REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 972
(CTA CASE NO. 7281)

-versus-

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
and
Ringpis-Liban, *JJ.*

FIRST GAS POWER CORPORATION,
Respondent.

Promulgated:
OCT 07 2014 11:10am

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is the Petitioner's "Motion for Reconsideration" filed through registered mail on June 11, 2014 and received by this Court on June 18, 2014, with respondent's "Comment" filed through registered mail on July 28, 2014 and received by this Court on August 1, 2014.

In the instant Motion for Reconsideration, petitioner seeks reconsideration of the Decision promulgated on May 12, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. The decision and resolution of the Third Division of this Court in CTA Case No. 7281 dated September 24, 2012 and December 13, 2012, respectively, are hereby **AFFIRMED**. No pronouncement as to costs.
>
> SO ORDERED."

In its Motion for Reconsideration, petitioner interposes the following arguments:

First, for taxable year 2000, the period to assess was extended by virtue of the Waivers of the Statute of Limitations executed by respondent's authorized representative.

Petitioner maintains that respondent's voluntary execution of the series of waivers is its own unilateral act; that respondent's act of signing the waivers is tantamount to an assent or consent to extend the period of assessment; that by signing the rest of the waivers cured the defect found in the prior waivers. Hence, respondent is estopped from claiming that the waivers are not valid. Moreover, petitioner claims that what is important is that the waivers were signed and accepted by the authorized official of the Bureau of Internal Revenue before the expiration of the period of prescription or before the lapse of the period agreed in case of subsequent waivers executed.

Second, for taxable year 2001, the assessments were issued in accordance with law, rules and jurisprudence.

Petitioner claims that both the assessment notice and the formal letter of demand bear the date "19 July 2004"; that the interest computed therein was computed from 16 August 2002 to 26 August 2004; that as long as the date can be verified on the face of the assessment notice or the formal letter of demand then such would suffice to determine when the tax deficiency should be payable. Moreover, there is nothing in Section 228 of the 1997 National Internal Revenue Code nor in Revenue Regulations No. 12-99 which states that a date of payment must be specified to make the assessment valid.

On the other hand, respondent counters that the Motion for Reconsideration deserves to be denied outright for failing to present any legitimate argument which would warrant the reversal of the Court's Decision dated May 12, 2014.

Respondent argues that the waiver required under the Tax Code and Revenue Memorandum Order No. 20-90 is in the nature of a contract and is not a unilateral act; that the waivers were not accepted by the petitioner before the expiration of the period of prescription; that for taxable year 2001, the Court in Division correctly ruled that there was no valid assessment.

The Motion for Reconsideration lacks merit.

A perusal of the petitioner's motion shows that the arguments raised by the petitioner are substantially the same as its previous arguments which have been duly considered and discussed in the assailed decision.

As discussed in the decision, a waiver of the statute of limitations is "an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain.[1]" As previously discussed in the decision, the period to assess respondent was not extended by mere signing of the waivers and the execution by the respondent of subsequent waivers, because the waivers executed were not valid. The waivers are void for failure to comply with the provisions set forth in Revenue Memorandum Order No. 20-90 and in the rules provided in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation,*[2] *and Commissioner of Internal Revenue vs. Kudos Marketing Corporation.*[3] Moreover, respondent cannot be considered estopped from claiming that the waivers are not valid because as ruled in *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* "[t]he doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow."

As regards the assessments for taxable year 2001, the same cannot be regarded by the Court as valid assessments. A final assessment notice must not only indicate its legal and factual bases but must also state a clear and unambiguous demand for payment of the computed tax liabilities within a prescribed period.

Petitioner's argument "that as long as the date can be verified on the face of the assessment notice or the formal letter of demand then such would suffice to determine when the tax deficiency should be payable" is misplaced, since the absence of a date when the tax shall be due creates confusion on the part of the taxpayer.

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[1] Decision, docket page 1274.
[2] G.R. No. 178087, May 5, 2010.
[3] CTA EB No. 176, September 25, 2006.

It bears to stress that the due date within which the taxes shall be paid is indispensable in an assessment notice. The date dictates the time when the penalties and interests begin to accrue against the taxpayer as well as the measures or remedies which may be available upon the taxpayer.

Therefore, this Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
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
Associate Justice