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FIRST DIVISION

[G.R. No. 162852. December 16, 2004]

PHILIPPINE JOURNALISTS, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYNOPSIS

Petitioner filed its Annual Income Tax Return for the calendar year which ended on December 31, 1994, and paid its tax liability in the amount of ₱10,247,384.00. The Bureau of Internal Revenue (BIR), however, found that petitioner had deficiency taxes. Subsequently, petitioner's comptroller executed a Waiver of the Statute of Limitations under the National Internal Revenue Code (NIRC), which document waived the running of the prescriptive period provided by Sections 223 and 224 of the NIRC. On December 9, 1998, the BIR issued an assessment and sent a collection letter to petitioner demanding the payment of the amount of ₱111,291,214.46. Petitioner contested the assessment alleging that it had no factual and legal basis. Subsequently, however, a warrant of distraint and/or levy was issued to the petitioner. The present petition revolves around the issue of whether or not the waiver document is valid.

In granting the petition, the Supreme Court ruled that the Waiver of the Statute of Limitations signed by petitioner's comptroller is not valid and binding, for it did not specify a definite agreed date between the BIR and petitioner within which the former may assess and collect revenue taxes. Thus, petitioner's waiver became unlimited in time, violating Section 222(b) of the NIRC. The waiver was also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC. There was also doubt as to whether the waiver was actually agreed before the expiration of the three-year prescriptive period. Finally, the records showed that petitioner was not furnished a copy of the waiver. Thus, the waiver document was incomplete and defective, and the three-year prescriptive period was not tolled or extended and continued to run until April 17, 1998. Consequently, the assessment issued on December 9, 1998 was invalid because it was issued beyond the three year period. In

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the same manner, the warrant of distraint and/or levy was null and void for having been issued pursuant to an invalid assessment.

SYLLABUS

1. **REMEDIAL LAW; REPUBLIC ACT NO. 1125; COURT OF TAX APPEALS; APPELLATE JURISDICTION.**— Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court: "SEC. 7. *Jurisdiction.* — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided — (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or *other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue.*" The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.

2. **TAXATION LAW; NATIONAL INTERNAL REVENUE CODE; STATUTE OF LIMITATIONS ON ASSESSMENT AND COLLECTION OF INTERNAL REVENUE TAXES; PURPOSE.**— 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 for 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.

3. **ID.; ID.; ID.; WAIVER OF STATUTE OF LIMITATIONS; NOT A WAIVER OF THE RIGHT TO INVOKE THE DEFENSE OF PRESCRIPTION.**— A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver

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of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, 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.

4. ID.; ID.; ID.; ID.; NOT A UNILATERAL ACT BY THE TAXPAYER OR THE BUREAU OF INTERNAL REVENUE.— The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (₱1,000,000.00) and executed almost seven months before the expiration of the three-year prescription period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR.

APPEARANCES OF COUNSEL

Balmeo & Peñasales for petitioner.
Gerlo C. Cacaitan and Mario A. Saldevar for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review filed by Philippine Journalists, Incorporated (PJI) assailing the Decision[1] of the Court of Appeals dated August 5, 2003,[2] which ordered petitioner to pay the assessed

[1] Penned by Court of Appeals Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justices Mariano C. Del Castillo and Amelita G. Tolentino.

[2] *Rollo*, pp. 62-71.

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tax liability of ₱111,291,214.46 and the Resolution[3] dated March 31, 2004 which denied the Motion for Reconsideration.

The case arose from the Annual Income Tax Return filed by petitioner for the calendar year ended December 31, 1994 which presented a net income of ₱30,877,387.00 and the tax due of ₱10,807,086.00. After deducting tax credits for the year, petitioner paid the amount of ₱10,247,384.00.

On August 10, 1995, Revenue District Office No. 33 of the Bureau of Internal Revenue (BIR) issued Letter of Authority No. 87120[4] for Revenue Officer Federico de Vera, Jr. and Group Supervisor Vivencio Gapasin to examine petitioner's books of account and other accounting records for internal revenue taxes for the period January 1, 1994 to December 31, 1994.

From the examination, the petitioner was told that there were deficiency taxes, inclusive of surcharges, interest and compromise penalty in the following amounts:

Value Added Tax	₱ 229,527.90
Income Tax	125,002,892.95
Withholding Tax	2,748,012.35
Total	₱ 127,980,433.20

In a letter dated August 29, 1997, Revenue District Officer Jaime Concepcion invited petitioner to send a representative to an informal conference on September 15, 1997 for an opportunity to object and present documentary evidence relative to the proposed assessment. On September 22, 1997, petitioner's Comptroller, Lorenza Tolentino, executed a "Waiver of the Statute of Limitation Under the National Internal Revenue Code (NIRC)."[5] The document "waive[d] the running of the prescriptive period provided by Sections 223 and 224 and other relevant provisions of the NIRC and consent[ed] to the assessment and collection of taxes which may be found due

[3] *Id.* at 60-61.

[4] Court of Appeals *Rollo*, p. 349.

[5] *Id.* at 348.

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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 investigation."[6]

On July 2, 1998, Revenue Officer De Vera submitted his audit report recommending the issuance of an assessment and finding that petitioner had deficiency taxes in the total amount of ₱136,952,408.97. On October 5, 1998, the Assessment Division of the BIR issued Pre-Assessment Notices which informed petitioner of the results of the investigation. Thus, BIR Revenue Region No. 6, Assessment Division/Billing Section, issued Assessment/Demand No. 33-1-000757-94[7] on December 9, 1998 stating the following deficiency taxes, inclusive of interest and compromise penalty:

Income Tax	₱108,743,694.88
Value Added Tax	184,299.20
Expanded Withholding Tax	2,363,220.38
Total	₱111,291,214.46

On March 16, 1999, a Preliminary Collection Letter was sent by Deputy Commissioner Romeo S. Panganiban to the petitioner to pay the assessment within ten (10) days from receipt of the letter. On November 10, 1999, a Final Notice Before Seizure[8] was issued by the same deputy commissioner giving the petitioner ten (10) days from receipt to pay. Petitioner received a copy of the final notice on November 24, 1999. By letters dated November 26, 1999, petitioner asked to be clarified how the tax liability of ₱111,291,214.46 was reached and requested an extension of thirty (30) days from receipt of the clarification within which to reply.[9]

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[6] *Id.*

[7] *Rollo*, p. 99 (Assessment for deficiency income taxes), p. 100 (Assessment for deficiency value-added taxes), p. 101 (Assessment for deficiency expanded withholding taxes).

[8] *Id.* at 98.

[9] *Id.* at 102.

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The BIR received a follow-up letter from the petitioner asserting that its (PJI) records do not show receipt of Tax Assessment/Demand No. 33-1-000757-94.[10] Petitioner also contested that the assessment had no factual and legal basis. On March 28, 2000, a Warrant of Distraint and/or Levy No. 33-06-046[11] signed by Deputy Commissioner Romeo Panganiban for the BIR was received by the petitioner.

Petitioner filed a Petition for Review[12] with the Court of Tax Appeals (CTA) which was amended on May 12, 2000. Petitioner complains: (a) that no assessment or demand was received from the BIR; (b) that the warrant of distraint and/or levy was without factual and legal bases as its issuance was premature; (c) that the assessment, having been made beyond the 3-year prescriptive period, is null and void; (d) that the issuance of the warrant without being given the opportunity to dispute the same violates its right to due process; and (e) that the grave prejudice that will be sustained if the warrant is enforced is enough basis for the issuance of the writ of preliminary injunction.

On May 14, 2002, the CTA rendered its decision,[13] to wit:

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

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[10] Court of Appeals *Rollo*, p. 61.

[11] *Rollo*, p. 103.

[12] *Id.* at 90-97.

[13] Penned by Presiding Judge Ernesto D. Acosta as concurred in by Associate Judge Juanito C. Castañeda, Jr.

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Letter No. 76134, Mr. Sanchez presented three identification cards, one of which is his company ID with herein petitioner.

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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.

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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 assess/collect the tax after the regular three-year period of prescription should be filled up. . .

Secondly, the waiver failed to state the date of acceptance by the Bureau which under the aforequoted RMO should likewise be indicated. . . .

. . . . . .

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. . . .

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-

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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 ₱111,291,214.46 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.[14]

After the motion for reconsideration of the Commissioner of Internal Revenue was denied by the CTA in a Resolution dated August 2, 2002, an appeal was filed with the Court of Appeals on August 12, 2002.

In its decision dated August 5, 2003, the Court of Appeals disagreed with the ruling of the CTA, to wit:

. . . The petition for review filed on 26 April 2000 with CTA was neither timely filed nor the proper remedy. Only decisions of the BIR, denying the request for reconsideration or reinvestigation may be appealed to the CTA. Mere assessment notices which have become final after the lapse of the thirty (30)-day reglementary period are not appealable. Thus, the CTA should not have entertained the petition at all.

. . . . . .

. . . [T]he CTA found the waiver executed by Phil. Journalists to be invalid for the following reasons: (1) it does not indicate a definite expiration date; (2) it does not state the date of acceptance by the BIR; and (3) Phil. Journalist, the taxpayer, was not furnished a copy of the waiver. These grounds are merely formal in nature. The date of acceptance by the BIR does not categorically appear in the document but it states at the bottom page that the BIR "accepted and agreed to:". . ., followed by the signature of the BIR's authorized

[14] *Rollo*, pp. 82-89.

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representative. Although the date of acceptance was not stated, the document was dated 22 September 1997. This date could reasonably be understood as the same date of acceptance by the BIR since a different date was not otherwise indicated. As to the allegation that Phil. Journalists was not furnished a copy of the waiver, this requirement appears ridiculous. Phil. Journalists, through its comptroller, Lorenza Tolentino, signed the waiver. Why would it need a copy of the document it knowingly executed when the reason why copies are furnished to a party is to notify it of the existence of a document, event or proceeding?

. . .

As regards the need for a definite expiration date, this is the biggest flaw of the decision. The period of prescription for the assessment of taxes may be extended provided that the extension be made in writing and that it be made prior to the expiration of the period of prescription. These are the requirements for a valid extension of the prescriptive period. To these requirements provided by law, the memorandum order adds that the length of the extension be specified by indicating its expiration date. This requirement could be reasonably construed from the rule on extension of the prescriptive period. But this requirement does not apply in the instant case because what we have here is not an extension of the prescriptive period but a waiver thereof. These are two (2) very different things. What Phil. Journalists executed was a renunciation of its right to invoke the defense of prescription. This is a valid waiver. When one waives the prescriptive period, it is no longer necessary to indicate the length of the extension of the prescriptive period since the person waiving may no longer use this defense.

WHEREFORE, the 02 August 2002 resolution and 14 May 2002 decision of the CTA are hereby SET ASIDE. Respondent Phil. Journalists is ordered [to] pay its assessed tax liability of ₱111,291,214.46.

SO ORDERED.[15]

Petitioner's Motion for Reconsideration was denied in a Resolution dated March 31, 2004. Hence, this appeal on the following assignment of errors:

I.

The Honorable Court of Appeals committed grave error in ruling that it is outside the jurisdiction of the Court of Tax Appeals to entertain

[15] *Id.* at 68-70.

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the Petition for Review filed by the herein Petitioner at the CTA despite the fact that such case inevitably rests upon the validity of the issuance by the BIR of warrants of distraint and levy contrary to the provisions of Section 7(1) of Republic Act No. 1125.

II.

The Honorable Court of Appeals gravely erred when it ruled that failure to comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 is merely a formal defect that does not invalidate the waiver of the statute of limitations without stating the legal justification for such conclusion. Such ruling totally disregarded the mandatory requirements of Section 222(b) of the Tax Code and its implementing regulation, RMO No. 20-90 which are substantive in nature. The RMO provides that violation thereof subjects the erring officer to administrative sanction. This directive shows that the RMO is not merely cover forms.

III.

The Honorable Court of Appeals gravely erred when it ruled that the assessment notices became final and unappealable. The assessment issued is void and legally non-existent because the BIR has no power to issue an assessment beyond the three-year prescriptive period where there is no valid and binding waiver of the statute of limitation.

IV.

The Honorable Court of Appeals gravely erred when it held that the assessment in question has became final and executory due to the failure of the Petitioner to protest the same. Respondent had no power to issue an assessment beyond the three year period under the mandatory provisions of Section 203 of the NIRC. Such assessment should be held void and non-existent, otherwise, Section 203, an expression of a public policy, would be rendered useless and nugatory. Besides, such right to assess cannot be validly granted after three years since it would arise from a violation of the mandatory provisions of Section 203 and would go against the vested right of the Petitioner to claim prescription of assessment.

V.

The Honorable Court of Appeals committed grave error when it HELD valid a defective waiver by considering the latter a waiver of the right to invoke the defense of prescription rather than an extension of

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the three year period of prescription (to make an assessment) as provided under Section 222 in relation to Section 203 of the Tax Code, an interpretation that is contrary to law, existing jurisprudence and outside of the purpose and intent for which they were enacted.[16]

We find merit in the appeal.

The first assigned error relates to the jurisdiction of the CTA over the issues in this case. The Court of Appeals ruled that only decisions of the BIR denying a request for reconsideration or reinvestigation may be appealed to the CTA. Since the petitioner did not file a request for reinvestigation or reconsideration within thirty (30) days, the assessment notices became final and unappealable. The petitioner now argue that the case was brought to the CTA because the warrant of distraint or levy was illegally issued and that no assessment was issued because it was based on an invalid waiver of the statutes of limitations.

We agree with petitioner. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:

> SEC. 7. *Jurisdiction.* — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or *other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;* (Italics supplied).

The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the

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[16] *Id.* at 15-16.

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CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.

This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*,[17] we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*,[18] the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court.

The second and fifth assigned errors both focus on Revenue Memorandum Circular No. 20-90 (RMO No. 20-90) on the requisites of a valid waiver of the statute of limitations. The Court of Appeals held that the requirements and procedures laid down in the RMO are only formal in nature and did not invalidate the waiver that was signed even if the requirements were not strictly observed.

The NIRC, under Sections 203 and 222,[19] provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer

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[17] 111 Phil. 197 (1961).

[18] G.R. No. 115712, 25 February 1999, 303 SCRA 614.

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

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against unreasonable investigation.[20] Unreasonable investigation contemplates cases where the period for 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. As was held in *Republic of the Phils. v. Ablaza*:[21]

> 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.* (Italics supplied)

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, thus:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

. . . . . .

(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.

[20] J.C. Vitug and E.D. Acosta, *TAX LAW AND JURISPRUDENCE* 295 (2nd ed. 2002), citing Report of the Tax Commission, Vol. I, p. 98.

[21] 108 Phil. 1105, 1108 (1960).

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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. . . .*

2. . . .

   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. . . .

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

   A. In the National Office

   . . . .

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.

   . . . .

   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.* (Italics supplied)[22]

A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must

[22] *Rollo*, pp. 84-85.

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therefore be carefully and strictly construed.[23] The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, 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.[24] RMO No. 20-90 explains the rationale of a waiver:

> . . . 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.* (Italics supplied)

As found by the CTA, the Waiver of Statute of Limitations, signed by petitioner's comptroller on September 22, 1997 is not valid and binding because it does not conform with the provisions of RMO No. 20-90. It did not specify a definite agreed date between the BIR and petitioner, within which the former may assess and collect revenue taxes. Thus, petitioner's waiver became unlimited in time, violating Section 222(b) of the NIRC.

The waiver is also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No.

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[23] See *Ouano v. Court of Appeals*, G.R. No. 129279, 4 March 2003, 398 SCRA 525, citing *People v. Donato*, G.R. No. 72969, 5 June 1991, 198 SCRA 130.

[24] *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, G.R. No. 104171, 24 February 1999, 303 SCRA 546.

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20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (₱1,000,000.00) and executed almost seven months before the expiration of the three-year prescription period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR.

The case of *Commissioner of Internal Revenue v. Court of Appeals,*[25] dealt with waivers that were not signed by the Commissioner but were argued to have been given implied consent by the BIR. We invalidated the subject waivers and ruled:

> Petitioner's submission is inaccurate. . . .
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> . . . . . .
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> The Court of Appeals itself also passed upon the validity of the waivers executed by Carnation, observing thus:
>
> > We cannot go along with the petitioner's theory. Section 319 of the Tax Code earlier quoted is clear and explicit that the waiver of the five-year[26] prescriptive period must be in writing and signed by both the BIR Commissioner and the taxpayer.
> >
> > Here, the three waivers signed by Carnation do not bear the written consent of the BIR Commissioner as required by law.
> >
> > We agree with the CTA in holding "these 'waivers' to be invalid and without any binding effect on petitioner (Carnation) for the reason that there was no consent by the respondent (Commissioner of Internal Revenue)."
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> . . . . . .

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[25] See note 18.

[26] This period was reduced to three (3) years by Batas Pambansa Blg. 700 (5 April 1984), amending Sections 318 and 319 of the Revenue Code. Under Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, the same three (3) year period was maintained under Sections 203 and 222 of the NIRC.

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> For sure, no such written agreement concerning the said three waivers exists between the petitioner and private respondent Carnation.
>
> . . . . . .
>
> What is more, the waivers in question reveal that they are in no wise unequivocal, and therefore necessitates for its binding effect the concurrence of the Commissioner of Internal Revenue. . . . *On this basis neither implied consent can be presumed nor can it be contended that the waiver required under Sec. 319 of the Tax Code is one which is unilateral nor can it be said that concurrence to such an agreement is a mere formality because it is the very signatures of both the Commissioner of Internal Revenue and the taxpayer which give birth to such a valid agreement.*[27] (Italics supplied)

The other defect noted in this case is the date of acceptance which makes it difficult to fix with certainty if the waiver was actually agreed before the expiration of the three-year prescriptive period. The Court of Appeals held that the date of the execution of the waiver on September 22, 1997 could reasonably be understood as the same date of acceptance by the BIR. Petitioner points out however that Revenue District Officer Sarmiento could not have accepted the waiver yet because she was not the Revenue District Officer of RDO No. 33 on such date. Ms. Sarmiento's transfer and assignment to RDO No. 33 was only signed by the BIR Commissioner on January 16, 1998 as shown by the Revenue Travel Assignment Order No. 14-98.[28] The Court of Tax Appeals noted in its decision that it is unlikely as well that Ms. Sarmiento made the acceptance on January 16, 1998 because "Revenue Officials normally have to conduct first an inventory of their pending papers and property responsibilities."[29]

Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer.

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[27] *Commissioner of Internal Revenue v. Court of Appeals, supra*, pp. 620-622.

[28] Annex I, *Rollo*, p. 114.

[29] *Rollo*, pp. 86-87.

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The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason copies are furnished is for a party to be notified of the existence of a document, event or proceeding.

The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.

The waiver document is incomplete and defective and thus the three-year prescriptive period was not tolled or extended and continued to run until April 17, 1998. Consequently, the Assessment/ Demand No. 33-1-000757-94 issued on December 9, 1998 was invalid because it was issued beyond the three (3) year period. In the same manner, Warrant of Distraint and/or Levy No. 33-06-046 which petitioner received on March 28, 2000 is also null and void for having been issued pursuant to an invalid assessment.

WHEREFORE, premises considered, the instant petition for review is *GRANTED*. The Decision of the Court of Appeals dated August 5, 2003 and its Resolution dated March 31, 2004 are *REVERSED and SET ASIDE*. The Decision of the Court of Tax Appeals in CTA Case No. 6108 dated May 14, 2002, declaring Warrant of Distraint and/or Levy No. 33-06-046 null and void, is *REINSTATED*.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and *Azcuna, JJ.,* concur.