REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE HOTELIERS, INC.,
Respondent.

C.T.A. E.B. NO. 515
(C.T.A. CASE NO. 6985)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
DEC 14 2009 Apolinario 10:00 a.m.

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on August 17, 2009 under Republic Act No. 1125, as amended by Republic Act No. 9282, and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division)[1] which granted the Petition for Review in CTA Case No. 6985, entitled "Philippine Hoteliers, Inc., petitioner, vs., Commissioner of Internal Revenue, respondent", to wit:

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[1] Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

1) Decision promulgated on March 9, 2009[2] granting the Petition for Review in CTA Case No. 6985 and accordingly canceling herein petitioner's assessments issued against herein respondent for deficiency income tax, value-added tax, final withholding tax, and expanded withholding tax for taxable period 1998, due to prescription; and reversing and setting aside petitioner's Final Decision on Disputed Assessment issued on December 12, 2003; and

2) Resolution promulgated on July 13, 2009[3] denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit.

THE FACTS

The undisputed facts of the case are as follows:

Petitioner Commissioner of Internal Revenue 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. Respondent, on the other hand, 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.

A Preliminary Assessment Notice (PAN) was issued on February 5, 2002, to which respondent duly replied to. Subsequently, on May 15, 2002, petitioner issued the Formal Letter of Demand against respondent 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**

[2] Ponencia of Associate Justice Caesar A. Casanova; Docket, pp. 19-38.
[3] Docket, pp. 39-44.

This Formal Letter of Demand was protested by respondent on June 26, 2002.

Consequently, in his Final Decision on Disputed Assessment dated December 12, 2003, which respondent received on April 13, 2004, petitioner partially granted respondent's protest, but still found the latter 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**

Moreover, the remaining income tax assessments were allegedly based on the following:

> a. Overclaimed interest expense (P696,998.34) — allegedly from failure of respondent to reduce by an amount equal to 41% of interest income its interest expense, pursuant to Section 34 (B) (1) of the NIRC;
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> b. Disallowed prior years expenses (P614,022.29) — allegedly because respondent 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 respondent withheld this amount as creditable VAT for services performed for the government.

As for the remaining value-added tax (VAT) deficiencies, petitioner 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) — respondent as licensee did not withhold VAT on such licensing fees and no input taxes were claimed, respondent 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.

Petitioner'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 National Internal Revenue Code (NIRC) of 1997.

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.

Thus, on May 13, 2004, respondent timely filed before the Court in Division a Petition for Review docketed as CTA Case No. 6985 entitled "Philippine Hoteliers, Inc., petitioner, vs., Commissioner of Internal Revenue, respondent", praying that the adverse decision of the petitioner dated December 12, 2003, assessing it for deficiency income tax, value-added tax, expanded withholding tax, and final withholding tax for calendar year 1998, be reversed and set aside.

A corresponding Answer was filed by petitioner on July 19, 2004.

The parties submitted their Joint Stipulation of Facts and Issues on November 23, 2004 which the Court in Division approved in a Resolution dated December 2, 2004.

However, on October 21, 2005, respondent filed a Motion for Leave to Admit Amended Petition for Review in view of its alleged discovery of copies of the Waivers of the Statute of Limitations from the BIR Records. Respondent explained that petitioner's right to assess respondent for deficiency taxes has already prescribed, thus, prayed for the cancellation of the subject assessment notices issued against it. In a Resolution dated January 11, 2006, the Court in Division admitted respondent's Amended Petition for Review and ordered petitioner to file his Amended Answer, which he did on January 27, 2006.

After trial on the merits, the Court in Division rendered its Decision dated March 9, 2009, the dispositive portion of which states:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED** and the assessments issued against petitioner (respondent herein) for deficiency income tax, value-added tax, final withholding tax, and expanded withholding tax for the taxable year 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 (petitioner's) Final Decision on

Disputed Assessment issued on December 12, 2003 is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED."[4]

Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied herein petitioner's Motion for Reconsideration of the aforesaid Decision in the Resolution dated July 13, 2009.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision and Resolution dated March 9, 2009 and June 13, 2009 (should be July 13, 2009), respectively, of the Court in Division be reconsidered and set aside; and another decision be issued ordering respondent to pay the amount of P21,817,404.82 representing deficiency tax liabilities for the calendar year 1998 covered under the subject Assessment Notices, plus surcharge and interest from the deficiency income tax, value-added tax, expanded withholding tax, and final withholding tax.

On September 3, 2009, this Court issued a Resolution[5] requiring respondent to file a Comment to the instant Petition for Review. Upon submission of respondent's Comment on October 5, 2009,[6] the Court issued a Resolution dated October 12, 2009[7] considering the present case submitted for decision.

Hence, this Decision.

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[4] Docket, pp. 37-38.
[5] Docket, p. 49.
[6] Docket, pp. 55-73.
[7] Docket, p. 75.

THE ISSUE

As adduced from the instant Petition for Review, the lone issue for the resolution of the Court *En Banc* is whether or not petitioner is precluded from assessing and collecting the deficiency taxes for taxable year 1998 from respondent despite the lack of certain formal requisites in the execution of waivers under the National Internal Revenue Code (NIRC) of 1997. In other words, the Court will rule on whether or not petitioner's right to assess respondent for the subject deficiency taxes has prescribed.

Petitioner's Arguments:

Petitioner submits the following arguments: (1) A waiver is not a contract; no need for agreement of both parties for its validity; (2) Issues not raised in the administrative proceedings cannot be raised for the first time on appeal; (3) The assessments for withholding taxes are penalties and not covered by the period of limitation in Section 222 of the NIRC of 1997; (4) Petitioner had every intention of assessing and collecting respondent's deficiency tax liabilities for calendar year 1998; (5) Tax exemptions are mere privileges, not rights; no vested right was given to respondent when the three waivers did not fully comply with the provisions of Revenue Memorandum Order No. 20-90; substantial compliance will suffice; and (6) Taxation is an inherent right of the State; it should not be subjected to the humble dictates of procedures; and the case should be tried on the merits.

According to petitioner, since the Waiver of Statute of Limitations executed by respondent is in fact a unilateral instrument, its signature would suffice to grant validity to the waiver. He stresses that the very wordings of the subject waivers issued by respondent readily reveal that the waiver was meant to be a unilateral statement and act of respondent. Moreover, the fact that the subject waivers failed to faithfully comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 does not grant any right whatsoever to respondent, which would place it beyond the reach of our tax laws based on mere technicalities and formalities. On the other hand, the facts and evidence submitted by the parties reveal that there was substantial compliance with the requirements of RMO No. 20-90, as respondent was well aware of the dates the waivers were signed and was able to execute three waivers and prepare a petition before the Court in Division before assailing the validity of said waivers which consequently places respondent in *estoppel*.

Finally, petitioner seeks this Court's kind indulgence to consider the disposition of this case, not on meager formalities, but on the merits and evidence presented during the proceedings before the Court in Division.

Respondent's Counter-arguments:

Respondent, on the other hand, counters that the instant petition should be denied due course and dismissed on the grounds that: (1) a Waiver of Statute of Limitations is not a unilateral act of the taxpayer; it is an agreement which requires the assent of both the Commissioner of Internal Revenue and the taxpayer; (2) Respondent is not precluded from raising the invalidity of the Waivers (Exhibits "U", "V", and "W") as an issue in the judicial proceedings, because the defects of the three Waivers were only discovered during the trial of the case; and (3) Petitioner has lost his right to assess respondent's alleged deficiency tax liabilities for calendar year 1998, in view of his failure to issue the assessment within the prescriptive period provided in Section 203 of the NIRC of 1997.

THE COURT EN BANC'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review readily reveals that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Court in Division which had already been exhaustively discussed and passed upon by it in its assailed Decision and Resolution. We thus adhere to the factual and legal findings of the Court in Division that the right of petitioner to assess respondent the subject deficiency taxes had already prescribed.

We quote hereunder the pertinent findings of the Court in Division:

> "To apply, records of the case would show that petitioner (respondent herein) filed its 1998 Annual Corporate Income Tax Return on April 7, 1999. Pursuant to the aforementioned Section, respondent (petitioner herein) has until April 15, 2002 within which to assess the petitioner (respondent) of its 1997 income tax liabilities.
>
> Records likewise show that petitioner (respondent) filed its 1998 Quarterly Value-Added Tax Returns on April 22, 1998, July 20, 1998, October 26, 1998, and January 25, 1999. In this regard, respondent (petitioner) 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 (respondent).

Monthly Remittance Returns of Income Taxes Withheld for the Taxable Year 1998	Date of Filing	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 26, 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**

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

Respondent (petitioner) does not dispute that the Formal Demand Letter with Assessment Notices were issued against petitioner (respondent) on May 15, 2002. 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. xxx"[8] *(Emphasis Ours)*

At this point, We find it apropos to emphasize that the period for petitioner to assess and collect an internal revenue tax is limited to three (3) years by Section 203 of the NIRC of 1997, 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."

This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of

[8] Assailed Decision dated March 9, 2009, pp. 9-10; Docket, pp. 27-28.

taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving 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.

In the case at bench, petitioner had three (3) years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. However, an exception to the three-year prescriptive period on the assessment of taxes is Section 222(b) of the same Code, which provides:

> "**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."

From the foregoing, 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. Bear in mind that the very reason why the law provided for prescription is to give taxpayers peace of mind, that is, to safeguard them from unreasonable examination, investigation, or assessment. 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.[9]

In ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue***,[10] the Supreme Court pronounced that a waiver is not automatically a renunciation of the right to invoke the defense of prescription. A waiver of the statute of limitations is nothing more but "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".

Corollary thereto, RMO No. 20-90 implementing Section 222(b) of the NIRC of 1997 [formerly Section 223(b) of the NIRC of 1977], which the Court in Division heavily relied upon for its judgment, enumerates the procedure in executing waivers of the Statute of Limitations:

> "Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. **In the execution of said waiver, the following procedures should be followed**:
>
> 1. **The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase 'but not after ______ 19 ___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.**

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[9] *CIR vs. B.F. Goodrich Phils., Inc.*, G.R. No. 104171, February 24, 1999.
[10] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

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

1. ACIRs for Collection, For tax cases involving
Special Operations, not more than P500,000.00
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.

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 Ours).*

A reading of the aforequoted RMO explicitly shows its mandatory nature, requiring strict compliance. Failure to comply with any of the aforesaid requisites renders a waiver defective and ineffectual.

Applying the foregoing to the present case, the waivers in question were defective and did not validly extend the original three-year prescriptive period. As correctly found by the Court in Division, petitioner clearly failed to establish that the prescriptive period to assess the subject deficiency taxes for taxable year 1998 of respondent, were indeed suspended considering that the subject waivers of the statute of limitations executed were flawed by the following legal infirmities, in clear violation of RMO No. 20-90:

(1) The first, second and third waivers failed to follow the required format as prescribed under RMO No. 20-90;

(2) The first waiver failed to indicate the date of receipt by the Commissioner of Internal Revenue or his authorized representative;

(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 failed to specify the types of tax and their respective amounts of deficiency due; and

(5) There is no proof to show that petitioner was given copies of the subject waivers.[11]

As already established by jurisprudence, the waiver in question is a bilateral agreement, thus necessitating the signatures of both the Commissioner of the Internal Revenue and the taxpayer to give birth to a valid agreement. Furthermore, indicating in the waiver the date of acceptance by the BIR is necessary in order to determine whether the parties (the taxpayer and the government) had entered into a waiver "before the expiration of the time prescribed in Section 203 (the 3-year prescriptive period) for the assessment of the tax". When the period of prescription has expired, then there will be no more need to execute a waiver as there will be nothing more to extend. Hence, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality. Accordingly, petitioner's right to assess the subject deficiency taxes has already prescribed.

Thus, We quote hereunder with approval the discussion of the Court in Division on the matter pertaining to the invalidity of the subject waivers executed:

"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

[11] Assailed Decision dated March 9, 2009, pp. 16-17; Docket, pp. 34-35.

form'. Likewise, the first waiver did not bear the date of acceptance by the respondent (petitioner herein). 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 (respondent) to identify which among the proposed tax assessments may subsequently be issued without invoking the defense of prescription. If the 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 (petitioner's) period to assess was not extended. A waiver, being void from its inception, does not give rise to a right for which respondent (petitioner) 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 (petitioner's) failure to issue the assessment notices within three (3) years from the date petitioner (respondent) 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 (respondent) are void for having been issued beyond the prescriptive period allowed by law.**"[12] *(Emphasis Ours)*

This Court cannot turn blind on the importance of the statute of limitations upon the assessment and collection of internal revenue taxes

[12] Ibid., at pp. 18-19; Docket, pp. 36-37.

provided for under the NIRC. The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act properly in the making of the assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a 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 beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.[13] Lastly, it is well settled 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 considered.[14]

As correctly found by the Court in Division, as the waivers were incomplete and defective, the three-year prescriptive period was not tolled nor extended, thereby making the subject assessments definitely considered time-barred.

[13] *Republic of the Philippines vs. Luis G. Ablaza*, No. L014519, July 26, 1960, 108 Phil. 1105, 1108.
[14] *Commissioner of Internal Revenue vs. B.F. Goodrich*, 363 Phil. 169 (1999) cited in *Commissioner of Internal Revenue vs. Philippine Global Communication, Inc.*, G.R. No. 167146, October 31, 2006.

Correspondingly, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated March 9, 2009 and July 13, 2009, respectively.

WHEREFORE, in view of the foregoing considerations, the instant petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

on leave
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice