

SECOND DIVISION

[G.R. No. 178087, May 05, 2010]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
KUDOS METAL CORPORATION, RESPONDENT.

DECISION

DEL CASTILLO, J.:

The prescriptive period on when to assess taxes benefits both the government and the taxpayer.^[1] Exceptions extending the period to assess must, therefore, be strictly construed.

This Petition for Review on *Certiorari* seeks to set aside the Decision^[2] dated March 30, 2007 of the Court of Tax Appeals (CTA) affirming the cancellation of the assessment notices for having been issued beyond the prescriptive period and the Resolution^[3] dated May 18, 2007 denying the motion for reconsideration.

Factual Antecedents

On April 15, 1999, respondent Kudos Metal Corporation filed its Annual Income Tax Return (ITR) for the taxable year 1998.

Pursuant to a Letter of Authority dated September 7, 1999, the Bureau of Internal Revenue (BIR) served upon respondent three Notices of Presentation of Records. Respondent failed to comply with these notices, hence, the BIR issued a *Subpeona Duces Tecum* dated September 21, 2006, receipt of which was acknowledged by respondent's President, Mr. Chan Ching Bio, in a letter dated October 20, 2000.

A review and audit of respondent's records then ensued.

On December 10, 2001, Nelia Pasco (Pasco), respondent's accountant, executed a Waiver of the Defense of Prescription,^[4] which was notarized on January 22, 2002, received by the BIR Enforcement Service on January 31, 2002 and by the BIR Tax Fraud Division on February 4, 2002, and accepted by the Assistant Commissioner of the Enforcement Service, Percival T. Salazar (Salazar).

This was followed by a second Waiver of Defense of Prescription^[5] executed by Pasco on

February 18, 2003, notarized on February 19, 2003, received by the BIR Tax Fraud Division on February 28, 2003 and accepted by Assistant Commissioner Salazar.

On August 25, 2003, the BIR issued a Preliminary Assessment Notice for the taxable year 1998 against the respondent. This was followed by a Formal Letter of Demand with Assessment Notices for taxable year 1998, dated September 26, 2003 which was received by respondent on November 12, 2003.

Respondent challenged the assessments by filing its "Protest on Various Tax Assessments" on December 3, 2003 and its "Legal Arguments and Documents in Support of Protests against Various Assessments" on February 2, 2004.

On June 22, 2004, the BIR rendered a final Decision^[6] on the matter, requesting the immediate payment of the following tax liabilities:

<i>Kind of Tax</i>	<i>Amount</i>
Income Tax	P 9,693,897.85
VAT	13,962,460.90
EWT	1,712,336.76
Withholding Tax-Compensation	247,353.24
Penalties	<u>8,000.00</u>
Total	<u>P25,624,048.76</u>

Ruling of the Court of Tax Appeals, Second Division

Believing that the government's right to assess taxes had prescribed, respondent filed on August 27, 2004 a Petition for Review^[7] with the CTA. Petitioner in turn filed his Answer.^[8]

On April 11, 2005, respondent filed an "Urgent Motion for Preferential Resolution of the Issue on Prescription."^[9]

On October 4, 2005, the CTA Second Division issued a Resolution^[10] canceling the assessment notices issued against respondent for having been issued beyond the prescriptive period. It found the first Waiver of the Statute of Limitations incomplete and defective for failure to comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90. Thus:

First, the Assistant Commissioner is not the revenue official authorized to sign the waiver, as the tax case involves more than P1,000,000.00. In this regard, only the Commissioner is authorized to enter into agreement with the petitioner

in extending the period of assessment;

Secondly, the waiver failed to indicate the date of acceptance. Such date of acceptance is necessary to determine whether the acceptance was made within the prescriptive period;

Third, the fact of receipt by the taxpayer of his file copy was not indicated on the original copy. 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 also of the acceptance by the BIR and the perfection of the agreement.

The subject waiver is therefore incomplete and defective. As such, the three-year prescriptive period was not tolled or extended and continued to run. x x x^[11]

Petitioner moved for reconsideration but the CTA Second Division denied the motion in a Resolution^[12] dated April 18, 2006.

Ruling of the Court of Tax Appeals, En Banc

On appeal, the CTA *En Banc* affirmed the cancellation of the assessment notices. Although it ruled that the Assistant Commissioner was authorized to sign the waiver pursuant to Revenue Delegation Authority Order (RDAO) No. 05-01, it found that the first waiver was still invalid based on the second and third grounds stated by the CTA Second Division. Pertinent portions of the Decision read as follows:

While the Court *En Banc* agrees with the second and third grounds for invalidating the first waiver, it finds that the Assistant Commissioner of the Enforcement Service is authorized to sign the waiver pursuant to RDAO No. 05-01, which provides in part as follows:

A. For National Office cases

Designated Revenue Official

- | | |
|--|---|
| 1. Assistant Commissioner (ACIR),
Enforcement Service | For tax fraud and
policy
cases |
| 2. ACIR, Large Taxpayers Service | For large taxpayers
cases
other than those cases
falling |

under Subsection B
hereof

3. ACIR, Legal Service

For cases pending
verification and
awaiting

resolution of certain
legal
issues prior to
prescription
and for
issuance/compliance
of Subpoena Duces
Tecum

4. ACIR, Assessment Service (AS)

For cases which are
pending in or subject
to
review or approval by
the ACIR, AS

Based on the foregoing, the Assistant Commissioner, Enforcement Service is authorized to sign waivers in tax fraud cases. A perusal of the records reveals that the investigation of the subject deficiency taxes in this case was conducted by the National Investigation Division of the BIR, which was formerly named the Tax Fraud Division. Thus, the subject assessment is a tax fraud case.

Nevertheless, the first waiver is still invalid based on the second and third grounds stated by the Court in Division. Hence, it did not extend the prescriptive period to assess.

Moreover, assuming *arguendo* that the first waiver is valid, the second waiver is invalid for violating Section 222(b) of the 1997 Tax Code which mandates that the period agreed upon in a waiver of the statute can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. As previously discussed, the exceptions to the law on prescription must be strictly construed.

In the case at bar, the period agreed upon in the subject first waiver expired on December 31, 2002. The second waiver in the instant case which was supposed to extend the period to assess to December 31, 2003 was executed on February 18, 2003 and was notarized on February 19, 2003. Clearly, the second waiver was executed after the expiration of the first period agreed upon. Consequently, the same could not have tolled the 3-year prescriptive period to assess.^[13]

Petitioner sought reconsideration but the same was unavailing.

Issue

Hence, the present recourse where petitioner interposes that:

THE COURT OF TAX APPEALS *EN BANC* ERRED IN RULING THAT THE GOVERNMENT'S RIGHT TO ASSESS UNPAID TAXES OF RESPONDENT PRESCRIBED.^[14]

Petitioner's Arguments

Petitioner argues that the government's right to assess taxes is not barred by prescription as the two waivers executed by respondent, through its accountant, effectively tolled or extended the period within which the assessment can be made. In disputing the conclusion of the CTA that the waivers are invalid, petitioner claims that respondent is estopped from adopting a position contrary to what it has previously taken. Petitioner insists that by acquiescing to the audit during the period specified in the waivers, respondent led the government to believe that the "delay" in the process would not be utilized against it. Thus, respondent may no longer repudiate the validity of the waivers and raise the issue of prescription.

Respondent's Arguments

Respondent maintains that prescription had set in due to the invalidity of the waivers executed by Pasco, who executed the same without any written authority from it, in clear violation of RDAO No. 5-01. As to the doctrine of *estoppel* by acquiescence relied upon by petitioner, respondent counters that the principle of equity comes into play only when the law is doubtful, which is not present in the instant case.

Our Ruling

The petition is bereft of merit.

Section 203^[15] of the National Internal Revenue Code of 1997 (NIRC) mandates the government 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 no longer valid and effective. Exceptions however are provided under Section 222^[16] of the NIRC.

The waivers executed by respondent's

***accountant did not extend the period
within which the assessment can be made***

Petitioner does not deny that the assessment notices were issued beyond the three-year prescriptive period, but claims that the period was extended by the two waivers executed by respondent's accountant.

We do not agree.

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^[17] issued on April 4, 1990 and RDAO 05-01^[18] issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

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.^[19]

A perusal of the waivers executed by respondent's accountant reveals the following infirmities:

1. The waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent.
2. The waivers failed to indicate the date of acceptance.
3. The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers.

Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void.

Estoppel does not apply in this case

We find no merit in petitioner's claim that respondent is now estopped from claiming prescription since by executing the waivers, it was the one which asked for additional time to submit the required documents.

In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*,^[20] the doctrine of estoppel prevented the taxpayer from raising the defense of prescription against the efforts of the government to collect the assessed tax. However, it must be stressed that in the said case, estoppel was applied as an exception to the statute of limitations on *collection* of taxes and not on the *assessment* of taxes, as the BIR was able to make an assessment within the prescribed period. More important, there was a finding that the taxpayer made several requests or positive acts to convince the government to postpone the collection of taxes, *viz*:

It appears that the first assessment made against respondent based on its second final return filed on November 28, 1946 was made on February 11, 1947. Upon receipt of this assessment respondent requested for at least one year within which to pay the amount assessed although it reserved its right to question the correctness of the assessment before actual payment. Petitioner granted an extension of only three months. When it failed to pay the tax within the period extended, petitioner sent respondent a letter on November 28, 1950 demanding payment of the tax as assessed, and upon receipt of the letter respondent asked for a reinvestigation and reconsideration of the assessment. When this request was denied, respondent again requested for a reconsideration on April 25, 1952, which was denied on May 6, 1953, which denial was appealed to the

Conference Staff. The appeal was heard by the Conference Staff from September 2, 1953 to July 16, 1955, and as a result of these various negotiations, the assessment was finally reduced on July 26, 1955. This is the ruling which is now being questioned after a protracted negotiation on the ground that the collection of the tax has already prescribed.

It is obvious from the foregoing that petitioner refrained from collecting the tax by distraint or levy or by proceeding in court within the 5-year period from the filing of the second amended final return due to the several requests of respondent for extension to which petitioner yielded to give it every opportunity to prove its claim regarding the correctness of the assessment. Because of such requests, several reinvestigations were made and a hearing was even held by the Conference Staff organized in the collection office to consider claims of such nature which, as the record shows, lasted for several months. After inducing petitioner to delay collection as he in fact did, it is most unfair for respondent to now take advantage of such desistance to elude his deficiency income tax liability to the prejudice of the Government invoking the technical ground of prescription.

While we may agree with the Court of Tax Appeals that a mere request for reexamination or reinvestigation may not have the effect of suspending the running of the period of limitation for in such case there is need of a written agreement to extend the period between the Collector and the taxpayer, there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. And when such situation comes to pass there are authorities that hold, based on weighty reasons, that such an attitude or behavior should not be countenanced if only to protect the interest of the Government.

This case has no precedent in this jurisdiction for it is the first time that such has risen, but there are several precedents that may be invoked in American jurisprudence. As Mr. Justice Cardozo has said: "The applicable principle is fundamental and unquestioned. `He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him in effect "this is your own act, and therefore you are not damnified.'" "(R. H. Stearns Co. vs. U.S., 78 L. ed., 647). Or, as was aptly said, "The tax could have been collected, but the government withheld action at the specific request of the plaintiff. The plaintiff is now estopped and should not be permitted to raise the defense of the Statute of Limitations." [Newport Co. vs. U.S., (DC-WIS), 34 F. Supp. 588].^[21]

Conversely, in this case, the assessments were issued beyond the prescribed period. Also, there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments.

The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right.^[22] As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.^[23] It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate.^[24] Simply put, the doctrine of estoppel must be sparingly applied.

Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.^[25]

As to the alleged delay of the respondent to furnish the BIR of the required documents, this cannot be taken against respondent. Neither can the BIR use this as an excuse for issuing the assessments beyond the three-year period because with or without the required documents, the CIR has the power to make assessments based on the best evidence obtainable.^[26]

WHEREFORE, the petition is **DENIED**. The assailed Decision dated March 30, 2007 and Resolution dated May 18, 2007 of the Court of Tax Appeals are hereby **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

^[1] *Republic of the Phils. v. Ablaza*, 108 Phil. 1105, 1108 (1960).

^[2] *Rollo*, pp. 31-45; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga

Palanca-Enriquez. Presiding Justice Ernesto D. Acosta was on leave.

[3] *Id.*, at 46-50; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez.

[4] *Records*, pp. 227-228.

[5] *Id.* at 229-230.

[6] *Id.* at 18-21.

[7] *Id.* at 1-17.

[8] *Id.* at 161-165.

[9] *Id.* at 219-226.

[10] *Id.* at 259-266.

[11] *Id.* at 265.

[12] *Id.* at 294-296.

[13] *Rollo*, pp. 42-43.

[14] *Id.* at 17.

[15] 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.

[16] SEC. 222. Exceptions as to period of limitation of assessment and collection of taxes.

—
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a

return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(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.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

[17] 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.

A. In the National Office

1. ACIRs for Collection, Special For tax cases involving Operations National Assessment, Excise and Legal not more than P500,000.00 on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.

3. Commissioner For tax cases involving more than P1M

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.

[18] I. Revenue Officials Authorized to Sign the Waiver

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

A. For National Office cases

Designated Revenue Official

1. Assistant Commissioner (ACIR), — For tax fraud and policy

Enforcement Service cases

X X X X

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious circumstances in the absence of the abovementioned officials.

The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The "WAIVER" should not be accepted by the concerned BIR office and official unless duly notarized.

II. Repealing Clause

All other issuances and/or portions thereof inconsistent herewith are hereby repealed and amended accordingly.

[19] *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, 488 Phil. 218, 235 (2004).

[20] 104 Phil 819 (1958).

[21] *Id.* at 822-824.

[22] *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87.

[23] *Ouano v. Court of Appeals*, 446 Phil. 690, 708 (2003).

[24] *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279, 290 (2002).

[25] *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, supra note 19 at 231-232.

[26] SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement -

x x x x

(b) Failure to Submit Required Returns, Statements, Reports and other Documents. - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or rules and regulation or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.