REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

JVC (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8646

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

NOV 02 2017 : 3:27pm

x -- x

RESOLUTION

UY, *J.*:

For resolution before this Court are the following:

1. Petitioner's **"MOTION FOR RECONSIDERATION (Of Decision Dated 3 July 2017)"** filed on July 20, 2017, without respondent's comment, despite due notice; and

2. Respondent's **"MOTION FOR PARTIAL RECONSIDERATION Re: Decision promulgated on July 3, 2017"** filed on July 20, 2017, with petitioner's **"COMMENT (to Respondent's Motion for Partial Reconsideration dated 20 July 2017)"** filed on August 14, 2017.

Both Motions pray for the reconsideration of this Court's Decision dated July 3, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is

PARTIALLY GRANTED. Petitioner is **ORDERED TO PAY THE REDUCED AMOUNT OF ₱38,402,993.86** for the fiscal year ended March 31, 2007, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax Due	25% Surcharge	Total
Income Tax	₱ 15,763,81.88	₱3,940,895.47	₱19,704,477.35
Value-Added Tax	7,633,313.53	1,908,328.38	9,541,641.91
Expanded Withholding Tax	5,586,908.19	1,396,727.05	6,983,635.24
Final Withholding Tax	112,500.12	28,125.03	140,625.15
Fringe Benefit Tax	1,171,091.37	292,772.84	1,463,864.21
Documentary Stamp Tax	455,000.00	113,750.00	568,750.00
Total	**₱ 30,722,395.09**	**₱7,680,598.77**	**₱38,402,993.86**

In addition, petitioner is **ORDERED TO PAY:**

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax from July 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱38,402,993.86, and on the 20% deficiency interest which have accrued as stated in (a) hereof, computed from March 31, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

In support of its *Motion for Reconsideration*, petitioner raises the following arguments, to wit:

1. The Waivers of the Statute of Limitations are not valid and binding, thus, the 3-year period of limitation within which to assess deficiency taxes prescribed by law was not extended.

2. The Supreme Court has ruled that there must be faithful compliance with the provisions of RMO No. 20-90 and RDAO No. 05-01 in order for a Waiver to be valid and binding.

In his *Motion for Partial Reconsideration*, respondent argues that:

1. The unreflected sources of funds not accounted for in the petitioner's tax returns led to the inference that part of his

income had not been reported.

2. The claimed losses in the amount of ₱1,238,543.69 must be supported by sufficient evidence prescribed under Section 34(D) of the NIRC of 1997, as amended.

3. The unsubstantiated professional fees amounting to ₱5,610,096.60 must be sustained pursuant to Sections 106(A) and 108(A) of the NIRC of 1997, as amended.

In its *Comment*, petitioner counters that:

1. Respondent's *Motion for Reconsideration* is *pro-forma.*

2. The Court's Decision cancelling the deficiency income tax and value-added tax on professional fees amounting to ₱5,610,096.60 is in accordance with the Tax Code, applicable laws, rules and regulations, and existing jurisprudence.

3. The Court's Decision allowing as deduction petitioner JVC's losses amounting to ₱1,238,543.69 is in accordance with the Tax Code, applicable laws, rules and regulations and existing jurisprudence.

THE COURT'S RULING

Both *Motions* lack merit.

After a careful examination and consideration of the respondent's *Motion for Partial Reconsideration*, it is noteworthy that the arguments raised in the said *Motion* are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

With regard to petitioner's *Motion for Reconsideration*, however, petitioner raises a new matter as it contends that respondent's right to assess has already prescribed. It argues that the first *Waiver of the Statute of Limitations* it executed in favor of the BIR did not validly extend the period for assessment, because the date of acceptance by the BIR was not indicated therein. As for the second *Waiver of the Statute of Limitations*, petitioner argues that it also failed to extend the period for assessment, considering that it was executed beyond the three (3) year period for assessment.

We are not convinced.

A perusal of the record reveals that petitioner indeed executed a *Waiver of the Statute of Limitations under the National Internal Revenue Code* (First Waiver) on January 27, 2010, wherein petitioner consented to the assessment of taxes on or before September 30, 2010.[1]

Thereafter, petitioner executed another *Waiver of the Statute of Limitations under the National Internal Revenue Code* (Second Waiver) on September 1, 2010, further extending the period to assess until March 31, 2011.[2]

On March 31, 2011, petitioner received a Final Assessment Notice (FAN) with Assessment Notices and Details of Discrepancies.[3]

Subsequently, petitioner filed its Administrative Protest to the FAN with the Bureau of Internal Revenue (BIR), to dispute the deficiency tax assessments against it.[4] In addition, petitioner filed a Supplemental Protest with the BIR on June 27, 2011.[5] It is noteworthy, however, that petitioner did *not* raise the issue of prescription in its Administrative Protest to the FAN, or in its Supplemental Protest filed with the BIR; particularly on the supposed infirmity of the First Waiver.

It was only in its *Petition for Review* before this Court that petitioner argued that the period to assess has already prescribed. Curiously, however, there was *never* any mention of the alleged invalidity of the *First* Waiver in any of its pleadings. Rather, petitioner relied solely on the fact that the *Second* Waiver was executed beyond the three (3) year period. It was only in the instant *Motion for Reconsideration* that petitioner raises the issue of the alleged infirmity found in the First Waiver it executed in favor of the BIR.

In the case of *Toshiba Information Equipment (Phils.), Inc. vs.*

---

[1] Exhibit "R-5," BIR Records, p. 1756.
[2] Exhibit "R-8," BIR Records, p. 2056.
[3] BIR Records, pp. 2196 to 2233.
[4] BIR Records, pp. 2307 to 2324.
[5] BIR Records, pp. 2285 to 2287.

Commissioner of Internal Revenue,[6] the Supreme Court held that *"it is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings."* Thus, petitioner cannot put into issue a defense which it failed to raise in its previous pleadings. It cannot belatedly raise the issue of the alleged invalidity of the First Waiver at this late stage, *i.e.*, only after this Court has already rendered a Decision in this case, especially when the said defense was already available to the petitioner even before it filed its *Petition for Review.*

But even granting that petitioner may be allowed to raise the issue with regard to the First Waiver, petitioner's contention that the assessment has prescribed still fails to persuade Us.

In *Commissioner of Internal Revenue vs. Next Mobile, Inc.* ("*Next Mobile* case"),[7] the Supreme Court held as follows:

> "The deficiencies of the Waivers in this case are the same as the defects of the waiver in *Kudos*[8]. In the instant case, the CTA found the Waivers because of the following flaws: (1) they were executed without a notarized board authority; (2) **the dates of acceptance by the BIR were not indicated therein**; and (3) the fact of receipt by respondent of its copy of the Second Waiver was not indicated on the face of the original Second Waiver.
>
> **To be sure, both parties in this case are at fault.**
>
> xxx xxx xxx
>
> The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule a find the Waivers valid for the reasons discussed below.
>
> ***First,* the parties in this case are *in pari delicto* or 'in equal fault.'** *In pari delicto* connotes that the two

---

[6] G.R. No. 157594, March 9, 2010.
[7] G.R. No. 212825, December 7, 2015.
[8] Referring to the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

***Second*, the Court has repeatedly pronounced that parties must come to court with clean hands.** Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

***Third*, respondent is estopped from questioning the validity of its Waivers.** While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

> ***Finally*, the Court cannot tolerate this highly suspicious situation.** In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities." *(Emphases supplied)*

Based on the foregoing, it is clear that the general rule is that when a waiver does not comply with the requisites for its validity specified under Revenue Memorandum Order (RMO) No. 20-90[9] and Revenue Delegation Authority Order (RDAO) No. 01-05[10], it is invalid and ineffective to extend the prescriptive period to assess taxes. However, there is an exception to such general rule, and the applicability of the said exception is warranted when the following circumstances are present, to wit:

1. The parties are *in pari delicto* or "in equal fault";
2. The parties came to court not with clean hands;
3. The taxpayer is estopped from questioning the validity of its Waivers;
4. The existence of a highly suspicious situation.

In this case, according to petitioner, the infirmity of the First Waiver is that *"the date of acceptance by OIC-Assistant Commissioner-Large Taxpayers Service Zenaida G. Garcia is not indicated therein."*[11] Indeed, upon a cursory examination of the said First Waiver, the same does not indicate a date of acceptance of the said BIR official.[12] Clearly, respondent is at fault for not indicating the said date of acceptance.

---

[9] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

[10] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

[11] Par. 2.9, petitioner's *Motion for Reconsideration (Of Decision Dated 3 July 2017)*, Docket—Vol. II, p. 1391.

[12] Refer to Exhibit "R-5", BIR Records, p. 1756.

Nevertheless, petitioner is equally at fault with respondent. Knowing that the First Waiver it executed has no date of acceptance by respondent, petitioner could have easily called the latter's attention, and requested to state such date. Petitioner did not do so for no apparent reason.

Consequently, petitioner, being at fault, should not be allowed to come to Court, since it is not considered to have clean hands, and thus, cannot be allowed to benefit from its own wrongdoing.

Furthermore, petitioner is likewise in estoppel. It executed two (2) Waivers and delivered them to respondent, one after the other. Petitioner allowed respondent to rely on them and did not raise any objection against their validity until the filing of the present *Petition for Review*, insofar as the Second Waiver is concerned, and as regards the First Waiver, only at this stage of the instant case.

Finally, the instant case involves a highly suspicious situation in the execution and acceptance of the subject Waiver, particularly in not observing the procedures therefor as stated in RMO No. 20-90 and RDAO No. 05-01. Both parties cannot feign ignorance of these administrative issuances, and yet the said procedures were not observed by them.

If petitioner had all the intention to give legal effect to the Waivers it executed and respondent had every inclination to perform his duties, both parties could have easily observed the procedures laid down in the subject administrative issuances. The fact that they did not creates a highly suspicious situation, which this Court will likewise not tolerate, nor countenance.

In fine, the BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.[13]

Finally, petitioner contends that the case of *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[14] ("*Inquirer* case") should be applied to this case.

---

[13] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.
[14] G.R. No. 213943, March 22, 2017.

We are not swayed.

A review of the facts in this case shows that the application of the *Next Mobile* case, instead of the *Inquirer* case, is more appropriate in this case. In other words, the factual milieu in the *Inquirer* case is different from that of the *Next Mobile* case and so must be applied herein.

In the instant case, the alleged infirmity of the First Waiver is that there is failure to indicate the date of acceptance by the concerned BIR official. This, in turn, is similar to in the *Next Mobile* case, since one of the infirmities raised therein is the lack of the said date of acceptance. In contrast, however, with the *Inquirer* case, the infirmity of the Waiver raised therein was the failure to execute three (3) copies of the waiver and the proper distribution of the said copies. Clearly, the application of the doctrine espoused in the *Next Mobile* is more fitting in this case, than that of the *Inquirer* case.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* and respondent's *Motion for Partial Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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