REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**CTA CASE NO. 8970**
-versus-	**Members:** **BAUTISTA,** Chairperson; **FABON-VICTORINO, RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	**Promulgated:** APR 18 2018 11:30 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This Petition for Review prays for the reversal of the deficiency tax assessment in the aggregate amount of Forty-Six Million Four Hundred Sixty-One Thousand Fifty-Six and 54/100 Pesos (Php46,461,056.54), including interest, surcharges and compromise penalties for calendar year ("CY") 2009, as confirmed in the Final Decision on Disputed Assessment ("FDDA") dated December 15, 2014.[1]

The Facts

Petitioner Lepanto Consolidated Mining Company is a duly organized and existing domestic corporation engaged in mining of gold and other precious metals, with principal place of business at 21/F Lepanto Bldg., 8747 Paseo de Roxas St., Barangay Bel Air, Makati City.[2] It is a registered taxpayer with

[1] Summary of the Case, Pre-Trial Order, docket, vol. 1, p. 190
[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, p. 176

Taxpayer Identification Number (TIN) 000-160-247-000.[3] Petitioner is also registered with the Board of Investments (BOI) as an export producer of gold bullion.[4]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 3, 1990, Petitioner entered into a Mineral Production Sharing Agreement with the Republic of the Philippines and Far South East Gold Resources, Inc.[5], the primary purpose of which is to provide for the exploration, development and commercial utilization of certain mineral deposits existing within the contract area, with all necessary services, technology and financing to be furnished or arranged for by the contractors in accordance with the provisions of the agreement; and the contractors shall not acquire any title to lands encompassed within the contract area.[6]

On April 14, 2010, Petitioner filed its Annual Income Tax Return.[7] Likewise, Petitioner filed its Quarterly VAT Returns for the second, third, and fourth quarters of CY 2009 on July 23, 2009[8], on October 26, 2009[9], and on January 25, 2010[10], respectively; and its Amended Quarterly VAT Return for the first quarter of CY 2009 on July 9, 2009[11].

On September 24, 2010, Petitioner received Letter of Authority No. eLA201000014924 (LOA-121-2010-00000092) for the examination of its books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2009 to December 31, 2009.[12] Consequently, Respondent issued an undated Checklist of Requirements and First Request for Presentation of Records.[13]

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3 Exhibit "P-5-A"
4 Exhibit "P-4-A"
5 Exhibit "P-3-A"
6 Exhibit "P-3-C"
7 Exhibits "P-8-A" to "P-8-D"
8 Exhibit "P-32"
9 Exhibit "P-33"
10 Exhibit "P-34"
11 Exhibit "P-31"
12 Par. 3, Stipulation of Facts, JSFI, docket, vol. 1, pp. 176 to 177; Exhibit "P-9-A"; Exhibit "R-1", BIR records, folder 2, p. 3
13 Exhibits "P-9-B" and "P-9-C"

Subsequently, Petitioner and Respondent allegedly executed Waivers of Statute of Limitations on January 27, 2012[14] and on September 16, 2013[15].

Thereafter, Respondent informed Petitioner that after tax investigation, it was found that the latter had deficiency taxes due; thus, an informal conference was held.[16]

On November 21, 2013, Respondent sent a Preliminary Assessment Notice[17] ("PAN"), assessing Petitioner for deficiency income tax, value-added tax ("VAT"), withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), final tax, fringe benefit tax ("FBT"), documentary stamp tax ("DST"), and excise tax in the amounts of Php11,203,399.31, Php13,439,432.72, Php13,638,881.78, Php16,894,065.71, Php11,373,355.36, Php2,822,884.46, Php1,683,033.46, and Php1,768,662.38, respectively.[18]

On March 12, 2014, Petitioner received from Respondent a Formal Letter of Demand ("FLD") dated March 11, 2014, assessing Petitioner for alleged deficiency income tax, VAT, WTC, EWT, final tax, DST, and excise tax for CY 2009 in the reduced aggregate amount of Php46,461,056.54.[19]

As a result, Petitioner protested the FLD and submitted additional documents in support of the protest dated April 11, 2014.[20]

However, Respondent still issued the Final Decision on Disputed Assessment and Audit Result/Assessment Notice, all dated December 15, 2014, which Petitioner received on December 15, 2014, assessing Petitioner for alleged deficiency income tax, VAT, WTC, EWT, final tax, and excise tax in the respective amounts of Php7,442,011.38, Php14,938,556.32, Php5,239,189.93, Php4,479,969.62, Php5,035,956.72, and Php309,268.21.[21]

Consequently, Petitioner filed the instant Petition for Review[22] through registered mail on January 6, 2015 and received by the Court on January 14, 2015.

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[14] Exhibit "P-100"; Exhibit "R-3", BIR records, folder 2, p. 397
[15] Exhibit "P-102"; Exhibit "R-4", BIR records, folder 4, p. 1418
[16] Exhibit "R-2", BIR records, folder 2, p. 617
[17] Par. 4, Stipulation of Facts, JSFI, docket, vol. 1, p. 177
[18] Exhibits "P-10-A" to "P-10-M"; Exhibit "R-6", BIR records, folder 4, pp. 1506 to 1509
[19] Par. 5, Stipulation of Facts, JSFI, docket, vol. 1, p. 177; Exhibits "P-11-A" to "P-11-E"; Exhibit "R-8", BIR records, folder 1, pp. 2209 to 2213
[20] Exhibits "P-12-A" to "P-12-K" and "P-13-A to "P-13-G"
[21] Exhibits "P-14-A" to "P-14-I"; Exhibit "R-9", BIR records, folder 1, pp. 2356 to 2364
[22] Docket, vol. 1, pp. 8 to 24

In the Answer[23] filed on April 8, 2015, Respondent interposed the following special and affirmative defenses:

"**<u>Petitioner is liable for deficiency Income Tax for taxable year 2009</u>**

4. Gain on sale of assets reflected per ITR amounting to [Php]16,003,304.00 as compared with the amount of gain on sale of fixed assets shown in [P]etitioner's Journal Entry disclosed that there was an understatement of gain in the amount of [Php]20,735,829.50, hence was assessed pursuant to Section 32 of the Tax Code. The understatement of gain on sale of Land was re-computed as follows:

Proceeds from sale of land	[Php]39,468,000.00
Less: Original Acquisition Cost	2,128,266.50
Documentary Stamp Tax	600,600.00
Net gain in sale of Land	36,739,133.50
Less: Gain on sale of assets per ITR	16,003,304.00
Unrecorded gain on sale of Land	[Php]20,735,829.50

5. Petitioner allege that they paid the appropriate taxes – capital gains tax of 6% amounting to [Php]2,402,400.00 and the documentary stamp tax amounting to [Php]600,600.00 on the sale of their Cebu property.

6. However, the sale of such land is subject [sic] is an ordinary gain, subject to 30% income tax pursuant to Sec. 27 (A) of the Tax Code, in relation to Sec. 32 thereof.

7. Petitioner had consistently declared the said gain on the sale of land as an ordinary gain, both in the filing of its Annual Income Tax Return (BIR Form 1702) and Withholding Tax Remittance Return (BIR Form 1606) For Onerous Transfer of Real Property Other Than Capital Asset (including Taxable and Exempt).

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[23] Docket, vol. 1, pp. 126 to 134

8. Furthermore, among the purposes for which [P]etitioner was created was that of a real estate dealer, as stated in its Articles of Incorporation, to wit:

> **Second – That the purposes for which such corporation is formed are as follows:**
>
> 8. To enter, make perform and carry out contracts of every kind and for any useful purposes, pertaining to the business of the corporation, or in any manner incident thereto, as principal, agent or otherwise, with any person, firm or association or corporation; to act as general agent of any insurance company, whether domestic or foreign or as a commercial broker, ***real estate dealer***, agent or factor of any person, firm association or corporation engaged in any lawful business, industry or enterprises.

9. Verification disclosed that the gain [P]etitioner derived on the sale of the land is in the amount of [Php]36,739,133.50, but it reported only the amount of [Php]16,003,304.00. Accordingly, the deficiency income tax assessment on the understated income in the amount of [Php]20,735,829.50 is valid.

10. Nevertheless, P[]etitioner's payment of the capital gains tax under BIR Form No. 1606 in the amount of [Php]2,402,400.00 was credited against the deficiency income tax due from the sale of the asset.

11. With regard to [P]etitioner's contention that it had sufficient Net Operating Loss Carry Over (NOLCO) in 2009 totalling [Php]744,737,500.00, of which [Php]578,471,579.00 expired and was never used up to 2012, the claim for the same as deduction from gross income after the tax investigation is not allowed under Section 6 (A) of the Tax Code, which provides to wit:

> 'Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, that within three (3) years from the date of such filing, the same may be modified,

> changed or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.

<u>Petitioner is liable for Value Added Tax for Taxable year 2009</u>

12. Proceeds from disposal of PPE in the amount of [Php]40,068,000.00 was not subjected to VAT, hence, assessed pursuant to Section 106 of the Tax code. Upon reconciliation of Bureau of Customs (BOC) versus Shippers Letters of Instructions (SLI), it was noted that there were importations for 2008 amounting to [Php]2,687,458.00 which was claimed in 2009, hence the input tax thereon was disallowed pursuant to Sec. 110 of the NIRC.

13. Petitioner argues that VAT is payable by 'persons who, in the course of trade or business, sells, barters, exchanges or leases goods or properties, xxx'; and the phrase 'in the course of trade or business' is defined therein as 'the regular conduct or pursuit of a commercial or economic activity, including transaction incidental thereto.'

14. However, as earlier discussed, [R]espondent maintains that the subject property sold was an ordinary asset. Accordingly, the proceeds for the sale thereof in the amount of [Php]40,068,000.00 as disclosed in the Cash Flow Statement, is subject to the 12% VAT imposed under Section 106 of the Tax Code, and as implemented under Section 4.106-1 of Revenue Regulations no. 16-2005.

15. Regarding the disallowance of the Input tax on Importation amounting to ([Php]2,687,458.00), upon reconciliation of BOC versus SLI, it was noted that there were importations for 2008 amounting to [Php]2,687,458.00 which were claimed in 2009, hence the input tax thereon were disallowed pursuant to Section 110, of the Tax Code.

16. The above findings resulted to a deficiency VAT amounting to [Php]14,938,556.32, inclusive of increments.

<u>Petitioner is liable for Withholding Tax on Compensation for taxable year 2009</u>

17. Computation of withholding tax on Compensation per Schedule 7.1 and Schedule 7.3 disclosed that there was an underwithholding in the total amount of [Php]1,974,242.14, hence assessed pursuant to Section 80(A) of the Tax Code.

18. Comparison of withholding tax due on Compensation per General Ledger with the total amount of remittance per BIR Form 1610 disclosed discrepancies in the amount of [Php]1,127,052.30, hence assessed pursuant to Section 80(A) of the Tax Code.

19. Verification of salaries per General Ledger as against salaries declared per Alphalist revealed a difference of [Php]14,532,954.91 which was considered as pertaining to prior year, hence assessed a penalty of [Php]77,509.09, pursuant to Section 249 of the Tax Code.

20. Furthermore, after careful analysis and evaluation together with the additional documents submitted by the taxpayer, the issue on unremitted withholding tax compensation amounting to [Php]1,127,052.30 was increased to [Php]2,578,938.80.

21. The above findings resulted to a deficiency withholding tax on compensation amounting to [Php]5,239,189.93, inclusive of increments.

<u>Petitioner is liable for Expanded Withholding Tax for taxable year 2009</u>

22. Reconciliation of Expenses per ITR vs. per Alphalist disclosed that there were expenses not subjected to expanded withholding tax amounting to [Php]12,328,206.33, hence assessed pursuant to Section 57 (B) of the Tax Code, as amended and RR 2-98, RR 17-2003, RR 1-2004, RR 3-2004 and RMC No. 72-04.

23. Verification of Audited Financial Statements disclosed an Interest Expense amounting to [Php]173,184,272.91, a part that of which has been subjected to Final Tax and EWT amounting to [Php]3,669,510.20 and [Php]9,883,528.73 respectively. However, there was still a discrepancy amounting to [Php]122,227,563.77 which was not subjected to EWT, hence assessed pursuant to Section 57(B) of the Tax Code, as amended, and RR-2-98, RR 17-2003, RR 1-2004, RR 3-2004 and RMC No. 72-04.

24. Upon careful analysis of the worksheet submitted by Petitioner, the assessment on Supplier of Goods was increased to [Php]10,915,986.33 and the penalties for excess remittance is now reduced to [Php]94,068.42.

25. The assessment on the Director's Fee was reduced to Php1,350,000.00 after given consideration on the per diem of the Board of Director's amounting to [Php]74,000.00. The remaining [Php]1,350,000.00 was still reiterated for failure to submit documents that it pertains to reimbursement of expenses of the Board of Directors.

26. The assessment on the total auto debit amounting to [Php]72,474,941.11 was reiterated for failure to support that the corresponding withholding tax was remitted. The exhibit XXVII mentioned above by the taxpayer is just a certification from the concerned banks that [P]etitioner paid the interest of such amounts. There was no mention as to the withholding of EWT, hence assessment was reiterated.

<u>Petitioner is liable for Final Tax for taxable year 2009</u>

27. Verification of income payments subject to final tax disclosed that interest expense by Petitioner on foreign loans payable to NRFC and interest on FCDU loans amounting to [Php]22,642,442.01 and [Php]15,141,228.22, respectively were not subjected to final tax hence, assessed pursuant to Section 28(B)(5)(a) of the tax code as amended. Moreover, computation of the Final Tax due per Alphalist disclosed that there was under remittance of the tax due in the amount of [Php]366,951.02.

28. Interest on foreign loans payable to NRFCs amounting to [Php]22,262,442.01 will be subjected to 10% final tax, hence assessed pursuant to Section 28(B)(5)(a) of the tax code.

29. The interest expense of [Php]12,240,476.24 representing payments to local banks will be assessed of 2% EWT and the difference of [Php]2,900,751.98 will still be subjected to 10% final tax rate.

Petitioner is liable for Excise Tax for taxable year 2009

30. Petitioner failed to remit the excise tax when they became due, as prescribed under Section 130 of the Tax Code. Hence, it was subjected to interest and compromise penalty due to late remittance pursuant to Section 149 (B) of the same Tax Code and RMO No. 19-2007 respectively.

31. Upon careful scrutiny of related documents and reconciliation presented by [P]etitioner, [P]etitioner's excise tax liability was reduced to [Php]309,268.21, inclusive of increments.

Final Discussions

32. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates in *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously.

33. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against [P]etitioner is imbued with factual and legal bases.

> 34. All presumptions are in favor of the correctness of tax assessments. Dereliction on the part of [P]etitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice."

On May 22, 2015, both Respondent's Pre-Trial Brief[24] and Petitioner's Pre-Trial Brief[25] were filed.

The parties submitted their Joint Stipulation of Facts and Issues[26] on June 10, 2015. Consequently, the Court issued a Pre-Trial Order[27] on June 23, 2015.

Upon motions of Petitioner,[28] the Court commissioned Mr. Glenn Ian D. Villanueva as the Independent Certified Public Accountant (CPA) for the case.[29]

During trial, Petitioner presented Mr. Glenn Ian Villanueva and Mr. Rommel Songcuan as its witnesses. Afterwards, Petitioner formally offered its documentary evidence as well as its testimonial evidence, which the Court all admitted via Resolution[30] dated January 29, 2016.

On the other hand, Respondent presented his sole witness, Revenue Officer Teresita Villamor, and formally offered his documentary evidence; which were all admitted by the Court in the Resolution[31] dated January 9, 2017.

The Court declared the case deemed submitted for decision on April 27, 2017, considering the filing through registered mail of Petitioner's Memorandum on March 24, 2017 and the Records Verification Report of the Court's Judicial Records Division dated April 11, 2017, stating that Respondent failed to filed a memorandum.[32]

The Issues

The parties submitted the following issues[33] for the Court's determination:

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[24] Docket, vol. 1, pp. 158 to 162
[25] Docket, vol. 1, pp. 147 to 157
[26] Docket, vol. 1, pp. 176 to 186
[27] Docket, vol. 1, pp. 190 to 197
[28] Motion for Appointment of Independent CPA and Motion to Reset Appointment of Independent CPA, docket, vol. 1, pp. 139 to 140 and 198 to 200, respectively
[29] Oath of Commission and Resolution dated July 30, 2015, docket, vol. 1, pp. 208 and 210, respectively
[30] Docket, vol. 1, pp. 379 to 381
[31] Docket, vol. 1, pp. 438 to 439
[32] Resolution dated April 27, 2017, docket, vol. 1, p. 507
[33] Issue, JSFI, docket, vol. 1, p. 177

1. Whether Respondent committed grave abuse of discretion in assessing Petitioner for tax deficiency for CY 2009 in the aggregate amount of Forty-Six Million Four Hundred Sixty-One Thousand Fifty-Six and 54/100 Pesos (Php46,461,056.54); and

2. Whether Petitioner is liable to pay Php46,461,056.54 representing income tax, VAT, WTC, EWT, final tax, DST, and excise tax assessment for CY 2009.

Discussion/Ruling

The Court has jurisdiction over the present case.

The Court shall determine first the timeliness of the filing of the instant Petition for Review.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Based on the foregoing provision, Petitioner had thirty (30) days from December 15, 2014[34], the date of receipt of the FDDA, or until January 14, 2015 within which to appeal the said decision.

Considering that Petitioner filed this Petition for Review through registered mail on January 06, 2015, which the Court received on January 14, 2015, the instant Petition for Review was timely filed.[35]

Respondent's right to assess Petitioner for the alleged tax deficiencies for CY 2009 had already prescribed.

The Court shall now proceed to discuss the main issue.

Petitioner contends that Respondent's right to assess had lapsed because the Waiver of the Statute of Limitations executed on January 27, 2012 (hereafter referred to as the "first waiver") was defective. There is allegedly no proof that the first waiver was executed by a duly authorized representative of Petitioner. It is averred that Respondent's witness, Ms. Teresita Villamor, presumed that there was a secretary's certificate authorizing Ms. Maria Lourdes B. Tuason to execute the first waiver.

[34] Exhibits "P-14-A" to "P-14-I"; Exhibit "R-9", BIR records, folder 1, pp. 2356 to 2364
[35] Docket, vol. 1, p. 8

Further, Petitioner posits that the date when Petitioner received the copy of the first waiver was not indicated in the original copy. Petitioner insists that the original copy did not indicate that a copy of the accepted and duly notarized first waiver was received by Petitioner. Petitioner claims that the signature at the bottom portion of the first waiver is not that of Petitioner or its duly authorized representative. Petitioner adds that it cannot be ascertained to whom the signature belongs because the name of the signatory was not indicated, as well as the position, relation, or authority of the same. Even Respondent's witness, Ms. Villamor, cannot identify whose signature was that which appeared in the first waiver.

Sections 203 and 222(b) of the NIRC of 1997, as amended, state:

> "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 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."
>
> "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."

Petitioner filed its returns as follows:

DATE OF FILING OF THE RETURNS	EXPIRATION DATE OF THE 3-YEAR PERIOD TO ASSESS	DATE OF ISSUANCE OF THE FLD
April 14, 2010[36] (Annual Income Tax Return)	April 15, 2013	March 11, 2014
January 25, 2010[37] (Fourth Quarter Quarterly VAT Return)	January 25, 2013	

It must be emphasized that if the first waiver was invalid, the right of Respondent to assess Petitioner has already prescribed when the FLD was issued. As such, it is imperative for this Court to determine the validity of the first waiver.

In the case of *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[38], the Supreme Court laid down the procedure for the proper execution of the waiver in accordance with Revenue Memorandum Order ("RMO") No. 20-90 and Revenue Delegation Authority Order ("RDAO") No. 05-01, and declared that the waiver should strictly conform to RMO No. 20-90, to wit:

> "In *Commissioner of Internal Revenue v. Kudos Metal Corporation,* the Court ruled:
>
> > Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
> >
> > > 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after __ 19_', which indicates the expiry date of the period agreed upon to assess/collect the tax

[36] Exhibits "P-8-A"
[37] Exhibit "P-34"
[38] G.R. No. 213943, March 22, 2017

after the regular three-year period of prescription, should be filled up.

2. The waiver must 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. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. 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.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the**

> **taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.**
>
> xxx xxx xxx

In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated,* the Court explained the nature of a waiver of assessment. The Court said:

> In *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, **the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90.** The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90 as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.
>
> To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, 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 imply that the taxpayer relinquishes the right to invoke prescription unequivocally.

> Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government.

Clearly, the defects in the Waivers resulted to the non-extension of the period to assess or collect taxes, and made the assessments issued by the BIR beyond the three-year prescriptive period void."[39]

A careful scrutiny of the records shows that Respondent's witness, Ms. Teresita Villamor, testified that the first waiver[40] was received by Petitioner, to wit:

"**Q8: What happened after the Letter of Authority was issued to Petitioner?**

A: Petitioner submitted some documents to us. Then Petitioner executed the first waiver on 27th January 2012 and was received by the Petitioner on 13 February 2012. This waiver extended the period to assess up until 31 December 2013."[41]

Nevertheless, Ms. Villamor also testified that she cannot ascertain who received the first waiver, *viz*:

"ATTY. SALENDAB

Q On the same 1st Waiver, this waiver, wherein that does it indicate that it was received by the Petitioner?

MS. VILLAMOR

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39 *Emphasis supplied.*
40 Exhibit "R-3", BIR records, folder 2, p. 397
41 Exhibit "R-10", docket, vol. 1, p. 412

A I guess this is the receipt of the Petitioner.

ATTY. SALENDAB

Q So you guessed you are not sure?

MS. VILLAMOR

A I am sure.

ATTY. SALENDAB

Q In this waiver, is the name of the person who received it indicated in that waiver?

MS. VILLAMOR

A The name is not indicated.

ATTY. SALENDAB

Q And of course the position and the relation of this purported recipient was also not indicated in the said waiver, correct?

MS. VILLAMOR

A No, that is as I mentioned, this is the first waiver executed by the [P]etitioner.

ATTY. SALENDAB

Q Yes, but I am asking about the . . .

ATTY. SOMERA

The document speaks for itself.

ATTY. SALENDAB

Precisely, Your Honors, I am crossing on the document, Your Honors.

Q So it is not?

MS. VILLAMOR

A It is not clearly stated in the waiver the name of the representative of . . .

JUSTICE VICTORINO

It will be best for the witness if you speak a little bit louder so that we can hear what you are saying.

MS. VILLAMOR

A Yes, Your Honor.

ATTY. SALENDAB

Q And also it was not indicated the position of this purported signatory in Lepanto?

MS. VILLAMOR

A The position is not indicated."[42]

The records further reveal that Ms. Villamor was not the one who served the first waiver and had no knowledge as to who received the said waiver, to wit:

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[42] Transcript of Stenographic Notes (TSN) dated October 17, 2016, pp. 11 to 13

"ATTY. SOMERA

Q You were also confronted about the waivers that were executed in this case particularly 1st and 2nd waivers, may I borrow the court's record. I am showing to you the 1st waiver marked as Exhibit R-3, 2nd waiver marked as Exhibit R-4, you mentioned that the 1st waiver was received through a signature found on the center of the lower portion of the waiver, correct, and that the 2nd waiver was received by a certain Rommel Sungkuan, can you compare the signatures and tell the honorable court whether they are one and the same person?

MS. VILLAMOR

A It is a different person.

ATTY. SOMERA

Q So, were you present during the service of this waiver?

MS. VILLAMOR

A I guess the previous officer Magat was present during the serving of 1st and 2nd waiver.

xxx xxx xxx

ATTY. SALENDAB

Q So do you confirm that the person who signed the first waiver is different from the one who signed the second waiver, correct?

MS. VILLAMOR

A Yes, sir.

ATTY. SALENDAB

Q You were not present when this waiver was served?

MS. VILLAMOR

A That was served by the previous revenue officer Magat . . .

ATTY. SALENDAB

Q Yes, but you were not present when it served?

MS. VILLAMOR

A I was not present."[43]

Based on the foregoing, the receipt of a copy of the first waiver, which was accepted and perfected as an agreement, can only be proved by a mere signature, whose owner of the same is unknown.

Accordingly, Respondent failed to show whether the signatures that appeared in the first waiver belonged to any of Petitioner's authorized agents. Thus, the fact of receipt of its file copy indicating that it was informed of the acceptance of Respondent and the perfection of the agreement has not been clearly proven by sufficient evidence. And since the first waiver is defective, the right of Respondent to assess Petitioner for deficiency tax has already lapsed when Respondent issued the FLD.

The prescriptive period on when to assess taxes benefits both the government and the taxpayer. Exceptions extending the period to assess must, therefore, be strictly construed.[44]

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated December 15, 2014 is **CANCELLED** and **SET ASIDE**.

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[43] TSN dated October 17, 2016, pp. 19 and 22 to 23

[44] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice