

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

**COMMISSIONER OF INTERNAL
REVENUE,**

CTA EB Case No. 522
(CTA Case No. 7165)

Petitioner,
- versus -

STANDARD CHARTERED BANK,

Respondent.

Members:

ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, AND
COTANGCO-MANALASTAS, JJ

Promulgated:

MAR 01 2010

Asst. Solicitor General
10:05 a.m.

X -----X

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review¹, filed by herein petitioner-Commissioner of Internal Revenue (CIR), from the Decision² (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) promulgated on February 27, 2009 in CTA Case No. 7165 entitled, "*Standard*" *a*

¹ En Banc Rollo, pp. 7-24

² En Banc Rollo, pp. 28-56

Chartered Bank vs. Commissioner of Internal Revenue," and from the Resolution³ (*Assailed Resolution*) dated July 29, 2009 denying CIR's Motion for Reconsideration⁴ filed on March 19, 2009 for lack of merit.

The facts of the case, as culled from the records⁵, are as follows:

"Petitioner Standard Chartered Bank is the Philippine Branch of Standard Bank, a corporation organized and existing under the laws of England, duly authorized to engage business in the Philippines.

Respondent Commissioner of Internal Revenue, on the other hand, is the official authorized under Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, to assess and collect internal revenue taxes, as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court.

On July 14, 2004, petitioner received respondent's Formal Letter of Demand dated June 24, 2004, for alleged deficiency income tax, final income tax-FCDU, WTC, EWT, FWT, and increments for taxable year 1998 in the aggregate amount of P33,326,211.37, broken down as follows:

Tax	Basic Tax	Interest	Compromise Penalty	Total
Income Tax	3,594,272.00	3,803,936.67	25,000.00	7,423,208.67
Final Income Tax-FCDU	11,748,483.99	12,433,808.31	25,000.00	24,207,292.30
Withholding Tax-Comp.	50,282.59	55,450.48	12,000.00	117,733.07
Exp. Withholding Tax	678,361.62	748,081.59	20,000.00	1,446,443.21
Final Withholding Tax	56,845.84	62,688.28	12,000.00	131,534.12
TOTAL	16,128,246.04	17,103,965.33	94,000.00	33,326,211.37

On August 12, 2004, petitioner protested the said assessment by filing a letter-protest dated August 9, 2004 addressed to the BIR Deputy Commissioner for Large Taxpayers' Service stating the factual and legal bases of the assessment, and requested that it be withdrawn and cancelled. 

³ En Banc Rollo, pp. 57-64

⁴ Division Docket, pp. 661-674

⁵ 2nd Division Decision, Division Docket, pp. 632-639.

As of the date of filing this *Petition for Review*, respondent has not rendered a decision on petitioner's protest.

In view of respondent's inaction on petitioner's protest, on March 9, 2005, petitioner filed the present *Petition for Review*.

On June 7, 2005, respondent filed his *Answer* alleging the following Special and Affirmative Defenses:

"4. On the issue of deficiency income tax assessment in the amount of Php: 7,423,208.67, resulting from the adjustments in commission and miscellaneous income, petitioner argued that in making such adjustment, respondent merely considered the credits to the trial balance, without taking into account the debits indicated in the trial balance or the adjustment as verified by petitioner's audited Financial Statement. *We disagree.* Relative to the difference of Commission Income per Trial Balance as against audited Financial Statement, petitioner failed to adduce or submit clear and convincing documents to explain the discrepancy. Such being the case, the assessment must stand. As to the discrepancy in the Miscellaneous Income per Trial Balance as against the audited financial statement, considering that petitioner was able to submit actual entries in its allegation regarding adjustments to its provisions for probable losses in the amount of Php: 12,483,177.54, said amount can be considered as allowable deduction from the amount of Php: 17,698,295.95;

5. On the issue of Final Income Tax-Foreign Currency Deposit Unit (FCDU) in the amount of **Php: 24,207,292.30**, according to petitioner, respondent's reliance on Revenue Regulations No. 2-98 and Revenue Regulations No. 10-76 is misplaced because, according to it, the liability of the payment of the tax rests primarily on the payor/withholding agent (petitioner's client) and not upon the payee-petitioner, Standard Chartered Bank. *We disagree.* Be it noted that no Certificate of Tax Withheld and documents have been presented to show that said amount has been paid to herein respondent. In addition, no names of the withholding agent, address, etc., have been adduced in order to obtain information if indeed the tax was remitted. It is in this regard that the provisions of Revenue Regulations 10-98 find application, requiring the information and details as contained in Sections 2.27 and 2.28 paragraph (D) thereof, to wit:

'It shall also declare thereunder all other incomes derived during the taxable period which are subject to the final withholding taxes, the fact that such final withholding taxes have been withheld therefrom by the *a*

payor notwithstanding, indicating the following information:

- (a) Name of the withholding agent;
- (b) His/its address;
- (c) His/its Taxpayer Identification Number (TIN);
- (d) Period covered;
- (e) Gross Income;
- (f) Rate of final withholding tax applied; and
- (g) Amount of final withholding tax withheld."

With petitioner's failure to comply with the requirements above-stated, the subject assessment relative to its final income tax, on FCDU, must stand.

6. While it is true that the payor-borrower is constituted by law to withhold and remit the 10% tax on onshore income, the obligation of paying the 10% final tax on onshore income rests on petitioner being the one directly liable for it, pursuant to Section 24(e)(3) [now 28(A)(7)(b)] of the Tax Code (*ING Bank, N.V. Manila Branch vs. Commissioner of Internal Revenue, C.T.A. EB No. 52, April 5, 2005*).

7. With regard to the deficiency withholding tax on compensation, petitioner argued that respondent based said assessment on the assumption that it did not properly withhold taxes on compensation. *We disagree.* During the informal conference, petitioner alleged that the above discrepancy was due to lack of alpha list of officers. The alleged alpha list and the corresponding remittances of taxes were requested for admission but were not submitted. Hence, the amount of Php: 286,739.25, which represents the discrepancy of gross amount of compensation per alpha list vis-à-vis its Financial Statement, should stand;

8. On the issue of expanded withholding tax in the amount Php: 1,446,443.21, petitioner argued that it is not liable for said deficiency assessment since it has appropriately withheld taxes on its income payments and that petitioner did not have to withhold taxes on items not subject to expanded withholding tax. *We disagree.* This assessment was based on the individual expense account that should have been covered by the withholding tax as computed corresponding to the applicable rate per account pursuant to Revenue Regulations No. 6-85, now Revenue Regulations 2-98, as amended. The amount assessed pertains to the four items of expenses, such as, maintenance-non-premises in the amount of Php: 4,471,606.30, travel expenses in the amount of Php: 5,149,866.02, GTS costs in the amount of Php: 37,150,236.34 and Miscellaneous in the amount of Php: 12,410,187.15, on which petitioner was required 

to supply information and proof as to the nature and breakdown, but it failed to provide the same. Hence, the subject assessment should stand;

9. Also, on the issue of Final Withholding Tax relative to petitioner's regular banking unit in the amount of Php: 131,534.12, it argued that petitioner has already withheld and remitted the correct amount of taxes on its interest expense. While petitioner was able to provide some reconciliation of final withholding tax payments to its RBU, however, there still exists a discrepancy which petitioner failed to remit or explain. Hence, the deficiency final withholding tax pertains to those not yet covered by the remittances as noted in its reconciliation pursuant to Section 57(A) in relation to Section 27(D)(1) of the Tax Code, as amended;

10. Lastly, petitioner argued that respondent's right to assess has already prescribed. We disagree. Admitted is the fact that herein respondent issued the subject assessments on 24 June 2004. However, on 06 June 2004, petitioner, thru its representative, executed a Waiver of the Statute of Limitations under the National Internal Revenue Code, extending the period of prescription until 30 September 2004. Therefore, the contention of petitioner that the subject assessment has already prescribed is without merit;

11. The assessments were issued in accordance with law and regulations;

12. Finally, it is a well settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.'

On October 14, 2005, petitioner filed a *Motion for Leave of Court to Serve Supplemental Petition*, with attached *Supplemental Petition for Review*, pursuant to *Rule 10 of the 1997 Rules of Civil Procedure*, as amended, in view of the alleged payments made by petitioner through the BIR's Electronic Filing and Payment System (eFPS) as regards its deficiency withholding tax on compensation and final withholding tax assessments in the amounts of P124,967.73 and P139,713.11, respectively. In its *Supplemental Petition for Review*, petitioner seeks to be fully credited of the payments it made to cover the deficiency withholding tax on compensation and final withholding tax. Thus, the remaining assessments cover only the deficiency income tax, final income tax-FCDU, and expanded withholding tax in the modified total amount of P33,076,944.18, computed as follows:



Tax	Basic Tax	Interest	Compromise Penalty	Total
Income Tax	3,594,272.00	3,803,936.67	25,000.00	7,423,208.67
Final Income Tax-FCDU	11,748,483.99	12,433,808.31	25,000.00	24,207,292.30
Expanded Withholding Tax	678,361.62	748,081.59	20,000.00	1,446,443.21
TOTAL	16,021,117.61	16,985,826.57	70,000.00	33,076,944.18

Finding merit in petitioner's *motion*, the same was granted and the *Supplemental Petition for Review* was admitted in a *Resolution* dated December 12, 2005.

Petitioner presented Chona G. Reyes, its Vice-President, as witness, and documentary exhibits which were admitted by the Court in its Resolution dated October 1, 2007, and January 31, 2008.

On the other hand, respondent presented Juan M. Luna, Jr., Revenue Officer II of the BIR LTAID I as witness, and documentary evidence marked as *Exhibits '1' to '4'*.

Thereafter, the parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich the case shall be deemed submitted for decision.

Respondent's '*Memorandum*' was filed on August 4, 2008, while petitioner's '*Memorandum*' was filed on October 24, 2008 after a series of motions for extension of time to file memorandum were granted by the Court. The case was deemed submitted for decision on November 12, 2008."

After the trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision* on February 27, 2009, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices dated June 24, 2004 for deficiency income tax, final income tax-FCDU, and expanded withholding tax in the total amount of P33,076,944.18 for taxable year 1998, issued by respondent Commissioner of Internal Revenue against petitioner, are hereby **ORDERED CANCELLED and SET ASIDE**.

SO ORDERED." 

Not satisfied with the aforementioned Decision, herein petitioner-CIR filed a *Motion for Reconsideration*⁶ dated March 19, 2009. Herein respondent-Standard Chartered Bank (STANDARD CHARTERED) filed its Opposition⁷ to CIR's Motion and invoked the following reasons for such opposition:

4.1 The assessments are void and as such, can neither be enforced nor ratified by petitioner's payment of a portion of such assessments.

4.2 Estoppel does not lie against the petitioner. Payment of a portion of the assessment is not inconsistent with attacking the validity of waiver.

4.3 The Motion for Reconsideration failed to properly comply with the notice of hearing requirement under the Revised Rules of Court, rendering such motion as pro forma, and thus, failed to toll the period to ask for reconsideration."⁸

In the Resolution⁹ dated July 29, 2009, the *CTA Second Division* denied the CIR's Motion for Reconsideration for lack of merit.

On September 3, 2009, CIR filed the instant Petition for Review¹⁰ with *CTA En Banc*, praying that, "the Decision dated 27 February 2009 and the Resolution promulgated 29 July 2009, be reversed and set aside and another one be rendered ordering petitioner to pay the amount of P33,076,944.18 representing deficiency income tax, final income tax-FCDU and expanded withholding tax for the year 1998, plus 25% surcharge and 20% annual interest for late payment from 10 January 2006 until fully paid pursuant to Sections 248 and 249 of the NIRC of 1999."¹¹ 

⁶ Division Docket, pp. 661-673

⁷ Division Docket, pp. 688-698

⁸ Division Docket, p. 690.

⁹ En Banc Rollo, pp. 57-64

¹⁰ En Banc Rollo, pp. 7-24

¹¹ En Banc Rollo, p. 23

In a Resolution¹² issued by the *CTA En Banc* dated September 23, 2009, respondent was ordered to file its Comment. In compliance with the said Resolution, STANDARD CHARTERED filed its Comment¹³ on October 20, 2009.

Petitioner-CIR raised the sole issue¹⁴ in the instant Petition for Review:

WHETHER OR NOT THE SECOND DIVISION OF THE HONORABLE COURT ERRED WHEN IT CANCELLED THE FORMAL LETTER OF DEMAND AND ASSESSMENT NOTICES DATED 24 JUNE 2004 FOR DEFICIENCY INCOME TAX, FINAL INCOME TAX-FCDU AND EXPANDED WITHHOLDING TAX IN THE TOTAL AMOUNT OF P33,076,944.18 FOR TAXABLE YEAR 1998.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its *Assailed Decision and Assailed Resolution*. Records also show that the arguments raised by the petitioner in the instant Petition for Review are the same as those stated in its Motion for Reconsideration,¹⁵ which were thoroughly discussed by the *CTA Second Division* in the *Assailed Resolution*, and We quote:

"Record shows that petitioner raised the issue of prescription in its Petition for Review with respect to deficiency assessment on income tax, FIT-FCDU, WTC, EWT and FWT. In fact, in his Answer, respondent CIR counter-argued that petitioner's argument is without merit considering that there were Waivers of Statute of Limitations executed between the parties. It was only after the case was filed with this Court, on April 18, 2005, that petitioner paid its deficiency WTC and FWT assessments. Record shows that even after petitioner paid the deficiency WTC and FWT assessments, it did not waive the defense of prescription, as petitioner continued to raise the issue of prescription in its Pre-Trial Brief filed on August 15, 2005, Joint Stipulations of Facts and Issues filed on September 1, 2005, direct testimonies of its witness (*Original Docket, pp. 175-179, 190-195, and 215-218*), and Memorandum filed on October 24, 2008. Even respondent CIR did not consider petitioner's payment of 

¹² En Banc Rollo, pp. 69-70

¹³ En Banc Rollo, pp. 76-101

¹⁴ En Banc Rollo, p. 13

¹⁵ Division Docket, pp. 661-675.

deficiency WTC and FWT assessments as waiver of the defense of prescription, as respondent CIR continued to raise prescription as one of the issues in this case, as shown in his Pre-trial Brief filed on August 16, 2005, Joint Stipulations of Facts and Issues filed on September 1, 2005, and Memorandum filed on August 4, 2008. Respondent CIR only raised the issue of *estoppel* in his Motion for Reconsideration. Based on the above conduct of both parties, there can be no *estoppel* in this case.

In the case of *Maneclang vs. Baun, G.R. No. 27876, April 22, 1992, 208 SCRA 192*, the Supreme Court ruled that as regards the party sought to be *estopped*, it is necessary that there be concurrence of the following requisites: a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive of the actual acts.

There is no false representation or concealment of material facts on the part of petitioner. From the moment it filed the Petition for Review before this Court, petitioner already contended that the assessments were issued beyond the prescriptive period. It never changed its stand even after payment thereof of its deficiency WTC and FWT assessments. Also, petitioner could not have intended that its payment of WTC and FWT deficiency assessments would have changed respondent's CIR appreciation/action of the instant case. Even with petitioner's payment of WTC and FWT deficiency assessments, the fact remains that the Waivers are invalid for failure to comply with the prescribed requirements laid down in *RMO No. 20-90*. More importantly, notwithstanding said payment, the fact remains that the deficiency assessments were issued beyond the three-year prescriptive period.

Neither can *estoppel* be appreciated in relation to respondent CIR itself. In the case of *Philippine Savings Bank vs. Chowking Food Corporation, G.R. No. 177526, July 4, 2008, 557 SCRA 329-330*, the Supreme Court held that as related to the party claiming the *estoppel*, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in question; (2) reliance, in good faith, upon the conduct and statements of the party to be *estopped*; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the *estoppel*, to his injury, detriment or prejudice.

In this case, the first two elements are wanting. Respondent CIR has knowledge and has the means to ascertain the validity of the Waivers 

executed by both of them. *RMO No. 20-90* was issued by no less than the Commissioner of Internal Revenue himself. Respondent CIR, therefore, is fully aware of the procedures prescribed therein. Thus, he can easily determine whether the Waivers executed are valid or not, pursuant to *RMO No. 20-90*.

Neither can respondent CIR be considered to have relied in good faith on the conduct and statements of petitioner. Being aware of the procedures prescribed by *RMO No. 20-90*, respondent CIR cannot be considered to have acted in good faith in relying on defective Waivers executed by petitioner. Moreover, petitioner, as previously pointed out, was consistent with its stand that the assessments issued against it had already prescribed, before, during, and after payment of its deficiency WTC and FWT assessments.

Thus, in the case of *Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008, 556 SCRA 709-710*, the Supreme Court held that the execution of the Waiver of the Statute of Limitation does not amount to a waiver of prescription; thus, the procedures outlined in *RMO No. 20-90* must be strictly followed:

'Petitioner contends that the procedure in *RMO No. 20-90* are merely directory and that the execution of a waiver was a renunciation of respondent's right to invoke prescription. We do not agree. *RMO No. 20-90* must be strictly followed. In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, we ruled that a waiver of the statute of limitation under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal. Notably, in this case, the waiver became unlimited in time because it did not specify a definite date, agreed upon between the BIR and respondent, within which the former may assess and collect taxes. It also had no binding effect on respondent because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.'

Respondent CIR's reliance in the RCBC Case is misplaced. The factual scenario obtaining in the present case is different from the said

case. In the RCBC Case, there was an Amended Formal Letter of Demand and Assessment Notices issued by the CIR after the filing of the case with the Court in Division, which reduced the taxpayer's deficiency tax assessments. By reason of said reduced Amended Assessment Notices, the taxpayer therein paid a portion of its deficiency tax assessments. In other words, in the RCBC Case, the taxpayer accepted the benefits of the reduced assessments by paying a portion of the same, thus, the Court did not allow the taxpayer to subsequently question the validity of the assessment, after it had accepted the benefits of the new assessment. This circumstance is not obtaining in the present case."

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed February 27, 2009 Decision and July 29, 2009 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the February 27, 2009 Decision and July 29, 2009 Resolution of the *CTA Second Division* in CTA Case No. 7165 entitled, "*Standard Chartered Bank vs. Commissioner of Internal Revenue*" are hereby **AFFIRMED in toto**.

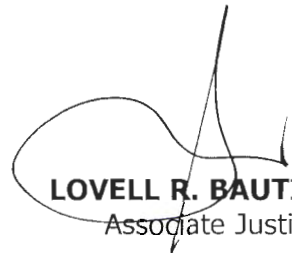
SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

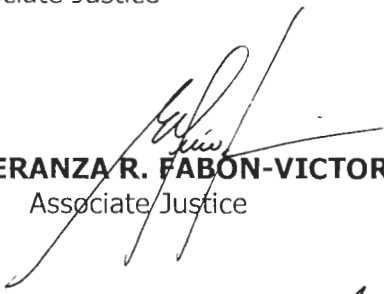

ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

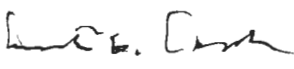

ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
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.


ERNESTO D. ACOSTA
Presiding Justice