REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8608

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

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RESOLUTION

COTANGCO-MANALASTAS, *J.:*

For resolution is respondent's *Motion for Reconsideration (with Motion to Reopen the Case)* filed through registered mail on July 30, 2015, and received by this Court on August 10, 2015, with petitioner's *Comment/Opposition (to the Motion for Reconsideration dated July 30, 2015 filed by the Commissioner of Internal Revenue)* filed on September 11, 2015.

Respondent moves for the reconsideration of this Court's Decision[1] dated July 13, 2015, the dispositive portion of which reads:

> **"WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Respondent's Final Decision on Disputed Assessment dated January 8, 2013 is hereby **REVERSED** and **SET ASIDE**. Accordingly, the Formal Letter of Demand and Assessment Notices issued by respondent against petitioner for deficiency VAT for taxable year 2006 in the total amount of P10,380,093.06 are hereby **CANCELLED** and **WITHDRAWN**."

[1] Docket, pp. 1780-1792.

Respondent argues that petitioner is estopped from assailing the validity of the waiver (of the defense of prescription under the statute of limitations) as it partially paid the assessment after the issuance of the Final Assessment Notice (FAN). It is not disputed that petitioner had partially paid the assessment against it after the issuance of the Formal Letter of Demand (FLD) and FANs. The only deficiency assessment assailed by petitioner was for its Value-Added Tax (VAT) in the amount of P10,380,093.06 from interest income received from its affiliates. Had petitioner truly believed that the waivers are invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of deficiency taxes in the revised assessment. Furthermore, petitioner never questioned the waivers it executed in its protest to the Preliminary Assessment Notice (PAN). Belatedly, petitioner raised the issue of prescription in its formal protest to the FAN by simply stating that the three (3) year period to assess had lapsed, without mentioning the waivers that it executed.

The doctrine of estoppel therefore is applicable in this case based on the foregoing grounds alone. The case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[2] (RCBC Case) exemplifies the instant case.

Respondent further argues that it was not only the Bureau of Internal Revenue (BIR) that was at fault in this case for failure to comply with Revenue Memorandum Order No. 20-90. As established during the cross examination of petitioner's witness, Mr. Dennis Odra, petitioner was aware of the alleged defect of the waivers during the execution thereof.

Respondent also points out that there were seven (7) waivers[3] executed by petitioner. On the assailed Decision, the Court also ruled that the waiver executed on December 20, 2010 was beyond June 30, 2010, the expiry on the supposed second waiver executed by petitioner. Respondent submits that there exists a third waiver executed on June 18, 2010 where petitioner and respondent agreed to extend the assessment not later than December 31, 2010. This waiver was unintentionally left-out in the joint stipulation of facts and issues. Nevertheless, it can be found on pages 208-209 of the

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

[3] In par. 4, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, only six (6) waivers were enumerated therein, docket, p. 860. Also See Exhibits "D" to "I", docket, pp. 1019-1028.

BIR Records (marked as Exhibit "7"[4] for respondent) and attached as Annex "1" in her motion for reconsideration.

Respondent submits that strict procedural rules frown upon the submission of the third waiver after trial. However, in the case of *BPI-Family Savings Bank, Inc. vs. Court of Appeals*[5], the Supreme Court reiterated that the paramount consideration remains to be the ascertainment of truth. Therefore, respondent prays that the attached waiver be considered by the Court in resolving the motion for reconsideration and, if necessary, that the case be reopened for the presentation thereof, in the interest of substantial justice.

In its comment/opposition, petitioner counter-argues that it is not estopped from assailing the validity of the waivers. The argument raised by respondent has already been passed upon by the Court citing the Supreme Court ruling in *Commissioner of Internal Revenue (CIR) vs. Kudos Metal Corporation*[6]. Likewise, the issue of the validity of the waivers can be raised even for the first time on appeal as ruled by the Court *En Banc* in *CIR vs. Union Cement Corporation*[7].

Contrary to respondent's assertion that the RCBC Case is on all fours with the instant case, petitioner stresses that the circumstances obtaining herein do not match those in the RCBC Case. In the instant case, petitioner executed several waivers however it did not get any benefit from the execution of the waivers. There was no substantial reduction on the amounts assessed indicated in the PAN as against the amounts shown on the FAN. In the RCBC Case, the petitioner therein took advantage of the "drastically reduced" amount of deficiency taxes in the second FLD issued to it, whereas in the instant case, no such advantage was obtained by petitioner in partially paying the deficiency taxes being assessed against it after the issuance of the FLD.

Moreover, petitioner points out that there had already been instances when this Court refused to apply the doctrine of estoppel despite partial payments made by the taxpayer since the circumstances of each case showed that estoppel

[4] Exhibit "7" was not admitted into evidence; see Court's Resolution dated September 22, 2014, docket, pp. 1716-1717.
[5] G.R. No. 122480, April 12, 2000.
[6] G.R. No. 178087, May 5, 2010.
[7] CTA EB No. 895 (CTA Case No. 6842), March 22, 2013.

was not applicable, citing the cases of *Union Cement Corporation vs. CIR*[8], *Avon Products Manufacturing, Inc. vs. CIR*[9], *Transitions Optical Philippines, Inc. vs. CIR*[10].

Petitioner further argues that the circumstances of the instant case do not justify the reopening thereof. Allowing such would be tantamount to a piecemeal presentation of a party's evidence which our Rules of Court proscribe. The Supreme Court held that reopening a case for the presentation of additional evidence must be for good reasons and in furtherance of justice. In the instant case, no "good reason" has been presented by respondent. From the statements made by respondent in her motion for reconsideration, it is apparent that the waiver being sought to be presented has already been in existence from the beginning of the case and is even readily available for her during the presentation of her evidence in chief. Likewise, the presentation of the said waiver would no longer serve any purpose other than delay the proceedings. The Court had already ruled that the First and Second Waivers are defective, thus, did not validly extend the original three-year period for assessment. Moreover, respondent's motion is not supported by affidavits of merits, which will render such motion a pro-forma motion.

After weighing the arguments of the parties, the Court finds that the RCBC Case cited by respondent is not on all fours with the instant case. Likewise, the circumstances of the case do not warrant the reopening of the case.

In *Avon Products Manufacturing, Inc. vs. CIR*[11], the Court *En Banc* made a detailed discussion on the factual milieu of the RCBC Case, *to wit*:

> A revisit on the factual milieu of the *RCBC Case* is necessary in order to put things in the proper perspective. In the said case, RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR, and that he failed to indicate acceptance or agreement of the CIR, as required under Section 223 (b) of the 1977 Tax Code. In denying the said petition, this Court *En Banc* ruled that:

[8] CTA Case No. 6842, March 30, 2012, as upheld by the CTA *En Banc* in CTA EB No. 895, March 22, 2013.
[9] CTA EB Nos. 661 and 663, Resolution dated April 10, 2012.
[10] CTA Case No. 8442, September 1, 2014.
[11] CTA EB Nos. 661 and 663, Resolution dated April 10, 2012.

"On January 27, 2000, petitioner received a Formal Letter of Demand and 14 assessment notices covering deficiency income taxes, deficiency gross receipt taxes, deficiency final taxes on FCDU onshore income, deficiency expanded withholding taxes and deficiency documentary stamp tax, all for the taxable years 1994 and 1995, amounting to P4,170,058,634.49, which are all covered by the aforesaid waivers. Petitioner then filed a protest to said assessments.

On November 20, 2000, petitioner filed its Petition for Review before this Court. On December 6, 2000, while the petition was pending before this Court, petitioner received from respondent another Formal Letter of Demand and 14 assessment notices. This was the result of the reinvestigation requested by petitioner from respondent. **The original assessments in the total amount of P4,170,058,634.49 were reduced to P303,160,495.55.** On even date, petitioner paid the assessments for Deficiency Income Tax, Deficiency Gross Receipts Tax, Deficiency Final Withholding Tax, Deficiency Expanded Withholding Taxes and Deficiency Documentary Stamp Tax.

By receiving and accepting the reduced assessment, and paying portions of the reduced assessments thereof, petitioner in effect binds itself to the new assessment. Consequently, it follows that petitioner recognized the validity of the waivers. Petitioner cannot now question its validity, specially, after it has received and accepted certain benefits as a result of the execution of the subject waivers. A party should not, after its opportunity to enjoy the benefits of an agreement, be allowed later to dispute the same, when the terms thereof ultimately would prove to operate against its hopeful expectations. This is a settled rule in this jurisdiction." [Emphasis supplied]

It may be gleaned from the foregoing that the premise of the ruling of this Court *En Banc*, as affirmed by the Supreme Court, is the fact that RCBC has received and accepted "benefits" as a result of the execution of the subject waivers of statute of limitations. *First,* the records disclosed that there was a revised assessment issued by CIR within the extended period as provided for in the questioned waivers, which drastically reduced the amount of assessment from P4,170,058,634.49 to P303,160,495.55. *Second*, there was a finding from the Court *a quo* that RCBC had received and accepted certain "benefits" from the reduced amount of Final Assessment as a result of the execution of the said waivers when it simultaneously paid

> the revised assessments for deficiency Income Tax, deficiency Gross Receipts Tax, deficiency Final Withholding Tax, deficiency Expanded Withholding Taxes and Deficiency Documentary Stamp Tax on the same day it received the Formal Letter of Demand and Assessment Notices dated October 20, 2000. *Third*, after RCBC has "benefited" from the reassessments and satisfied its obligation with the foregoing taxes, it thereafter assailed the validity of the same questioned waivers with respect to the remaining deficiency Final Tax on FCDU Onshore Income and deficiency Documentary Stamp Tax on Special Savings Account.
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> A review of the records of this case shows that, except for the amount of interest, the Formal Letter of Demand and the Final Assessment Notices (FAN), all dated February 28, 2003, reflect exactly the same deficiency taxes listed in the Preliminary Assessment Notice (PAN) dated November 29, 2002. Otherwise stated, unlike in the *RCBC Case* above-cited, there was no revised assessment issued by the CIR that would indicate a reduction in the assessed deficiency taxes of petitioner within the extended period as provided for in the questioned waivers. As a matter of fact, the petitioner was able to establish that there was an increase in the assessed deficiency taxes when the CIR increased the alleged sales discrepancy from P15.7 Million in the preliminary findings during the informal conference to P62.9 Million as stated in the PAN and FAN. Further, it must be emphasized that AVON's partial payment of the portion of the Final Assessment does not imply that it recognized the validity of the questioned waivers because AVON cannot be considered to have "benefitted" from the execution of the said waivers so as to be precluded from assailing their validity.

In the instant case, the amount assessed in the PAN dated July 25, 2012 was not substantially reduced in the FLD and FAN dated September 19, 2012, as shown in the table below:

Tax Type	PAN[12]		FLD&FAN[13]	
Income Tax				
Basic	P 7,618,884.20		P 7,567,835.49	
Interest	8,063,065.15		8,261,049.22	
Compromise Penalty	50,000.00	P 15,731,949.35	50,000.00	P 15,878,884.71
VAT				
Basic	P 8,256,239.26		P 6,514,720.92	
Interest	9,150,389.97		7,383,133.22	
Compromise Penalty	50,000.00	17,456,629.23	50,000.00	13,947,854.14
Withholding Tax on Compensation				
Basic	P 33,823.28		P 33,823.28	

[12] Exhibit "J", docket, pp. 1029-1040.
[13] Exhibits "L" and "M", docket, pp. 1047-1058.

Interest	37,486.34		38,331.92	
Compromise Penalty	8,500.00	79,809.62	8,500.00	80,655.20
Final Withholding Tax - Compromise Penalty		10,000.00		10,000.00
Compromise Penalty		50,000.00		50,000.00
Total		**P 33,328,388.20**		**P29,967,394.05**

In contrast, in the RCBC Case, the original amount of deficiency taxes in the total amount of P4,170,058,634.49 was **drastically reduced** to P303,160,496.55. Hence, herein petitioner cannot be considered to have received "benefits" as a result of the execution of the subject waivers. The partial payment of the assessment contained in the FLD/FAN does not imply that petitioner recognized the validity of the subject waivers. Thus, petitioner is not estopped from questioning the validity of the waivers.

Moreover, as observed by respondent, petitioner already raised the defense of prescription in its protest[14] to the FLD and FAN arguing that the right of the BIR to assess had already prescribed. Even though there was no mention of the waivers executed, by invoking the defense of prescription, petitioner is impliedly repudiating the waivers it executed. Further, the waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.[15]

The fact that petitioner never questioned the waivers in its protest to the PAN should not be used against petitioner. It must be emphasized that a protest to the PAN is not the same as the protest required to be filed as an answer to the FAN. In fact, a PAN may or may not even be protested to by the taxpayer.[16]

In view of the foregoing, the principle of estoppel does not apply. Instead, as sufficiently discussed in the assailed Decision, the Supreme Court's decision in *CIR vs. Kudos Metal Corporation*[17] applies in the instant case.

Anent respondent's prayer that the attached waiver executed on June 18, 2010 be considered by the Court in resolving the motion for reconsideration and, if necessary, that

[14] Exhibit "O", docket, p. 1059-1064.
[15] *Bank of the Philippines Islands vs. CIR*, G.R. No. 139736, October 17, 2005.
[16] *Security Bank Corporation vs. CIR*, CTA Case No. 6564, November 28, 2006.
[17] G.R. No. 178087, May 5, 2010.

the case be reopened for the presentation thereof, in the interest of substantial justice, the Court cannot allow the same.

First, the Court cannot consider the said waiver because it was not formally offered in evidence. Section 34, Rule 132 of the Rules of Court is quite clear that "[t]he court shall consider no evidence which has not been formally offered."

Second, the very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence.[18] The movant is, therefore, very often confined to the amplification or further discussion of the same issues already passed upon by the court. Otherwise, his remedy would not be a reconsideration of the decision but a new trial or some other remedy.[19]

Hence, it is implicitly clear from Rule 37[20] that a motion for reconsideration cannot be used as a vehicle to introduce new evidence.[21] If petitioner wanted to present further evidence, they should have filed a motion for new trial based on newly discovered evidence. In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (a) the evidence is discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching; and (d) such evidence is of such weight that it would probably change the judgment if admitted.[22]

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[18] *Siy vs. Court of Appeals*, G.R. No. L-39778, September 13, 1985; Section 2, Rule 37 of the Revised Rules of Court.

[19] *Siy vs. Court of Appeals*, G.R. No. L-39778, September 13, 1985.

[20] "RULE 37

New Trial or Reconsiderations

Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law."

[21] *Cansino vs. Court of Appeals*, G.R. No. 125799, August 21, 2003.

[22] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue, G.R. No. 188260, November 13, 2013*; Section 1, paragraph (b), Rule 37 of the Revised Rules of Court.

The Court finds that the said waiver constitutes forgotten evidence which petitioner intends to present only after obtaining an unfavorable judgment. Respondent did not prove that, even with reasonable diligence, it could not produce the additional evidence during trial.

Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[23]

Lastly, as correctly observed by petitioner, the presentation of the said waiver will no longer serve any purpose. The Court had already ruled in the assailed Decision that the First and Second Waivers are defective. When the Court held that "even granting for the sake of argument that the First and Second Waivers are valid, the Third Waiver was nevertheless invalid and without force and effect as it was executed beyond the period agreed upon in the Second Waiver", the Court did not admit that the First and Second Waivers are valid. Rather, this statement was only made as a matter of argument, that assuming the First and Second Waivers are valid, still the same conclusion will be arrived at. Hence, the alleged "third" waiver executed on June 18, 2010 would not change the judgment even if admitted.

WHEREFORE, premises considered, the instant Motion for Reconsideration (with Motion to Reopen the Case) is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[23] *Office of the Ombudsman vs. Coronel*, G.R. No. 164460, June 27, 2006.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.	**CAESAR A. CASANOVA**
Associate Justice	Associate Justice