REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FIRST BALFOUR, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9020

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MAÑAHAN, *JJ.*

Promulgated:
JAN 3 1 2017 3:02 pm

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R E S O L U T I O N

For resolution are the following:

1. Petitioner's Motion for Reconsideration[1] (Re: Decision[2] dated November 7, 2016) with Motion to Reset Hearing for Further Presentation of Petitioner's Evidence, filed on November 29, 2016; with respondent's Comment/Opposition[3] filed on December 19, 2016; and

2. Respondent's Omnibus Motion[4] filed on November 25, 2016; with petitioner's Comment/Opposition[5] filed on December 16, 2016.

The Motions are in response to this Court's Resolution dated November 7, 2016, which partially cancelled the assessments for taxable year 2009 on the ground of prescription. The dispositive portion provided:

> WHEREFORE, in view of the foregoing, petitioner's Omnibus Motion is PARTIALLY GRANTED. Accordingly, respondent's right to assess the following: (1) deficiency

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[1] Docket, CTA Case No. 9020, Vol. 4, pp. 1399-1415.
[2] Should be "Resolution."
[3] Docket, Vol. 4, pp. 1444-1459.
[4] Docket, Vol. 4, pp. 1417-1429.
[5] Docket, Vol. 4, pp. 1434-1443.

VAT for the first quarter of 2009; (2) deficiency EWT for the months of January to March 2009; and (3) deficiency FBT for the first quarter of 2009 had prescribed.

Set this case for hearing on December 12, 2016 at 9:00 a.m. for the presentation of evidence for the petitioner to determine its liability for the remaining tax deficiency assessments for the taxable year 2009.

SO ORDERED.[6]

Petitioner argues against the application of Commissioner of Internal Revenue v. Next Mobile, Inc.[7] (Next Mobile) in finding that the parties are *in pari delicto* such that respondent's right to assess was deemed validly extended through the issuance of the waivers. Petitioner states that the exceptional circumstances found in Next Mobile do not appear in the instant case. Petitioner argues instead that the ruling in Commissioner of Internal Revenue v. Kudos Metal Corporation[8] should be applied.

Petitioner also argues that its due process rights were violated when respondent failed to replace the manual Letter of Authority (LOA) with an electronic LOA (eLOA) as required by Revenue Memorandum Circular No. (RMC) 56-2010[9], in relation to Revenue Memorandum Order No. (RMO) 69-2010.[10] Finally, petitioner argues that its right to speedy disposition of cases was violated when the LOA was received on May 18, 2010 and the initial assessment was only issued on June 27, 2014.

On the other hand, respondent disagrees with the Court's ruling that the assessment for deficiency VAT for the 1st quarter of 2009 had already prescribed. Respondent alleges petitioner failed to disclose its correct gross receipts amounting to Php1,039,653,865.75; and, that this substantial under-declaration of receipts is a deviation from the truth which, under Aznar v. Court of Tax Appeals[11], would subject the assessment to the ten-year prescriptive period as provided in

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[6] Docket, Vol. 4, p. 1398.
[7] G.R. No. 212825, December 7, 2015.
[8] G.R. No. 178087, May 5, 2010, 620 SCRA 232.
[9] Most Recent Policies on the Audit of All Internal Revenue Tax Liabilities for the Year 2009, June 28, 2010.
[10] Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment, August 11, 2010.
[11] G.R. No. L-20569, August 23, 1974, 58 SCRA 519.

Section 222 (a)[12] of the National Internal Revenue Code of 1997 (NIRC), as amended.

Respondent further argues that withholding tax is not an internal revenue tax but is merely a system for collecting taxes. As such, the assessment for deficiency withholding tax is not subject to the three-year prescriptive period.

The motions are without merit.

The Court finds no reason to reverse its ruling that the factual circumstances of the present case are similar to those in Next Mobile. In both cases, there were several waivers with defects that arose from the fault or negligence of both the taxpayer and the Bureau of Internal Revenue (BIR). The Court reiterates its discussion, as follows:

> The Court finds the factual circumstances of the foregoing case similar to the present case. Both parties are *in pari delicto* or 'in equal fault.' Petitioner also executed Waivers through its Treasurer/Comptroller who allegedly had no authority to sign the Waivers. Clearly, petitioner did not comply with the requirements under RMO No. 20-90 which provides that in case of a corporate taxpayer, the waiver must be signed by its responsible officials, and RDAO 05-01 which requires the presentation of a written and notarized authority...
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> Similarly, the BIR violated its own rules and was negligent in performing its functions with respect to these Waivers. It must be noted that RDAO 05-01 requires the concerned authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. It also states that in case the authority is delegated by a taxpayer to a representative, the concerned revenue official shall see to it that the delegation is in writing and duly notarized. Moreover, it mandates that the waiver should not be accepted by the concerned BIR office and official unless duly notarized. In this case, the BIR apparently failed five

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[12] Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. – (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission xxx

> times to perform its duties to exact from petitioner compliance with its rules.
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> Evidently, the defects of the Waivers were obvious to both parties as well as its consequences, but they continued their dealings with each other on the strength of these five (5) Waivers...
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> xxx
>
> Considering the foregoing, respondent's right to assess was deemed validly extended through the issuance of Waivers <u>except</u> for (1) deficiency VAT for the 1st quarter of 2009; (2) deficiency EWT for the months of January to March 2009; and (3) deficiency FBT for the 1st quarter of 2009, where the right to assess had already prescribed by the time the first Waiver was executed on May 14, 2012.[13]

The Court also finds no merit in petitioner's arguments that it was deprived of due process for failure of the BIR to replace the LOA issued to it with an eLOA. Upon examination of the letter of authority submitted by petitioner as Exhibit "P-32",[14] the Court finds that the same is an eLOA, consistent with the features explained in RMO 44-2010[15] and the sample eLOA attached thereto as Annex A.

While there is unexplained delay in the issuance of the assessment as alleged by petitioner, any negligence on the part of the BIR may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for such.[16]

With respect to respondent's argument that the ten-year prescriptive period should apply and that assessment of deficiency withholding taxes is imprescriptible, the Court finds the same to have been raised for the first time in respondent's Omnibus Motion, and thus cannot be considered at this stage.

WHEREFORE, petitioner's Motion for Reconsideration, filed on November 29, 2016, and respondent's Omnibus Motion,

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[13] Docket, Vol. 4, Resolution dated November 7, 2016, pp. 1397-1398 (Underscoring in the original, citations omitted).
[14] Docket, Vol. 3, Exhibit "P-32" Letter of Authority, p. 1098.
[15] Electronic Issuance of Letters of Authority, May 12, 2010.
[16] G.R. No. 212825, December 7, 2015.

with respect to its prayer for partial reconsideration, filed on November 25, 2016, are **DENIED** for lack of merit.

Set this case for hearing on March 1, 2017 at 9:00 a.m. for the presentation of evidence for the petitioner to determine its liability for the remaining tax deficiency assessments for taxable year 2009.

SO ORDERED.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice