REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LA FRUTERA, INC.
Respondent.

CTA EB NO. 1011
(CTA CASE NO. 7988)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
and
Ringpis-Liban, *JJ.*

Promulgated:
FEB 06 2015
4:20 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.

For resolution is petitioner's Motion for Reconsideration (Re: Decision dated August 4, 2014) filed on August 29, 2014, with respondent's Comment thereon filed on November 21, 2014.

In its Motion for Reconsideration, petitioner alleged that the Court *En Banc* erred in denying the afore-said petition and prays for reconsideration on the following grounds:

a. Both petitioner and respondent have validly entered into a written agreement to extend the period to assess;
b. A withholding tax assessment is imprescriptible;
c. Erroneous application and enforcement of the law by public officers do not preclude subsequent correct application of the statute.

Petitioner maintains that the waiver was validly executed between the parties; that an alleged deviation from the form of the waiver prescribed under RMO No. 20-90 by one or both parties should not be used to frustrate the collection of just taxes if there is concurrence and a voluntary act of entering said agreement in accordance with Section 222 of the Tax Code; that the withholding tax assessment is imprescriptible; that withholding taxes are not tax liabilities but a penalty for the breach of its legal duty to withhold and remit taxes from the statutory taxpayer; that a withholding tax is not an internal revenue tax but is only a system used to collect income in advance; that the government can never be in estoppel by error of its agents, particularly in matters involving taxes.

On the other hand, respondent La Frutera counters that the Court correctly ruled that the waiver of the statute of limitations under the NIRC executed by Mr. Edwin S. Ledesma was defective and could not have validly extended the original three (3) year prescriptive period to assess; that petitioner impermissibly changed her theory on appeal in arguing that a withholding tax assessment is imprescriptible; that the Court correctly ruled that the presumption of correctness of the assessment may be overturned by evidence to the contrary. Respondent prayed that the Court deny the Motion for Reconsideration and affirm the Decision dated 4 August 2014.

A perusal of the issues and arguments raised in the instant Motion for Reconsideration shows that petitioner raised for the first time the argument that "a withholding tax assessment is imprescriptible." Petitioner never raised this argument before the lower court, nor in her Petition for Review.

It is well established that the issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic considerations of due process impel the adoption of this rule.[1]

On the other hand, the other arguments raised by petitioner are substantially the same as its previous arguments which had been fully addressed and discussed by the Court in the assailed Decision.

[1] Pamela Mercado, et al. vs. Spouses Aguedo Espina and Lourdes Espina, G.R. No. 173987, February 25, 2013, citations omitted.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[2], the Supreme Court emphasized that "in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court." Petitioner, however, did not satisfy this burden.

The Motion for Reconsideration deserves to be denied for failing to present any legitimate argument which could warrant the reconsideration of the Court's Decision dated August 4, 2014.

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

SO ORDERED.

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MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

with concurring opinion

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

[2] Marcos vs. Manglapuz, G.R. No. 88211, October 27, 1989.

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1011 (CTA Case No. 7988)
	Present:
-versus-	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN, *JJ.***
LA FRUTERA, INC., *Respondent.*	
	Promulgated: FEB 06 2015 4:20 p.m.

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CONCURRING OPINION

DEL ROSARIO, *PJ*:

I concur with my esteemed colleague, the Honorable Associate Justice Ma. Belen M. Ringpis-Liban, that there is no compelling reason that will warrant the modification or reversal of the assailed Decision. Indeed, the arguments raised by petitioner in the subject Motion for Reconsideration are mere rehash and amplification of the previous arguments raised in her Petition for Review which have been fully addressed and threshed out by the Court in the assailed Decision.

Likewise, I am in agreement with the *ponente* in finding that petitioner raised for the first time, in the subject Motion for Reconsideration, the argument that *"a withholding tax assessment is imprescriptible."* It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.[1]

Even assuming *arguendo* that the Court can consider the afore-mentioned argument of petitioner, albeit newly raised, the same has no leg to stand on, both in law and in jurisprudence.

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,*[2] *Commissioner of Internal Revenue vs. Kudos Metal Corporation,*[3] *Commissioner of Internal Revenue vs. FMF Development Corporation,*[4] *Philippine National Oil Company vs. Court of Appeals*, *et al.*,[5] the Supreme Court has consistently ruled that Section 203[6] of the National Internal Revenue Code (NIRC) of 1997, as amended, applies in cases involving deficiency withholding tax assessments. To be specific, in the afore-cited cases, the Supreme Court uniformly applied the three-year prescriptive period on the assessment of deficiency withholding tax against the taxpayer along with other internal revenue taxes.

At the risk of being repetitive, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiceable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[7]

Since no less than the Supreme Court has applied the three-year prescriptive period on the assessment of deficiency withholding tax, I find no merit on petitioner's claim that the Bureau of Internal Revenue's right to assess a taxpayer for deficiency withholding is imprescriptible.

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[1] Ayala Land, Inc. and Capitol Citifarms, Inc. v. Simeona Castillo, et al., G. R. No. 178110, June 15, 2011 *citing* Madrid v. Mapoy, G.R. No. 150887, 14 August 2009, 596 SCRA 14, 28.
[2] G.R. No. 169225, November 17, 2010.
[3] G.R. No. 178087, May 5, 2010.
[4] G.R. No. 167765, June 30, 2008.
[5] G.R. No. 109976, April 26, 2005.
[6] Section 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, <u>internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return</u>, 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....(Emphasis added)
[7] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003, citing the case of GSIS vs. Court of Appeals, 334 Phil. 163.

All told, I vote to **DENY** petitioner's Motion for Reconsideration filed on August 29, 2014.

ROMAN G. DEL ROSARIO
Presiding Justice