REPUBLIC OF THE PHILIPPINES

COURT OF TAX APPEALS

QUEZON CITY

FIRST DIVISION

ADVENT CAPITAL AND FINANCE CORPORATION (formerly ALL ASIA CAPITAL AND LEASING CORPORATION)
Petitioner,

CTA CASE NO. 7054

Members:

- *versus* -

Acosta, *PJ*
Bautista, and
Casanova, *JJ*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 20 2008 2:30 p.m.

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DECISION

ACOSTA, *PJ:*

The Case

This Petition for Review seeks for the cancellation of the assessed deficiency income taxes of P23,446,142.56 and P37,897,999.89 for taxable years 1988 and 1989, respectively, as well as, the deficiency gross receipts tax of P295,308.02 for the taxable year 1988.

The Facts

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with office address at the 6th Floor of the SSHG Law Centre, 105 Paseo de Roxas, Makati City. It is a duly registered taxpayer under Tax Identification Number 000-522-802-000.[1] It was issued a Certificate of Incorporation and Filing of By-Laws by the Securities and Exchange Commission on May 1, 1980.[2]

Respondent on the other hand, is the chief of the Bureau of Internal Revenue ("BIR"), the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith. She may be served with summons and other court processes at the BIR National Office Building, Diliman, Quezon City.[3]

For taxable years 1988 and 1989, petitioner entered into lease agreements whereby, it leased out various equipments to third parties.[4] In connection therewith, petitioner filed its Annual Corporate Income Tax Returns for same taxable years on April 17, 1989 and April 16, 1990 and claimed as deductions from its gross income, depreciation expenses of its leased assets in the amounts of P50,902,051.00 and P49,564,557.37, respectively.[5] Petitioner likewise filed its quarterly Gross Receipts Tax Returns for taxable year 1988 on April 20, 1988, July 20, 1988, October 20, 1988 and January 20, 1988.[6]

On January 30, 1992, petitioner received Assessment Notice FAS-B-88-92 dated January 17, 1992, under which it was assessed deficiency gross receipts tax for taxable

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[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues
[2] Par. 12, Supra.
[3] Par. 2, Supra.
[4] Par. 13, Supra.
[5] Par. 14, Supra.
[6] Par. 17, Supra.

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year 1988, in the amount of P389,058.06 (the "First Assessment Notice on Gross Receipts").[7] Through a letter dated February 27, 1992, petitioner duly protested the said Assessment Notice.[8]

Then on March 12, 1992, petitioner, through its Executive Vice President Eleuterio D. Coronel, executed a waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code (NIRC) valid until May 15, 1992, in connection with the tax investigation for the calendar year ended December 31, 1988.[9]

Thereafter, on May 22, 1992 petitioner received Assessment Notice FAS-1088-92-001983 dated May 7, 1992, for deficiency income tax for 1988 in the amount of P21,876,978.54. The said assessment was duly protested by petitioner on June 19, 1992.[10]

On February 4, 1993, February 15, 1993, June 7, 1993, July 30, 1993, August 24, 1993, and November 12, 1993, petitioner executed more waivers of the defense of prescription under the statute of limitations provided in the NIRC. These waivers extended the period given to the BIR to assess and collect the deficiency taxes of petitioner for the years 1988 and 1989, to December 31, 1994.[11]

Meanwhile, in a letter dated June 29, 1993, and received by petitioner on July 8, 1993, the Bureau of Internal Revenue, through Director Bernardo A. Frianeza, reduced the original assessed amount for gross receipt tax of P389,058.00, to P295,308.02. Then, on August 31, 1993, petitioner received the new assessment notice, FAS-5-88-93-2916 dated July 29, 1993 (the "Final Assessment Notice on Gross Receipts"), superseding the old

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[7] Par. 6, Supra.
[8] Par. 7, Supra.
[9] Exhibit "U"
[10] Par. 3, Supra.
[11] Exhibits "BB", "V", "Y", "CC", "W", "Z", "X", "AA, and "DD"

assessment.[12] Under the Final Notices of Assessment on Gross Receipts, petitioner is being held liable for deficiency gross receipts tax computed as follows:[13]

1988 Deficiency Gross Receipts Tax

Adjusted Amount subject to deficiency	
Gross receipts tax	P2,415,637.00
5% Gross receipt tax	P 120,781.85
Add: Surcharge	30,195.46
Interest (fr. 1.21.89 to 4.20.93)	128,330.71
Compromise Penalty	16,000.00
Total Amount Due	P 295,308.02

On August 6, 1993, petitioner duly protested the said Final Assessment Notice on Gross Receipts in a letter dated August 5, 1993.[14]

On August 9, 1993, petitioner received two final assessment notices, FAS-2-88-93-2803, which superseded FAS-1088-92-001983, and FAS-2-89-93-2804, both dated July 20, 1993, under which the Commissioner assessed petitioner for the alleged deficiency income taxes for taxable years 1988 and 1989 in the total amounts of P23,446,142.56 and P37,897,999.89, respectively (the "Final Assessment Notices on Income Tax")[15] computed as follows:[16]

I. 1988 Deficiency Income Tax

Net loss per return	(P18,983,905.00)
Add: Disallowed depreciation expense	47,921,224.00
Income Tax due thereon	P 10,128,061.65
Less: Tax already paid	0
Deficiency-basic	P 10,128,061.65
Add: 25% Surcharge	2,532,015.41
Interest	10,761,065.50
Compromise penalty	25,000.00

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[12] Par. 8, Supra.
[13] Par. 19, Supra.
[14] Par. 9, Supra.
[15] Par. 4, Supra.
[16] Par. 16, Supra.

Total amount due and collectible	P 23,446,142.56

II. 1989 Deficiency Income Tax

Basic Tax Due	P 18,178,812.99
Add: Surcharge	4,544,532.48
Interest (from 4-16-90 to 8-15-93)	15,149,654.42
Compromise penalty	25,000.00
Total amount due and collectible	P 37,897,999.89

On August 23, 1993 and September 8, 1993, petitioner duly protested the Final Assessment Notices on Income Taxes.[17]

Thereafter, on July 8, 1999, petitioner, through a letter dated July 7, 1999, contested the recommendation of Revenue Officer Gabriel U. Villaluz, on the disallowance of its depreciation expense and reiterated its request for the cancellation of the assessments on income tax for 1988 and 1989.[18]

In a letter dated July 16, 2004, and received by petitioner on August 23, 2004, the Commissioner denied the protests filed by petitioner on the following grounds:[19]

a. Petitioner failed to comply with Revenue Regulations No. 18-86 dated November 10, 1986, by failing to secure an advance ruling;

b. The Lease Agreements are actually conditional sales in substance, because:

   i. The Lease Agreements used the phrase "until fully paid", and
   ii. The costs of the lease assets do not appear in Petitioner's Balance Sheet.

c. Petitioner gross receipts as computed using BIR's pro forma audit procedures, did not match the gross receipts declared by petitioner in its gross receipt tax returns.

[17] Par. 5, Supra.
[18] Par. 10, Supra.
[19] Par. 11, Supra.

This letter purported to be respondent's "final decision", over which, in case of disagreement, petitioner may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt.[20]

Thus, on September 22, 2004, petitioner filed the instant Petition for Review praying that the adverse decision of the respondent dated July 16, 2004 and the Assessments Nos. FAS-2-88-93-3803, FAS-2-89-93-2804 and FAS-5-88-93-2916, be reversed and set aside.

On June 24, 2005, petitioner filed a "Motion For Leave To File and Admit Amended Petition for Review" alleging that upon review and examination, it has discovered that the Waivers of the Statute of Limitations it had executed in connection with the investigation made by the BIR for the alleged deficiency income taxes for 1988 and 1989, as well as the deficiency gross receipts tax for 1988, are invalid because they failed to comply with the requirements under Revenue Memorandum Order No. 20-90. Accordingly, the waivers it had executed did not toll or suspend the running of the prescriptive period within which the BIR could have validly issued an assessment and collected taxes from it. Thus, the assessments involved should be cancelled because both the periods to assess and to collect have prescribed. The Petition for Review, as amended included the foregoing arguments and legal defenses in support of the cancellation of the assessments involved. The said Motion was granted and the Amended Petition for Review admitted, in a resolution promulgated on October 14, 2005. [21]

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[20] Par. 21, Supra.
[21] Pages 474 to 477, *Rollo*

In her Answer[22] to the Original Petition for Review, which served as the Answer to the Amended Petition for Review,[23] respondent raised the following Special and Affirmative Defenses:

> "4. The assessments for 1988 Deficiency Income Tax in the amount of P23,446,142.56, 1989 Deficiency Income Tax in the amount of P37,897,999.89 and Deficiency Gross Receipts Tax in the amount of P295,308.02 were issued in accordance with law and regulations;
>
> Deficiency Income Tax
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> 5. The Deficiency income tax assessments were the result of the disallowance of depreciation expense on Petitioner's leased personal assets in the amounts of P50,902,051.00 and P49,564,557.37 for taxable years 1988 and 1989, respectively;
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> 6. The Depreciation Expense claimed by the Petitioner as deduction from gross income were disallowed for the following reasons:
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> A) Petitioner has failed to comply with Section 5 (Advance Ruling Required to Recognize Existence of a Lease) of Revenue Regulations No. 19-86 dated October 1, 1986. Violation of the provision deprives the Petitioner of availing of its benefits, including depreciation expenses.
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> B) The lease transactions of All Asia Capital & Leasing Corporation (now Advent Capital & Finance Corporation) appear to be LEASES IN FORM but are CONDITIONAL SALES IN SUBSTANCE for the following reasons:
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> B.1 The lease is a FINANCE LEASE as evidenced by the phrase "until fully paid" in the Lease Agreement. Quoted hereunder is Item (F) of petitioner's lease agreement:
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> "Rental Payment:
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> *(F) The LESSEE agreed to pay in advance/arrears such as rent as stipulated below on a monthly/quarterly basis until the termination or expiration of the Agreement. Such rent is payable*

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[22] Pages 98 to 103, Supra.
[23] Resolution dated October 14, 2005, pages 474 to 477, Supra.

> *at the LESSOR'S office commencing on March 10, 1988 and the subsequent rents on the 10th day of each month thereafter* <u>*UNTIL FULLY PAID.*</u>*"*

B.2 The 1988 and 1989 Audited Financial Statements did not show as ASSET ACCOUNT the leased equipments. The non-appearance of the costs of the leased assets in the Balance Sheet means titles or ownership have been transferred, or have never been vested in the petitioner, making its transactions as plain sales or plain loans;

C) Besides claiming depreciation expense on the principal or cost portion of its lease receivables (Investment in Loans/Leases in the Balance Sheet), the petitioner is also providing an allowance for doubtful accounts (bad debts) on the lease receivables. Furthermore, the computation of the year-end balances of the Investment in Loans/leases (lease receivables) as follows:

12/31/88 – P311,437,266.00
12/31/89 – P502,803,851.00

shows that the above amounts are net of the allowances for uncollectibles. Therefore, the lease receivables or investments in loans/leases, which the petitioner has claimed, include the principal portion representing the leased equipment's book value, are deemed amounts collectible in money and payable by customers, because they are the offshoots of conditional sales, or maybe simple loans and not leases. In either case, the income from these transactions is not subject to depreciation charges.

1988 Gross Receipts Tax:

7. Following the pro forma computation set forth in audit procedures, the gross receipts during the year did not match the gross receipts declared by petitioner in its Gross Receipts Tax (GRT) returns;

8. The deficiency gross receipts tax assessment was the result of the portion of gross receipts in the amount of P3,769,850.87 which was not included in the declared amount subject to tax in the GRT returns filed by petitioner.

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9. Finally, it is well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The Petitioner has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

The Stipulated Issues[24]

By agreement of the parties, the issues to be tried and resolved in this case are the following:

A. On the assessments for 1988 and 1989 Deficiency Income Tax.

1. Whether the assessment issued against petitioner have already prescribed, considering the following corollary issues:

   1.1 Whether the Waivers of the Statute of Limitations under the National Internal Revenue Code (the "Waivers") filed by petitioner with the BIR are valid;

   1.2 Whether the Waivers submitted duly complied with the requirements under Revenue Memorandum Order No. 20-90.

2. Whether the depreciation expenses claimed by petitioner are valid or not, considering the following sub-issues:

   2.1 Whether it was mandatory for petitioner to comply with Section 5 of Revenue Regulations No. 19-86 dated 1 October 1986.

   2.2 Whether or not the fact that petitioner did not secure an advance ruling from the BIR deprives petitioner of the right to claim depreciation expenses under Revenue Regulation No. 19-86.

   2.3 Whether the transactions of petitioner, subject of this assessment, are leases or are conditional sales.

B. On the assessment for 1988 Deficiency Gross Receipts Tax

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[24] Issues to be Tried and Resolved, Joint Stipulation of Facts and Issues

1. Whether the assessment for 1988 Deficiency Gross Receipts Tax is valid considering the following sub-issues:

   1.1 Whether the Waivers filed by petitioner with the BIR are valid;

   1.2 Whether the Waivers submitted duly complied with the requirements under Revenue Memorandum Order No. 20-90.

   1.3 Whether the actual gross receipts derived by petitioner, during the subject year, match with the gross receipts declared by petitioner in its Gross Receipts Tax returns.

   1.4 Whether a portion of the gross receipts of petitioner were not included in the declared amount subject to tax in the Gross Receipts Tax returns filed by petitioner.

Parties' Arguments

Petitioner's arguments

Petitioner asserts that the waivers it executed are invalid for failure to comply with the provisions of Revenue Memorandum Order No. 20-90. Not one of the waivers was signed by the Commissioner nor did the waivers bear the dates of acceptance or approval by the BIR. Thus, under Sections 203 and 222 of the NIRC, the BIR's right to assess the alleged deficiency income taxes for 1988 and 1989, as well as, the deficiency gross receipts tax for 1988 had already prescribed. Petitioner claims that even on the assumption that the Final Assessment Notices on Income Tax are valid, it is entitled to claim the depreciation expenses of its leased assets, as deductions from its gross income, considering that the transactions it entered into are leases, not conditional sales under Revenue Regulation No. 19-86. Further, granting for the sake of argument that the Final Assessment Notice on Gross Receipts Tax was validly issued, the BIR failed to take into

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account the unrealized foreign exchange gain and the 1988 beginning balance of accrued interest receivable in computing the gross receipts tax for 1988.

Respondent's arguments

Respondent maintains that the assessed deficiency income taxes of P23,446,142.56 for 1988 and P37,897,999.89 for 1989, as well as the deficiency gross receipts tax of P295,308.02 for 1988 were issued in accordance with law and regulations. According to respondent, the waivers were validly executed by the parties and necessarily extended the prescriptive period to assess the subject taxes. Petitioner was furnished of the copies of the approved and accepted waivers. It in fact brought before the Court its own copies of the waivers; a manifestation that it was notified of the perfected and accepted agreements between them. Further, even granting without conceding that the waivers suffer from alleged defects (lack of signature of the Commissioner and lack of date of acceptance), by repeatedly requesting extensions of time to substantiate its allegations and dispute the findings of the BIR, by executing subsequent waivers extending the period of limitation, petitioner impliedly recognized the validity of the prior waivers it executed. Lastly, in the most extreme circumstance that the waivers are invalid, still the assessments have not yet prescribed because petitioner's repeated requests for reinvestigation were acted upon. This fact effectively extended the period of limitation and rendered any discussion on the validity of the waivers, moot and academic.

The Court's Ruling

As a general rule, the period for the Bureau of Internal Revenue to assess and collect an internal revenue tax is limited to three years by Section 203 of the National Internal Revenue Code (NIRC)[25] which provides that:

> Sec. 203. *Period of limitation upon assessment and collection.* – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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-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.

Foremost, this Court will determine the reckoning date of the three year prescriptive period provided under the aforementioned law which may either be the date of actual filing of the requisite returns during the questioned taxable years, or the last date prescribed by law for filing such returns, whichever comes later.

For taxable year 1988, petitioner actually filed its annual income tax return on April 17, 1989, which was also the last date prescribed by law for filing such a return. Counting from April 17, 1989, respondent had three (3) years, until April 17, 1992, within which to assess petitioner of deficiency income tax for 1988. In this case, petitioner received the Assessment Notice FAS-1088-92-00-1983[26] dated May 7, 1992 involving the assessed

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[25] Batas Pambansa Blg. 700 (approved on April 5, 1984) amended the Tax Code of 1977 by shortening the period of limitations on assessment and collection of national internal revenue taxes from the original five years to three years. The shorter three-year prescriptive period shall apply to assessments made on or after April 5, 1984 covering taxable years beginning January 1, 1984.
[26] Exhibit "FF"

deficiency income tax for 1988, only on May 22, 1992[27], clearly beyond the three (3) year prescriptive period to assess the alleged tax due.

In the same vein for taxable year 1989, petitioner filed its annual income tax return on April 16, 1990, which was also the last date prescribed by law for filing such a return. Counting from April 16, 1990, respondent had three (3) years, until April 17, 1993, within which to assess petitioner of deficiency income tax for 1989. Records, however, reveal that petitioner received the Assessment Notices FAS-2-88-93-28-03[28] and FAS-2-88-93-002804[29] dated July 20, 1993, both only on August 9, 1993[30], beyond the three (3) year prescriptive period to assess the alleged tax liability.

Lastly, petitioner filed its quarterly Gross Receipts Tax Return for four quarters of the taxable year 1988 on April 20, 1988, July 20, 1988, October 20, 1988 and January 20, 1988.[31] Counting from these dates of the actual filing of quarterly gross receipts tax returns, respondent then had three (3) years, until April 20, 1991, July 20, 1991, October 20, 1991 and January 20, 1992, respectively, within which to assess petitioner of deficiency gross receipts tax for 1988. Unfortunately, records show that petitioner received the Assessment Notice FA-B-88-92 dated January 17, 1992 for the alleged deficiency gross receipts tax only on January 30, 1992, also beyond the three (3) year prescriptive period.

Respondent would like to impress this Court that the prescriptive period to assess the deficiency income taxes for 1988 and 1989, and the deficiency gross receipts tax for

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[27] Par. 3, Summary of Admitted Facts
[28] Superseded FAS-1088-92-001983
[29] Exhibit "B"
[30] Par. 4, Summary of Admitted Facts
[31] Par. 17, Summary of Admitted Facts, Joint Stipulation of Facts and Issues

1988 were suspended with petitioner's execution of waivers of the statute of limitation. Respondent invokes one of the exceptions to the three-year period of limitation of assessment under Section 223(b) of the NIRC which states that "if before the expiration of the time prescribed 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 said exception is often referred to as "waiver of statute of limitations" to assess national internal revenues taxes.

Noteworthy that a waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.[32] This waiver, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally.[33]

Indeed, on several occasions[34], petitioner had executed and filed the "Waivers of the Statute of Limitations under the National Internal Revenue Code" this is not disputed. However, in the execution of waiver/s, the procedures outlined in Revenue Memorandum Order (RMO) No. 20-90 implementing the provisions of the NIRC should be followed,

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[32] Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G. R. No. 162852, December 16, 2004
[33] Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, Supra.
[34] Par. 20, Summary of Admitted Facts, Joint Stipulation of Facts and Issues

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bear in mind that in ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue***[35], the Supreme Court already ruled that RMO No. 20-90 must strictly be adhered to. And where, the waiver documents are incomplete and defective, the three-year prescriptive periods were not tolled nor extended and continued to run.

After examination, this Court holds that all the waivers executed by the petitioner failed to comply with two of the settled procedures outlined in RMO No. 20-90, namely: the lack of the signature of the Commissioner of Internal Revenue or the defective manner by which the other revenue official has accepted and agreed to the waiver; and the absence of dates of such acceptance by the Bureau.

For 1988 and 1989 deficiency income tax assessments, both the amounts assessed are more than One Million pesos. Under RMO 20-90, it is the Commissioner who is authorized to sign the waivers. Considering that all the waivers for deficiency income taxes for 1988 and 1989 were all signed by revenue officials, other than the Commissioner, the waivers are all defective. Moreover, even if we assume that the aforesaid cases of deficiency income taxes were still under the Regional Office of the BIR, and are about to prescribe, where as provided in par. 3(b) of RMO No. 20-90[36] the waivers may be approved and accepted by revenue officials lower than the Commissioner, still the

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[35] Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, Supra.

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

A. In the National Office xxx

B. In the Regional Offices

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

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, Assessment 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.

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said waivers are defective since there were no dates showing their acceptance, in violation of the same RMO.

The same is true with regard to the two waivers executed for the 1988 deficiency gross receipts tax. The said waivers were likewise not signed by the Commissioner or his authorized revenue official, and there were also no dates of their acceptance.

The argument of the respondent that the petitioner was furnished copies of the approved and accepted waivers as it was in fact able to bring before the Court its own copies thereof, showing that it was notified of the perfection and acceptance of the waivers, is unmeritorious.

That fact that petitioner had copies of the waivers which were brought before this Court as evidence does not mean that the Commissioner had duly approved and accepted the waivers. The only proof of respondent's approval and the date of her acceptance are the waiver documents themselves, revealing such approval and date of acceptance.

Moreover, par. 4 of RMO 20-90 provides that the waivers 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. It is further provided that the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

A closer scrutiny of the waivers which are attached to records of the Bureau, do not show petitioner's receipts of its file (second) copies of the waivers, yet another violation of RMO No. 20-90. [37]

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[37] Pages 208, 209, 239, 240, 251, 252, 260, 261, 304, 305, 327, 328, 640, 641, 642, 643, 653, 654, 670, 934, 1022, and 1046 of the BIR Records

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The argument of the respondent that petitioner impliedly recognized the validity of all the waivers it had executed due to its repeated requests for opportunities to substantiate its allegations and its execution of subsequent waivers further extending the period of limitation is also bereft of merit.

The execution of waiver document is not a unilateral act, but is a bilateral agreement between the two parties to extend the period to a date certain. It could only be done by strictly following the procedures outlined in RMO No. 20-90, any deviation shall result to an incomplete and defective waiver which does not toll nor extend the three-year prescriptive period.

In ***Commissioner of Internal Revenue vs. Court of Appeals***,[38] the Supreme Court invalidated the waivers not bearing the Commissioner's signatures and ruled that implied consent cannot be presumed, neither can it be contended that the waiver required under Sec. 319 of the Tax Code is one which is unilateral, nor can it be said that concurrence to such an agreement is a mere formality because the very signatures of both the Commissioner of Internal Revenue and the taxpayer gives birth to such a valid agreement.

Section 224 of the NIRC enumerates instances when the running of the statute of limitations on the assessment and collection of national internal revenue taxes could be suspended, even in the absence of a waiver, to quote:

> Section 224. *Suspension of running of statute.* — The running of the statute of limitation provided in Section 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation

[38] GR No. 115712, February 25, 1999

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> which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer inform the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a members of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

Among the exceptions provided by the afore-cited section, which the respondent invokes as a ground for the dismissal of the Petition, is the instance when the taxpayer requests for a reinvestigation and such request is granted by the Commissioner. Section 224 of the NIRC, however, could only be invoked if the period to assess and collect has not yet prescribed, it only suspends the running of the statute of limitation. Necessarily the prescriptive period could be suspended, by the Commissioner's grant of requests for reinvestigation, only when the period itself had not yet lapsed. It should be pointed out that in ***Commissioner of Internal Revenue v. B.F. Goodrich***,[39] the Supreme Court made an affirmation that the law on prescription should be liberally construed in order to protect the taxpayers and that, as a corollary, the exceptions to the law on prescription should be strictly construed.

The fact that petitioner filed administrative protests against the assessments issued, did not have the effect of extending or tolling the prescriptive periods. In this case, all the assessments were "issued" (following the definition provided in the case Bank of the Philippine Islands vs. Commissioner of Internal Revenue[40]) after respondent's period to assess and collect the taxes had lapsed, there being no valid waivers executed by the parties.

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[39] 363 Phil. 169 (1999) cited in the case of Commissioner of Internal Revenue vs. Philippine Global Communication, Inc. GR No. 167146, October 31, 2006
[40] Supra.

In view of the above, the Court finds no need to determine the validity of the assessments.

WHEREFORE, the instant Petition for Review seeking the cancellation of Final Assessment Notices: FAS-2-88-93-2803, which superseded FAS-1088-92-001983, involving the assessed deficiency income taxes of P23,446,142.56 for taxable year 1988; FAS-2-89-93-2804 involving the assessed deficiency income tax of P37,897,999.89 for taxable year 1989 and FAS-5-88-93-2916 superseding FAS-B-88-92 on deficiency gross receipts tax of P295,308.02 for the taxable year 1988 is hereby **GRANTED**; the aforementioned Assessment Notices are hereby **CANCELLED**, having been issued beyond the three-year prescriptive period provided by law.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

ON LEAVE
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice