



REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

THIRD DIVISION

[G.R. No. 212825, December 07, 2015]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. NEXT MOBILE, INC. (FORMERLY NEXTEL COMMUNICATIONS PHILS., INC.), RESPONDENT.

DECISION

VELASCO JR., J.:

This is a Petition for Review under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision of the Court of Tax Appeals *En Banc* affirming the earlier decision of its First Division in CTA Case No. 7965, cancelling and withdrawing petitioner's formal letter of demand and assessment notices to respondent for having been issued beyond the prescriptive period provided by law.

The Facts

On April 15, 2002, respondent filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (ITR) for taxable year ending December 31, 2001. Respondent also filed its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F), its Monthly Remittance Returns of Expanded Withholding Tax (BIR Form No. 1501-E) and its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for year ending December 31, 2001.

On September 25, 2003, respondent received a copy of the Letter of Authority dated September 8, 2003 signed by Regional Director Nestor S. Valeroso authorizing Revenue Officer Nenita L. Crespo of Revenue District Office 43 to examine respondent's books of accounts and other accounting records for income and withholding taxes for the period covering January 1, 2001 to December 31, 2001.

Ma. Lida Sarmiento (Sarmiento), respondent's Director of Finance, subsequently executed several waivers of the statute of limitations to extend the prescriptive period of assessment for taxes due in taxable year ending December 31, 2001 (Waivers), the details of which are summarized as follows:

| Waiver | Extended Date of Prescription | Date of Execution | Date of Acknowledgment | BIR Signatory |
|---------------|-------------------------------|-------------------|------------------------|--------------------------|
| First Waiver | March 30, 2005 | August 26, 2004 | August 30, 2004 | Revenue District Officer |
| Second Waiver | June 30, 2005 | October 22, 2004 | October 22, 2004 | Revenue District Officer |
| Third Waiver | September 30, 2005 | January 12, 2005 | January 18, 2005 | Revenue District Officer |
| Fourth Waiver | September 30, 2005 | None | May 3, 2005 | Revenue District Officer |

| | | | | |
|--------------|------------------|----------------|-------------|--------------------------|
| Fifth Waiver | October 31, 2005 | March 17, 2005 | May 3, 2005 | Revenue District Officer |
|--------------|------------------|----------------|-------------|--------------------------|

On September 26, 2005, respondent received from the BIR a Preliminary Assessment Notice dated September 16, 2005 to which it filed a Reply.

On October 25, 2005, respondent received a Formal Letter of Demand (FLD) and Assessment Notices/Demand No. 43-734 both dated October 17, 2005 from the BIR, demanding payment of deficiency income tax, final withholding tax (FWT), expanded withholding tax (EWT), increments for late remittance of taxes withheld, and compromise penalty for failure to file returns/late filing/late remittance of taxes withheld, in the total amount of P313,339,610.42 for the taxable year ending December 31, 2001.

On November 23, 2005, respondent filed its protest against the FLD and requested the reinvestigation of the assessments. On July 28, 2009, respondent received a letter from the BIR denying its protest. Thus, on August 27, 2009, respondent filed a Petition for Review before the CTA docketed as CTA Case No. 7965.

Ruling of the CTA Former First Division

On December 11, 2012, the former First Division of the CTA (CTA First Division) rendered a Decision granting respondent's Petition for Review and declared the FLD dated October 17, 2005 and Assessment Notices/Demand No. 43-734 dated October 17, 2005 cancelled and withdrawn for being issued beyond the three-year prescriptive period provided by law.

It was held that based on the date of filing of respondent's Annual ITR as well as the dates of filing of its monthly BIR Form Nos. 1601-F, 1601-E and 1601-C, it is clear that the adverted FLD and the Final Assessment Notices both dated October 17, 2005 were issued beyond the three-year prescriptive period provided under Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended.

The tax court also rejected petitioner's claim that this case falls under the exception as to the three-year prescriptive period for assessment and that the 10-year prescriptive period should apply on the ground of filing a false or fraudulent return. Under Section 222(a) of the 1997 NIRC, as amended, in case a taxpayer filed a false or fraudulent return, the Commissioner of Internal Revenue (CIR) may assess a taxpayer for deficiency tax within ten (10) years after the discovery of the falsity or the fraud. The tax court explained that petitioner failed to substantiate its allegation by clear and convincing proof that respondent filed a false or fraudulent return.

Furthermore, the CTA First Division held that the Waivers executed by Sarmiento did not validly extend the three-year prescriptive period to assess respondent for deficiency income tax, FWT, EWT, increments for late remittance of tax withheld and compromise penalty, for, as found, the Waivers were not properly executed according to the procedure in Revenue Memorandum Order No. 20-90 (RMO 20-90)¹ and Revenue Delegation Authority Order No. 05-01 (RDAO 05-01).²

The tax court declared that, in this case, the Waivers have no binding effect on respondent for the following reasons:

First, Sarmiento signed the Waivers without any notarized written authority from respondent's Board of Directors. Petitioner's witness explicitly admitted that he did not require Sarmiento to present any notarized written authority from the Board of Directors of respondent, authorizing her to sign the Waivers. Petitioner's witness also confirmed that Revenue District Officer Raul Vicente L. Recto (RDO Recto) accepted the Waivers as submitted.

Second, even assuming that Sarmiento had the necessary board authority, the Waivers are still invalid as the respective dates of their acceptance by RDO Recto are not indicated therein.

Third, records of this case reveal additional irregularities in the subject Waivers:

- (1) The fact of receipt by respondent of its copy of the Second Waiver was not indicated on the face of the original Second Waiver;
- (2) Respondent received its copy of the First and the Third Waivers on the same day, May 23, 2005; and
- (3) Respondent received its copy of the Fourth and the Fifth Waivers on the same day, May 13, 2005.

Finally, the CTA held that estoppel does not apply in questioning the validity of a waiver of the statute of limitations. It stated that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01.

Petitioner's Motion for Reconsideration was denied on March 14, 2013.

Petitioner filed a Petition for Review before the CTA En Banc.

On May 28, 2014, the CTA *En Banc* rendered a Decision denying the Petition for Review and affirmed that of the former CTA First Division.

It held that the five (5) Waivers of the statute of limitations were not valid and binding; thus, the three-year period of limitation within which to assess deficiency taxes was not extended. It also held that the records belie the allegation that respondent filed false and fraudulent tax returns; thus, the extension of the period of limitation from three (3) to ten (10) years does not apply.

Issue

Petitioner has filed the instant petition on the issue of whether or not the CIR's right to assess respondent's deficiency taxes had already prescribed.

Our Ruling

The petition has merit.

Section 203³ of the 1997 NIRC mandates the BIR to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is not valid and effective. Exceptions to this rule are provided under Section 222⁴ of the NIRC.

Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01⁵ issued on August 2, 2001 provide the procedure for the proper execution of a waiver. RMO 20-90 reads:

April 4, 1990

REVENUE MEMORANDUM ORDER NO. 20-90

Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code

To: All Internal Revenue Officers and Others Concerned

Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:

1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after _____ 19_____" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver:

x x x x

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with.

This Revenue Memorandum Order shall take effect immediately.

(SGD.)JOSEU. ONG
Commissioner of Internal Revenue

The Court has consistently held that a waiver of the statute of limitations must faithfully comply with the provisions of RMO No. 20-90 and RDAO 05-01 in order to be valid and binding.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*⁶ the Court declared the waiver executed by petitioner therein invalid because: (1) it did not specify a definite agreed date between the BIR and petitioner within which the former may assess and collect revenue taxes; (2) it was signed only by a revenue district officer, not the Commissioner; (3) there was no date of acceptance; and (4) petitioner was not furnished a copy of the waiver.

Philippine Journalists tells us that since a waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, waivers of this kind must be carefully and strictly construed. *Philippine Journalists* also clarifies that a waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription but rather an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. It is not a unilateral act by the taxpayer of the BIR but is a bilateral agreement between two parties.

In *Commissioner of Internal Revenue v. FMF Development Corporation*⁷ the Court found the waiver in question defective because: (1) it was not proved that respondent therein was furnished a copy of the BIR-accepted waiver; (2) the waiver was signed by a revenue district officer instead of the Commissioner as mandated by the NIRC and RMO 20-90 considering that the case involved an amount of more than P1,000,000.00, and the period to assess was not yet about to prescribe; and (3) it did not contain the date of acceptance by the CIR. The Court explained that the date of acceptance by the CIR is a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original period.⁸

In *CIR v. Kudos Metal Corporation*,⁹ the waivers executed by Kudos were found ineffective to extend the period to assess or collect taxes because: (1) the accountant who executed the waivers had no notarized written board authority to sign the waivers in behalf of respondent corporation; (2) there was no date of acceptance indicated on the waivers; and (3) the fact of receipt by respondent of its file copy was not indicated in the original copies of the waivers.

The Court rejected the CIR's argument that since it was the one who asked for additional time, Kudos should be considered estopped from raising the defense of prescription. The Court held that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with its RMO 20-90 and RDAO 05-01. Having caused the defects in the waivers, the Court held that the BIR must bear the consequence.¹⁰ Hence, the BIR assessments were found to be issued beyond the three-year period and declared void.¹¹ Further, the Court stressed that there is compliance with RMO 20-90 only after the taxpayer receives a copy of the waiver accepted by the BIR, viz:

The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.¹²

The deficiencies of the Waivers in this case are the same as the defects of the waiver in *Kudos*. In the instant case, the CTA found the Waivers because of the following flaws: (1) they were executed without a notarized board authority; (2) the dates of acceptance by the BIR were not indicated therein; and (3) the fact of receipt by respondent of its copy of the Second Waiver was not indicated on the face of the original Second Waiver.

To be sure, both parties in this case are at fault.

Here, respondent, through Sarmiento, executed five Waivers in favor of petitioner. However, her authority to sign these Waivers was not presented upon their submission to the BIR. In fact, later on, her authority to sign was questioned by respondent itself, the very same entity that caused her to sign such in the first place. Thus, it is clear that respondent violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials¹³ and RDAO 01-05 which requires the presentation of a written and notarized authority to the BIR.¹⁴

Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. It is very clear that under RDAO 05-01 it is the duty of the 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 instructs that **in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized.** Furthermore, it mandates that **the waiver should not be accepted by the concerned BIR office and official unless duly notarized.**¹⁵

Vis-a-vis the five Waivers it received from respondent, the BIR has failed, for five times, to perform its duties in relation thereto: to verify Ms. Sarmiento's authority to execute them, demand the presentation of a notarized document evidencing the same, refuse acceptance of the Waivers when no such document was presented, affix the dates of its acceptance on each waiver, and indicate on the Second Waiver the date of respondent's receipt thereof.

Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

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.

On the other hand, the stringent requirements in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its very own issuances. Verily, if the BIR was truly determined to validly assess and collect taxes from respondent after the prescriptive period, it should have been prudent enough to make sure that all the requirements for the effectivity of the Waivers were followed not only by its revenue officers but also by respondent. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent to even comply with its most basic requirements.

The BIR's negligence in this case is so gross that it amounts to malice and bad faith. Without doubt, the BIR knew that waivers should conform strictly to RMO 20-90 and RDAO 05-01 in order to be valid. In fact, the mandatory nature of the requirements, as ruled by this Court, has been recognized by the BIR itself in its issuances such as Revenue Memorandum Circular No. 6-2005,¹⁶ among others. Nevertheless, the BIR allowed respondent to submit, and it duly received, five defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein. It even openly admitted that it did not require respondent to present any notarized authority to sign the questioned Waivers.¹⁷ The BIR failed to demand respondent to follow the requirements for the validity of the Waivers when it had the duty to do so, most especially because it had the highest interest at stake. If it was serious in collecting taxes, the BIR should have meticulously complied with the foregoing orders, leaving no stone unturned.

The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

First, the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.¹⁸

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need.¹⁹ Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents.²⁰ As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands.²¹ Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing.²² Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors.²³ The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.²⁴

As regards petitioner's claim that the 10-year period of limitation within which to assess deficiency taxes provided in Section 222(a) of the 1997 NIRC is applicable in this case as respondent allegedly filed false and fraudulent returns, there is no reason to disturb the tax court's findings that **records failed to establish, even by prima facie evidence, that respondent Next Mobile filed false and fraudulent returns on the ground of substantial underdeclaration of income in respondent Next Mobile's Annual ITR for taxable year ending December 31, 2001.**²⁵

While the Court rules that the subject Waivers are valid, We, however, refer back to the tax court the determination of the merits of respondent's petition seeking the nullification of the BIR Formal Letter of Demand and Assessment Notices/Demand No. 43-734.

WHEREFORE, premises considered, the Court resolves to **GRANT** the petition. The Decision of the Court of Tax Appeals *En Banc* dated May 28, 2014 in CTA EB Case No. 1001 is hereby **REVERSED** and **SET ASIDE**. Accordingly, let this case be remanded to the Court of Tax Appeals for further proceedings in order to determine and rule on the merits of respondent's petition seeking the nullification of the BIR Formal Letter of Demand and Assessment Notices/Demand No. 43-734, both dated October 17, 2005.

SO ORDERED.

Peralta, Villarama, Jr., Perez, and Reyes, JJ., concur.

NOTICE OF JUDGMENT

December 28, 2015

Sirs / Mesdames:

Please take notice that on December 7, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled cases, the original of which was received by this Office on December 28, 2015 at 2:28 p.m.

Very truly yours,

(SGD)WILFREDO V. LAPITAN
Division Clerk of Court

Footnotes

* Jardeleza, J., no part, due to his prior action as Solicitor General; Perez, J., designated Additional Member per Raffle dated January 7, 2015.