REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TRANSITIONS OPTICAL PHILIPPINES, INC.,
Respondent.

CTA EB NO. 1251
(CTA Case No. 8442)

Present:

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

Promulgated:

SEP 26 2016 9:30 a.m.

x- -x

RESOLUTION

For resolution is the petitioner's "Motion for Reconsideration" filed on June 28, 2016,[1] praying that the Decision dated 7 June 2016 be reversed and set aside and another one be rendered ordering respondent to pay the amount of Nineteen Million Six Hundred Fourteen Thousand Four Hundred Thirty Eight Pesos and 97/100 (Php19,614,438.97) as deficiency income tax, value added tax, expanded withholding tax and final tax for taxable year 2004, plus 25% surcharge and 20% deficiency and delinquency interest for late payment until fully paid pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

[1] Rollo, pages 175 to 182.

On July 26, 2016, the Court *En Banc* issued a Resolution ordering respondent Transitions Optical Philippines, Inc. (TOPI) to file its Comment on the Motion for Reconsideration within ten (10) days from notice.

On July 28, 2016, TOPI filed its "COMMENT/OPPOSITION RE: PETITIONER'S MOTION FOR RECONSIDERATION (of the Decision Promulgated 07 June 2016)"

Petitioner contends that the Court *En Banc* erred in upholding the Decision and Resolution of the First Division which cancelled the formal assessment notice, formal letter of demand and final decision on disputed assessment which found respondent liable for deficiency income tax, expanded withholding tax, value added tax and final tax for taxable year 2004; that TOPI benefited from the extension of the period to assess pursuant to the waivers it executed; that it was allowed to submit the necessary documents in support of its protest and the same were considered in the evaluation of the protest; that by claiming that the waivers are defective, TOPI violated the principles of quasi-contract when it clearly benefited from the execution of the waivers.

On the other hand, TOPI avers that the arguments presented by petitioner calling for the application of the doctrine of estoppel have already been addressed and completely set aside by the Court *En Banc* and that petitioner failed to contradict the Court's finding that the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) were issued beyond the prescriptive period to assess deficiency taxes.

A perusal of the records shows that the arguments raised by petitioner in the "Motion for Reconsideration" have already been passed upon and considered by the Court *En Banc* in the Assailed Decision. At any rate, it is worthy to emphasize the ruling of the Court that the waivers did not extend the petitioner's right to assess TOPI. The waivers executed are defective since they were issued without the requisite authority from TOPI and there is no date when the waiver was accepted by TOPI's representative. The original copies of waivers do not show proof of receipt by TOPI of the file copy of the waivers. Moreover, the FAN was mailed only after the validity period of the second waiver has expired. Prescription has already set in at the time the FAN and FLD were actually mailed on December 4, 2008.

The Court reiterates that an assessment that was given beyond the statute of limitations can never become final and executory, hence, the assessments would not be binding on the taxpayer.

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." However, in this case, petitioner did not satisfy this burden.

Thus, the "Motion for Reconsideration" deserves to be denied for failing to present any legitimate argument which could warrant reconsideration of the Court *En Banc's* Decision dated June 7, 2016.

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

SO ORDERED.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

I maintain my separate concurring opinion

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

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