REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

IP CONTACT CENTER OUTSOURCING, INC.,
Petitioner,

-versus-

HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. RICARDO B. ESPIRITU, Revenue District Officer, Revenue District No. 50,
Respondents.

CTA Case No. 8537

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

Promulgated:

DEC 15 2015
10:26 a.m.

X---X

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is the "Motion for Reconsideration" filed by respondents on October 8, 2015 seeking reconsideration of our Decision dated September 10, 2015 where the Court granted petitioner's Petition for Review, and declared Assessment Notice Nos. IT-LA3529-07-12-0418 and WE-LA3529-07-12-0418 dated April 12, 2012 cancelled and withdrawn.

As grounds for reconsideration, respondents argue that 1) the 1st Waiver dated November 2, 2010 is valid since it was made under the required format prescribed in RDAO 05-01 dated August 2, 2001 which amended, deleted and repealed the required format under RMO 20-90, which requires that a waiver must specify the amount of tax due; and 2) the subject 1st Waiver and the subsequent waivers executed by petitioner being valid, the right of the BIR to assess petitioner for the taxable year 2007 has not yet prescribed.

that 1) the 1st Waiver is fatally infirm for failing to specify the amount of tax due because the repealing clause in RDAO 05-01 falls under the category of an implied repeal and absent a clear intention on the part of the legislature to abrogate the requirement of specifying the amount of deficiency tax due, the requirement has not been repealed; and 2) the doctrine of estoppel does not apply in the instant case.

We find respondents' grounds insufficient to merit reconsideration. In fact, the issues raised by respondents in their Motion for Reconsideration have already been exhaustively studied and considered by this Court prior to rendering our Decision dated September 10, 2015.

The nature of the repealing clause found in RDAO 05-01 which states that "[a]ll other issuances and/or portions thereof inconsistent herewith are hereby repealed and amended accordingly," is in the nature of a general repealing provision and any repeal of the requirement of stating the amount of tax due is merely by implication, if at all.

In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed.[1]

RMO 20-90 was issued on April 4, 1990, while RDAO 5-2001 was issued on August 2, 2001 with an attached Annex "A" that did not include a field for placing the amount of tax due, the period for assessment of which was the subject of the waiver. Corollary to this, on June 29, 2012, RMC 29-2012 was issued which clarified RMC No. 06-05 which, in turn, circularized the salient features of the Supreme Court decision in *Philippine Journalists, Inc. v. CIR*[2] (PCIJ Case). It stated:

> "The aforecited Supreme Court decision pertains to a case involving a tax assessment for the year 1994 and a waiver executed in 1997. Thus, in resolving the case, the relevant BIR issuance is RMO No. 20-90 and not RDAO No. 05-01 which took effect only in 2001."

However, in the *Kudos* case[3] cited in our Decision, different circumstances obtain. The first Waiver in that case which was found to be infirm was executed on December 10, 2001, clearly after RDAO 5-2001 was issued. In *Kudos*, the Supreme Court reiterated that "[t]he waiver must be in the

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[1] Iloilo Palay & Corn Planters Assn., Inc. v. Feliciano, G.R. No. 24022, March 3, 1965.
[2] G.R. No. 162852, December 16, 2004.
[3] Commissioner of Internal Revenue vs. Kudos Metal Corporation, May 5, 2010.

proper form prescribed by RMO 20-90". As *Kudos* was promulgated on May 5, 2010, nearly a decade after RDAO 5-2001 was issued, the High Tribunal is mandated to have been aware of its existence, and despite that, found that the the form of the Waiver in its Annex "A" did not repeal the requirement of stating the amount of tax found in the form of Waiver in RMO 20-90.

Regardless of RMC 29-2012 which expounded on the 2004 *PCIJ* case alone and did not touch on the *Kudos* case, *Kudos* is the standing case law on the matter. As the 1st Waiver was executed by petitioner on November 2, 2010, accepted by respondents on November 8, 2010, and a copy of which was furnished to and received by petitioner on November 9, 2010, after the *Kudos* had been promulgated on May 5, 2010, the Court maintains that the 1st Waiver contains the fatal flaw of failing to specify the amount of tax due in violation of RMO No. 20-90. This requirement has been previously discussed and emphasized in numerous cases.[4] The infirmities in the 1st Waiver, therefore, effectively did not extend respondent's period to assess. The first waiver being a void one, the succeeding waivers executed by the parties have no force and effect as to bind the parties.[5]

Respondents' contention that by executing the 1st Waiver, petitioner is estopped from impugning the same since it is deemed to have admitted that the said waiver is valid and enforceable likewise has no merit. The Supreme Court elaborated on the doctrine of estoppel in the *Kudos* case, thus:

> "The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in equity which, broadly defined, is justice according to natural law and right. **As such, 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 to 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."[6] *(Emphasis ours)*

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[4] Scandinavian Motors Corp. v. Commissioner of Internal Revenue, CTA Case No. 7269, March 26, 2008; Bovis Lend Lease Projects Pte. Ltd. v. Commissioner of Internal Revenue, CTA Case No. 6825, August 23, 2007; Commissioner of Internal Revenue v. Maruka Enterprises, Inc., CTA EB Case No. 105, June 1, 2006; Guoco Holdings (Phils.) v. Commissioner of Internal Revenue, CTA Case No. 6122, August 31, 2005; Maruka Enterprises, Inc. v. Commissioner of Internal Revenue, CTA Case No. 5977, February 2, 2005.
[5] Philippine Hoteliers, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6985, March 9, 2009.
[6] *Id.*, at Note 3.

In view of upholding the infirmity of the 1st Waiver and affirming respondents' failure to issue the assessment notices within three (3) years from the date petitioner filed its income and expanded withholding tax returns, the Court finds no compelling reason to reverse or modify our Decision.

WHEREFORE, respondent's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice