REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**C.T.A. E.B. NO. 454** **(C.T.A. CASE NO. 7054)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
ADVENT CAPITAL AND FINANCE CORPORATION (Formerly All Asia Capital and Leasing Corporation), Respondent.	**Promulgated:** JUN 0 3 2009 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 February 11, 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. 7054, entitled "Advent Capital and Finance

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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.

Corporation (formerly All Asia Capital and Leasing Corporation), petitioner, vs. Commissioner of Internal Revenue, respondent", to wit:

1) Decision promulgated on October 20, 2008[2] granting the Petition for Review in CTA Case No. 7054 and accordingly canceling herein petitioner's assessments against herein respondent for deficiency income taxes for taxable years 1988 and 1989, as well as the deficiency gross receipt tax for taxable year 1988, due to prescription; and

2) Resolution promulgated on January 7, 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 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. He may be served with summons and other court processes at the BIR National Office Building, Diliman, Quezon City. Respondent, on the other hand, 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. It was issued a Certificate of Incorporation and Filing of By-Laws by the Securities and Exchange Commission on May 1, 1980.

For taxable years 1988 and 1989, respondent entered into lease agreements whereby, it leased out various equipments to third parties. In

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[2] Ponencia of Presiding Justice Ernesto D. Acosta; Docket, pp. 27-45.
[3] Docket, pp. 47-50.

connection therewith, respondent 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. Respondent 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, 1989.

On January 30, 1992, respondent received Assessment Notice FAS-B-88-92 dated January 17, 1992, under which it was assessed deficiency gross receipts tax for taxable year 1988, in the amount of P389,058.06 (First Assessment Notice on Gross Receipts). Through a letter dated February 27, 1992, respondent duly protested the said Assessment Notice.

Then on March 12, 1992, respondent, 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.

Thereafter, on May 22, 1992 respondent 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 respondent on June 19, 1992.

On February 4, 1993, February 15, 1993, June 7, 1993, July 30, 1993, August 24, 1993, and November 12, 1993, respondent 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 respondent for the years 1988 and 1989, to December 31, 1994.

Meanwhile, in a letter dated June 29, 1993, and received by respondent on July 8, 1993, the BIR, 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, respondent received the new assessment notice, FAS-5-88-93-2916 dated July 29, 1993 (Final Assessment Notice on Gross Receipts), superseding the old assessment. Under the Final Notices of Assessment on Gross Receipts, respondent is being held liable for deficiency gross receipts tax computed as follows:

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, respondent duly protested the said Final Assessment Notice on Gross Receipts in a letter dated August 5, 1993.

On August 9, 1993, respondent 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 petitioner assessed respondent 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 (Final Assessment Notices on Income Tax), computed as follows:

I. 1988 Deficiency Income Tax

Net loss per return	(P18,983,905.00)
Add: Disallowed depreciation expense	47,921,224
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
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, respondent duly protested the Final Assessment Notices on Income Taxes.

Thereafter, on July 8, 1999, respondent, 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.

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

"a. Petitioner (herein respondent) 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 (herein respondent's) Balance Sheet.

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

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

Thus, on September 22, 2004, respondent filed before the Court in Division a Petition for Review docketed as C.T.A. Case No. 7054 entitled "Advent Capital and Finance Corporation (formerly All Asia Capital and Leasing Corporation), petitioner, vs. Commissioner of Internal Revenue, respondent", praying that the adverse decision of the petitioner 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, respondent 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 allegedly 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.

After trial on the merits, the Court in Division rendered its Decision dated October 20, 2008, the dispositive portion of which states:

> "**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.
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> **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 January 7, 2009.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision and Resolution dated October 20, 2008 and January 7, 2009, respectively, of the Court in Division be reconsidered and set aside; and

[4] Docket, p. 45.

another decision be issued on the merits ordering respondent to pay the amounts of P23,446,142.56 and P37,897,999.89 as deficiency income tax for taxable years 1988 and 1989, respectively, and P295,308.02 as deficiency gross receipts tax for taxable year 1988 covered under the subject Assessment Notices, plus annual interests for late payment. A sole assignment of error was raised by petitioner, to wit:

"**ASSIGNED ERROR**

THE FIRST DIVISION OF THE HONORABLE CTA ERRONEOUSLY RULED THAT THE SUBJECT ASSESSMENTS ARE INVALID.[5]"

On February 25, 2009, this Court issued a Resolution[6] requiring respondent to file a Comment to the instant Petition for Review. Upon submission of respondent's Comment on March 9, 2009,[7] the Court issued a Resolution dated March 13, 2009[8] giving due course to the instant petition and requiring both parties to submit their memoranda within the period of thirty (30) days from notice.

After respondent filed its Memorandum on April 16, 2009,[9] while petitioner filed his Manifestation on the same date adopting the facts, issues, arguments, discussions, and prayer in the instant Petition as his memorandum,[10] this case was deemed submitted for decision in a Resolution dated April 22, 2009.

Hence, this Decision.

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[5] Petition for Review, p. 9, Docket, p. 14
[6] Docket, pp. 55-56.
[7] Docket, pp. 57-67.
[8] Docket, pp. 69-70.
[9] Docket, pp. 71-84.
[10] Docket, pp. 85-87.

THE ISSUE

As adduced from petitioner's assignment of error, the lone issue for the resolution of the Court *En Banc* is whether or not petitioner's right to assess respondent the subject deficiency taxes has prescribed.

Petitioner's Arguments:

According to petitioner, the Court in Division misapplied the doctrine of *stare decisis* case by adopting the ruling of the Supreme Court in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004* (PJI case) because the aforesaid ruling in the PJI case is not applicable herein due to the alleged factual variance between the two cases. In the PJI case, there was no ruling on the issue of estoppel, while in the present case, respondent is estopped from setting up the defense of prescription against the collection of the subject deficiency taxes as it repeatedly requested for extensions (as contained in respondent's protest letters dated February 27, 1992, June 19, 1992, August 5, 1993, August 23, 1993, and September 8, 1993) to substantiate its allegations by executing subsequent waivers extending the period of limitation. In other words, these positive acts persuaded petitioner to delay the collection of the subject deficiency taxes and therefore, respondent cannot attack the validity of the waivers, being contrary to the conclusive presumption provided under Section 2(a) of Rule 131 of the Revised Rules of Court, which provide that:

> "Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it" .

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Hence, by its own actions, respondent allegedly agreed to the validity of the waivers executed and therefore cannot be permitted to falsify it as rooted in the principle of fairness and equity. Petitioner thus submits that the suspension of its right to collect the deficiency taxes of respondent for taxable years 1988 and 1989 was justified and his right to collect has not prescribed.

Respondent's Counter-arguments:

Respondent posits that the instant petition should be dismissed on the grounds that: (a) petitioner failed to show that the Court in Division erroneously ruled that the waivers executed in this case are invalid; (b) petitioner's arguments are mere rehash of his previous arguments in the Motion for Reconsideration of the assailed Decision in the Court in Division level; and (c) it is clear that under Revenue Memorandum Order (RMO) No. 20-90, and pursuant to the ruling enunciated in PJI case, there was no valid waiver of the statute of limitations which would have effectively suspended the running of the prescriptive period to asses respondent; accordingly, the subject assessment notices subject of this case had been issued out of time and properly cancelled by the Court in Division.

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

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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.

It must be emphasized 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 1977, as amended, the applicable revenue code when the subject assessments were issued, which states:

> "**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 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 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 instant case, 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. An exception to the three-year prescriptive period on the assessment of taxes is Section 223 (b)[11] of the NIRC of 1977, as amended, which provides:

> **"SEC. 223. Exceptions as to period of limitation of assessment and collection of taxes. –**
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> xxx xxx xxx
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> (b) If before the expiration of the time prescribed in the preceding section 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 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. The 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.[12]

As held in the case of ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,***[13] 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

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[11] Now Section 222(b) of the NIRC of 1997, as amended.
[12] CIR vs. B.F. Goodrich Phils., Inc., G.R. No. 104171, February 24, 1999.
[13] G.R. No. 162852, December 16, 2004, 447 SCRA 214

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 223(b), 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**:
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> 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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> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
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> Soon after the waiver is signed by the taxpayer, **the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.**

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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 instant case, the waivers in question were defective and did not validly extend the original three-year prescriptive period. Petitioner clearly failed to establish that the prescriptive period to assess the deficiency income taxes for 1988 and 1989, and the deficiency gross receipts tax for 1988, 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) Lack of signature of the Commissioner of Internal Revenue or the defective manner by which the other revenue official has accepted and agreed to the waiver;
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> (2) Absence of dates of such acceptance by the Bureau of Internal Revenue; and
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> (3) Failure to show respondent's receipt of its file copies of the subject waivers.

Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement. 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 with approval the discussion of the Court in Division on the matter pertaining to the invalidity of the subject waivers executed, to wit:

> "Respondent (herein petitioner) 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 1988 were suspended with petitioner's (respondent's) execution of waivers of the statute of limitation. Respondent (herein petitioner) 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.
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> 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. 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.
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> Indeed, on several occasions, petitioner (herein respondent) 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, bear in mind that in Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, 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 (herein respondent) 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, the waivers may be approved and accepted by revenue officials lower than the Commissioner, still the 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 (herein petitioner) that the petitioner (herein respondent) 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 (herein respondent) 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 (petitioner's) approval and the date of her acceptance are the

> waiver documents themselves, revealing such approval and date of acceptance.
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> 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.
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> **A closer scrutiny of the waivers which are attached to records of the Bureau, do not show petitioner's (respondent's) receipts of its file (second) copies of the waivers, yet another violation of RMO No. 20-90**."[14] *(Emphasis Ours)*

Moreover, it bears stressing that this Court cannot turn blind on the importance of the statute of limitations upon the assessment and collection of internal revenue taxes 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

[14] Assailed Decision dated October 20, 2008, pp. 13-16; Docket, pp. 39-42.

the taxpayer within the contemplation of the Commission which recommends the approval of the law.[15]

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.

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 October 20, 2008 and January 7, 2009, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[15] Republic of the Philippines vs. Luis G. Ablaza, No. L014519, July 26, 1960, 108 Phil. 1105, 1108.

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