REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

TOTAL (PHILIPPINES) CORPORATION, *Petitioner,*	**CTA CASE NO. 8479**
	Members: **Bautista,** *Chairperson* **Fabon-Victorino,** *and* **Ringpis-Liban, *JJ.***
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 06 2017 11:47 a.m.

x---x

RESOLUTION

BAUTISTA, J:

For resolution are:

1. Petitioner's Motion for Reconsideration ("petitioner's MR") filed on January 23, 2017, with respondent's Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated 23 January 2017) ("respondent's Comment") filed on February 17, 2017; and

2. Respondent's Motion for Partial Reconsideration (Re: Decision dated 22 December 2016) ("respondent's MPR") filed on January 23, 2017, with petitioner's Comment (to Respondent's Motion for Partial Reconsideration) ("petitioner's Comment") filed on February 23, 2017.

On December 22, 2016, the Court rendered a Decision, the dispositive portion thereof states the following:

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment issued by respondent against petitioner for taxable year 2005 covering deficiency Expanded Withholding Tax and Fringe Benefit Tax is **UPHELD** but in the reduced amount of **Sixteen Million Seventy-Seven Thousand Six Hundred Forty-Five Pesos and 16/100 Pesos (Php16,077,645.16)**, inclusive of the 25% surcharge imposed under *Section 248(A)(1)(3) of the 1997 NIRC*, computed as follows:

TYPE OF TAX		BASIC		25% SURCHARGE		TOTAL
Expanded Withholding Tax						
Supplier at 1%	Php	11,589,526.30	Php	2,897,381.58	Php	14,486,907.88
Contractor at 2%		451,048.99		112,762.25		563,811.24
Fringe Benefit Tax		821,540.84		205,385.21		1,026,926.05
TOTAL	**PHP**	**12,862,116.13**	**PHP**	**3,215,529.03**	**PHP**	**16,077,645.16**

In addition, petitioner is also **ORDERED TO PAY**:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT and FBT computed from the dates indicated below until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC*:

TYPE OF TAX		BASIC	DEFICIENCY INTEREST COMPUTED FROM
Expanded Withholding Tax			
Supplier at 1%	Php	11,589,526.30	January 16, 2006
Contractor at 2%		451,048.99	January 16, 2006
Fringe Benefit Tax		821,540.84	January 16, 2006

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php16,077,645.16, representing the basic deficiency EWT and FBT and the corresponding 25% surcharge; and on the twenty percent (20%) deficiency interest which have accrued as aforestated in item (1), computed from March 26, 2012 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC.*

SO ORDERED.[1]

In the above-stated Decision, the Court held that it has jurisdiction to entertain the present Petition for Review since the assessments have not yet attained finality; that the Letter of Authority ("LOA") is valid; that the Waivers are binding on the parties and the assessments were issued within the prescriptive period, as extended; that the assessment for deficiency expanded withholding tax ("EWT") is reduced and the assessment for deficiency fringe benefit tax ("FBT") is upheld; and that petitioner is not liable for compromise penalties.

[1] Emphases retained.

In petitioner's MR, on one hand, it avers that the assessment has already prescribed; that the rules established in *Commissioner of Internal Revenue v. Next Mobile, Inc. (G.R. No. 212825, December 7, 2015) ("Next Mobile")* is the exception, rather than the general rule; that the Waivers are defective for *(1)* not being signed by the Commissioner of Internal Revenue ("CIR"), *(2)* non-indication of the dates of acceptance of the Bureau of Internal Revenue ("BIR") Officials, *(3)* failure to specify the kind and amount of tax due, *(4)* not being notarized, and *(5)* other defects; that the exception in *Next Mobile* runs counter to the established general principles of law; that the assessment did not arise from a LOA, which was not furnished to petitioner; and that petitioner is not liable for the alleged deficiency EWT and FBT.

In respondent's Comment, he argues that the Court correctly ruled that the assessment was issued within the period prescribed by law and pursuant to a valid LOA; that petitioner failed to prove that it is not liable for deficiency EWT at 2% and FBT; and that petitioner failed to prove that its purchases are valid importations, hence, the same should be subject to deficiency assessment for EWT.

On the other hand, in respondent's MPR, he claims that petitioner failed to prove that its purchases were valid importations, hence, the same should be subject to deficiency assessment for EWT; and that the assessment is valid and lawful.

Petitioner's Comment states that it imports in the normal course of business; that a substantial amount of its purchases are importations of gasoline, diesel, lubricants, kerosene, LPG and special fluids; that these importations are not subject to withholding taxes; that its claims are supported by evidence; that the assessments were issued beyond the three (3) year prescriptive period, for the Waivers executed are defective; that the *Next Mobile* ruling does not apply to this case since the parties are not equally guilty; that the Final Letter of Demand ("FLD") lacked factual and legal bases, hence, void; and that the assessment is invalid since the LOA was not furnished to petitioner.

The Court *En Banc* shall now resolve petitioner's MR and respondent's MPR.

On the claim of non-application of the *Next Mobile* case, the Court finds that the latter and the case at bar have the following in common:

1. The BIR and the taxpayer are in *pari delicto* or "in equal fault." On one hand, the BIR violated its own rules and was careless in performing its functions. Its negligence in the performance of its duties was so gross that it amounted to malice and bad faith. On the other hand, the taxpayer was given the opportunity to gather and submit documents to substantiate its claims during investigation; and was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Despite these, the taxpayer challenged the validity of the waivers when the consequences thereof were not in its favor, which can likewise be attributed to bad faith. Moreover, notwithstanding awareness of the infirmities of the waivers, the parties continued dealing with each other without bothering to rectify the errors committed. Needless to say, the parties came to court with unclean hands.

2. A highly suspicious situation exists, which is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by raising technicalities. The BIR's right to assess and collect taxes should not be jeopardized by mere mistakes and lapses of its Officers, especially in cases where the taxpayer is obviously in bad faith.

3. To uphold the validity of the Waivers would be consistent with the public policy embodied in the lifeblood theory. In view of this, as between the BIR and the taxpayer, it would be more equitable if the former's lapses were allowed to pass, in order to support this principle and public policy.

4. The taxpayer is estopped from questioning the validity of its waivers. This application of estoppel would promote the administration of the law, prevent injustice, avert the accomplishment of a wrong and undue advantage, and is necessary to prevent the undue injury that the Government would suffer should the assessment be cancelled.

In view of the foregoing, the Court finds that the doctrine in *Next Mobile* applies to the case at bar.

As to the other contentions of the parties, a perusal of the contents of petitioner's MR and respondent's MPR show that the grounds raised therein are the same ones found in their respective Memoranda and were properly settled in the Decision of the Court. Reproduced hereunder are the parties' arguments, as appearing in the December 22, 2016 Decision:

> ***Petitioner's Arguments***
>
> Petitioner argues that the period to assess deficiency EWT and FBT for taxable year 2005 has already prescribed. It likewise contends that the Waivers are defective considering that they were not signed by the CIR; that the dates of acceptance by the officials of respondent were not indicated therein; that they failed to specify the kind and amount of tax due; that they were not notarized on the part of the respondent; that they do not conform with the requirements for a valid execution of a waiver; and that the officers who signed on behalf of petitioner were not authorized to do so.
>
> With respect to the assessed deficiency taxes, petitioner argues that the assessment is invalid for having arisen from an LOA which was not furnished to petitioner. Petitioner further argues that in the assessment for deficiency EWT, respondent erroneously included items that are not subject to withholding taxes, or were already subjected by petitioner to the proper withholding tax rates. As to the assessment for deficiency FBT, petitioner argues that the taxable fringe benefits granted to its officers have been properly subjected thereto.
>
> ***Respondent's Counter-Arguments***
>
> Respondent argues that petitioner voluntarily executed the subject Waivers; that such Waivers were duly accepted and approved by the person delegated by respondent; and that the failure to indicate the date of acceptance by respondent is a mere oversight which is not fatal to the validity of the Waivers, bearing in mind that the date of acceptance can be presumed to be between the date of notarization and the date of receipt by the taxpayer. Respondent further argues that the first three (3) waivers did not specify the kind and amount of tax, as there was yet no assessment at the time of their execution; and that the fourth waiver already specified the kind of tax being assessed. He likewise claims that it is only petitioner who is required to have the Waivers acknowledged before a notary public; and that petitioner is estopped from questioning the validity of the Waivers.

Lastly, respondent alleges that the assessments are valid and binding since the same were issued within the prescriptive period; and are in accordance with the law, rules and jurisprudence.

ACCORDINGLY, premises considered, petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration (Re: Decision dated 22 December 2016) are hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice