REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

AYALA LAND INTERNATIONAL SALES, INC., Petitioner, -versus- COMMISSIONER OF INTERNAL REVENUE, Respondent.	CTA Case No. 9262 Members: FABON-VICTORINO, and RINGPIS LIBAN, JJ. Promulgated: FEB 04 2019 3:50 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

Assailed in respondent's *Motion for Reconsideration* dated October 18, 2018[1] is the Decision dated September 28, 2018,[2] disposing the case as follows:

> **WHEREFORE**, the Petition for Review dated February 17, 2016 filed by Ayala Land International Sales, Inc. is hereby **GRANTED**.
>
> Accordingly, respondent's Formal Letter of Demand dated March 24, 2014, with Details of Discrepancies and Assessment Notices, and the Final Decision on Disputed Assessment dated January 18, 2016 assessing petitioner for deficiency taxes in the aggregate amount of ₱29,226,987.73 for calendar year 2009 is **CANCELLED**.
>
> **SO ORDERED**.

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[1] Docket, pp. 1350-1358.
[2] Ibid. at pp. 1327-1349.

Respondent maintains that the first waiver executed on February 6, 2012 was crafted in accordance with Section 222(b) of the National Internal Revenue Code (NIRC), as amended. He claims that the failure of the Notary Public to state the name of the affiant and her relevant details in the acknowledgment clause did not render the notarization defective since it is presumed that the affiant appeared before the Notary Public. Such omission will not also automatically make the first waiver inutile as it will only reduce the same from public to a private document.[3]

Respondent ascribes error on the Court in holding that petitioner's board resolution authorizing Ma. Teresa R. Famy's[4] to sign the five (5) waivers is a prerequisite to the subject waivers' efficacy. Respondent insists that Ms. Famy is petitioner's responsible officer, since her signature appeared on several documents of petitioner[5], hence, her act of signing the subject waivers binds petitioner. Further, the validity of the waiver may not be challenged by petitioner since it benefited from the extension which gave it longer opportunity to submit the necessary papers to counter his audit findings. In addition, there is no law requiring a board resolution authorizing a taxpayer's representative to sign a waiver. More importantly, since both he and petitioner were *in pare delicto*, the principle laid down in the *Next Mobile*[6] case should be applied in the present controversy.

Respondent further theorizes that the provisions of Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 utilized as foundation of the Court's ruling are internal procedures followed only by the Bureau of internal Revenue (BIR) Officials, therefore, has no application with respect to taxpayers such as petitioner. With the subject waivers, his period to assess was legally extended. As such, petitioner must be held entirely accountable for the assessed

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[3] Respondent cites *Martires vs. Chua,* G.R. No. 174240, March 20, 2013; and *Dela Rama vs. Papa,* G.R. No. 142309, January 30, 2009.
[4] Respondent alleges that she is the Chief Finance Officer (CFO) of petitioner.
[5] The subject five (5) waivers, Protest to Preliminary Assessment Notice, as well as to the Formal Letter of Demand.
[6] *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.),* G.R. No. 212825, December 7, 2015.

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deficiency taxes, together with increments for CY 2009 as stated in the subject assessment.

On the other hand, petitioner argues[7] that the legal infractions made by respondent respecting the subject waivers is offensive of the rules and regulations, i.e., RMO No. 20-90 and RDAO No. 05-01, that he himself enacted, for that reason, should not be countenanced by the Court.

Neither may respondent invoke the presumption of regularity in the performance of his duty and that of the Notary Public as assessments must be predicated upon actual facts and may not rest on another presumption, no matter how rational or reasonable such presumption may be.[8] In other words, the Court committed no reversible error in invalidating the subject assessment.

THE RULING OF THE COURT

The instant Motion must fail.

Section 203 of the National Internal Revenue Code of 1997 (NIRC) mandates the government 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 no longer valid and without force and effect. Exceptions however are provided under Section 222 of the same Code.[9]

There is no denying that the subject assessments for deficiency income tax (IT),[10] value-added tax (VAT),[11] expanded withholding tax (EWT),[12] withholding tax on compensation

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[7] Respondent's *Comment/Opposition* dated December 7, 2018.
[8] Petitioner invokes the case of *Collector of Internal Revenue vs. Benipayo, Jr.,* G.R. No. L-13656, January 31, 1962.
[9] See *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.
[10] The last day that respondent may assess petitioner for IT covering CY 2009 is on April 15, 2013.
[11] The last day that respondent may assess petitioner for VAT covering CY2009 on January 25, 2013.
[12] The last day that respondent may assess petitioner for EWT covering CY2009 is on January 15, 2013.

(WTC),[13] and documentary stamp tax (DST)[14] covering CY 2009 were all received by petitioner on April 15, 2014, or beyond the three (3) year ordinary prescriptive period granted by the statute. Respondent nonetheless asserts that the prescriptive period to assess was extended by the five (5) waivers validly executed by petitioner.

The point is not well-taken.

Section 222(b) of the NIRC, as amended, as implemented by RMO No. 20-90 and RDAO No. 5-01, stringently decrees, *inter alia* that certain facts must be attendant in the execution of the subject waiver, lest the extension of prescriptive period to assess would be ineffectual:[15] a) the fact of notarization; and b) in cases where the taxpayer is a corporation, the signatory of such notarized waiver/s must be authorized by its board of directors to execute the same via a corresponding board resolution. Such mandatory preconditions are wanting in this case.

The first waiver executed on February 6, 2012 was without the requisite acknowledgment emanating from the Notary Public as the name of the person who appeared before her and her/his identity was not indicated in the foregoing document. As such, there was no completed process of notarization envisaged under Section 1, Public Act No. 2103, and Section 1, Rule II[16] of the 2004 Rules on Notarial Practice.

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[13] The last day that respondent may assess petitioner for WTC covering CY2009 is on January 21, 2013.

[14] The last day that respondent may assess petitioner for DST covering CY2009 is on July 6, 2012.

[15] The provisions of the RMO (20-90) xxx explicitly show their mandatory nature, requiring strict compliance. Hence, failure to comply with any of the requisites renders a waiver defective and ineffectual. See *Commissioner of Internal Revenue vs. Standard Chartered Bank,* G.R. No. 192173, July 29, 2015.

[16] SECTION 1. Acknowledgment. - "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an integrally complete instrument or document;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and -

(c) represents to the notary public that the signature on the instrument or

Further, the record is bereft of any showing that the signatory to the five (5) waivers, i.e., Ma. Teresa R. Famy was authorized by petitioner's board of directors to execute such documents. The *raison d' etre* for the foregoing legal requirement is not that difficult to perceive - Section 23[17] of the Corporation Code of the Philippines explicitly confers upon the board of directors the competence to exercise the corporate powers of all corporations.[18] Being a juridical entity, corporations cannot conduct its business, make any decisions, or act in any manner without action from its corresponding board xxx.[19] *Ergo*, in the absence of authority from the board of directors, as in this case, no person, not even its officers, can validly bind a corporation.[20]

More importantly, in the *Kudos* case,[21] the High Tribunal did not hesitate to strike down the waivers executed therein for lack of notarized written authority of the taxpayer's representative to sign the waivers on behalf of the principal-taxpayer corporation.

Neither will the *Next Mobile* case[22] save the day for respondent. As discussed in page 22 of the assailed Decision, petitioner may not be deemed in bad faith since the alleged flaw, i.e., lack of authority to sign the subject waivers was not raised as an issue in its petition for review, negating any impression of any intent to profit from the aforementioned infirmity.

To conclude, the BIR has the *onus* of ensuring compliance with the requirements of RMO No. 20-90, as

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document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

[17] **Section 23.** *The board of directors or trustees.* - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors xxx.

[18] See *Banate vs. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.,* G.R. No. July 13, 2010.

[19] See *University of Mindanao, Inc. vs. Bangko Sentral ng Pilipinas,* G.R. Nos. 194964-65, January 11, 2016.

[20] See *Development Bank of the Philippines vs. Sta. Ines Melale Forest Products Corporation,* G.R. No. 193068, February 1, 2017.

[21] See Note 9.

[22] See Note 6.

they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe, absent any showing of a valid extension of the period set by the law.[23]

WHEREFORE, there being no ground to reverse, much less modify the assailed Decision of September 28, 2018, respondent's *Motion for Reconsideration* dated October 18, 2018 is **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[23] See *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated,* G.R. No. 187589, December 3, 2014.