REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

TEKTITE INSURANCE BROKERS, INC.,
Petitioner,

- **versus** -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8903

Members:

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

Promulgated:

NOV 03 2017 3:52pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on October 8, 2014 by petitioner Tektite Insurance Brokers, Inc., pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3 (a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) praying that judgment be rendered ordering respondent Commissioner of Internal Revenue or his duly authorized representative to cancel and set aside the assessment against petitioner in the amount of ₱420,988.65, consisting of income tax, interest and compromise penalty, for taxable year ending December 31, 2010, broken down as follows:

Tax Type	*Basic Tax*	*Interest*	*Compromise Penalty*	*Total*
Income Tax	₱ 247,810.19	₱ 161,178.46	-	₱ 408,988.65
Failure to submit SLS/SLP	-	-	₱ 12,000.00	12,000.00
TOTAL				**420,988.65**

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THE PARTIES

Petitioner Tektite Insurance Brokers, Inc. is a corporation organized under Philippine laws with principal place of business at the 20th Floor, East Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City.[1] Petitioner is formed to carry on the business of insurance brokers, among others.[2] It is authorized to operate as an insurance broker, as evidenced by the Insurance Brokers License issued by the Insurance Commission.[3] Petitioner was registered with the Bureau of Internal Revenue (BIR) on April 11, 1997 and was issued Tax Identification Number (TIN) 000-188-338-000 as evidenced by BIR Certificate of Registration No. OCN 3RC0000493115.[4]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR). He is vested by law with the authority to implement and enforce the provisions of the National Internal Revenue Code and other tax laws.[5]

THE FACTS

On April 15, 2011, petitioner filed with the BIR Revenue District Office No. 43A its Annual Income Return for the calendar year ending December 31, 2010. Petitioner reported Sales/Revenues in the amount of ₱6,769,558.00.[6]

A Letter of Authority No. LOA-43A-2012-00000255 (SN: eLA201000086947) dated March 1, 2012 was issued by the OIC-Regional Director of Quezon City, Jonas DP Amora, authorizing the examination of the books of accounts and other accounting records of petitioner for taxable year 2010.[7] Petitioner received a Checklist of Requirements for Presentation of Records dated March 5, 2012.[8]

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[1] Par. 1 of Petition for Review which was admitted in respondent's Answer, CTA Docket, pp. 6 and 142.
[2] Exhibit P-2.
[3] Exhibit P-3, P-4, and P-5.
[4] Exhibit P-6.
[5] Par. 2 of Petition for Review which was admitted in respondent's Answer, CTA Docket, pp. 7 and 142.
[6] Exhibit P-7, P-7-a, and P-7-b.
[7] Exhibit P-14.
[8] Exhibit P-15; and Judicial Affidavit of Antonio Reyes-Cuerva, p. 176.

On November 22, 2013, petitioner received a Notice for Informal Conference (NIC).[9]

On December 23, 2013, petitioner submitted a Letter dated December 18, 2013, in response to the NIC issued by the BIR relative to the audit and investigation of its books of accounts and other financial records for the year ending December 31, 2010.[10]

On February 5, 2014, petitioner also submitted to the BIR a Letter dated February 4, 2014 attaching thereto a copy of petitioner's 2009 Annual Income Tax Return.[11]

On February 11, 2014, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (Waiver) extending the prescriptive period to assess petitioner of all internal revenue tax liabilities for the year ending December 31, 2010 until October 31, 2014.[12]

On June 2, 2014, petitioner received from the BIR a Preliminary Assessment Notice (PAN) dated May 30, 2014[13] with attached Details of Discrepancies.[14]

On June 4, 2014, petitioner filed its one (1)-page protest to the PAN[15], stating that: ""*We respectfully submit our Protest to the Preliminary Assessment Notice (PAN) dated May 30, 2014, copy of which was received by Tektite Insurance Brokers, Inc. (TIBI) on June 02, 2014, in relation to the tax audit investigation of TIBI for taxable year ended December 31, 2010. Relative thereto, may we request for re-investigation by the examiner so TIBI can substantiate its protest to the assessment.*"

On June 18, 2014, petitioner received Assessment Notices (FAN) and Formal Letters of Demand (FLD) No. 043A-B020-10 with Details of Discrepancies, assessing petitioner for deficiency income tax, interest and compromise penalty in the amount of ₱420,000.00,

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[9] Exhibit P-16; and Judicial Affidavit of Antonio Reyes-Cuerva, p. 176.
[10] Exhibit P-17, P-17-a, P-17-b, P-17-c, and P-17-d.
[11] Exhibit P-18 and P-18-a.
[12] Exhibit P-19.
[13] Exhibit P-20.
[14] Exhibit P-20-a.
[15] Exhibit P-26, CTA Docket, p. 788.

for taxable year ending December 31, 2010,[16] broken down as follows:

Tax Type	*Basic Tax*	*Interest*	*Compromise Penalty*	*Total*
Income Tax	₱ 247,810.19	₱ 161,178.46	-	₱ 408,988.65
Failure to submit SLS/SLP	-	-	₱ 12,000.00	12,000.00
TOTAL				**₱420,988.65**

On June 24, 2014, petitioner filed its Protest[17] dated June 20, 2014 against the FAN, consisting of one (1) page and solely stating that: "*We respectfully submit our Protest to the Preliminary Assessment Notice (PAN) dated June 18, 2014, copy of which was received by Tektite Insurance Brokers, Inc. (TIBI) on June 18, 2014, in relation to the tax audit investigation of TIBI for taxable year ended December 31, 2010. Relative thereto, may we request for re-investigation by the examiner so TIBI can substantiate its protest to the assessment.*"

On September 8, 2014, petitioner received a Letter dated August 29, 2014,[18] signed by Regional Director Alfredo Y. Misajon, informing petitioner that its request for reinvestigation of the assessment for taxable year 2010 was not in compliance with pertinent provisions of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013 and that in view thereof, the FAN and FLD have become final, executory and demandable. The Letter further states that it is the BIR's final decision on the matter.

On October 8, 2014, petitioner filed the subject Petition for Review.

On November 20, 2014, respondent filed his Answer[19] with the following Special and Affirmative Defenses:

> "10. The Assessment of Petitioner's 2010 deficiency Income Tax in the amount of ₱408,988.65 and Compromise Penalty in the amount of ₱12,000.00 were issued in accordance with the applicable laws and regulations. The factual and legal bases

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[16] P-21-a, P-21-b, P-21-c, P-21-d, P-21-e.
[17] Exhibit P-22, CTA Docket, p. 1153.
[18] Exhibit P-23.
[19] CTA Docket, pp. 142-146.

of the assessments are contained in the Formal Letter of Demand (FLD).

11. Finally, well settled is the rule that tax assessments by examiners are presumed correct and made in good faith. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

12. In COMMISSIONER OF INTERNAL REVENUE VS. BANK OF THE PHILIPPINE ISLANDS, GR. NO. 134062 dated April 17, 2007, the Honorable Supreme Court said, to wit:

> '*Tax Assessment by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by the [B]ureau of [I]nternal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favour of the correctness of tax assessment.*'"

On February 23, 2015, petitioner filed its Pre-Trial Brief[20] while respondent failed to file his Pre-Trial Brief despite due notice.

The Pre-Trial Conference was held on February 26, 2015 where only petitioner's counsel appeared. In view of the absence of the counsel for the respondent, the Pre-Trial Conference was cancelled and reset to April 23, 2015 at 9:00 a.m.[21]

In the Order dated April 22, 2015, the Court *motu proprio* cancelled the Pre-Trial Conference, and reset the same to June 25, 2015 at 9:00 a.m. due to the attendance of the Court Officials and Personnel in the Gender and Development Re-Orientation Seminar.[22]

During the Pre-Trial Conference on June 25, 2015, respondent's counsel again failed to appear despite due notice. Thus, the Court granted petitioner's motion to present its evidence *ex parte*.[23]

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[20] CTA Docket, pp. 161-170.
[21] Minutes of the Hearing dated February 26, 2015, CTA Docket, pp. 296-297.
[22] CTA Docket, p. 306.
[23] Minutes of the Hearing dated June 25, 2015, CTA Docket, 306-307.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in its Formal Offer of Evidence, were admitted in the Resolutions dated July 29, 2016[24] and April 4, 2017[25] except for Exhibits "P-7-c", "P-8", "P-8-a", "P-8-b", "P-8-c", "P-8-d", "P-8-e", "P-9", "P-9-a", "P-9-b", "P-9-c", "P-9-d", "P-9-f", "P-10", "P-10-a", "P-10-b", "P-10-c", "P-10-d", "P-10-e", "P-28-y", "P7-d", "P-7-e", "P-7-f", "P-9-e", "P-27", "P-42-b-11", "P-27-i", "P-27-j", "P-27-k", "P-27-l", "P-28-x", "P-40-c-8", "P-43-1", and "P-43-b-11".

On April 24, 2017, petitioner filed its Tender of Excluded Evidence[26]. In the Resolution dated June 13, 2017,[27] the Court noted petitioner's Tender of Excluded Evidence and declared that petitioner's denied exhibits are part of the records of the case.

In view of the filing of petitioner's Memorandum on May 26, 2017,[28] the case was submitted for decision on June 23, 2017.[29]

ISSUES[30]

1. Whether or not the PAN dated May 30, 2014 and FAN and FLD dated June 18, 2014 issued against petitioner for taxable year ending December 31, 2010 are void for not having been issued within the three (3)-year prescriptive period provided under Section 203 of the NIRC of 1997, as amended;

    a. Whether or not the Waiver executed on February 11, 2014 validly extended the period for the BIR to assess petitioner for deficiency internal revenue taxes for taxable year ending December 31, 2010;

2. Whether or not petitioner is liable for deficiency income tax, interest and compromise penalty in the amount of ₱408,988.65 for taxable year ending December 31, 2010;

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[24] CTA Docket, pp. 1130-1133.
[25] CTA Docket, pp. 1169.
[26] CTA Docket, pp. 1174-1183.
[27] CTA Docket, pp. 1223-1229.
[28] CTA Docket, pp. 1188-1220.
[29] CTA Docket, p. 1231.
[30] Petitioner's Pre-Trial Brief, CTA Docket, pp. 163-164.

3. Whether or not petitioner is liable for compromise penalty in the amount of ₱10,000.00 for failure to submit summary list of sales and purchases for taxable year ending December 31, 2010; and,

4. Whether or not petitioner is liable for compromise penalty in the amount of ₱2,000.00 for failure to submit summary list of income payments.

THE COURT'S RULING

The Waiver is valid and it extended the original three (3)-year prescriptive period to assess

The Court shall resolve the first issue regarding the validity of the Waiver executed by petitioner.

Petitioner contends that there are infirmities in the subject Waiver which rendered the same void. As a consequence thereof, the three (3)-year prescriptive period under Section 203 of the NIRC of 1997 was not extended. Petitioner raises the following infirmities in the subject Waiver: (i) the officer who executed the Waiver was not duly authorized by petitioner's Board of Directors; (ii) the Waiver was not properly notarized; (iii) the Waiver was not signed by an authorized official of the BIR; and, (iv) the Waiver failed to specify the kind and amount of tax due.

To resolve the afore-stated issue, it is indispensable for this Court to examine the provisions of Sections 203 and 222 of the NIRC of 1997, as amended, *viz.*:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, 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 (3)-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."

xxx xxx xxx

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (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."

Pursuant to Section 203 of the NIRC of 1997, as amended, internal revenue taxes must generally be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. An assessment notice may be issued after the lapse of the three (3)-year prescriptive period, however, provided that the instances under Section 222 of the NIRC of 1997, as amended, are present. In particular, under Section 222 (b), before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the CIR and the taxpayer may agree in writing to its assessment after such time; in such situation, the tax may be assessed within the period agreed upon.

It is settled that strict compliance with the procedures laid down under Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, relative to the execution of a waiver, is indispensable. In ***Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.,***[31] ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue***[32] and ***Commissioner of Internal Revenue vs. Kudos Metal Corporation,***[33] the Supreme Court emphasized that failure to observe the procedures specified in RMO No. 20-90 and RDAO No. 05-01 shall render the Waiver void and as a consequence, the three (3)-year prescriptive period to assess shall not be extended.

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[31] G.R. No. 213943, March 22, 2017.
[32] G.R. No. 162852, December 16, 2004.
[33] G.R. No. 178087, May 5, 2010.

By way of exception, however, the validity of a defective waiver may be upheld if there is a finding that both the BIR and taxpayer are *in pari delicto* in causing the deficiencies of the waiver. The pronouncement of the Supreme Court in ***Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)***[34] is thus instructive:

> "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 an exception to this rule and find the Waivers valid for the reasons discussed below.
>
> *First*, the parties in this case 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 <u>delivered them to petitioner</u>, one after

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[34] G.R. 212825, December 7, 2015.

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> 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, **<u>after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused</u>. 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.**
>
> It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith." (Boldfacing and underscoring supplied)

On the basis of the foregoing jurisprudence, the Court shall now proceed to determine whether the subject Waiver validly extended the original three (3)-year prescriptive period for respondent to assess petitioner for deficiency income tax, interest and compromise penalty for the taxable year ending December 31, 2010.

Upon perusal of the Waiver, the Court finds the same valid and sufficient to extend the three (3)-year prescriptive period to asses as provided under Section 203 of the NIRC of 1997, as amended.

The Court does not find merit on petitioner's argument that the Waiver is not binding as the officer who signed the same was not authorized by petitioner's Board of Directors.

Under RMO No. 20-90, if the taxpayer issuing a waiver is a corporation, the waiver may be signed by any of its responsible officials. A notarized Board Resolution is necessary only when the authority is delegated to a representative who is not a responsible official. Here, the subject Waiver[35] was signed by no less than petitioner's President, Mr. Antonio Reyes-Cuerva. Undoubtedly, Mr. Reyes-Cuerva, as the President of petitioner who has direct control and supervision over the management and conduct of the affairs of the corporation, is a responsible officer of the corporation. A notarized Board Resolution from the Board of Directors is neither required nor necessary to give authority to Mr. Reyes-Cuerva to execute the Waiver as his authority to do so is inherent in his position as petitioner's President. Truth to tell, Mr. Reyes-Cuerva [36] himself admitted signing the Waiver, and the same was corroborated by petitioner's accountant, Josefa Maria Bernadette Dizon.[37]

The Court does not also agree with petitioner's proposition that the Waiver is void for not having been signed by the authorized BIR official. A perusal of the Waiver reveals that it was signed and accepted by Revenue District Officer Josephine S. Virtucio.

A Revenue District Officer is authorized to sign a waiver under RDAO No. 05-01 in behalf of the CIR, *viz*:

> "REVENUE DELEGATION AUTHORITY ORDER NO. 05-01
>
> SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations
>
> xxx xxx xxx
>
> I. Revenue Officials Authorized to Sign the Waiver.
>
> The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:
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> xxx xxx xxx
>
> B. For Regional Cases
> Designated Revenue Official
>
> 1. Revenue District Officer — Cases pending investigation / verification/reinvestigation in the Revenue District Offices

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[35] *Supra*, Note 12.

[36] Exhibit "P-45", Judicial Affidavit of Mr. Antonio Reyes-Cuerva dated February 20, 2015, CTA Docket, pp. 177-178.

[37] Exhibit "P-46", Judicial Affidavit of Josefa Maria Bernadette Dizon dated July 20, 2015, CTA Docket, pp. 502-503.

2. Regional Director	Cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director

Based on RDAO No. 05-01, for regional cases, those who are authorized to sign and accept a waiver are the Revenue District Officer and the Regional Director depending on the status of the audit and investigation. In the present case, the Waiver was signed and accepted by Revenue District Officer Josephine S. Virtucio on February 11, 2014, during the pendency of the audit and investigation. Evidently, under the afore-quoted RDAO No. 05-01, Revenue District Officer Virtucio has the authority to sign and accept the Waiver.

Petitioner also argues that the Waiver is void on account of its defective notarization and due to the BIR's failure to specify the kind and amount of tax due against petitioner.

It is undisputed that the proof of identity provided by petitioner's President when he subscribed the Waiver before the notary public was his Community Tax Certificate, which is not considered as competent evidence of identity under Section 12, Rule II of Administrative Matter No. 02-8-13-SC (Rules on Notarial Practice)[38]

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RULE II
DEFINITIONS

xxx xxx xxx

SEC. 12. Competent Evidence of Identity. - The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disable Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who as amended. But the Court finds it worthy to emphasize that it was petitioner's President who furnished the details of his Community Tax Certificate to the Notary Public.

Likewise, when petitioner's President executed the Waiver, he indicated therein the phrase *"in connection with the investigation [it's] **all internal revenue taxes liabilities** for the calendar year ending December 31, 2010..."* instead of specifying the kind and amount of tax due that should be covered by the extended period to assess.

Undeniably, the foregoing infirmities in the Waiver are attributable to petitioner, albeit respondent appears to have been equally remiss in his duty to ascertain that the Waiver was not in compliance with RMO No. 20-90. For this reason, the exception to the rule that failure to observe the procedures specified in RMO No. 20-90 and RDAO No. 05-01 renders the Waiver void is applicable. Despite their knowledge of the Waiver's infirmities, the parties continued to deal with each other - - giving full effect and validity to the defective Waiver. By the principle of estoppel, as enunciated in the earlier quoted ***Next Mobile, Inc. case***, petitioner should not be allowed to assail the Waiver and raise the defense of prescription against the government's right to assess. **Impugning the validity of the Waiver from which petitioner benefited and after persuading respondent to postpone the issuance of the FAN is palpably reprehensible.**

Thus, this Court finds that the subject Waiver is valid, and has extended the right of the government to assess petitioner of the subject deficiency taxes for the year ending December 31, 2010 until October 31, 2014. The FAN which was received by petitioner on June 18, 2014, assessing it for deficiency income tax, interest and compromise penalty for the year ending December 31, 2010 which was issued by the BIR within the extended period is valid.

The FAN has become final and executory for petitioner's failure to file a valid protest

Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provide for

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each personally knows the individual and shows to the notary public documentary identification.

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the manner in which an assessment, which is otherwise presumed correct, may be assailed, *viz.*:

> "SECTION 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:
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> 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 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 (30) days from receipt of the assessment <u>in such form and manner</u> 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." (Boldfacing supplied)
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> xxx xxx xxx.
>
> RR No. 12-99, as amended by RR No. 18-2013
>
> "3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

> (ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the **basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation**. It may also involve a question of fact or of law or both.
>
> **The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.**
>
> xxx xxx xxx
>
> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. **Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.**
>
> **If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.** No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable." (Boldfacing and underscoring supplied)

As oft-repeated, petitioner received the FAN and FLD on June 18, 2014. On June 24, 2014, petitioner filed its Protest[39] dated June 20, 2014 against the FAN, consisting of one (1) page, *viz.*:

[39] Exhibit P-22, CTA Docket, p. 1153.

TEKTITE Insurance Brokers, Inc.

2002A East Tower, Phil. Stock Exchange Centre,
Exchange Road, Ortigas Center, Pasig City
Metro Manila, Philippines
Tel. no. 636-1162 to 64 (Direct Lines)
Fax no. 635-5454

June 20, 2014

BUREAU OF INTERNAL REVENUE
Revenue Region 7
Floor, BIR Bldg.,
Quezon Avenue cor. Sct. Santiago, Quezon City
Assessment Division

EXHIBIT P-22
OCT 27 2016
PETITIONER
FAITHFUL REPRODUCTION OF THE ORIGINAL

Attention: **Mr. JONAS DP AMORA**
Regional Director

Thru: **Ms. NORMA P. CEROMA**
OIC-Chief, Assessment Division

Re: *Protest to the Preliminary Assessment Notice dated June 18, 2014 issued in relation to the tax audit investigation for taxable year ended 2010*
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Gentlemen:

We respectfully submit our *Protest* to the *Preliminary Assessment Notice* (PAN) dated June 18, 2014, copy of which was received by Tektite Insurance Brokers, Inc. (TIBI) on June 18, 2014, in relation to the tax audit investigation of TIBI for taxable year ended December 31, 2010. Relative thereto, may we request for re-investigation by the examiner so TIBI can substantiate its protest to the assessment.

Thank you.

Truly yours,

Rochelle R. Gatpandan
Accountant

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Petitioner never bothered to submit any relevant supporting documents in support of its request for reinvestigation within sixty (60) days from June 24, 2014 (the date of the filing of the Protest dated June 20, 2014), as mandated by Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013.

Thus, in the Letter dated August 29, 2014 (BIR's Final Decision),[40] signed by Regional Director Alfredo Y. Misajon, petitioner was informed that its request for reinvestigation of the assessment for taxable year 2010 was not in compliance with pertinent provisions of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013 and that in view thereof, the FAN and FLD have become final, executory and demandable.

The Court agrees with the foregoing findings of the BIR as contained in the afore-mentioned Letter dated August 29, 2014. Truth to tell, **the Protest to the FAN, aside from erroneously referring to it as the PAN, failed to state the following:** (i) the newly discovered or additional evidence that petitioner intends to present in support of its request for reinvestigation; (ii) date of the FAN; and, **(iii) the applicable law, rules and regulations, or jurisprudence on which petitioner's protest is based.**

Clearly, petitioner's Protest to the FAN does not constitute a valid protest. While it requested for reinvestigation of petitioner's tax liabilities for the year ending December 31, 2010, **it did not in any way dispute the assessments by stating the facts, the applicable laws, rules and regulations, or** jurisprudence; neither was any document submitted in support thereof. Undeniably, petitioner's failure to comply with the form and manner of protesting an assessment rendered its Protest void and without force and effect.

Failure to contest the validity and correctness of the FAN in the manner prescribed by law is fatal to a taxpayer's case. In ***Ferdinand R. Marcos II vs. Court of Appeals,***[41] the Supreme Court clarified the consequence of a taxpayer's failure to properly protest an assessment:

> **"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**

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[40] Exhibit P-23.
[41] G.R. No. 120880, June 5, 1997.

> **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 internal revenue taxes." (Boldfacing supplied)

In ***CIR vs. Hambrecht & Quist Philippines, Inc.***,[42] the Supreme Court held that the fact that an assessment has become final shall mean that **the validity or correctness of the assessment may no longer be questioned on appeal**.

Considering that the FAN was issued within the extended period as stated in the Waiver, and in view of petitioner's failure to file a valid protest against the FAN in the form and manner prescribed under Section 228 of the NIRC of 1997, as amended, and as implemented by RR No. 12-99, as amended by RR No. 18-2013, the FAN, assessing petitioner for deficiency income tax, interest and compromise penalty, has become final, executory and demandable.

WHEREFORE, premises considered, the Petition for Review filed by Tektite Insurance Brokers, Inc. is hereby **DENIED**. Accordingly, the Assessment Notices and Formal Letters of Demand No. 043A-B020-10 with Details of Discrepancies, assessing petitioner for deficiency income tax, interest and compromise penalty for taxable year ending December 31, 2010 and the Letter dated August 29, 2014 (Final Decision), signed by Regional Director Alfredo Y. Misajon, stating that the aforesaid Assessment Notices and Formal Letters of Demand have become final, executory and demandable, are **AFFIRMED**.

Petitioner is **ORDERED** to **PAY** respondent the basic deficiency income tax of ₱247,810.19 and compromise penalty for failure to submit SLS/SLP of P12,000.00.

In addition, petitioner is **ORDERED** to **PAY**:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱247,810.10, computed from April 16, 2011, until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997, as amended; and,

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[42] G.R. No. 169225. November 17, 2010.

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱247,810.10, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from July 18, 2014 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
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