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FIRST DIVISION

[G.R. No. 187589. December 3, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **THE STANLEY WORKS SALES (PHILS.), INCORPORATED,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; PRESCRIPTION FOR VIOLATIONS OF ANY PROVISION OF THE CODE; A WAIVER OF THE STATUTE OF LIMITATIONS, WHETHER ON ASSESSMENT OR COLLECTION, SHOULD NOT BE CONSTRUED AS A WAIVER OF THE RIGHT TO INVOKE THE DEFENSE OF PRESCRIPTION BUT, RATHER, AN AGREEMENT BETWEEN THE TAXPAYER AND THE BUREAU OF INTERNAL REVENUE (BIR) TO EXTEND THE PERIOD TO A DATE CERTAIN.— The statute of limitations on the right to assess and collect a tax means that once the period established by law for the assessment and collection of taxes has lapsed, the government's corresponding right to enforce that action is barred by provision of law. The period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222 (b) of the NIRC. In relation to the implementation of this provision, the CIR issued Revenue Memorandum Order (RMO) No. 20-90 on 4 April 1990 to provide guidelines on the proper execution of the Waiver of the Statute of Limitations. x x x In *Philippine Journalist, Inc. v. Commissioner of Internal Revenue,* the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's

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inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law. To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.

2. ID.; ID.; A STATUTE OF LIMITATIONS ON THE ASSESSMENT AND COLLECTION OF INTERNAL REVENUE TAXES WAS ADOPTED TO SERVE A PURPOSE THAT WOULD BENEFIT BOTH THE TAXPAYER AND THE GOVERNMENT; SIGNIFICANCE THEREOF.— Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government. This Court has expounded on the significance of adopting a statute of limitation on tax assessment and collection in this case: The provision of law on prescription was adopted in our statute books upon recommendation of the tax commissioner of the Philippines which declares: Under the former law, the right of the Government to collect the tax does not prescribe. However, in fairness to the taxpayer, the Government should be estopped from collecting the tax where it failed to make the necessary investigation and assessment within 5 years after the filing of the return and where it failed to collect the tax within 5 years from the date of assessment thereof. Just as the government is interested in the stability

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of its collection, so also are the taxpayers entitled to an assurance that they will not be subjected to further investigation for tax purposes after the expiration of a reasonable period of time. (Vol. II, Report of the Tax Commission of the Philippines, pp. 321-322).

3. ID.; ID.; SINCE THE WAIVER IN CASE AT BAR IS DEFECTIVE AND THEREFORE INVALID, IT PRODUCES NO EFFECT; THE PRESCRIPTIVE PERIOD FOR COLLECTING DEFICIENCY INCOME TAX FOR TAXABLE YEAR 1989 WAS NEVER SUSPENDED OR TOLLED, AND, CONSEQUENTLY, THE RIGHT TO ENFORCE COLLECTION BASED ON ASSESSMENT NOTICE NO. 002523-89-6014 HAS ALREADY PRESCRIBED.— We do not agree with petitioner that respondent is now barred from setting up the defense of prescription by arguing that the repeated requests and positive acts of the latter constituted estoppels, as these were attempts to persuade the CIR to delay the collection of respondent's deficiency income tax. True, respondent filed a Protest and asked for a reconsideration and cancellation of the assessment on 19 May 1993; however, it is uncontested that petitioner failed to act on that Protest until 29 November 2001, when the latter required the submission of other supporting documents. In fact, the Protest was denied only on 22 March 2004. Petitioner's reliance on *CIR v. Suyoc* (Suyoc) is likewise misplaced. In *Suyoc*, the BIR was induced to extend the collection of tax through repeated requests for extension to pay and for reinvestigation, which were all denied by the Collector. Contrarily, herein respondent filed only one Protest over the assessment, and petitioner denied it 10 years after. The subsequent letters of respondent cannot be construed as inducements to extend the period of limitation, since the letters were intended to urge petitioner to act on the Protest, and not to persuade the latter to delay the actual collection. Petitioner cannot take refuge in *BPI* either, considering that respondent and BPI are similarly situated. Similar to *BPI*, this is a simple case in which the BIR Commissioner and other BIR officials failed to act promptly in resolving and denying the request for reconsideration filed by the taxpayer and in enforcing the collection on the assessment. Both in *BPI* and in this case, the BIR presented no reason or explanation as to why it took many years to address the Protest of the taxpayer. The statute of limitations imposed by the Tax Code precisely intends to

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protect the taxpayer from prolonged and unreasonable assessment and investigation by the BIR. Even assuming *arguendo* that the Waiver executed by respondent on 16 November 1993 is valid, the right of petitioner to collect the deficiency income tax for the year 1989 would have already prescribed by 2001 when the latter first acted upon the protest, more so in 2004 when it finally denied the reconsideration. Records show that the Waiver extends only for the period ending 30 June 1994, and that there were no further extensions or waivers executed by respondent. Again, a waiver is not a unilateral act of the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. Since the Waiver in this case is defective and therefore invalid, it produces no effect; thus, the prescriptive period for collecting deficiency income tax for taxable year 1989 was never suspended or tolled. Consequently, the right to enforce collection based on Assessment Notice No. 002523-89-6014 has already prescribed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Quisumbing Torres for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari*[1] filed by the Commissioner of Internal Revenue (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Tax Appeals *En Banc* (CTA *En Banc*) Decision[2] dated 27 February 2009 and Resolution[3] dated 24 April 2009 in C.T.A. EB No. 406.

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[1] *Rollo*, pp. 8-29.

[2] *Id*. at 30-49; penned by Associate Justice Erlinda P. Uy and concurred in by then Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Caesar A. Casanova, and Olga Palanca-Enriquez.

[3] *Id*. at 50-51.

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THE FACTS

The pertinent findings of fact of the CTA *En Banc* are as follows:

Petitioner is the duly appointed officer of the Bureau of Internal Revenue (BIR) mandated to exercise the powers and perform the duties of his office including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code. Respondent, on the other hand, is a domestic corporation duly organized and existing under Philippine laws and duly registered with the Securities and Exchange Commission. Its office address is at the 5th Floor, Pan Pacific Hotel, Adriatico Street corner Gen. Malvar Street, Manila.

Respondent is authorized "to engage in the business of designing, manufacturing, fabricating, or otherwise producing, and the purchase, sale at wholesale, importation, export, distribution, marketing or otherwise dealing with, construction and hardware materials, tools, fixtures and equipment."

On January 1, 1979, respondent and Stanley Works Agencies (Pte.) Limited, Singapore (Stanley-Singapore) entered into a Representation Agreement. Under such agreement, Stanley-Singapore appointed respondent as its sole agent for the selling of its products within the Philippines on an indent basis.

On April 16, 1990, respondent filed with the BIR its Annual Income Tax Return for taxable year 1989.

On March 19, 1993, pursuant to Letter of Authority dated July 3, 1992, the BIR issued against respondent a Pre-Assessment Notice (PAN) No. 002523 for 1989 deficiency income tax.

On March 29, 1993, respondent received its copy of the PAN.

On April 12, 1993, petitioner, through OTC Domingo C. Paz of Revenue Region No. 4B-2 of Makati, issued to respondent Assessment Notice No. 002523-89-6014 for deficiency income tax for taxable year 1989. The Notice was sent on April 15, 1993 and respondent received it on April 21, 1993.

On May 19, 1993, respondent, through its external auditors Punongbayan & Araullo, filed a protest letter and requested reconsideration and cancellation of the assessment.

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On November 16, 1993, a certain Mr. John Ang, on behalf of respondent, executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver). Under the terms of the Waiver, respondent waived its right to raise the defense of prescription under Section 223 of the NIRC of 1977 insofar as the assessment and collection of any deficiency taxes for the year ended December 31, 1989, but not after June 30, 1994. The Waiver was not signed by petitioner or any of his authorized representatives and did not state the date of acceptance as prescribed under Revenue Memorandum Order No. 20-90. Respondent did not execute any other Waiver or similar document before or after the expiration of the November 16, 1993 Waiver on June 30, 1994.

On January 6, 1994, respondent, through its external auditors Punongbayan & Araullo, wrote a letter to the Chief of the BIR Appellate Division and requested the latter to take cognizance of respondent's protest/request for reconsideration, asserting that the dispute involved pure questions of law. On February 22, 1994, respondent sent a similar letter to the Revenue District Officer (RDO) of BIR Revenue Region No. 4B-2 and asked for the transmittal of the entire docket of the subject tax assessment to the BIR Appellate Division.

On September 30, 1994, respondent, through its external auditors Punongbayan & Araullo, submitted a Supplemental Memorandum on its protest to the BIR Revenue Region No. 4B-2.

On September 20, 1995, respondent, through its external auditors Punongbayan & Araullo, filed a Supplemental Memorandum with the BIR Appellate Division.

On November 29, 2001, the Chief of the BIR Appellate Division sent a letter to respondent requiring it to submit duly authenticated financial statements for the worldwide operations of Stanley Works and a sworn declaration from the home office on the allocated share of respondent as a "branch office."

On December 11, 2001, respondent, through its counsel, the Quisumbing Torres Law Offices, wrote the BIR Appellate Division and asked for an extension of period within which to comply with the request for submission of documents. On January 15, 2002, respondent sent a request for an extension of period to submit a Supplemental Memorandum.

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On March 4, 2002, respondent, through its counsel, the Quisumbing Torres Law Offices, submitted a Supplemental Memorandum alleging, *inter alia*, that petitioner's right to collect the alleged deficiency income tax has prescribed.

On March 22, 2004, petitioner rendered a Decision denying respondent's request for reconsideration and ordering respondent to pay the deficiency income tax plus interest that may have accrued. The dispositive portion reads:

> IN VIEW WHEREOF, this Office resolves, as it hereby resolves, to DENY the request for reconsideration of STANLEY WORK SALES (Philippines), INC. dated May 19, 1993 of Assessment No. 002523-89-6014 dated April 12, 1993 issued by this Bureau demanding payment of the total amount of Php41,284,968.34 as deficiency income tax for taxable year 1989. Consequently, Stanley Works Sales (Philippines), Inc. is hereby ordered to pay the above-stated amount plus interest that may have accrued thereon to the Collection Service, within thirty (30) days from receipt hereof, otherwise, collection will be effected through the summary remedies provided by law.
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> This constitutes the final decision of this Office on the matter.

On March 30, 2004, respondent received its copy of the assailed Decision. Hence, on April 28, 2004, respondent filed before the Court in Division a Petition for Review docketed as C.T.A. Case No. 6971 entitled "*The Stanley Works Sales (Philippines), Inc., petitioner, vs. Commissioner of Internal Revenue, respondent.* x x x

THE CTA FIRST DIVISION RULING[4]

After trial on the merits, the CTA First Division found that although the assessment was made within the prescribed period, the period within which petitioner may collect deficiency income taxes had already lapsed. Accordingly, the court cancelled Assessment Notice No. 002523-89-6014 dated 12 April 1993.

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[4] https://docs.google.com/viewer?url=http://cta.judiciary.gov.ph/home/download/b44b105b6015df0060c08414b6532e67 (visited 14 May 2014), penned by Associate Justice Lovell R. Bautista and concurred in by then Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

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The CTA Division ruled that the request for reconsideration did not suspend the running of the prescriptive period to collect deficiency income tax. There was no valid waiver of the statute of limitations, as the following infirmities were found: (1) there was no conformity, either by respondent or his duly authorized representative; (2) there was no date of acceptance to show that both parties had agreed on the Waiver before the expiration of the prescriptive period; and (3) there was no proof that respondent was furnished a copy of the Waiver. Applying jurisprudence and relevant BIR rulings, the waiver was considered defective; thus, the period for collection of deficiency income tax had already prescribed.

THE CTA *EN BANC* RULING[5]

The CTA *En Banc* affirmed the CTA First Division Decision dated 6 May 2008 and Resolution dated 14 July 2008. The Waiver executed by respondent on 16 November 1993 could not be used by petitioner as a basis for extending the period of assessment and collection, as there was no evidence that the latter had acted upon the waiver. Hence, the unilateral act of respondent in executing said document did not produce any effect on the prescriptive period for the assessment and collection of its deficiency tax. As to the issue of estoppel, the court ruled that this measure could not be used against respondent, as it was petitioner who had failed to act within the prescribed period on the protest asking for a reconsideration of the assessment.

ISSUES

In the present recourse, petitioner raises the following issues:

Whether or not petitioner's right to collect the deficiency income tax of respondent for taxable year 1989 has prescribed.

Whether or not respondent's repeated requests and positive acts constitute "estoppel" from setting up the defense of prescription under the NIRC.[6]

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[5] *Supra* note 2.

[6] *Rollo*, pp. 16-17; Petition for Review on *Certiorari*, pp. 9-10.

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THE COURT'S RULING

We deny the Petition.

Petitioner mainly argues that in view of respondent's execution of the Waiver of the statute of limitations, the period to collect the assessed deficiency income taxes has not yet prescribed.

The resolution of the main issue requires a factual determination of the proper execution of the Waiver. The CTA Division has already made a factual finding on the infirmities of the Waiver executed by respondent on 16 November 1993. The Court found that the following requisites were absent:

(1) Conformity of either petitioner or a duly authorized representative;

(2) Date of acceptance showing that both parties had agreed on the Waiver before the expiration of the prescriptive period; and

(3) Proof that respondent was furnished a copy of the Waiver.[7]

These findings are undisputed by petitioner. In fact, it cites *BPI v. CIR*[8] to support its contention that the approval of the CIR need not be express, but may be implied from the acts of the BIR officials in response to the request for reinvestigation. Accordingly, petitioner argues that the actual approval of the Waiver is apparent from the proceedings that were additionally conducted in determining the propriety of the subject assessment.[9]

We do not agree.

The statute of limitations on the right to assess and collect a tax means that once the period established by law for the assessment and collection of taxes has lapsed, the government's

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[7] *Supra* note 4.

[8] 510 Phil. 1 (2005).

[9] *Rollo*, p. 19.

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corresponding right to enforce that action is barred by provision of law.

The period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222 (b) of the NIRC. In relation to the implementation of this provision, the CIR issued Revenue Memorandum Order (RMO) No. 20-90[10] on 4 April 1990 to provide guidelines on the proper execution of the Waiver of the Statute of Limitations. In the execution of this 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 x x x

2. x x x

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. x x x.

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

A. In the National Office

x x x	x x x	x x x
3. Commissioner	For tax cases involving more than 1M	

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.

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[10] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

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x x x x x x x x x

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.

Furthermore, jurisprudence is replete with requisites of a valid waiver:

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. 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.[11]

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[11] *CIR v. Kudos Metal Corporation*, G.R. No. 178087, 5 May 2010, 620

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In *Philippine Journalist, Inc. v. Commissioner of Internal Revenue,*[12] the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005[13] and 29-2012.[14] Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.

To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.[15]

SCRA 232, 243-244, citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* 488 Phil. 218, 235 (2004).

[12] 488 Phil. 218 (2004).

[13] SUBJECT: Salient Features of Supreme Court Decision on Waiver of the Statute of Limitations under the Tax Code, issued on 2 February 2005.

[14] SUBJECT: Waiver of the Defense of Prescription under the Statute of Limitations, issued on 29 June 2012.

[15] *BPI v. CIR, supra* note 8.

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Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government.

This Court has expounded on the significance of adopting a statute of limitation on tax assessment and collection in this case:

> The provision of law on prescription was adopted in our statute books upon recommendation of the tax commissioner of the Philippines which declares:
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> > Under the former law, the right of the Government to collect the tax does not prescribe. However, in fairness to the taxpayer, the Government should be estopped from collecting the tax where it failed to make the necessary investigation and assessment within 5 years after the filing of the return and where it failed to collect the tax within 5 years from the date of assessment thereof. Just as the government is interested in the stability of its collection, so also are the taxpayers entitled to an assurance that they will not be subjected to further investigation for tax purposes after the expiration of a reasonable period of time. (Vol. II, Report of the Tax Commission of the Philippines, pp. 321-322)
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> 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 legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment

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by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.[16]

Anent the second issue, we do not agree with petitioner that respondent is now barred from setting up the defense of prescription by arguing that the repeated requests and positive acts of the latter constituted estoppels, as these were attempts to persuade the CIR to delay the collection of respondent's deficiency income tax.

True, respondent filed a Protest and asked for a reconsideration and cancellation of the assessment on 19 May 1993; however, it is uncontested that petitioner failed to act on that Protest until 29 November 2001, when the latter required the submission of other supporting documents. In fact, the Protest was denied only on 22 March 2004.

Petitioner's reliance on *CIR v. Suyoc*[17] (Suyoc) is likewise misplaced. In *Suyoc*, the BIR was induced to extend the collection of tax through repeated requests for extension to pay and for reinvestigation, which were all denied by the Collector. Contrarily, herein respondent filed only one Protest over the assessment, and petitioner denied it 10 years after. The subsequent letters of respondent cannot be construed as inducements to extend the period of limitation, since the letters were intended to urge petitioner to act on the Protest, and not to persuade the latter to delay the actual collection.

Petitioner cannot take refuge in *BPI*[18] either, considering that respondent and BPI are similarly situated. Similar to *BPI*, this is a simple case in which the BIR Commissioner and other BIR officials failed to act promptly in resolving and denying the request for reconsideration filed by the taxpayer and in

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

[17] 104 Phil 819 (1958).

[18] *Supra* note 8.

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enforcing the collection on the assessment. Both in *BPI* and in this case, the BIR presented no reason or explanation as to why it took many years to address the Protest of the taxpayer. The statute of limitations imposed by the Tax Code precisely intends to protect the taxpayer from prolonged and unreasonable assessment and investigation by the BIR.[19]

Even assuming *arguendo* that the Waiver executed by respondent on 16 November 1993 is valid, the right of petitioner to collect the deficiency income tax for the year 1989 would have already prescribed by 2001 when the latter first acted upon the protest, more so in 2004 when it finally denied the reconsideration. Records show that the Waiver extends only for the period ending 30 June 1994, and that there were no further extensions or waivers executed by respondent. Again, a waiver is not a unilateral act of the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain.[20]

Since the Waiver in this case is defective and therefore invalid, it produces no effect; thus, the prescriptive period for collecting deficiency income tax for taxable year 1989 was never suspended or tolled. Consequently, the right to enforce collection based on Assessment Notice No. 002523-89-6014 has already prescribed.

WHEREFORE, premises considered, the Petition is **DENIED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[19] *Id.*

[20] *Philippine Journalist, Inc. v. Commissioner of Internal Revenue, supra* note 12.