REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE *Petitioner,*	CTA EB CASE No. 1058 (CTA CASE No. 8205)
-versus-	*Present*: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
NIKKEN PHILIPPINES INC., *Respondent.*	Promulgated: APR 10 2015 3:20 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) seeking to set aside this Court's Decision promulgated on October 23, 2014,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated May 24, 2013 and August 12, 2013, respectively, are hereby **AFFIRMED**."

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[1] Filed on November 21, 2014.
[2] *En Banc* Docket, pp. 653-664.

In her motion, CIR insists that the doctrine of estoppel applies in the instant case, as Nikken Philippines Inc., (Nikken) protested the validity of the waiver of statute of limitations only in its protest on the Formal Letter of Demand and Assessment Notice, and such questioning was not raised as early as Nikken's protest on the Preliminary Assessment Notice. CIR points out that the waiver itself was notarized and stated therein under oath that such was executed by Ms. Concepcion Turingan on behalf of Nikken. Likewise, CIR contends that Nikken acted in bad faith in questioning Ms. Turingan's authority when in another case involving taxable year 2006 before the Second Division of this Court, it was also Ms. Turingan who signed the waiver.

In its Comment/Opposition,[3] Nikken maintains its same arguments that the waiver is void as the same was executed after the lapse of prescriptive period for assessment, that it was signed without the required written and notarized authority from it, that it lacks proof that Nikken was furnished a copy of the approved and accepted waiver, and that such cannot be validated by a mere invocation of the doctrine of estoppel.

The main thrust of CIR's argument lies on whether the waiver of statute of limitations is valid.

The motion is bereft of merit.

On the issue of estoppel, a cursory reading of the arguments presented by CIR readily reveals that no new matters or issues have been raised and that it deals with the very same issue which has been thoroughly passed upon by the Court in Division and clearly discussed in the Decision promulgated on May 24, 2013 and sustained in the Resolution dated August 12, 2013, by this Court's Special Third Division, as reiterated by the Court *En Banc* in the Motion for Reconsideration's assailed Decision. Thus, there is no need to dwell on the said matter.

On the issue of bad faith, the possibility of committing perjury by Ms. Turingan is not an issue to rule otherwise on

[3] Filed on December 11, 2014.

the validity of the waiver. In addition, courts are not authorized to take judicial notice, in the adjudication of cases pending before them, of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge.[4] Although there are exceptions[5] to the said rule, any of such exceptions is absent in the instant case. Thus, Ms. Turingan's signing of waiver in another case is of no moment.

Most importantly, the fact that the waiver is not accompanied by a written and notarized authority from Nikken is not the only reason why such was invalidated. Aside from the said fatal defect, the assailed Decision points out that:

> "After carefully examining the questioned Waiver of the Statute of Limitations, this Court has no reason to deviate from the findings in the assailed Decision and considers the said waiver to be without any binding effect for the reasons stated that it was executed without the notarized written authority of Ms. Turingan to sign on behalf of Nikken, <u>and even so, the fact of receipt by Nikken of its file copy of the waiver was not indicated in the original copy and no other evidence was presented to prove the fact of receipt of the waiver accepted by CIR</u>. xxx" (underlining supplied)

To note, what is required is not only that the waiver be signed by an authorized representative of Nikken, but that it must also be accompanied by a written and notarized authority from Nikken itself. Such is absent in this instant case. As stated in Revenue Delegation Authority Order (RDAO) No. 05-01:

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[4] *Tabuena vs. Court of Appeals*, 196 SCRA 650; *People vs. Melencio Mendoza*, 294 SCRA 288 37 *Republic vs. Court of Appeals*, 277 SCRA 633

[5] The following are exceptions to this general rule: (1) when in the absence of any objection, with the knowledge of the opposing party, the contents of said other case are dearly referred to by title and number in a pending action and adopted or read into the record of the latter; or (2) when the original record of the other case or any part of it is actually withdrawn from the archives at the court's discretion upon the request, or with the consent, of the parties, and admitted as part of the record of the pending case.

> "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 authorized. The 'WAIVER' should not be accepted by the concerned BIR office and official unless duly notarized." (Underlining supplied)

To reiterate, it is not enough that Ms. Turingan signed the waiver itself, just like what CIR alleges Ms. Turingan did in another case involving the taxable year 2006. Aside from the signed waiver, the delegation of authority to Ms. Turingan must also be written and duly notarized. The absence of this is one of the factors that made the waiver defective.

Thus, even on the assumption that Ms. Turingan signed the waiver involved in another case, such does not necessarily mean Nikken acted bad faith. If, just the same, the said waiver is not accompanied by a written and notarized delegation from Nikken, the same will suffer the same fate as what happened in the instant case.

That being said, this Court will not disturb the findings in the assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice