REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HOYA GLASS DISK PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8115

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 27 2016
1:18 p.m.

x- -x

RESOLUTION

***Fabon-Victorino, J.*:**

Before the Court are the following incidents:

1) Motion for Partial Reconsideration (Re: Decision dated 8 March 2016) dated March 31, 2016, filed by respondent Commissioner of Internal Revenue (CIR);

2) Motion for Partial Reconsideration dated April 1, 2016, filed by petitioner Hoya Glass Disk Philippines, Inc.

Both respondent and petitioner assail the Decision dated March 8, 2016 which cancelled the assessment for deficiency value-added tax (VAT) for the fiscal year 2005 but affirmed with modification the assessments for deficiency income tax (IT) and final withholding tax (FWT) for the same period.

In her motion, respondent asserts that the Court erred in cancelling the entire assessment for deficiency VAT she issued on the ground that her right to assess had already prescribed. Respondent claims that the five (5) Waivers of the Defense of Prescription extended her period to assess, pursuant to Section 222 of the National Internal Revenue Code (NIRC), as amended. Since the last Waiver extended her period to assess until June 30, 2010, the Formal Letter of Demand (FLD) and Final Assessment Notices (FAN) were issued and received by petitioner within the prescriptive period on April 20, 2009.

Further, the investigation conducted by the Bureau of Internal Revenue (BIR) disclosed that petitioner's sales of scrap were not subjected to VAT, when it is not exempted from VAT.

In its Comment, petitioner considers respondent's arguments as mere rehash of her previous arguments which have already been discussed and passed upon by the Court in the assailed Decision.

Moreover, respondent's right to assess deficiency VAT had already prescribed, as ruled in the assailed Decision. The last day to assess petitioner for VAT for the first quarter of fiscal year 2004 was July 16, 2007 considering that petitioner filed the relevant return on July 16, 2004.

In relation to the foregoing, petitioner invokes Section 222 of the NIRC which provides that the prescriptive period to assess may be extended through the execution of a Waiver of the Statute of Limitations by a taxpayer duly accepted by respondent. However, such Waiver must be executed before the 3-year prescriptive period to assess lapse. In the present case, petitioner executed the Waiver on September 26, 2007 when the prescriptive period had already lapsed, hence, there was no more period to extend.

Even if prescription had not set in, the assessment for deficiency VAT for the scrap items is still without any basis. Petitioner claims that during the trial, it was able to prove that the said sales of scrap items were already subjected to VAT, precisely, the Court cancelled the said VAT assessment.

In its own Motion, petitioner states that the Court erred in sustaining the validity of the Waivers it executed relying on the ruling in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc.*[1] Priorly, the Supreme Court had consistently ruled that the requirements for a valid waiver of the statute of limitation must be strictly complied with, lest, the waiver is deemed void. Since the Next Mobile, Inc. case overturned the existing doctrine, it should be prospectively applied based on the tenet that when a doctrine of the Supreme Court is overruled or a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who relied in good faith on the old doctrine.

Moreover, the instant case is allegedly not on all fours with the cited case since the taxpayer therein deliberately executed defective waivers and thereafter raised the very same defects to avoid tax liability. In the instant case, no evidence was presented by respondent to prove that petitioner deliberately executed defective waivers to avoid payment of taxes. Also unlike in the cited case, there were also three different signatories for the five waivers executed in the present case.

Petitioner also disagrees with the Court's ruling that the delegation fees it paid to Hoya Corporation, were compensation for services rendered and not royalties, thus, subject to final withholding tax. According to petitioner, it was actually an imposition of a new tax not included in respondent's assessment for final withholding tax. Since it was unable to refute the said imposition, it was denied due process which requires that a taxpayer must be informed in writing of the law and the facts upon which the assessment is made.

Petitioner again rejects liability to pay final withholding tax on the delegation fees it paid to Hoya Corporation since it was able to establish, through the testimony of its witness

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

Ma. Anita A. Policarpio, that the services it rendered for which such fees were paid, were performed outside the Philippines, hence not taxable.

Diametrically opposed to the Court's finding, petitioner was able to prove that its repairs and maintenance cost were production overheads incurred in the manufacture of goods attributable to petitioner's Philippine Economic Zone Authority (PEZA) registered activities, hence not subject to tax.

It is also of no moment that the Independent Certified Public Accountant (ICPA) was unable to verify if the said repairs and maintenance cost were necessary for the operation of its PEZA-registered activities as the testimony of its Finance and Accounting Manager Ma. Anita A. Policarpio, corroborated by petitioner's Director Tatsuji Kohuma, are sufficient to prove the same.

Lastly, petitioner complains the simultaneous imposition of deficiency and delinquency interests until full payment based on Section 249 of the NIRC, as amended saying that the same is unconscionable, excessive, and confiscatory since Section 249 imposes a cap of 20% interest. Per petitioner's own interpretation of Section 249 of the NIRC, deficiency interest shall accrue only from the date prescribed for payment in the notice and demand, and that only from such date that delinquency interest will commence to run.

Despite notice, respondent failed to file comment or opposition to petitioner's Motion for Partial Reconsideration.[2]

On respondent's Motion for Partial Reconsideration (Re: Decision dated 8 March 2016) dated March 31, 2016

Clear from the assailed Decision that while the Waivers executed by petitioner suffered certain infirmities, they were

[2] Records Verification dated May 4, 2016

deemed valid given that petitioner and respondent were equally at fault in causing the defects or infirmities.

It is also inaccurate for respondent to claim that the entire assessment for deficiency VAT was cancelled on the ground that prescription had set in. According to respondent, her period to assess petitioner had been extended by the latter's execution of Waivers of the Defense of Prescription and it was erroneous for the Court to declare them invalid. Thus, the Formal Letter of Demand (FLD) and the Final Assessment Notices, were timely issued and received by petitioner.

Obviously, respondent failed to fully discern the Court's declaration in the assailed Decision that the Waivers executed by petitioner were valid.

For the 1st quarter (April-June 2004) of fiscal year April 1, 2004 to March 31, 2005, the right to assess had already prescribed since the First Waiver was executed only on September 26, 2007 or after the last day to assess, viz., July 26, 2007. In other words, the first Waiver executed on September 26, 2007 did not cover the 1st quarter (April-June 2004) of fiscal year April 1, 2004 to March 31, 2005, hence, no extension was effected for the said quarter. Thus, when respondent issued the Formal Letter of Demand (FLD) and the Final Assessment Notices on April 20, 2009, the right to assess for the 1st quarter had already prescribed.

As to respondent's theory that the entire assessment for deficiency VAT from scrap sales were not subjected to VAT, suffice it to say that the record is pregnant with proof they were properly subjected to VAT. For this reason, the assessment for this item was cancelled.

Anent the disallowance of certain input VAT amounting to P64,130.99, it was declared void for failure to inform petitioner of the facts and the law upon which it was based in violation of the requirements under Section 228 of the NIRC. Even if validly issued, the said disallowance pertains to the 1st quarter of the fiscal year, which as earlier discussed, cannot be subjected to assessment on ground of prescription as amply discussed in pages 30-33 of the assailed Decision of March 8, 2016.

On respondent's contention that petitioner is liable for deficiency VAT per third party information that the sales of scrap were not subjected to VAT, the same simply lacks support for the consideration of the Court. Absence any evidence to support such allegation, the same is without weight and credence.

On petitioner's Motion For Partial Reconsideration dated April 1, 2016

Equally without merit is petitioner's contention that the doctrine in *Next Mobile case*[3] should be prospectively applied since it overturned existing jurisprudence that the requirements for a valid waiver of the statute of limitation must be strictly complied with, otherwise the waiver is void.

Contrary to petitioner's claim, the doctrine in the *Next Mobile* case remains to be an existing authority on the matter. The pertinent portion of the said case is hereby quoted for easy reference, thus: "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." It was only due to the peculiar factual circumstances in the said case that the Supreme Court upheld the validity of the Waivers since the parties were *in pari delicto* or in equal fault. Thus, there was no overturning of existing jurisprudence, and the doctrine in *Next Mobile* can be applied to this case, in light that "there is only one Supreme Court from whose decisions all other courts should take their bearings."[4] Further, it is elementary that the interpretation of a law by the Supreme Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law

[3] G.R. No. 212825, December 7, 2015
[4] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003

carried into effect.[5]

On petitioner's contention that the factual milieu of the present case is not on all fours with that of *Next Mobile* case, obviously, petitioner failed to assiduously assimilate the discussion on the matter in pages 16-22 of the Decision dated March 8, 2016.

Petitioner also contends that the Court imposed a new tax which was not included in the assessment issued by respondent, thereby depriving it of its fundamental right to be informed and be heard. Petitioner claims that respondent did not assess it with any tax for delegation fees as it did not appear in the FAN.

The FAN itself belies petitioner's asseveration. In the FAN, respondent assessed petitioner FWT on the delegation fees, only it was treated as Research and Development or royalty fees.

In connection with the foregoing, petitioner itself raised this matter in its own Pre-Trial Brief[6] and in the Joint Stipulation of Facts and Issues[7] it executed with respondent. The parties agreed to submit for the determination of the Court the issue of whether the imposition of FWT on delegation fees paid by petitioner to Hoya Corporation pursuant to the Technology Development Delegation Agreement (TDDA) is proper.

Indeed, it is inaccurate for petitioner to state that new tax has been imposed in the assailed Decision. The Court merely upheld the FWT imposed on the delegation fees/Research and Development/royalty fees but treated the said delegation fees, not as royalty fees but as compensation for services rendered.

Petitioner also rejects any liability for final withholding tax on the delegation fees paid claiming that it was able to

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[5] Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012 citing Senarillos v. Hermosisima, 100 Phil. 501 (1956)
[6] See docket, p. 380, par. 3.3.2
[7] See docket, p. 394, par. 3.3.2

prove that the services rendered for which such fees were paid, were performed outside the Philippines, hence, not taxable.

This issue was already raised by petitioner in its pleadings and during the trial of the case. Again, the evidence presented strongly show that petitioner is liable for FWT on the delegation fees it paid since it failed to prove that the services rendered for which delegation fees were paid, were performed in Japan and that the income arising from such performance were derived from Japan. The full discussion by the Court on upholding the imposition of FWT on the delegations fess is in pages 35-40 of the assailed Decision of March 8, 2016.

The same holds true with regard the Court's ruling pertaining to the item repairs and maintenance cost. No new argument has been put forth which will compel the Court to modify or change its ruling. The disallowance of the deductions for cost of sales from gross income was upheld as petitioner failed to prove that the subject repairs and maintenance costs can be allocated as production overheads incurred in the manufacture of goods pursuant to its PEZA registered activities. Significantly, the ICPA Report indicated that verification as to whether such repairs and maintenance expenses were attributable to petitioner's PEZA-registered activities could not be made since no documents in support thereof were presented for audit. The full discussion on the matter is found in pages 23-29 of the impugned Decision.

Finally, on the imposition of deficiency and delinquency interests, Section 249 of the NIRC of 1997 provides that in case of failure to pay deficiency tax, or any surcharge or interest on such deficiency tax, delinquency interest of 20% per annum shall be assessed and collected.

No less than the Supreme Court upheld the validity of the simultaneous imposition of deficiency and delinquency interest, in this wise:

> The Court likewise holds the imposition of delinquency interest under Section 249(C)(3) of

the 1997 NIRC to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.[8]

The law may be harsh but that is the law.[9]

WHEREFORE, the Motion For Partial Reconsideration (Re: Decision dated 8 March 2016) dated March 31, 2016 filed by respondent, as well as the Motion For Partial Reconsideration dated April 1, 2016 filed by petitioner, are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

(On Official Business)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[8] First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue, G.R. No. 197117, April 10, 2013
[9] Olympio Revaldo vs. People of the Philippines, G.R. No. 170589, April 16, 2009