REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILUSA CORPORATION,
Respondent.

CTA EB NO. 2566
(CTA CASE NO. 9409)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
DEC 20 2023 11:50am

x - x

RESOLUTION

RINGPIS-LIBAN, ***J.*:**

For resolution is the *Motion for Reconsideration [re: Decision dated 13 September 2023]* filed by petitioner Commissioner of Internal Revenue (CIR) on October 2, 2023 with *Comment (Re: Motion for Reconsideration dated October 2, 2023)* filed by the respondent taxpayer on October 18, 2023.

Petitioner CIR moves for the reconsideration of the decision, which affirmed the *cancellation* of the deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) assessments and the compromise penalty against the taxpayer for calendar year 2009. The CIR reiterates the arguments that the waivers executed by the taxpayer are valid; his right to assess the taxpayer had not yet prescribed; his right to due process was violated; and, thus, the assessments are valid.

In its *Comment [Re: Motion for Reconsideration dated October 2, 2023]*, the taxpayer counters that petitioner's right to assess had prescribed; his right to due process was *not* violated; and lastly, the Formal Letter of Demand (FLD)/Final Assessment Notice (FAN) issued by petitioner is null and void for having been issued without a definite due date.

Petitioner's motion is *denied* for lack of merit.

The taxpayer *correctly* notes that petitioner's discussion in the motion are mere reiterations of the issues already covered in the Petition for Review.[1] These issues have extensively been passed upon in the assailed decision.[2]

Nonetheless, the Court deems it prudent to address the point raised by the petitioner that the taxpayer is *estopped* from assailing the validity of the waivers because it benefitted from the execution of the same. In support of this argument, it quoted the case of *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[3] whose doctrine was summarized in the prefatory statement of the case:

> "Estoppel applies against a taxpayer who did not only raise at the earliest opportunity its representative's lack of authority to execute two (2) waivers of defense of prescription, but was also accorded, through these waivers, more time to comply with the audit requirements of the Bureau of Internal Revenue. Nonetheless, a tax assessment served beyond the extended period is void."

In this case, however, the waivers were invalidated *not* because of the lack of authority of the taxpayer's representative *but* because of several infirmities noted by the Court. These infirmities consisted of the failure to indicate the nature and amount of tax due and the fact that *both dates of execution* by the taxpayer and *dates of acceptance* by the Bureau of Internal Revenue took place after the prescription had already set in.[4] In short, the waivers were voided pursuant to the pronouncements of the Supreme Court in *Commissioner of Internal Revenue v. Standard Chartered Bank*,[5] *Commissioner of Internal Revenue v. Kudos Metal*

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[1] *See* the statements which stressed that petitioner's right to assess respondent taxpayer had not yet prescribed; its basic right to fair play and due process was violated when the court *a quo* ruled on a matter not raised as an issue by the taxpayer; and the assessments are valid and not contrary to law as there was no violation of taxpayer's right to due process; *Petition for Review, Rollo*, pp. 11-15, 15-18 and 18-23.

[2] *See* the Court's discussion that no reversible error was committed when the court *a quo* ruled (a) On the issue of prescription that was, allegedly, neither raised by the taxpayer in the petition nor stipulated or tried by the parties; (b) That the assessments were a nullity for failure to state the due date for the payment of the tax liabilities arising from the same; and, (c) That the assessments are barred by prescription; *Decision* dated September 13, 2023, *Rollo*, pp. 115-118, 119-123 and 123-129.

[3] G.R. No. 227544, November 22, 2017.

[4] EWT for January, February, March, July, August, September and October of CY 2009; and, VAT for the 1st, 2nd and 3rd Quarters of CY 2009; *See Decision* dated September 13, 2023, *Rollo*, pp. 124-129.

[5] G.R. No. 192173, July 29, 2015.

Corporation,[6] *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[7] and *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[8]

Clearly, the case cited by the CIR is inapplicable to the facts of this case and *estoppel* cannot bar the taxpayer from questioning the validity of the waivers since it had no hand in their infirmity.

WHEREFORE, premises considered, the CIR's *Motion for Reconsideration [re: Decision dated 13 September 2023]* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[6] G.R. No. 178087, May 5, 2010.
[7] G.R. No. 220835, July 26, 2017.
[8] G.R. No. 211289, January 14, 2019.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice