REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SABRE TRAVEL NETWORK (PHILIPPINES) INC. (FORMERLY, ABACUS DISTRIBUTION SYSTEMS PHILIPPINES, INC.), *Petitioner,*	**CTA Case No. 9532** Present: **DEL ROSARIO,** *P.J., Chairperson,* **FABON-VICTORINO,** *and* **MANAHAN,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 26 2020 : 9:07 am

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RESOLUTION

MANAHAN, J.:

For resolution is respondent's *Motion for Reconsideration (of the Decision dated 25 October 2019)* posted on November 21, 2019, with petitioner's *Comment/Opposition (To Commissioner of Internal Revenue's Motion for Reconsideration dated 21 November 2019)* filed on January 24, 2020.

Respondent seeks reconsideration of the Decision of the Court promulgated on October 25, 2019 (Assailed Decision), the dispositive portion of which reads:

> **"WHEREFORE,** premises considered, the Amended Petition for Review is **GRANTED**. Accordingly, the tax deficiency assessments against petitioner for alleged deficiency income tax, VAT, WTC, EWT and DST issued by respondent in the aggregate amount of P45,856,059.61 for the taxable year 2010 are **CANCELLED** and **SET ASIDE.**
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> Furthermore, respondent is likewise **ORDERED TO REFUND** in favor of petitioner the amount of P1,042,579.35 representing the deficiency EWT assessment it paid under protest.
>
> **SO ORDERED."**

In his *Motion for Reconsideration*, respondent presents the following arguments against the Assailed Decision:

1. The deficiency tax assessments for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC) and documentary stamp tax (DST) against the petitioner have not prescribed;

2. Petitioner was duly informed of the law and the facts upon which the assessment for deficiency DST was based;

3. The assessment notice for deficiency WTC was duly issued to petitioner;

4. Petitioner is not entitled to the refund of deficiency EWT assessment it paid under protest in the amount of Php1,042,579.35.

Respondent challenges the conclusion of the Court that the Waivers of the Defense of Prescription under the Statute of Limitations of the 1997 NIRC (waivers) are void hence did not have any effect of extending the period to assess the deficiency taxes of petitioner for the taxable year 2010. First, respondent maintains that petitioner's signatory to the waivers (Mr. Demetrio C. Silverio) was duly authorized to sign them on behalf of petitioner as its President and that the lack of a notarized authority from the petitioner does not render the waivers invalid. Second, respondent submits that petitioner never questioned the validity of the waivers for taxable year 2010 and in fact the protests it filed against the Preliminary Assessment Notices (PAN) and the Final Assessment Notice (FAN) neither raised the issue of the validity of the waivers nor called attention to their defects. Respondent cites the ruling of the Supreme Court in the case of *CIR vs. Next Mobile, Inc.*[1] and mentions that petitioner is now estopped to question the validity of the waivers by attacking the authority of its own representative who signed them.

The second ground cited by respondent is his allegation that the Court erred in ruling that the DST assessment issued did not contain the law and the facts upon which the findings were based. Contrary to such allegation, respondent firmly asserts that the BIR Records will reveal that petitioner was duly informed of the facts and the law upon which the DST assessments were based as evidenced by the Details of Discrepancy which accompanied the FAN for DST which fully explains the bases of such an assessment.

Respondent also maintains that the assessment notice for deficiency WTC was duly issued to petitioner as evidenced by the BIR Records of the instant case and the Formal Offer of Evidence of petitioner particularly Exhibit "P-10" which refers to the amended assessment notices for income tax, EWT and WTC dated December 20, 2016.

Lastly, respondent asserts that petitioner is not entitled to the refund of the amount paid for the deficiency EWT assessments in the amount of Php1,042,579.35 because he maintains that the EWT assessment has not yet prescribed as earlier discussed. Respondent posits that instead of a refund, the Court should instead apply the payment made by petitioner on the EWT assessment to its deficiency EWT for taxable year 2010.

In its Opposition to the Motion for Reconsideration, petitioner focuses on the following defects of the waivers, to wit:

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

1. The waivers were executed after the 3-year prescriptive period had already lapsed;

2. The waivers failed to indicate the specific type of tax and the amount of tax assessed by respondent;

3. The signatory to the waivers did not have the requisite notarized written authority from petitioner's Board of Directors.

According to petitioner, the above defects have the effect of invalidating the waivers which consequently led to the assessments' invalidity due to prescription. Moreover, they fell short of the requisites of a valid waiver under Revenue Memorandum Order (RMO) No. 20-90.

Petitioner also challenges the validity of the assessment notices issued by respondent for failure to state a specific payment date of the alleged deficiency taxes. Although this observation was not mentioned in the Assailed Decision, petitioner deems it worthy to mention as this is an equally important reason to invalidate the assessments citing the case of *CIR vs. Pascor Realty and Development Corporation*[2] where the Supreme Court ruled that for an assessment to be valid, the same must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. Petitioner asserts that there are no due dates of payment stated or stamped in both the FANs and the Final Decision on Disputed Assessment (FDDA) issued by respondent and this constitutes a violation of its right to due process making said assessments void.[3]

In response to respondent's allegation that it is estopped from questioning the validity of the waivers pursuant to the decision of the Supreme Court in the *Next Mobile* case, petitioner argues that said case is not on all fours with the instant case. First, in the *Next Mobile* case, the taxpayer's representative executed five (5) waivers to extend the period of assessment for taxable year 2001 only to question its representative's authority to execute said waivers and the failure to comply with the requirements under RMO No. 20-90. The Supreme Court applied the principle of estoppel in the *Next Mobile* case because the BIR and the taxpayer were

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[2] G.R. No. 128315, June 29, 1999.
[3] Volume III, Court Docket, pp. 1306-1318 and Exhibit "P-8".

in *pari delicto* because the BIR was also equally at fault for failing to perform its duties as provided under RMO 20-90. Further, petitioner asserts that the taxpayer in the *Next Mobile* case was found to be in bad faith because it impugned the authority of its representative after benefitting from the extension of the prescriptive period which is not the same in the instant case.

Lastly, petitioner firmly stands by its assertion that respondent failed to state the facts and the law upon which the DST assessment was based. Thus, said assessment is invalid.

RULING OF THE COURT

The Assailed Decision promulgated by the Court on October 25, 2019 granted the Petition for Review of petitioner on two important, albeit technical grounds, to wit:

1. The defects of the waivers executed are deemed substantial to invalidate the same, hence, did not extend the period of respondent's right to assess the petitioner's alleged deficiency taxes for taxable year 2010;

2. The FAN pertaining to the DST assessment did not contain the facts and the law upon which it was based.

Respondent contends that the alleged defects of the waivers cited by petitioner cannot serve to invalidate their effect of extending the period to assess its tax liabilities. The authority of its President to sign the waivers need not be supported by a notarized written authority such as a Board Resolution because by the nature of the position, he is given general supervision and control over corporate operations. Respondent dismisses the other purported defects cited by petitioner by citing the *Next Mobile* case where the *pari delicto* rule (both parties being at fault) resulted to the effectiveness/validity of the waivers.

We disagree with respondent.

The peculiar circumstances attendant in the *Next Mobile* case cannot be made to apply, as a general rule, to all cases which involve the issue of defective waivers. In fact, *the pari delicto* doctrine enunciated in the *Next Mobile* case should serve as an exception to the general rule applied in the case of *CIR vs. Kudos Metal Corporation*[4] where the Supreme Court required strict compliance with the requirements embodied in RMO 20-90 issued on April 4, 1990 and Revenue Delegation Authority No. (RDAO) No 05-01 issued on August 2, 2001 which lay down the procedures in the proper execution of the waiver. We quote relevant portions of the decision in the *Kudos Metal* case, thus:

> 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 execute 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 procedures for the proper execution of the waiver, to wit:
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> 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.
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> 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.**
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> 3. The waiver must be duly notarized.
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> 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 authorized representative.
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> 5. Both the date of execution by the taxpayer and the 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.

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

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> **Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period."** (emphasis supplied)

To reiterate, the general rule is for a strict compliance with the requirements provided under the afore-quoted RMO 20-90 and RDAO 05-01, otherwise the waivers shall be deemed void. In the instant case, the Court found out that the signatory to the two waivers, Mr. Demetrio Silverio had no notarized written authority from petitioner's Board of Directors to sign the waivers on behalf of petitioner. The Court stated, thus:

> "Undeniably, RMO No. 20-90 must be strictly followed. A waiver of the statute of limitations under the 1997 NIRC, as amended, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed."

The waivers having suffered substantial defects did not extend the period within which the assessments may be issued.

The Court also sees no reason to depart from its original stance that the DST assessment is invalid for failure to state the facts upon which it is based.

The records clearly show, particularly the Details of Discrepancy which accompanied the assessment notice, that it did not provide any factual basis for the assessed deficiency DST. Nowhere in the said Details of Discrepancy did it reveal where the BIR derived the amount of Php14,627,599.60. In the case of *CIR vs. Fitness by Design, Inc.*[5], the Supreme Court ruled that the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory, and we quote:

> "The word "shall" in Section 228 of the NIRC and Revenue Regulations No. 12-99 **means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory**. The law requires that the bases be reflected in the formal letter of demand and assessment notice.

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[5] G.R. No. 215957. November 9, 2016.

> This cannot be presumed. Otherwise the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision." (emphasis supplied)

As to the grant of the claim for refund of the payment made by petitioner of the EWT assessment, we also see no reason to deviate from the ruling enunciated in the Assailed Decision, and we quote:

> "Having filed an administrative claim on March 17, 2017 with the BIR, requesting for a refund should the CTA decide in its favor, and thereafter filing a judicial claim on March 30, 2017, records clearly show that both the administrative and judicial claims have been filed within two years from the date of its payment on March 17, 2017[6] as provided under Sections 204(C) and 229 of the 1997 NIRC, as amended. Hence, petitioner is entitled to the refund of the deficiency EWT assessment it paid under protest in the amount of ₱1,042,579.35."

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (of the Decision dated 25 October 2019)* posted on November 21, 2019, is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice