REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TRANSITIONS OPTICAL PHILIPPINES, INC.,
Petitioner,

CTA Case No. 8442

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 07 2014 ; 4:13 p.m.

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RESOLUTION

UY, *J.*:

For this Court's resolution is respondent's *Motion for Reconsideration (Re: Decision Promulgated 1 September 2014)* filed on September 24, 2014, with petitioner's *Comment/Opposition Re: Respondent's Motion for Reconsideration (Of the Decision Promulgated 1 September 2014)* filed on October 9, 2014.

Respondent moves for the reconsideration of the Decision promulgated on September 1, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice, Formal Letter of Demand and Final Decision on Disputed

Assessment finding petitioner Transitions Optical Philippines, Inc. liable for deficiency income tax, deficiency expanded withholding tax, deficiency value-added tax and deficiency final tax for taxable year 2004 in the total amount of **P19,701,849.68** are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."

Respondent seeks the reconsideration of the assailed Decision, wherein the Court found invalid the waivers subject of the instant petition due to the infirmities present in the execution of said waivers.

According to respondent, petitioner is estopped from assailing the validity of the waivers since it never raised the issue in its Protest to the Preliminary Assessment Notice (PAN), Protest to the Final Assessment Notice (FAN), and Supplemental Protest to the FAN.

Respondent insists that the following facts are enough to be considered as implied admission of the validity of the subject waivers which would then warrant the application of the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[1]:

1. Petitioner never questioned the waivers' validity in its Protest to the PAN, Protest to the FAN, and Supplemental Protest to the FAN;
2. Petitioner only raised the issue of validity of the waivers in its Petition for Review after more or less two years of actively participating in the assessment process;
3. A Second Waiver was executed by petitioner's representative/employee with similar job title as that of the person who executed the First Waiver; and
4. Petitioner's Protest to the FAN itself, clearly recognizes the validity of the waivers.

Respondent likewise emphasizes that the FAN and the Formal Letter of Demand (FLD) were served before the expiration of either or both waivers, considering that the same were allegedly delivered to the post office for mailing on November 28, 2008. Such allegation was purportedly supported by the following testimonial and documentary evidence:

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[1] G.R. No. 170257, September 7, 2011.

1. The testimony of Revenue Officer Jocelyn Santos via her Judicial Affidavit, stating that the FLD and the FAN were issued and served to Transitions Optical Inc.;
2. Respondent's Final Decision on Disputed Assessment (FDDA) which stated that the date of actual mailing of the FAN and the FLD was on November 28, 2008; and
3. The testimony of respondent's Liason Officer Dario Consignado who testified that the mail matter containing the FAN/FLD was delivered to the Administrative Division for mailing and that on the same date, he brought the mail matter to the post office.

A perusal of the foregoing shows that the arguments interposed by respondent are the very same contentions contained in her Memorandum filed on March 4, 2014 which have been sufficiently considered, if not squarely addressed, by this Court in the assailed Decision. Thus, further discussing the afore-mentioned allegations is deemed unnecessary.

To reiterate the Court's ruling in the assailed Decision, a waiver of the statute of limitations under the National Internal Revenue Code, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is an agreement between the taxpayer and the Bureau of Internal Revenue (BIR) that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, **the exceptions to the law on prescription should perforce be strictly construed**.[2]

In addition, it is well-settled that the doctrine of estoppel springs from equitable principles and the equities in the case.[3] However,

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[2] *Philippine Journalists, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[3] *Philippine National Bank vs. Intermediate Appellate Court, et al.*, G.R. No. 66715, September 18, 1990.

respondent cannot rely on equity because he who comes into equity must come with clean hands. **Equity refuses to lend its aid in any manner to one seeking its active interposition who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief.**[4]

In this case, respondent is guilty of not complying with the provisions of the BIR's own issuances (*i.e.*, provisions of Revenue Memorandum Order No. 20-90 and Revenue Delegation Authority Order No. 05-01), which have the force and effect of law.[5] In the assailed Decision, this Court noted three (3) infirmities in the execution of the subject Waivers, to wit:

1. The written and notarized authorities of petitioner's representatives, to sign for and on its behalf, namely: the first Waiver by Pamela Theresa D. Abad, and the second Waiver by Suzanne B. Mondoñedo, were not secured by respondent's revenue officers concerned, and the same were not presented in court;
2. The subject Waivers failed to indicate the date of acceptance by respondent's authorized representative, Myrna S. Leonida; and
3. The original copies of the Waivers do not indicate the fact of receipt by the taxpayer.

Without question, the foregoing omissions are all attributable to respondent herself or her representative revenue officials or employees. Thus, it cannot be said that respondent comes to this Court with clean hands and therefore, she cannot be permitted to invoke the equitable doctrine of estoppel.

Such being the case, in view of the infirmities found in the waivers executed by petitioner, the period to assess taxes was not extended. Accordingly, the Court finds no reversible error in declaring the assessment dated November 28, 2008[6] void since the same was issued by the BIR beyond the three-year period provided by law.

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[4] *Pagasa Industrial Corporation vs. Court of Appeals, et al.*, G.R. No. L-54158, August 31, 1984, citing 30 C.J.S. 1009.
[5] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.
[6] Exhibits "9" and its submarkings.

WHEREFORE, respondent's *Motion for Reconsideration* filed on September 24, 2014 is 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