REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

ARCHIPELAGO MOTORS CORPORATION,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA Case No. 8321

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

AUG 1 2014 2:45 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before this Court is the Petition for Review filed on August 17, 2011, seeking to annul and set aside the Decision of the Commissioner of Internal Revenue dated July 1, 2011; to declare the Waiver of the Defense of Prescription incomplete, defective, and without legal effect; to withdraw and cancel the assessment issued on June 29, 2005 for being issued beyond the three-year period provided by law; and to pay the cost of the suit.

THE FACTS

Petitioner Archipelago Motors Corporation is a domestic corporation duly registered and existing under the laws of the Republic of the Philippines, with business address at 2724 Faraday corner Aragon Streets, San Isidro, Makati City.[1]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), a government institution established by law to assess and collect national internal revenue taxes, with

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 59.

office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 18, 2003, petitioner received Audit Notice No. OCN 9AN000006765 dated May 16, 2003, authorizing the examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2001.[2]

Petitioner received respondent's First, Second, and Final Notices dated June 11, 2003, July 17, 2003 and July 30, 2003, respectively, requiring it to submit its books of accounts and other accounting records for examination of all internal revenue taxes for taxable year 2001.[3]

However, due to petitioner's failure to present its books of accounts and other accounting records despite the said notices, a Memorandum was issued recommending the referral of the case to the Legal Division of Revenue Region No. 8, Revenue District Office (RDO) No. 48 of Makati City for the issuance of *Subpoena Duces Tecum*.[4] Subsequently, a *Subpoena Duces Tecum* was issued by Acting Regional Director Anselmo G. Adriano on October 30, 2003, requiring petitioner to submit its book of accounts and other accounting records for examination of all internal revenue taxes for taxable year 2001.[5]

For petitioner's failure to again submit the required books of accounts and other accounting records for taxable year 2001, respondent, through Acting Regional Director Anselmo G. Adriano, filed a criminal complaint dated December 10, 2003 before the Prosecutor of Makati City for violation of Sections 5(C) and 266 of the National Internal Revenue Code (NIRC) of 1997, as amended.[6]

A Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC dated August 16, 2004 was executed by petitioner.[7]

On April 28, 2005, petitioner received a Post Reporting Notice dated April 28, 2005, informing petitioner that it was found liable for deficiency taxes for taxable year 2001 and giving it an opportunity to refute the same in the interest of due process.[8]

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[2] Pars. 2 and 3, Stipulation of Facts, JSFI, Docket, p. 59.
[3] Pars. 8 and 11, Stipulation of Facts, JSFI, Docket, p. 60.
[4] Exhibit "1".
[5] Pars. 9 and 11, Stipulation of Facts, JSFI, Docket, p. 60, Exhibit "2".
[6] Par. 10, Stipulation of Facts, JSFI, Docket, p. 60; Exhibit "3".
[7] Exhibit "6".
[8] Pars. 4 and 5, Stipulation of Facts, JSFI, Docket, p. 59.

Respondent issued a Preliminary Assessment Notice[9] (PAN) dated June 29, 2005, finding petitioner liable for the following deficiency taxes:

TAX	AMOUNT
Income Tax	P1,201,716.04
Value-added Tax	4,276,229.63
Withholding Tax on Compensation (WTC)-Basic Tax Due	22,830.70
WTC-Increments for late payment/filing for February and March	15,076.15
Expanded Withholding Tax (EWT)-Under-withholding of income payments	42,131.62
EWT-Non-remittance for the months of January and February	90,849.28
EWT-Increments for late payment/filing for the month of March	P 4,543.05

Respondent likewise issued a Formal Assessment Notice (FAN) with Details of Discrepancies dated July 22, 2005 on July 28, 2005.[10] Petitioner then requested the reconsideration of the said FAN on August 11, 2005.[11]

Respondent later issued an amended Assessment Notice with Details of Discrepancies dated August 29, 2006, stating that petitioner was amenable with her findings relative to petitioner's deficiency withholding tax on compensation for non-withholding and increments for late filing/payments for the months of February and March, as well as the deficiency expanded withholding tax for non-remittance for the months of January and February and increment for late filing for the month of March. Respondent also acknowledged the payment of the said assessment, and thus, cancelled the same. However, respondent upheld her assessment relative to petitioner's deficiency income tax, VAT, and EWT for under-withholding of income payments.[12]

Petitioner protested the amended Assessment Notice on September 22, 2006.[13]

Respondent issued a Final Decision on Disputed Assessment (FDDA) dated March 5, 2009 for taxable year 2001. In the Details of Discrepancies, the income tax assessment against petitioner was cancelled in view of the submission of supporting documents on its claimed interest expense as well as the payment of withholding tax from payment of Rent and Contractors and the payment of deficiency income tax arising from non-submission of supporting documents on its claimed creditable withholding tax. Respondent likewise cancelled the assessment for expanded withholding tax due to petitioner's payment of the same. However, since petitioner failed to present

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[9] Par. 6, Stipulation of Facts, JSFI, docket, p. 60; Exhibit "8".
[10] Exhibits "9", "9-A", "9-B", "9-C", and "9-D".
[11] Exhibit "10".
[12] Exhibits "15", "15-A", "15-B", and "15-C".
[13] Exhibit "16".

supporting documents as regards the assessed deficiency VAT, the assessment for the said tax was upheld.[14]

Petitioner filed its request for reconsideration of the FDDA on April 7, 2009, averring that the FAN, as amended, was invalid on the ground of prescription and for lack of factual basis.[15]

In a Decision dated July 1, 2011, respondent denied petitioner's protest.[16]

Aggrieved by respondent's Decision, petitioner filed the instant Petition for Review on August 17, 2011.

Respondent filed her Answer[17] on October 3, 2011, interposing the following defenses:

1. Petitioner's judicial appeal to the CTA has already prescribed. As such, the subject deficiency value-added tax of petitioner for taxable year 2001 has already become final, executory and demandable, pursuant to Section 228 of the 1997 Tax Code. Consequently, the Court has no jurisdiction to act on the instant petition;

2. Petitioner was validly assessed deficiency VAT for taxable year 2001 because during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown and discussed under the Details of Discrepancies attached to the Formal Assessment Notice, (FAN) dated July 22, 2005, the Preliminary Assessment Notice (PAN) dated June 29, 2005, and Final Decision on Disputed Assessment dated March 5, 2009, as well as Decision dated July, 2011 of the respondent CIR;

3. Petitioner validly executed on August 16, 2004 a Waiver of the Defense of Prescription of the Statute of Limitations under the NIRC, extending the period of limitations until December 31, 2005. Thus, the running of the statute of limitations was suspended under Section 222(b) of the 1997 Tax Code because both the Commissioner and the taxpayer agreed in writing to its assessment after such time. Additionally, the running of the statute of limitations was also suspended, under Section 223 of

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[14] Par. 7, Stipulation of Facts, JSFI, docket, p. 60; Exhibits "17" to "17-D".
[15] Exhibit "18".
[16] Exhibit "19".
[17] Docket, pp. 32-39.

the same Code, when petitioner requested for reinvestigation of its deficiency internal revenue taxes for taxable year 2001 which was granted by the respondent CIR;

4. The Waiver duly executed by petitioner on August 16, 2004, was validly signed and accepted by the respondent CIR through the authorized BIR Official named RDO Ner Alfredo B. Plana, pursuant to Revenue Delegation Authority Order No. 05-01 dated August 2, 2001;

5. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the disputed Preliminary Assessment Notice (PAN) dated June 29, 2005 and Formal Assessment Notice (FAN) dated July 22, 2005 were issued to petitioner.

6. The failure and refusal of petitioner to produce the required records despite repeated notice[18] by the BIR is an indication of fraud. Hence, the assessed deficiency VAT of petitioner for taxable year 2001 was made within the ten (10) year prescriptive period under Section 222 (a) of the 1997 Tax Code;

7. The assessment issued against petitioner for deficiency VAT for taxable year 2001 was made in accordance with law and regulations; and

8. All presumptions are in favor of the correctness of tax assessment issued by the respondent CIR.

The case was set for pre-trial conference on November 4, 2011.[19] Petitioner's Pre-Trial Brief[20] was filed on October 28, 2011; while respondent's Pre-Trial Brief was filed on November 3, 2011.[21]

On November 29, 2011, the parties filed through registered mail their Joint Stipulation of Facts and Issues[22] which was approved in a Resolution[23] dated December 13, 2011.

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[18] The First, Second and Final notices sent by the BIR were dated June 11, 2003, July 17, 2003 and July 30, 2003, respectively, which resulted in the issuance of the BIR Subpoena Duces Tecum dated October 30, 2003 to petitioner, and the consequent filing by the BIR of a criminal complaint against the responsible officers of petitioner for violation of the Sections 5(C), 256 and 266 of the 1997 Tax Code, pursuant to Section 222 of the 1997 Tax Code in relation to RMO 15-95 (par. D1 and E27).
[19] Notice of Pre-Trial Conference issued on October 6, 2011, Docket, p. 40.
[20] Docket, pp. 41-44.
[21] Docket, pp. 45-48.
[22] Docket, pp. 64-68.
[23] Docket, p. 71.

On January 5, 2012, the Court issued a Pre-Trial Order which, among others, declared the pre-trial terminated and set the initial presentation of petitioner's evidence on January 17, 2012.[24]

After presentation, marking and identification of petitioner's lone exhibit, Exhibit "A", the same was denied admission in this Court's Resolution[25] dated January 25, 2013 for petitioner's failure to present its original for comparison.

On the other hand, respondent presented and formally offered Exhibits "1" to "21-A", which were admitted as part of her documentary evidence via this Court's Resolution[26] dated September 18, 2013.

Petitioner submitted its Memorandum on October 24, 2013[27]; while respondent submitted her Manifestation and Motion on October 17, 2013, adopting all the special and affirmative defenses raised in her Answer dated September 30, 2011, including the purposes of her documentary evidence admitted by the Court, as her Memorandum.[28] Hence, in a Resolution[29] dated November 6, 2013, the case was submitted for decision.

THE ISSUES

The parties submitted the following issues[30] for this Court's resolution:

> A. Whether or not this Honorable Court has jurisdiction to entertain the instant case.
>
> B. Whether or not the BIR's right to assess petitioner for deficiency VAT for taxable year 2001 has already prescribed, or was suspended pursuant to Section 222(b) and 223 of the 1997 Tax Code.
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> C. Whether or not the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC) was validly executed in accordance with existing BIR regulations, laws and jurisprudence.

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[24] Docket, pp. 74-80.
[25] Docket, p. 131.
[26] Docket, pp. 215-216.
[27] Docket, pp. 218-229.
[28] Docket, pp. 230-231.
[29] Docket, p. 235.
[30] Issues to be resolved, JSFI, Docket, p. 65.

> D. Whether or not petitioner is liable to pay the amount of ₱7,004,881.40 (inclusive of increments), as deficiency value-added tax for taxable year 2001.

THE RULING OF THE COURT

Anent the issue on jurisdiction, this Court finds instructive Sections 7 and 11 of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which enumerate the cases over which this Court has appellate jurisdiction. The relevant portions of Sections 7 and 11 are quoted hereunder for ready reference:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis supplied)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law** for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction** as herein provided, **from the expiration of the period fixed by law to act thereon**. xxx" *(Emphasis supplied)*

In relation thereto, the pertinent part of Section 228 of the NIRC of 1997, as amended, states:

> "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:
>
> x x x
>
> **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.**" *(Emphasis supplied)*

From the above-mentioned provisions of law, it is clear that when there is a decision issued by the BIR Commissioner on the protest or in case of inaction by the BIR Commissioner on the protest and the taxpayer chooses to appeal to the Court of Tax Appeals, the same must be made within 30 days from the receipt of the said decision, or from the lapse of the 180-day period and the failure of petitioner to file a Petition for Review with the Court of Tax Appeals within 30 days renders the assessment final, executory and demandable.

In other words, in order to successfully invoke the jurisdiction of this Court, a "decision of the Commissioner of Internal Revenue" on a disputed assessment is necessary except when the ground relied upon is the inaction of the BIR Commissioner.

In this case, respondent's Formal Assessment Notice with Details of Discrepancies dated July 22, 2005 was received on July 28, 2005.[31] Petitioner requested the reconsideration of the said Formal Assessment Notice[32] on August 11, 2005. Respondent later issued an amended Assessment Notice

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[31] Exhibits "9", "9-A", "9-B", "9-C", and "9-D".
[32] Exhibit "10".

with Details of Discrepancies[33] dated August 29, 2006. As a result, petitioner protested the amended Assessment Notice on September 22, 2006.[34] Subsequently, OIC-Assistant Regional Director Manuel V. Mapoy issued a Final Decision on Disputed Assessment dated March 5, 2009 for taxable year 2001.[35] Petitioner filed a request for reconsideration of the FDDA before the BIR Commissioner on April 7, 2009.[36] Respondent Commissioner then issued a Decision dated July 1, 2011.[37]

According to respondent, the Final Decision on Disputed Assessment dated March 5, 2009 is the final decision appealable to this Court. She explained that counting from March 9, 2009, petitioner had 30 days or until April 8, 2009 within which to file an appeal with this Court. Respondent argued that this Court has no jurisdiction over the Petition for Review, which was filed only on August 17, 2011.[38]

Relevant to the issue at hand is Section 3.1.5 of Revenue Regulations No. 12-99, implementing Section 228 of the NIRC of 1997, as amended, the applicable portion of which reads:

> "3.1.5 *Disputed Assessment.* - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
>
> x x x
>
> In general, **if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within**

[33] Exhibits "15", "15-A", "15-B", and "15-C".
[34] Exhibit "16".
[35] Par. 7, Stipulation of Facts, JSFI, docket, p. 60; Exhibits "17" to "17-D".
[36] Exhibit "18".
[37] Exhibit "19".
[38] Par. 8, Answer, docket, pp. 33-34.

> **thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable**: Provided, however, that **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**" *(Emphasis supplied)*

Based on the foregoing, the decision of the Commissioner of Internal Revenue or his duly authorized representative shall be the decision appealable to this Court within 30 days from receipt thereof; otherwise, the assessment shall become final, executory and demandable. It is also provided that the decision of the authorized representative will not attain finality if the taxpayer appeals the same to the Commissioner of Internal Revenue who shall then be required to decide the protest himself.[39]

Clearly, petitioner merely exercised the remedies available to it as provided in the above-cited provision when it protested before respondent Commissioner the FDDA issued by the OIC-Regional Director, her duly authorized representative. Therefore, petitioner correctly filed its judicial appeal of the Decision dated July 1, 2011 issued by respondent Commissioner herself, and not on the FDDA dated March 5, 2009.

Counting 30 days from the receipt of the Decision dated July 1, 2011, which was on July 18, 2011[40], petitioner had until August 17, 2011 within which to file its appeal before this Court. Thus, the Petition for Review filed on August 17, 2011 was filed within the prescriptive period and the Court has jurisdiction over the case.

On the issue of whether or not the right to assess petitioner for deficiency VAT for taxable year 2001 has already prescribed, respondent alleged in her Answer to the Petition for Review that petitioner filed fraudulent returns which would mean that the 10-year period of limitation to issue an assessment applies pursuant to Section 222(a) of the NIRC of 1997, as amended, which states:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a **false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such**

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[39] *Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue*, CTA EB No. 44, May 10, 2005.

[40] Par. 2, Petition for Review, Docket, p. 6.

> **tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

Respondent contends that the fact that petitioner failed to present/submit its books of accounts and other accounting records despite the First, Second and Final Notices issued by the BIR on June 11, 2003, July 17, 2003 and July 30, 2003, respectively, resulting in the issuance of the BIR *Subpoena Duces Tecum* dated October 30, 2003 to herein petitioner, and the consequent filing of the BIR of a criminal complaint against the responsible officers of petitioner for violation of Sections 5(C), 256, and 266 of the NIRC of 1997 pursuant to Section 222 of the NIRC of 1997 in relation to Revenue Memorandum Order (RMO) No. 15-95, are indications of fraud. Hence, the assessment for deficiency VAT of petitioner for taxable year 2001 was timely issued within the 10-year prescriptive period under Section 222(a) of the NIRC of 1997.

In *Aznar vs. Court of Tax Appeals, et al.*[41], the Supreme Court, interpreting then Sections 331 (providing for a five-year ordinary prescriptive period) and 332(a), now Sections 203 and 222(a), of the Tax Code, held:

> "(W)e believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'. That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.
>
> The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, **but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due**

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[41] G.R. No. L-20569, August 23, 1974.

> **to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.**" *(Emphasis supplied)*

While the Court cannot immediately decide on the existence of fraudulent returns in this case, respondent's findings that petitioner has unsupported excess input tax carried over from the previous quarter in the amount of ₱1,630,285.82 and unsupported input taxes in the amount of ₱882,308.86, together with petitioner's failure to present documents to substantiate the said unsupported input taxes, however, leads this Court to conclude that there was falsity in petitioner's VAT return for 2001.[42] Furthermore, petitioner's repeated failure to present/submit its books of accounts and other accounting records in spite of the First, Second and Final Notices issued by the BIR on June 11, 2003, July 17, 2003 and July 30, 2003, respectively, resulting in the issuance by the BIR of a *Subpoena Duces Tecum* placed respondent at a disadvantage that prevented her from properly assessing the tax liabilities, making the period of ten years from the time of discovery of falsity the applicable prescriptive period.

Consequently, counting 10 years from the discovery of falsity, which was on April 28, 2005, the date of the Post Reporting Notice issued by respondent that informed petitioner of deficiency taxes due it,[43] respondent's Formal Assessment Notice received by petitioner on July 28, 2005 was clearly made within the prescriptive period provided by law.

Waiver is Valid

As regards the purported infirmity of the waiver dated August 16, 2004, petitioner averred that the waiver should be signed by no less than the Commissioner of Internal Revenue, and not by a Revenue District Officer, such as the one who signed the assailed waiver. Also, petitioner alleged that the date of acceptance by the BIR was not indicated in the waiver.

At this juncture, it must be pointed out that petitioner failed to present evidence to support the foregoing averments. Nevertheless, upon examination by the Court of the waiver[44], the same shows that petitioner's allegations are bereft of merit.

As to the authority of the signatory to sign the waiver, the Court cites the relevant provisions of Revenue Delegation Authority Order (RDAO) No. 05-01, to wit:

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[42] Exhibit "9-B".
[43] Pars. 4 and 5, Stipulation of Facts, JSFI, Docket, p. 59.
[44] Exhibit "6".

"II. *Revenue Officials Authorized to Sign the Waiver*

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997.

x x x

C. *For Regional cases*

Designated Revenue Official	
1. Revenue District Officer	Cases pending investigation/verification/reinvestigation in the Revenue District Offices"

Based on the foregoing, the Revenue District Officer is authorized to sign and accept waivers for cases pending investigation/ verification/reinvestigation in the Revenue District Offices.

Records reveal that the investigation of the subject deficiency tax was pending in Revenue District Office No. 48, Revenue Region No. 8, Makati City.[45] As Revenue District Officer Alfredo Ner B. Plana is the Revenue District Officer assigned in that Revenue District Office, he is authorized to sign and accept the subject waiver.

The evidence also refutes the allegation of petitioner as regards the lack of date of acceptance. The waiver itself shows that August 16, 2004 was the date of acceptance of the waiver by the Revenue District Officer.[46] Petitioner's imputation that the waiver contains infirmities, therefore, is bereft of merit.

Despite the discussion above on the validity of the waiver, the waiver itself will have little bearing in the light of our finding that it is the ten-year prescriptive period which is applicable in this case. Respondent's assessment of petitioner's tax liabilities, considering that it was done within the prescriptive period,

Even if the Court considers the waiver to be invalid, the assessment shall still be considered issued within the prescriptive period provided by law

[45] Exhibit "4".
[46] Exhibit "6-B".

since the Court already declared that the 10-year period is the applicable period to assess petitioner's tax liabilities.

Lastly, as to the issue of whether or not petitioner is liable to the deficiency VAT assessment, it must be emphasized that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a Petition for Review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.[47]

Considering that petitioner failed to present evidence to overturn the presumption of correctness of respondent's assessment, the assessment as regards petitioner's deficiency VAT must be upheld.

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

SO ORDERED.

Ma. Belen Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[47] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice