

## FIRST DIVISION

[ G.R. No. 220835, July 26, 2017 ]

### COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. SYSTEMS TECHNOLOGY INSTITUTE, INC., RESPONDENT.

#### DECISION

##### CAGUIOA, J:

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision<sup>[2]</sup> dated March 24, 2015 and Resolution<sup>[3]</sup> dated September 2, 2015 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1050. The CTA *En Banc* affirmed the Decision dated April 17, 2013 and the Resolution dated July 17, 2013 of the CTA Second Division, which granted the petition for review filed by respondent Systems Technology Institute, Inc. (STI) and cancelled the assessments against STI for deficiency income tax, deficiency expanded withholding tax (EWT), and deficiency value-added tax (VAT) for fiscal year ending March 31, 2003.<sup>[4]</sup>

#### Facts

The facts of this case, as presented by the CTA *En Banc*, are as follows:

STI filed its Amended Annual Income Tax Return for fiscal year 2003 on August 15, 2003; its Quarterly VAT Returns on July 23, 2002, October 25, 2002, January 24, 2003, and May 23, 2003; and its Bureau of Internal Revenue (BIR) Form 1601E for EWT from May 10, 2002 to April 15, 2003.<sup>[5]</sup>

On May 30, 2006, STI's Amiel C. Sangalang signed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (NIRC), with the proviso that the assessment and collection of taxes of fiscal year 2003 shall come "no later than December 31, 2006."<sup>[6]</sup> On June 2, 2006, the waiver was accepted by Virgilio R. Cembrano, Large Taxpayers District Officer of Makati and was notarized on even date.<sup>[7]</sup>

On December 12, 2006, another waiver was executed extending the period to assess and collect the assessed taxes to March 31, 2007.<sup>[8]</sup> It was also signed by Sangalang and accepted by Cembrano and notarized on the same date.<sup>[9]</sup> A third waiver was executed by the same signatories extending further the period to June 30, 2007.<sup>[10]</sup>

On June 28, 2007, STI received a Formal Assessment Notice from the CIR, assessing STI for deficiency income tax, VAT and EWT for fiscal year 2003, in the aggregate amount of P161,835,737.98.<sup>[11]</sup>

On July 25, 2007, STI filed a request for reconsideration/reinvestigation dated July 23, 2007.<sup>[12]</sup>

On September 11, 2009, STI received from the CIR the Final Decision on Disputed Assessment (FDDA) dated August 17, 2009 finding STI liable for deficiency income tax, VAT and EWT in the lesser amount of P124,257,764.20.<sup>[13]</sup>

On October 12, 2009, STI appealed the FDDA by filing a petition for review with the CTA.<sup>[14]</sup> The case was docketed as CTA Case No. 7984 and was heard by the CTA Second Division.<sup>[15]</sup>

On April 17, 2013, the CTA Second Division promulgated its Decision denying the assessment on the ground of prescription, the dispositive portion of which reads as follows:

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments against petitioner for deficiency income tax, deficiency expanded withholding tax, and deficiency value-added tax for fiscal year ending March 31, 2003 are hereby **CANCELLED** and **SET ASIDE** on the ground of prescription.<sup>[16]</sup>

The CTA Division found the waivers executed by STI defective for failing to strictly comply with the requirements provided by Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001. Consequently, the periods for the CIR to assess or collect internal revenue taxes were never extended; and the subject assessment for deficiency income tax, VAT and EWT against STI, which the CIR issued beyond the three-year prescriptive period provided by law, was already barred by prescription.<sup>[17]</sup>

On May 9, 2013, the CIR filed a motion for reconsideration, but this was denied by the CTA Division in its Resolution dated July 17, 2013.<sup>[18]</sup>

Undaunted, the CIR appealed to the CTA *En Banc*.<sup>[19]</sup>

In the assailed Decision,<sup>[20]</sup> the CTA *En Banc* denied the CIR's petition for lack of merit. The CTA *En Banc* affirmed the Decision and Resolution of the CTA Division, reiterating that the requirements for the execution of a waiver must be strictly complied with; otherwise, the waiver will be rendered defective and the period to assess or collect taxes will not be extended. It further held that the execution of a waiver did not bar STI from questioning the validity thereof or invoking the defense of prescription.<sup>[21]</sup>

On September 2, 2015, the CTA *En Banc* issued the assailed Resolution<sup>[22]</sup> denying the CIR's motion for reconsideration for lack of merit.

Hence, the instant petition raising the following issue:

WHETHER OR NOT PRESCRIPTION HAD SET IN AGAINST THE ASSESSMENTS FOR DEFICIENCY INCOME TAX, DEFICIENCY VAT AND

## DEFICIENCY EXPANDED WITHHOLDING TAX.<sup>[23]</sup>

The CIR asserts that prescription had not set in on the subject assessments because the waivers executed by the parties are valid.<sup>[24]</sup> It also claims that STI's active participation in the administrative investigation by filing a request for reinvestigation, which resulted in a reduced assessment, amounts to estoppel that prescription can no longer be invoked.<sup>[25]</sup> To support its contention, the CIR cites the case of *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,<sup>[26]</sup> where the Court considered the taxpayer's partial payment of the revised assessment as an implied admission of the validity of the waivers.<sup>[27]</sup>

For its part, STI contends that the requisites under RMO No. 20-90 are mandatory and no less than this Court has affirmed that the failure to comply therewith results in the nullity of the waiver and consequently, the assessments.<sup>[28]</sup> Tested against these requisites and settled jurisprudence, the subject waivers are defective and invalid and, thus, did not extend the period to assess.<sup>[29]</sup>

STI further claims, that contrary to the CIR's insistence, it is not estopped from invoking the defense of prescription because: (1) STI did not admit the validity or correctness of the deficiency assessments; (2) it did not receive or accept any benefit from the execution of the waivers since it continued to dispute the assessment; and (3) STI did not, in any way, lead the CIR to believe that the waivers were valid.<sup>[30]</sup>

Finally, STI avers that the doctrine in *RCBC* does not apply to this case because the estoppel upheld in said case arose from the act of payment, which is not obtaining in the instant case.<sup>[31]</sup>

### The Court's Ruling

The petition lacks merit.

***The Waivers of Statute of Limitations, being defective and invalid, did not extend the CIR's period to issue the subject assessments. Thus, the right of the government to assess or collect the alleged deficiency taxes is already barred by prescription.***

Section 203 of the NIRC of 1997, as amended, limits the CIR's period to assess and collect internal revenue taxes to three (3) years counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later.<sup>[32]</sup> Thus, assessments issued after the expiration of such period are no longer valid and effective.<sup>[33]</sup>

In *SMI-Ed Philippines Technology, Inc. v. Commissioner of Internal Revenue*,<sup>[34]</sup> the Court explained the primary reason behind the prescriptive period on the CIR's right to assess or collect internal revenue taxes: that is, to safeguard the interests of taxpayers from unreasonable investigation.<sup>[35]</sup> Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive 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.<sup>[36]</sup>

In this regard, the CTA Division found that the last day for the CIR to issue an assessment on STI's income tax for fiscal year ending March 31, 2003 was on **August 15, 2006**; while the latest date for the CIR to assess STI of EWT for the fiscal year ending March 31, 2003 was on **April 17, 2006**; and the latest date for the CIR to assess STI of deficiency VAT for the four quarters of the same fiscal year was on **May 25, 2006**.<sup>[37]</sup> Clearly, on the basis of these dates, the final assessment notice dated June 16, 2007,<sup>[38]</sup> assessing STI for deficiency income tax, VAT and EWT for fiscal year 2003, in the aggregate amount of P161,835,737.98, which STI received on June 28, 2007,<sup>[39]</sup> was issued beyond the three-year prescriptive period.

However, the CIR maintains that prescription had not set in because the parties validly executed a waiver of statute of limitations under Section 222(b) of the NIRC, as amended. Said provision reads:

*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.

x x x x

To implement the foregoing provisions, the BIR issued RMO 20-90 and RDAO 05-01, outlining the procedures for the proper execution of a valid waiver, viz.:

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.<sup>[40]</sup>

These requirements are mandatory and must strictly be followed. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,<sup>[41]</sup> the Court declared the waiver invalid because: (1) it did not specify the date within which the BIR may assess and collect revenue taxes, such that the waiver became unlimited in time; (2) it was signed only by a revenue district officer, and not the CIR; (3) there was no date of acceptance; and (4) the taxpayer was not furnished a copy of the waiver.<sup>[42]</sup>

In *Commissioner of Internal Revenue v. FMF Development Corporation*,<sup>[43]</sup> the waiver was found defective and thus did not validly extend the original three-year prescriptive period because: (1) it was not proven that the taxpayer was furnished a copy of the waiver; (2) it was signed only by a revenue district officer, and not the CIR as mandated by law; and (3) it did not contain the date of acceptance by the CIR, which is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.<sup>[44]</sup>

In another case,<sup>[45]</sup> the waivers executed by the taxpayer's accountant were found defective for the following reasons: (1) the waivers were executed without the notarized written authority of the taxpayer's representative to sign the waiver on its behalf; (2) the waivers failed to indicate the date of acceptance; and (3) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers.<sup>[46]</sup>

In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*,<sup>[47]</sup> the Court nullified the waivers because the following requisites were absent: (1) conformity of either the CIR or a duly authorized representative; (2) date of acceptance showing that both parties had agreed on the waiver before the expiration of the prescriptive period; and (3) proof that the taxpayer was furnished a copy of the waiver.<sup>[48]</sup>

The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*,<sup>[49]</sup> because: (1)