

ASIAN TRANSMISSION CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 230861. February 14, 2022

Ponente: INTING, J.

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INTING, J.:

This resolves the Motion for Reconsideration[1] of the Court Decision[2] dated September 19, 2018 denying Asian Transmission Corporation's (ATC) Petition for Review on Certiorari[3] thereby affirming the Court of Tax Appeals (CTA) En Banc Decision[4] dated August 9, 2016 in CTA EB No. 1289.

The Antecedents

The crux of the present controversy lies in the validity of eight Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code[5] (Waivers) executed successively by ATC, through Roderick M. Tan, ATC Vice President for Personnel and Legal Affairs.[6]

Previously, on the strength of a Letter of Authority[7] (LOA) dated August 9, 2004, the Bureau of Internal Revenue (BIR) commenced its audit and investigation of ATC's books of account and other accounting records pertaining to taxable year 2002, including those in connection with the following documents filed by ATC: (a) Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes filed on January 30, 2003; and (b) Annual Information Return of Creditable Income Taxed Withheld (Expanded)/Income Payments Exempt from Withholding Tax filed on March 3, 2003.[8]

Based on these filing dates, the Commissioner of Internal Revenue's (CIR) right to assess ATC for the relevant taxes was due to prescribe in the first quarter of 2006.[9] However, the Waivers' execution extended until December 31, 2018: (a) the BIR's investigation period; and (b) the CIR's assessment period.[10] Consequently, this allowed the CIR to serve a Formal Letter of Demand[11] (FLD) on July 15, 2008 assessing ATC for deficiency withholding tax on compensation (WTC), expanded withholding tax (EWT), and final withholding tax (FWT).[12]

In its administrative protest,[13] ATC raised only two main objections: first, the BIR violated ATC's right to due process when it failed to indicate in the Preliminary Assessment Notice[14] (PAN) and accompanying details of discrepancies "the surrounding circumstances supporting the assessment that will allow the taxpayer the opportunity to dispute the assessment;"[15] and second, the BIR's details of discrepancies in the FLD, which set out to compute the deficiency WTC, EWT, and FWT are erroneous and must be reconsidered.[16] The CIR denied ATC's protest,[17] and its subsequent request for reconsideration.[18]

Subsequently, the ATC proceeded to file a judicial protest[19] before the CTA where it introduced the following arguments: first, the LOA became invalid due to lack of revalidation;[20] and second, the first, second, and third Waivers were defective; thus, these did not validly extend the assessment period.[21]

The Rulings of the CTA

At first instance, the CTA Second Division (CTA Division) ruled in ATC's favor and canceled the tax assessments on account of prescription. It found that the subject Waivers were defective and, at the same time, that ATC was not estopped from assailing the Waivers' validity.[22]

However, on appeal at the CIR's instance, the CTA En Banc reinstated the assessments and remanded the case to the CTA Division for further proceedings to determine ATC's tax liability.[23]

Aggrieved, ATC assailed the CTA En Banc ruling before the Court.

Our Main Decision

In the decision sought to be reconsidered, the Court affirmed the CTA En Banc.[24] The Court recounted the defects found in the Waivers, viz.:

- The notarization of the Waivers was not in accordance with the 2004 Rules on Notarial Practice;
- Several waivers clearly failed to indicate the date of acceptance by the Bureau of Internal Revenue;
- The Waivers were not signed by the proper revenue officer; and
- The Waivers failed to specify the type of tax and the amount of tax due.[25]

Stated differently, both parties were at fault. On the one hand, the BIR failed to observe the procedures in the execution of a valid waiver, as prescribed by Revenue Delegation Authority Order No. (RDAO) 05-01. However, ATC was also remiss in its responsibility of preparing the waiver prior to submission to and filing before the BIR.[26]

Further, the Court explained that ATC benefited from the Waivers. They are estopped from assailing its validity. Thus, the CTA En Banc was correct in applying the equitable principles of in pari delicto, unclean hands, and estoppel.[27]

Hence, ATC filed the present motion.[28]

Motion for Reconsideration

ATC grounds the present motion on the following arguments: first, the Court focused solely on the first defect which had been attributed to it and failed to address the issues arising from the three other defects which had been attributed to the BIR. Second, the principles of in pari delicto, unclean hands, and estoppel do not apply with respect to the second, third, and fourth defects. Third, all defects were attributable to the BIR, rendering them fatal to the waivers' validity. A waiver is a bilateral agreement between the BIR and the taxpayer. When the tax authorities failed to indicate properly their acceptance of the waivers executed by ATC, no valid agreement arose between the parties.[29]

Our Ruling

The Court denies the Motion for Reconsideration.

ATC's proposition seeks to divest the CIR of its right to assess and collect deficiency taxes on account of alleged defects caused by the BIR that outnumber the one caused by ATC. It makes much out of the singular defect that had been attributable to it and how this pales in comparison when juxtaposed against the three defects attributable to the tax authorities.

The Court rejects this reasoning. If a waiver suffers from defects on account of both parties, the waiver's validity in relation to the timeliness of the CIR's subsequent issuance of a tax assessment is not determined by a mere

plurality of the defects committed between the BIR and the taxpayer.

In *Commissioner of Internal Revenue v. Next Mobile, Inc.*[30] (Next Mobile), which was relied upon in the Main Decision, the taxpayer's representative who signed the waivers had no authority to execute the same on behalf of the corporation (i.e., no notarized written authority).[31] On the other hand, the responsible revenue officer: (a) failed to verify the taxpayer representative's authority to execute the waivers; (b) accepted the documents despite not having received any proof of the taxpayer representative's authority; and (c) signed the waivers upon submission by the taxpayer but failed to indicate clearly the date of acceptance.[32]

More recently, in *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[33] the circumstances were similar to those under consideration in Next Mobile. On the one hand, the taxpayer failed to attach a corresponding notarized written authority to each of the waivers executed. On the other, the responsible revenue officer also failed to signify properly the BIR's receipt and acceptance of the waivers (i.e., no dates of receipt/acceptance).[34]

Verily, both parties in those cases contributed flaws to the waivers. However, the Court upheld the waivers as effective because, although both parties caused separate defects, the taxpayer contested the waivers' validity only on appeal.[35]

A more circumspect appreciation of the relevant jurisprudence reveals that the taxpayer's contributory fault or negligence coupled with estoppels[36] will render effective an otherwise flawed waiver, regardless of the physical number of mistakes attributable to a party.

In other words, while a waiver may have been deficient in formalities, the taxpayer's belated action on questioning its validity tilts the scales in favor of the tax authorities.

In the present case, the Court considers the following:

First, it is no longer disputed that the subject defects were the result of both parties failure to observe diligence in performing what is incumbent upon them, respectively, relative to the execution of a valid waiver, particularly the requirements outlined in applicable BIR issuances.[37] That the defects attributable to one party had been greater in number cannot diminish the seriousness of the counter-party's fault or negligence.

Second, ATC issued eight successive Waivers over the course of four years (2004-2008).[38] The Waivers had always been marred by defects and, yet, ATC continued to correspond with the tax authorities and allowed them to proceed with their investigation, as extended by the Waivers in question.

Third, when the CIR issued the FLD, ATC did not question the Waivers' validity. It raised this argument for the first time in its appeal to the CTA, after obtaining an unfavorable CIR decision on their administrative protest.

That ATC acquiesced to the BIR's extended investigation and failed to assail the Waivers' validity at the earliest opportunity gives rise to estoppel. Moreover, ATC's belated attempt to cast doubt over the Waivers' validity could only be interpreted as a mere afterthought to resist possible tax liability.[39]

Verily, it has been held that the doctrine of estoppel, as a bar to the statute of limitations protecting a taxpayer from prolonged investigations,[40] must be applied sparingly.[41]

However, the number of successive Waivers executed by ATC is telling. Certainly, no taxpayer may be allowed to execute haphazard waivers deliberately, go through the motions that the waivers are effective, and lead the tax authorities to believe that the assessment period has been extended, only to deny the validity thereof when it becomes unfavorable to him. Otherwise, it would create a dangerous situation – "open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind

technicalities." [42]

WHEREFORE, the present Motion for Reconsideration is DENIED for lack of merit.

The Court shall not entertain further pleadings or motions in the case. Let entry of judgment be issued.

SO ORDERED.

Perlas-Bernabe, S.A.J., (Chairperson), Hernando, Gaerlan, and Dimaampao, JJ., concur.

[1] Rollo, pp. 393-407.

[2] Asian Transmission Corp. v. Commissioner of Internal Revenue, G.R. No. 230861, September 19, 2018; penned by Associate Justice Lucas P. Bersamin (now a retired Chief Justice), with Chief Justice Teresita J. Leonardo-de Castro and Associate Justices Mariano C. Del Castillo, Francis H. Jardeleza, and Noel G. Tijam, concurring.

[3] Id. at 9-30.

[4] Id. at 32-45; penned by Associate Justice Lovell R. Bautista, with Presiding Justice Roman G. Del Rosario (with Concurring Opinion) and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, concurring.

[5] Id. at 83-90.

[6] Id. at 33-34.

[7] Id. at 79.

[8] Id. at 33.

[9] In general, the period to assess internal revenue taxes is limited to three years after the last day prescribed by law for the filing of the return or the date of actual filing of the return, whichever is later. See Section 203 of Presidential Decree No. 1158 or the National Internal Revenue Code of 1997.

[10] The Waiver of the Statute of Limitation under the National Internal Revenue Code dated May 30, 2008 extended the assessment period to December 31, 2008, rollo, p. 90.

[11] Id. at 91-92.

[12] Id. at 34.

[13] Id. at 98-103.

[14] Id. at 80-82.

[15] Id. at 100.

[16] Id. at 100-103.

[17] See Final Decision on Disputed Assessment dated April 14, 2009, id. at 110-111; signed by OIC-ACIR Zenaida G. Garcia.

[18] See Decision dated November 15, 2011, id. at 122-130; signed by Commissioner of Internal Revenue Kim S.

Jacinto-Henares.

[19] See Petition for Review dated April 13, 2012, *id.* at 131-156.

[20] *Id.* at 135-137.

[21] *Id.* at 137-148.

[22] See Decision dated November 18, 2014 of the Court of Tax Appeals (CTA) in CTA Case No. 8476, *id.* at 229-261; penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr., and Amelia R. Cotangco-Manalastas, concurring.

[23] See Decision dated August 9, 2016 of the CTA, *id.* at 32-45.

[24] *Asian Transmission Corp. v. Commissioner of Internal Revenue*, *supra* note 2.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Rollo*, pp. 393-407.

[29] *Id.* at 394-306.

[30] 774 Phil. 428 (2015).

[31] *Id.* at 441.

[32] *Id.* at 440.

[33] 821 Phil. 664 (2017).

[34] *Id.* at 675.

[35] See *Commissioner of Internal Revenue v. Next Mobile, Inc.*, *supra* note at 30, and *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, *supra* note 33.

[36] *Asian Transmission Corp. v. Commissioner of Internal Revenue*, *supra* note 2.

[37] *Rollo*, pp. 41-43.

[38] *Id.* at 33-34.

[39] See *AFP General Insurance Corp. v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020.

[40] *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021.

[41] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, 634 Phil. 314, 328-329 (2010).

[42] *Commissioner of Internal Revenue v. Next Mobile, Inc.*, *supra* note 30 at 445.

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