REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1289** (CTA Case No. 8476)
- versus -	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
ASIAN TRANSMISSION CORPORATION, *Respondent.*	Promulgated: MAR 27 2017 3:28 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution are the following:

1. Respondent's Motion for Reconsideration (Re: Decision dated 09 August 2016) filed on September 9, 2016 without petitioner's comment thereto despite notice; and

2. Respondent's Supplemental Motion for Reconsideration (Re: Decision dated 09 August 2016) filed by registered mail on September 23, 2016 without petitioner's comment thereto despite notice.

On August 9, 2016, the Court promulgated a Decision (the

"Assailed Decision") wherein the Court granted the Petition for Review and remanded the case to the Court in Division for further proceedings to determine the propriety of the cancellation of the tax assessments against respondent for deficiency withholding tax on compensation ("WTC") and final withholding tax ("FWT") for calendar year ("CY") 2002 in the total amount of Php75,696,616.75. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, the Court hereby **GRANTS** the Petition for Review. Accordingly, the Decision promulgated on November 28, 2014 and the Resolution promulgated on March 13, 2015 by the Second Division are **REVERSED** and **SET ASIDE**. Let the case be **REMANDED** to the Court in Division for further proceedings in order to determine and rule on the merits of respondent's petition seeking the cancellation of the deficiency tax assessments for calendar year 2002 for withholding tax on compensation, expanded withholding tax, and final withholding tax in the aggregate amount of Php75,696,616.75.
>
> **SO ORDERED.**

Respondent, in its Motion for Reconsideration, prays that the Court *En Banc* reverse and set aside the Assailed Decision for the reason that the equitable principles of *in pari delicto*, unclean hands, and estoppel as enunciated by the Supreme Court in *Commissioner of Internal Revenue v. Next Mobile, Inc.*[1] is not applicable to the present case. Specifically, respondent argues that all the defects in the waivers executed by the parties are entirely attributable to petitioner; hence, the principles of *in pari delicto* and unclean hands do not apply. According to respondent, the defects in the waivers were not within the control or power of the respondent to either cause or rectify. Considering respondent did not cause any of the defects in the waivers, the parties in the case cannot be said to be equally at fault. Respondent also posits that the *Next Mobile case* is not applicable to the instant case as, contrary to the facts in the *Next Mobile case*, the defects in the waivers were caused entirely by petitioner and was not due to the fault of both parties. In addition, respondent contends that the application of the principle of estoppel is misplaced as it would defeat public policy. Finally, respondent, in its Supplemental Motion for Reconsideration, expounded on the inapplicability of the principle of estoppel to the present case.

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[1] G.R. No. 212825, December 7, 2015, 776 SCRA 343.

After a careful review of the grounds raised in the Motion for Reconsideration as well as the Supplemental Motion for Reconsideration, the Court *En Banc* finds no new matters or arguments which were not considered in the Assailed Decision. Respondent failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court *En Banc*'s findings in the Assailed Decision. Consequently, the Court *En Banc* finds respondent's Motion for Reconsideration and Supplemental Motion for Reconsideration devoid of merit. Nevertheless, the Court *En Banc* will expound on the arguments raised, if only to reinforce the discussion in the Assailed Decision.

On the issue of the applicability of the *Next Mobile case* to the present case, the Court *En Banc* holds that the Supreme Court's pronouncements in the *Next Mobile case* are applicable to the case at bar.

The Court *En Banc* cannot emphasize more that the pronouncements of the Supreme Court in the *Next Mobile case* are applicable to the case at bar as the factual milieu therein is similar to those of the present case.

In the *Next Mobile case*, the taxpayer executed several waivers of the statute of limitations to extend the prescriptive period of assessment for taxes due, which waivers had the following defects: (a) they were executed without a notarized board authority; (b) they did not indicate the dates of acceptance by the Bureau of Internal Revenue ("BIR"); and (c) they did not indicate on the face of the original Second Waiver the fact of receipts by the taxpayer of its copy of the Second Waiver. Meanwhile, in the present case, the taxpayer also executed several waivers, which had the following defects: (a) they were not notarized in accordance with the proper procedure; (b) they failed to indicate the dates of acceptance by the BIR; (c) they were not signed by the proper revenue officer; and (d) they failed to specify the type of tax and the amount of tax due.

The similarities of the two cases are inescapable. Hence, the observations of the Supreme Court in the *Next Mobile case* likewise find application to the present case. Even assuming the defects in the present waivers were due to the fault of petitioner, as respondent would have the Court *En Banc* believe, respondent can no longer assail the validity of the waivers herein as it benefitted from said defects. As observed by the Supreme Court in the *Next Mobile case,*

> In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.[2]

Having benefitted from the defective waivers in the present case, respondent should no longer be allowed to question its validity. Respondent's act of questioning the same is tantamount to bad faith. Accordingly, the equitable principles of *in pari delicto*, unclean hands, and estoppel as enunciated in the *Next Mobile case* must be applied.

From the foregoing, the Court *En Banc* finds no cogent reason to disturb its findings in the Assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration (Re: Decision dated 09 August 2016) and Supplemental Motion for Reconsideration (Re: Decision dated 09 August 2016) filed by respondent are **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[2] *Id.* at 357; underscoring supplied.

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice