REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

STARSMASH BADMINTON CENTER CORPORATION, represented by RAJESH CHULANI,
Petitioner,

\- versus -

THE COMMISSIONER OF INTERNAL REVENUE AND RDO CLAVELINA S. NACAR,
Respondents.

CTA CASE NO. 8523

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 20 2015 ; 11:40a.m.

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RESOLUTION

MINDARO-GRULLA, *J*.:

For this Court's resolution is a **Motion for Reconsideration (Decision dated 29 May 2015)**, filed by Commissioner of Internal Revenue (CIR) on June 23, 2015, with petitioner's **Comment (To Respondent's Motion for Reconsideration)**, filed on July 20, 2015. The dispositive portion of the assailed Decision promulgated on May 29, 2015 reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, BIR Assessment No. 39-B04-07 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

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Respondent CIR seeks the reversal of the assailed Decision on the following grounds:

1. The Honorable Court erred in ruling that the assessment issued against petitioner is void due to respondent's failure to strictly comply with the notice requirements laid down in Section 228 of the NIRC of 1997, as amended, and Revenue Regulation No. 12-99 amounting to denial of petitioner's right to due process; and

2. The Honorable Court erred in ruling that the Waiver of the Statute of Limitations executed by petitioner is defective and invalid, hence, without force and effect.

Respondent CIR contends that the Final Assessment Notice (FAN) is valid since there was no violation of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. The service of FAN to petitioner through its president was not disputed, thus, petitioner was informed in writing of the law and facts on which the assessment was made. She further insists that the purported violation of Revenue Regulation (RR) No. 12-99 does not in any manner affect the validity of the assessment.

Moreover, respondent CIR maintains that petitioner voluntarily entered into an agreement with her to extend the period to assess. Petitioner signed the Waiver of the Statute of Limitations (Waiver), and its validity was not put in issue. She alleges that at the time the Waiver was executed, petitioner knows the kind and amount of tax involved as it admitted to have received a Post Reporting Notice (PRN) with attachments. Lastly, she contends that the Waiver was validly notarized as no evidence was presented to destroy the regularity of the performance of the duty of the Notary Public.

On the other hand, petitioner claims deprivation of due process when the FAN was not properly served to it either actually or constructively. It contends that respondents' violation of RR 12-99 reduced the FAN into a mere scrap paper with no force and effect.

As regards the Waiver, it is petitioner's stance that the exceptions extending the period to assess must be strictly construed. Petitioner contends that there was no valid agreement between respondents and petitioner and if there was one, the same remains unenforceable because Rajesh Chulani signed the agreement without the authority of petitioner's Board of Directors. The act of Mr. Chulani was ultra-vires and did not bind petitioner. Respondents failed to adduce the quantum of evidence to prove that the subject Waiver was validly executed.

Lastly, petitioner maintains that the Waiver was not duly notarized as the acknowledgment portion of the Waiver did not bear the details of the person who allegedly appeared before the notary public and who swore that the Waiver was voluntarily executed on behalf of the taxpayer.

We DENY respondent CIR's Motion for Reconsideration for lack of merit.

The records of the case reveal that there was no valid service of FAN to petitioner inasmuch as the alleged constructive service of FAN did not comply with the requirements of a <u>valid</u> constructive service under Section 3.1.7 of RR No. 12-99. This has been exhaustively discussed in the assailed Decision, the pertinent portion of which reads:

> "However, the Final Assessment Notice dated October 7, 2011 was not properly served on petitioner.
>
> xxx xxx xxx
>
> During the cross-examination, it was revealed that respondent constructively served the Final Assessment Notice to petitioner, thus:
>
> xxx xxx xxx
>
> Section 3.1.7 of RR No. 12-99 provides for the requirements of a valid constructive service of tax assessment notices, which reads:
>
> > 'SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
> >
> > xxx xxx xxx
> >
> > 3.1. 7 *Constructive Service.* - If the notice to the taxpayer herein required is

> served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. **If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case**.' xxx (*Emphasis supplied*)

Based on the foregoing, constructive service of tax assessment notice can be availed of when the taxpayer or his duly authorized representative refuses to acknowledge receipt of a personally served notice. It is effected by leaving the notice in the premises of the taxpayer and this should be attested to by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the notice shall make a written report of the service which shall form part of the docket.

Records show that respondent did not comply with the requirements of a valid constructive service of the Final Assessment Notice. There is no written report of the constructive service in the BIR Records as required.

Respondent's failure to strictly comply with the notice requirements as laid down in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 amounts to the denial of petitioner's right to due process, effectively voiding the assessment issued."c

With regard to respondent CIR's argument that the purported violation of RR No. 12-99 does not in any manner affect the validity of the assessment, it must be noted that "Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the provisions of Section 228 of the NIRC, RR No. 12-99 was enacted."[1] A violation of the requirements laid down in RR 12-99 would also invalidate the assessment.

The invalidity of the Waiver of the Statute of Limitations executed by petitioner was likewise settled in the assailed Decision. Considering the defects in the execution of the Waiver, the same was found to be invalid, hence without legal force and effect. The infirmities of the Waiver are:

1. The waiver failed to indicate the date of acceptance;[2]

2. The waiver failed to indicate the kind and amount of tax involved; and

3. The waiver was not properly notarized considering that the affiant was not specified, and the date and place of issuance of the Community Tax Certificate were not indicated.[3]

In the recent case of *Commissioner of Internal Revenue vs. Standard Chartered Bank*[4], the Supreme Court discussed the nature of the Waiver of the Statute of Limitations and the importance of indicating the date of acceptance, to wit:

> "A waiver of the Statute of Limitations is nothing more than '**an agreement between the taxpayer and the Bureau of Internal Revenue (BIR) that the period to issue an assessment and collect the taxes due is extended to a date certain**.' It is a **bilateral agreement, thus necessitating the very signatures of both the CIR and the taxpayer to give birth to a**

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[1] *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzales, et al,* G.R. No. 177279, October 13, 2010, 633 SCRA 139.
[2] Exhibit "D-5".
[3] Exhibit "D-7".
[4] G.R. No. 192173, July 29, 2015.

> **valid agreement**. Furthermore, **indicating in the waiver the date of acceptance by the BIR is necessary in order to determine whether the parties (the taxpayer and the government) had entered into a waiver 'before the expiration of the time prescribed in Section 203** (the three-year prescriptive period) for the assessment of the tax.' When the period of prescription has expired, there will be no more need to execute a waiver as there will be nothing more to extend. Hence, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.
>
> xxx xxx xxx
>
> It must be remembered that the execution of a Waiver of Statute of Limitations may be beneficial to the taxpayer or to the BIR, or to both. **Considering however, that it results to a derogation of some of the rights of the taxpayer, the same must be executed in accordance with pre-set guidelines and procedural requirements**. Otherwise, it does not serve its purpose, and the taxpayer has all the right to invoke its nullity." (*Emphasis supplied*)

The failure of respondents to comply with all the requisites provided in Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990[5] and Revenue Delegation Authority Order (RDAO) No. 05-01 dated August 2, 2001[6] renders the Waiver of Statute of Limitations defective and ineffectual. The period to assess deficiency taxes for taxable year 2007 was therefore never extended. Consequently, the Final Assessment Notice and the Formal Letter of Demand dated October 7, 2011 are void for having been issued beyond the three-year period to assess.

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent CIR's **Motion for Reconsideration (Decision dated 29 May 2015)**, is hereby **DENIED** for lack of merit.

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[5] Subject: Proper Execution of the Waiver of the Statute of Limitations Under the National Internal Revenue Code, dated April 4, 1990.

[6] Subject: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice