REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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RCBC SAVINGS BANK, INC., Petitioner,	**CTA Case No. 9001**
- versus -	***Members:***
	DEL ROSARIO, P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** DEC 18 2018 ; 2:15 p.m.

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DECISION

UY, J.:

The instant *Petition for Review*[1] filed by RCBC Savings Bank, Inc. on February 27, 2015 seeks the cancellation of the deficiency income tax assessment issued by the Commissioner of Internal Revenue for taxable year 2006, in the total amount of ₱59,844,040.34, inclusive of increments.

THE FACTS

Petitioner RCBC Savings Bank, Inc. is a subsidiary of Rizal Commercial Banking Corp. (RCBC), with principal office address at the RCBC Saving Bank Corporate Center, 26th and 25th Streets, Bonifacio Global City, Taguig City, Metro Manila.[2]

On the other hand, respondent Commissioner of Internal Revenue is duly appointed to perform the duties of his office,

[1] Docket – Vol. I, pp. 6 to 21.
[2] Par. 1, Parties, *Petition for Review*, Docket – Vol. I, p. 6.

including among others, the power to act upon and render final decisions on protests filed against internal revenue tax assessments, and other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR).[3] He holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City, Metro Manila.[4]

On September 7, 2007, petitioner received *Letter of Authority* (LOA) No. 2007 00006766 dated August 31, 2007,[5] authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for taxable year 2006.

Thereafter, on December 17, 2009, petitioner received a *Notice of Informal Conference* from Zenaida G. Garcia, OIC-Assistant Commissioner-Large Taxpayers Service of the BIR, informing petitioner of the result of the investigation of its internal revenue taxes for taxable year 2006, and alleging internal revenue tax deficiencies amounting to ₱1,761,479,304.86 (inclusive of penalties).[6] Petitioner sent its *Written Reply* thereto on October 8, 2010.[7]

On August 16, 2011, petitioner received a *Preliminary Assessment Notice* (PAN) signed by Olivia O. Lao, HREA, Large Taxpayers Service Programs & Compliance & LTDO, containing the complete details covering the remaining income tax assessment and discrepancies for taxable year 2006 in the aggregate amount of ₱64,370,235.17 (inclusive of penalties).[8] Petitioner then sent its *Written Formal Reply* to the BIR to formally protest the PAN on August 23, 2011.[9]

Subsequently, the BIR issued the *Final Assessment Notice* (FAN), received by petitioner on January 16, 2012, reiterating the deficiency income tax assessment outlined in the PAN, and covered the details of the remaining deficiency income tax assessment

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[3] Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 394.
[4] Par. 2, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 6 and 175.
[5] Exhibit "R-1", BIR Records, p. 3.
[6] Par. 2, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 394; Exhibit "P-1", Docket – Vol. I, p. 474; and Exhibit "R-6", BIR Records, p. 431.
[7] Par. 3, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 394; and Exhibit "P-2", Docket – Vol. I, pp. 479 to 483.
[8] Par. 4, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 394; Exhibit "P-3", Docket – Vol. I, pp. 484 to 486; and Exhibit "R-14", BIR Records, pp. 780 to 782.
[9] Par. 6, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 395; and Exhibit "P-4", Docket – Vol. I, pp. 487 to 489.

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amounting to ₱59,844,040.34 (inclusive of penalties) for taxable year 2006.[10]

On February 10, 2012, petitioner sent its *Formal Protest* on the FAN, addressed to Alfredo V. Misajon, Assistant Commissioner (Large Taxpayers Service) of the BIR.[11]

On November 13, 2013, Assistant Commissioner Misajon issued the *Final Decision on Disputed Assessment* (FDDA), reiterating the deficiency income tax assessment against petitioner.[12] Petitioner filed its appeal from the FDDA on December 12, 2013 and said appeal was addressed to former BIR Commissioner Kim S. Jacinto-Henares.[13]

On January 29, 2015, petitioner received the *Decision* dated January 21, 2015 issued by former BIR Commissioner Kim S. Jacinto-Henares, which denied petitioner's appeal.[14] The dispositive portion of the *Decision* reads:

> "**WHEREFORE,** predicated on all the foregoing, the Decision dated November 13, 2013 denying the protest of **RCBC Savings Bank, Inc.** against Assessment Notice No. LTDO-122-IT-2006-00022 demanding payment of P59,844,040.34, representing deficiency income tax for taxable year 2006 is hereby AFFIRMED in all respects.
>
> Consequently, **RCBC Savings Bank, Inc.** is hereby ordered to pay the aforestated amount, plus increments that have accrued thereon until the actual date of payment, to the Collection Service, BIR, National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof will be effected through the summary remedies provided by law."

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[10] Par. 7, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 395; Exhibit "P-5", Docket – Vol. I, pp. 490 to 493; and Exhibit "R-19", BIR Records, pp. 798 to 800.
[11] Par. 9, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 395; and Exhibit "P-12", Docket – Vol. I, pp. 520 to 522.
[12] Par. 10, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 395; and Exhibit "P-13", Docket – Vol. I, pp. 523 to 526.
[13] Par. 11, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 395; and Exhibit "P-14", Docket – Vol. I, pp. 527 to 535.
[14] Par. 12, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 395; Exhibit "P-15", Docket – Vol. I, pp. 536 to 546; and Exhibit "R-24", BIR Records, pp. 1124 to 1134.

As a result thereof, petitioner filed the instant *Petition for Review* before this Court on February 27, 2015.[15]

On April 1, 2015, petitioner filed an *Urgent Motion for Suspension of Collection of Taxes*.[16] A hearing on the said motion was held on April 7, 2015,[17] wherein petitioner presented, Jo Anne C. Chan as its witness.[18] Petitioner orally offered Exhibits "P-1" to "P-6-a" which were admitted by the Court.[19] Thereafter, respondent's counsel manifested that he is not presenting counter-evidence.[20]

In the Resolution dated April 20, 2015,[21] the Court granted petitioner's *Urgent Motion for Suspension of Collection of Taxes* subject to the filing of a surety bond by petitioner equivalent to one and one half times (1½) of the principal amount within ten (10) days from receipt of the resolution.

Petitioner filed a *Compliance & Manifestation* on May 4, 2015,[22] submitting the required surety bond for the suspension of collection of taxes in compliance with the Resolution dated April 20, 2015. The same was noted by the Court in the Resolution dated June 9, 2015,[23] but petitioner was required to submit proof of payment of the value-added tax (VAT) on the surety bond.

Meanwhile, within the extended time granted by the Court,[24] respondent filed his *Answer* on May 27, 2015, [25] interposing the following special and affirmative Defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 5. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.

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[15] Docket – Vol. I, pp. 6 to 24.
[16] Docket – Vol. I, pp. 84 to 87.
[17] Minutes of the hearing held on April 7, 2015, Docket – Vol. I, pp. 122 to 126.
[18] Exhibit "P-6", Docket – Vol. I, pp. 93 to 103.
[19] Minutes of the hearing held on April 7, 2015, *supra*.
[20] *Ibid.*
[21] Docket – Vol. I, pp. 132 to 135.
[22] Docket – Vol. I, pp. 143 to 144.
[23] Docket – Vol. I, pp. 198 to 200.
[24] Orders dated March 31, 2015 and May 8, 2015, Docket – Vol. I, pp. 83 and 174.
[25] Docket – Vol. I, pp. 175 to 195.

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RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR TAXABLE YEAR 2006 DID NOT PRESCRIBE

6. Petitioner alleged that respondent's right to assess petitioner's taxes for taxable year 2006 has prescribed pursuant to the three (3) year limitation period provided for under Section 203 of the NIRC. It further alleged that the subject Final Assessment Notice (FAN) was received by Petitioner RSB on January 16, 2012, almost five (5) years have already lapsed since the actual filing by petitioner of its 2006 corporate income tax return.

7. True as it may that Section 203 provides for such limitation, however, petitioner failed to consider that such provision is not without exception. Section 222 of the NIRC provides:

> Sec. 222. **Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –**
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> 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. (Emphasis ours)

8. Petitioner's taxable year subject of assessment is that of taxable year 2006. Thus, pursuant to Section 203 of the NIRC respondent only has three (3) years from the date prescribed by law for the filing of the return for the applicable tax to make its assessment if it does not fall within the exceptions provided under Section 222.

9. Assuming arguendo that petitioner regularly filed its Annual Income Tax Return for taxable year 2006 within the period required by law, respondent interposes that its right to assess petitioner for deficiency taxes did not prescribe.

10. On 13 April 2010, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Support Services Division executed a waiver ('first waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 30 September 2010. The first waiver was accepted for the respondent by Assistant Commissioner Zenaida G. Garcia.

11. On 14 September 2010, before the first waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('second waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 October 2010. The second waiver was accepted for the respondent by Assistant Commissioner Zenaida G. Garcia.

12. On 08 October 2010, before the second waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('third waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 December 2010. The third waiver was accepted for the respondent by Assistant Commissioner Zenaida G. Garcia.

13. On 09 December 2010, before the third waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('fourth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for

taxable year 2006 until 31 January 2011. The fourth waiver was accepted for the respondent by Assistant Commissioner Zenaida G. Garcia.

14. On 07 January 2011, before the fourth waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('fifth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 30 June 2011. The fifth waiver was accepted for the respondent by Assistant Commissioner Zenaida G. Garcia.

15. On 13 June 2011, before the fifth waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('sixth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 August 2011. The sixth waiver was accepted for the respondent by Assistant Commissioner Zenaida G. Garcia.

16. On 24 August 2011, before the sixth waiver loses its validity, Mr. Alberto O. Regino, petitioner's Head of its Litigation Department, executed another waiver ('seventh waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 30 September 2011. The seventh waiver was accepted for the respondent by Assistant Commissioner Alfredo V. Misajon.

17. On 26 September 2011, before the seventh waiver loses its validity, Mr. Alberto O. Regino, petitioner's Head of its Litigation Department, executed another waiver ('eighth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 October 2011. The eighth waiver was

accepted for the respondent by Assistant Commissioner Alfredo V. Misajon.

18. On 24 October 2011, before the eighth waiver loses its validity, Ms. Aleta I. Lopez, petitioner's Head of its Advisory & Documentation Section Corporate Legal Services Department, executed another waiver ('ninth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 January 2012. The ninth waiver was accepted for the respondent by Assistant Commissioner Alfredo V. Misajon.

19. Petitioner interposed a general allegation without specifying which waivers are invalid, null and void on the ground that the signatories were not duly authorized through a valid Board Resolution. Petitioner even attached as its Annex 'K' a certification from petitioner's Board Secretary stating that the only authorized signatories for petitioner's tax audit investigation for taxable year 2006 were Atty. Alberto O. Regino, Jr. and Rommel S. Latinazo.

20. Respondent begs to differ. Based on the above discussions, the waivers dated 24 August 2011 and 26 September 2011 the same being the seventh and eighth waiver, respectively were both executed by petitioner's authorized signatory Atty. Alberto O. Regino, Jr. If petitioner merely questions the waivers by interposing a want of proper authorization of its signatories, then it can be inferred that the seventh and the eighth waivers are valid on its face for its signatories were duly authorized by a Board Resolution based on the same certification issued by petitioner's Board Secretary.

21. On the matter of the first up to the sixth waivers which were executed by petitioner through the Head of its Controllership and Other Services Division, Ms. Jo Anne Chan, respondent strongly submits that the existence of a Board Resolution authorizing her to sign the waiver in behalf of the corporation is of no moment. Assuming for the sake of argument that the signatory for the first up to the sixth waivers was not authorized

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through a Board Resolution, the waivers are still valid and binds the corporation.

22. The Honorable Supreme Court in the case of *People's Aircargo and Warehousing Co, Inc. vs. Court of Appeals and Stefani Sano* made it explicit that it is a familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

23. In the case at hand, petitioner cannot deny Ms. Chan's authority to represent petitioner. On various occasions, Ms. Chan consistently communicated with respondent's Revenue Examiners not to mention the letter dated 26 September 2007 transmitting the supporting documents to refute the initial audit findings were signed by Ms. Chan. Further, Ms. Chan is also the signatory for an in behalf of petitioner when it contested the findings contained in the Notice of Informal Conference through a letter dated 08 October 2010. Petitioner cannot therefore deny the apparent authority of Ms. Chan to deal with matters arising from the audit examination for the taxable year 2006. To emphasize, Ms. Chan did not only execute one (1) but six (6) waivers. Petitioner impliedly ratified the acts of its officer when it allowed her to sign the subsequent waivers. Therefore, petitioner should be bound by the acts of its agent.

24. On the matter of the ninth waiver which was executed by petitioner's corporate secretary Ms. Aleta I. Lopez, the same is also valid and binding upon petitioner. Respondent would like to emphasize that the ninth waiver was accompanied by a letter request signed by petitioner's corporate secretary. Excerpt of such letter contained:

> 'We would like to respectfully request your good office to grant RCBC SAVINGS BANK a period of fifteen (15) days from receipt of this letter to submit additional documents in support of our

> protest to the aforesaid PAN. This letter is not intended to delay the proceedings but to provide us with additional time to procure the necessary documents in support of our position/ protest against the PAN.
>
> Attached is our waiver for the defense of prescription under the statute of limitations of the National Internal Revenue Code until December 31, 2011.'

25. As can be gleaned from the above letter, the execution of the waiver was pursuant to the request of petitioner for additional time to submit supporting documents in support of its protest. Respondent emphasizes that the waiver and the letter were both signed by Ms. Aleta I. Lopez petitioner's corporate secretary and Section Head of petitioner's Corporate Legal Services Department. Ms. Lopez therefore is estopped from claiming that she was not authorized through a Board Resolution to execute the ninth waiver. Ms. Lopez knowingly, voluntarily and at her own instance executed such waiver. The ninth waiver therefore validly binds petitioner.

26. Petitioner also contends that the waivers are likewise null and void because the same waivers failed to state the specific kind of tax and the amount due.

27. Respondent strongly differs. The requirement is not specifically mandated in by Revenue Memorandum Order (RMO) No. 20-90 nor by Revenue Delegation Authority Order (RDAO) No. 05-01. The assailed RMO and RDAO do not require that the waiver should indicate the specific tax that should be covered by the waiver and most specially the amount. Respondent humbly submits that to require the waiver to specify the kind of tax and the corresponding amount would be impossible since these waivers are executed in the course of the conduct of the audit investigation prior to the issuance of the FAN and in the present case, several waivers were issued prior to the issuance of the Preliminary Assessment Notice (PAN). During such stages, it is not yet probable to determine

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whether or not taxpayer is liable for deficiency taxes more so, how much that liability would be.

28. Petitioner contends that the date of respondent's acceptance of the waiver dated 29 December 2009 was not expressly indicated on the said waiver.

29. Respondent however interposes that no waiver bearing such date exists in the BIR Records.

30. Respondent strongly submits that petitioner should not profit from its own misdeeds. Through the execution of the waivers, respondent was misled to believe that petitioner waived its right under the Statute of Limitations. A corporation like petitioner is of knowledge of the effects and consequences of the execution of waivers. It is only when petitioner received an adverse decision that it questioned the validity of its own actions and took stance contrary to its previous act.

31. Petitioner having executed a waiver extending the period to assess until 31 January 2012, the Final Assessment Notice (FAN) issued and duly received by petitioner on 16 January 2012 is valid and subsisting.

PETITIONER IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE WAIVERS IT EXECUTED

32. It is noteworthy to pinpoint petitioner's conduct amounting to false representation or concealment of material facts calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert.

33. First, petitioner after executing nine (9) waivers continuously participated in the audit examination. In the entire duration of the audit, never did petitioner questioned the validity of the waivers it executed.

34. Second, petitioner filed several protest letters to question the findings contained in the Notice of Informal Conference, in the Preliminary Assessment

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Notice (PAN), in the Final Assessment Notice (FAN) and the Final Decision on Disputed Assessment (FDDA), but not a single protest raised the issue on the validity of the waivers it executed. If petitioner truly believed that the waivers were defective it could have raised the same at the earliest possible time.

35. Third, petitioner executed not only one waiver, not two but nine Waivers of Statute of Limitations. This fact alone will prove that if upon the execution of the first waiver, petitioner believed that the same was invalid, it should not have executed the remaining eight waivers. It can be deduced from the succeeding acts of petitioner that it was its clear intention to give force and effect to the waivers.

36. Article 1431 of the Civil Code provides that in order that estoppel may apply to the person, to whom representations have been made and who claims the estoppel in his favor **must have relied or acted on such representations**. Article 1431 states that:

> *'Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.'*

37. On the other hand, Section 2(a) of Rule 131 of the Rules of Court, on burden of proof and presumptions, states as follows:

> 'SEC. 2 *Conclusive presumptions.* – The following are instances of conclusive presumptions:
>
> (a) Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief he cannot in any litigation arising out of such declaration, act or omission, be permitted to falsify it;

38. Respondent humbly submits, that by petitioner's acts or representation, and after benefiting from the effects of the waiver of the defense of prescription petitioner should not be the first to impugn the validity of such agreement. As discussed above, petitioner only interposed the questions on the validity of the very agreement that it executed when the decision was adverse to its interest. Therefore, petitioner should not be allowed to profit from its misdoings.

THE ASSESSMENT HAS BASES BOTH IN FACT AND IN LAW.

39. Petitioner questions the existence of factual and legal bases of respondent's findings and whether it finds support under Section 228 of the Tax Code as implemented by Revenue Regulation No. 12-99.

40. Respondent strongly submits that the assessment has bases both in fact and in law which can be gleaned from the following discussion.

PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX RESULTING FROM DISALLOWED DEDUCTIONS

41. Petitioner is being assessed for deficiency Income Tax resulting from disallowed deductions from alleged write-off of bad debts. Petitioner further alleged that respondent disallowed such deduction on the sole ground that petitioner failed to present supporting documents that the write-off was actually approved by the Bangko Sentral ng Pilipinas.

42. Petitioner further submits that it already presented the Certificates of Eligibility (COEs) under Republic Act 9182 to support the bad debts write-offs aggregating to P87,833,332.80.

43. Petitioner's contention is devoid of merit. Section 12 of Revenue Regulation No. 6-2004 speaks of consequences of an issuance of COE by the Bangko Sentral ng Pilipinas to wit:

> 'Sec.12. ***Certificate of Eligibility***.- (a) The COE issued by the Appropriate Regulatory Authority shall serve as a prima facie proof of an NPL/ROPOA being an NPA within the purview of the Act and its implementing rules and regulations without the need of a prior BIR determination/ruling. If applicable, it shall likewise serve as a prima facie proof that the transfer from an FI to an SPV is in the nature of a 'true sale' within purview of the Act and its implementing rules and regulations without the need of a prior BIR determination/ruling.'

44. As can be gleaned from the above quoted provision of the RR No. 6-2004, the issuance of the COE does not automatically merit the allowance of a bad debt expense being deducted from gross income without need of a prior BIR determination/ ruling.

45. Petitioner in protesting the assessment seek succor by arguing Section 17 of Republic Act No. 9182 as its basis for deducting the transferred Non-Performing Loans from gross income which reads:

> Sec. 17. Privileges of Participation FIs.
>
> (a)Any loss that is incurred by the financial institutions as a result of the transfer of NPAs shall be treated as ordinary loss: *Provided*, That the accrued interest and penalties shall not be included as loss on said loss carry over from operations subject to the provisions of the National Internal Revenue Code of 1997 on net operating loss carry-over (NOLCO), except that the loss incurred by the FI from the transfer of NPAs within the two-year period from the effectivity of the IRR may be carried over for a period of five (5) consecutive taxable years immediately following the year

> of such loss: *Provided, further*, That for the purpose of corporate gain or loss the carry-over shall be subject to pertinent laws: *Provided, finally*, That the tax savings derived by FIs from the NOLCO shall not be made available for dividend declaration but shall be retained as a form of capital build-up.

46. Nowhere in the above cited provision of R.A. 9182 states that the amount of Non-Performing Loans transferred be shall be considered an outright loss. Further, Section 34(D) of the Tax Code may be use well as a guide, viz:

> 'Section 34. Deductions from Gross Income. – xxx xxx xxx
>
> (D) Losses. –
>
> (1)In General.- Losses **<u>actually sustained during the taxable year</u>** and not compensated for by insurance or other forms of indemnity shall be allowed as deduction:
>
> (a)If incurred in trade, profession or business;

47. It is clear from the above quoted provision of the Tax Code that in order for a loss to be allowed a deduction from gross income, it must be **<u>actually sustained</u>** during the taxable year.

48. In the light of the foregoing, respondent deemed it proper to scrutinize the Deed of Assignment executed between petitioner and Philippine Investment One. A pertinent portion of the Deed of Assignment is quoted as follows:

> 'Pursuant to the Non-Performing Loan Sale and Purchase Agreement dated February 3, 2005 (the "Sale and Purchase Agreement" as supplemented

> by the Memorandum of Agreement dated 11 April 2005 (the "MOA") by and between Philippine Investment One (SPV-AMC) Inc., as Purchaser, and RCBC Savings Bank, Inc., as seller ("Seller"), in consideration of the sum of Pesos Ten Thousand, the payment of such amounts as may fall due and payable under the SPV Note, and the SPV Note, Seller hereby absolutely sells, transfers, assigns, delivers, sets-over and conveys to Purchaser, on a 'without recourse' basis, all of its rights, title and interest in the following:
>
> Each of the Loans identified in the Final Loan Schedule attached as Schedule 'A' hereto, as more fully described in the Final Loan Fact Summary attached as Schedule 'B' including the promissory note and all liens and security interests securing the payment of such Loan, and including, but without limitation, the Loan Documents enumerated in the Loan Document Listing attached as Schedule 'C'

49. Pursuant to the Deed of Assignment, petitioner and Philippine Investment One entered into a 'Sale and Purchase Agreement' the terms and conditions of which are as follows:

> 'a) The SPV shall pay the Bank the sum of P10,000.00 which shall form part of the **<u>total purchase price and the balance shall become due and payable under the SPV Note with a face value of P85.735 million. The issuance of the SPV note to the Bank constitutes full settlement for the NPLs transferred.</u>**' (Emphasis ours)

50. As can be gleaned above, respondent submits that the NPLs are not actually worthless as petitioner is

expected to receive payment from Philippine Investment One as a result of the NPLs transfer. In substance and in form, there is no loss that will warrant a deduction from gross income to speak of.

51. The Honorable Supreme Court in the case of *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue* had the occasion to rule:

> '**To reiterate, deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed**'

52. Clearly petitioner failed to prove the existence of an actual loss to enable it to claim a valid deduction.

53. Petitioner contends that respondent did not indicate the factual and legal bases upon which the assessment is based. It further contends that respondent tried to introduce new arguments/grounds for the bad debts disallowance in its Decision dated 21 January 2015.

54. Petitioner's contention is flawed. Initial findings show that the documents submitted by petitioner were not sufficient to warrant the claim for bad debts deductions. Petitioner in its protest to the FDDA argued that the Certificates of Eligibility (COEs) were sufficient to support such claim for deduction. In ruling the issue at hand, respondent deemed it fit to rule on whether this COEs are sufficient proof of claiming bad debts as deductions.

55. In doing so, respondent did not raise new arguments but simply made a ruling on the issue at hand.

56. Respondent also submits that petitioner did not contest the income tax assessment resulting from disallowances amounting to P1,786,170.35 and P1,438,889.20 due to double claim of deduction (amortization of NPL in 2005 included in 2006 BSP approval) and excess deduction in the write-off of NPLs,

respectively. Pursuant to Section 3.1.5 of Revenue Regulation No. 12-99, as amended which implements the provisions of the National Internal Revenue Code of 1997 governing the rules on assessment, the uncontested assessment is considered undisputed which can be the subject of collection.

57. Section 3.1.5 of RR 12-99 provides:

> '3.1.5 Disputed Assessment. – xxx xxx xxx The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence or which his protest is based, otherwise, his protest shall be considered void and without force and effect. **If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.** (Emphasis ours)

58. Foregoing considered, the assessment has bases both in law and in fact.

THE LETTER OF AUTHORITY (LOA), NOTICE OF INFORMAL CONFERENCE (NIC), PRELIMINARY ASSESSMENT NOTICE (PAN), FORMAL LETTER OF DEMAND (FLD), FINAL ASSESSMENT NOTICE (FAN) AND FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) WERE ISSUED IN ACCORDANCE WITH LAW, RULES AND JURISPRUDENCE.

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59. As can be deduced from the following narrations of facts, the procedure prescribed under Revenue Regulations No. 12-99 had been complied with by respondent, thus:

59.1 Letters of Authority (LOA) Nos. 00006766 and 00006776 both dated 31 August 2007 were issued authorizing Revenue Officers Rene de Veyra, Matias Fadri III, Josephine Gaerlan, Romualdo Plocios and Group Supervisor Juvy dela Pena to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2006.

59.2 On 07 September 2007 the First Request for Presentation of Documents/ Records requesting for presentation and submission of the documents listed.

59.3 On 02 September 2008 the Secord Request for Presentation of Documents/ Records requesting for presentation and submission of the documents listed.

59.4 On 12 September 2008 a Revalidation Notice was issued to revalidate subject Letter of Authority. The same notice was served upon petitioner.

59.5 On 17 December 2009 a Notice of Informal Conference (NIC) was issued by Asst. Commissioner Zenaida G. Garcia.

59.6 On 13 April 2010, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Support Services Division executed a waiver ('first waiver) of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 30 September 2010.

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59.7 On 14 September 2010, before the first waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('second waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 October 2010.

59.8 On 08 October 2010, before the second waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('third waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 December 2010.

59.9 On 09 December 2010, before the third waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('fourth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 January 2011.

59.10 On 07 January 2011, before the fourth waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('fifth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 30 June 2011.

59.11 On 13 June 2011, before the fifth waiver loses its validity, Ms. Jo Anne C. Chan, petitioner's Head of its Controllership and Other Services Division, executed another waiver ('sixth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 August 2011.

59.12 On 15 August 2011 the Preliminary Assessment Notice ('PAN') was issued to petitioner demanding payment of deficiency Income Tax, interest and compromise penalty for taxable year 2006. The PAN was served to petitioner through registered mail on even date and through personal service on 16 August 2011.

59.13 On 24 August 2011, before the sixth waiver loses its validity, Mr. Alberto O. Regino, petitioner's Head of its Litigation Department, executed another waiver ('seventh waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 30 September 2011.

59.14 Petitioner filed its protest dated 25 August 2011 on the PAN.

59.15 On 26 September 2011, before the seventh waiver loses its validity, Mr. Alberto O. Regino, petitioner's Head of its Litigation Department, executed another waiver ('eighth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 October 2011.

59.16 On 24 August 2011, before the eighth waiver loses its validity, Ms. Aleta I. Lopez, petitioner's Head of its Advisory & Documentation Section Corporate Legal Services Department, executed another waiver ('ninth waiver') of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2006 until 31 January 2012.

59.17 The Final Assessment Notice (BIR Form No. 0401) with Assessment Notice No. LTDO-122-IT-2006-000222 was issued and duly received by petitioner on 16 January 2012 covering deficiency income tax in the amount of P59,844,040.34 for taxable year 2006 inclusive of interest.

59.18 On 14 February 2012, petitioner filed its administrative protest on the Final Assessment Notice (FAN).

59.19 On 13 November 2013, respondent issued to petitioner the Final Decision on Disputed Assessment (FDDA) due to its failure to refute the validity of the audit findings. The FDDA was received by petitioner on even date.

59.20 On 12 December 2013, petitioner filed its appeal on the FDDA alleging that the deficiency tax assessments are without any legal and/ or factual basis.

59.21 On 21 January 2015, respondent issued a Decision affirming the Final Decision on Disputed Assessment (FDDA) dated 13 November 2013 denying the protest of petitioner against Assessment Notice No. LTDO-122-IT-2006-000222 demanding payment of P59,844,040.34.

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60. Based on the foregoing, the finding of deficiency income tax liabilities against petitioner for taxable year 2006 is proper in all respects. The Details of Discrepancies explained:

I. INCOME TAX (reiteration of findings per FAN)-

The deficiency income tax arises from the disallowance of bad debts claimed as deduction in the computation of taxable income as well as double-claim of amortization of NPAs, enumerated as follows:

1. **<u>Unsupported write-off of the NPA transferred to Phil. Investment One, Inc. under RA No. 9182- P87,833,332.80</u>**

   Said write-off was disallowed for failure of the taxpayer to present supporting documents as required under Revenue Regulations No. 05-99, as amended by Revenue Regulations No. 25-2002.

2. **<u>Over-claim of deduction in the write-off of the NPAs- P1,438,889.20</u>**

   The company's claimed deduction for NPA write-off amounted to P89,272,222.00. However, the amounts approved by the BSP for NPLs and ROPOAs amounted only to P85,745,332.80 and P2,088,000.00, respectively, or an unapproved write-off of P1,438,889.20; hence, assessed pursuant to Section 34 (E) of the Tax Code, as amended, as implemented under Section 2 of Revenue Regulations NO. 25-2002.

> 3. **<u>Double-claim of deduction (amortization of NPAs in 2005 included in 2006 BSP approval-P1,786,170.35</u>**
>
> This pertains to amortization of NPAs for the year 2005 in accordance with the BSP regulations. The said amount was, however, returned in the company's books per advice of its external auditor to comply with the requirements of PFRS. Hence, when the whole amount was written off in 2006, the write off includes the amount already claimed as amortization in 2005.

61. It was made explicit by the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* that:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. **<u>In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.</u>**' (Emphasis ours)"

On June 19, 2015, petitioner filed its *Reply (Re: Respondent's "Answer" dated 26 May 2015)*,[26] arguing that the waiver executed on April 13, 2010 is null and void; that the subsequent waivers are also null and void; that the principle of estoppel does not apply in this case; and that a valid waiver should indicate the specific kind of tax covered by the waiver.

On June 29, 2015, petitioner filed its *Compliance*,[27] submitting

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[26] Docket – Vol. I, pp. 208 to 220.
[27] Docket – Vol. I, pp. 222 to 223.

proof of payment of VAT relative to the surety bond. In the Resolution dated July 30, 2015, [28] this Court noted said compliance and approved the surety bond submitted by petitioner on May 4, 2015. Thus, the Court enjoined respondent from collecting from petitioner the amount of tax subject of the present *Petition for Review* either by distraint, levy, or by any other means provided for by law, until further orders from the Court.

After the pre-trial conference on August 27, 2015,[29] the parties submitted their *Joint Stipulation of Facts and Issues*[30] on September 11, 2015. This was approved by the Court in the Resolution dated September 17, 2015.[31] Thereafter, the Court issued the Pre-Trial Order on October 29, 2015.[32]

During trial, petitioner presented Jo Anne Cua Chan,[33] its Chief Finance Officer, and Atty. Aleta I. Lopez,[34] its Assistant Corporate Secretary, as its witnesses.

Petitioner also filed its *Formal Offer of Evidence* on February 22, 2016,[35] consisting of Exhibits "P-1" to "P-23-1" (inclusive of submarkings). In the Resolution dated April 25, 2016,[36] the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-6-a", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-22", "P-22-1", "P-23", and "P-23-1". However, the Court denied the admission of Exhibits "P-16", "P-17", "P-18", "P-19", "P-20", and "P-21" for failure of petitioner to submit the exhibits duly presented and marked during the Commissioner's Hearing held on October 20, 2015.

Petitioner filed a *Motion for Reconsideration* on May 5, 2016,[37] submitting the denied exhibits and praying for their admission. This

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[28] Docket – Vol. I, pp. 232 to 234.
[29] Notice of Pre-Trial Conference, Docket – Vol. I, pp. 201 to 202.
[30] Docket – Vol. I, pp. 394 to 400.
[31] Docket – Vol. I, p. 403.
[32] Docket – Vol. I, pp. 418 to 428.
[33] Exhibit "P-22", Docket – Vol. I, pp. 452 to 473; and Minutes of the hearing held on December 1, 2015, Docket – Vol. I, pp. 429 to 430.
[34] Exhibit "P-23", Docket – Vol. II, pp. 590 to 593; and Minutes of the hearing held on February 2, 2016, Docket – Vol. I, pp. 432-A to 432-D.
[35] Docket – Vol. I, pp. 437 to 451.
[36] Docket – Vol. II, pp. 573 to 574.
[37] Docket – Vol. II, pp. 581 to 583.

was granted by the Court in the Resolution dated July 27, 2016,[38] and Exhibits "P-16", "P-17", "P-18", "P-19", "P-20", and "P-21" were admitted into evidence.

On the other hand, respondent presented Revenue Officers Matias D. Fadri III,[39] and Ma. Daisy C. Dajao,[40] as his witnesses.

Respondent then filed his *Formal Offer of Evidence* on June 22, 2016, offering Exhibits "R-1" to "R-27", inclusive of sub-markings.[41] In the Resolution dated September 26, 2016,[42] the Court admitted into evidence Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-10", "R-11", "R-12", "R-13", "R-14", "R-14-a", "R-15", "R-16", "R-17", "R-18", "R-19", "R-20", "R-21", "R-22", "R-23", "R-24", "R-25", "R-26", "R-27", and "R-27-a". However, the Court denied Exhibit "R-9" for failure to present the original for comparison.

On October 17, 2016, respondent filed an *Omnibus Motion (Motion for Partial Reconsideration, Motion for Leave to Defer Filing of Memorandum, Motion to Set another Hearing Date, and Motion to Recall Witness).*[43]

In the Resolution dated December 19, 2016,[44] the Court granted respondent's *Motion to Recall Witness, Motion for Leave to Defer Filing of Memorandum, and Motion to Set another Hearing Date*; while his *Motion for Partial Reconsideration* was held in abeyance. Hence, respondent's witness, Revenue Officer Matias D. Fadri III,[45] was recalled to the witness stand on March 21, 2017.[46]

Thereafter, respondent filed his *Supplemental Formal Offer of Evidence* on March 22, 2017.[47] In the Resolution dated November 2,

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[38] Docket – Vol. II, pp. 646 to 647.
[39] Exhibit "R-26", Docket – Vol. I, pp. 266 to 279; and Minutes of the hearing held on May 3, 2016 and June 7, 2016, Docket – Vol. II, pp. 577 to 580, and 608 to 609.
[40] Exhibit "R-27", Judicial Affidavit of Revenue Officer Ma. Daisy C. Dajao, Docket – Vol. I, pp. 254 to 259; and Minutes of the hearing held on June 7, 2016, Docket – Vol. II, pp. 608 to 609.
[41] Docket – Vol. II, pp. 613 to 625.
[42] Docket – Vol. II, pp. 664 to 665.
[43] Docket – Vol. II, pp. 671 to 675.
[44] Docket – Vol. II, pp. 687 to 690.
[45] Exhibit "R-28", Docket – Vol. II, pp. 702 to 706.
[46] Minutes of the Hearing dated March 21, 2017, Docket – Vol. II, pp. 708 to 710.
[47] Docket – Vol. II, pp. 714 to 717.

2017,[48] the Court denied the admission of Exhibit "R-9" as secondary evidence for respondent's failure to lay the bases and thus, respondent's *Motion for Partial Reconsideration* was also denied.

On December 6, 2017, respondent filed his *Tender of Excluded Evidence*,[49] praying that Exhibit "R-9" be attached to and made part of the records of the case.

The *Memorandum for the Petitioner* was filed on December 6, 2017;[50] while respondent filed his *Memorandum* on January 4, 2018.[51]

In the Resolution dated January 18, 2018,[52] the Court granted respondent's *Tender of Excluded Evidence* and Exhibit "R-9", declaring as part of the records of the case, a photocopy of the *Waiver of the Defense of Prescription* executed by petitioner on October 8, 2010. In the same Resolution, the instant case was considered submitted for decision.

Hence, this decision.

THE ISSUE

The parties submitted the following issue for this Court's resolution, to wit:

> "Whether Petitioner RSB is liable to pay the total amount of ₱59,844,040.34 for deficiency Income Tax (IT) for taxable year 2006, as well as 25% Surcharge, 20% Deficiency and Delinquency Interests pursuant to Sections 248 and 249 of the National Internal Revenue Code of 1997."[53]

Petitioner's arguments:

Petitioner argues that the FAN issued by respondent is null and void for failure to comply with mandatory and essential requirements

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[48] Docket – Vol. II, pp. 729 to 737.
[49] Docket – Vol. II, pp. 775 to 778.
[50] Docket – Vol. II, pp. 738 to 774.
[51] Docket – Vol. II, pp. 791 to 809.
[52] Docket – Vol. II, pp. 811 to 812.
[53] Joint Issue, JSFI, Docket – Vol. I, p. 395.

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set forth under Section 228 of the NIRC of 1997, and as implemented by Revenue Regulations (RR) No. 12-99. It contends that the subject FAN did not categorically mention the factual and legal bases for the disallowance of the ₱87,833,332.80 bad debts, except the general, sweeping and bare allegation that the company failed to present supporting documents.

Allegedly, respondent's right to assess petitioner for the alleged deficiency taxes for taxable year 2006, in the aggregate amount of ₱59,844,040.34 has already lapsed, and that the FAN received by petitioner on January 16, 2012 was issued beyond the statutory three (3)-year period provided under Section 203 of the NIRC of 1997.

Petitioner further asserts that the First Waiver executed on April 13, 2010 is null and void for being belatedly accepted by respondent on April 21, 2010; that the first and subsequent waivers are null and void for lack of Board authority; and that a valid waiver should indicate the specific kind of tax covered thereby.

Lastly, considering that Exhibit "R-9", the October 8, 2010 Waiver, was denied admission as evidence by this Court, it is as if there was no such waiver executed in the first place. Thus, with the denial of the October 8, 2010 Waiver, it follows that all the waivers purportedly executed subsequent to it are also null and void.

Respondent's counter-arguments:

Respondent counters that his right to assess petitioner for taxable year 2006 did not prescribe. He contends that petitioner executed nine (9) *Waivers of the Defense of Prescription under the Statute of Limitations* to extend the period to assess and collect petitioner's deficiency taxes for taxable year 2006, as follows:

Waiver	Date of Waiver	Period Extended Until	Person who Signed the Waiver	Person Who Accepted the Waiver
First[54]	April 13, 2010	September 30, 2010	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Second[55]	September 14, 2010	October 31, 2010	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Third[56]	October 8, 2010	December 31, 2010	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia

[54] Exhibit "P-6", Docket – Vol. I, p. 494; and Exhibit "R-7", BIR Records, p. 554.
[55] Exhibit "P-7", Docket – Vol. I, p. 495; and Exhibit "R-8", BIR Records, p. 554-A.
[56] Exhibit "R-9", BIR Records, p. 555.

Fourth[57]	December 9, 2010	January 31, 2011	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Fifth[58]	January 7, 2011	June 30, 2011	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Sixth[59]	June 13, 2011	August 31, 2011	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Seventh[60]	August 24, 2011	September 30, 2011	Alberto O. Regino	Asst. Comm. Alfredo V. Misajon
Eighth[61]	September 26, 2011	October 31, 2011	Alberto O. Regino	Asst. Comm. Alfredo V. Misajon
Ninth[62]	October 24, 2011	January 31, 2012	Aleta I. Lopez	Asst. Comm. Alfredo V. Misajon

Considering that petitioner executed waivers extending the period to assess until January 31, 2012, respondent argues that the FAN issued and duly received by petitioner on January 16, 2012 is valid and subsisting.

Respondent also alleges that petitioner is liable for deficiency income tax resulting from disallowed deductions.

THE COURT'S RULING

In view of the parties' respective arguments on the prescription of the subject tax assessment, the Court shall first determine whether prescription has set in.

Section 203 of the NIRC of 1997 states the period of limitation upon the assessment of taxes, to wit:

> "SEC. 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**

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[57] Exhibit "P-8", Docket – Vol. I, p. 496; and Exhibit "R-10", BIR Records. p. 656.
[58] Exhibit "R-11", BIR Records, p. 657.
[59] Exhibit "P-9", Docket – Vol. I, p. 497; and Exhibit "R-12", BIR Records, p. 724.
[60] Exhibit "R-16", BIR Records, p. 805.
[61] Exhibit "R-17", BIR Records, p. 806.
[62] Exhibit "R-18", BIR Records, p. 884.

the filing thereof shall be considered as filed on such last day." (*Emphasis supplied*)

Based on the above-quoted provision, internal revenue taxes must be assessed by the government within three (3) years from the last day prescribed by law for the filing of the tax return or from the date of actual filing of such return, whichever comes later. Accordingly, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.[63]

The instant case involves the assessment of deficiency income tax for taxable year 2006. Pursuant to Section 77(B) of the NIRC of 1997,[64] the final adjusted income tax return of a corporate taxpayer is due to be filed on or before April 15 of the following calendar year, or on or before the 15th day of the fourth month following the close of the fiscal year, as the case may be. Records show that petitioner adopts the calendar year and filed its Annual Income Tax Return for taxable year 2006 on April 16, 2007.[65]

As provided under Section 203 of the NIRC of 1997, respondent had until April 16, 2010 within which to assess petitioner for deficiency income tax for taxable year 2006.

Clearly, the FAN,[66] received by petitioner on January 16, 2012,[67] was issued beyond the 3-year prescriptive period provided under the aforequoted Section 203 of the NIRC of 1997.

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[63] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[64] Section 77(B) of the NIRC of 1997 provides as follows:

"SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –

xxx xxx xxx

(B) *Time of Filing the Income Tax Return.* – The corporate quarterly tax declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. **The final adjustment return shall be filed on or before the fifteenth (15th) day of April**, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." *(Emphasis supplied)*

[65] Exhibit "P-11", Docket – Vol. I, pp. 499 to 519.

[66] Exhibit "P-5", Docket – Vol. I, pp. 490 to 493; and Exhibit "R-19", BIR Records, pp. 798 to 800.

[67] Par. 7, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 395.

However, respondent maintains that prescription had not set in because the parties validly executed nine (9) *Waivers of the Defense of Prescription under the Statute of Limitations of the NIRC* under

Section 222(b) of the NIRC of 1997, extending the period to assess petitioner until January 31, 2012, detailed as follows:

Waiver	Date of Waiver	Period Extended Until	Person who Signed the Waiver	Person Who Accepted the Waiver
First[68]	April 13, 2010	September 30, 2010	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Second[69]	September 14, 2010	October 31, 2010	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Third[70]	October 8, 2010	December 31, 2010	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Fourth[71]	December 9, 2010	January 31, 2011	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Fifth[72]	January 7, 2011	June 30, 2011	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Sixth[73]	June 13, 2011	August 31, 2011	Jo Anne C. Chan	Asst. Comm. Zenaida G. Garcia
Seventh[74]	August 24, 2011	September 30, 2011	Alberto O. Regino	Asst. Comm. Alfredo V. Misajon
Eighth[75]	September 26, 2011	October 31, 2011	Alberto O. Regino	Asst. Comm. Alfredo V. Misajon
Ninth[76]	October 24, 2011	January 31, 2012	Aleta I. Lopez	Asst. Comm. Alfredo V. Misajon

Nevertheless, petitioner counters that the First Waiver executed on April 13, 2010 is null and void for being belatedly accepted by

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[68] Exhibit "P-6", Docket – Vol. I, p. 494; and Exhibit "R-7", BIR Records, p. 554.
[69] Exhibit "P-7", Docket – Vol. I, p. 495; and Exhibit "R-8", BIR Records, p. 554-A.
[70] Exhibit "R-9", BIR Records, p. 555.
[71] Exhibit "P-8", Docket – Vol. I, p. 496; and Exhibit "R-10", BIR Records. p. 656.
[72] Exhibit "R-11", BIR Records, p. 657.
[73] Exhibit "P-9", Docket – Vol. I, p. 497; and Exhibit "R-12", BIR Records, p. 724.
[74] Exhibit "R-16", BIR Records, p. 805.
[75] Exhibit "R-17", BIR Records, p. 806.
[76] Exhibit "R-18", BIR Records, p. 884.

respondent on April 21, 2010. As a consequence, the period to assess was not validly extended.

We agree with petitioner.

Section 222(b) of the NIRC of 1997 provides as follows, to wit:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx xxx xxx
>
> (b) **<u>If before the expiration of the time prescribed in Section 203 for the assessment of the tax</u>, 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."

From the foregoing, the above provision authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the Commissioner of Internal Revenue may stipulate to extend the period of assessment **by a written agreement executed <u>prior to the lapse of the period prescribed by law</u>**, and by subsequent written agreements before the expiration of the period previously agreed upon.[77] In other words, a valid waiver of the statute of limitations must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) **before the expiration of the ordinary prescriptive period for assessment**; and (4) for a definite period beyond the ordinary prescriptive period for assessment.[78]

In *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[79] the Supreme Court said:

> "Section 222(b) of the NIRC provides that the period to assess and collect taxes **may only be extended upon**

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[77] *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.
[78] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.
[79] G.R. No. 178087, May 5, 2010.

a written agreement between the CIR and the taxpayer executed <u>before the expiration of the three-year period</u>. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase but not after __ 19 __, which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must 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. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. <u>Both</u> the date of execution by the taxpayer and date of acceptance by the Bureau <u>should be before the expiration of the period of prescription</u> or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three 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 must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement." *(Emphases and underscoring supplied)*

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Applying the foregoing provisions and jurisprudence, the Court finds that the First Waiver of the Statute of Limitations executed by petitioner is void.

An examination of the First Waiver[80] reveals that the waiver was accepted by ACIR-Large Taxpayers Service Zenaida G. Garcia on April 21, 2010.[81] Considering that petitioner filed its Annual Income Tax Return for taxable year 2006 on April 16, 2007,[82] respondent only had until April 16, 2010 within which to assess petitioner for deficiency income tax for taxable year 2006, pursuant to Section 203 of the NIRC of 1997. The acceptance of the First Waiver was therefore made after the expiration of the period to assess. Consequently, the First Waiver is void.

Considering that the First Waiver is void, the eight subsequent waivers are also void because there was no period to extend at the time these were all executed as the period to assess has already expired on April 16, 2010.

Since the waivers executed by petitioner are void, the deficiency income tax assessment for taxable year 2006 is likewise void for having been issued beyond the three-year prescriptive period mandated by law.

With the foregoing findings, it becomes unnecessary to determine whether petitioner is liable to pay the subject deficiency income tax assessed by respondent against petitioner.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FAN issued by respondent against petitioner for deficiency income tax for taxable year 2006 in the total amount of ₱59,844,040.34, inclusive of increments, is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[80] Exhibit "P-6", Docket – Vol. I, p. 494; and Exhibit "R-7", BIR Records, p. 554.
[81] Exhibit "P-6-a", Docket – Vol. I, p. 494.
[82] Exhibit "P-11", Docket – Vol. I, pp. 499 to 519.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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
Chairperson, Special 1st Division