Republic of the Philippines
**SUPREME COURT**
Manila

SECOND DIVISION

**G.R. No. 178087** **May 5, 2010**

**COMMISSIONER OF INTERNAL REVENUE,** Petitioner,
vs.
**KUDOS METAL CORPORATION,** Respondent.

D E C I S I O N

**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:

| Kind of Tax | Amount |
|---|---|

| | |
|---|---|
| Income Tax | ₱ 9,693,897.85 |
| VAT | 13,962,460.90 |
| EWT | 1,712,336.76 |
| Withholding Tax-Compensation | 247,353.24 |
| Penalties | 8,000.00 |
| **Total** | ₱25,624,048.76 |

*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 ₱1,000,000.00. 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), For tax fraud and policy Enforcement Service 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.
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> 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.
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> 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.

**MARIANO C. DEL CASTILLO**
Associate Justice

WE CONCUR:

**ANTONIO T. CARPIO**
Associate Justice
Chairperson

**ARTURO D. BRION**
Associate Justice

**ROBERTO A. ABAD**
Associate Justice