REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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KUDOS MARKETING CORPORATION,
Petitioner,

C.T.A. CASE NO. 7045

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ*

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:
NOV 14 2005
[signature]

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RESOLUTION

For resolution is petitioner's "Motion for Preferential Resolution on the Issue of Prescription" filed on April 6, 2005, seeking to declare respondent's right to assess taxes in this case to have prescribed, and to reversing and setting aside the Final Decision on Disputed Assessment declaring the same as void, arbitrary and issued in violation of petitioner's right to due process."

In support of its motion, petitioner submits that:

1. The assessment made by respondent dated September 26, 2003 and received by the petitioner on November 5, 2003, for the taxable calendar year 1998, is barred by the three-year prescriptive period. And the issue of prescription was seasonably raised at the initial stage by the petitioner;
2. Respondent's own evidence shows that the period within which it can make a valid assessment has prescribed;
3. In the first waiver dated December 10, 2001, while made within the statutory three-year prescriptive period, it was clearly agreed that the period of limitation shall not extend beyond December 31, 2002; and
4. The subsequent waiver made by Nelia Pasco and the BIR represented by Assistant Commissioner Percival T. Salazar, was executed only on February 18, 2003, or thirty nine (39) days after the lapsed of the period of limitation agreed on the first waiver which is December 31, 2002.

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Respondent, however, counters in his Comment that the defense of prescription cannot be invoked since the waivers of the statute of limitations executed by the petitioner validly extended the period within which the assessment can be made since: (1) It was petitioner who executed the waiver of the defense of prescription and, therefore, consented to the extended audit of the BIR beyond the prescribed three-year period; and (2) It was the petitioner who initiated the execution of the same and requested the BIR for its acceptance and conformity. Respondent concluded that any minor defects, such as the lapse of thirty nine (39) days before the second waiver was executed, is deemed immaterial and of no consequence to the validity of the waiver.

In resolving the petitioner's motion, the Court considers the following facts as culled from the parties' Joint Stipulation of Facts and Issues:

"3. On April 15, 1999, Petitioner as required by law, filed its annual income tax return for the calendar year 1998.

"4. On November 12, 2003, Petitioner received a FORMAL LETTER OF DEMAND with accompanying ASSESSMENT NOTICES dated September 26, 2003.

"5. A '*Protest on Various Tax Assessments*' was filed on December 3, 2003, which was acknowledged receive[d] by the Bureau of Internal Revenue xxx, in its letter dated December 22, 2003.

"6. On February 2, 2004, Petitioner submitted its 'LEGAL ARGUMENTS AND DOCUMENTS IN SUPPORT OF PROTESTS AGAINST VARIOUS ASSESSMENTS".

"7. On July 29, 2004, Petitioner received a 'FINAL DECISION ON DISPUTED ASSESSMENT' dated June 22, 2004, signed by the Hon. JOSE MARIO C. BUÑAG, Deputy Commissioner for the Legal and Inspection Group, seeking to collect from the petitioner the following:

Kind of Tax	**Amount**
Income Tax	P7,301,850.60
Value Added Tax	2,207,677.21
Expanded Withholding Tax	13,557.23
Withholding Tax- Compensation	10,031.62
Other Penalties	9,000.00
Total	P9,542,116.65

The Court finds the petitioner's motion with merit.

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Sections 203 and 222 (b) of the National Internal Revenue Code of 1997, provides for a period of limitations on the assessment and collection of internal revenue taxes. We quote:

> SECTION 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.
>
> SECTION 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.
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> xxx xxx xxx

The above provisions aims to safeguard the interest of the taxpayer against unreasonable investigation. (*J.C. Vitug and E.D. Acosta, **Tax Law and Jurisprudence. 2nd Ed., p. 295***) Unreasonable investigation contemplates such cases where the period for assessment are extended indefinitely depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.

In the case at bar, the taxable year involved in the assessment is calendar year 1998 wherein petitioner filed on April 15, 1999 its Annual Income Tax Return for the said period. Thus, the government has until April 14, 2002 (2000 being a leap year) within which to assess the petitioner.

On December 10, 2001, petitioner executed a "Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue Code". The said waiver, however, is not valid.

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Revenue Memorandum Order No. 20-90, dated April 4, 1990, gives Us the proper execution of the waiver, to wit:

"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 <u>in addition</u> 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 <u>before</u> the expiration of the period of prescription or <u>before</u> 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

xxx xxx xxx

3. **Commissioner** **For tax cases involving more than P1M**

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of the 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 the 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.

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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 should be administratively dealt with.**" (Emphasis supplied)

A scrutiny of the first waiver reveals the following: (1) it does not appear on the face of the waiver that the person who executed the same is petitioner's responsible official; (2) it is not signed by the respondent; (3) the date of acceptance by the Bureau is not indicated; and (4) there is no indication of the fact of petitioner's receipt of its own copy.

Respondent's right to assess and collect deficiency taxes from petitioner has already prescribed as there was no valid waiver at the first instance. Consequently, the second waiver is without force and effect as there is no longer a period to extend.

Thus, when respondent issued its Formal Letter of Demand with Assessment Notices for the taxable year 1998 on September 26, 2003, the three-year prescriptive period within which the respondent may assess the petitioner has already set in. Respondent's right to assess petitioner already prescribed.

We must stress the ruling of the Supreme Court in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue (447 SCRA 214)* that: "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. xxx"

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Indeed, after the expiration of the prescriptive period, the government losses the right to assess a tax and any assessment thereafter conducted is without any effect or invalid. As held in ***Republic of the Phils. v. Ablaza (108 Phil. 1105)***:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. **The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law."** (Emphasis supplied)

WHEREFORE, in view of all the foregoing, motion is hereby **GRANTED**. Accordingly, respondent's Final Decision on Disputed Assessment dated June 22, 2004 is **SET ASIDE** and the corresponding assessment notices for deficiency income tax, value-added tax and expanded withholding tax, withholding tax on compensation assessments and other penalties issued against the petitioner are hereby declared **CANCELLED AND WITHDRAWN**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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