Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1379** (CTA Case No. 8523)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
STARSMASH BADMINTON CENTER CORPORATION, Respondent.	**Promulgated:** JUL 24 2017 1:12 p.m.

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RESOLUTION

CASANOVA, *J.*:

Before *Us* is petitioner's **Motion for Reconsideration (Decision dated 21 March 2017)**[1] filed on April 12, 2017 with respondent's **Comment (To Respondent's *[sic]* Motion for Reconsideration)**[2] filed on June 1, 2017.

In his Motion, petitioner seeks reconsideration of the Court *En Banc* Decision[3] dated March 21, 2017. He prays that a new one be rendered upholding the validity of Assessment No. 39-B04-07 which

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[1] CTA *En Banc* Rollo, pp. 75-81
[2] *Ibid.*, pp. 92-103
[3] *Id.*, pp. 54-67

was issued against respondent. The dispositive portion of the assailed *En Banc* Decision reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated May 29, 2015 and Resolution dated October 20, 2015 in CTA Case No. 8523 are both **AFFIRMED**.
>
> **SO ORDERED.**"

In assailing the above Decision, petitioner alleges that the Court *En Banc* erred in ruling that the assessments were issued in violation of respondent's right to due process. He insists that nowhere in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, does it state that a constructive service of the Final Assessment Notice (FAN) should be attested by at least two revenue officers, other than the revenue officer who constructively served the same, and, that a written report thereof should be made which shall form part of the case docket. Nonetheless, petitioner believes that the purported violation of Revenue Regulations (RR) No. 12-99[4], does not in any manner affect the validity of the assessment since what matters most was that respondent was duly informed in writing of the law and fact on which the assessment was made. Thus, the fact that the FAN was duly received by respondent would set aside the alleged irregularities in the service of the FAN.

Furthermore, petitioner likewise alleges that the Court *En Banc* erred in ruling that the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code ("Waiver" for brevity) was defective. Petitioner insists that, considering the Waiver is an agreement between him and the respondent, it is primarily governed by the applicable provisions on contracts, such as Article 1305[5] of the New Civil Code, as amended. Lastly, petitioner claims that by failing to question the infirmities in the mandatory requirements of the Waiver at the earliest possible time, respondent is also equally at fault under the principle of *in pari delicto*. Petitioner cites the

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[4] "IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", dated September 6, 1999

[5] **Art. 1305.** A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

Concurring Opinion of Presiding Justice Roman G. Del Rosario in upholding the validity of the subject Waiver.

Meanwhile, in its Comment, respondent chiefly claims that there is no reason to disturb the conclusions reached by the majority in the *En Banc* decision. Respondent contends that petitioner's allegations are wrong and misplaced; it asserts that, ever since the onset, it has established that the FAN was not properly served. Respondent also claims that the Waiver failed to observe the provisions of executing a valid waiver thereby making the said Waiver void and without effect. As such, respondent prays that petitioner's Motion for Reconsideration be denied for lack of merit.

After consideration of the arguments raised by petitioner in his Motion, *We* find no merit in the same.

Perusal of the arguments in the instant Motion reveals that they are rehash of what were already thoroughly discussed in the *En Banc* Decision. In fact, the only thing new in petitioner's Motion is his adoption of the rationale enunciated in the Supreme Court case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[6], as cited by the Honorable Presiding Justice in his Concurring Opinion. Thus, to discuss anew the issues reiterated in the instant Motion would only be mere superfluity.

On this note, assuming arguendo, that the Waiver is valid, petitioner's assessments are still considered void due to the fact that the service of the FAN was tainted with irregularities. It cannot be emphasized enough that, while constructive service[7] is a valid mode of serving assessment notices, the procedure on how it is effected should,

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

[7] **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.** *(Emphasis Ours)*

nonetheless, be strictly observed. There has been a plethora of cases[8] wherein the Supreme Court held that the procedures provided in RR No. 12-99 are mandatory, and non-compliance therewith renders the assessment void.

Accordingly, finding no reversible error, *We* find no cogent justification to disturb the conclusions reached in the assailed *En Banc* Decision dated March 21, 2017.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[8] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc, G.R. No. 197515, July 2, 2014; Commissioner of Internal Revenue vs. Metro Star Superama, Inc, G.R. No. 185371, December 8, 2010; Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, G.R. No. 172598, December 21, 2007; Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R. Nos. 159694 & 163581, January 27, 2006; Estate of the late Juliana Diez vda. De Gabriel vs. Commissioner of Internal Revenue, G.R. No. 155541, January 27, 2004; Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, Rogelio A. Dio and Virginia S. Dio, G.R. No. 128315, June 29, 1999; Commissioner of Internal Revenue vs. Algue, Inc., G.R. No. L-28896, February 12, 1988

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice