

## THIRD DIVISION

**[ G.R. No. 212825, December 07, 2015 ]**

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. NEXT MOBILE, INC. (FORMERLY NEXTEL COMMUNICATIONS PHILS., INC.), RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

This is a Petition for Review under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision of the Court of Tax Appeals *En Banc* affirming the earlier decision of its First Division in CTA Case No. 7965, cancelling and withdrawing petitioner's formal letter of demand and assessment notices to respondent for having been issued beyond the prescriptive period provided by law.

### The Facts

On April 15, 2002, respondent filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (ITR) for taxable year ending December 31, 2001. Respondent also filed its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F), its Monthly Remittance Returns of Expanded Withholding Tax (BIR Form No. 1501-E) and its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for year ending December 31, 2001.

On September 25, 2003, respondent received a copy of the Letter of Authority dated September 8, 2003 signed by Regional Director Nestor S. Valeroso authorizing Revenue Officer Nenita L. Crespo of Revenue District Office 43 to examine respondent's books of accounts and other accounting records for income and withholding taxes for the period covering January 1, 2001 to December 31, 2001.

Ma. Lida Sarmiento (Sarmiento), respondent's Director of Finance, subsequently executed several waivers of the statute of limitations to extend the prescriptive period of assessment for taxes due in taxable year ending December 31, 2001 (Waivers), the details of which are summarized as follows:

<b>Waiver</b>	<b>Extended Date of Prescription</b>	<b>Date of Execution</b>	<b>Date of Acknowledgment</b>	<b>BIR Signatory</b>
First Waiver	March 30, 2005	August 26, 2004	August 30, 2004	Revenue District Officer
Second Waiver	June 30, 2005	October 22, 2004	October 22, 2004	Revenue District Officer
Third	September	January	January 18, 2005	Revenue

Waiver	30, 2005	12,2005		District Officer
Fourth Waiver	September 30, 2005	None	May 3, 2005	Revenue District Officer
Fifth Waiver	October 31, 2005	March 17, 2005	May 3, 2005	Revenue District Officer

On September 26, 2005, respondent received from the BIR a Preliminary Assessment Notice dated September 16, 2005 to which it filed a Reply.

On October 25, 2005, respondent received a Formal Letter of Demand (FLD) and Assessment Notices/Demand No. 43-734 both dated October 17, 2005 from the BIR, demanding payment of deficiency income tax, final withholding tax (FWT), expanded withholding tax (EWT), increments for late remittance of taxes withheld, and compromise penalty for failure to file returns/late filing/late remittance of taxes withheld, in the total amount of P313,339,610.42 for the taxable year ending December 31, 2001.

On November 23, 2005, respondent filed its protest against the FLD and requested the reinvestigation of the assessments. On July 28, 2009, respondent received a letter from the BIR denying its protest. Thus, on August 27, 2009, respondent filed a Petition for Review before the CTA docketed as CTA Case No. 7965.

### **Ruling of the CTA Former First Division**

On December 11, 2012, the former First Division of the CTA (CTA First Division) rendered a Decision granting respondent's Petition for Review and declared the FLD dated October 17, 2005 and Assessment Notices/Demand No. 43-734 dated October 17, 2005 cancelled and withdrawn for being issued beyond the three-year prescriptive period provided by law.

It was held that based on the date of filing of respondent's Annual ITR as well as the dates of filing of its monthly BIR Form Nos. 1601-F, 1601-E and 1601-C, it is clear that the adverted FLD and the Final Assessment Notices both dated October 17, 2005 were issued beyond the three-year prescriptive period provided under Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended.

The tax court also rejected petitioner's claim that this case falls under the exception as to the three-year prescriptive period for assessment and that the 10-year prescriptive period should apply on the ground of filing a false or fraudulent return. Under Section 222(a) of the 1997 NIRC, as amended, in case a taxpayer filed a false or fraudulent return, the Commissioner of Internal Revenue (CIR) may assess a taxpayer for deficiency tax within ten (10) years after the discovery of the falsity or the fraud. The tax court explained that petitioner failed to substantiate its allegation by clear and convincing proof that respondent filed a false or fraudulent return.

Furthermore, the CTA First Division held that the Waivers executed by Sarmiento did not validly extend the three-year prescriptive period to assess respondent for deficiency income tax, FWT, EWT, increments for late remittance of tax withheld and compromise penalty, for, as found, the Waivers were not properly executed

according to the procedure in Revenue Memorandum Order No. 20-90 (RMO 20-90) [1] and Revenue Delegation Authority Order No. 05-01 (RDAO 05-01). [2]

The tax court declared that, in this case, the Waivers have no binding effect on respondent for the following reasons:

*First*, Sarmiento signed the Waivers without any notarized written authority from respondent's Board of Directors. Petitioner's witness explicitly admitted that he did not require Sarmiento to present any notarized written authority from the Board of Directors of respondent, authorizing her to sign the Waivers. Petitioner's witness also confirmed that Revenue District Officer Raul Vicente L. Recto (RDO Recto) accepted the Waivers as submitted.

*Second*, even assuming that Sarmiento had the necessary board authority, the Waivers are still invalid as the respective dates of their acceptance by RDO Recto are not indicated therein.

*Third*, records of this case reveal additional irregularities in the subject Waivers:

- (1) The fact of receipt by respondent of its copy of the Second Waiver was not indicated on the face of the original Second Waiver;
- (2) Respondent received its copy of the First and the Third Waivers on the same day, May 23, 2005; and
- (3) Respondent received its copy of the Fourth and the Fifth Waivers on the same day, May 13, 2005.

*Finally*, the CTA held that estoppel does not apply in questioning the validity of a waiver of the statute of limitations. It stated that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01.

Petitioner's Motion for Reconsideration was denied on March 14, 2013.

Petitioner filed a Petition for Review before the CTA *En Banc*.

On May 28, 2014, the CTA *En Banc* rendered a Decision denying the Petition for Review and affirmed that of the former CTA First Division.

It held that the five (5) Waivers of the statute of limitations were not valid and binding; thus, the three-year period of limitation within which to assess deficiency taxes was not extended. It also held that the records belie the allegation that respondent filed false and fraudulent tax returns; thus, the extension of the period of limitation from three (3) to ten (10) years does not apply.

### **Issue**

Petitioner has filed the instant petition on the issue of whether or not the CIR's right to assess respondent's deficiency taxes had already prescribed.

### **Our Ruling**

The petition has merit.

Section 203<sup>[3]</sup> of the 1997 NIRC mandates the BIR to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is not valid and effective. Exceptions to this rule are provided under Section 222<sup>[4]</sup> of the NIRC.

Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01<sup>[5]</sup> issued on August 2, 2001 provide the procedure for the proper execution of a waiver. RMO 20-90 reads:

**April 4, 1990**

**REVENUE MEMORANDUM ORDER NO. 20-90**

**Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code**

**To: All Internal Revenue Officers and Others Concerned**

Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. 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. 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.

2. The waiver shall 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.

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. 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.

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

x x x x

4. The waiver must be executed in three (3) 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 shall be indicated in the original copy.

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.

This Revenue Memorandum Order shall take effect immediately.

(SGD.)JOSEU. ONG  
Commissioner of Internal Revenue

The Court has consistently held that a waiver of the statute of limitations must faithfully comply with the provisions of RMO No. 20-90 and RDAO 05-01 in order to be valid and binding.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*<sup>[6]</sup> the Court declared the waiver executed by petitioner therein invalid because: (1) it did not specify a definite agreed date between the BIR and petitioner within which the former may assess and collect revenue taxes; (2) it was signed only by a revenue district officer, not the Commissioner; (3) there was no date of acceptance; and (4) petitioner was not furnished a copy of the waiver.

*Philippine Journalists* tells us that since a waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, waivers of this kind must be carefully and strictly construed. *Philippine Journalists* also clarifies that a waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription but rather 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. It is not a unilateral act by the taxpayer of the BIR but is a bilateral agreement between two parties.

In *Commissioner of Internal Revenue v. FMF Development Corporation*<sup>[7]</sup> the Court found the waiver in question defective because: (1) it was not proved that respondent therein was furnished a copy of the BIR-accepted waiver; (2) the waiver was signed by a revenue district officer instead of the Commissioner as mandated by the NIRC and RMO 20-90 considering that the case involved an amount of more than P1,000,000.00, and the period to assess was not yet about to prescribe; and (3) it did not contain the date of acceptance by the CIR. The Court explained that the date of acceptance by the CIR is a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original period.<sup>[8]</sup>

In *CIR v. Kudos Metal Corporation*,<sup>[9]</sup> the waivers executed by Kudos were found ineffective to extend the period to assess or collect taxes because: (1) the accountant who executed the waivers had no notarized written board authority to