

# FIRST DIVISION

[ G.R. No. 230861, September 19, 2018 ]

**ASIAN TRANSMISSION CORPORATION, PETITIONER, V.  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

## DECISION

**BERSAMIN, J.:**

We reiterate through this decision that the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. Hence, the Commissioner of Internal Revenue (CIR) may not be blamed for any defects in the execution of the waiver.

### The Case

This appeal seeks the review and reversal of the decision promulgated on August 9, 2016,<sup>[1]</sup> whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) reversed and set aside the decision rendered by its Second Division (CTA in Division) holding that the waivers executed by petitioner Asian Transmission Corporation (ATC) were invalid and did not operate to extend the three-year period of prescription to assess deficiency taxes for the calendar year 2002.<sup>[2]</sup>

### Antecedents

As found by the CTA in Division, the factual and procedural antecedents are as follows:

[ATC] is a corporation duly organized and existing under Philippine Laws and with business address at Carmelray Industrial Park, Canlubang, Calamba City, Laguna. ATC is a manufacturer of motor vehicle transmission component parts and engines of Mitsubishi vehicles. It was organized and registered with the Securities and Exchange Commission on August 29, 1973 as evidenced by its Certificate of Incorporation.

[The CIR] is the Commissioner of the Bureau of Internal Revenue (BIR) with office address at BIR National Office Bldg., Agham Road, Diliman, Quezon City.

On January 3, 2003 and March 3, 2003, ATC filed its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes and Annual Information Return of Creditable Income Taxed Withheld (Expanded)/Income Payments Exempt from Withholding Tax, respectively.

On August 11, 2004, ATC received Letter of Authority [(LOA)] No. 200000003557 where [the CIR] informed ATC that its revenue officers from the Large Taxpayers Audit and Investigation Division II shall

examine its books of accounts and other accounting records for the taxable year 2002.

Thereafter, [the CIR] issued a Preliminary Assessment Notice (PAN) to ATC.

Consequently, on various dates, ATC, through its Vice President for Personnel and Legal Affairs, Mr. Roderick M. Tan, executed several documents denominated as "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver), as follows:

<b>Waiver</b>	<b>Source of Document</b>	<b>Date of Execution</b>	<b>Date of Extension</b>
<b>First Waiver</b>	Page 415, BIR Records	September 8, 2004	June 30, 2005
<b>Second Waiver</b>	Page 419, BIR Records	March 3, 2005	December 31, 2005
<b>Third Waiver</b>	Page 422, BIR Records	November 10, 2005	June 30, 2006
<b>Fourth Waiver</b>	Page 429, BIR Records	March 21, 2006	December 31, 2006
<b>Fifth Waiver</b>	Page 767, BIR Records	March 21, 2006	June 30, 2007
<b>Sixth Waiver</b>	Page 349, BIR Records	April 18, 2007	December 31, 2007
<b>Seventh Waiver</b>	Page 354, BIR Records	October 25, 2007	June 30, 2008
<b>Eight[h] Waiver</b>	Page 1176, BIR Records	May 30, 2008	December 31, 2008

Meanwhile, on February 28, 2008, ATC availed of the Tax Amnesty [P]rogram under Republic Act No. 9480.

On July 15, 2008, ATC received a Formal Letter of Demand from [the] CIR for deficiency [WTC] in the amount of P[hp]62,977,798.02, [EWT] in the amount of P[hp]6,916,910.51, [FWT] in the amount of P[hp]501,077.72. On August 14, 2008, ATC filed its Protest Letter in regard thereto.

Accordingly, on April 14, 2009, ATC received the Final Decision on Disputed Assessment where [the] CIR found ATC liable to pay deficiency tax in the amount of P[hp]75,696,616.75. Thus, on May 14, 2009, ATC filed an appeal letter/request for reconsideration with [the] CIR.

On April 10, 2012, ATC received the Decision of [the] CIR dated November 15, 2011, denying its request for reconsideration. As such, on April 23, 2012, ATC filed the instant Petition for Review (with Application for Preliminary Injunction and Temporary Restraining Order).<sup>[3]</sup>

### **Ruling of the CTA in Division**

On November 28, 2014, the CTA in Division rendered its decision granting the petition for review of ATC. It held that ATC was not estopped from raising the invalidity of the waivers inasmuch as the Bureau of Internal Revenue (BIR) had itself caused the defects thereof, namely: (a) the waivers were notarized by its own employee despite not being validly commissioned to perform notarial acts; (b) the BIR did not indicate the date of its acceptance; (c) the BIR did not specify the amounts of and the particular taxes involved; and (d) respondent CIR did not sign the waivers despite the clear mandate of RMO 20-90 to that effect. It ruled that the waivers, being invalid, did not operate to toll or extend the three-year period of prescription.<sup>[4]</sup>

The CTA in Division disposed:

**WHEREFORE**, in view thereof, the Petition for Review is hereby **GRANTED**. Accordingly, the deficiency [WTC] in the amount of P[hp]67,722,419.38, [EWT] in the amount of P[hp]7,436,545.83 and [FWT] in the amount of P[hp]537,651.55, or in the total amount of P[hp]75,696,616.75 for the taxable year 2002, are hereby declared **CANCELLED, WITHDRAWN and WITH NO FORCE AND EFFECT**.

**SO ORDERED.**<sup>[5]</sup>

On December 16, 2014, the CIR moved for reconsideration, and ATC opposed.

On March 13, 2015, the CTA in Division denied the CIR's motion for reconsideration,<sup>[6]</sup> to wit:

**WHEREFORE**, premises considered, [the CIR's] Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**<sup>[7]</sup>

On April 20, 2015, the CIR filed a petition for review in the CTA *En Banc*.

#### **Decision of the CTA *En Banc***

On August 9, 2016, the CTA *En Banc* promulgated the assailed decision reversing and setting aside the decision of the CTA in Division, and holding that the waivers were valid. It observed that the CIR's right to assess deficiency withholding taxes for CY 2002 against ATC had not yet prescribed. It disposed:

**WHEREFORE**, premises considered, the Court hereby **GRANTS** the Petition for Review. Accordingly, the Decision promulgated on November 28, 2014 and the Resolution on March 13, 2015 by the Second Division are **REVERSED** and **SET ASIDE**. Let the case be **REMANDED** to the Court in Division for further proceedings in order to determine and rule on the merits of respondent's petition seeking the cancellation of the deficiency tax assessments for calendar year 2002 for withholding tax on compensation, expanded withholding tax, and final withholding tax in the aggregate amount of Php75,696,616.75.

**SO ORDERED.**<sup>[8]</sup>