Court's decision are quoted below:

> 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. It should be resorted to solely as a means

> of preventing injustice and 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.
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> 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.

Respondent also insists that the essential elements of a valid waiver pursuant to Article 6 of the New Civil Code are present in this case. The Court does not agree.

A Waiver of the Statute of Limitations under the National Internal Revenue Code (NIRC) is not an ordinary agreement, as it is, to a certain extent, a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly

> construed. It is governed not by the general provisions of the New Civil Code but by the National Internal Revenue Code following the basic principle in statutory construction that a special law prevails over a general law.
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> Finally, the Court finds no merit on respondent's assertion that non-compliance with the requisites prescribed under RMO No. 20-90 does not affect the validity of the Waiver as said requirements are merely formal in nature. No less than the Supreme Court 10 had emphasized strict compliance with the provisions of RMO No. 20-90 in order for a waiver executed pursuant to Section 222 (b) of the NIRC to be valid and binding. It is the Court's duty to apply the ruling of the Supreme Court. This is in consonance with the well-entrenched rule that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.

In the landmark case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[7] the Supreme Court stressed that for a waiver of the statute of limitations to be valid and binding, all the requirements of RMO No. 20-90 must be strictly complied with. Pursuant to RMO No. 20-90, which implements Section 222 (b) of the NIRC of 1997, the procedure in executing waivers of the Statute of Limitations, are:

> 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 ______

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

> 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.
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> 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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> 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.
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> xxx xxx xxx

The mandatory nature of the requisites in the RMO requiring strict compliance is clear. In fact, it is no less than the BIR which emphasized strict compliance of RMO No. 20-90 when it issued RMC No. 06-05, to circularize the salient features of the decision of the Supreme Court in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, to wit:

> 1. A waiver of the statute of limitations under the Tax Code **must conform strictly with the provisions of Revenue**

> **<u>Memorandum Order No. 20-90 in order to be valid and binding</u>**.
>
> > 1.1. The waiver must specify a definite agreed date between the BIR and the taxpayer within which the former may assess and collect revenue taxes.
> >
> > 1.2. The waiver must be accepted by the Commissioner of Internal Revenue or his duly authorized representative, and the date of acceptance must be indicated.
> >
> > 1.3. The taxpayer must be furnished a copy of the waiver accepted by the BIR. (*Emphases supplied*)

Considering that petitioner's version of the Waiver of the Statute of Limitations[8] does not show the date when RDO Florante R. Aninag accepted the Waiver and there being no indication that petitioner received its copy of the said Waiver, the Court *En Banc* finds no reason not to uphold the ruling of the Court in Division.

As regards petitioner's contention that respondent's failure to file a petition for review with the CTA within the statutory period rendered the subject assessment final, executory and demandable, thereby precluding respondent from interposing the defenses of legality or validity of the assessment and prescription, the same is simply untenable. Suffice it to say that any assessment issued beyond the period prescribed under Section 203 of the NIRC of 1997, as amended, is void.

In view of the above findings, a discussion of the other issues raised is no longer necessary.

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[8] *Rollo*, pp. 587, Exhibit "3".

WHEREFORE, the *Petition for Review* is hereby **DENIED** for lack of merit. The assailed Decision of February 6, 2012, as well as the assailed Resolution of March 26, 2012, both issued by the Court of Tax Appeals Second Division in CTA Case No. 7936, are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(No Part)
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice