

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**UNITED PARCEL SERVICE CO.
(PHILIPPINE BRANCH),**

Petitioner,

CTA CASE NO. 7667

Members:

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

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

AUG 18, 2010; 10:49 am

X-----X

DECISION

BAUTISTA, J.:

The present case involves a Petition for Review praying for the cancellation and setting aside of the Warrant of Dstraint and/or Levy¹ issued against petitioner for alleged deficiency income tax, expanded withholding tax, and final withholding tax in the total amount of P8,985,334.70, inclusive of penalties and interests, covering taxable year 2000.

Petitioner United Parcel Service Co. (Philippine Branch) is a duly registered Philippine branch of United Parcel Service Co., a foreign

¹ Exhibit "O"

corporation organized and existing under the laws of the State of Delaware, United States of America. Petitioner is registered with the Securities and Exchange Commission, and is licensed to coordinate the movement of air freight, and to carry property, cargo, and mail as a certificated international US carrier. Its office is located at UPS Intra-Asia Hub, Civil Aviation Complex, Diosdado Macapagal International Airport, Clark Special Economic Zone, Clark Field, Pampanga.²

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of said office, including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Sometime in the middle of the year 2002, petitioner received an Audit Notice No. OCN9AN0000005184 dated June 26, 2002, authorizing the Revenue Officers named therein to examine all of petitioner's internal revenue taxes for the period covering January 1, 2000 to December 31, 2000.³

In compliance thereto, petitioner sent to the BIR the required books of accounts and other related records concerning taxable year 2000, which was received by Revenue Officer Porfirio T. Dones on October 15, 2002.⁴

² Exhibit "P", docket p. 380; par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 251

³ Annex "F", Petition for Review, docket, pp. 44-45; par. 7, Stipulation of Facts, JSFI, docket, p. 252

⁴ Annex "G", Petition for Review, docket, p. 46; par. 8, Stipulation of Facts, JSFI, docket, p. 252

As a result of the examination conducted by the BIR, petitioner received a Notice of Findings dated February 4, 2004, where petitioner was found to have incurred deficiency on expanded withholding tax, final withholding tax on Branch Profit Remittances, and documentary stamp tax.⁵

Petitioner, through its Manager Benjamin S. Solis, executed a Waiver of the Defense of Prescription under the Statute of the National Internal Revenue Code on February 4, 2004.⁶

Thereafter, petitioner sent its position paper contesting the above-mentioned Notice of Findings, which was received by the BIR on March 15, 2004. In reply thereto, on March 23, 2004, the BIR requested petitioner to submit the necessary documents and other pieces of evidence that would substantiate its claims. In lieu of the requested documents and evidence, petitioner sent a Letter/Reply dated April 26, 2004 to the BIR, where it emphasized the provisions of law and other rulings in support of its arguments.⁷

The BIR issued a Preliminary Assessment Notice (PAN) dated September 17, 2004 against petitioner. The PAN stated that petitioner has deficiency income tax, expanded withholding tax, and final withholding tax on Branch Profit Remittances amounting to P6,473,902.64, P255,377.40, and P1,946,974.84, respectively. In the Details of Discrepancies attached to the

⁵ Annex "H", Petition for Review, docket, pp. 47-48; par. 9, Stipulation of Facts, JSFI, docket, p. 253

⁶ Exhibit "L"

⁷ Pars. 11 and 12, Stipulation of Facts, JSFI, docket, p. 253



PAN, the BIR requested petitioner to execute another Waiver of the Statute of Limitations to give respondent more time to conduct its tax investigation.⁸

On October 12, 2004, petitioner filed a protest letter dated October 11, 2004 to the PAN issued by the BIR. Petitioner countered that the assessment on deficiency income tax and final withholding tax has no legal or factual basis. Likewise, petitioner manifested that it would be willing to pay the assessed expanded withholding tax upon receipt of the appropriate notice indicating the correct amount and the date of payment.⁹

Respondent then sent a reply/collection letter dated December 13, 2004, to the protest filed by petitioner, requesting petitioner to pay the amount of P261,102.00 for the previously assessed expanded withholding tax liability; which petitioner subsequently paid on December 28, 2004.¹⁰

On January 7, 2005, petitioner received a Formal Assessment Notice (FAN) dated December 28, 2004, assessing petitioner of the following alleged deficiency taxes:¹¹

Assessment No.	Tax Type	Amount	Period
IT-5184-00-04-1002	Income Tax	6,712,775.69	2000
WE-5184-00-04-1002	Expanded Withholding Tax	264,585.27	2000
WF-5184-00-04-1002	Final Withholding Tax	2,007,973.74	2000
MC-5184-00-04-1002	Penalty	20,000.00	2000

On January 28, 2005, petitioner filed with respondent its protest letter on the aforesaid assessments.¹²

⁸ Annex "J", Petition for Review, docket, pp. 50-53; par. 13, Stipulation of Facts, JSFI, docket, pp. 253-254

⁹ Annex "K", Petition for Review, docket, pp. 55-58; par. 14, Stipulation of Facts, JSFI, docket, p. 254

¹⁰ Exhibits "M-6" and "M-7"; Annex "L", Petition for Review, docket, p. 59; par. 15, Stipulation of Facts, JSFI, docket, p. 254

¹¹ Exhibits "A", "B", "C", "D", and "E"

¹² Exhibit "I"

In a letter dated February 17, 2005, signed by Acting Regional Director Anselmo G. Adriano, the BIR acknowledged receipt of the proof of payment (BIR Form No. 0605 and BTR-BIR Payment Slip dated December 28, 2004) of the assessed deficiency expanded withholding tax amounting to P261,102.00, and informed petitioner that the entire docket of the case, together with the protest, was forwarded to Revenue District Office (RDO) No. 51-Pasay City.¹³

On March 4, 2005, petitioner received a Tax Verification Notice (TVN) No. 2002-00125323 dated March 1, 2005, as well as a letter signed by Revenue Officer Porfirio T. Dones, which was noted by Group Supervisor Teodoro V. Malabanan Jr., informing petitioner that the protest it previously filed was granted; thus, approving petitioner's request for reinvestigation.¹⁴

In response to the said TVN and letter, petitioner sent a letter on April 15, 2005, reiterating its position that it is not liable for any assessed deficiency taxes as alleged in the Formal Assessment Notice. To support its contentions, petitioner attached to the said letter a copy of the RP-US Tax Treaty, International Tax Affairs Division (ITAD) Ruling No. 120-01, Income Tax Return, Land Bank of the Philippines Deposit Slip, and BIR Form No. 0605.¹⁵

Petitioner, through the Law Offices of Perlas, De Guzman, Antonio, and Herbosa, sent a letter dated August 25, 2005, to the BIR in order to inquire about the status of the company's pending protest. In reply thereto, the BIR, through Acting Regional Director Anselmo G. Adriano, sent a letter dated

¹³ Exhibit "J"

¹⁴ Exhibits "K" and "K-1"

¹⁵ Exhibits "M" to "M-7"



September 26, 2005, which was duly received by aforesaid counsel on September 29, 2005. In the said letter, the BIR informed petitioner that only the issue on final withholding tax on Branch Profit Remittance was forwarded to the Legal Division of the BIR and that the assessment on deficiency income tax and expanded withholding tax had been cancelled.¹⁶

Respondent issued his Final Decision on Disputed Assessment¹⁷ dated March 13, 2006, which was purportedly mailed to petitioner as evidenced by a Certified True Copy of the transmittal form.¹⁸ However, petitioner denied ever receiving the mailed copy of the said Final Decision on Disputed Assessment.

Respondent then issued a Warrant of Dstraint and/or Levy¹⁹ dated June 25, 2007, for petitioner's alleged deficiency taxes, to wit:

Assessment No.	Tax Type	Period Covered	Amount
IT-5184-00-04-1002	Income Tax	2000	P 6,712,775.69
WE-5184-00-04-1002	Expanded Withholding Tax	2000	264,585.27
WF-5184-00-04-1002	Final Withholding Tax	2000	2,007,973.74
TOTAL			P8,985,334.70

Consequently, upon receipt of the above-mentioned warrant on July 9, 2007²⁰, petitioner filed the instant Petition for Review on August 8, 2007, praying for the cancellation and setting aside of the said Warrant of Dstraint and/or Levy.

¹⁶ Exhibit "N"; pars. 19, 20, and 21, Stipulation of Facts, JSFI, docket, p. 255

¹⁷ Exhibit "2"

¹⁸ Exhibits "1" and "1-a"

¹⁹ Exhibit "O"

²⁰ Exhibit "O-1"

In his Answer²¹ filed on October 5, 2007, respondent interposed the following Special and Affirmative Defenses:

- "8. Section 222 of the 1997 Tax Code authorizes the taxpayer and the government to extend by mutual agreement the prescriptive periods for the assessment and collection of taxes. Section 222 of the 1997 Tax Code provides, thus:

'SEC. 222. 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 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.

xxx

xxx

xxx'

9. The Waiver of Statute of Limitations was executed by and between Mr. Benjamin S. Solis, General Manager of United Parcel Service Company (Philippine Branch) and the duly delegated signatory, Elenita B. Quimosing, Revenue District Officer, RDO 51, Pasay City. It was executed on February 4, 2004 and specified the period of extension agreed upon, which is December 31, 2004. Petitioner alleges that since the date of acceptance by the BIR and the fact of receipt of the waiver by petitioner were not indicated therein, such waiver becomes invalid. Respondent submits that such is not the case.
10. As to date of acceptance, the import of this requirement is to determine if the waiver was agreed upon by the parties before the expiration of the three-year period. Such rationale was provided in the case of PHILIPPINE JOURNALISTS, (SIC) INC. PETITIONER, VERSUS COMMISSIONER OF INTERNAL REVENUE, Respondent. (G.R. No. 162852 December 16, 2004) wherein it was stated:

²¹ Docket, pp. 106-116



'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.'

Thus, the evil which the date of acceptance address is the chance that the actual meeting of the minds took place beyond the period of limitation, therefore, in such a case, there is no more existent, valid period of assessment to extend as the period had prescribed. In this case, notwithstanding the lack of a definite date of acceptance, it is easy to determine if the waiver was actually agreed upon before the expiration of the three-year prescriptive period.

11. As appearing on the face of the waiver, petitioner's and respondent's authorized representatives duly executed the waiver and acknowledged the same before a notary public. Hence, contrary to its allegations, the waiver was duly received by the petitioner and duly accepted by respondent on the same date the waiver was executed and acknowledged before a notary public.

xxx

xxx

xxx

12. Section 228 of the 1997 Tax Code provides for the period within which to appeal the decision of respondent denying taxpayer's protest, Section 228 of the 1997 Tax Code provides, thus:

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

13. On December 28, 2004, respondent issued a Formal Assessment Notice with attached Details of Discrepancies and Assessment Notices bearing the following Assessment



Nos. i.e. IT-5184-00-04-1002, WE-5184-00-04-1002, WF-5184-00-04-1002 and MC-5184-00-04-1002. On January 28, 2005, petitioner filed a protest letter requesting for reinvestigation/reevaluation.

14. Thereafter, respondent issued a Final Decision on Disputed Assessment (FDDA) dated March 13, 2006. In the said decision, respondent discussed the results of its reinvestigation. Consequently, the assessment on income tax was dropped and cancelled. Further, since the deficiency expanded withholding tax was paid by petitioner, the same has been cancelled. On the other hand, petitioner's deficiency Final Withholding Tax on Branch Profit Remittance and compromise penalty were sustained.
15. Petitioner had thirty (30) days from receipt of the FDDA to appeal the same before the Court of Tax Appeals, but it failed to do so. It is only on August 8, 2007 that petitioner filed its petition for review before this Honorable Court. Obviously, the remedy of the taxpayer to appeal the FDDA had lapsed. Hence, the assessment has become final, executory and demandable.

XXX

XXX

XXX

16. Assuming for the sake of argument that the assessment has not become final, executory and demandable, petitioner is liable to pay the 15% Branch Profit Remittance Tax under Section 28(A) (5) of the 1997 Tax Code. Section 28 (A) (5) of the 1997 Tax Code clearly provides as follows:

'Section 28. Rates of Income Tax on Foreign Corporations. –

(A) Tax on Resident Foreign Corporations. -

(5) Tax on Branch Profits Remittances. - Any profit remitted by a branch to its head office shall be subject to a tax of fifteen (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority).



The tax shall be collected and paid in the same manner as provided in Sections 57 and 58 of this Code: xxx.' (Emphasis supplied)

17. It is apparent from the foregoing that a resident foreign corporation is subject to tax at 15% on any profit remitted to its head office, based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof, with exception to those activities which are registered with the Philippine Economic Zone Authority.
18. Based upon the foregoing, since the profit remittance of petitioner does not fall under the said exception above, the total profit it has applied or earmarked for remittance to its head office, without any deduction for the tax component thereof, as declared in its Audited Financial Statement for taxable year 2000, in the amount of P6,509,118.00 should be subject to the 15% branch profit remittance tax under Section 28 (A) (5) of the 1997 Tax Code.
19. Hence, its argument that being a branch of an International Air Carrier, it is not subject to Final Tax on its profit remittance under Section 28 (A) (5) of the 1997 Tax Code, is bereft of any factual and legal basis. The cited provisions of Article 11 par. 6 of the RP-US Treaty and Reservations paragraphs 2 and 3, as well as Supreme Court decision in the case of Bank of America NT & SA, vs. CIR, G.R. Nos. 103092 and 103106, July 21, 1994 and BIR Ruling Nos. 211-85 and 213-82 dated November 29, 1985 and July 13, 1982, respectively, are erroneous, misplaced, irrelevant and inapplicable to the instant case since the facts and issues involved in the cited decision and BIR Rulings are remote and do not squarely fall in the case at bar.
20. Further, its argument that it did not actually remit any branch profit nor it had applied or earmarked any profit for remittance is clearly a self-serving allegation and bereft of any factual basis. Its Audited Financial Statement for taxable year 2000, clearly belied its allegations, specifically under Note 5 on Home Account which disclosed a net income of P6,509,118.00 out of the total assigned capital transactions to its head office, which partakes the nature of an indirect remittances to its head office.



21. This finds support under BIR Ruling No. 039-2005 dated January 28, 2005, wherein the BIR ruled that:

'Increasing the head office's assigned capital to its Philippine Branch by transferring net profits of the branch to the assigned capital account shall be subject to the 15% branch profit remittance tax. **Although the profit from operation will not be physically remitted to the head office abroad, the transfer to assigned capital is an indirect remittance to the head office.**' (Emphasis supplied)

22. Furthermore, settled is the rule in taxation that laws granting exemption from tax are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rest upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. (Commissioner of Internal Revenue vs. Mitsubishi Metal Corp., et al., Gr. Nos. 54908 and 80041, January 22, 1990).
23. In this case, since petitioner failed to prove that indeed, it is exempt from the operation of Section 28 (A) (5) of the 1997 Tax Code, therefore, any profit remitted to its head office, based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof shall be subject to the 15% branch profit remittance tax.

xxx

xxx

xxx

24. Pursuant to Revenue Memorandum Order No. 1-90, in lieu of instituting criminal action, petitioner is liable to pay compromise penalty in the amount of P20,000.00 in view of its failure to file Final Withholding Tax Returns on Branch Profit Remittance and pay the corresponding tax due thereon in violation of Section 255 of the 1997 Tax Code.
25. Accordingly, the fact that the assessed deficiency final withholding tax of the petitioner for taxable year 2000 has already become final, executory and demandable, petitioner can no longer dispute the validity of such



assessments either administratively or judicially through an appeal to the Court of Tax Appeals.

26. Finally, all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They are presumed to have taken into consideration all the facts to which their attention was called (CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Antonio Tuazon, Inc., 173 SCRA 397), and failure to do so shall vest legality to respondent's actions and assessments."

During trial, the parties presented and formally offered their respective witnesses and documentary evidence.

The case was submitted for decision on August 18, 2009, taking into consideration respondent's Memorandum filed on July 29, 2009 and petitioner's Memorandum filed on August 17, 2009.

The following are the parties' jointly stipulated issues²² submitted for this Court's resolution:

- "1. Whether or not the assessment issued by Respondent for deficiency final withholding tax on branch profit remittance has become final, executory, and demandable.
2. Whether or not Petitioner's right to appeal the assessment on the final withholding tax on branch profit remittance before the Honorable Court of Tax Appeals had elapsed.
3. Whether or not the right of the Respondent to assess the 2000 final withholding tax on branch profit remittance of the Petitioner had prescribed.
4. Whether or not the Waiver of Statute of Limitations executed by Benjamin S. Solis is valid and thus, extended the right of the Respondent to assess the 2000 internal revenue taxes of the Petitioner until December 31, 2004.

²² Docket, p. 256



5. Whether or not Petitioner is liable for the amount of P2,232,137.06 as deficiency Final Withholding Tax on Branch Profit Remittance for taxable year 2000.
6. Whether or not Petitioner is liable to pay the amount of P20,000 as compromise penalty."

The Court finds it appropriate to determine first the validity of the waiver executed by petitioner, which will determine whether the right of respondent to assess the final withholding tax on Branch Profit Remittance for taxable year 2000 had prescribed or not.

Section 203 of the National Internal Revenue Code (NIRC) of 1997 provides that respondent only has three (3) years to assess and collect an internal revenue tax, to wit:

"SEC. 203. Period of Limitation Upon Assessment and Collection. - Except as provided in the 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."

Section 222(b) of the NIRC of 1997 provides however that the three-year prescriptive period may be waived upon agreement in writing by both the Commissioner of Internal Revenue and the taxpayer. Section 222(b) states as follows:



"SEC. 222. 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 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."

The BIR issued Revenue Memorandum Order (RMO) No. 20-90²³ dated April 4, 1990, to implement Sections 203 and 222(b) of the Tax Code. The BIR also issued Revenue Memorandum Circular (RMC) No. 6-2005²⁴ dated February 2, 2005, emphasizing strict conformity with the provisions of RMO No. 20-90 for a waiver of the statute of limitations under the Tax Code to be valid and binding, pursuant to the Supreme Court's ruling in the case of **Philippine Journalist, Inc. vs. Commissioner of Internal Revenue**²⁵.

In applying RMO No. 20-90, the Supreme Court held in the case of **Commissioner of Internal Revenue vs. FMF Development Corporation**²⁶ that the waiver executed by the taxpayer was defective and did not validly extend the original three-year prescriptive period. Firstly, it was not proven that therein respondent was furnished a copy of the BIR-accepted waiver. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Commissioner as mandated

²³ Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code

²⁴ Salient Features of Supreme Court Decision on Waiver of the Statute of Limitations under the Tax Code

²⁵ G.R. No. 162852, December 16, 2004

²⁶ G.R. No. 167765, June 30, 2008



by the Tax Code and RMO No. 20-90, considering that the case involves an amount of more than P1,000,000.00 and the period to assess is not yet about to prescribe. Lastly, 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. The pertinent portions of the High Court's ruling are quoted hereunder for ready reference:

"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.

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.

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

A. In the National Office

xxx

xxx

xxx

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.

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.)

Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. Firstly, it was not proven that respondent was furnished a copy of the BIR-accepted waiver. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Commissioner as mandated by the NIRC and RMO No. 20-90, considering that the case involves an amount of more than P1 million, and the period to assess is not yet about to prescribe. Lastly, 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."

In the instant case, Mr. Benjamin S. Solis, petitioner's Manager, executed a "Waiver of the Defense of Prescription under the Statute of the National Internal Revenue Code" on February 4, 2004.²⁷ The said document states that petitioner waived its right to raise the defense of prescription under the National Internal Revenue Code of 1997 and consented to the assessment and/or collection of tax or taxes which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the

²⁷ Exhibit "L"



lapse of the period of limitation fixed by sections of the NIRC, but not later than December 31, 2004. The waiver was signed by Elenita B. Quimosing, the Revenue District Officer of RDO 51-Pasay City, who failed to indicate the date of acceptance as prescribed under Revenue Memorandum Order No. 20-90. Petitioner did not execute any other waiver or similar document before or after the expiration of the February 4, 2004 waiver on December 31, 2004.

This Court finds that the waiver executed by petitioner's representative is indeed defective and cannot validly extend the original three-year prescriptive period for respondent to issue an assessment. The said waiver failed to strictly comply with the requirements provided under RMO No. 20-90. The waiver failed to indicate the date of acceptance made by Ms. Elenita B. Quimosing, the Revenue District Officer of RDO 51-Pasay City. Moreover, while the waiver appears to have been notarized by a notary public, the Acknowledgement did not indicate the person or persons who actually appeared and the proper identification presented. Hence, the date of execution of the waiver before the Notary Public cannot be considered as the date of execution by the parties. Respondent even failed to prove that the taxpayer was furnished a copy of said waiver after its acceptance. Lastly, the subject waiver failed to indicate the type of tax and the amount of tax due.

In the case of **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**²⁸, this Court emphasized that both the date of execution by the taxpayer and the date of acceptance by respondent must be

²⁸ CTA Case No. 7397, April 9, 2008



indicated. The date of acceptance is vital because it determines whether or not the acceptance was made within the prescriptive period; for if the acceptance was made after the prescriptive period, the same is ineffectual because there is no more period to extend. The significant parts of the Decision are quoted as follows:

"A perusal, however, of the Waivers of the Statute of Limitations executed by petitioner, reveals that the waivers were not even accepted/approved or signed as received by respondent Commissioner. It must be pointed out that the purpose of a Waiver of the Statute of Limitations 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. This waiver, 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 noteworthy that the prescriptive period or statute of limitations benefits 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 the books of the taxpayer 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 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 law.**

Equally important is the fact that not only were the waivers wanting of the required signatures, the same waivers do not even show the **date of acceptance** by the Commissioner. **Both the date of execution by the taxpayer and date of acceptance by respondent must be before the expiration of the period of prescription. The date of**



acceptance is vital because it determines whether or not the acceptance was made within the prescriptive period; for if the acceptance was made after the prescriptive period, the same is ineffectual because there is no more period to extend." (*Emphasis supplied*)

In the present case, the waiver submitted to this Court, which also forms part of the BIR records, failed to prove that petitioner was furnished with the copy of the approved and accepted waiver. Paragraph 4 of RMO No. 20-90 specifically provides that the waiver must be executed in three 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. It is further provided that the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy. And the absence of proof that the taxpayer was furnished a copy of the approved and accepted waiver cannot be remedied by the fact that at the time of the Court proceedings, the taxpayer was able to bring before the Court its own copy of the waiver.²⁹

Moreover, in the case entitled **Scandinavian Motors Corporation vs. The Commissioner of Internal Revenue**³⁰, this Court explained the reason behind the requirement that a waiver must specify the type of tax and the amount of tax due, thus:

"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**

²⁹Commissioner of Internal Revenue vs. Advent Capital and Finance Corporation (Formerly All Asia Capital and Leasing Corporation, CTA EB No. 454, June 3, 2009)

³⁰CTA Case No. 7269, March 26, 2008, citing Dole Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5705, July 1, 2003



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."

A closer scrutiny of the contents of the waiver would reveal that the same failed to indicate the type and the amount of tax that should be considered as waived by petitioner in applying the three-year period for respondent to assess.

In the landmark case of **Philippine Journalists, Inc. vs. Commissioner of Internal Revenue**³¹, the High Tribunal ruled that since the waiver was defective, the running of the prescriptive period was not suspended. It likewise made a categorical pronouncement on the strict interpretation of the waiver of the statute of limitations, in the following manner:

"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

³¹ G.R. No. 162852, December 16, 2004



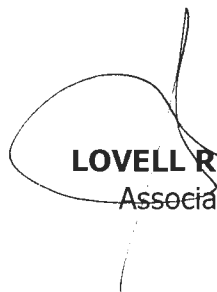
assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. RMO No. 20-90 explains the rationale of a waiver:"

In the instant case, the waiver is incomplete and defective. Consequently, the three-year prescriptive period was not extended and the assessments are rendered invalid. Accordingly, the issuance of the subject Warrant of Dstraint and/or Levy had no basis.

Based on the foregoing, the Court deems it no longer necessary to resolve the other issues.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Dstraint and/or Levy dated June 25, 2007 is hereby **CANCELLED** and **SET ASIDE** for having been issued pursuant to an invalid assessment.

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