REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE JOURNALISTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6108

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 14 2002

x - x

DECISION

The case before us seeks to nullify Assessment/Demand No. 33-1-000757-94 issued by the respondent against the petitioner on December 9, 1998, in the total amount of P111,291,214.46 for the year 1994. Petitioner likewise prays that the Warrant of Distraint and/or Levy issued pursuant thereto be declared null and void.

The antecedent facts follow.

Petitioner is a domestic corporation duly organized and existing under Philippine laws. It is engaged in the business of publication, with principal office address at the Journal Building, Railroad Street, between 19th and 20th Streets, Port Area, Manila.

On April 17, 1995, petitioner filed its Annual Income Tax Return for the calendar year ended December 31, 1994, reflecting a net income of P30,877,387.00 and the tax due thereon amounting to P10,807,086.00. After deducting its tax credits for the year in the amount of P559,702.00, petitioner paid on the same day its remaining tax liability of P10,247,384.00 (p. 30, BIR Records).

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On August 10, 1995, Letter of Authority No. 87120 was issued to petitioner by Revenue Region No. 06, Revenue District Office No. 33 of the Bureau of Internal Revenue (BIR), authorizing Revenue Officer Federico de Vera, Jr. and Group Supervisor Vivencio Gapasin to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 1994 to December 31, 1994.

On June 10, 1997, petitioner was informed of the results of investigation conducted pursuant to Letter of Authority No. 87120, which showed the following deficiency taxes, inclusive of surcharges, interest and compromise penalty (p. 93, BIR Records):

Value Added Tax	P 229,527.90
Income Tax	125,002,892.95
Withholding Tax	2,748,012.35

Through a letter dated August 29, 1997, Revenue District Officer Jaime Concepcion invited the petitioner to an informal conference on September 15, 1997, to give the latter the opportunity to interpose its objections and/or present documentary evidence to disprove the proposed assessment (p. 93-A, BIR Records).

On September 22, 1997, petitioner, through its Comptroller, Ms. Lorenza Tolentino, executed a "Waiver of the Statute of Limitation Under the National Internal Revenue Code" (NIRC) by virtue of which petitioner "waive(d) the running of the prescriptive period provided for by Sections 223 and 224 and other relevant provisions of the NIRC, and consent to the assessment and collection of taxes which may be found due after the examination at any time after the lapse of the period of limitations fixed by said Sections 223 and 224 and other relevant provisions of the NIRC, until the completion of the said investigation." (Exhibit 11, p. 93-C, BIR Records).

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On October 3, 1997, Revenue Officer Federico de Vera, Jr. submitted his report to the Revenue District Officer of RDO No. 33, stating that "in the conference held on September 15, 1997, the taxpayer has failed to submit supporting documents and schedules to refute the assessment previously presented, with only a promise to comply with the requirements later on," thus, he recommended for the issuance of an assessment. On July 2, 1998, Revenue Officer de Vera submitted his audit report, with the following deficiency taxes, inclusive of surcharges, interest and compromise penalty: (Exhibits 8 to 10)

Income Tax	P133,806,778.70
Value Added Tax	240,603.13
Withholding Tax	2,905,027.14

On October 5, 1998, Pre-Assessment Notices were issued by the Assessment Division of the BIR, informing petitioner of the findings upon investigation and per review of the said Division (pp. 122-124, BIR Records). On December 9, 1998, the Assessment Notices and Letters of Demand subject of the instant petition were issued (Exhibits 1 to 6), showing the following deficiency taxes, inclusive of interest and compromise penalty.

Income Tax	P108,743,694.88
Value Added Tax	184,299.20
Expanded Withholding Tax	2,363,220.38
Total	P111,291,214.46

On March 15, 1999, a Preliminary Collection Letter was sent by Deputy Commissioner Romeo S. Panganiban to petitioner, giving the latter ten (10) days from receipt thereof to pay its tax liabilities totaling P111,291,214.46. On November 10, 1999, a Final Notice Before Seizure was issued by the same deputy commissioner, giving again the petitioner ten (10) days from receipt thereof to pay the said amount. Petitioner received a copy of the said notice on November 24, 1999. Through a letter dated November 26, 1999 and filed with the BIR on November 29, 1999, petitioner sought a clarification on how its tax liability of P111,291,214.46 was arrived at. Petitioner also requested for an extension of thirty (30) days from receipt of said clarification within which to reply.

On December 2, 1999, petitioner wrote a follow-up letter to the BIR, stating that its records do not show that it had received a copy of Assessment/Demand No. 33-1-000757-94. Petitioner further contested the assessment on the ground that it has no factual and legal basis.

On March 28, 2000, petitioner received Warrant of Distraint and/or Levy No. 33-06-046 signed by Deputy Commissioner Romeo Panganiban for and in behalf of the Respondent (p. 141, BIR Records). Hence, this Petition for Review filed on April 26, 2000, which was amended on May 12, 2000 to include the additional allegation that it categorically contested the assessment in its follow-up letter dated November 29, 1999, on the following grounds:

1. No assessment/demand was received by the petitioner.

2. The warrant of distraint and/or levy is without factual and legal bases as its issuance was premature.

3. The assessment having been made beyond the 3-year prescriptive period is null and void.

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4. The issuance of the warrant without giving petitioner prior opportunity to contest or dispute the assessment violates the latter's right to due process.

5. The grave prejudice that petitioner will surely sustain if the impending enforcement of the warrant be not enjoined is sufficient basis for the issuance of the writ of prelin inary injunction.

Respondent filed his Answer (To Petitioner's Amended Petition for Review) on June 5, 2000 and claimed by way of Special and Affirmative Defenses that:

"13. An assessment is deemed made for the purpose of giving effect thereto when the notice to that effect is released, mailed or sent to the taxpayer within the prescribed period (*Basilan Estate, Inc. vs. CIR, L-22492, September 05, 1967*).

14. The subject tax assessments have become final, executory and enforceable for failure of the petitioner to assail the same within thirty (30) days from receipt of the assessment (Section 229 of the 1993 Tax Code, as amended).

15. The subject petition was filed out of ti.ne since respondent has validly served upon petitioner the subject assessments dated December 09, 1998 and the same was received by the petitioner through its authorized representative on January 08, 1999. Thus, the petitioner has no cause of action against the respondent.

16. An assessment is not an action or proceeding for the collection of taxes. It is merely a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof. It is a step preliminary but essential to warrant of distraint and/or levy, if still feasible, and also to establish a cause for judicial action (*Alhambra Cigar and Cigarette Manufacturing Company vs. Collector of Internal Revenue, May 29, 1959*). Thus, respondent's service of Warrant of Distraint and/or Levy to the petitioner on March 28, 2000 is proper.

17. The remedy of a taxpayer who disagrees with a tax assessment is to appeal to the Court of Tax Appeals within the thirty (30) day period prescribed by law. The failure to do so constitutes a waiver of the defenses against assessment and estops the taxpayer from subsequently raising his objections thereafter. Otherwise, the period of thirty (30) days for appeal to the Court of Tax Appeals would make little sense (*Republic vs. Del Rosario, 105 Phil. 277*).

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18. The petitioner's letters dated November 26 & 29, 1999 (1) asking clarification on how the assessments were computed and (2) a follow-up letter which manifests that petitioner did not receive the subject assessments, respectively, cannot be considered as one disputing the subject assessments because the petitioner failed to substantiate its claim that the subject assessments were issued contrary to law. Hence, said two (2) letters were nothing but a mere scrap of paper considering that, aside from being unsubstantiated, the same were filed beyond the thirty (30) day reglementary period prescribed under Section 229 of the 1993 Tax Code, as amended.

19. Petitioner executed a Waiver of the Statute of Limitation dated September 22, 1997 which is within the three (3) year period of assessment. Said petitioner's renunciation of its right to invoke the defense of prescription is valid and proper. There is nothing unlawful nor immoral about this kind of waiver, just like any other right, the right to avail of the defense of prescription is waivable (*Sambrano vs. Court of Tax Appeals [1957], 101 Phil 1; Republic vs. Arcache, L-15547, February 29, 1964*)."

In their "Joint Stipulation of Facts and Issues" filed on September 29, 2000, the parties submitted the following issues for resolution:

1. FACTUAL

    a. Whether or not petitioner received copy of the subject assessments;

    b. Whether or not petitioner has executed a valid Waiver of Statute of Limitation.

2. LEGAL

    a. Whether or not the subject assessments have already become final and executory;

    b. Whether or not the Waiver of Statute of Limitation is valid and binding on the petitioner;

    c. Whether or not the subject assessments have already prescribed;

d. Whether or not the issuance of Warrant of Distraint and/or Levy is premature.

We dwell on the factual issues.

As to whether or not the assessment notices were received by the petitioner, this Court rules in the affirmative.

To disprove petitioner's allegation of non-receipt of the aforesaid assessment notices, respondent presented a certification issued by the Post Master of the Central Post Office, Manila to the effect that Registered Letter No. 76134 sent by the BIR, Region No. 6, Manila on December 15, 1998 addressed to Phil. Journalists, Inc. at Journal Bldg., Railroad St., Manila was duly delivered to and received by a certain Alfonso Sanchez, Jr. (Authorized Representative) on January 8, 1999. Respondent also showed proof that in claiming Registered Letter No. 76134, Mr. Sanchez presented three identification cards, one of which is his company ID with herein petitioner.

While the presumption under Section 3(v) of Rule 131 of the Revised Rules of Court "that a letter duly directed and mailed was received in the regular course of the mail" is not conclusive and may be contradicted and overcome by other evidence, this Court nonetheless believes that the evidence presented by respondent can sustain his assertion that the assessment notices were received by an authorized representative of the petitioner. But if indeed, the assessment notices never reached the hands of the officer concerned despite its receipt by the employee who was tasked to claim the mail, we opine that the problem lies within the petitioner corporation and cannot be attributed to the respondent. Surely, Mr. Sanchez could not have taken hold of the Registry Notice and could not have claimed the mail in question had he been a stranger to the corporation.

Anent the second factual issue raised by the parties, again, we rule in the affirmative.

A cursory reading of the Waiver of the Statute of Limitations executed by the parties would readily reveal that the same was executed on September 22, 1997, signed by the Comptroller of the petitioner in the person of Ms. Lorenza Tolentino and accepted by Revenue District Officer Delia Sarmiento.

Petitioner, however, contends that Ms. Lorenza Tolentino was not expressly nor impliedly authorized to execute the said waiver and conveniently puts the blame on the BIR by alleging that the latter did not require Ms. Tolentino to present a letter or certificate of authority to execute said waiver despite the fact that the BIR examiners who were conducting the investigation had a lot of time and access to the responsible corporate officers of the petitioner.

Revenue Memorandum Order (RMO) No. 20-90, which deals with the proper execution of the Waiver of the Statute of Limitations, clearly provides that in case the taxpayer is a corporation, the waiver must be signed by any of its responsible officials. Without doubt, a Comptroller is a responsible official within the purview of the law. And as correctly pointed out by Respondent, the law merely requires that the waiver be signed by any of a corporation's responsible officials, NOT necessarily an authorized representative or officer.

However, as to whether or not the Waiver of the Statute of Limitations is valid and binding on the petitioner is another question. Since the subject assessments were issued beyond the three-year prescriptive period, it becomes imperative on our part to rule first on the validity of the waiver allegedly executed on September 22, 1997, for if this court finds the same to be ineffective, then the assessments must necessarily fail.

For easy reference, the provisions of RMO No. 20-90 are hereby reproduced:

"In the execution of said waiver, the following procedures should be followed:

1. The waiver must be in the form identified hereof. **This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after _____ 19 ____" should be filled up.** This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. **In the case of a corporation, the waiver must be signed by any of its responsible officials.**

   Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated.** <u>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.</u>

3. The following revenue officials are authorized to sign the waiver.

A. **In the National Office**

1.	ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver	For tax cases involving not more than P500,000.00

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2.	Deputy Commissioner	For tax cases involving more than P500,000.00 but not more than P1M
3.	**Commissioner**	**For tax cases involving more than P1M**

B. **In the Regional Offices**

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

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

3. The Regional Director, the Assistant Regional Director, the Chief Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

4. **The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**

5. **The foregoing procedures shall be strictly followed**. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with." (Emphasis Supplied)

After carefully examining the questioned Waiver of the Statute of Limitations, this Court considers the same to be without any binding effect on the petitioner for the following reasons:

The waiver is an unlimited waiver. It does not contain a definite expiration date. Under RMO No. 20-90, the phrase indicating the expiry date of the period agreed upon to

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assess/collect the tax after the regular three-year period of prescription should be filled up. In this case, the waiver not only failed to fill up the phrase "but not after ________" but even deviated from the prescribed form. Moreover, Section 223 of the NIRC provides that if before the expiration of the time prescribed 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. Verily, even under the NIRC, there has to be an agreement as to the expiry date of the period to assess or collect.

In the case of **Republic vs. Ablaza, 108 Phil. 1105**, the Supreme Court ruled on the importance of fixing prescriptive periods:

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

Secondly, the waiver failed to state the date of acceptance by the Bureau which under the aforequoted RMO should likewise be indicated. We, therefore, cannot determine with certainty if the waiver was actually accepted before the expiration of the three-year assessment period considering that it was accepted by Revenue District Officer Delia Sarmiento who was assigned in RDO#33 only on January 16, 1998. This is the

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date of her Revenue Travel Assignment Order assigning her to RDO No. 33, Intramuros–Ermita Manila. Most likely, this was not her date of acceptance considering that these Revenue Officials normally have to conduct first an inventory of their pending papers and property responsibilities. This process may take time; thus, the said waiver must have been accepted on a much later date, which may even be after the lapse of the three-year period. The court likewise wonders why the BIR still waited for Ms. Sarmiento before finally accepting the waiver when the same was executed by Ms. Lorenza Tolentino as early as September 22, 1997. Since the case involves more than P1M, the waiver could have been signed by the respondent himself considering that when the same was executed in 1997, the period to assess was not about to prescribe. As aptly cited by petitioner, in CTA Case No. 4263 entitled **Carnation Phils., Inc. (now merged with Nestle Phils., Inc.) vs. Commissioner of Internal Revenue**, promulgated on January 26, 1993, this court had the occasion to pass upon a similar issue, thus:

> "Notwithstanding the fact that the records show that petitioner, through its Senior Vice President Jaime Lardizabal, signed three waivers of the statute of limitations under the Tax Code on separate dates (October 13, 1986, March 16, 1987, and May 18, 1987). **We find these "waivers" to be invalid and without any binding effect on petitioner for the reason that there was no consent by the respondent and no period was set or agreed upon for subsequent assessment."** (Emphasis supplied)

Significantly, the aforesaid decision was affirmed by the Court of Appeals on May 31, 1994 and by the Supreme Court on February 25, 1999, which ruled:

> "Verily, we discern no basis for overruling the aforesaid conclusions arrived at by the Court of Appeals. In fact, there is every reason to leave undisturbed the said conclusions, having in mind the precept that all doubts as to the correctness of such conclusions will be resolved in favor

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of the Court of Appeals. Besides being a reiteration of the holding of the Court of Tax Appeals, such decision should be accorded respect. xxx "

Finally, petitioner was not furnished a copy of the waiver. It is to be noted that under RMO No. 20-90, the waiver must be executed in three (3) copies, the second copy of which is for the taxpayer. It is likewise required that the fact of receipt by the taxpayer of his/her file copy be indicated in the original copy. Again, respondent failed to comply.

It bears stressing that RMO No. 20-90 is directed to all concerned internal revenue officers. The said RMO even provides that the procedures found therein should be strictly followed, under pain of being administratively dealt with should non-compliance result to prescription of the right to assess/collect. Being one of the revenue officials authorized to sign a waiver, Revenue District Officer Delia Sarmiento ought to have known the procedures that should be followed in executing a waiver, for it is the only way to extend the BIR's right to assess/collect which could be barred by prescription. RMO No. 20-90 was promulgated pursuant to Section 223 of the Tax Code. In the case of **Victorias Milling Co., Inc. vs. Social Security Commission, 4 SCRA 627**, the Supreme Court ruled on the nature of administrative rules and regulations, thus:

> "When an administrative agency promulgates rules and regulations, it 'makes' a new law with the force and effect of a valid law, while when it renders an opinion or gives a statement of policy, it merely interprets a pre-existing law (*Parker, Administrative Law, p. 197; Davis Administrative Law, p. 194*). Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partakes of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law. This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times left to the administrative agency entrusted with its enforcement."

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Thus, finding the waiver executed by the petitioner on September 22, 1997 to be suffering from legal infirmities, rendering the same invalid and ineffective, the Court finds Assessment/Demand No. 33-1-000757-94 issued on December 5, 1998 to be time-barred. Consequently, the Warrant of Distraint and/or Levy issued pursuant thereto is considered null and void.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED.** Accordingly, the deficiency income, value-added and expanded withholding tax assessments issued by the respondent against the petitioner on December 9, 1998, in the total amount of P111,291,214.46 for the year 1994 are hereby declared **CANCELLED, WITHDRAWN** and **WITH NO FORCE AND EFFECT**. Likewise, Warrant of Distraint and/or Levy No. 33-06-046 is hereby declared **NULL and VOID.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above 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

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