REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 951
(CTA Case No. 8154)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

-versus-

LA FLOR DELA ISABELA, INC.,
Respondent.

Promulgated:
SEP 30 2013 9:00 a.m.

x- -x

DECISION

CASTAÑEDA, JR., *J.*:

Assailed in this Petition for Review are the Decision dated August 3, 2012 cancelling the Final Assessment Notices identified as LTEADI-WC-05-00038, LTEADI-WE-05-00 062, LTEADI-CP-05-00007 and LTEADI-CP-05-00008 pertaining to alleged 2005 deficiency assessments for withholding tax on compensation and expanded withholding tax and penalties for late filing and payment in the aggregate amount of P6,835,994.76, inclusive of interest and penalties, and the Resolution dated October 5, 2012 denying petitioner's Motion for Reconsideration issued by the Court of Tax Appeals Third Division in CTA Case No. 8154.

The Commissioner of Internal Revenue ("petitioner") is tasked to decide disputed assessments, collection, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters under the 1997 National Internal Revenue Code ("NIRC"), as amended, or other laws administered by the Bureau of Internal Revenue ("BIR").

La Flor Dela Isabela, Inc. ("respondent") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.[1]

For taxable year 2005, respondent filed monthly withholding tax returns pertaining to expanded withholding tax and withholding tax on compensation as follows:

Withholding Tax Expanded for Taxable Year 2005	Date Filed
January[2]	March 8, 2005
February [3]	March 14, 2005
March[4]	April 14, 2005
April [5]	May 13, 2005
May[6]	June 14, 2005
June[7]	July 14, 2005
July [8]	August 11, 2005
August[9]	September 14, 2005
September[10]	October 14, 2005
October[11]	November 14, 2005
November[12]	December 14, 2005
December[13]	March 1, 2006

[1] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 8154, p. 160.
[2] Exhibit "A".
[3] Exhibit "B".
[4] Exhibit "C".
[5] Exhibit "D".
[6] Exhibit "E".
[7] Exhibit "F".
[8] Exhibit "G".
[9] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 8154, p. 161.
[10] Exhibit "I".
[11] Exhibit "J".
[12] Exhibit "K".
[13] Exhibit "L".

Withholding Tax on Compensation for Taxable Year 2005	Date Filed
January[14]	February 15, 2005
February[15]	March 14, 2005
March[16]	April 14, 2005
April[17]	May 13, 2005
May[18]	June 14, 2005
June[19]	July 14, 2005
July[20]	August 14, 2005
August[21]	September 14, 2005
September[22]	October 14, 2005
October[23]	November 14, 2005
November[24]	December 14, 2005
December[25]	January 30, 2006

On February 16, 2009, respondent through its President Alan James Anthony C. Harrow agreed to waive the statute of limitations on the assessment and collection of its 2005 internal revenue tax liabilities pursuant to Sections 203 and 222 of the 1997 NIRC, as amended.[26]

On November 20, 2009, petitioner through its duly authorized representatives served a copy of the Preliminary Assessment Notice ("PAN") to respondent pertaining to the alleged deficiency internal revenue taxes for taxable year 2005.[27]

On January 7, 2010, respondent received copies of the Formal Letter of Demand and Final Assessment Notices ("FANs") LTAID-II CP-05-00007, LTAID-II CP 05-00008, LTAID-II WE-05-00062 and LTAID-II WC-0500038 all dated December 17, 2009 covering

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[14] Exhibit "N".
[15] Exhibit "O".
[16] Exhibit "P".
[17] Exhibit "Q".
[18] Exhibit "R".
[19] Exhibit "S".
[20] Docket, Joint Stipulation of Facts and Issues ,CTA Case No. 8154, p. 161.
[21] Exhibit "U".
[22] Exhibit "V".
[23] Exhibit "X".
[24] "Exhibit "Y".
[25] Exhibit "Z".
[26] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 8154, p.162.
[27] *Ibid.*

withholding tax on compensation and expanded withholding tax deficiencies plus penalty for taxable year 2005.[28]

Respondent protested the FANs on January 15, 2010.[29]

In reply to respondent's protest on the FANs, petitioner through Assistant Commissioner Zenaida G. Garcia issued a Final Decision on Disputed Assessment dated July 20, 2010 demanding payment of P6,835,994.76 representing 2005 withholding tax on compensation and expanded withholding tax deficiencies and penalties.[30]

On September 13, 2010, respondent filed a Petition for Review docketed as CTA Case No. 8154 before the Court of Tax Appeals Third Division ("Court in Division").

In the Decision dated August 3, 2012, the Court in Division ruled for the respondent and set-aside the FANs, namely: LTEADI-WC-0500038, LTEADI-WE-05-00062, LTEADI-CP-05-00007 and LTEADI-CP-05-00008 for being issued beyond the prescriptive period. The Court in Division reasoned that due to its infirmity, the waiver of statute of limitations dated February 16, 2009 did not extend the assessment period.[31]

Dissatisfied, petitioner moved for the reconsideration of the Decision dated August 3, 2012; however, in the Resolution dated October 5, 2012, the Court in Division denied the same for lack of merit.[32]

Unfazed, petitioner appealed by way of a Petition for Review before the Court *en banc* raising the following issues:

1. Whether or not the assessments and eventual collection of the alleged deficiency withholding taxes are barred by prescription;

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[28] *Ibid.*
[29] *Ibid.*
[30] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 8154, p. 163.
[31] Penned by Associate Justice Lovell R. Bautisa with Associate Justices Olga Palanca-Enriquez and Amelia C. Cotangco-Manalastas concurring.
[32] Penned by Associate Justice Lovell R. Bautista with Associate Justice Olga Palanca-Enriquez concurring.

2. Whether or not respondent is liable to pay the deficiency withholding taxes for taxable year 2005.

3. Whether or not respondent failed to specifically deny under oath the genuineness and due execution of the waivers.[33]

Petitioner asserts that one of the exceptions to the three year prescriptive period for the assessment of internal revenue taxes occurs when a waiver in writing is executed authorizing the government to extend the assessment period.

According to petitioner, in the United States Supreme Court case of *Stange v. United States*[34], a waiver is not a contract but should be treated as a unilateral defense of prescription by taxpayer. The provision requiring the Commissioner's signature is inserted for administrative purposes.

At the time of the execution of the waivers, the petitioner has concluded the audit and was ready to issue the assessment, but then, respondent by consenting to the waivers begged petitioner to hold in abeyance the issuance of an assessment and to submit additional documents. Respondent by its own action caused the delay in the resolution of its protest; thus, it may no longer question the validity of the waivers and raise the issue of prescription.

Petitioner further argues that respondent's failure to challenge the legality of the waivers within the administrative level operates as estoppel on its part to question the same before the Honorable Court.

Respondent's voluntary act of signing the waivers is tantamount to consenting in extending the assessment period. The act of signing the rest of the waivers already cured the alleged defect found in the prior waivers.

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[33] *Rollo*, pp. 13 & 31.
[34] 282 U.S.270(1931)

The Court in Division erred in declaring the nullity of the waivers of the statute of limitations due to non compliance with RMO No. 20-90. Revenue Memorandum Orders are directives that are intended for the guidance of revenue officers in carrying out plans and programs of the BIR, with the exception of auditing. RMO 20-90 establishes internal order in the issuance of waivers.

Petitioner insists that respondent as a withholding agent has the duty to deduct and withhold any internal revenue taxes from the wages of its employees and to remit the same to the Government. It holds such fund as trustee for the government.

The amount of P6,835,994.76 sought to be collected from respondent is not the tax itself but as the penalty for failure to remit this amount.

Moreover, respondent's failure to specifically deny the existence, genuineness and due execution of the waivers amounts to an admission negating the necessity of presenting further evidence as to the validity of the waivers.

Respondent on the other hand, counters that the waivers dated September 3, 2008 and December 2, 2009 were not offered before the Court and cannot be given any weight. The waiver dated February 16, 2009 being defective for failure to compy with RMO No. 20-90 did not toll the three (3) year assessment period. Thus, the FANs dated December 17, 2009 were issued beyond the three year prescriptive period.

THE COURT'S RULING

THE WAIVERS EXECUTED ON SEPTEMBER 3, 2008 AND DECEMBER 2, 2009 ARE INADMISSIBLE.

The assessment period of internal revenue taxes is within three (3) years after the last day prescribed by law for the filing of the return, or the actual date of filing of such return, whichever is later pursuant to Section 203 of the 1997 NIRC, as amended, stating: ✓

> 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.

One of the grounds for the extension of the three year period to assess is when the taxpayer and the Commissioner have agreed in writing to waive the statute of limitations for the assessment and collection of internal revenue taxes executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed as emphasized in Section 222 of the 1997 NIRC, as amended, reading:

> Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> xxx xxx xxx
>
> (b) If before 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.

Since this case involves taxable year 2005, the period to file a return for withholding tax on compensation and expanded withholding tax is governed by the provisions of Section 4 of Revenue

Regulations No. 06-01[35] and Section 5 of Revenue Regulations No. 17-2003[36], stating:

Revenue Regulations No. 06-01

SECTION 4. Time for Filing of Withholding Tax and Value Added Tax Returns and the Payment of Taxes Due Thereon. - The time for filing of the various tax returns as indicated below and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to the existing regulations, as presented below.

(1) Sections 2.58(A)(2) and 2.81 of Revenue Regulations No. 2-98, as amended, are hereby further amended to read as follows:

xxx xxx xxx

"SECTION 2.81 FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COMPENSATION (FORM NO. 1601).-Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, **shall make a return and pay such tax on or before the 10th day of the month following the month in which the withholding was made** to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; provided, however, **that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than**

[35] Amending Pertinent Provisions of Revenue Regulations Nos. 1-98, 2-98, as Amended, and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon And Others.

[36] Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, As Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, As Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

January 15 of the succeeding year; **Provided, however, that with respect to taxpayers, whether large or non-large, who availed of the EFPS, the deadline for electronically filing the aforesaid withholding tax return and paying the tax due thereon via EFPS shall be five (5) days later than the deadlines set above.** (Emphasis supplied.)

xxx xxx xxx

Revenue Regulations No. 17-2003

SECTION 5. Returns and Payments of Taxes Withheld at Source. – Section 2.58 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

"Sec.2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) Monthly return and payment of taxes withheld at source.-

(1) xxx xxx xxx

(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within (10) days after the end of each month, except for taxes withheld for the month of December of each year; which shall be filed on or before January 15 of the following year**; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the

> transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.
>
> Nonetheless, in case of disposition of real property classified as capital asset by an individual to the government, the tax to be imposed shall be determined either under the normal income tax return rate imposed in Sec. 24(A) or under a final capital gains tax of six percent (6%) imposed under Sec 24(D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows the seller's filed income tax return reflecting the result of the subject real estate transaction.
>
> b) **With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof."** (Emphasis supplied.)

Generally, the filing of a return for withholding tax on compensation and expanded withholding tax is within ten (10) days after the end of each month except for the month of December, the filing of which should be within the 15^{th} day of January of the succeeding year. However, for taxpayers who file monthly withholding tax returns through electronic filing and payment system ("EFPS") such as in the instant case, the filing and payment should be within the additional five days from the deadline dates.

Petitioner alleges that it executed three waivers justifying the extension of the assessment period for deficiency expanded withholding tax and withholding tax on compensation under Section 222 of the 1997 NIRC, as amended. The first waiver executed on September 3, 2008 was signed by its President Alan James Anthony C. Harrow. By virtue of this waiver, the assessment period for the year 2005 was extended until June 30, 2009. This waiver was executed within the mandated three year assessment period.

The second waiver executed on February 16, 2009 was also signed by James Anthony C. Harrow. This was concluded before the expiration of the period agreed upon in the first waiver specifically on or before June 30, 2009. By virtue of this waiver, the assessment period for year 2005 was extended until December 31, 2009.

The third waiver undertaken on December 2, 2009 was executed within the period provided in the second waiver, specifically on or before December 31, 2009. By virtue of this waiver, the assessment period for year 2005 was extended until June 30, 2010.

Since respondent filed its 2005 withholding tax on compensation on January 30, 2006 and 2005 expanded withholding tax on March 1, 2006, petitioner had until January 30, 2009 and March 1, 2009 within which to validly issue an assessment. The first waiver executed on September 3, 2008 was done prior to the expiration of the three year assessment period. The two succeeding waivers were done prior to the expiration of the period previously agreed. The waivers are therefore valid.

We disagree.

In the case at bar, the end of the three year assessment period for 2005 withholding tax on compensation and expanded withholding tax deficiencies is detailed as follows:

Withholding Tax Expanded for Taxable Year 2005	**Date Filed**	**End of the Three Year Assessment Period**
January[37]	March 8, 2005	March 8, 2008
February [38]	March 14, 2005	March 15, 2008
March[39]	April 14, 2005	April 15, 2008

[37] Exhibit "A".
[38] Exhibit "B".
[39] Exhibit "C".

April [40]	May 13, 2005	May 15, 2008
May[41]	June 14, 2005	June 15, 2008
June[42]	July 14, 2005	July 15, 2008
July [43]	August 11, 2005	August 15, 2008
August[44]	September 14, 2005	September 15, 2008
September[45]	October 14, 2005	October 15, 2008
October[46]	November 14, 2005	November 15, 2008
November[47]	December 14, 2005	December 15, 2008
December[48]	March 1, 2006	March 1, 2009

Withholding Tax on Compensation for Taxable Year 2005	**Date Filed**	**End of the Three Year Assessment Period**
January[49]	February 15, 2005	Feb. 15, 2008
February[50]	March 14, 2005	March 15, 2008
March[51]	April 14, 2005	April 15, 2008
April[52]	May 13, 2005	May 15, 2008
May[53]	June 14, 2005	June 15, 2008
June[54]	July 14, 2005	July 15, 2008
July[55]	August 14, 2005	August 15, 2008
August[56]	September 14, 2005	September 15, 2008
September[57]	October 14, 2005	October 15, 2008
October[58]	November 14, 2005	November 15, 2008
November[59]	December 14, 2005	December 15, 2008
December[60]	January 30, 2006	January 30, 2009[61]

[40] Exhibit "D".
[41] Exhibit "E".
[42] Exhibit "F".
[43] Exhibit "G".
[44] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 8154, p. 161.
[45] Exhibit "I".
[46] Exhibit "J".
[47] Exhibit "K".
[48] Exhibit "L".
[49] Exhibit "N".
[50] Exhibit "O".
[51] Exhibit "P".
[52] Exhibit "Q".
[53] Exhibit "R".
[54] Exhibit "S".
[55] Docket, Joint Stipulation of Facts and Issues, CTA Case No.8154, p.161.
[56] Exhibit "U".
[57] Exhibit "V".
[58] Exhibit "X".
[59] "Exhibit "Y".
[60] Exhibit "Z".
[61] In the Supreme Court case of *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*, G.R. No. 162155, August 28, 2007, 531 SCRA 436, Administrative Code of 1987 applies in the computation of

Respondent's withholding tax on compensation and expanded withholding tax monthly returns for taxable year 2005 disclose that the earliest filing was on February 15, 2005 for the month of January 2005 and the latest was on March 1, 2006 for the month of December 2005. The three year assessment period would end on February 15, 2008 for the month of January 2005 and for the month of December 2005 until March 1, 2009.

Records disclose that when the FANs dated December 17, 2009 were received by respondent on January 7, 2010[62], the three year period to assess has prescribed. Petitioner asserts that three waivers of statute of limitations were executed specifically on September 3, 2008, February 16, 2009 and December 2, 2009. However, the Court agrees with the Court in Division in considering only the waiver of statute of limitations executed on February 16, 2009 because the existence of this waiver was admitted by both parties[63], while the other two waivers were never offered to this Court, hence, inadmissible.

Evidence not formally offered is inadmissible under Section 34, Rule 132 of the Rules of Court which provides:

> SEC. 34. Offer of Evidence. – The Court shall consider no evidence which has not been formally offered. xxx

The relevance of a formal offer of evidence is emphasized in the case of *Rafael Dizon vs. Court of Tax Appeals*[64] in this manner:

> xxx the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR. *gz*

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the prescriptive period. In the Administrative Code of 1987, a year is composed of 12 calendar months. The number of days is irrelevant.

[62] Docket, CTA Case No. 8154, p. 162.

[63] *Ibid.*

[64] G.R. No. 140944, April 30, 2008, 553 SCRA 111.

> xxx xxx xxx in *Heirs of Pedro Pasag v. Parocha*:
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> A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.

But in the case of *Mato Vda de Oñate v. Court of Appeals*[65], the Supreme Court recognized the admissibility of evidence even if not formally offered provided that the following requisites are present:

> First, evidence must have been duly identified by testimony duly recorded and second, the same must have been incorporated in the records of the case.[66]

In *Ramos v. Dizon*[67], exhibits presented and marked at the pre-trial proceedings are deemed incorporated in the records of the case.

Here, the waivers dated September 3, 2008 and December 2, 2009 would still be inadmissible as they were not incorporated in the records of the case and duly identified by testimony.

INVALIDITY OF THE FEBRUARY 16, 2009 WAIVER

THE ASSESSMENTS OF THE 2005 EXPANDED WITHHOLDING TAX AND WITHHOLDING TAX ON COMPENSATION

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[65] G.R. No. 116149, November 23, 1995 250 SCRA 283. See *Dizon v. Court of Tax Appeals*, *supra*.
[66] Cited in *Anatalia B. Ramos v. Spouses Dizon*, G.R. No. 137247, August 7, 2006, 498 SCRA 17.
[67] *Anatalia B. Ramos v. Spouses Dizon*, *supra*.

DEFICIENCIES ARE BARRED BY PRESCRIPTION.

To ascertain the validity of the waiver executed on February 16, 2009, We shall refer to Revenue Memorandum Order ("RMO") No. 20-90.

Pursuant to RMO No. 20-90, a waiver of the statute of limitations is governed by the following prescribed procedure:

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 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 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 or before the lapse of the period agreed upon in case a subsequent agreement is executed.

xxx xxx xxx

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. (Emphasis supplied).

Annex "A" of RMO 20-90 provides:

WAIVER OF THE STATUE 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 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 period 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 ______________________

The procedure stated in RMO No. 20-90 must be strictly complied.[68] The case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[69] explains the nature of a waiver of statute of limitations as implemented by RMO No. 20-90, *viz*:

> 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 statue of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect 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.[70]

We subscribe to the findings of the Court in Division on the infirmities of the February 16, 2009 waiver for failure to indicate the

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[68] *Commissioner of Internal Revenue v. FMF Development Corporation*, G.R. No. 167765, June 30, 2008, 556 SCRA 698 and *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R No. 162852, December 16, 2004, 447 SCRA 214.
[69] *Supra.*
[70] *Supra.*

kind and amount of tax involved. The purpose of stating the specific kind of tax and the amount of tax due is to pinpoint which among the proposed tax assessments may be subsequently be issued without the taxpayer invoking the defense of prescription. If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of. It should be emphasized that RMO No. 20-90 requires specific information.[71]

Considering the inadmissibility and defectiveness of the waivers, the three year assessment period for 2005 withholding tax on compensation and expanded withholding tax deficiencies has not been extended. Hence, the FANS dated December 17, 2009 were belatedly issued.

The Court shall not discuss the other grounds for being moot.

WHEREFORE, premises considered, the assailed Decision dated August 3, 2012 and the Resolution dated October 5, 2012 are **AFFIRMED**. The Petition for Review is hereby **DISMISSED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[71] *Bovis Lend Lease Projects PTE. LTD v. Commissioner of Internal Revenue*, CTA EB Case No. 374, June 22, 2009 affirming *Bovis Lend Lease Projects PTE. LTD v. Commissioner of Internal Revenue*, CTA Case No. 6825, August 23, 2007 quoting *Dole Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 5705, July 1, 2003.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice