



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECORDED
 17 2018
J. Reyes

**ASIAN TRANSMISSION
 CORPORATION,**

Petitioner,

G.R. No. 230861

Present:

LEONARDO-DE CASTRO, C.J.,

Chairperson,

BERSAMIN,

DEL CASTILLO,

JARDELEZA, and

TIJAM, JJ.

- versus -

**COMMISSIONER OF INTERNAL
 REVENUE,**

Respondent.

Promulgated:

SEP 19 2018

X-----*J. Reyes*X

DECISION

BERSAMIN, J.:

We reiterate through this decision that the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. Hence, the Commissioner of Internal Revenue (CIR) may not be blamed for any defects in the execution of the waiver.

The Case

This appeal seeks the review and reversal of the decision promulgated on August 9, 2016,¹ whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) reversed and set aside the decision rendered by its Second Division (CTA in Division) holding that the waivers executed by petitioner Asian

¹ *Rollo*, pp. 32-44; penned by Associate Justice Lovell R. Bautista, with the concurrence of Presiding Justice Roman G. Del Rosario, Associate 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, Associate Justice Amelia R. Cotangco-Manalastas and Associate Justice Ma. Belen M. Ringpis-Liban.

Transmission Corporation (ATC) were invalid and did not operate to extend the three-year period of prescription to assess deficiency taxes for the calendar year 2002.²

Antecedents

As found by the CTA in Division, the factual and procedural antecedents are as follows:

[ATC] is a corporation duly organized and existing under Philippine Laws and with business address at Carmelray Industrial Park, Canlubang, Calamba City, Laguna. ATC is a manufacturer of motor vehicle transmission component parts and engines of Mitsubishi vehicles. It was organized and registered with the Securities and Exchange Commission on August 29, 1973 as evidenced by its Certificate of Incorporation.

[The CIR] is the Commissioner of the Bureau of Internal Revenue (BIR) with office address at BIR National Office Bldg., Agham Road, Diliman, Quezon City.

On January 3, 2003 and March 3, 2003, ATC filed its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes and Annual Information Return of Creditable Income Taxed Withheld (Expanded)/Income Payments Exempt from Withholding Tax, respectively.

On August 11, 2004, ATC received Letter of Authority [(LOA)] No. 200000003557 where [the CIR] informed ATC that its revenue officers from the Large Taxpayers Audit and Investigation Division II shall examine its books of accounts and other accounting records for the taxable year 2002.

Thereafter, [the CIR] issued a Preliminary Assessment Notice (PAN) to ATC.

Consequently, on various dates, ATC, through its Vice President for Personnel and Legal Affairs, Mr. Roderick M. Tan, executed several documents denominated as “Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code” (Waiver), as follows:

Waiver	Source of Document	Date of Execution	Date of Extension of Investigation
First Waiver	Page 415, BIR Records	September 8, 2004	June 30, 2005
Second Waiver	Page 419, BIR Records	March 3, 2005	December 31, 2005
Third Waiver	Page 422, BIR Records	November 10, 2005	June 30, 2006
Fourth Waiver	Page 429, BIR Records	March 21, 2006	December 31, 2006
Fifth Waiver	Page 767, BIR Records	March 21, 2006	June 30, 2007
Sixth Waiver	Page 349, BIR Records	April 18, 2007	December 31, 2007
Seventh Waiver	Page 354, BIR Records	October 25, 2007	June 30, 2008
Eight[h] Waiver	Page 1176, BIR Records	May 30, 2008	December 31, 2008

² Id. at 229-261; penned by Associate Justice Casonova, with the concurrence of Associate Justice Castañeda, Jr. and Associate Justice Cotangco-Manalastas.

Meanwhile, on February 28, 2008, ATC availed of the Tax Amnesty [P]rogram under Republic Act No. 9480.

On July 15, 2008, ATC received a Formal Letter of Demand from [the] CIR for deficiency [WTC] in the amount of P[hp]62,977,798.02, [EWT] in the amount of P[hp]6,916,910.51, [FWT] in the amount of P[hp]501,077.72. On August 14, 2008, ATC filed its Protest Letter in regard thereto.

Accordingly, on April 14, 2009, ATC received the Final Decision on Disputed Assessment where [the] CIR found ATC liable to pay deficiency tax in the amount of P[hp]75,696,616.75. Thus, on May 14, 2009, ATC filed an appeal letter/request for reconsideration with [the] CIR.

On April 10, 2012, ATC received the Decision of [the] CIR dated November 15, 2011, denying its request for reconsideration. As such, on April 23, 2012, ATC filed the instant Petition for Review (with Application for Preliminary Injunction and Temporary Restraining Order).³

Ruling of the CTA in Division

On November 28, 2014, the CTA in Division rendered its decision granting the petition for review of ATC. It held that ATC was not estopped from raising the invalidity of the waivers inasmuch as the Bureau of Internal Revenue (BIR) had itself caused the defects thereof, namely: (a) the waivers were notarized by its own employee despite not being validly commissioned to perform notarial acts; (b) the BIR did not indicate the date of its acceptance; (c) the BIR did not specify the amounts of and the particular taxes involved; and (d) respondent CIR did not sign the waivers despite the clear mandate of RMO 20-90 to that effect. It ruled that the waivers, being invalid, did not operate to toll or extend the three-year period of prescription.⁴

The CTA in Division disposed:

WHEREFORE, in view thereof, the Petition for Review is hereby **GRANTED**. Accordingly, the deficiency [WTC] in the amount of P[hp]67,722,419.38, [EWT] in the amount of P[hp]7,436,545.83 and [FWT] in the amount of P[hp]537,651.55, or in the total amount of P[hp]75,696,616.75 for the taxable year 2002, are hereby declared **CANCELLED, WITHDRAWN and WITH NO FORCE AND EFFECT**.

SO ORDERED.⁵

³ Id. at 33-34.

⁴ Id. at 260.

⁵ Id. at 260-261.

On December 16, 2014, the CIR moved for reconsideration, and ATC opposed.

On March 13, 2015, the CTA in Division denied the CIR's motion for reconsideration,⁶ to wit:

WHEREFORE, premises considered, [the CIR's] Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.⁷

On April 20, 2015, the CIR filed a petition for review in the CTA *En Banc*.

Decision of the CTA *En Banc*

On August 9, 2016, the CTA *En Banc* promulgated the assailed decision reversing and setting aside the decision of the CTA in Division, and holding that the waivers were valid. It observed that the CIR's right to assess deficiency withholding taxes for CY 2002 against ATC had not yet prescribed. It disposed:

WHEREFORE, premises considered, the Court hereby **GRANTS** the Petition for Review. Accordingly, the Decision promulgated on November 28, 2014 and the Resolution 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.⁸

On September 9 and September 16, 2016, ATC filed its motion for reconsideration⁹ and supplemental motion for reconsideration,¹⁰ respectively, but the CTA *En Banc* denied the motions for lack of merit.

⁶ Id. at 281-292; penned by Associate Justice Casanova, with the concurrence of Associate Justice Castañeda, Jr., Associate Justice Cotangco-Manalastas (on leave).

⁷ Id. at 292.

⁸ Id. at 43-44.

⁹ Id. at 54-64.

¹⁰ Id. at 65-71.

Issue

In this appeal, ATC insists that the CTA *En Banc* acted in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in applying the ruling in *Commissioner of Internal Revenue v. Next Mobile Inc.*¹¹ as well as the equitable principles of *in pari delicto*, unclean hands, and *estoppel*.

Ruling of the Court

The appeal has no merit.

To be noted is that the CTA *En Banc* cited *Commissioner of Internal Revenue v. Kudos Metal Corporation*,¹² whereby the Court reiterated that RMO 20-90 and RDAO 05-01 governed the proper execution of a valid waiver of the statute of limitations; and pointed to *Commissioner of Internal Revenue v. Next Mobile Inc.*, *supra*, to highlight the recognized exception to the strict application of RMO 20-90 and RDAO 05-01.

In *Commissioner of Internal Revenue v. Next Mobile Inc.*, the Court declared that as a general rule a waiver that did not comply with the requisites for validity specified in RMO No. 20-90 and RDAO 01-05 was invalid and ineffective to extend the prescriptive period to assess the deficiency taxes. However, due to peculiar circumstances obtaining, the Court treated the case as an exception to the rule, and considered the waivers concerned as valid for the following reasons, *viz.*:

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.

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. 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. 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.

¹¹ G.R. No. 212825, December 7, 2015, 776 SCRA 343.

¹² G.R. No. 178087, May 5, 2010, 620 SCRA 232.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. 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. 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.¹³

In this case, the CTA in Division noted that the eight waivers of ATC contained the following defects, to wit:

1. The notarization of the Waivers was not in accordance with the 2004 Rules on Notarial Practice;
2. Several waivers clearly failed to indicate the date of acceptance by the Bureau of Internal Revenue;
3. The Waivers were not signed by the proper revenue officer; and

¹³ Supra note 11, at 361-363.

4. The Waivers failed to specify the type of tax and the amount of tax due.¹⁴

We agree with the holding of the CTA *En Banc* that ATC's case was similar to the case of the taxpayer involved in *Commissioner of Internal Revenue v. Next Mobile Inc.* The foregoing defects noted in the waivers of ATC were not solely attributable to the CIR. Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver. Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates.

Moreover, the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit. It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse. Indeed, the Court observed in *Commissioner of Internal Revenue v. Next Mobile Inc.* that:

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.¹⁵

Thus, the CTA *En Banc* did not err in ruling that ATC, after having benefitted from the defective waivers, should not be allowed to assail them. In short, the CTA *En Banc* properly applied the equitable principles of *in pari delicto*, unclean hands, and estoppel as enunciated in *Commissioner of Internal Revenue v. Next Mobile case*.

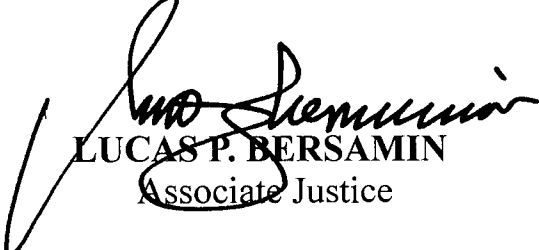
WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on August 9, 2016 by the

¹⁴ *Rollo*, pp. 257-258.

¹⁵ *Supra* note 11, at 359-360.


Court of Tax Appeals *En Banc* in CTA EB No. 1289 (CTA Case No. 8476); and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:




TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice




FRANCIS H. JARDELEZA
Associate Justice



NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



TERESITA J. LEONARDO-DE CASTRO
Chief Justice