REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

ACTIVE MULTI-MARKETING & MERCHANDISING SERVICES, INC.,	**CTA Case No. 8744**
Petitioner,	***Members:***
- versus -	**DEL ROSARIO,** Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE,	***Promulgated:***
Respondent.	MAY 2 5 2017 : 2:17pm

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DECISION

UY, J.:

Before this Court is the *Petition for Review (with Urgent Motion to Lift Warrant of Distraint and/or Levy)*[1] filed on December 9, 2013 by Active Multi-Marketing and Merchandising Services, Inc., praying for (1) the lifting of the *Warrant of Distraint and/or Levy* dated October 3, 2013 issued against it; (2) a declaration that it is not subject to the alleged deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax, documentary stamp tax and compromise penalty amounting to ₱11,291,381.71, inclusive of interests and surcharges for taxable year 2009; (3) and the permanent withdrawal and cancellation of the said *Warrant of Distraint and/or Levy*.

Petitioner Active Multi-Marketing and Merchandising Services, Inc. is a corporation duly organized and existing under Philippine

[1] Docket, pp. 6 to 16.

laws.[2] It is a corporation engaged in the business of buying, selling, importing, exporting, preparing for market or otherwise dealing with merchandise, commodity or produce. Its taxable year coincides with the calendar year.[3]

Respondent Commissioner of Internal Revenue is the public officer authorized under the National Internal Revenue Code (NIRC) of 1997 to examine any taxpayer and assess the correct amount of internal revenue tax.[4]

On November 22, 2010, petitioner received the *Letter of Authority* with SN: eLA201000005195 dated September 29, 2010 issued by the Bureau of Internal Revenue (BIR),[5] authorizing Revenue Officer Leonita L. Dimagiba and Group Supervisor Rufina M. Baldonasa of Revenue District Office (RDO) No. 052 – Parañaque to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2009.[6]

Subsequently, on June 28, 2012, petitioner, through its President Rogelio J. Dela Cruz, executed a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code*[7] (the "Waiver" for brevity).[8] In the Waiver, petitioner consented to the assessment and/or collection of taxes for 2009 not later than June 30, 2013.

Thereafter, on October 9, 2012, petitioner received the *Notice of Informal Conference* dated October 8, 2012. Through said notice, petitioner was requested to appear before RDO No. 52 - Parañaque City, within fifteen (15) days from receipt thereof in order to present its position.[9]

On March 6, 2013, petitioner received a *Preliminary Assessment Notice* (PAN) dated February 28, 2013[10] from the BIR for deficiency income tax (IT), value-added tax (VAT),

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[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 421.
[3] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 421.
[4] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 421
[5] Exhibit "P-2", Docket, p. 76.
[6] Par. 4, Summary of Admitted Facts, JSFI, Docket, p. 422.
[7] Exhibit "P-3", Docket, p. 77.
[8] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 422.
[9] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 422.
[10] Exhibit "P-4", Docket, pp. 78 to 83.

expanded withholding tax (EWT), withholding tax on compensation (WTC), improperly accumulated earnings tax (IAET), documentary stamp tax (DST), and compromise penalty in the total amount of ₱10,799,483.44, inclusive of interests and surcharges.[11]

In response, petitioner filed its *Reply* dated April 19, 2013,[12] which was received by the BIR on the same date, contesting therein the deficiency assessments for taxable year 2009.[13]

On September 18, 2013, petitioner received the *Preliminary Collection Letter* (PCL) dated September 3, 2013,[14] demanding payment of the alleged deficiency assessments now amounting to ₱11,291,381.71, inclusive of interests, surcharges, and compromise penalty.[15]

Thereafter, on September 26, 2013, petitioner received the *Final Notice Before Seizure* (FNBS) dated September 16, 2013,[16] demanding once again the payment of the alleged deficiency assessments.[17] This was followed by the *Warrant of Distraint and/or Levy* dated October 3, 2013,[18] which petitioner received on the same date.[19]

Through the letter dated October 7, 2013,[20] petitioner registered its objection and protest to the FNBS and WDL before the BIR for not having received a *Formal Letter of Demand* (FLD) and *Assessment Notice*.[21] The BIR, however, in the letter dated October 31, 2013, controverted petitioner's claim. The original of the said letter was received by petitioner on November 19, 2013 through registered mail.[22]

Thus, on December 9, 2013, petitioner filed the instant *Petition for Review (with Urgent Motion to Lift Warrant of Distraint and/or*

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[11] Par. 7, Summary of Admitted Facts, JSFI, Docket, p. 422.
[12] Exhibit "P-5", Docket, pp. 84 to 99.
[13] Par. 8, Summary of Admitted Facts, JSFI, Docket, p. 422.
[14] Exhibit "P-6", Docket, p. 100.
[15] Par. 9, Summary of Admitted Facts, JSFI, Docket, p. 422.
[16] Exhibit "P-7", Docket, pp. 101 to 102.
[17] Par. 10, Summary of Admitted Facts, JSFI, Docket, p. 422.
[18] Exhibit "P-8", Docket, p. 103.
[19] Par. 11, Summary of Admitted Facts, JSFI, Docket, p. 423.
[20] Exhibit "P-9", Docket, pp. 104 to 107.
[21] Par. 12, Summary of Admitted Facts, JSFI, Docket, p. 423.
[22] Par. 13, Summary of Admitted Facts, JSFI, Docket, p. 423.

Levy).[23]

Within the extended time granted by the Court,[24] respondent filed his *Answer with Motion to Dismiss* on January 17, 2014,[25] interposing the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

6. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;

7. **Section 228 of the 1997 Tax Code** partly reads as follows:

'**Section 228**. Protesting of Assessment. –

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Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner 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.' [Emphasis supplied]

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[23] Docket, pp. 6 to 16.
[24] Order dated January 13, 2014, Docket, p. 128.
[25] Docket, pp. 196 to 206.

Implementing such provisions of law, ***Revenue Regulations No. 12-99***, as amended by ***Revenue Regulations No. 18-2013***, clearly provides as follows:

> '***SEC. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
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> ***3.1.4 Formal Letter of Demand and Assessment Notice.*** — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
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> ***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. **<u>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</u>**

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 supplied]

'***3.1.6 Modes of Service.* —** The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
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> In case personal service is not practicable, the notice shall be served by ***substituted service or by mail***.
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> (ii) **Substituted service** can be **resorted to when the party is not present at the registered or known address** under the following circumstances:
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> **The notice may be left at the party's registered address, with his clerk or with a person having charge thereof**.

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<u>If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof</u>.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'*Disinterested witnesses*' refers to persons of legal age other than

> employees of the Bureau of Internal Revenue.
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> (iii) ***Service by mail*** is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
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> The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/ barangay official/ professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
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> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall

be deemed service to the taxpayer.' [Emphasis supplied]

In the instant case, records clearly shows that respondent served the subject Formal Assessment Notices (FAN) dated June 24, 2013, bearing the assessed deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax, documentary stamp tax and compromise penalty, respectively; for taxable year 2009, through the modes service prescribed under Revenue Regulations No 12-99, as amended by Revenue Regulations No 18-2013, as cited above, and such Formal Assessment Notices (FAN) was duly received by petitioner on **June 25, 2013**. Apparently, however, petitioner failed to file any administrative Protest with the BIR within the 30-day reglementary period from receipt of the said FAN on June 25, 2013. Hence, the said deficiency taxes of petitioner for taxable year 2009 has already become final, executory and demandable, pursuant to Section 228 of the 1997 Tax Code. Consequently, this Honorable Court has no jurisdiction to act on the instant Petition for Review since the filing of the instant Petition for Review on December 9, 2013 has already prescribed.

8. Well-settled is the rule that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits ***(De Guzman, et al., vs. Escalona, et al., G.R. No. L-51773, May 16, 1980)***. The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction ***(Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150)***.

9. Further, the Supreme Court in the case of **Ker & Company, Ltd. vs. CTA, et al., L-12396, January 31, 1962** and **Commissioner of Internal Revenue vs. Joseph, et al., L-14034, August 30, 1962**, consistently ruled that:

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> '***If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.***' [Emphasis supplied]

10. Moreover, in the case of ***Yao vs. Court of Appeals, et al., G.R. No. 132428, October 24, 2000***, the Supreme Court held and we quote:

> '***The right to appeal is not a constitutional, natural or inherent right***. It is a statutory privilege of statutory origin and, therefore available only if granted or provided by statute. Since the right to appeal is not a natural right nor part of due process, ***it may be exercised only in the manner and in accordance with the provisions of law. Corollary, its requirements must be strictly complied with.***
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> ***That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional***. Noncompliance with such legal requirements is fatal, for its renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision.' [Emphasis supplied]

Thus, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for the court to act on a given controversy ***(Commissioner of Internal Revenue vs. Villa, et al., G.R. No. L-23988, January 2, 1968)***, and is conferred only by law and not by the consent or waiver upon the court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties ***(Laresma vs. Abellana, G.R. No. 140973, November 11, 2004)***.

11. In the case of ***Commissioner of Internal Revenue vs. Algue, Inc., (158 SCRA 9 [1988])*** the Supreme Court held that as a rule, a **Warrant of Distraint and Levy is 'proof of the finality of the assessment'** (Phil. Planters Investment Co. Inc. v. Acting Comm. of Internal Revenue, CTA Case No. 1266, Nov. 11, 1962) and **'renders hopeless a request for reconsideration**, (Vicente Hilado v. Comm. of Internal Revenue, CTA Case No. 1256, Oct. 22, 1962) being **'tantamount to an outright denial thereof and makes the said request deemed rejected'** (Vicente Hilado v. Comm. of Internal Revenue, CTA Case No. 1256, Oct. 22, 1962).

12. Moreover, assuming without admitting that this Honorable Court has jurisdiction to act on the instant petition, petitioner were assessed for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax, documentary stamp tax and compromise penalty, respectively, for taxable year 2009, for the reason that during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the Formal Assessment Notices (FAN) dated 24 June 2013 and the Preliminary Assessment Notice (PAN) dated 28 February 2013.

13. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the Formal Assessment Notice (FAN) dated 24 June 2013 were issued to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to controvert the initial findings of the respondent involving its deficiency taxes for taxable year 2009 through the issuance of a Notice for Informal Conference dated October 8, 2012, Preliminary Assessment Notice (PAN) dated 28 February 2013. Likewise, petitioner was duly appraised by the respondent of the factual and legal basis on how and why she (respondent) arrived such a deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax,

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documentary stamp tax and compromise penalty, respectively, for taxable year 2009, through the issuance of the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) dated 28 February 2013 and Formal Assessment Notice (FAN) dated 24 June 2013, as well as other BIR Correspondence duly received by petitioner which are found in the BIR records of this case.

14. The Formal Assessment Notices (FAN) dated 24 June 2013 issued by the respondent CIR against herein petitioner for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax, documentary stamp tax and compromise penalty, respectively, for taxable year 2009 were made in accordance with law and regulations.

15. Pursuant to Section 218 of the 1997 Tax Code, which states that '*No Court shall have the authority to grant injunction to restrain the collection of any National Internal Revenue Tax, fee or charges imposed by this Code*', this Honorable Court, in the instant case, has no authority to restrain the BIR from collection of the unpaid delinquent taxes of petitioner for taxable year 2009 since the same has already became final, executory and demandable, pursuant to Section 228 of the 1997 Tax Code. The justification for the rule is found in several cases decided by the Supreme Court far back in the case of ***Churchill and Tait vs. Rafferty et al., 32 Phils. 580***, which held that '*A provision in an internal revenue law prohibiting the court from enjoining the collection of an internal revenue tax is not invalid as opposed to the due process and equal protection clause of the constitution. It is upon taxation that the Government chiefly relies to obtain the means to carry on its operations and it is of the utmost importance that the means adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.*'

16. The Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC, duly executed and signed by petitioner through its **President - ROGELIO J. DELA CRUZ on June 28, 2012**, and duly accepted by the respondent CIR through her authorized BIR Official named **RDO REGINA C. DELA CRUZ on**

June 29, 2012 was validly made in compliance with the requirements under **Revenue Delegation Authority Order No. 05-01 dated August 2, 2001**, which provides as follows:

'SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

TO : All Internal Revenue Officers and Employees and Other Concerned.

I. Revenue Official Authorized to Sign the Waiver

The Following revenue official are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations prescribed in Sections 203, 222 and other related provisions of the NIRC of 1997.

A. xxx xxx xxx
B. xxx xxx xxx

C. <u>For Regional Cases</u>
Designated Revenue Officials:

1. <u>Revenue District Officer</u>	**<u>-for cases pending investigation/ verification/ reinvestigation in the Revenue District Offices;</u>**
2. Regional Director	-for cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director.

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious circumstances in the absence of the abovementioned officials.

The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The 'WAIVER' should not be accepted by the concerned BIR Office and official unless duly notarized.'

Hence, the right of the respondent CIR to assess herein petitioner for its deficiency internal revenue taxes for taxable year 2009 was ***<u>suspended</u>*** pursuant to ***Section 222 (b) of the 1997 Tax Code***, when petitioner validly executed the said Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC, on June 28, 2012, ***extending the period of limitations to assess its taxes due until June 30, 2013***. As such, the issuance of the subject FAN dated 24 June 2013 was made within the prescriptive period provided under the 1997 Tax Code.

17. The Formal Assessment Notices (FAN) dated 24 June 2013 are *prima facie* presumed correct and made in good faith. The petitioner has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Hence, all presumptions are in favor of the correctness of the subject tax assessment issued by the respondent. (*Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil. 290; Sy Po, vs. CTA, G.R. 81446, August 18, 1988; Dayrit, vs. Cruz, L-39910, September 26, 1988; Cagayan Robina Sugar Milling Co., vs. CA, G.R. 122451, October 12, 2000). Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (Delta Motors Co., vs. CIR, CAT Case No. 3782, May 21, 1986; CIR vs. CA, G.R. Nos. 104151 and 105563, March 10, 1995).*"

The Court conducted hearings on petitioner's *Urgent Motion to Lift Warrant of Distraint and/or Levy* and respondent's *Motion to Dismiss.*[26]

Petitioner presented its President and Director, Mr. Rogelio J. Dela Cruz, as its witness. It then filed its *Formal Offer of Evidence* on January 20, 2014. In the Resolution dated January 28, 2014, the Court admitted Exhibits "P-1" to "P-10" as petitioner's evidence.

On the other hand, respondent presented the following witnesses: Revenue Officer Leonita L. Dimagiba, Administrative Officer Annabel C. Villanueva, and Postmaster Glenn V. Granados.

[26] Minutes of Hearing dated December 20, 2013, January 17, 2014, January 28, 2014, and February 18, 2014, Docket, pp. 50, 207 to 211, 239 to 240, and 257 to 258, respectively.

Respondent filed his *Formal Offer of Evidence* on March 4, 2014.[27] In the Resolution dated May 2, 2014,[28] the Court admitted all of respondent's documentary evidence from Exhibits "R-1" until Exhibit "R-22" and submarkings, except Exhibit "R-12-D" for not being found in the records of the case.

Thereafter, respondent filed an *Omnibus Motion (a. For Reconsideration of the Resolution dated 2 May 2014) (b. To Defer the Filing of the Parties Memorandum).*[29] This was granted by the Court in the Resolution dated July 14, 2014 and Exhibit "R-12-D" was admitted into evidence.

The *Memorandum for the Respondent* was submitted on August 11, 2014;[30] while petitioner's *Memorandum* was filed on August 12, 2014.[31] Thereafter, in the Resolutions dated August 18, 2014[32] and September 12, 2014[33], petitioner's *Urgent Motion to Lift Warrant of Distraint and/or Levy* and respondent's *Motion to Dismiss* were deemed submitted for resolution.

In the Resolution dated October 23, 2014,[34] the Court denied respondent's *Motion to Dismiss* and granted petitioner's *Urgent Motion to Lift Warrant of Distraint and/or Levy* subject to petitioner's filing of a surety bond equivalent to one and one half (1 ½) times the amount sought to be collected.

On November 25, 2014, petitioner filed a *Manifestation*[35] that despite its readiness and willingness to post a surety bond, it cannot do so due to the fact that it could not satisfy the cash deposit requirement imposed by the surety bond companies. Thus, in the Resolution dated December 22, 2014,[36] the Court set aside the Resolution dated October 23, 2014 insofar as it granted petitioner's *Urgent Motion to Lift Warrant of Distraint and/or Levy.*

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[27] Docket, pp. 262 to 277.
[28] Docket, pp. 296 to 297.
[29] Docket, pp. 299 to 302.
[30] Docket, pp. 327 to 348.
[31] Docket, pp. 349 to 363.
[32] Docket, p. 366.
[33] Docket, pp. 368 to 369.
[34] Docket, pp. 371 to 374.
[35] Docket, pp. 381 to 384.
[36] Docket, p. 386.

Thereafter, Pre-Trial Conference was set on June 18, 2015.[37] As directed by the Court, the parties filed *their Joint Stipulation of Facts and Issues* (JSFI) through registered mail on June 3, 2015, and received by the Court on July 9, 2015.[38] The parties' JSFI was approved by the Court in the Resolution dated July 30, 2015[39] and the Court issued a Pre-Trial Order on August 26, 2015.[40]

During trial, petitioner presented Rogelio J. Dela Cruz, its President and Director, as its witness.[41] On the part of respondent, his counsel manifested during the hearing held on October 29, 2015 that he would be adopting the evidence and witnesses already presented during the proceedings pertaining to petitioner's *Urgent Motion to Lift Warrant of Distraint and/or Levy*.[42]

In the Resolution dated April 14, 2016, the Court directed the parties to file their respective Memorandum within a period of thirty (30) days from receipt thereof.[43] On May 20, 2016, petitioner filed a *Manifestation*[44] stating that it adopts its *Memorandum* dated August 12, 2014,[45] which was filed in connection with its *Urgent Motion to Lift Warrant of Distraint and/or Levy*, as its memorandum. On the other hand, the *Memorandum* for the Respondent[46] was filed through registered mail on June 3, 2016 and was received by the Court on June 17, 2016.

Thus, in the Resolution dated June 22, 2016,[47] the instant *Petition for Review* was submitted for decision.

Hence, this Decision.

THE ISSUE

The parties stipulated a lone issue for the Court's resolution,

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[37] Minutes of Pre-Trial Conference held on June 18, 2015, Docket, pp. 413-415.
[38] Docket, pp. 421 to 426.
[39] Docket, p. 430.
[40] Docket, pp. 432 to 437.
[41] Minutes of the Hearing dated October 29, 2015, Docket, pp. 494 to 496.
[42] Minutes of the Hearing dated October 29, 2015, Docket, pp. 494 to 496.
[43] Docket, pp. 556-557
[44] Docket, pp. 564 to 566.
[45] Docket, pp. 349 to 363.
[46] Docket, pp. 570 to 592.
[47] Docket, p. 595.

to wit:[48]

> "WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, IMPROPERLY ACCUMULATED EARNINGS TAX, DOCUMENTARY STAMP TAX AND COMPROMISE PENALTY BEING COLLECTED BY RESPONDENT FOR TAXABLE YEAR 2009 IN THE AGGREGATE AMOUNT OF ELEVEN MILLION TWO HUNDRED NINETY ONE THOUSAND THREE HUNDRED EIGHTY ONE AND 71/100 PESOS (₱11,291,381.71), INCLUSIVE OF INTERESTS AND SURCHARGES."

Petitioner's arguments:

Petitioner argues that the Waiver was not duly executed and therefore void; and thus, the alleged deficiency assessments for taxable year 2009 has prescribed. According to petitioner, assuming that the Waiver was duly executed, the assessment is nonetheless void since no Formal Letter of Demand (FLD) and Assessment Notices (AN) were duly 0received by petitioner within the period agreed upon in the Waiver.

And having been founded on a void FLD and AN, the *Warrant of Distraint and/or Levy* must immediately be struck down for being void.

Respondent's counter-arguments:

Respondent, on the other hand, claims that the Formal Assessment Notice (FAN) and the Letter of Demand dated June 24, 2013 were duly served to and delivered by the BIR to petitioner through the modes of service prescribed under Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, *i.e.*, by constructive service on June 25, 2013 and by registered mail on July 4, 2013.

According to respondent, the FAN and the Letter of Demand dated June 24, 2013 issued to petitioner became final, executory and demandable for failure of petitioner to file any administrative protest

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[48] Statement of Issue, JSFI, Docket, p. 423.

with the BIR within the 30-day reglementary period from receipt on June 25, 2013 and on July 4, 2013, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. Thus, the Court has no jurisdiction to entertain the instant case.

While Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, allegedly gives this Court the authority to order the suspension of tax collection when in its view, such collection would work to the serious prejudice of either the taxpayer or the Government, this ancillary remedy is available only to petitioner when there is a pending appeal over which this Court has jurisdiction, which is wanting in this case.

This Court is allegedly bound to take notice of the limits of its authority and it may, by its own motion, even though the question is not raised in the pleadings, or not even suggested by counsel, recognized the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.

Furthermore, respondent avers that the issuance of the Warrant of Garnishment by respondent to enforce the collection of petitioner's delinquent taxes is proof of finality of the subject deficiency taxes of petitioner for taxable year 2009.

Lastly, respondent points out that the Waiver duly executed and signed by petitioner through its President, Rogelio J. Dela Cruz on June 12, 2012 was validly executed and accepted by respondent through his authorized representative, in compliance with the requirements prescribed under Revenue Delegation Authority Order No. 05-01 dated August 2, 2001.

THE COURT'S RULING

The instant *Petition for Review* lacks merit.

This Court has jurisdiction to entertain the present appeal.

Respondent assails the jurisdiction of the Court over the instant case.

In the instant *Petition for Review*, petitioner prays for the withdrawal and cancellation of the *Warrant of Distraint and/or Levy.*

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[49] the Supreme Court held:

> "xxx. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:
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> > SEC. 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
> >
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue**; (Emphasis supplied)
>
> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. <u>It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid</u>** and to rule if the Waiver of Statute of Limitations was validly effected." *(Emphasis and underscoring supplied)*

Thus, considering that petitioner is questioning the validity of the *Warrant of Distraint and/or Levy*, this Court is clearly endowed with jurisdiction to entertain the present *Petition for Review.*

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[49] G.R. No. 162852, December 16, 2004.

Having resolved the issue of jurisdiction, We shall proceed to determine the validity of the subject Waiver.

Exception to the general rule that a waiver that does not comply with the requisites for its validity, is invalid and ineffective.

Petitioner effectively points out that there are infirmities in the subject Waiver which would have the effect of nullifying the same, and consequently, of not extending the 3-year period under Section 203 of the NIRC of 1997.

To reiterate, petitioner raises the following infirmities in the subject Waiver, to wit:

1. The Waiver was executed without the notarized written authority appointing Mr. dela Cruz to sign the Waiver on behalf of petitioner;
2. The Waiver failed to indicate the date of acceptance by respondent's duly authorized officer;
3. The Waiver failed to specify the types of deficiency taxes being assessed by respondent; and
4. The fact of receipt by petitioner of its file copy was not indicated in the original of the said Waiver.

We are mindful of the rule that the procedures laid down by Revenue Memorandum Order No. 20-90[50] and Revenue Delegation Authority Order No. 05-01[51] must be strictly followed; otherwise, the waiver shall be rendered defective and shall not extend the period to assess the tax.

However, there is an exception to this rule, as enunciated in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[52] pertaining to instances when both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of

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[50] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code

[51] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations

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

these waivers without bothering to rectify these infirmities. In said case, the Supreme Court held as follows:

> " To be sure, both parties in this case are at fault.
>
> xxx xxx xxx
>
> Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.
>
> xxx xxx xxx
>
> 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 exception to this rule and find the Waivers valid for the reasons discussed below.
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> *First*, the parties in this 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 delivered them to petitioner, one after 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, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. 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

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> 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." *(Underscoring supplied)*

The foregoing case is in all-fours with, and thus, must be applied to, the instant case.

On one hand, petitioner denies ever having authorized Dela Cruz to sign the subject Waiver. Upon the other hand, it is apparent that respondent failed to ensure that the said Waiver was duly accomplished and signed by petitioner's duly authorized representative.

Just as in the above-quoted *Next Mobile* case, the parties are likewise *in pari delicto*, and have not come to this Court with clean hands. Furthermore, petitioner is estopped from questioning the validity of the subject Waiver since it is the same entity which caused the invalidity thereof.

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 until June 30, 2013.[53]

Petitioner received the Formal Letter of Demand and the Assessment Notices on June 25, 2013.

Petitioner denies receiving the Formal Letter of Demand (FLD) and Assessment Notice (AN). However, respondent claims that these were duly served to petitioner through constructive service and by registered mail.

We agree with respondent.

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[53] Exhibit "P-3", Docket, p. 77.

Relevant to the matter of issuance of assessment are Section 228 of the NIRC of 1997, and Section 3 of Revenue Regulations No. 12-99,[54] to wit:

> "**SEC. 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: xxx
>
> 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.
>
> xxx xxx xxx."
>
> "**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** **–**
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
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> 3.1.4 *Formal Letter of Demand and Assessment Notice.* – **The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*** (see

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[54] SUBJECT: 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, September 6, 1999.

> illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
>
> xxx xxx xxx
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> 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 under RR No. 12-99 shall be considered effected by (1) leaving the same in the premises of the taxpayer; (2) the fact of constructive service should be attested to, witnessed and signed by at least two revenue officers other than the revenue officer who constructively served the same; and (3) the revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of the case.

A perusal of the records shows that respondent was able to comply with all the requisites of constructive service. To prove the first two (2) requisites, respondent presented Revenue Officer Leonita L. Dimagiba who testified that she tried to personally serve the FLD and the AN to petitioner but the same were not received by petitioner's responsible officers, so she effected constructive service as witnessed by Revenue Officers Rufina M. Baldonasa and Flordeliza F. Ferrer, to wit:

> "39. Q: Would you know when did petitioner received this Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24, 2013 issued by the BIR?
>
> A: **Yes sir. Petitioner through its authorized representative, MARY JANE B. GARCES constructively received the original copies of these Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24, 2013 issued by the BIR, on <u>25 June 2013</u>, which proof of receipt was sub-marked as Exhibit 'R-12-D' for the respondent.**
>
> 40. Q: How did you know that petitioner constructively received on 25 June 2013 the original copies of these Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24, 2013 issued by the BIR?
>
> A: **Because I am the one who personally went to the office premises of petitioner, at Camper Mfg. Inc. Compound, Km. 14, Edison Ave., Brgy. Sun Valley, Paranaque City <u>on 6 March 2013</u>, and served to petitioner the said original copies of these Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24,2013 issued by the BIR.**
>
> 41. Q: How did you serve the original copies of these Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24, 2013 to petitioner?
>
> A: **Pursuant to the requirements under Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-2013, prescribing the mode of service of BIR**

Assessment Notices to a particular taxpayer, *at first*, I went personally to the office address of petitioner, at Camper Mfg. Inc. Compound, Km. 14. Edison Ave., Brgy. Sun Valley, Paranaque City on June 25, 2013 to personally serve the said original copies of the Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24, 2013 to the responsible officers of petitioner. However, despite diligent effort I have exerted to locate and personally serve the said assessment notices to the responsible officers of the said corporation, the latter refused to receive the same. Thus, I was constrained to serve the said Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24, 2013 to petitioner, by substituted/constructive service by leaving the original copies thereof with the said corporation's employee/administrative staff named, MARY JANE B. GARCES, who acknowledged to have received the same on June 25, 2013.

42. Q: Who are the persons that witness your constructive service of the said BIR Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24, 2013 to herein petitioner?

A: **My constructive service of the said BIR Assessment Notices, Formal Assessment Notice (FAN) of Demand (Part I and II) and Details of Discrepancies all dated June 24, 2013 to herein petitioner, June 25, 2013, were witnessed by two (2) Revenue Officers RUFINA M. BALDONASA and FLORDELIZA F. FERRER, who are both assigned at BIR Revenue District Office (RDO) No. 52, Paranaque City.**

43. Q: After you have constructively serve the said BIR Assessment Notices, Formal Assessment Notice (FAN) of Demand and Details of Discrepancies

all dated June 24, 2013 to herein petitioner, what relevant document, if any, did you prepare?

A: **I prepared a Memorandum Report dated 25 June 2013, showing that on June 25, 2013, I have personally served to petitioner, with address at Camper Mfg. Inc. Compound, Km. 14, Edison Ave., Brgy. Sun Valley, Parañaque City, through its responsible officers, the original copies of BIR Assessment Notice Nos. IT-ELA5195-09-13-0172, VT-ELA5195-09-13-0172, WE-ELA5195-09-130172, WC-ELA5195-09-13-0172, IT-ELA5195-09-13-0172, DS-ELA5195-09-130172 and MC-ELA5195-09-13-0172, all dated June 24, 2013 together with the Formal Assessment Notice (FAN) (Part I and II) and Details of Discrepancies dated June 24, 2013, assessing it a deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax, documentary stamp tax and compromise penalty, respectively, for taxable year 2009. Despite diligent effort I have exerted to personally serve the said assessment notices to the responsible officers of the said corporation, however, the latter refused to receive the same. Thus, I was constrained to serve the subject AN and FLD of the BIR by substituted/constructive service by leaving the original copies thereof with the said corporation's employee/administrative staff named, MARY JANE B. GARCES, who acknowledged to have received the same on June 25, 2013, and witnessed by Revenue Officers RUFINA M. BALDONASA and FLORDELIZA F. FERRER, in compliance with the requirements prescribed under Revenue Regulations No. 12-99, as amended."**[55]

Respondent also presented the written report[56] of the constructive service made by Revenue Officer Leonita L. Dimagiba, which forms part of the BIR Records in compliance with the third requisite. The written report was signed by Revenue Officer Leonita

[55] Judicial Affidavit of Revenue Officer Leonita L. Dimagiba, Docket, pp. 227 to 228.
[56] Exhibit "R-16", BIR Records, p. 382.

L. Dimagiba[57] and by witnesses Revenue Officers Rufina M. Baldonasa and Flordeliza F. Ferrer[58]. Evidently therefore, petitioner received the FLD and AN through constructive service.

As regards the requisite proof to show that the FLD and AN were sent to petitioner, in the instant case, allegedly by registered mail, the Supreme Court held in the case of *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[59] as follows:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that [the taxpayer] indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. <u>And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.</u>** The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed

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[57] Exhibit "R-16-a", BIR Records, p. 382.
[58] Exhibit "R-16-b", BIR Records, p. 382.
[59] G.R. No. 202695, February 29, 2016.

at the mercy of the revenue offices." *(Emphasis and underscoring supplied)*

In this case, respondent was not able to present the registry receipt issued by the Bureau of Posts or the Registry return card. However, respondent was able to show that the FLD and AN was posted in the Makati Central Post Office on June 24, 2013 and was registered therein as letter no. 1098-13.[60] Such fact and the dispatch of the said registered letter are supported by the Certification dated January 24, 2014 issued by Divina G. Madeja, Chief, Records Unit of the Makati Central Post Office.[61] Moreover, the said registered letter was delivered to petitioner on July 4, 2013 as evidenced by the Certification dated February 3, 2014 issued by Glenn V. Granados, Postmaster V of the Parañaque Central Post Office.[62]

In view thereof, the mail matter, containing the said FLD and AN, is deemed received by petitioner, as addressee, in the course of mail. Additionally, considering that the FLD and AN were sent on June 25, 2013 and likewise mailed on June 24, 2013, the assessment was made within the prescriptive period (*i.e.*, until June 30, 2013, pursuant to the Waiver).

The Formal Letter of Demand and Assessment Notices for TY 2009 has become final, executory and demandable.

The procedure for protesting an assessment is provided in the same Section 228 of the NIRC of 1997, as follows:

"SEC. 228. *Protesting of Assessment*. – xxx

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of

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[60] Exhibits "R-15" and "R-14-A", BIR Records, pp. 385 and 383.
[61] Exhibit "R-19", Docket, p. 279.
[62] Exhibit "R-20", Docket, p. 280.

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." *(Emphasis supplied)*

As a corollary, Section 3.1.5 of Revenue Regulations No. 12-99 provides as follows:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.5 *Disputed Assessment.* – **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.** xxx

xxx xxx xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. xxx" *(Emphasis supplied)*

Pursuant to the foregoing provisions, the protest to the formal letter of demand and the assessment notice must be made within thirty (30) days from the taxpayer's receipt of the deficiency tax assessment; otherwise, the assessment becomes final, executory, and demandable.

In this case, petitioner failed to file any administrative protest to the FLD and AN. Thus, the assessment for taxable year 2009 has become final, executory and demandable.

A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail it can no longer be contested.[63] Correspondingly, collection of the subject taxes must perforce follow, through the remedies given to respondent by Section 205 of the NIRC of 1997.

We therefore see no reason or valid ground to cancel or withdraw the subject *Warrant of Distraint and/or Levy.*

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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
Chairperson
Presiding Justice

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[63] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.