REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

M. TECH PRODUCTS PHILIPPINES, INC., Petitioner,	**CTA Case No. 9331**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF THE INTERNAL REVENUE, Respondent.	***Promulgated:*** DEC 11 2018, 9:00 am

x - x

DECISION

UY, J.:

Before this Court is the *Petition for Review* filed on April 14, 2016 by M. Tech Products Philippines, Inc., as petitioner, against the Commissioner of Internal Revenue, as respondent, seeking the cancellation of its assessed deficiency taxes for taxable year 2010.

THE PARTIES

Petitioner M. Tech Products Philippines, Inc. is a domestic corporation duly organized and existing under and by virtue of the Philippine laws. Its address is located at Unit 1100 88 Corporate Tower, Valero corner Sedeno Streets, Salcedo Village, Makati City.[1]

On the other hand, respondent Commissioner Internal Revenue is an instrumentality of the government tasked to assess and collect all national internal revenue taxes, fees and charges, and

[1] Par. 3, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. II, p. 811.

the enforcement of all forfeitures, penalties, and fines connected therewith.[2]

THE FACTS

By virtue of the *Letter of Authority* (LOA) No. 050-2011-00000437 dated November 21, 2011, petitioner's books of accounts and accounting records were made the subject of examination by respondent for purposes of assessing all of petitioner's internal revenue taxes for taxable year 2010.[3] The said LOA authorized Revenue Officer (RO) Felinor A. Pascua and Group Supervisor Ma. Susana Santos to examine petitioner's books of accounts and other accounting records for the period January 1, 2010 to December 31, 2010.[4]

A *Notice for Informal Conference* dated September 3, 2013 was sent to petitioner, informing petitioner that RO Felinor A. Pascua has submitted the report of investigation on petitioner's internal revenue tax liabilities from January 1, 2010 to December 31, 2010 and inviting petitioner to an informal conference.[5]

Respondent received the letter dated October 1, 2013 from the Managing Partner of Alas Oplas & Co. CPAs, Marycris S. Oplas, referring to the *Notice of Informal Conference* issued against petitioner and stating therein the position of petitioner on the proposed assessment.[6]

On December 1, 2014, petitioner's Office Manager, Maria Theresa Tan-Dy, received the *Preliminary Assessment Notice* (PAN) Part I and II dated December 1, 2014, stating that respondent found petitioner liable for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, and final withholding of value-added tax, and compromise penalty for taxable year 2010.[7]

In the *Details of Discrepancies* attached to the PAN, respondent further indicated that petitioner's authorized

---

[2] Par. 4, Admitted Facts, JSFI, Docket – Vol. II, p. 811.
[3] Par. 5, Admitted Facts, JSFI, Docket – Vol. II, p. 811.
[4] Exhibit "R-1", BIR Records, p. 2.
[5] Exhibit "R-3", BIR Records, pp. 238 to 240.
[6] Exhibit "R-4", BIR Records, pp. 478 to 484.
[7] Exhibit "R-6", BIR Records, pp. 563 to 568.

M

representative executed a waiver of the defense of prescription under the statute of limitations provided in Sections 203 and 222 of the National Internal Revenue Code (NIRC) of 1997 on December 20, 2013 and that the period to assess was suspended from the date of execution until December 31, 2014.[8]

Subsequently, respondent issued the *Formal Assessment Notice* (FAN) Part I and II dated December 18, 2014, holding petitioner liable to pay the said deficiency taxes and penalty.[9]

On April 10, 2015, respondent received the letter dated April 1, 2015 from Marycris S. Oplas of Alas Oplas & Co. CPAs, alleging that the assessment against petitioner must be cancelled for having been issued beyond the three (3)-year prescriptive period, invoking the invalidity of the waiver of the statute of limitation.[10]

Thereafter, in the letter dated May 15, 2015, the Bureau of Internal Revenue (BIR), invoking Revenue Regulations (RR) No. 18-2013, stated that the assessment has become final and executory and that the assessment has already been forwarded to the Collection Division of the BIR.[11]

On October 13, 2015, petitioner authorized Maria Theresa Tan-Dy, petitioner's Office Manager, to file any and all appropriate pleadings/letters to challenge respondent's assessment. Also, petitioner engaged the legal services of Rovero Tamayo & Partners Law Office as counsel to represent petitioner in the said case based on the Secretary's Certificate executed on October 14, 2015.[12] Petitioner, through the above law office, filed before the Collection Division of the BIR on October 16, 2015, the letter of even date, requesting to hold in abeyance the issuance of the order of seizure and to revert the docket to the Assessment Division of the BIR.[13]

The letter dated February 18, 2016 from the Chief of Collection Division of the BIR was sent to petitioner, stating that the FAN dated December 18, 2014 was served and received on the same day by

---

[8] BIR Records, p. 558.
[9] Exhibit "R-8", BIR Records, pp. 598 to 04.
[10] Exhibit "R-10", BIR Records, pp. 595 to 597.
[11] Par. 6, Admitted Facts, JSFI, Docket – Vol. II, p. 811.
[12] Exhibit "P-15", Docket – Vol. I, pp. 505 to 506.
[13] Exhibit "P-17", Docket – Vol. I, pp. 156 to 178.

M

petitioner's representative, Jamie Ordoveza, at the taxpayer's given address.[14]

Petitioner filed its reply to the said letter dated February 18, 2016 on March 4, 2016, reiterating the arguments raised in its letter filed on October 16, 2015.[15] In response, respondent sent the letter dated March 10, 2016 to petitioner, stating that petitioner is already precluded from disputing the correctness of the assessment because of the late filing of the protest on October 16, 2015.[16]

Hence, petitioner filed the instant *Petition for Review with Motion to Suspend Collection of Taxes* on April 14, 2016.[17]

After service of Summons upon respondent on April 22, 2016, petitioner's Motion to Suspend Collection of Taxes embodied in the instant Petition for Review was set for hearing on May 4, 2016, but the hearing was reset to June 1, 2016 due to some discrepancies in the Judicial Affidavit of petitioner's witness, Maria Theresa A. Tan Dy.

During the hearing held on June 1, 2016, Maria Theresa A. Tan Dy completed her testimony in support of petitioner's Motion for Suspension of Collection of Taxes. However, in view of the doctrine in the case of *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao vs. The Court of Tax Appeals – First Division, et.al.*,[18], the Court directed both counsels to file a Manifestation whether there is a need to conduct further hearing with respect to the issues raised in the instant Petition for Review within ten (10) days from June 1, 2016. Thus the Court set a tentative hearing on June 22, 2016 for the continuation of the presentation of petitioner's evidence.

Meanwhile, respondent filed his *Answer* on June 6, 2016,[19] interposing the following special and affirmative defenses:

> "<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>
>
> 3. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;

---

[14] Exhibit "P-18", Docket – Vol. I, p. 179.
[15] Exhibit "P-19", Docket – Vol. I, pp. 180 to 208.
[16] Exhibit "P-20", Docket – Vol. I, pp. 209 to 210.
[17] Petition for Review, Docket – Vol. I, pp. 12 to 48.
[18] G.R. No. 213394, April 6, 2016.
[19] Docket – Vol. II, pp. 581 to 587.

M

4. Based on the records of the case, it is worth noting that petitioner received the Formal Assessment Notice **(FAN)** involving the assessed deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, final withholding tax on VAT and compromise penalty for taxable year 2010 on December 18, 2014 (paragraph 35 of the Petition for Review). Thereafter, petitioner filed a protest against the FAN on April 1, 2015 (paragraph 40 of the Petition for Review).

Considering the circumstances in the case at bar, it is clear that respondent failed to file a valid protest within the thirty (30) day period, as required by Section 228 of the 1997 Tax Code. Consequently, the assessment became final executory and unappealable. In the case of **Protector's Services, Inc. vs. Court of Appeals, 330 SCRA 404, promulgated on April 12, 2000**, the Supreme Court upheld this Honorable Court's ruling that the assessment became final after thirty days from receipt of demand letters by the petitioner, without the latter interposing a reconsideration, thus:

> 'We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a re-investigation. From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the assessment. Hence, in our view, the Court of Tax Appeals correctly dismissed the appeal for lack of jurisdiction.'

Moreover, in the case of **Marcus** *(sic)* **II vs. Court of Appeals, 273 SCRA 47, June 5, 1997**, the Supreme Court passed upon a similar issue to wit:

> 'Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in

Section 229 (now 228) of the NIRC on protests on assessments of the internal revenue taxes.'

5. As provided in Section 228 of the NIRC, as amended, the failure of the [petitioner] to file a timely protest against the assessment rendered the assessment final, executory and unappealable. Once the assessment had attained finality, [petitioner] is already precluded from disputing the correctness of the assessment pursuant to Section 228 of the NIRC of 1997. Thus, [petitioner] can no longer seek judicial relief from the Court of Tax Appeals because the assessment is already final, hence, beyond review.

6. In fine, **petitioner only had until January 17, 2015 within which to file its protest against the FAN**. When the protest was filed by petitioner on April 1, 2015, it was clearly beyond the period allowed by law. Accordingly, the subject deficiency taxes for taxable year 2010 had already become final, executory, demandable and unappealable. Hence, the Honorable Court has no jurisdiction to take cognizance of the case.

The prescriptive period allowed by law are made to benefit both the taxpayer and the government. For one, the government is benefited because tax officers would be obliged to act properly and promptly in making assessments. On the other hand, the taxpayer is benefited because after the lapse of the period of prescription, it would have feeling of security against unscrupulous tax agents who would find an excuse to inspect its books, not to determine the latter's real liability, but to take advantage of every opportunity to molest law-abiding citizens. Even though laws on prescription are liberally construed in favor of the taxpayer in order to afford the aforementioned protection, this, however, does not mean that the taxpayer may sleep on its rights.

7. Well-settled is the rule that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits ***(De Guzman, et al., vs. Escalona, et al., G.R. No. L-51773, May 16, 1980)***.

8. On the other hand, assuming without admitting that this Honorable Court has jurisdiction to act on the

instant petition, petitioner was assessed for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, final withholding tax on VAT and compromise penalty for taxable year 2010, for the reason that during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the PAN and FAN, which are briefly discussed hereunder, viz:

xxx xxx xxx

<u>PERIOD OF PRESCRIPTION</u>

Petitioner was assessed by respondent for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, final withholding tax on VAT and compromise penalty for taxable year 2010 within the prescriptive period under Section 222(b) of the 1997 Tax Code, in view of the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code duly executed by petitioner.

Moreover, the running of the three year statute of limitation as provided under Section 203 of the NIRC is not applicable but rather the ten year prescriptive period pursuant to Section 222(a) of the Tax Code which states that, 'In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission.'

9. The assessments issued against petitioner for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, final withholding tax on VAT and compromise penalty for taxable year 2010 were made in accordance with law and regulations.

10. Assessment are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any

irregularities in the performance of official duties, an assessment will not be disturbed ***(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109).***"

On June 13, 2016, petitioner filed its "Manifestation With Motion for 1. Additional Time to Submit Judicial Affidavit of Witness; 2. For the Resetting of 22 June 2016 hearing to any day in July 2016" alleging that there is a need for a preliminary hearing to determine whether respondent has committed patent violation of laws.

On the other hand, respondent posted his *Comment/Opposition (To Petitioner's Motion for the Suspension of Collection of Taxes)* on June 7, 2016 which was received by this Court on June 17, 2016.[20]

In the Resolution dated June 22, 2016, the Court granted petitioner's motion to reset the hearing on June 22, 2016 while awaiting respondent's filing of the required Manifestation. Hence, said hearing was reset to July 27, 2016.

On June 13, 2016, respondent posted his Manifestation/ Compliance which was received by this Court on June 23, 2016, alleging that a further hearing be conducted and that respondent will be presenting his witness to prove that the subject deficiency tax assessments have already become final, executory and demandable for failure of petitioner to timely file a protest against the FAN.

Thus, in the Resolution July 1, 2016, the Court set a preliminary hearing on July 27, 2016 for further presentation of petitioner's evidence. On said date, petitioner's counsel recalled to the witness stand its witness Maria Theresa Tan-Dy. Subsequently, petitioner filed its Formal Offer of Evidence in relation to its Motion to Suspend Collection of Taxes.[21]

In the Resolution dated September 14, 2016,[22] the Court admitted Exhibits "P-1", "P-1-a", "P-4", "P-7", "P-7-a", "P-10", "P-13", "P-14", "P-15", "P-15-a", "P-17", "P-17-a", "P-17-b", "P-18", "P-19",

---

[20] Docket – Vol. II, pp. 589 to 591.
[21] Petitioner's *Formal Offer of Evidence* dated July 29, 2016, Docket – Vol. II, pp. 681 to 688.
[22] Docket – Vol. II, pp. 700 to 703.

M

"P-20", "P-21", "P-22", "P-22-a", "P-23", "P-24", and "P-24-a"; but denied the admission of Exhibits "P-2", "P-3", "P-5", "P-6", "P-6-a", "P-8", "P-9", "P-9-a", "P-9-b", "P-9-c", "P-9-d", "P-11", "P-12", "P-16", "P-21-a", "P-21-a-1", "P-21-b", and "P-21-b-1", for failure to present the original documents for comparison.

During the hearing held on September 14, 2016, respondent presented counter-evidence to petitioner's Motion to Suspend Collection of Taxes by way of the testimony of witness Felinor A. Pascua. Thereafter, respondent's counsel filed respondent's Formal Offer of Evidence on September 30, 2016 consisting of Exhibits "R-1" to "R-11-a", inclusive of submarkings.[23] All the said Exhibits and their submarkings were I on admitted by the Court in the Resolution dated November 15, 2016.[24]

In the Resolution dated January 4, 2017, the Court granted petitioner's *Motion to Suspend Collection of Taxes* subject to the posting of a cash bond or surety bond equivalent to the amount of P24,433,300.67 representing the principal amount of the assessed deficiency taxes.[25]

After the pre-trial conference held on August 31, 2017, the parties submitted their *Joint Stipulation of Facts and Issues (JSFI)* on September 20, 2017 stating that the parties are adopting the exhibits presented and offered through their respective *Formal Offer of Evidence* dated July 29, 2016 and September 29, 2016; that petitioner is adopting the testimony of Maria Theresa A. Tan-Dy, while respondent as adopting the testimony of Revenue Officer Felinor A. Pascua.[26] The same was approved by the Court in the Resolution dated September 28, 2017.

On the basis thereof, the Court issued the Pre-Trial Order dated November 3, 2017,[27] noting the foregoing manifestations of the parties, through counsel, and gave both parties a period of thirty (30) days from receipt thereof to submit their respective *Memoranda*.

---

[23] Respondent's *Formal Offer of Evidence* dated September 29, 2016, Docket – Vol. II, pp. 708 to 713
[24] Docket – Vol. II, pp. 730 to 731.
[25] Docket – Vol. II, pp. 733 to 739. As per Records Verification dated February 3, 2017 issued by the Judicial Records Division, counsel for petitioner failed to deposit a cash bond or surety bond, Docket – Vol. II, p. 750.
[26] Docket – Vol. II, pp. 810 to 812.
[27] Docket – Vol. II, pp. 816 to 826.

M

Respondent filed his *Memorandum* on December 1, 2017[28] while petitioner filed its *Memorandum for the Petitioner* on December 22, 2017.[29] The Court considered the case submitted for decision on January 15, 2018.[30]

Hence, this Decision.

THE ISSUES

The following are the stipulated issues for this Court's resolution, to wit:[31]

> "1. Whether or not the Bureau of Internal Revenue's right to assess petitioner for taxable year 2010 has prescribed.
>
> 2. Whether or not petitioner is liable to pay deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, final withholding tax on VAT and compromise penalty for taxable year 2010."

Petitioner's arguments:

Petitioner claims that the waiver of prescription is void, thus, respondent's right to assess deficiency taxes covering taxable year 2010 was never extended and has prescribed. Allegedly, the waiver is void for being contrary to Revenue Memorandum Circular No. 20-90 because it has no date of acceptance from respondent and no proof that petitioner was furnished a copy of the waiver.

Moreover, respondent allegedly committed grave abuse of discretion amounting to lack or excess of jurisdiction when it released the FAN barely two (2) days from the day that a reply to the PAN was filed by petitioner.

As regards the FAN dated December 18, 2014, petitioner submits that the same was not properly served to petitioner because it did not have an authorized representative. Allegedly, a copy of the

---

[28] Docket – Vol. II, pp. 827 to 830.
[29] Docket – Vol. II, pp. 832 to 847.
[30] Resolution dated January 15, 2018, Docket – Vol. II, p. 850.
[31] Issues, JSFI, Docket – Vol. II, p. 811 to 812; Pre-Trial Order dated November 3, 2018, p. 818.

M

Notice of Informal Conference shows that respondent required the authority of the representative to be in writing. However, respondent failed to show proof of any resolution or document which would show that petitioner was duly represented. Thus, the assessment is allegedly void.

Respondent's counter-arguments:

For his part, respondent claims that the protest filed by petitioner on April 1, 2015 was filed beyond the period allowed by law. Based on the records of this case, petitioner allegedly received the Formal Assessment Notice (FAN) involving the assessed deficiency income tax, value added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, final withholding tax on VAT and compromise penalty for taxable year 2010 on December 18, 2014. Thereafter, petitioner filed a protest against the FAN on April 1, 2015.

Considering the foregoing circumstance, petitioner allegedly failed to file a valid protest within the thirty (30) day period, as required under Section 228 of the 1997 Tax Code. Thus, the deficiency tax assessment for taxable 2010 became final, executory, and unappealable. Hence, the Court has no jurisdiction to take cognizance of the case.

Respondent likewise avers that petitioner was assessed of deficiency taxes for taxable year 2010 within the prescriptive period under Section 222(b) of the NIRC of 1997, in view of the *Waiver of the Defense of Prescription* duly executed by petitioner.

THE COURT'S RULING

The instant *Petition for Review* must be dismissed for lack of jurisdiction.

As pointed out by respondent, this Court has no jurisdiction to take cognizance of the case because the protest of petitioner was filed beyond the period allowed by law and therefore the assessment is now final, executory, and unappealable.

On the other hand, petitioner cannot invoke the invalidity of the Waiver it executed because it is equally remiss in complying with legal requirements in the execution of the same.

M

The subject tax assessments have not prescribed.

Section 203 of the NIRC of 1997 provides the period of limitation upon the assessment and collection of taxes, to wit:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — <u>Except as provided in Section 222</u>, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return,** and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, **That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**." *(Emphases and underscoring supplied)*

Based on the foregoing, the government is mandated to assess internal revenue taxes within three (3) 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 said three-year prescriptive period is no longer valid and effective.

By way of exception, however, there are certain instances provided under Section 222(a) and (b) of the NIRC of 1997, wherein the government may assess pertinent taxes against taxpayers beyond the said three-year prescriptive period. Said provision reads:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: xxx

M

(b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

xxx xxx xxx." (*Emphasis supplied.*)

Based on the foregoing, under Section 222(a), the three-year prescriptive period shall not apply when the case involves a false or fraudulent return, or there was failure to file a return; in which case, the prescriptive period shall be ten (10) years after the discovery of the falsity, fraud, or omission.

Furthermore, under Section 222(b) the same three-year prescriptive period may be extended, if before the expiration of the time prescribed in Section 203 for the assessment of the tax, both petitioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.

In this case, petitioner assails the validity of the subject Waiver as follows:

> "19. Aside from the fact that the waiver of prescription cannot bind the Petitioner as it was executed without the Petitioner being duly represented, the said waiver is also void for being contrary to RMC 20-90 for the following reasons:
>
> a. No date of acceptance from the Respondent;
> b. No showing that Petitioner was furnished a copy thereof;"

Indeed, the aforementioned grounds raised by petitioner can validly be invoked in assailing the validity of the subject Waiver in the instant case as enunciated in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[32] wherein the Supreme Court said:

---

[32] G.R. No. 178087, May 5, 2010.

"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 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19____', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must 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. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form duly notarized, and executed by the taxpayer or his duly the authorized representative.

5. 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.

6. The waiver must be executed in three 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 must be indicated in the original copy to show that the taxpayer was notified

of the acceptance of the BIR and the perfection of the agreement."

Nevertheless, while We recognize the rule that the foregoing procedures laid down by Revenue Memorandum Order (RMO) No. 20-90[33] and Revenue Delegation Authority Order (RDAO) No. 05-01[34] must be strictly followed, the Supreme Court recognized an exception thereto in the more recent case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*. [35] In said case, the Supreme Court held:

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

xxx xxx xxx

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 (referring to Next Mobile, Inc.), 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 in act of bad faith.

xxx xxx xxx

---

[33] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code

[34] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations

[35] G.R. No. 212825, December 7, 2015.

NY

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 exception to this rule and find the Waivers valid for the reasons discussed below.

First, the parties in this 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.

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". *(Emphasis supplied)*

The thrust of the foregoing case is that when the parties are both at fault, it creates an exception to the rule that the procedures laid down by RMO No. 20-90 and RDAO No. 05-01 must be strictly followed.

In the instant case, both parties are evidently *in pari delicto*.

Although petitioner, in effect, denies ever having authorized Mary Grace T. Aguilar to sign the subject Waiver, it appears however, that at the administrative level, petitioner admitted that the signatory was, in fact, authorized as shown in petitioner's letter dated April 1, 2015.[36] The pertinent portions thereof read as follows:

> "**Waiver must be signed by the CIR or Revenue Official Authorized by him and that the date of acceptance should be indicated.**

---

[36] Exhibit "R-10", BIR Records, pp. 595 to 597.

M

> The BIR provided a waiver template which the Company fill-out. The said waiver was pre-signed by two witness – Felinor Pascua and Susana Santos. <u>This waiver was returned to the BIR after the Company have it signed by their authorized representative.</u> After which, the Company didn't hear anything from the BIR about the said waiver." *(Underscoring supplied)*

Thus, petitioner cannot deny that it authorized Mary Grace T. Aguilar as signatory of the subject Waiver.

On the other hand, there is no showing that respondent's representative, who is presumed to know that the delegation must be in writing and duly notarized pursuant to the said BIR issuances, required from petitioner's representative, such written and notarized authorization/delegation before accepting the subject Waiver.

Anent the absence of the date of acceptance by respondent, petitioner's authorized representative received the Waiver without requiring that the date of acceptance be indicated therein. Hence, both are equally remiss in ensuring compliance with legal requirements.

In the same vein, the lack of indication that petitioner was furnished a copy of the subject Waiver could have been likewise averted to, if only petitioner and respondent made sure that the subject Waiver was fully compliant with all the legal requirements therefor.

Thus, just as in the above-quoted *Next Mobile* case, the parties herein are similarly *in pari delicto*, and did not come to this Court with clean hands. Therefore, both parties are estopped from questioning the validity of the subject Waiver because they performed contributory acts in the invalidity thereof.

But even granting that the Waiver should be rendered invalid, the 10-year period under Section 222(a) of the NIRC of 1997 may still be applied in this case.

It must be emphasized that in invoking prescription as an affirmative defense under Section 203 of the NIRC of 1997, it is incumbent upon a taxpayer to prove that he submitted a return. If he fails to do so, the conclusion should be that no such return was filed, in which case the Government has ten (10) years within which to make the corresponding assessments.[37]

In this case, there is no evidence to show that petitioner filed the pertinent tax returns for taxable year 2010. Correspondingly, the ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997 applies in this case.

In sum, the subject tax assessments have not prescribed.

Respondent did not commit grave abuse of discretion.

Petitioner also claims that there was grave abuse of discretion amounting to lack or excess of jurisdiction when respondent issued the FAN barely two (2) days from the submission of petitioner's *Reply* to the PAN. According to petitioner, the *Reply* of the taxpayer to the PAN was never considered, hence, a defective output in the form of the FAN.

Relative thereto, We look into the provisions of Section 228 of the NIRC of 1997 and RR No. 12-99, pertaining to the procedural requirements that must be followed for the validity of an assessment.

Section 228 of the NIRC of 1997 reads:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer**

---
[37] *Taligaman Lumber Co., Inc. vs. The Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962.

M

shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphases supplied)*

Relative thereto, Section 3 of RR No. 12-99 states:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedures in the issuance of deficiency tax assessment:

xxx xxx xxx

3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in**

> **which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence, on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void xxx The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: xxx" *(Emphasis supplied)*

In other words, the taxpayer is given fifteen (15) days to file a *Reply* to the PAN and is also permitted to examine the records and present his arguments in writing. If the taxpayer fails to respond to the PAN within fifteen (15) days from receipt thereof, a *Formal Letter of Demand* and *Assessment Notice* must already be issued which shall state the facts and the law on which the assessment was based. The taxpayer may file a protest based on such assessment within thirty (30) days. After filing the protest, the taxpayer must submit the relevant supporting documents within sixty (60) days, otherwise the assessment shall become final.

It is well settled that the essence of due process is found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. What the law proscribes is the lack of opportunity to be heard. As long as the party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[38]

---

[38] *Spouses Estares vs. Court of Appeals, et al.*, G.R. No. 144755, June 8, 2005.

In this case, petitioner admitted that it was able to file its *Reply* to the PAN on December 16, 2014.[39] Having been given the opportunity to be heard, the Court finds petitioner's allegation of denial of due process bereft of merit.

Be that as it may, even granting that petitioner's *Reply* to the PAN on December 16, 2014 was not filed, it must be pointed out that what is prohibited, in effect, by the aforequoted Section 3 of RR No. 12-99 is the issuance of a formal letter of demand and assessment notice within a period of fifteen (15) days from the date of receipt of the PAN, because this is the period given to the taxpayer to respond thereto. Since the subject PAN was received by petitioner on December 1, 2014,[40] the issuance of FAN on December 18, 2014 is clearly beyond the said fifteen (15) day prohibitory period.

Thus, there can be no merit in petitioner's contention that there was grave abuse of discretion on the part of respondent in the issuance of the FAN.

As there was proper service of the FAN, the subject tax assessments have become final, executory and unappealable due to petitioner's failure to timely file its protest.

Petitioner, claims that it was not properly served with the FAN. Allegedly, petitioner, being a juridical person, can only act through its authorized agents but it never authorized a natural person, through a Secretary's Certificate or Board Resolution, to represent it before the BIR for purposes of investigation. This matter becomes especially material since even the BIR is allegedly aware of it as indicated in the Notice of Informal Conference dated 03 September 2013.

Thus, it is allegedly in a quandary how it could have received the notices and assessment when no board resolution was approved as its representative. According to petitioner, said representative should have been in place at least during the informal conference as required by respondent.

---

[39] Pars. 74 to 81, Petition for Review, Docket – Vol. I, pp. 36 to 37.
[40] Exhibit "R-6", BIR Records, pp. 563 to 568.

It can be deduced from the foregoing that petitioner's allegation that the FAN was not properly served, is mainly based on its claim that petitioner did not authorize anyone to represent it.

The Court finds petitioner's allegation untenable.

In *Banate, et al. vs. Philippine Countryside Rural Bank (Liloan, Cebu), Inc., et al.*,[41] the Supreme Court enunciates the doctrine of apparent authority, to wit:

> "...just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to its officers, committees or agents. **The authority of these individuals to bind the corporation is generally derived from** law, corporate bylaws or **authorization from the board, either expressly or <u>impliedly by</u> habit, custom or <u>acquiescence in the general course of business</u>.**
>
> **The authority of a corporate officer or <u>agent</u> in dealing with third persons may be actual or <u>apparent</u>.** Actual authority is either express or implied. The extent of an agent[']s express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved, or their benefits accepted by his principal. The doctrine of apparent authority, on the other hand, with special reference to banks, had long been recognized in this jurisdiction. **The existence of apparent authority may be ascertained through:**
>
> 1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or
> 2) **the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.**

---
[41] G.R. No. 163825, July 13, 2010.

MC

> **Accordingly, the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances when the power was exercised <u>without any objection from its board or shareholders</u>.**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, an authority to bind a corporation may be *impliedly* derived, among others, from acquiescence in the general course of business. Furthermore, such an authority may be classified into actual and apparent. Moreover, the existence of apparent authority may be ascertained through, *inter alia*, the acquiescence in the acts of the representative of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.

In this case, it is shown that Alas Oplas & Co. CPAs had an apparent authority to act for and to bind petitioner.

Undoubtedly, petitioner's witness, Maria Theresa A. Tan-Dy, the Office Manager of petitioner, testified that Alas Oplas and Co. CPAs was not authorized by petitioner to represent it before the BIR. But when Ms. Dy was asked the reason why the Alas Oplas & Co. CPAs acted for petitioner, she admitted that they are petitioner's internal accountants.[42]

It must also be noted that in her Judicial Affidavit dated May 16, 2016, Ms. Dy mentioned that the exchanges between petitioner's accountant and the BIR continued until the matter was relayed to the directors of the company only sometime in September 2015.[43] However, she contradicted her own testimony during the re-direct examination, when she testified that petitioner received the *Notice for Informal Conference*[44] dated September 3, 2013 and that petitioner came to know that Alas Oplas & Co. CPAs has been appearing on its behalf around last part of the year 2013 or earlier part of 2014.[45]

During the same hearing, Ms. Dy stated that after having been informed that the internal accountant has been representing petitioner, she informed their officials; and that after the internal accountant was directed to refrain from representing petitioner, the

---

[42] Exhibit "P-22" (Judicial Affidavit of Maria Theresa A. Tan-Dy), Docket – Vol. I, pp. 402 to 403.
[43] Docket – Vol. I, p. 405.
[44] Transcript of Stenographic Notes (TSN) at the hearing held on June 1, 2016, p. 38.
[45] TSN at the hearing held on June 1, 2016, p. 28.

My

said internal accountant still continued to represent petitioner and that no action was taken by petitioner to prohibit the internal accountant from continuing its representation.[46]

Furthermore, the Revenue Officer who examined petitioner's books, Felinor A. Pascua, testified as follows:

"ATTY. ROVERO

Q. Sir, what is your basis in saying that Alas Oplas and Company is the External Auditor of M. Tech?

MR. PASCUA

A. Every time I visit the company and serving all the notices, they always said that Alas Oplas and Company will meet you in your office. "[47]

Based on the documentary and testimonial evidence presented by both parties, it can be established that petitioner received the *Notice for Informal Conference*.[48] And after being duly served with the same, petitioner was represented by its internal accountant, Alas Oplas & Co. CPAs, from **October 1, 2013**,[49] the date of the letter-reply (to the *Notice for Informal Conference*), up to **April 1, 2015**,[50] the date of the Protest to the FAN.

Peculiarly, despite being aware of the investigation of its 2010 tax liability and of the alleged unauthorized representation of its internal accountant as early as **2013**, petitioner still failed to designate an authorized representative to communicate with the BIR regarding its computed tax deficiencies for taxable year 2010. Furthermore, it must be emphasized that petitioner did not object or even act on the alleged unauthorized representation, considering that Alas Oplas & Co. CPAs is still the internal accountant of petitioner.

These can only lead to the logical conclusion that Alas Oplas & Co. CPAs, petitioner's internal accountant, had the authority to represent petitioner before the BIR, and respondent on its part recognized such representation. Thus, having received by a person

---

[46] TSN at the hearing held on June 1, 2016, pp. 33 to 35 and 44 to 45.
[47] TSN at the hearing held on September 14, 2016, p. 10.
[48] TSN at the hearing held on June 1, 2016, p. 38.
[49] Exhibit "R-4", BIR Records, pp. 478 to 484.
[50] Exhibit "R-10", BIR Records, pp. 595 to 597.

with apparent authority to bind petitioner, the FAN issued by respondent against petitioner cannot be considered void.

Since there is no indication that respondent violated petitioner's right to due process, and that the evidence presented by respondent showing receipt of the PAN and the FAN through petitioner's representative remained uncontroverted,[51] the Court can now determine whether or not petitioner complied with the requirement of timely filing the protest to the FAN.

Petitioner failed to timely file its Protest to the FAN, thus, the Court can no longer determine the validity and correctness of the said assessment

To reiterate, the taxpayer may protest the assessment within a period of thirty (30) days from receipt thereof; and that failure to contest the assessment within the said 30-day period renders the assessment notice final, executory, and demandable.

The records of the BIR show that the FAN Part I and II <u>dated December 18, 2014 were received on the same day</u> by petitioner, through a certain Jamie Ordoveza.[52] On the other hand, petitioner notably did not present evidence *as to when* it received the said FAN. However, petitioner cannot deny that it was able to take possession of the <u>original copies</u> thereof, since the same were presented in evidence;[53] and that petitioner eventually received the same FAN, in view of the allegations it made in its *Petition for Review*, to wit:

> "36. 18 December 2014 was a Thursday; [petitioner] was then busy with the closing of its books to be forwarded to Singapore office, not to mention the preparation for office Christmas celebration. In other words, the timing of service prevented [petitioner] to have its attention on the matter immediately;

---

[51] Exhibits "R-6" and "R-8", BIR Records; Exhibit "R-11" (Judicial Affidavit of Felinor A. Pascua), Docket – Vol. II, pp. 604 to 612.
[52] Exhibits "R-7" and "R-8", BIR Records, pp. 598 to 611.
[53] Exhibits "P-13" and "P-14", Docket – Vol. I, pp. 140 to 146; and also the Assessment Notices, all dated December 18, 2014, Docket – Vol. I, pp. 85 to 91.

> 37. But petitioner could not have acted on it just the same, regardless of the above predicament; **because the FAN was served through another entity on a different floor of the building.** xxx."[54] *(Emphasis supplied)*

Based on the foregoing allegations, it is noted that petitioner never presented any evidence as to the circumstances connected with the above-quoted allegations. In this connection, the presumption *"that evidence willfully suppressed would be adverse if produced"*[55] shall prevail.

Thus, considering that petitioner did not present contrary evidence as to when it actually received the said FAN, except as that stated in the BIR Records, *i.e.*, December 18, 2014, such date shall be considered as the date of receipt of the same.

Counting from December 18, 2014, petitioner had until January 19, 2015 (January 17, 2015 being a Saturday) within which to file its protest to the subject FAN. However, petitioner, through Alas Oplas & Co. CPAs, filed the *Protest* to the said FAN only on April 1, 2015.[56] Thus, the assessment became final, executory, and unappealable upon the expiration of the 30-day period to protest on January 19, 2015.

As provided in Section 228 of the NIRC of 1997, the failure of a taxpayer to timely file a protest against the FAN would render the assessment final, executory, and unappealable. In other words, a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 of the NIRC of 1997 can no longer be contested.[57]

Clearly, despite the subsequent filing of the *Protest* on April 1, 2015, petitioner is already precluded from contesting the merits of the assessment considering that the same already became final, executory, and unappealable. Accordingly, the Court can no longer determine the validity and correctness of the said assessment.

---

[54] Docket – Vol. I, p. 23.
[55] Section 3(e), Rule 131, Rules of Court.
[56] Exhibit "R-10", BIR Records, pp. 595 to 597.
[57] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005.

In *Republic of the Philippines vs. Hizon,*[58] the Supreme Court ruled:

> "The contention has no merit. Sec. 229[59] of the Code mandates that **a request for reconsideration must be made within 30 days from the taxpayer's receipt of the tax deficiency assessment, otherwise the assessment becomes final, unappealable and, therefore, demandable.** The notice of assessment for respondent's tax deficiency was issued by petitioner on July 18, 1986. On the other hand, respondent made her request for reconsideration thereof only on November 3, 1992, without stating when she received the notice of tax assessment. She explained that she was constrained to ask for a reconsideration in order to avoid the harassment of BIR collectors. In all likelihood, she must have been referring to the distraint and levy of her properties by petitioner's agents which took place on January 12, 1989. Even assuming that she first learned of the deficiency assessment on this date, **her request for reconsideration was nonetheless filed late since she made it more than 30 days thereafter.** Hence, her request for reconsideration did not suspend the running of the prescriptive period provided under §223(c). Although the Commissioner acted on her request by eventually denying it on August 11, 1994, this is of no moment and does not detract from the fact that **the assessment had long become demandable.**" (*Emphasis supplied*)

Considering that petitioner's protest letter was filed beyond the 30-day reglementary period, the deficiency assessment had already become final, executory, and demandable, and the Court, therefore, has no jurisdiction to rule on the correctness of the assessment.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

---

[58] G.R. No. 130430, December 13, 1999.
[59] Now Section 228 of the NIRC of 1997.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special 1st Division