REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

RURAL BANK OF BACNOTAN (LA UNION), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9118

Members:

UY, *Chairperson*,
RINGPIS-LIBAN, and
MODESTO-SAN PEDRO, JJ.

Promulgated:
JAN 21 2021
2:10 p.m.

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RESOLUTION

UY, J.:

For resolution is respondent's ***Motion for Reconsideration (Re: Decision promulgated 2 March 2020)***[1] filed via registered mail on June 10, 2020, without petitioner's comment despite due notice per Record Verification Report dated October 15, 2020.[2]

In his *Motion,* respondent prays that the Decision promulgated on March 2, 2020, granting the Petition for Review be reversed and set aside, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Final Assessment Notices assessing petitioner for deficiency income tax, gross receipts tax, expanded

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[1] Docket – Vol. 5, pp. 2438 to 2451.

[2] Records Verification Reported dated October 22, 2020 issued by Records Officer Leocadia L. De Alday and Rosemarie R. Tera, Docket – Vol. 5, p. 2456.

> withholding tax, final withholding tax and compromise penalties for taxable year 2010 in the total amount of ₱2,844,647.67 are **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

After careful consideration of the allegations and arguments raised in respondent's *Motion for Reconsideration,* the Court finds that it contains mere reiterations or rehash of arguments previously submitted, resolved and found by the Court to be without merit.

Thus, the Court reiterates its ruling in the assailed Decision that the two *Waivers*[3] executed by the parties reveal that these do not indicate the nature and amount of the taxes due, to wit:

> "Furthermore, in the case of *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.*[4] *(La Flor)* citing the case of *Commissioner of Internal Revenue vs. System Technology Institute,*[5] the Supreme Court ruled on the materiality of compliance with RMO No. 20-90 and the inclusion of the nature and amount of taxes in the Waiver, to wit:
>
>> In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.,* the Court ruled that **waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due**, to wit:
>>
>> **These requirements are mandatory and must strictly be followed.** To be sure, in a number of cases, this Court did not hesitate to strike down waiver which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
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>> xxx xxx xxx
>>
>> The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard*

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[3] Exhibit "R-5", BIR Records, p. 88. Exhibit "P-11", CD attached to petitioner's FOE; and Exhibit "R-15, BIR Records, p.276.

[4] G.R. No. 212289, January 14, 2019.

[5] G.R. No. 220835, July 26, 2017.

Chartered Bank, because: (1) they were signed by Assistant Commissioner – Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No.20-90.

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA finding that the waivers subject of this case suffer from the following defects:

xxx xxx xxx

> 3. Similar to *Standard Chartered Bank,* the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)

<u>In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected</u>. As above-mentioned, <u>these details are material</u> as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached – the

> assessments had prescribed as there was no valid waiver."
>
> Based on the foregoing, it is a requirement, among others, that Waivers extending the prescriptive period of tax assessments must indicate the nature and amount of the tax due. These requirements are mandatory and must strictly be followed.
>
> In the instant case, the Court finds two waivers executed by the parties and admitted by the Court: 1) Waiver of the Defense of Prescription Under Statute of Limitations execution on October 9, 2013 (*First Waiver*); and 2) Waiver of the Defense of Prescription Under Statute of Limitations dated December 16, 2014 (*Second Waiver*).
>
> A perusal of the *First* and *Second Waivers* show that both Waivers failed to indicate the exact amount of the tax due to be assessed or collected. Following the Supreme Court's pronouncement in the *La Flor* case, the amount of tax due to be assessed or collected are material details that must be indicated in the Waiver in order to reflect the true and valid agreement between the taxpayer and the CIR.
>
> In the absence thereof, the two (2) *Waivers* did not effectively extend the three-year period under Section 203 of the NIRC of 1997 on account of their invalidity. As a result, the assessment against petitioner had prescribed as the Waivers were invalid.
>
> Having found the *Waivers* in the instant case defective due to the absence of the amount of tax due to be assessed, it follows that the period to assess granted to respondent was not extended."

Respondent argues that petitioner is estopped from assailing the validity of the waivers it executed, that petitioner misled respondent by making respondent believes that petitioner needs more time to submit documents. Respondent puts emphasis that petitioner executed not only one, but two (2) waivers. Allegedly, this fact alone will prove that, if upon the execution of the first waiver, petitioner believed that the same was invalid, it should not have executed the first waiver. The succeeding acts of petitioner that it was its clear intention to give force and effect to the waivers. Respondent cites Article 1431[6] of the Civil Code and invokes the case of *Asian Transmission Corporation vs. Commissioner of Internal Revenue*[7] *(Asian Transmission case),* where it applied the doctrine laid down in *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc) (Next Mobile case).*[8]

The Court is not convinced.

Contrary to the allegation of respondent, the *Asian Transmission case* finds no application in the instant case since the factual milieu in the said case is not on all fours with the present case.

Again, We reiterate that the basis of the Court for invaliding the assessment is the fact that the subject *Waivers* failed to indicate the nature and amount of taxes due following the pronouncement made by the Supreme Court in the *La Flor* case.

On the other hand, the issue in the *Asian Transmission case,* citing the doctrine laid down in the *Next Mobile* case, deals with the defects and infirmities of the waivers which include: (1) the notarization of the Waivers was not in accordance with the 2004 Rules on Notarial Practice; (2) failure to indicate the date of acceptance by the Bureau of Internal Revenue (BIR); (3) the Waivers were not signed by the proper revenue officer; and (4) the Waivers failed to specify the type of tax and the amount due. The Supreme Court, in upholding the validity of the waivers despite the infirmities noted, applied the principle of *in pari delicto* or "in equal fault" and ruled that the taxpayer was at fault for deliberately executing defective waivers. Such is not the scenario in the instant case.

It must be noted that the determination of the nature and amount of taxes due lies on the part of the BIR (respondent in this case), and not on the taxpayer (petitioner in this case). Hence, the application of the principle of "*in pari delicto*" or "in equal fault" as enunciated in the *Asian Transmission* case is not obtaining in the present case in view of the disparity in the issues, as well as, the factual background of the case.

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[6] ***Article 1431.-*** Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

[7] G.R. No. 230861, September 19, 2018.

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

Further, the peculiar circumstances attendant in the *Asian Transmission* case, applying the principle laid down in *Next Mobile,* is an exception to the general rule applied in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[9] (*Kudos Metal* case) wherein the Supreme Court required strict compliance with the requirements embodied in RMO No. 20-90 and RDAO No. 05-01, in the proper execution of waiver.

With regard to respondent's argument that petitioner is estopped from questioning the validity of the waiver, the same is of no merit.

Jurisprudence dictates that the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. 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. Simply put, the doctrine of estoppel must be sparingly applied.[10]

In this case, because of the invalidity of the subject *Waivers,* the assessments for deficiency income tax, gross receipts tax, expanded withholding tax, final withholding tax and compromise penalties for taxable year 2010 had already prescribed. Hence, the subject assessments are considered null and void. Verily, respondent cannot use the doctrine of estoppel to validate a void assessment.

As held by the Supreme Court in *Kudos Metal* case, the BIR cannot shift the blame to the taxpayer for issuing defective waivers. The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[11]

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

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[9] G.R. No. 178087, May 5, 2010.
[10] *Ibid.*
[11] *Ibid.*

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice