REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- **versus** -

CORAL BAY NICKEL CORPORATION,
Respondent.

CTA EB No. 1652
(CTA Case No. 8756)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

FEB 06 2019
3:41 p.m.

x - x

RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on September 5, 2018,[1] with respondent's **"COMMENT/OPPOSITION"** filed on October 18, 2018,[2] praying for the reconsideration and setting aside of the Court *En Banc's* Decision dated August 14, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated January 13, 2017 and the Resolution dated April 26, 2017, both rendered by the Court in Division in CTA Case No. 8756, are **AFFIRMED**.

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[1] EB Docket, pp. 103 to 115.
[2] EB Docket, pp. 121 to 139.

SO ORDERED."

Petitioner's arguments:

In his *Motion for Reconsideration*, petitioner argues that the Court erred when it ruled that respondent is not estopped from questioning the validity of the waivers. He reiterates that the rule on estoppel applies in the instant case.

According to petitioner, respondent is estopped from assailing the validity of the waivers especially since the said waivers arose from respondent. Allegedly, respondent never questioned the validity of the waivers; and that it was only when the audit investigation yielded unfavorable results that respondent started to question the validity of the waivers. Thus, respondent should not be allowed to profit from its misrepresentation. By claiming that the waivers are defective, respondent allegedly violated the underlying principles of quasi-contracts.

Petitioner likewise contends that the Court erred in ruling that withholding taxes are taxes due to taxpayer and are subject to the period of limitation under Section 203 of the National Internal Revenue Code (NIRC) of 1997. Allegedly, the imposition of penalty to the withholding agent for failure to withhold is not covered by the three (3)-year prescriptive period. In the case of non-withholding of tax, the liability of the withholding agent becomes separate and distinct from the liability of the person to whom the tax is primarily imposed and when there is breach of the withholding agent of his legal duty, he is assessed not for the collection of income tax, but merely penalized for failure to comply with the withholding tax provision.

Respondent's arguments:

In its *Comment/Opposition*, respondent counters that petitioner mistakenly apply the doctrine in the case *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, (hereinafter referred to as "*Next Mobile* case"). According to respondent, the factual milieu in the *Next Mobile* case and in the instant case are explicitly distinct. Respondent emphasizes that in the *Next Mobile* case, the flaws found in the waiver were formal defects. On the other hand, the issues in the instant case do not pertain to the formal requirements of the waivers, but rather to the timing of execution of the waiver.

The doctrine of estoppel, as an equitable remedy, cannot allegedly be applied when clear positive law is applicable. The law clearly provides for the period to assess, which petitioner failed to observe after he belatedly accepted the waiver. Public policy dictates the stringent application of the three-year period in accordance with taxpayer's right to security against prolonged and unscrupulous investigations by the government.

Respondent likewise posits that the rule on prescription applies to the alleged deficiency final withholding tax of the respondent, as the amount being assessed by petitioner clearly represents internal revenue taxes that are well within the coverage of the rules on prescription.

Finally, respondent submits that petitioner had waived and abandoned its arguments against respondent's application of the ten percent (10%) preferential tax treaty rate pursuant to the Philippines-Japan Tax Treaty n its income payments in 2007.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

In support of his argument that estoppel applies in this case, petitioner contends that by claiming that the waivers are defective, respondent violated the underlying principles of quasi-contracts which hold true when respondent clearly benefited by the execution of the waivers. According to petitioner, a quasi-contract is based on the presumed will or intent of the obligor dictated by equity and by the principles of absolute justice.

We find the foregoing arguments untenable.

Sections 203 and 222 of the NIRC of 1997 states the periods of limitation upon the assessment of taxes, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, 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. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (*Emphasis supplied*)
>
> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx xxx xxx
>
> (b) **<u>If before the expiration of the time prescribed in Section 203 for the assessment of the tax</u>, 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." *(Emphasis and underscoring supplied)*

Based on the above-quoted Section 203, taxpayers may be assessed of taxes for a period of three (3) years from the last day prescribed by law for the filing of the return, or the actual filing thereof, which comes later. However, Section 222(b) authorizes the extension of the said three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the Commissioner of Internal Revenue may stipulate to extend the period of assessment **by a written agreement executed <u>prior to the lapse of the period prescribed by law</u>**, and by subsequent written agreements before the expiration of the period previously agreed upon.[3] In other words, a waiver of the statute of limitations, to be valid, must be, *inter alia*, executed **before the expiration of the ordinary prescriptive period for assessment.**[4]

As discussed in the assailed Decision, the first *Waiver of the Defense of Prescription Under the Statute of Limitations Under the National Internal Revenue Code* executed by both parties, became

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[3] *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.

[4] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

effective and binding **only after** the lapse of the three-year prescriptive period to assess respondent for the deficiency Final Withholding Tax (FWT) for the months of January, February and March 2007. Evidently, at the time when the said first *Waiver* became effective, the period to assess respondent for the said taxes had already prescribed.

There is, therefore, no merit to petitioner's claim that respondent was unduly enriched or benefited with the execution of the waivers, insofar as the assessments of the deficiency FWT for the months of January, February and March 2007, are concerned. On the contrary, the execution of the waivers was detrimental to respondent as it was unduly assessed with deficiency taxes that had already prescribed.

Accordingly, We find no cogent reason to deviate from Our ruling that respondent is not estopped from questioning the validity of the waiver.

As for the other arguments raised by petitioner, a perusal of the instant *Motion for Reconsideration* show that the grounds raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision. Moreover, petitioner failed to present new matters or arguments which may compel Us to reconsider and reverse the assailed Decision.

Finding no compelling reason to reconsider, modify or reverse Our Decision, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice