REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOLID CEMENT CORPORATION,
Petitioner,

- versus -

LIWAYWAY VINZONS-CHATO, in her capacity as the Commissioner of Internal Revenue,
Respondent.

C.T.A. CASE NO. 5420

Promulgated:

MAY 27 1999 [signature]

x - x

DECISION

This case stems from an assessment issued against the petitioner in the amount of P85,282,456.17 allegedly representing deficiency income tax due to the disallowance of certain interest expenses for the year 1990.

Petitioner is a domestic corporation with principal office at 3/F Golden Rock Building, 168 Salcedo St., Legaspi Village, Makati City.

On April 15, 1991, petitioner filed its corporate annual income tax return for the year ended December 31, 1990 (Exh. LL). On March 14, 1996, petitioner received Assessment Notice No. 001585-90-231 (Exh. A) and an accompanying demand letter (Exh. A-1), both dated March 13, 1996 from the Bureau of Internal Revenue (BIR) for alleged deficiency income tax for the year 1990 in the

236

amount of ₱85,282,456.17, inclusive of interest, surcharge and compromise penalty.

Petitioner, on March 27, 1996, filed a protest with the BIR (Exh. B). Herein respondent sent a letter to the petitioner informing the latter of a hearing for the reception of additional evidence (Exh. C). Petitioner, however, countered that inasmuch as the issues involved (prescription and disallowance of interest expense) are basically legal, it would not present any additional evidence (Exh. D). Consequently, respondent, on August 13, 1996, demanded from petitioner the payment of the subject deficiency income tax (Exh. E). Hence, this petition on August 23, 1996.

It is the contention of the petitioner that both the assessment notice and demand letter are void because they were issued beyond the three-year reglementary period provided for under Section 203 of the Tax Code, as amended. Respondent vehemently disagrees claiming that the execution of two Waivers of the Statute of Limitations suspended the running of the prescriptive period as provided under Section 223, in relation to Section 224 of the Tax Code.

When the trial was ongoing, petitioner moved for the earlier resolution on the issue of prescription of the assessment in question before proceeding with the trial

237

on the merits. This Court, on July 11, 1997, granted said motion (CTA rec., p. 48) and allowed both parties to adduce evidence in support of their allegations.

Thus, the sole issue submitted for determination at this point is, whether or not the assessment on March 14, 1996 against petitioner for alleged deficiency income tax in the amount of P85,282,456.17 for the year 1990 was issued beyond the three-year period prescribed under Section 203 of the Tax Code, as amended.

This Court rules in favor of the petitioner. The subject assessment was issued beyond the three-year prescriptive period allowed by law.

Section 203 of the Tax Code, as amended, provides for a statute of limitation applicable to the assessment and collection of internal revenue taxes, to wit:

> **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.

238

Prescinding from the above provision, an assessment for deficiency taxes issued after the lapse of three years can no longer be valid and effective.

Petitioner filed its corporate annual income tax return for the taxable year 1990 on April 15, 1991. Since this case involves an assessment for deficiency income tax for the taxable year 1990, respondent had three years or until April 14, 1994 within which to issue a valid assessment. Considering that the assessment in question was issued only on March 14, 1996, the period allowed by law to assess herein petitioner had already prescribed.

However, the respondent argues that the assessment issued on March 14, 1996 was still valid in view of the fact that the petitioner executed two Waivers of the Statute of Limitations (Exh. MM or Exh. 1 & Exh. NN or Exh. 4) which under Section 223(b) of the same Code effectively tolls the running of the prescriptive period. Respondent further avers that substantial compliance of Revenue Memorandum Order No. 20-90 will suffice. Although the amount and kind of tax were not indicated in the two waivers, respondent nevertheless maintains that it is clearly specified therein that the same pertains to the taxable year 1990.

This Court does not concur with respondent's assertions for the two waivers executed by the petitioner are not valid.

Section 223(b) relied upon by the respondent is hereunder quoted:

> **SEC. 223.** ***Exceptions as to period of limitation of assessment and collection of taxes.*** - (a) x x x
>
> (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.

Corollary thereto, Revenue Memorandum Order No. 20-90 mandates that the following procedure must be observed, *viz*:

> 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. <u>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</u>.
>
> 2. <u>The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation,</u>

240

> 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.
>
> 3. 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.
>
> 4. The foregoing procedure shall be strictly complied with. x x x (Underscoring supplied).

The first waiver (Exh. MM or Exh 1) which extended the period to assess up to November 30, 1994, did not specify the kind of tax and the amount of tax due. It must be stressed once again that this case arises from an assessment of deficiency income tax due to disallowance of certain interest expense in the amount of P85,282,456.17 for the year 1990. If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of. An agreement is "the expression by two or more persons of a common intention

241

to affect their legal relations; it consists in their being of the same mind and intention concerning the matter agreed upon." (Philippine Law Dictionary, Moreno, 3rd Ed., p. 46.) "It is a meeting of two or more minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition" (Black's Law Dictionary, 6th Ed., p. 67). Moreover, the date of the acceptance of said waiver by the respondent and the fact of receipt by the petitioner of its copy of the accepted waiver were not indicated in said waiver.

Therefore, having ruled that the first waiver was invalid, the three-year reglementary period was not interrupted. In other words, the assessment issued on March 14, 1996, for alleged liability incurred in 1990 already prescribed.

Considering that the first waiver is not valid, there can be no basis for the second waiver (Exh. NN or Exh 4). As held in **Luzon Packaging Products, Inc. vs. Liwayway Vinzons-Chato,** CTA Case No. 5016, June 23, 1997:

> As regards the second waiver executed by the petitioner, the same was of no consequence since the first waiver was not valid. Thus, the period to assess was not suspended by petitioner's execution of the first waiver, more so by the second waiver. As required by Section 223 the second waiver must be executed before the expiration of the period previously agreed upon. Inasmuch as there is no valid

242

> waiver previously agreed upon, no valid extension can be made.

Even granting *arguendo* that the first waiver was valid, the second waiver, which extended the period to assess and collect petitioner's deficiency income tax up to December 31, 1995, also suffered from several infirmities. First, the amount and kind of tax were not specified. Second, the acceptance by the BIR and the receipt by the petitioner of the accepted waiver were not indicated. Third, the second waiver was executed after the lapse of the period agreed upon in the first waiver. Records will show that the second waiver was accomplished on August 16, 1995, while the first waiver expired on November 30, 1994.

Having concluded that the first and second waivers are not valid then the assessment dated March 14, 1996 was already issued beyond the three (3) year period prescribed by law. A total of four (4) years and eleven (11) months have already lapsed from the time petitioner's annual income tax return was filed on April 15, 1991 up to the time the assessment was issued on March 14, 1996. It bears stressing that since these waivers are not valid then they did not have the effect of suspending the period to assess, hence the total number of days that have lapsed is still counted from the

243

time the return was filed up to the time the assessment was issued, that is four (4) years and eleven (11) months which is obviously more the three (3) years.

Respondent contrarily alleges that the issuance on November 25, 1994 of Assessment Notice No. 01-212-90B-94-B2-065 for deficiency valued-added tax in the amount of P144,099,958.74 (Exh. 2); Assessment Notice No. 001585-90-065 for deficiency income tax in the amount of P211,273,013.00 (Exh. 2-a) and Assessment Notice No. 001585-90-065 for deficiency expanded withholding tax in the amount of P9,070,491.25 before the lapse of the agreed period (November 30, 1994) made the second waiver valid. Respondent also claims that as per Section 224 of the Tax Code, the request for reinvestigation of the original assessment filed by the petitioner on August 15, 1995, suspends the running of the three-year prescriptive period until the issuance of the new assessment on March 14, 1996. For clarity, Section 224 is quoted below:

> SEC. 224. ***Suspension of running of statute.*** - The running of the statute of limitation provided in Section 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a

244

> reinvestigation which is granted by the Commissioner; x x x

Notwithstanding the above assertions, this Court is still not convinced.

The assessment issued on March 14, 1996 (Exh. A), which gives rise to the instant petition, pertains to deficiency income tax for taxable year 1990 in the amount of P85,282,456.17 by reason of the disallowance by respondent of certain interest expenses. However, the assessment notices above-mentioned relate to different tax liabilities of herein petitioner. In fact, the memorandum issued by the Revenue Officer who conducted the reinvestigation recommended for the cancellation of the same assessments for lack of factual and legal basis (Exh. 9; TSN, July 27, 1998). Said Revenue Officer also found "that subject taxpayer is still deficient in the payment of internal revenue taxes based on issues not raised in the original report."

In sum, even supposing that the two waivers were valid, the assessment issued on March 14, 1996 is still void simply because it does not correspond to the original assessments nor to the same assessments in a reduced amount. As evinced by the records, the subject assessment is entirely separate and distinct from the assessments issued on November 25, 1994.

245

WHEREFORE, in the light of all the foregoing, the assessment issued on March 14, 1996 for alleged deficiency income tax covering the taxable year 1990 in the amount of ₱85,282,456.17 is hereby **CANCELLED AND SET ASIDE.**

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(On Leave)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals