REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MS. MARY SUSAN R. FORTICH, Petitioner,	**CTA CASE NO. 9036**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
MYRNA S. LEONIDA, OIC-REGIONAL DIRECTOR, BIR, REVENUE REGION NO. 12, Respondent.	Promulgated: AUG 17 2018 9:10 am

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RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's **Motion for Reconsideration (Re: Decision promulgated 10 May 2018)**, filed on May 28, 2018, with petitioner's **Opposition to Motion for Reconsideration**, filed by registered mail on June 19, 2018 and received by the Court on June 27, 2018.

Respondent moves for reconsideration of the Court's Decision dated May 10, 2018 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner for taxable year 2010 are **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

In the assailed Decision, the Court found that the waivers extending the period to assess is defective, and hence, respondent's right to assess has already prescribed. The Court also ruled that the absence of a Letter of Authority (LOA) violated petitioner's right to due process.

In her motion, respondent argues that estoppel is applicable in this case since petitioner performed acts showing her awareness that the waivers were accepted by the Bureau of Internal Revenue (BIR). Respondent maintains that from the correspondence between petitioner and respondent's representatives, it is evident that the former is actively participating during the conduct of the audit investigation. Respondent also cites the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[1] (*Next Mobile*) and avers that a taxpayer may be estopped from raising the defense of prescription by his repeated requests or positive acts which has induced the government authorities to delay the collection of the assessed tax.

By way of opposition, petitioner avers that waivers must be carefully and strictly construed since it is a bilateral agreement between two parties, and that estoppel does not apply to petitioner in questioning the validity of the first and second waivers.

At the outset, a careful evaluation of respondent's arguments reveals that she has substantially raised the same issues in her previous pleadings which had already been passed upon and considered by the Court. Nonetheless, for the purpose of elucidating the Court's ruling in the assailed Decision, this Court will address the arguments raised by respondent.

In the assailed Decision, the Court noted that the three copies of the waiver executed on April 19, 2013, were still attached to the BIR Records of the case, leading to the conclusion that petitioner was not furnished a copy of the accepted waiver, and such fact was not controverted by respondent. Instead, respondent argues that from petitioner's acts, such as her submission of purchase and sales invoices and communicating with respondent in relation to the investigation, petitioner's awareness that the waivers were accepted by the BIR is apparent.

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[1] G.R. No. 212825, December 7, 2015.

The Court reiterates its ruling in the assailed Decision that the waivers are invalid as they do not indicate the date of acceptance and the fact of receipt by petitioner of the accepted waiver. The procedure laid down under Revenue Memorandum Order (RMO) No. 20-90[2] is clear that the date of acceptance of the waiver by the BIR must be indicated, and the fact of receipt by the taxpayer of her file copy must also 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.

Respondent claims that petitioner voluntarily executed the waivers, and hence, she should not be allowed to impugn the validity of the agreement after benefiting from the same. Respondent avers that petitioner should not be allowed to profit from her misrepresentation.

On the other hand, petitioner argues that the execution of the waivers was not sought or requested by her. Instead, what she requested was for respondent to use his awesome and vast reservoir of powers to examine whatever is left of her records and books, and for respondent to use "benchmarking" or best evidence obtainable in the computation of the gross profit ratio.

It should be noted that the Court found that it was in fact respondent who advised petitioner to execute the first waiver. The pertinent portion of the assailed Decision reads:

> "Thereafter, petitioner received a letter dated March 25, 2013 signed by Director Aranas, granting petitioner's request for reinvestigation and reconsideration of the deficiency income tax and VAT assessments. The same letter, likewise, advised petitioner to accomplish and sign the enclosed Waiver of the Defense of Prescription of the Statute of Limitations in three (3) copies.
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> On April 1, 2013, Regional Director Aranas indorsed the docket back to Revenue District Office No. 79 for reinvestigation, and advised that a notarized waiver of the defense of prescription of the statute of limitations should be submitted by petitioner as a requirement for the reinvestigation of the case. The reinvestigation was

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2 Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, dated April 4, 1990.

> assigned to RO Rafael S. Amores and Group Supervisor Tomas S. Rambuyon.
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> Hence, petitioner executed the waiver on April 19, 2013, which extended the assessment of taxes up to December 31, 2013. Subsequently, on May 28, 2013, another waiver was executed by petitioner which will expire on October 31, 2014." *(Citations omitted)*

Moreover, respondent himself stated in her motion that petitioner was made to accomplish the waiver. The motion reads:

> "In reply to petitioner's letter requesting for reinvestigation and reconsideration in relation to the PAN dated 24 January 2013, Regional Director Perfecto L. Aranas of Revenue Region No. 12, Bacolod (p. 100, BIR Records), informed petitioner thru a Letter dated 25 March 2013 that her request for reinvestigation and reconsideration was granted. That to formalize the same, petitioner was made to accomplish a Waiver of the Defense of Prescription of the Statute of Limitations.
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> On 19 April 2013, petitioner executed the first Waiver (extending the period to assess not later than 31 December 2013) as evidenced by her letter dated 20 April 2013 addressed to the Office of the Revenue District Officer, Revenue District No. 079, Dumaguete City (p. 101, BIR Records).
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> On 28 May 2013, petitioner executed the second Waiver extending the period to assess not later than 31 October 2014. In a Letter dated 28 May 2013, petitioner sent the Waiver to RDO Crescencio A. Agad (p. 164, BIR Records)."

Clearly, it was respondent who instructed petitioner to execute the first waiver.

Respondent asserts that petitioner is violating the principles of quasi-contract by claiming that the waivers are defective when petitioner benefited from the same. Suffice it to state that provisions under the Civil Code cannot supersede the provisions of the National

Internal Revenue Code of 1997, as amended (Tax Code) as the latter is a special law which governs, among others, the audit and examination of taxpayers.

The Court is not unaware of the *Next Mobile* case where the Supreme Court ruled that the waivers executed by Next Mobile are valid, applying the principle of "*in pari delicto*". However, it should be noted that due to the *peculiar circumstances* of that case, the Supreme Court treated that case as an *exception* to the general rule that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes.

The treatment of the Supreme Court of the *Next Mobile* case as an "exception" can be seen in the subsequent case of *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[3], where the Supreme Court once again invalidated the first and second waivers executed by the taxpayer therein, holding that the failure to provide the office accepting the waiver with the third copy violates RMO No. 20-90 and RDAO No. 05-01[4] and, likewise, invalidating the third waiver executed by the taxpayer on the ground that it was not executed in three copies.

We find that *Next Mobile* is inapplicable to the present case since in this case, the defect is caused solely by respondent. Had respondent's officers religiously done their duty under RMO No. 20-90 and RDAO No. 05-01, i.e., indicating the date of acceptance in the waivers and furnishing petitioner a copy of the waivers, the waivers would have been valid, and prescription would not have set in.

Respondent further argues that a revenue officer has authority to conduct the audit investigation without an LOA because there was no actual examination of petitioner's books in this case. Thus, Section 13 of the Tax Code does not apply. Accordingly, there is no strict requirement for the existence of an LOA in the "no-contact-audit-approach" and what is sufficient is that a Letter Notice (LN) was issued in compliance with RMO No. 30-2003[5]. Respondent also cites

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[3] G.R. No. 213943, March 22, 2017.

[4] Subject: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, dated August 2, 2001.

[5] Subject: Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes, dated September 18, 2003.

Revenue Memorandum Circular (RMC) No. 40-2003[6] and posits that a LN is considered as a notice of audit and investigation, receipt of which prevents the subject taxpayer from amending the relevant tax return.

On the other hand, petitioner contends that the cases of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[7] (*Medicard*) and *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[8] (*Sony Philippines*), as cited therein, explains the correct interpretation of the power of the Commissioner under Section 6(A) of the Tax Code; and, whether "there is no actual examination of the books or "No-Contact-Audit-Approach" is irrelevant".

Petitioner is correct that it is the *Medicard* case which applies in this case. As discussed extensively in the *Medicard* case, which is quoted in the assailed Decision, an examination or assessment of any taxpayer cannot be undertaken without prior approval and authorization from the Commissioner or his duly authorized representatives. Based on RMC No. 40-2003, an LN can be considered a notice of audit or investigation only insofar as it disqualifies the taxpayers concerned from amending any return which is the subject of such audit or investigation.

Respondent argues that the case of *Sony Philippines* is not applicable herein because of the difference in the set of facts; and that principle of *stare decisis* cannot set in, as there was a misapplication of the doctrine laid down in the *Sony Philippines* case to the case at bar.

The doctrine of *stare decisis et non quieta movere* is explained by the Supreme Court in the case of *Chinese Young Mens Christian Association of the Philippine Islands, doing business under the name of Manila Downtown YMCA vs. Remington Steel Corporation*[9] in this wise:

> "xxx Under the doctrine, when the Supreme Court has once laid down a principle of law as applicable to a

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[6] Subject: Effect of the Issuance and Receipt of Letter Notice to the Taxpayer's Right to Amend its Tax Returns as Provided under Section 6 of the National Internal Revenue Code, dated July 3, 2003.
[7] G.R. No. 222743, April 5, 2017.
[8] G.R. No. 178697, November 17, 2010.
[9] G.R. No. 159422, March 28, 2008.

> certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same. The doctrine of *stare decisis* is based upon the legal principle or rule involved and not upon judgment which results therefrom. In this particular sense *stare decisis* differs from *res judicata* which is based upon the judgment.
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> The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:
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>> Time and again, the court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. <u>*Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different.</u> It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue." *(Underscoring supplied)*

It bears stressing that what was cited in the assailed Decision is the *Medicard* case and the *Sony Philippines* case was merely cited therein, which shows that the Supreme Court itself found that the doctrine in the *Sony Philippines* case is applicable. Be that as it may, the doctrine in the *Sony Philippines* case may still be applied as the facts are substantially the same.

In the *Sony Philippines* case, the issued LOA covered the period 1997 and unverified prior years. The Supreme Court applied Section 6 of the Tax Code and held that in the absence of an authority to conduct an examination or assessment of any taxpayer, or when the revenue officer so authorized went beyond the authority given, the examination or assessment is a nullity. Considering that the assessment arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998, then, the revenue officers went beyond their authority as stated in the LOA, and as a result, the assessment was considered a nullity. In the same way, the assessment in the present case where no LOA was issued at all should also be declared a nullity.

Moreover, in the case of *Commissioner of Internal Revenue vs. Mid-Land QC Realty Corporation*[10], the CTA *En Banc,* citing the *Medicard* case, ruled as follows:

> "A careful examination of the case *a quo* would disclose that no Letter of Authority (LOA) was issued against respondent for taxable year 2007. Thus, the subject tax assessments are void.
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> The LN No. 039-TRS-07-00-00120 dated March 15, 2010 issued to respondent will not suffice. This is the ruling of the Supreme Court in the same case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, to wit:
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> xxx xxx xxx
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> Based on the foregoing jurisprudential pronouncements, before an examination of the taxpayer may be validly done, it is a legal requirement that there must first be an LOA issued to the concerned revenue examiners, unless the petitioner (the Commissioner of Internal Revenue) himself or his duly authorized representative will conduct such an examination; and an LN does not suffice, simply because an LN is entirely different and serves a different purpose than an LOA. Without such an LOA, the resulting assessment or examination is a nullity.

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[10] CTA EB No. 1463 (CTA Case No. 8711), December 15, 2017.

> In this case, there is no indication that an LOA was issued against respondent. The BIR came up with the subject tax assessments only on the basis or pursuant to an LN, particularly, LN No. 039-TRS-07-00-00120 dated March 15, 2010. Thus, for lack of an LOA, the said tax assessments are void."

The same is true in this case. Considering that the assessment arose from a mere LN, without an audit being conducted pursuant to a valid LOA, the assessment conducted by respondent is void.

Respondent cites the dissenting opinion of Honorable Justice Ma. Belen M. Ringpis-Liban in the case of *Medtecs International Corporation Limited vs. Commissioner of Internal Revenue*[11] and contends that the law of agency should be applied in this case. Respondent claims that an LOA as well as an LN are contracts of agency where the CIR is the principal, as he is the one mandated by law to make assessments, and the Revenue Regional Director (RRD), his agent. According to respondent, the revenue officers named in the LOA are mere sub-agents of the RRD, and that although the LN was not entitled "Letter of Authority", it contains all the elements necessary to establish a contract of agency between the Commissioner and the revenue officer, since the title of the contract does not necessarily determine its true nature.

Respondent's arguments are bereft of merit. First, the *Medtecs* case is inapplicable to the case at bar. In the *Medtecs* case, an LOA was issued by the Commissioner but the actual revenue officer who continued the assessment and concluded the same is different from the officer named in the LOA. Clearly, the issue therein is different from the present case where no LOA was issued at all.

Furthermore, it is well to point out that in this case, there was no revenue officer authorized to conduct an investigation since no LOA was issued by respondent. Hence, it puzzles the Court how the laws on agency could apply as respondent argued. Absent an authorized agent, respondent, as principal, did not and could not enter into a contract of agency.

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[11] CTA EB Nos. 1560 & 1561 (CTA Case No. 8538), March 13, 2018.

In view of the foregoing, the Court finds no compelling reason to modify or amend the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated 10 May 2018)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice