REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. E.B. No. 374
(C.T.A. CASE No. 6825)

-versus-

BOVIS LEND LEASE PROJECTS PTE LTD,
Respondent.

Present:
Acosta, *P.J.*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:
JUN 2 2 2009 [illegible] 1:00 p.m.

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DECISION

CASTAÑEDA, Jr., *J.:*

This is a petition for review filed with the Court *en banc* on March 12, 2008 by petitioner Commissioner of Internal Revenue ("CIR", for brevity/respondent in the division level) assailing the decision and the resolution dated August 23, 2007 and February 4, 2008, respectively, rendered by the First Division of this Court (Court in division) in C.T.A. Case No. 6825 entitled *"BOVIS LEND LEASE PROJECTS PTE LTD vs. COMMISSIONER OF INTERNAL REVENUE"*.

The dispositive portion of the assailed decision states:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED.** Accordingly, the Formal Assessment Notices issued by respondent against petitioner for deficiency income and final withholding taxes for the calendar year ended December 31, 1997 in the amounts of P33,715,269.16 and P30,108,491.08, respectively, are hereby **CANCELLED** and **DISMISSED.**
>
> **SO ORDERED.**

The dispositive portion of the assailed resolution reads, as follows:

> **WHEREFORE**, respondent's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

The Facts

As found by the Court in Division, the following are the facts of this case:

> Petitioner Bovis Lend Lease Projects Pte. Ltd., formerly known as "Bovis Asia Pacific Pte. Ltd.", is a resident foreign corporation licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines, particularly, to engage in contracting for professional project and construction management services, under SEC Registration No. AF095-00101 issued on August 22, 1995.
>
> Respondent, on the other hand is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the National Internal Revenue Code and related statutes, including, among others, the power to cancel disputed assessments; with office address at BIR National Office Building, Diliman, Quezon City.
>
> The antecedent facts of the case are as follows: *gr*

On February 5, 2003, petitioner received respondent's Formal Assessment Notice with Assessment Notices Nos. IT-138389-97-03-250 for deficiency income taxes in the amount of P33,715,269.16 and WF-138389-97-03-250 for deficiency withholding taxes in the amount of P30,108,491.08, all dated January 31, 2003 and covering the calendar year ended December 31, 1997.

The alleged tax deficiencies of petitioner are as follows:

A. Deficiency Income Tax

Net Income per return		12,277,203.00
Add: Adjustments per investigation		
Overclaimed Sal and wages	6,174,433.86	
Management Fees	42,575,680.00	48,750,113.86
Net Taxable Income Per Investigation		61,027,316.86
Tax due thereon (35%)		21,359,560.90
Less: Tax Due per return		4,297,021.00
Deficiency Income Tax		17,062,539.90
Add: Interest from 4-16-98 to 3-3-03		16,652,729.26
Total Amount Due		**33,715,269.16**

B. Deficiency Final withholding Tax

Management Fees to NRFC	P42,575,680.00
Tax Rate	35%
Deficiency Final WT	14,901,488.00
Add: Interest from 1-26-98 to 3-3-03	15,207,003.08
Total Amount Due	**30,108,491.08**

On March 7, 2003, petitioner filed its formal protest contesting each item of deficiency income and withholding tax assessments and requested its cancellation and withdrawal. Thereafter, on May 6, 2003, petitioner filed its supplemental protest with additional documents in support of its protest letter in accordance with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent having failed to act on petitioner's protest-letter within 180-days from the date of submission of its supporting documents, petitioner then filed this present Petition for Review on December 2, 2003. It was stipulated by the parties that the Petition for Review was timely filed,[1] in accordance with Section 228 of the NIRC of 1997, as amended.

On February 19, 2004, respondent filed his Answer, raising the following as his Special and Affirmative Defenses:

"6. The assessments in question were made and issued in accordance with law,rules, and regulations.

7. It was disclosed that management fees paid to Head Office in the amount of P42,575,680.00 was not subjected to withholding tax, hence, was disallowed and added back to petitioner's gross income pursuant to

[1] Paragraph 1.8, Joint Stipulation of Facts and Simplification of Issues, Records, page 92.

Section 29(J) of the National Internal Revenue Code (NIRC), as amended.

8. It was discovered that petitioner has an over claimed salaries and wages amounting to P6,174,433.86 which were disallowed for lack of documentary evidence pursuant to Section 29 of the NIRC, as amended.

9. The petitioner was assessed of deficiency final withholding tax because its management income payment to Head Office involving the amount of P42,575,680.00 which represents 58% of petitioner's total expenses claimed was not subjected to 35% final withholding tax under Section 25 of the NIRC.

10. All presumptions are in favor of the correctness of the tax assessment (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)."

Before this case could be submitted for decision, petitioner filed a "Motion for Leave of Court to File and Admit Attached Amended Petition for Review (To Conform to Evidence)" on August 15, 2006. Petitioner additionally argued that respondent's right to assess had already prescribed, pursuant to Section 203 of the NIRC of 1997, as amended. Petitioner alleged that the subject waivers executed on January 4, 2001, May 18, 2001 and October 19, 2001, were void for their failure to comply with the provisions of law. Consequently, on September 8, 2006, this Court, in open court, granted petitioner's motion which effectively admitted the attached Amended Petition for Review.

On January 9, 2007, respondent filed his Amended Answer, basically arguing that the Court should not have allowed the Amended Petition for Review because amendment of pleading during the course of trial to raise a new issue when the party had the opportunity to raise the issue at an earlier stage or when it will result in a change of cause of action, defense or theory of the case is improper and violates the principle of justice and fair play. Likewise, amendment to conform to evidence under Section 5, Rule 10 of the Rules of Civil Procedure is appropriate only if the trial of the issues that were not alleged in the pleadings is with the express or implied consent of the parties.

Thereafter, upon the lapse of the period within which the parties were ordered to submit their Memoranda and their failure to file the same, the case was considered submitted for decision on May 11, 2007.

The parties jointly agreed to the following issues[2] for the consideration of the Court, to wit:

"2.1. Whether or not the disallowance of petitioner's management fees payment to its Head Office, a non-resident foreign corporation, in the amount of PHP 42,575,680.00 is proper and legal.

2.2. Whether or not petitioner salaries and wages expense amounting to PHP 6,174,433.86 were supported by the documentary evidence. Je

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[2] Joint Stipulation of Facts and Simplification of Issues, Records, pages 93-94.

2.3. Whether or not petitioner is liable for deficiency income tax and final withholding tax in the respective amounts of PHP 33,715,269.16 and PHP 30,108,491.08 for taxable year 1997."

On August 23, 2007, the Court in division promulgated the assailed decision. Thereafter, CIR filed its Motion for Reconsideration on September 14, 2007. On February 4, 2008, the assailed resolution denying such motion was promulgated by the same Court.

Within the reglementary period to file the petition for review *en banc*, CIR filed its Motion for Extension of Time to File Petition for Review. The said motion was granted by the Court *en banc* giving CIR a final and non-extendible period of fifteen (15) days from February 26, 2008 or up to March 12, 2008, within which to file the petition for review. Thus, CIR's petition for review *en banc* was filed on March 12, 2008.

In a resolution dated April 9, 2008, this Court ordered CIR to submit a copy of Revenue Delegation Authority Order No. 2-2007 dated March 1, 2007 within ten (10) days from receipt of such resolution to this Court. The Compliance of CIR was duly noted by the Court on May 7, 2008. On the same resolution, respondent Bovis Lend Lease Projects PTE, Ltd. ("Bovis", for brevity/petitioner in the division level) was ordered by the Court to file its Comment, not a motion to dismiss, within ten (10) days from notice. Upon submission of the requisite Comment or the expiration of the period for filing the same, the petition shall be deemed submitted for resolution, unless the Court *en banc* decides to require the parties to submit their respective memoranda. No comment was filed.

On September 8, 2008, this Court submitted the case for decision without requiring the parties to submit their respective memoranda.

Hence, this decision.

Issues

I. Whether or not the issue of prescription was tried with the implied consent of the respondent.

II. Whether or not the admission of the respondent's Amended Petition for Review, which introduced a new issue (prescription), divested the CTA-1st Division of its jurisdiction to take cognizance of this case.

This case boils down to the issue of whether or not it is correct for the Court in division to cancel and dismiss the subject Formal Assessment Notices, all dated January 31, 2003, issued by CIR against Bovis for deficiency income and final withholding taxes in the amount of P33,715,269.16 and P30,108,491.08, respectively, for calendar year ended December 31, 1997 on the ground that the right of the government to assess has prescribed because the Waiver of the Statute of Limitations dated October 19, 2001 is void.

As to the first issue, CIR alleges that the Court in division erred in holding that its failure to make a timely objection to the introduction of the testimonial and documentary evidence tending to prove that its right to assess the 1997 tax liabilities of Bovis had already prescribed constitutes an implied consent on the part of CIR to include the issue of prescription in the trial of the case. CIR submits that there was no implied consent in this case because he expressly and explicitly objected to the introduction of the issue of prescription during the cross-examination of his witness, Mr. Bernardo A. Mora in as much as such issue was raised only for the first time on appeal during trial.

Likewise, CIR alleges that the failure to file comment on the Bovis formal offer of evidence wherein the "waivers" were among the evidence formally offered should not constitute as an implied consent to include the issue of prescription. In addition, he alleges that such failure to comment was justified because CIR did not personally receive the copy and read the same because it was accidentally commingled with the records of other cases; thus he was not aware that the "waivers" were among the evidence formally offered by Bovis.

As to the second issue, CIR alleges that the Court in division erred in not holding that with the admission of the respondent's amended petition for review, which introduced a new issue (prescription), divested the court of its jurisdiction to take cognizance of the case.

This Court's Ruling

We deny the petition.

A careful reading of the issues and arguments raised by CIR reveal that these are mere reiterations of what have been considered and passed upon by the Court in division in the assailed decision and resolution. Be that as it may, pertinent issues need to be emphasized.

The issue of prescription was tried with implied consent

The argument of CIR that the Court in division erred in its finding that he impliedly consented to the introduction of the issue of prescription is untenable.

Pertinent to this is Section 36, Rule 132 of the Revised Rules on Evidence which reads, as follows:

> SEC. 36. *Objection.*—Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court. Ja

In any case, the grounds for the objections must be specified. (36a)

The above provision states the proper time to object.

The right to object to the admissibility of evidence is a mere privilege. As such the parties may waive such right, expressly or impliedly.[3] Evidence introduced without objection, whether or not such evidence is testimonial, documentary, real or circumstantial, becomes part of the record of the case and the parties are amenable to any favorable and unfavorable effects resulting therefrom.[4] The failure to object to any evidence tending to prove facts outside the issues joined amounts to an **implied consent** to try issues not raised in the pleadings nor listed in the pre-trial order.[5] *(Emphasis Supplied.)*

The records reveal that although CIR expressly and explicitly objected[6] to the introduction of the issue of prescription during the cross-examination of his witness, Mr. Bernardo Mora, it was already a belated objection. Prior to this, Bovis already presented testimonial and documentary evidence which were offered to prove that the subject Assessment Notices covering its alleged deficiency income and final

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[3] Agpalo, R. *Handbook on Evidence*, First Edition 2003, p.369.
[4] *ibid.*, p.370 citing the cases of Phil. Airlines, Inc. v. CA, 226 SCRA 423 ;Beam v. Yatco, 82 Phil. 30 [1948].
[5] *ibid.*, p. 370 citing the case of Son v. Son, 251 SCRA 556.
[6] Transcript of Stenographic Notes(TSN) of June 15, 2006 Hearing, pp. 37 to 38.

withholding taxes were made beyond the prescribed three (3) year period. In both instances, CIR failed to object.

Based on the foregoing discussion, this Court agrees with the Court in division's finding which reads, as follows:

> The Court notes that respondent failed to object[7] to the admissibility of the Waivers of Statute of Limitations[8] offered by petitioner. Respondent's failure to make a timely objection to the introduction of the testimonial and documentary evidence tending to prove that respondent's right to assess the 1997 tax liabilities of petitioner had already prescribed, constitutes an implied consent on the part of respondent to include the issue of prescription in the trial of the case. Hence, the Court can consider the issue in accordance with the aforequoted Section of the Revised Rules on Civil Procedure[9].

Likewise, we find that the Court in division did not err in applying Section 5, Rule 10 of the Rules of Court which read, as follows:

> "SEC. 5. *Amendment to conform to or authorize presentation of evidence.* — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made."

This provision applies only if a piece of evidence was introduced on an issue not raised by the party in its pleading.

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[7] Resolution dated November 24, 2005, Rollo, pp 145-146
[8] Exhibit "SS".
[9] *MWSS vs. CA*, 143 SCRA 623 [1986]; *Pacific Banking Corporation vs. Hon. Rafael T. Mendoza and J.C. Antonio C. Leviste*, G.R. No. L-69158, December 29, 1988

A reading of Bovis' original petition for review filed with the Court in division reveals that the issue of prescription was not alleged therein. The issue of prescription was raised during the continuation[10] of the direct examination of Ms. Ma. Milagros Tan-Rivera, witness for Bovis (petitioner in the division level).The counsel for CIR was not present at that time. CIR was also given time to comment on the Formal Offer of Evidence. CIR did not file his comment. Clearly, there was an implied consent to include the issue of prescription. Hence, there was no error on the part of the Court in division to allow the amendment of Bovis' petition for review to conform to evidence.

The Court in division has jurisdiction

CIR argues that the Court in division has no jurisdiction to take cognizance of the case because the amended petition for review was filed out of time. CIR alleges that respondent's amended petition for review introduces a new issue, i.e., prescription. Thus, the amended petition supersedes the original petition which is deemed withdrawn and is no longer considered part of the record.

We find this argument bereft of merit.

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[10] Transcript of Stenographic Notes (TSN) of July 19, 2005 Hearing.

The jurisdiction of the Court in division is not affected when the amended petition for review was filed. Once jurisdiction has been acquired, the court retains it until the final determination of the case. It is even noteworthy to mention that under the Rules, it is clear that "xxx failure to amend does not affect the result of the trial of these issues xxx."

This Court agrees with Court in division's ratiocination in the assailed resolution, pertinent portion of which is quoted hereunder, as follows:

> The Court had thoroughly discussed in the subject Decision that although the issue of prescription was not raised in the original Petition, the same can still be considered by the Court pursuant to Section 5, Rule 10 of the Revised Rules of Civil Procedure, which allows amendments to conform to evidence. **In fact, the issue of prescription can be considered part of the issues of the case even without amendment of the Petition for Review since it was tried, at the very least, with the implied assent of respondent.** Respondent, by his failure to make a timely objection, impliedly consented to the admission of testimonial and documentary evidence which were offered to prove that the subject Assessment Notices covering petitioner's alleged deficiency income and final withholding taxes were made beyond the prescribed three (3)-year period. *(Emphasis Supplied)*

Waiver of the Statute of Limitations dated October 19, 2001 is void.

The taxable period involved in this case is calendar year 1997. It follows that the National Internal Revenue Code of 1977 ("1977 Tax Code", for brevity) applies and not the National Internal Revenue Code of 1997 which took effect only on January 1, 1998.

Pertinent to this case are Sections 203 and 223 of the 1977 Tax Code which read as follows:

> 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. *(As amended by B.P. Blg. 700)*
>
> SEC. 223. Exceptions as to the period of limitation of assessment and collection of taxes.-
>
> xxx xxx xxx
>
> (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.
>
> Xxx xxx xxx

Based on the foregoing provisions, the three-year period to assess shall be counted after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later. Thus, we agree and we reiterate the findings of the Court in division as follows:

> Records show that petitioner filed its 1997 Annual Corporate Income Tax Return on December 1, 1998[11]. Pursuant to Section 203[12] of the NIRC of 1997, as amended, respondent has until November 30, 2001 (the year 2000 being a leap year) within which to assess petitioner of its 1997 income tax liabilities. Records likewise indicate that the Formal Assessment Notices were all dated January 31, 2003, thus, even at first glance, were apparently issued beyond the prescriptive period. Under the same Section 203, it is provided that an assessment notice issued after the lapse of the three (3)-year prescriptive period is no longer valid and effective, except for certain exceptions, one of which is Section 222[13](b) of the same Code, which provides: Jr

[11] Exhibit "V" and "V-1".
[12] should be Section 203 of the 1977 Tax Code.
[13] should be Section 223 of the 1977 Tax Code.

"Section 222[14]. *Exceptions as to the Period of Limitation of Assessment and Collection of Taxes.* – 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."

Under the law, however, there are exceptions to this period to assess. One of these exceptions is when the Commissioner and the taxpayer have executed a valid waiver of the statute of limitations. Revenue Memorandum Order (RMO) No. 20-90[15] enumerates the procedures/requirements for the proper execution of a waiver of the statute of limitations under the Tax Code.

In the Supreme Court case of *Commissioner of Internal Revenue vs. FMF Development Corporation*[16], it was categorically stated that RMO No. 20-90 must be strictly followed. It even reiterates the ruling in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[17] that a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The

[14] *ibid.*
[15] "PROPER EXECUTION OF THE WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE", April 4, 1990.
[16] G.R. No. 167765, June 30, 2008, 556 SCRA 698.
[17] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal.

The following the procedures mandated by RMO No. 20-90:

1. The **waiver must be in the form identified as Annex "A" hereof.** This form may be reproduced by the Office concerned but **there should be no deviation from such form**. The phrase **'but not after ______________19___ should be filled up**. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax **in addition** to the ordinary prescriptive period.

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

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

A. In the National Office

1. ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices.	For tax cases involving not more than P500,000.00

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. <u>In the Regional Offices</u>

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 supplied*)

RMO No. 20-90 states that "The waiver must be in the form identified as Annex "A" hereof". The said Annex "A" reads, as follows: *gc*

WAIVER OF THE STATUTE OF LIMITATIONS
UNDER THE NATIONAL INTERNAL REVENUE CODE

____in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of ______________ as _________ for the years________, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after re-investigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after _______, 19 ______.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this _________ day of ________ 19____, in Quezon City, Philippines.

____
(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date _______________

In this case, the Waiver of the Statute of Limitations dated October 19, 2001 reads as follows:

WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE[18]

I, Ma. Milagros T. Rivera, representing **BOVIS ASIA PACIFIC PTE LTD**, in connection with the investigation of its internal revenue tax liabilities for the year 1997 do hereby waive the defense of prescription under the statute of limitations prescribed in section 203, 223 and other related provisions of the National Internal Revenue Code.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully verify whatever tax or taxes that may be found due from **BOVIS ASIA PACIFIC PTE LTD**, of said year. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admits in advance the correctness of any assessment or assessments which may be made for the subject taxable year nor waives the right to use any of the legal remedies accorded by law to contest assessment.

Executed this October 19, 2001 in Taguig, Metro Manila.

BOVIS ASIA PACIFIC PTE. LTD,

By:

(Signed)

____

Taxpayer

Agreed and Accepted:

(Signed)
ROSEMARIE RAMOS-RAGASA
Revenue District Officer

SUBSCRIBED AND SWORN to before me this 17th day of __ (illegible) 2002 in Taguig, Metro Manila.

GEORGE A. ELIAS
Notary Public

[18] *supra*, Note 8.

Until December 31, 2003
PTR No. 3882572
01-03-02 Taguig, MM

After comparing the above waiver with "Annex A" of RMO No. 20-90 as well as considering the procedures mandated by the same revenue memorandum order in executing a valid waiver of the statute of limitations, We agree with the Court in division in its findings that the said waiver was defective, thus, the three-year prescriptive period was not validly extended. These findings were as follows:

1. The subject Waiver was not signed by the Commissioner of Internal Revenue or by an authorized representative. It was signed by a Revenue District Officer and not by the Commissioner as required by RMO 20-90.

2. The date of acceptance by the Revenue District Officer Rosemarie Ramos-Ragasa was not indicated in the subject Waiver. By failing to indicate in the Waiver the date of acceptance, it cannot be determined with certainty if it was actually accepted before the expiration of the three (3)-year assessment period.

3. It did not specify the kind of tax and the amount of the tax due. On the prescribed form of a Waiver under RMO No. 20-90, it is required that the kind of tax and the amount of the tax due must be indicated. RMO No. 20-90 provides that there should be no deviation from the prescribed form.

4. It likewise failed to indicate the date extending respondent's right to assess petitioner for deficiency internal revenue taxes for the calendar year ended December 31, 1997.

Considering that the right of the government to assess had prescribed because the Waiver of Statute of Limitations was void, there is no more need to discuss the substantive validity of the disputed assessment.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. Accordingly, the assailed Decision and the Resolution dated August 23, 2007 and February 4, 2008, respectively, are hereby **AFFIRMED *in toto*.**

SO ORDERED.

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

We concur:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice