REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE HOTELIERS, INC.,
Petitioner,

CTA Case No. 6985

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Promulgated:
MAR 09 2009 ; 2:05 pm

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DECISION

CASANOVA, *J.*:

This is a Petition for Review of respondent's Decision on Disputed Assessment dated December 12, 2003 partially denying petitioner's protest on the assessments issued against it for deficiency income, value-added, expanded withholding, and final withholding taxes for the calendar year ended 1998 in the amounts of **P2,314,791.70**, **P18,081,177.67**, **P422,710.83**, and **P998,724.62**, respectively, including increments therein.

Statement of Facts

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Hotel Dusit Nikko, Ayala Center, Makati City[1].

Respondent, on the other hand, is the official duly authorized under Section 4 of the National Internal Revenue Code (NIRC) of 1997 to assess and collect internal revenue taxes, as well as, the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court[2].

A Preliminary Assessment Notice[3] (PAN) was issued on February 5, 2002, to which petitioner duly replied to. Subsequently, on May 15, 2002, respondent issued the Formal Letter of Demand[4] against petitioner showing the following tax deficiencies, with interests:

Income Tax	P 8,871,902.99
VAT	30,126,600.69
Final Withholding Tax	8,641,150.42
EWT	1,389,766.75
Total	**P 49,029,420.85**

This Formal Demand was protested to on June 26, 2002[5].

Consequently, in his Final Decision[6] on Disputed Assessment dated December 12, 2003, respondent partially granted petitioner's protest, but still found petitioner liable for the following amounts:

Income Tax	P 2,314,791.70
VAT	18,081,177.67
EWT	422,710.83
Final Withholding Tax	998,724.62
Total	**P 21,817,404.82**

The remaining income tax assessments were allegedly based on the following[7]:

[1] Joint Stipulation of Facts and Issues (JSFI), paragraph 1, Rollo, pp. 83-90
[2] Ibid., paragraph 3
[3] Ibid., paragraph 5; Exhibit "A', Rollo, pp. 222-224
[4] Ibid., paragraphs 7-11, Exhibit "G", Rollo, pp. 235-237
[5] Exhibit "H", Rollo, p. 238-246
[6] Exhibit 'I", Rollo, pp. 247-249
[7] Ibid.

a. Overclaimed interest expense (P696,998.34) – allegedly from failure of petitioner to reduce by an amount equal to 41% of interest income its interest expense, pursuant to Section 34(B)(1) of the NIRC;

b. Disallowed prior years expenses (P614,022.29) – allegedly because petitioner did not incur these expenses during the taxable year, in violation of Section 34(A)(1) of the NIRC;

c. Disallowed expenses not subjected to final tax (P1,605,321.30) – failure to deduct and withhold the final tax on payments made to non-resident foreign corporations in violation of Sections 34(K), 58, and 81 of the NIRC; and

d. Disallowed income tax credits (P50,483.23) – allegedly petitioner withheld this amount as creditable VAT for services performed for the government.

As for the remaining value-added tax (VAT) deficiencies, respondent averred that:

a. Collections for the account of Hospitality Marketing Consultants not subject to VAT (P17,974,794.21) – should form part of gross receipts under Section 108 (A);

b. Licensing fees paid to non-resident foreign corporations not subjected to VAT (P44,759,858.43)- petitioner as licensee did not withhold VAT on such licensing fees and no input taxes were claimed, petitioner was made liable for increments only under Sections 248 & 249 of the NIRC and RMO No. 1-90; and

c. Unsubstantiated input taxes and input tax from non-VAT suppliers (P6,484,197.68)- these input taxes were not duly supported by invoices or receipts contrary to Sections 113 and 237 of the NIRC and others were purchases from Non-VAT suppliers contrary to Section 4.110-5, Revenue Regulations 7-95 in relation to Section 110 (A) of the NIRC.

Respondent's findings on the remaining expanded withholding tax deficiency was based on the alleged late remittance of expanded withholding taxes for expenses incurred in 1997, thus the 20% per annum interest pursuant to Section 249 of the NIRC.

Lastly, the remaining final withholding tax assessments were based on the following discrepancies:

a. Expenses not subjected to final withholding tax (P1,928,821.30)- tax allegedly required to be deducted and withheld from payments made to non-resident foreign corporations has not been paid to the BIR pursuant to Sections 34(K), 58 and 81 of the NIRC; and

b. Interest (P25,142.00)- the 20% per annum interest has been allegedly imposed pursuant to the provisions of Section 249 of the NIRC on late remittance of final taxes as of 1997 expenses.

Hence this petition.

Respondent, in his Answer[8] filed on July 19, 2004, raised the following Special and Affirmative Defenses:

"*6. Income Tax*

a.) Over-claimed interest expense (P696,998.34)

Verification disclosed that the interest expense claimed was not reduced by an amount equal to 41% of interest income subjected to final tax pursuant to Section 34 (B)(1) of the National Internal Revenue Code of 1997.

b.) Disallowed prior year's expenses (P614,022.29)

Verification disclosed that these expenses were not incurred during the taxable year, in violation of Section 34(A)(1)(a) of the National Internal Revenue Code of 1997.

c.) Disallowed expenses – not subjected to final tax (P1,928,821.30)

Verification disclosed that the tax required to be deducted and withheld from the payments made to non-resident foreign corporations has not been paid to the Bureau of Internal Revenue in accordance with Sections 34(K), 58 and 81 of the National Internal Revenue Code of 1997.

d.) Disallowed income tax credits (P50,481.23)

Verification disclosed that these tax credits were withholding of creditable value-added tax for services performed for the government.

7. Value-Added Tax

a.) Collections for the account of Hospitality Marketing Consultants (HMC) not subjected to VAT (P17,974,794.21)

Verification disclosed that the petitioner issued official receipts for proceeds of sales of membership tickets sold by HMC. In addition, there is a provision in the Marketing Agreement signed by HMC and the petitioner that petitioner will be solely liable for the payment of VAT to the government and will indemnify and hold HMC harmless from and against any claims that may be made by any government authority for non-payment or underpayment of any such tax. Under Section 108(A) of the 1997 Tax Code, the term "gross receipts" means the total amount of money or its equivalent actually or constructively received during the table quarter for the services performed or to be performed for another person, excluding value-added tax.

[8] Rollo, pp. 47-51

b.) Licensing fees paid to non-resident foreign corporation not subjected to VAT (P44,749,858.43)

Verification disclosed that petitioner did not withhold the VAT on such licensing fees, and no input taxes were claimed. Thus, for the equivalent loss of money to the government, petitioner was made liable only for supposedly late remittance of withheld VAT for fifteen days until the filing of VAT return, in accordance with Sections 248 and 249 of the NIRC and RMO No. 1-90.

c.) Unsubstantiated input taxes and input tax from non-VAT suppliers (P6,484,197.68)

Verification disclosed that these input taxes claimed were not duly supported by invoices or receipts showing the information required under Sections 113 and 237 of the NIRC, and others were on purchases from non-VAT suppliers, in violation of Section 4.110-5 of Revenue Regulations No. 7-95, in relation to Section 110(A) of the Tax Code.

8. Final Withholding Tax

a.) Expenses not subjected to final withholding tax (P1,928,821.30)

Verification disclosed that the tax required to be deduced and withheld from the payments made to non-resident corporations has not been paid to the Bureau of Internal Revenue in accordance with Sections 34(K), 58 and 81 of the NIRC.

b.) Interest (P25,142.00)

The 20% per annum interest has been imposed pursuant to the provisions of Section 249 of the NIRC on late remittance of final taxes on 1997 transactions.

9. Expanded Withholding Tax

a.) Interest (P422,710.83)

The 20% per annum interest has been imposed pursuant to the provisions of Section 249 of the NIRC on late remittance of final taxes on 1997 transactions.

10. The assessments were issued in accordance with the existing law and regulations.

11. Assessment are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favour of the correctness of tax assessments. (Cagayan Robina Sugar Milling

Company vs. Court of Tax Appeals, et al., G.R. No. 122451, October 12, 2000).

12. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. (Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, March 10, 1995)."

The parties submitted their Joint Stipulation of Facts and Issues [9] on November 23, 2004 which this Court approved *via* a Resolution[10] dated December 2, 2004.

On October 21, 2005, petitioner filed a Motion for Leave to Admit Amended Petition for Review[11] in view of its alleged discovery of copies of the Waivers of the Statute of Limitations from the BIR Records. Petitioner submits that respondent's right to assess petitioner for deficiency taxes has already prescribed, thus, prays for the cancellation of the subject assessment notices issued against it. In a Resolution[12] dated January 11, 2006, this Court admitted petitioner's Amended Petition for Review and ordered respondent to file his Amended Answer.

Consequently, respondent filed his Amended Answer on January 27, 2006 maintaining his stand on the validity of the assessments and raising as additional Special and Affirmative Defenses the following:

"7. The assessments were issued within the reglementary period because the period to assess did not run during the time petitioner's request for reinvestigation was given due course.

8. 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 will be 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. Tuazon, Inc. 173 SCRA 397*) and failure to do so shall vest legality to respondent's actions and assessments."

[9] Rollo, pp. 83-90
[10] Rollo, p. 92
[11] Rollo, pp. 122-128
[12] Rollo, pp. 146-148

After petitioner presented its documentary and testimonial evidence, it submitted its Formal Offer of Evidence[13] on November 9, 2006. This Court resolved petitioner's Formal Offer on January 18, 2007[14]. Petitioner filed a Motion for Reconsideration Re: Resolution Dated January 18, 2007[15] seeking the admission of several denied exhibits which this Court eventually admitted *via* a Resolution[16] dated March 21, 2007.

Respondent, for his part, likewise presented testimonial and documentary evidence but failed to formally offer its documentary exhibits; thus, on December 3, 2007, respondent was deemed to have waived his right to file his Formal Offer of Evidence[17].

Upon the receipt of petitioner's Memorandum[18], *sans* respondent's Memorandum, this case was submitted for decision on March 12, 2008[19].

Statement of the Issues

The parties originally stipulated[20] on the following issues for the consideration of this Court, to wit:

A. Income Tax Assessment

1. Whether or not petitioner overclaimed its interest expense for the taxable year 1998;
2. Whether or not the expenses claimed by petitioner as deductions were paid or incurred in the taxable year 1998;
3. Whether or not the expenses representing payments made by petitioner to certain non-resident foreign corporation should be disallowed for petitioner's failure to withhold the final taxes thereon; and
4. Whether or not the tax credits claimed on income tax were actually creditable VAT for services rendered to the government.

B. VAT Assessment

1. Whether or not the collections held in trust for HMC should be considered as part of petitioner's gross receipts for VAT purposes;

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[13] Rollo, pp. 185-221
[14] Rollo, pp. 375-376
[15] Rollo, pp. 381-383
[16] Rollo, pp. 387-388
[17] Rollo, p. 405
[18] Rollo, pp. 416-444
[19] Rollo, p. 446
[20] Rollo, pp. 88-89

2. Whether or not the licensing fee paid to non-resident foreign corporations should be subjected to VAT, or alternatively, whether or not petitioner is obliged to withhold any VAT thereon; and
3. Whether or not there were unsubstantiated input taxes and input tax claimed from non-VAT suppliers.

C. Final Withholding Tax Assessment

1. Whether or not payments petitioner made to certain foreign contractors are subject to final tax in the taxable year 1998.

D. EWT Assessment

1. Whether or not petitioner should be held liable for interest on the alleged late remittance of the expanded withholding tax for expenses incurred in 1997.

However, considering petitioner's Amended Petition for Review, the issue of whether or not respondent's right to assess petitioner has prescribed warrants a similar consideration by this Court.

FINDINGS/DISCUSSION

Before discussing the factual issues presented, this Court deems it proper to discuss first the legal issue of prescription considering that the resolution of the factual issues would depend on the findings of the same.

After a careful scrutiny of the arguments and documents presented, the Court finds for petitioner.

The applicable provision of law is Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

> **"Sec. 203.** ***Period of Limitation Upon Assessment and Collection.*** — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For the purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

To apply, records of the case would show that petitioner filed its 1998 Annual Corporate Income Tax Return on April 7, 1999[21]. Pursuant to the aforementioned Section, respondent has until April 15, 2002 within which to assess the petitioner of its 1997 income tax liabilities.

Records likewise show that petitioner filed its 1998 Quarterly Value-Added Tax Returns on April 22, 1998[22], July 20, 1998[23], October 26, 1998[24], and January 25, 1999[25]. In this regard, respondent has until April 25, 2001, July 25, 2001, October 25, 2001, and January 25, 2002 covering the 1st, 2nd, 3rd, and 4th Quarters of the taxable year 1998, respectively, within which to issue his deficiency tax assessments against petitioner.

As regards petitioner's Monthly Remittance Returns on Income Tax Withheld for the taxable year 1998, petitioner filed the same as follows:

Monthly Remittance Returns of Income Taxes Withheld for the Taxable Year 1998[26]	**Date of Filing[27]**	**Last Day to Assess**
January	February 24, 1998	**February 26, 2001**
February	March 25, 1998	**March 26, 2001**
March	April 22, 1998	**April 25, 2001**
April	May 20, 1998	**May 25, 2001**
May	June 25, 1998	**June 25, 2001**
June	July 20, 1998	**July 25, 2001**
July	August 24, 1998	**August 27, 2001**
August	September 24, 1998	**September 25, 2001**
September	October 26, 1998	**October 25, 2001**
October	November 25, 1998	**November 26, 2001**
November	December 22, 1998	**December 25, 2001**
December	January 25, 1999	**January 25, 2002**

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21 Exhibit "O"
22 For the 1st Quarter of 1998; Exhibit "P"
23 For the 2nd Quarter of 1998; Exhibit "Q"
24 For the 3rd Quarter of 1998; Exhibit "R"
25 For the 4th Quarter of 1998; Exhibit "S"
26 Exhibits "T-1" to "T-12", "X-1" to "X-12", "Y-1" to "Y-11"
27 Exhibits "T-1-a" to "T-12-a", "X-1-a" to "X-12-a", "Y-1-a" to "Y-11-a"

Based on the dates of filing of petitioner's Monthly Remittance Returns of Income Taxes Withheld for the taxable year 1998, respondent has the aforementioned dates within which to issue his assessment against petitioner for any deficiency taxes.

Respondent does not dispute that the Formal Demand Letter with Assessment Notices were issued against petitioner on May 15, 2002.[28] Apparently, based on the above-mentioned dates, these assessment notices were issued beyond the prescriptive period allowed under Section 203 of the NIRC of 1997.. However, the same Section 203 of the NIRC of 1997, as amended, provides that an assessment notice issued may be issued after the lapse of the 3-year prescriptive period provided that the instances under Section 222 (b) of the same Code are present:

> **"Section 222.** ***Exceptions as to the Period of Limitation of Assessment and Collection of Taxes. –***
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> x x x x x x x x x
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> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer has 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 respondent's right to assess petitioner for deficiency taxes depends on them.

In support of its defense of prescription, petitioner submits that the three (3) Waivers of the Statute of Limitations executed by the parties are invalid since the said waivers were not executed in accordance with Section 222(b) of the NIRC of 1997, as well as, Revenue Memorandum Order (RMO) No. 20-90. For one, the first waiver failed to indicate the date of acceptance, in violation of Section 2 of RMO 20-90. Second, the second

[28] Supra, note 4

waiver was not signed by the respondent nor by any of his authorized representatives. Hence, there is no valid and binding agreement between the parties which would warrant the extension of the period to assess. However, assuming that the second waiver is valid, the third waiver is not valid considering that the same was executed three (3) days after the expiration of the second waiver. Moreover, petitioner avers that it was not provided with a copy of any of the three waivers. Lastly, all three waivers failed to state the kind of tax and the amounts for each deficiency assessment, in violation of the requirements under Section 1 of RMO 20-90. In view thereof, the waivers did not in any way extend respondent's right to assess.

Hence, there being no valid waivers to extend the respondent's period to assess petitioner for deficiency taxes, the subject Formal Assessment Notices are void for having been issued beyond the three (3)-year prescriptive period.

This Court agrees.

For purposes of clarity, hereunder is a reproduction of the subject first waiver allegedly executed by the parties:

"WAIVER OF THE STATUTE OF LIMITATION UNDER THE NATIONAL INTERNAL REVENUE CODE[29]

I, PABLO M. TANSIKING, JR. of PHILIPPINE HOTELIERS, INC. request for the approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation its tax liabilities for the year 1998. I hereby waive the defense of prescription under the statute of limitations prescribed in Section 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitation fixed be said sections of the National Internal Revenue Code but not later than March 30, 2002.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer[s] represented below, by the execution of this waiver, neither admits in advance the

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[29] Exhibit "U"

correctness of the assessment/assessments which may be made for the year above-mentioned no[r] waives the right to use any legal remedies afforded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.

Executed this September 27, 2001, 2001 in Quezon City, Philippines.

By: (sgd.)
PABLO M. TANSIKING, JR.
Taxpayer or Duly Authorized Signatory
TREASURER
Position
ROLDAN M. ANTONIO (sgd.)
Witness

Accepted by:

RENE G. BANEZ
COMMISSIONER OF INTERNAL REVENUE
By: (sgd.)

VIRGINIA L. TRINIDAD
Revenue Official/Position

Assistant Commissioner
Large Taxpayers Service
Office

x x x x x x x x x"

The second Waiver of the Statute of Limitations was written as follows:

"WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE[30]

I, ROLDAN ANTONIO representing PHILIPPINE HOTELIER, INC. (owner of DUSIT HOTEL NIKKO[)] in consideration of the approval by the Commissioner of Internal Revenue of our request for the extension of time within which to present the required documents in connection with the investigation and/or consideration of our pending internal revenue tax liabilities for the year ended DECEMBER 1998 hereby waive the running of the prescriptive period provided for in Section 203 and 222 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 investigation and consideration at any time before or after the lapse of the period of limitations fixed by said [sections] of the National Internal Revenue Code but not after JUNE 30, 2002.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment

[30] Exhibit "V"

which may be made against him for the period above-mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund of such tax that may be assessed and paid for the same period pursuant to Sections 204 and 229 of the National Internal Revenue Code.

Executed this 14th day of MARCH 2002 in Makati City, Philippines.

(sgd.)
ROLDAN ANTONIO
(Taxpayer or Authorized Representative)

Accepted and Agreed to:

RENE G. BANEZ
COMMISSIONER OF INTERNAL REVENUE
By:

EDWIN R. ABELLA
Asst. Commissioner
Large Taxpayers Service
Date: ______________________

x x x x x x x x x"

As for the third waiver:

"WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE[31]

I, ROLDAN ANTONIO representing PHILIPPINE HOTELIER, INC. (owner of DUSIT HOTEL NIKKO[)] in consideration of the approval by the Commissioner of Internal Revenue of our request for the extension of time within which to present the required documents in connection with the investigation and/or consideration of our pending internal revenue tax liabilities for the year ended DECEMBER 1998 hereby waive the running of the prescriptive period provided for in Section 203 and 222 and other related provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after investigation and consideration at any time before or after the lapse of the period of limitations fixed by said [sections] of the National Internal Revenue Code but not after DECEMBER 31, 2002.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admits in advance the correctness of the assessment which may be made against him for the period 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 year pursuant to Sections 204 and 229 of the National Internal Revenue Code.

[31] Exhibit "W"

Executed this 1st day of JULY 2002 in Makati City, Philippines.

(sgd.)
ROLDAN ANTONIO
(Taxpayer or Authorized Representative)

Accepted and Agreed to:

RENE G. BANEZ
COMMISSIONER OF INTERNAL REVENUE
By:

(sgd.)
EDWIN R. ABELLA
Asst. Commissioner
Large Taxpayers Service

Date: 7-01-02

x x x x x x x x x"

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

"1. The waiver must be in the form identified as Annex "A" 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. In the National Office

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

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 and underscoring supplied)

In other words, a valid waiver must conform to the following format:

"WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE[32]

____ 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 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 Waivers of the Statute of Limitations dated October 19, 2001, reveals the following defects:

1. The first, second and third waivers[33] failed to follow the required format as prescribed under RMO 20-90.
2. The first waiver failed to indicate the date of receipt by the Commissioner of Internal Revenue or his authorized representative.

[32] Annex "A", Revenue Memorandum Order No. 20-90, April 4, 1990
[33] Exhibits "U", "V", and "W"

3. The second waiver was not signed by the Commissioner of Internal Revenue or his authorized representative.

4. The subject three (3) Waivers of Statute of Limitations[34] failed to specify the types of tax and their respective amounts of deficiency due.

5. There is no proof to show that petitioner was given copies of the subject waivers.

In the case of **Philippine Journalists, Inc., vs. Commissioner of Internal Revenue**[35], the Supreme Court discussed the rationale behind the strict compliance of the requisites in executing of a valid Waiver of the Statute of Limitations, to wit:

> *"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.*
>
> *xxx xxx xxx*
>
> *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."* (Emphasis supplied)

Verily, all details bringing about the validity of a waiver should not be dispensed with; for one, not only is the date of acceptance by the respondent of the waiver one vital information, the same waiver must logically be agreed to and accepted by the respondent. As a waiver is an agreement between the parties, failure to agree and accept would

[34] Exhibits "U", "V", and "W"
[35] G.R. No. 162852, December 16, 2004

effectively mean that no waiver was ever executed, that is, no agreement or meeting of the minds ever existed. The law requires that the date of acceptance by the Bureau of Internal Revenue (BIR) should be before the expiration of the period of prescription, or before the lapse of the three-year prescriptive period pursuant to Section 203 of the NIRC of 1997, as amended; for the date of acceptance would determine whether or not the acceptance by respondent was made within the prescriptive period. Consequently, if the same was executed after the period to assess, then, there would not have been any period to extend. This finds ground in the same **Philippine Journalist**[36] case, 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 'Revenue Officials normally have to conduct first an inventory of their pending papers and property responsibilities.' "* (Emphasis supplied)

In this instant case, the first waiver failed to follow the prescribed format as required under RMO No. 20-90, which specifically states that there *"should be no deviation from such form"*. Likewise, the first waiver did not bear the date of acceptance by the respondent. As previously discussed, the date of acceptance plays an important role in the validity of the waiver for this determines whether the subject waiver was executed within the prescriptive period allowed by law to issue an assessment. Consequently, if the same was executed after the period to assess, then, there would not have been any period to extend. Moreover, there is no mention of the amount of taxes subject of the assessments. The purpose of stating the amount of tax due is for the petitioner to identify which among the proposed tax assessments may subsequently be issued without invoking the defense of prescription. If the

[36] Ibid.

amount were not indicated in the said waiver, rationally, there is no agreement to speak of. It should be emphasized that RMO No. 20-90 requires specific information; hence, to substitute the same with general statements is a departure from the said order. Lastly, the signatory of the first waiver is the Assistant Commissioner of the Large Taxpayers Service, which, in this case, should have been the Commissioner himself pursuant to RMO No. 20-90, considering that the amount of assessed taxes is more than one million pesos.

With these lapses on the first waiver, effectively, respondent's period to assess was not extended. A waiver, being void from its inception, does not give rise to a right for which respondent may exercise; it was as if no waiver to extend the period to assess was ever executed. The first waiver being a void one, the succeeding waivers executed by the parties have no force and effect as to bind the parties.

With respondent's failure to issue the assessment notices within three (3) years from the date petitioner filed its income, value-added, final withholding, and expanded withholding tax returns, in view of the invalidity of the three Waivers of the Statute of Limitations, his period to assess had already prescribed. Effectively, the May 15, 2002 Formal Letter of Demand and Assessment Notices for deficiency taxes issued against petitioner 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** and the assessments issued against petitioner for deficiency income tax, value-added tax, final withholding tax, and expanded withholding tax for the taxable period 1998 in the aggregate amount of **TWENTY ONE MILLION EIGHT HUNDRED SEVENTEEN THOUSAND FOUR HUNDRED FOUR AND 82/100 PESOS (P21,817,404.82)** are hereby **CANCELLED** and **WITHDRAWN** for being issued beyond the prescriptive period allowed by law. Accordingly, respondent's Final Decision on Disputed Assessment issued on December 12, 2003 is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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