

FIRST DIVISION

[G.R. No. 162852, December 16, 2004]

**PHILIPPINE JOURNALISTS, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

DECISION

YNARES-SATIAGO, J.:

This is a petition for review filed by Philippine Journalists, Incorporated (PJI) assailing the Decision^[1] of the Court of Appeals dated August 5, 2003,^[2] which ordered petitioner to pay the assessed tax liability of P111,291,214.46 and the Resolution^[3] dated March 31, 2004 which denied the Motion for Reconsideration.

The case arose from the Annual Income Tax Return filed by petitioner for the calendar year ended December 31, 1994 which presented a net income of P30,877,387.00 and the tax due of P10,807,086.00. After deducting tax credits for the year, petitioner paid the amount of P10,247,384.00.

On August 10, 1995, Revenue District Office No. 33 of the Bureau of Internal Revenue (BIR) issued Letter of Authority No. 87120^[4] for Revenue Officer Federico de Vera, Jr. and Group Supervisor Vivencio Gapasin to examine petitioner's books of account and other accounting records for internal revenue taxes for the period January 1, 1994 to December 31, 1994.

From the examination, the petitioner was told that there were deficiency taxes, inclusive of surcharges, interest and compromise penalty in the following amounts:

Value Added Tax	P 229,527.90
Income Tax	125,002,892.95
Withholding Tax	2,748,012.35
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Total	P 127,980,433.20

In a letter dated August 29, 1997, Revenue District Officer Jaime Concepcion invited petitioner to send a representative to an informal conference on September 15, 1997 for an opportunity to object and present documentary evidence relative to the proposed assessment. On September 22, 1997, petitioner's Comptroller, Lorenza Tolentino, executed a "Waiver of the Statute of Limitation Under the National Internal Revenue Code (NIRC)".^[5] The document "waive[d] the running of the prescriptive period provided by Sections 223 and 224 and other relevant provisions of the NIRC and consent[ed] to the assessment and collection of taxes which may be found due after the examination at any time after the lapse of the period of limitations fixed by said Sections 223 and 224 and other relevant provisions of the

NIRC, until the completion of the investigation”.[6]

On July 2, 1998, Revenue Officer De Vera submitted his audit report recommending the issuance of an assessment and finding that petitioner had deficiency taxes in the total amount of P136,952,408.97. On October 5, 1998, the Assessment Division of the BIR issued Pre-Assessment Notices which informed petitioner of the results of the investigation. Thus, BIR Revenue Region No. 6, Assessment Division/Billing Section, issued Assessment/Demand No. 33-1-000757-94[7] on December 9, 1998 stating the following deficiency taxes, inclusive of interest and compromise penalty:

Income Tax	P108,743,694.88
Value Added Tax	184,299.20
Expanded Withholding Tax	2,363,220.38
Total	<hr/> P111,291,214.46

On March 16, 1999, a Preliminary Collection Letter was sent by Deputy Commissioner Romeo S. Panganibanto the petitioner to pay the assessment within ten (10) days from receipt of the letter. On November 10, 1999, a Final Notice Before Seizure[8] was issued by the same deputy commissioner giving the petitioner ten (10) days from receipt to pay. Petitioner received a copy of the final notice on November 24, 1999. By letters dated November 26, 1999, petitioner asked to be clarified how the tax liability of P111,291,214.46 was reached and requested an extension of thirty (30) days from receipt of the clarification within which to reply. [9]

The BIR received a follow-up letter from the petitioner asserting that its (PJI) records do not show receipt of Tax Assessment/Demand No. 33-1-000757-94.[10] Petitioner also contested that the assessment had no factual and legal basis. On March 28, 2000, a Warrant of Dstraint and/or Levy No. 33-06-046[11] signed by Deputy Commissioner Romeo Panganiban for the BIR was received by the petitioner.

Petitioner filed a Petition for Review[12] with the Court of Tax Appeals (CTA) which was amended on May 12, 2000. Petitioner complains: (a) that no assessment or demand was received from the BIR; (b) that the warrant of dstraint and/or levy was without factual and legal bases as its issuance was premature; (c) that the assessment, having been made beyond the 3-year prescriptive period, is null and void; (d) that the issuance of the warrant without being given the opportunity to dispute the same violates its right to due process; and (e) that the grave prejudice that will be sustained if the warrant is enforced is enough basis for the issuance of the writ of preliminary injunction.

On May 14, 2002, the CTA rendered its decision,[13] to wit:

As to whether or not the assessment notices were received by the petitioner, this Court rules in the affirmative.

To disprove petitioner’s allegation of non-receipt of the aforesaid assessment notices, respondent presented a certification issued by the

Post Master of the Central Post Office, Manila to the effect that Registered Letter No. 76134 sent by the BIR, Region No. 6, Manila on December 15, 1998 addresse to Phil. Journalists, Inc. at Journal Bldg., Railroad St., Manila was duly delivered to and received by a certain Alfonso Sanchez, Jr. (Authorized Representative) on January 8, 1999. Respondent also showed proof that in claiming Registered Letter No. 76134, Mr. Sanchez presented three identification cards, one of which is his company ID with herein petitioner.

...

However, as to whether or not the Waiver of the Statute of Limitations is valid and binding on the petitioner is another question. Since the subject assessments were issued beyond the three-year prescriptive period, it becomes imperative on our part to rule first on the validity of the waiver allegedly executed on September 22, 1997, for if this court finds the same to be ineffective, then the assessments must necessarily fail.

...

After carefully examining the questioned Waiver of the Statute of Limitations, this Court considers the same to be without any binding effect on the petitioner for the following reasons:

The waiver is an unlimited waiver. It does not contain a definite expiration date. Under RMO No. 20-90, the phrase indicating 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...

...

Secondly, the waiver failed to state the date of acceptance by the Bureau which under the aforequoted RMO should likewise be indicated...

...

Finally, petitioner was not furnished a copy of the waiver. It is to be noted that under RMO No. 20-90, the waiver must be executed in three (3) copies, the second copy of which is for the taxpayer. It is likewise required that the fact of receipt by the taxpayer of his/her file copy be indicated in the original copy. Again, respondent failed to comply.

It bears stressing that RMO No. 20-90 is directed to all concerned internal revenue officers. The said RMO even provides that the procedures found therein should be strictly followed, under pain of being administratively dealt with should non-compliance result to prescription of the right to assess/collect...

Thus, finding the waiver executed by the petitioner on September 22, 1997 to be suffering from legal infirmities, rendering the same invalid and ineffective, the Court finds Assessment/Demand No. 33-1-000757-94 issued on December 5, 1998 to be time-barred. Consequently, the Warrant of Dstraint and/or Levy issued pursuant thereto is considered

null and void.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency income, value-added and expanded withholding tax assessments issued by the respondent against the petitioner on December 9, 1998, in the total amount of P111,291,214.46 for the year 1994 are hereby declared **CANCELLED, WITHDRAWN** and **WITH NO FORCE AND EFFECT**. Likewise, Warrant of Distrain and/or Levy No. 33-06-046 is hereby declared **NULL and VOID**.

SO ORDERED.^[14]

After the motion for reconsideration of the Commissioner of Internal Revenue was denied by the CTA in a Resolution dated August 2, 2002, an appeal was filed with the Court of Appeals on August 12, 2002.

In its decision dated August 5, 2003, the Court of Appeals disagreed with the ruling of the CTA, to wit:

... The petition for review filed on 26 April 2000 with CTA was neither timely filed nor the proper remedy. Only decisions of the BIR, denying the request for reconsideration or reinvestigation may be appealed to the CTA. Mere assessment notices which have become final after the lapse of the thirty (30)-day reglementary period are not appealable. Thus, the CTA should not have entertained the petition at all.

...

... [T]he CTA found the waiver executed by Phil. Journalists to be invalid for the following reasons: (1) it does not indicate a definite expiration date; (2) it does not state the date of acceptance by the BIR; and (3) Phil. Journalist, the taxpayer, was not furnished a copy of the waiver. These grounds are merely formal in nature. The date of acceptance by the BIR does not categorically appear in the document but it states at the bottom page that the BIR "accepted and agreed to:"..., followed by the signature of the BIR's authorized representative. Although the date of acceptance was not stated, the document was dated 22 September 1997. This date could reasonably be understood as the same date of acceptance by the BIR since a different date was not otherwise indicated. As to the allegation that Phil. Journalists was not furnished a copy of the waiver, this requirement appears ridiculous. Phil. Journalists, through its comptroller, Lorenza Tolentino, signed the waiver. Why would it need a copy of the document it knowingly executed when the reason why copies are furnished to a party is to notify it of the existence of a document, event or proceeding? ...

As regards the need for a definite expiration date, this is the biggest flaw of the decision. The period of prescription for the assessment of taxes may be extended provided that the extension be made in writing and that it be made prior to the expiration of the period of prescription. These are the requirements for a valid extension of the prescriptive period. To these requirements provided by law, the memorandum order adds that

the length of the extension be specified by indicating its expiration date. This requirement could be reasonably construed from the rule on extension of the prescriptive period. But this requirement does not apply in the instant case because what we have here is not an extension of the prescriptive period but a waiver thereof. These are two (2) very different things. What Phil. Journalists executed was a renunciation of its right to invoke the defense of prescription. This is a valid waiver. When one waives the prescriptive period, it is no longer necessary to indicate the length of the extension of the prescriptive period since the person waiving may no longer use this defense.

WHEREFORE, the 02 August 2002 resolution and 14 May 2002 decision of the CTA are hereby SET ASIDE. Respondent Phil. Journalists is ordered [to] pay its assessed tax liability of P111,291,214.46.

SO ORDERED. ^[15]

Petitioner's Motion for Reconsideration was denied in a Resolution dated March 31, 2004. Hence, this appeal on the following assignment of errors:

I.

The Honorable Court of Appeals committed grave error in ruling that it is outside the jurisdiction of the Court of Tax Appeals to entertain the Petition for Review filed by the herein Petitioner at the CTA despite the fact that such case inevitably rests upon the validity of the issuance by the BIR of warrants of distraint and levy contrary to the provisions of Section 7(1) of Republic Act No. 1125.

II.

The Honorable Court of Appeals gravely erred when it ruled that failure to comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 is merely a formal defect that does not invalidate the waiver of the statute of limitations without stating the legal justification for such conclusion. Such ruling totally disregarded the mandatory requirements of Section 222(b) of the Tax Code and its implementing regulation, RMO No. 20-90 which are substantive in nature. The RMO provides that violation thereof subjects the erring officer to administrative sanction. This directive shows that the RMO is not merely cover forms.

III.

The Honorable Court of Appeals gravely erred when it ruled that the assessment notices became final and unappealable. The assessment issued is void and legally non-existent because the BIR has no power to issue an assessment beyond the three-year prescriptive period where there is no valid and binding waiver of the statute of limitation.

IV.

The Honorable Court of Appeals gravely erred when it held that the