REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

RCBC SAVINGS BANK INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9001

Members:

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

Promulgated:
APR 16 2019 ; 10:10 am

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RESOLUTION

UY, J.:

For resolution is respondent's **Motion for Reconsideration (Re: Decision dated 18 December 2018)**, filed on January 21, 2019, with petitioner's **Comment & Opposition (Re: Respondent CIR's "Motion for Reconsideration" dated 18 January 2019)**, filed on February 12, 2019, pursuant to the Resolution dated February 19, 2019.

Respondent seeks reconsideration of the Court's Decision (assailed Decision)[1] promulgated on December 18, 2018, the dispositive portion of which reads:

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

[1] Docket, vol. II, pp. 816-850.

GRANTED. Accordingly, the FAN issued by respondent against petitioner for deficiency income tax for taxable year 2006 in the total amount of ₱59,844,040.34, inclusive of increments, is **CANCELLED** and **SET ASIDE**.

SO ORDERED."[2]

In the assailed Decision, the Court found the First Waiver void since it was accepted on April 21, 2010, or beyond the three (3)-year period to assess petitioner for deficiency income tax for taxable year 2006. The other eight (8) subsequent waivers were also found void because there was no period to extend at the time these waivers were all executed as the period to assess has already expired. Thus, the Court held that since all the waivers executed by petitioner are void, the deficiency income tax for taxable year 2006 is likewise void for having been issued beyond the three-year prescriptive period mandated by law.

Respondent's Arguments

In the instant motion, respondent moves for reconsideration of the assailed Decision based on the following:

a. The Court erred in considering an issue that was belatedly raised by petitioner. The Court's power of judicial review over decisions of the Commissioner of Internal Revenue (CIR) on disputed assessment is by nature exclusive and appellate; and

b. The Court erred in cancelling the deficiency tax assessment issued against petitioner on the ground of prescription.

Respondent points out that petitioner raised for the first time on appeal the issue of the alleged prescription of the tax assessment. It was never raised by petitioner during the administrative level.

According to respondent, being in the nature of an appeal, the Court's power is to determine, by review, the propriety of the decision rendered by respondent based on the arguments and records presented during the administrative level. He contends that petitioner should not be allowed to raise for the first time issues, errors or

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[2] Docket, vol. II, p. 849.

defenses, in relation to the tax assessment, which were forgotten or abandoned in the administrative level.

Moreover, respondent submits that the date of acceptance of the waiver is of no moment. The waiver should already bind petitioner as of the date of execution on April 13, 2010.

Allegedly, a waiver is essentially a unilateral act, and therefore does not require acceptance by respondent in order for it to be binding. Respondent alleges that this was emphasized by Revenue Memorandum Order No. 14-2016 promulgated by respondent:

> "5. Considering that the waiver is a voluntary act of the taxpayer, the waiver shall take legal effect and be binding on the taxpayer upon its execution thereof."

Furthermore, respondent contends that petitioner voluntarily executed not one, but nine Waivers of Statute of Limitations. This fact alone will allegedly prove that if upon the execution of the first waiver, petitioner believed that the same was invalid, it should not have executed the remaining eight waivers. Thus, according to respondent, it can be deduced from the succeeding acts of petitioner that it was its clear intention to give force and effect to the waivers.

Finally, respondent stresses that by petitioner's acts or representation, and after benefiting from the effects of the waiver of the defense of prescription, petitioner should not be the first to impugn the validity of its voluntary act. He then cited the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[3].

Petitioner's Counter-Arguments

On the other hand, petitioner opposes respondent's motion. It contends that the Court has already ruled on the matters and issues raised by respondent in the instant motion. Allegedly, the grounds relied upon by the respondent are a mere rehash of the very same issues already passed upon by the Court in the assailed Decision. Moreover, the Court rightfully considered and addressed the issue of prescription. As a general rule, lack of jurisdiction over the subject matter may be raised at any time or even the first time on appeal.

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

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Petitioner further submits that the law on prescription should be liberally construed in order to protect taxpayers and that, as a corollary, the exceptions to the law on prescription should be strictly construed. It is allegedly not fatal to petitioner's case that it failed to raise the issue of prescription or the waiver defects at the administrative level as it has been established in a long line of cases that a void assessment cannot give rise to an obligation to pay deficiency taxes, and it divests the taxing authority of the right to collect them.

According to petitioner, the records are clear that the acceptance by respondent of the First Waiver was only made on April 21, 2010, which was clearly beyond the three-year prescriptive period to assess petitioner for taxable year 2006.

THE COURT'S RULING

Respondent's motion for reconsideration is bereft of merit.

As a rule, failure to raise the defense of prescription at the administrative level prevents the taxpayer from raising it at the appeal stage. However, this rule is not absolute.[4]

The case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[5] (*BPI* case), provides an exception to the rule against raising the defense of prescription for the first time on appeal: the exception arises when the pleadings or the evidence on record show that the claim is barred by prescription. In the *BPI* case, the issue of prescription was only raised upon reaching the Supreme Court, yet, it was ruled that the CIR could no longer collect the assessed tax due to prescription, based on Section 1[6], Rule 9 of the Rules of Court and on jurisprudence. The Supreme Court held that it is imbued with sufficient discretion to review matters, not otherwise

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[4] *China Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 172509, February 4, 2015.

[5] G.R. No. 181836, July 9, 2014; cited in *China Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 172509, February 4, 2015.

[6] Section 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (*Underscoring supplied*)

assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case.

In this case, petitioner raised the issue of prescription when it filed its Petition for Review.

Pursuant to Section 1, Rule 9 of the Rules of Court, the issue of prescription can be raised on appeal (in fact, the issue can be passed upon despite not being raised as a defense, as courts are mandated to dismiss the claim when it appears from the pleadings or the evidence on record that the claim is barred by prescription). Moreover, respondent was afforded due process as he was given the opportunity to raise his arguments and present evidence against petitioner's defense of prescription. Thus, the Court finds that it can rule upon the issue of prescription.

The Court also finds no merit to respondent's argument that the Court erred in cancelling the deficiency tax assessment issued against petitioner on the ground of prescription. Respondent's contentions and arguments are a mere rehash of the same facts and issues which have already been duly considered and extensively discussed in the assailed Decision, to wit:

> "From the foregoing, the above provision authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the Commissioner of Internal Revenue may stipulate to extend the period of assessment by **a written agreement executed <u>prior to the lapse of the period prescribed by law</u>**, and by subsequent written agreements before the expiration of the period previously agreed upon. In other words, a valid waiver of the statute of limitations must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) **before the expiration of the ordinary prescriptive period for assessment**; and (4) for a definite period beyond the ordinary prescriptive period for assessment.
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> In *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, the Supreme Court said:
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> > 'Section 222(b) of the NIRC provides that the period to assess and collect taxes **may**

only be extended upon a written agreement between the CIR and the taxpayer executed <u>before the expiration of the three-year period</u>. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase but not after_ 19 _, which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. <u>Both</u> the date of execution by the taxpayer and date of acceptance by the Bureau <u>should be before the expiration of the period of prescription</u> or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the

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> docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must 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.' (*Emphases and underscoring supplied*)
>
> Applying the foregoing provisions and jurisprudence, the Court finds that the First Waiver of the Statute of Limitations executed by petitioner is void.
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> An examination of the First Waiver reveals that the waiver was accepted by ACIR-Large Taxpayers Service Zenaida G. Garcia on April 21, 2010. Considering that petitioner filed its Annual Income Tax Return for taxable year 2006 on April 16, 2007, respondent only had until April 16, 2010 within which to assess petitioner for deficiency income tax for taxable year 2006, pursuant to Section 203 of the NIRC of 1997. The acceptance of the First Waiver was therefore made after the expiration of the period to assess. Consequently, the First Waiver is void.
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> Considering that the First Waiver is void, the eight subsequent waivers are also void because there was no period to extend at the time these were all executed as the period to assess has already expired on April 16, 2010.
>
> Since the waivers executed by petitioner are void, the deficiency income tax assessment for taxable year 2006 is likewise void for having been issued beyond the three-year prescriptive period mandated by law."

Moreover, it must be noted that in the case of *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[7], the Supreme Court held that the BIR cannot shift the blame to the taxpayer for issuing defective waivers. The Supreme Court ruled that 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

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

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taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated December 18, 2018.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 18 December 2018)** is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice