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FIRST DIVISION

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

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. STANDARD CHARTERED BANK, RESPONDENT.

DECISION

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] 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 P33,076,944.18, 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 P33,326,211.37, 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
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assessment, and requested that it be withdrawn and cancelled.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

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 P124,967.73 and P139,713.11, 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 P33,076,944.18, 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**	**33,076,944.18**

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.

[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 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 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) 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 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
>
> (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 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.