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it must be proven by clear and convincing evidence,[27] which BDO failed to do.

Under these facts and circumstances, we rule that there was no pending litigation that could give rise to forum shopping, *litis pendentia*, or *res judicata* on Daswani's part without any valid ground for dismissal, the RTC Br. 61 should not have dismissed Daswani's second complaint but should have given it due course.

WHEREFORE, premises considered, we hereby **GRANT** the present petition and **ANNUL** the November 20, 2009 resolution and the January 15, 2010 order of the Regional Trial Court of Makati City, Br. 61. The trial court is hereby ordered to give due course to petitioner Surendra Gobindram Daswani's complaint, docketed as Civil Case No. 09-843. No costs.

SO ORDERED.

Carpio (Chairperson), Mendoza, Perlas-Bernabe,[*] and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 192173. July 29, 2015]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **STANDARD CHARTERED BANK,** *respondent*.

SYLLABUS

1. TAXATION; ASSESSMENT AND COLLECTION OF TAXES; PERIOD OF LIMITATION; THE COMMISSIONER OF

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[27] *Spouses Ramos v. Obispo,* G.R. No. 193804, February 27, 2013, 692 SCRA 240, 249-250.

[*] Designated as Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 2115 dated July 22, 2015.

INTERNAL REVENUE (CIR) HAS THREE YEARS, COUNTED FROM THE DATE OF ACTUAL FILING OF THE RETURN OR FROM THE LAST DATE PRESCRIBED BY LAW FOR THE FILING OF SUCH RETURN, WHICHEVER COMES LATER, TO ASSESS A NATIONAL INTERNAL REVENUE TAX OR TO BEGIN A COURT PROCEEDING FOR THE COLLECTION THEREOF WITHOUT AN ASSESSMENT. — [T]he period for petitioner to assess and collect an internal revenue tax is limited only to three years by Section 203 of the NIRC of 1997, as amended x x x. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time. Thus, in the present case, petitioner only had three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment.

2. **ID.; ID.; ID.; THE ORIGINAL THREE-YEAR PRESCRIPTIVE PERIOD TO ASSESS AND COLLECT AN INTERNAL REVENUE TAX MAY BE EXTENDED BY EXECUTION OF A VALID WAIVER, WHERE THE TAXPAYER AND THE CIR MAY STIPULATE TO EXTEND THE PERIOD OF ASSESSMENT BY A WRITTEN AGREEMENT EXECUTED PRIOR TO THE LAPSE OF THE PERIOD PRESCRIBED BY LAW, AND BY SUBSEQUENT WRITTEN AGREEMENTS BEFORE THE EXPIRATION OF THE PERIOD PREVIOUSLY AGREED UPON.** — [O]ne of the exceptions to the three-year prescriptive period on the assessment of taxes is that provided for under Section 222(b) of the NIRC of 1997, as amended x x x. [T]he x x x 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 (CIR) may stipulate to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon. It must be kept in mind that the very reason why the law provided for prescription is

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to give taxpayers peace of mind, that is, to safeguard them from unreasonable examination, investigation, or assessment. The law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.

3. ID.; ID.; ID.; ID.; TO BE VALID, A WAIVER OF THE THREE-YEAR PRESCRIPTIVE PERIOD TO ASSESS AND COLLECT INTERNAL REVENUE TAXES REQUIRES THE SIGNATURES OF BOTH THE CIR AND THE TAXPAYER, AND SHOULD INDICATE THE DATE OF ACCEPTANCE BY THE CIR IN ORDER TO DETERMINE WHETHER THE TAXPAYER AND THE GOVERNMENT HAD ENTERED INTO A WAIVER BEFORE THE EXPIRATION OF THE THREE-YEAR PRESCRIPTIVE PERIOD FOR THE ASSESSMENT OF THE TAX.— In the landmark case of *Philippine Journalists, Inc. v. CIR* (PJI case), we pronounced that a waiver is not automatically a renunciation of the right to invoke the defense of prescription. A waiver of the Statute of Limitations is nothing more than "an agreement between the taxpayer and the Bureau of Internal Revenue (BIR) that the period to issue an assessment and collect the taxes due is extended to a date certain." It is a bilateral agreement, thus necessitating the very signatures of both the CIR and the taxpayer to give birth to a valid agreement. Furthermore, indicating in the waiver the date of acceptance by the BIR is necessary in order to determine whether the parties (the taxpayer and the government) had entered into a waiver "before the expiration of the time prescribed in Section 203 (the three-year prescriptive period) for the assessment of the tax." When the period of prescription has expired, there will be no more need to execute a waiver as there will be nothing more to extend. Hence, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.

4. ID.; ID.; ID.; ID.; PROCEDURAL REQUIREMENTS FOR THE PROPER EXECUTION OF A WAIVER UNDER RMO NO. 20-90 AND REVENUE DELEGATION AUTHORITY ORDER (RDAO) NO. 05-01; NON-COMPLIANCE THEREWITH RENDERS A WAIVER DEFECTIVE AND INEFFECTUAL.— In delineation of the same sense about

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the waiver of the Statute of Limitations, RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 were issued on 4 April 1990 and 2 August 2001, respectively. The said revenue orders outline the procedure for the proper execution of a waiver, *viz*.: 1. **The waiver must be in the proper form prescribed by RMO 20-90**. x x x. 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. x x x. 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. x x x.** 5. **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**. 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**. The provisions of the RMO and RDAO explicitly show their mandatory nature, requiring strict compliance. Hence, failure to comply with any of the requisites renders a waiver defective and ineffectual.

5. ID.; ID.; ID.; ID.; A DEFECTIVE WAIVER WILL NOT VALIDLY EXTEND THE ORIGINAL THREE-YEAR PRESCRIPTIVE PERIOD TO ASSESS AND COLLECT INTERNAL REVENUE TAXES.— Applying the rules and rulings, the waivers in question were defective and did not validly extend the original three-year prescriptive period. As correctly found by the CTA in Division, and affirmed *in toto* by the CTA *En Banc*, the subject waivers of the Statute of Limitations were in clear violation of RMO No. 20-90 x x x. Taking into consideration the x x x defects in the First and Second Waivers presented and admitted in evidence before the court *a quo*, the period to assess the tax liabilities of respondent for taxable year 1998 was never extended. Consequently, when the succeeding waivers of Statute of Limitations were subsequently executed covering the same tax liabilities of respondent, and there being no assessment having been issued as of that time, prescription has already set in.

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We therefore hold that the subject waivers did not extend the period to assess the subject deficiency tax liabilities of respondent for taxable year 1998. The aforesaid waivers cannot be considered as "subsequent written agreement(s) made before the expiration of the period previously agreed upon" referred to in the second sentence of the earlier quoted Section 222(b) of the NIRC of 1997, as amended, since there is no "period previously agreed upon" to speak of. x x x. In fine, considering the defects in the First and Second Waivers, the period to assess or collect deficiency taxes for the taxable year 1998 was never extended. Consequently, the Formal Letter of Demand and Assessment Notices dated 24 June 2004 for deficiency income tax, FCDU, and EWT in the aggregate amount of ₱33,076,944.18, including increments, were issued by the BIR beyond the three-year prescriptive period and are therefore void.

6. ID.; ID.; THE CIR'S ACCEPTANCE WITHOUT ANY OPPOSITION OF THE TAXPAYER'S PAYMENT OF THE SUBJECT TAX DEFICIENCY ASSESSMENTS EFFECTIVELY EXTINGUISHED THE LATTER'S OBLIGATION TO PAY THE SUBJECT TAX.— When respondent paid the deficiency WTC and FWT assessments, petitioner accepted said payment without any opposition. This effectively extinguished respondent's obligation to pay the subject taxes. It bears emphasis that, obligations are extinguished, among others, by payment or performance. Under Article 1232 of the Civil Code, payment means not only the delivery of money but also the performance, in any other manner, of an obligation. As intended, which intention was recognized by the CTA in Division and CTA *En Banc*, the question regarding the income tax, final income tax – FCDU, and EWT, was kept unaffected by the payment of the deficiency WTC and FWT assessments.

7. ID.; ID.; ID.; 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 RECOMMENDS THE APPROVAL OF THE LAW.— It must be remembered that the execution of a Waiver of Statute of Limitations may be beneficial to the taxpayer or to the BIR, or to both. Considering however, that it results to a derogation of some of the rights

of the taxpayer, the same must be executed in accordance with pre-set guidelines and procedural requirements. Otherwise, it does not serve its purpose, and the taxpayer has all the right to invoke its nullity. For that reason, this Court cannot turn blind on the importance of the Statute of Limitations upon the assessment and collection of internal revenue taxes provided for under the NIRC. 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 properly in the making of the 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 may 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 recommends the approval of the law.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador & Associates for respondent.

D E C I S I O N

PEREZ, *J.*:

For the Court's consideration is a Petition for Review on *Certiorari* which seeks to reverse and set aside the 1 March 2010 Decision[1]

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[1] *Rollo*, pp. 26-37; Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas concurring.

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and the 30 April 2010 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 522, affirming *in toto* the Decision[3] and Resolution[4] dated 27 February 2009 and 29 July 2009, respectively, of the Second Division of the CTA (CTA in Division) in CTA Case No. 7165. The court *a quo* cancelled and set aside the Formal Letter of Demand and Assessment Notices dated 24 June 2004 issued by petitioner against respondent for deficiency income tax, final income tax – Foreign Currency Deposit Unit (FCDU), and expanded withholding tax (EWT) in the aggregate amount of ₱33,076,944.18, including increments covering taxable year 1998, for having been issued beyond the reglementary period.

The Facts

As found by the CTA in Division and affirmed by the CTA *En Banc*, the factual antecedents of the case and the proceedings conducted thereon were as follows:

On July 14, 2004, [respondent] received [petitioner's] Formal Letter of Demand dated June 24, 2004, for alleged deficiency income tax, final income tax – FCDU, [withholding tax – compensation (WTC)], EWT, [final withholding tax (FWT)], and increments for taxable year 1998 in the aggregate amount of ₱33,326,211.37, 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 - Compensation	50,282.59	55,450.48	12,000.00	117,733.07
Expanded Withholding Tax	678,361.62	748,081.59	20,000.00	1,446,443.21

[2] *Id*. at 39-41.

[3] *Id*. at 89-188; Penned by Associate Justice Olga Palanca-Enriquez with Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Erlinda P. Uy concurring.

[4] *Id*. at 120-127.

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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, [respondent] 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.

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

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

x x x x x x x x x

On October 14, 2005, [respondent] 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 [respondent] through the BIR's Electronic Filing and Payment System (eFPS) as regards its deficiency [WTC] and [FWT] assessments in the amounts of ₱124,967.73 and ₱139,713.11, respectively. In its *Supplemental Petition for Review*, (respondent) seeks to be fully credited of the payments it made to cover the deficiency [WTC] and [FWT]. Thus, the remaining assessments cover only the deficiency income tax, final income tax – FCDU, and [EWT] in the modified total amount of ₱33,076,944.18, 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**	**33,076,994.18**

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

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

On the other hand, [petitioner] 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.

[Petitioner's] *"Memorandum"* was filed on August 4, 2008, while [respondent's] *Memorandum* was filed on October 24, 2008 after a series of motions for extension of time to file memorandum were granted by the [c]ourt. The case was deemed submitted for decision on November 12, 2008.[5]

The Ruling of the CTA in Division

In a Decision dated 27 February 2009,[6] the CTA in Division granted respondent's petition for the cancellation and setting aside of the subject Formal Letter of Demand and Assessment Notices dated 24 June 2004 on the ground that petitioner's right to assess respondent for the deficiency income tax, final income tax – FCDU, and EWT covering taxable year 1998 was already barred by prescription. The court *a quo* explained that although petitioner offered in evidence copies of the Waivers of Statute of Limitations executed by the parties, for the purpose of justifying the extension of period to assess respondent, the subject waivers, particularly the First and Second Waivers dated 20 July 2001 and 4 April 2002, respectively, failed to strictly comply and conform with the provisions of Revenue Memorandum Order (RMO) No. 20-90, citing the case of *Philippine Journalists, Inc. v. CIR*.[7] It therefore concluded that since the aforesaid waivers were invalid, it necessarily follows that the subsequent waivers did not in any way cure these defects. Neither did it

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[5] *Id*. at 91-97; CTA in Division Decision dated 27 February 2009.

[6] *Id*. at 89-118.

[7] *Id*. at 112-114; 488 Phil. 219 (2004).

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extend the prescriptive period to assess. Accordingly, it ruled that the assailed Formal Letter of Demand and Assessment Notices are void for having been issued beyond the reglementary period.[8] Having rendered such ruling, the CTA in Division decided not to pass upon other incidental issues raised before it for being moot.

On 29 July 2009, the CTA in Division denied petitioner's Motion for Reconsideration thereof for lack of merit.[9]

Aggrieved, petitioner appealed to the CTA *En Banc* by filing a Petition for Review under Section 18 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282,[10] on 3 September 2009, docketed as CTA EB No. 522.

The Ruling of the CTA En Banc

The CTA *En Banc* affirmed *in toto* both the aforesaid Decision and Resolution rendered by the CTA in Division in CTA Case No. 7165, pronouncing that there was no cogent justification to disturb the findings and conclusion spelled out therein, since what petitioner merely prayed was for the appellate court to view and appreciate the arguments/discussions raised by petitioner in her own perspective of things, which unfortunately had already been considered and passed upon.

In other words, the CTA *En Banc* simply concurred with the ruling that petitioner's subject Formal Letter of Demand and Assessment Notices (insofar as to the deficiency income tax, final income tax – FCDU, and EWT) shall be cancelled considering that the same was already barred by prescription

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[8] *Id*. at 115; CTA in Division Decision dated 27 February 2009.

[9] *Id*. at 120-127; CTA in Division Resolution dated 29 July 2009.

[10] R.A. No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals," as amended by R.A. No. 9282, also known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes," which took effect on 23 April 2004.

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for having been issued beyond the three-year prescriptive period provided for in Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended. The waivers of the statute of limitations executed by the parties did not extend the aforesaid prescriptive period because they were invalid for failure to comply with and conform to the requirements set forth in RMO No. 20-90.

Upon denial of petitioner's Motion for Reconsideration thereof, it filed the instant Petition for Review on *Certiorari* before this Court seeking the reversal of the 1 March 2010 Decision[11] and the 30 April 2010 Resolution[12] rendered in CTA EB No. 522, based on the sole ground, to wit: The CTA *En Banc* committed reversible error in not holding that respondent is estopped from questioning the validity of the waivers of the Statute of Limitations executed by its representatives in view of the partial payments it made on the deficiency taxes sought to be collected in petitioner's Formal Letter of Demand and Assessment Notices dated 24 June 2004.

The Issues

The primary issue presented before this Court is whether or not petitioner's right to assess respondent for deficiency income tax, final income tax – FCDU, and EWT covering taxable year 1998 has already prescribed under Section 203 of the NIRC of 1997, as amended, for failure to comply with the requirements set forth in RMO No. 20-90 dated 4 April 1990, pertaining to the proper and valid execution of a waiver of the Statute of Limitations, and in accordance with existing jurisprudential pronouncements.

Subsequently, even assuming that petitioner's right to assess had indeed prescribed, another issue was submitted for our consideration, to wit: whether or not respondent is estopped from questioning the validity of the waivers of the Statute of Limitations executed by its representatives in view of the partial payments it made on the deficiency taxes (*i.e.* WTC and FWT)

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[11] *Rollo*, pp. 26-37.

[12] *Id*. at 39-41.

sought to be collected in petitioner's Formal Letter of Demand and Assessment Notices dated 24 June 2004.

Our Ruling

We find no merit in the petition.

At the outset, the period for petitioner to assess and collect an internal revenue tax is limited only to three years by Section 203 of the NIRC of 1997, as amended, quoted hereunder as follows:

> SEC. 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222, **internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That **in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**.
>
> For purposes of this Section, **a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**. (Emphasis supplied)

This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[13]

Thus, in the present case, petitioner only had three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. However, one of the exceptions to the three-year prescriptive period on the assessment of taxes is that provided

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[13] See *CIR v. FMF Dev't. Corp.*, 579 Phil. 174, 183 (2008).

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for under Section 222(b) of the NIRC of 1997, as amended, which states:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*. –
>
> x x x x x x x x x
>
> (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 supplied)

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 (CIR) may stipulate to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon. It must be kept in mind that the very reason why the law provided for prescription is to give taxpayers peace of mind, that is, to safeguard them from unreasonable examination, investigation, or assessment. The law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[14]

In the landmark case of *Philippine Journalists, Inc. v. CIR* (PJI case),[15] we pronounced that a waiver is not automatically a renunciation of the right to invoke the defense of prescription. A waiver of the Statute of Limitations is nothing more than "an agreement between the taxpayer and the Bureau of Internal Revenue (BIR) that the period to issue an assessment and collect

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[14] *CIR v. B.F. Goodrich Phils., Inc.*, 363 Phil. 169, 178 (1999).

[15] 488 Phil. 219, 231-232 (2004).

the taxes due is extended to a date certain." It is a bilateral agreement, thus necessitating the very signatures of both the CIR and the taxpayer to give birth to a valid agreement. Furthermore, indicating in the waiver the date of acceptance by the BIR is necessary in order to determine whether the parties (the taxpayer and the government) had entered into a waiver "before the expiration of the time prescribed in Section 203 (the three-year prescriptive period) for the assessment of the tax." When the period of prescription has expired, there will be no more need to execute a waiver as there will be nothing more to extend. Hence, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.

In delineation of the same sense about the waiver of the Statute of Limitations, RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 were issued on 4 April 1990 and 2 August 2001, respectively. The said revenue orders outline the procedure for the proper execution of a waiver, *viz*.:[16]

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.

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[16] *CIR v. Kudos Metal Corporation*, 634 Phil. 314, 323-326 (2010).

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5. **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**.

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 supplied)

The provisions of the RMO and RDAO explicitly show their mandatory nature, requiring strict compliance. Hence, failure to comply with any of the requisites renders a waiver defective and ineffectual. It is worth mentioning that strict compliance with the requirements set forth in RMO No. 20-90 has been upheld in the *PJI* case.[17] In reversing the decision of the Court of Appeals promulgated on 5 August 2003, this Court ruled that:

> The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period of assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time x x x
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> x x x x x x x x x
>
> RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. **A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed**, x x x"[18] (Emphasis supplied)

Applying the rules and rulings, the waivers in question were defective and did not validly extend the original three-year

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[17] *Philippine Journalists, Inc. v. CIR*, *supra* note 15.

[18] *Id*. at 229-230.

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prescriptive period. As correctly found by the CTA in Division, and affirmed *in toto* by the CTA *En Banc*, the subject waivers of the Statute of Limitations were in clear violation of RMO No. 20-90:

1) This case involves assessment amounting to more than ₱1,000,000.00. For this, *RMO No.* 20-90 requires the Commissioner of Internal Revenue to sign for the BIR. A perusal of the First and Second Waivers of the Statute of Limitations shows that they were signed by Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad and Assistant Commissioner-Large Taxpayers Service Edwin R. Abella respectively, and not by the Commissioner of Internal Revenue;

2) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad of the First Waiver was not indicated therein;

3) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Edwin R. Abella of the Second Waiver was not indicated therein;

4) The First and Second Waivers of Statute of Limitations did not specify the kind and amount of the tax due; and

5) The tenor of the Waiver of the Statute of Limitations signed by petitioner's authorized representative failed to comply with the prescribed requirements of RMO No. 20-90. The subject waiver speaks of a request for extension of time within which to present additional documents, whereas the waiver provided under RMO No. 20-90 pertains to the approval by the Commissioner of Internal Revenue of the taxpayer's request for re-investigation and/or reconsideration of his/its pending internal revenue case.[19]

Taking into consideration the foregoing defects in the First and Second Waivers presented and admitted in evidence before the court *a quo*, the period to assess the tax liabilities of respondent for taxable year 1998 was never extended. Consequently, when the succeeding waivers of Statute of Limitations were

[19] *Rollo*, pp. 111-112; CTA in Division Decision dated 27 February 2009.

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subsequently executed covering the same tax liabilities of respondent, and there being no assessment having been issued as of that time, prescription has already set in. We therefore hold that the subject waivers did not extend the period to assess the subject deficiency tax liabilities of respondent for taxable year 1998. The aforesaid waivers cannot be considered as "subsequent written agreement(s) made before the expiration of the period previously agreed upon" referred to in the second sentence of the earlier quoted Section 222(b) of the NIRC of 1997, as amended, since there is no "period previously agreed upon" to speak of.

As regards petitioner's insistence that respondent is already estopped from impugning the validity of the subject waivers considering that it made partial payments on the deficiency taxes being collected, particularly as to the payment of its deficiency WTC and FWT assessments in the amounts of ₱124,967.73 and ₱139,713.11, respectively, we find this argument bereft of merit.

As aptly found in the 29 July 2009 Resolution of the CTA in Division, although respondent paid the deficiency WTC and FWT assessments, it did not waive the defense of prescription as regards the remaining tax deficiencies, it being on record that respondent continued to raise the issue of prescription in its Pre-Trial Brief filed on 15 August 2005, Joint Stipulations of Facts and Issues filed on 1 September 2005, direct testimonies of its witness, and Memorandum filed on 24 October 2008. More so, even petitioner did not consider such payment of respondent as a waiver of the defense of prescription, but merely raised the issue of *estoppel* in her Motion for Reconsideration of the aforesaid decision. From the conduct of both parties, there can be no *estoppel* in this case.[20]

Upon payment of the assessed deficiency in the WTC in the amount of ₱124,967.73 and in the FWT in the amount of ₱139,713.11, respondent filed a Motion for Leave of Court to Serve Supplemental Petition, with attached Supplemental Petition

[20] *Id*. at 122.

for Review. As stated in the CTA *En Banc* affirmed decision of the CTA in Division, "[i]n its *Supplemental Petition for Review*, respondent seeks to be fully credited of the payments it made to cover the deficiency WTC and FWT. Thus, the remaining assessments cover only the deficiency income tax, final income tax – FCDU, and (EWT) in the modified total amount of ₱33,076,944.18, x x x."[21] The aforesaid motion was granted and the supplemental petition was admitted by the CTA in Division. Undeniably, the acceptance of said payments was never questioned by petitioner. Indeed, the decision of the CTA in Division, which decision was affirmed by the CTA *En Banc*, covered only the remaining questioned assessment, namely: income tax, final income tax – FCDU, and EWT. Clearly, the payment of the deficiency WTC and FWT was made together with the reiteration in the petition for the cancellation of the assessment notices on the alleged deficiency income tax, final income tax – FCDU, and EWT.

When respondent paid the deficiency WTC and FWT assessments, petitioner accepted said payment without any opposition. This effectively extinguished respondent's obligation to pay the subject taxes. It bears emphasis that, obligations are extinguished, among others, by payment or performance.[22] Under Article 1232 of the Civil Code, payment means not only the delivery of money but also the performance, in any other manner, of an obligation. As intended, which intention was recognized by the CTA in Division and CTA *En Banc*, the question regarding the income tax, final income tax – FCDU, and EWT, was kept unaffected by the payment of the deficiency WTC and FWT assessments.

By way of reiteration, taking into consideration the foregoing flaws found in the subject waivers, the same are void, and the supposed suspensions of the prescriptive periods within which to issue the subject assessments were not legally effected. And the facts of this case do not call for the application of the doctrine of estoppel.

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[21] *Id*. at 30.

[22] Article 1231 (1), Civil Code of the Philippines.

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It must be remembered that the execution of a Waiver of Statute of Limitations may be beneficial to the taxpayer or to the BIR, or to both. Considering however, that it results to a derogation of some of the rights of the taxpayer, the same must be executed in accordance with pre-set guidelines and procedural requirements. Otherwise, it does not serve its purpose, and the taxpayer has all the right to invoke its nullity. For that reason, this Court cannot turn blind on the importance of the Statute of Limitations upon the assessment and collection of internal revenue taxes provided for under the NIRC. 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 properly in the making of the 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 may 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 recommends the approval of the law.[23]

In fine, considering the defects in the First and Second Waivers, the period to assess or collect deficiency taxes for the taxable year 1998 was never extended. Consequently, the Formal Letter of Demand and Assessment Notices dated 24 June 2004 for deficiency income tax, FCDU, and EWT in the aggregate amount of ₱33,076,944.18, including increments, were issued by the BIR beyond the three-year prescriptive period and are therefore void.[24]

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[23] *Republic of the Philippines v. Ablaza*, 108 Phil. 1105, 1108 (1960).

[24] See *CIR v. Kudos Metal Corp., supra* note 16 at 329.

WHEREFORE, the petition is **DENIED** for lack of merit. No costs.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson), Peralta,*[**] *Bersamin,* and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 201494. July 29, 2015]

MARITES R. CUSAP, *petitioner, vs.* **ADIDAS PHILIPPINES, INC., (ADIDAS), PROMOTION RESOURCES & INTER-MARKETING EXPONENTS, INC. (PRIME) and JC ATHLETES, INC. (JCA),** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYER AND EMPLOYEE RELATIONSHIP; LABOR-ONLY CONTRACTING; DEFINED; REQUIREMENTS; SUBSTANTIAL CAPITAL OR INVESTMENT REQUIREMENT FOR A LEGITIMATE JOB CONTRACTOR OR SUBCONTRACTOR NOT SATISFIED.— Article 106 of the Labor Code provides that *"There is 'labor-only' contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.* ***In such cases, the person or intermediary shall be considered merely***

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[*] Per Special Order No. 2102 dated 13 July 2015.

[**] Acting member per Special Order No. 2103 dated 13 July 2015.