REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ACTIVE MULTI-MARKETING & MERCHANDISING SERVICES, INC., Petitioner,	CTA EB No. 1728 (CTA Case No. 8744)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 25 2019 11:38am

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DECISION

Fabon-Victorino, J.:

We reiterate through this decision that the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. Hence, the Commissioner of Internal Revenue (CIR) may not be blamed for any defects in the execution of the waiver.[1]

Under consideration is the Petition for Review dated November 3, 2017 filed by petitioner Active Multi-Marketing & Merchandising Services, Inc., impugning the Decision dated May 25, 2017 and Resolution dated October 3, 2017, both rendered by the Court in Division in CTA Case No.

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[1] *Asian Transmission Corporation vs. Commissioner of Internal Revenue,* G.R. No. 230861, September 19, 2018.

8744, the dispositive portions of which respectively state as follows:

Impugned Decision dated May 25, 2017

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

SO ORDERED.[2]

Impugned Resolution of October 3, 2017

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.[3]

The facts as established during the trial are as follows.

Petitioner Active Multi-Marketing & Merchandising Services, Inc. is a domestic corporation engaged in the business of buying, selling, importing, exporting, preparing for market or otherwise dealing with merchandise, commodity or produce.

Respondent Commissioner of Internal Revenue (CIR) is the public officer authorized under the National Internal Revenue Code (NIRC), of 1997 to examine and assess the correct amount of internal revenue tax.

On November 22, 2010, petitioner received the *Letter of Authority*[4] (LOA) dated September 29, 2010, authorizing Revenue Officer (RO) Leonita L. Dimagiba and Group Supervisor Rufina M. Baldonasa of Revenue District Office (RDO) No. 052 - Parañaque to examine its books of account and other accounting records for all internal revenue taxes for taxable year (TY) 2009.

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[2] *Rollo,* p. 61.
[3] Ibid. at p. 68.
[4] SN: eLA201000005195.

On June 28, 2012, petitioner[5] executed a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* (NIRC), as amended, in which it agreed to extend the period to assess and collect taxes for TY 2009 until June 30, 2013.

On October 9, 2012, petitioner received a Notice of Informal Conference dated October 8, 2012, requesting it to appear before RDO No. 52 - Parañaque City to present its position.

On March 6, 2013, petitioner received a *Preliminary Assessment Notice (PAN)* dated February 28, 2013, finding it liable for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), improperly accumulated earnings tax (IAET), documentary stamp tax (DST), and compromise penalty, inclusive of interests and surcharges in the total amount of ₱10,799,483.44 for TY 2009.

On April 19, 2013, petitioner filed its *Reply* of even date, contesting the deficiency tax assessments for TY 2009.

On September 18, 2013, petitioner received a *Preliminary Collection Letter (PCL)* dated September 3, 2013, demanding payment of the alleged deficiency tax assessments in the amount of ₱11,291,381.71, inclusive of increments[6] for TY 2009.

On September 26, 2013, petitioner received a *Final Notice Before Seizure (FNBS)* dated September 16, 2013, reiterating the demand for payment of deficiency tax assessments for TY 2009.

On October 3, 2013, petitioner received a *Warrant of Distraint and/or Levy (WDL)* of even date.

In a Letter dated October 7, 2013, petitioner registered its objection and protest to the FNBS and WDL, disclaiming

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[5] Petitioner's President Rogelio J. Dela Cruz executed the subject Waiver on its behalf, see impugned Decision, p. 2.
[6] Interests, surcharges and penalties.

receipt of the Formal Assessment Notice (AN) and Formal Letter of Demand (FLD).

On November 19, 2013, petitioner received BIR Letter dated October 31, 2013 stating that the FLD/AN were constructively served to it on June 25, 2013.[7]

On December 9, 2013, petitioner filed a Petition for Review[8] (with Urgent Motion to Lift Warrant of Distraint and/or Levy)[9] dated December 5, 2013, praying among others, that the WDL dated October 3, 2013, as well as the deficiency tax assessments for TY 2009 upon which it is based be nullified.

In the assailed Decision of May 25, 2017, the Court in Division found petitioner's Petition for Review bereft of merit and denied the same. Citing the *Next Mobile* case, the Court explained that when the parties in the execution of waiver were in *pari delicto,* or at equal fault, a defective waiver may result in the extension of prescriptive period to assess. Since no notarized board resolution was issued by petitioner authorizing its President, Rogelio J. Dela Cruz, to execute the subject waiver while respondent on the other end failed to ensure that it was accomplished by the former's authorized representative, both petitioner and respondent were at equal fault, or in *pari delicto.* On that account, the subject waiver, albeit defective, legally stretched respondent's prescriptive period to assess internal revenue taxes until June 30, 2013.

The Court in Division added that since petitioner failed to register its protest to the FLD/AN received on June 25, 2013, the subject assessment became incontrovertible and could no longer be contested pursuant to Section 228 of the NIRC, as amended.

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[7] BIR Record, p. 407.
[8] Docket (CTA Case No. 8744), pp. 1-16.
[9] Petitioner's *Urgent Motion to Lift Warrant of Distraint and/or Levy* appended in its petition for review was granted in the Resolution dated October 23, 2014. See docket (CTA Case No. 8744), pp. 371-374.

On June 13, 2017, petitioner moved,[10] but failed[11] to obtain a reconsideration of the impugned Decision of May 25, 2017. Hence, the present recourse.

Petitioner maintains that the facts obtaining between the case at bench and that of the *Next Mobile* case are dissimilar with one another. In the latter case, the taxpayer therein executed five (5) consecutive waivers all of which contained the same legal infirmities which both the taxpayer and the BIR failed to rectify. The sequence of acts perpetuated by the parties therein reveals that both were patently at fault and in bad faith. Precisely they were declared to be *in pari delicto,* consequently, the efficacy of the infirmed waivers was sustained. In contrast, a single defective waiver could not be perceived as an outright bad faith on its part. Given the foregoing variance in the factual milieu between the two cases, petitioner opines that *in pari delicto* doctrine enunciated in the *Next Mobile* case is not applicable in the present controversy.

Further, the severity of respondent's infractions far outweighs its own, shares petitioner. It explains that not only did respondent fail to ensure that petitioner's president was armed with notarized written authority to sign the subject waiver, he likewise neglected to indicate the date of his acceptance on its copy of the waiver. Also, there is something sinister, if not suspicious, on the fact that respondent's copy of the waiver[12] has the date of acceptance one that is not found in its copy, a striking discrepancy which respondent failed to explain.

Moreover, it need not apprise respondent and his subordinates of their duty to ensure compliance with RMO No. 20-90, along with RDAO 5-01 for it is their responsibility to ensure that the rules and regulations the BIR promulgated are stringently enforced.[13] Besides, to remind

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[10] Petitioner's Motion for Reconsideration dated June 9, 2017, docket (CTA case no. 8744), pp. 650-664.
[11] Resolution on petitioner's Motion for Reconsideration dated October 3, 2017, docket (CTA Case No. 8744), pp. 674-681.
[12] Exhibit R-2.
[13] Petitioner cites the cases of *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Inc.,* G.R. No. 187589, December 3, 2014; and *Commissioner of Internal Revenue vs. Philippine Daily Inquirer,* G.R. No. 213943, March 22, 2017 as bases.

respondent and his subordinates of their bounden to comply with RMO No. 20-90 and RDAO No. 5-01, is to encourage them to discount their own rules and regulations to the detriment of the taxpayer.

In the absence of bad faith on its part, and due to obvious infirmities found therein, the subject waiver did not validly stretch the ordinary three (3)-year prescriptive period to assess. Since the prescriptive period to assess IT commenced upon filing of its 2009 annual ITR on April 15, 2010, respondent had until April 15, 2013 to assess deficiency IT. Hence, the assessment notice for IT allegedly served to it on June 25, 2013 is void, opines petitioner.

Petitioner as well denies receipt of the Formal Letter of Demand (FLD) along with most[14] of the accompanying assessment notice (AN) supposedly served by respondent via registered mail on June 25, 2013. Petitioner points out that the Certification[15] issued by the postmaster Glenn V. Granados as the purported sole proof of service is deficient to establish that the FLD/AN were received by it given that in the letter-carrier record book, the addressee of the mail matter no. 1098-13 allegedly containing the FLD/AN was a certain Camper Mfg., Inc. and not petitioner. Without sufficient evidence that the FLD/AN were mailed and received by it, the FLD/AN is not binding against it.

Petitioner also finds erroneous respondent's claimed constructive service of the FLD/AN *sans* justification to adopt such exceptional mode of service. The testimony of RO Leonita Dimagiba that "upon actual service of the FLD/AN, petitioner declined the same," without the specifics or details of such refusal would not suffice as the particular circumstances showing "diligent efforts" were exerted to personally serve the same is required[16] which is wanting in this case. In fine, it cannot be deemed to have constructively received, let alone, notified of the subject assessment.

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[14] Assessment notice for deficiency value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), improperly accumulated earnings tax (IAET) and documentary stamp tax (DST).
[15] Exhibit R-20.
[16] Petitioner invokes *Manotoc vs. Court of Appeals,* G.R. No. 130674, August 16, 2006 as authority.

Moreover, the FLD/AN which only states the amount of tax and interest due without the details on how the said amount was arrived at is void for being offensive of Section 228 of the NIRC, as amended.

Even assuming that the waiver validly stretched the prescriptive period to assess until June 30, 2013 and that the FLD/AN were properly served to petitioner on June 25, 2013, the deficiency VAT for the 1st Quarter of 2009,[17] as well as deficiency EWT[18] and WTC[19] covering the months of February to June 2009, had already prescribed before the prescriptive period to assess was extended. Petitioner concludes that the deficiency VAT, EWT and WTC to the extent of the foregoing periods should at the very least, be partially cancelled.

On the other hand, in his Manifestation and Motion dated April 5, 2018,[20] respondent adopts the factual and legal findings of the Court in Division, as well as his argumentation in his Memorandum dated June 2, 2016.

THE RULING OF THE COURT *EN BANC*

The instant petition must fail.

To be sure, the Court is not unmindful of the legal tenet[21] that the waiver must conform with the requirements set under Section 222(b) of the NIRC, as amended, and as implemented by RMO No. 20-90 and RDAO 5-01, lest the extension of the BIR's period to assess and collect internal

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[17] The alleged last day for respondent to assess deficiency VAT covering the 1st Quarter of 2009 shall be on April 25, 2012.

[18] The alleged last day for respondent to assess deficiency EWT for the months of February to June 2009 shall be on January 10, 2012.

[19] The alleged last day for respondent to assess deficiency WTC for the months of February to June 2009 shall be on June 10, 2012.

[20] *Rollo,* pp. 106-107.

[21] See *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 224327, June 11, 2018; *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.,* G.R. No. 213943, March 22, 2017; *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated,* G.R. No. 187589, December 3, 2014; *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010; and *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004.

revenue taxes would be ineffectual. However, the rule is not unbridled for it admits of an exception as laid down in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[22]

In the *Next Mobile* case, the Supreme Court *En Banc* declared that where both the taxpayer and the BIR are in *pari delicto* or equally culpable coupled with bad faith in the execution of a waiver, such waiver suffering from infirmities may result in an extension of the latter's prescriptive period to assess, ratiocinating in the following fashion:

> 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.
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> 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.
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> 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.
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> 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

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

> 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.
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> 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.

Petitioner insists that the *Next Mobile* case does not apply in the given controversy since: 1) the facts therein and of this case are different; and 2) it acted in good faith in challenging the defects of the waiver in question.

The assertion is specious.

Indeed, petitioner misunderstood the *raison d' etre* behind the pronouncement in the *Next Mobile* case. The exception crafted by the Supreme Court therein, i.e., a defectively executed waiver may result in an extension of respondent's period to assess internal revenue taxes, was not solely hinged on the execution of five (5) separate infirmed waivers which remained unrectified as petitioner suggests. Rather, the doctrinal precept finds application when factual circumstances display that the parties to the execution of the waiver are *in pari delicto,* or at equal fault irrespective of the number of waiver/s accomplished or executed.

Jurisprudence defines bad faith as a state of mind affirmatively operating with furtive design or with some motive of self interest or ill will for ulterior purpose.[23] It implies moral obliquity or a conscious and intentional design to do a wrongful act for a dishonest purpose.[24] However, a conscious or intentional design need not always be present because negligence may occasionally be so gross as to amount to malice or bad faith,[25] as what probably occurred in this case.

Relevantly, Section 4, Rule 129[26] provides *inter alia* that a written admission made by a party in the course of a proceeding binds the admitter and does not require proof. A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.[27] Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them.[28] Such judicial admission also removes an admitted fact from the field of controversy,[29] and no amount of rationalization can offset it.[30]

In the present case, petitioner declared[31] that it clothed its president Rogelio J. Dela Cruz with authority to execute on its behalf the subject waiver in favor of the BIR. But when the result of the tax audit proved to be adverse, it impugned the very same authority it conferred upon its president on the ground that it was neither in writing nor notarized. Verily, submission of a notarized board resolution confirming the authority priorly given could have possibly cured the defect. Petitioner however did not take any

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[23] See *Balbuena vs. Sabay,* G.R. No. 154720, September 4, 2009.
[24] See *Bankard, Inc. vs. Dr. Feliciano,* G.R. No. July 28, 2006.
[25] *BPI Express Card Corporation vs. Armovit,* G.R. No. 163654, October 8, 2014. Underscoring supplied.
[26] **Section 4.** *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.
[27] See *Spouses Binarao vs. Plus Builders, Inc.,* G.R. No. 154430, June 16, 2006.
[28] *Bayas vs. Sandiganbayan,* G.R. Nos. 143689-91, November 12, 2002.
[29] See *Constantino vs. Heirs of Constantino, Jr.,* G.R. No. 181508, October 2, 2013.
[30] See *Yuliongsiu v. Philippine National Bank*, G.R. No. L-19227, February 17, 1968.
[31] Paragraph 5, Joint Stipulation of Facts and Issues, docket (CTA Case No. 8744), p. 422. The said stipulation states: "5. On 28 June 2012, Petitioner, through its President Rogelio J. dela Cruz, executed a 'Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code' (the 'Waiver')."

remedial action at the earliest opportunity via its response[32] to the BIR's preliminary findings in the Preliminary Assessment Notice (PAN). Such act, intentional or due to gross negligence, failed to escape the scrutiny of the Court in Division in resolving the case. On the other hand, respondent, whose office is the very author of the rules on the matter, proceeded with the tax audit/examination without requiring petitioner's president to present a written notarized authority to execute the waiver.

The same is true with respect to respondent's inability to indicate the date of his acceptance of the waiver in petitioner's copy of the waiver as mandated in Section 222(b) of the NIRC, as amended, and as implemented by RMO No. 20-90. Petitioner was aware of such infirmity which could adversely affect the validity of the waiver it executed, yet it stood still allowing the proceedings against it to continue. Petitioner should not be permitted to casually attribute fault upon respondent just to compensate for its own lapses. The *primordial* responsibility in ensuring the proper execution of a waiver is vested with the taxpayer, such as petitioner and not the BIR as a receiving party. This position finds solace in *Asian Transmission Corporation vs. Commissioner of Internal Revenue*[33] wherein it was held that:

> xxx Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver. Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to respondent CIR and her subordinates.

Consistent with the pronouncement in the *Next Mobile* case, the defective waiver stretched the BIR's period to assess internal revenue taxes for TY 2009 until June 30, 2013.

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[32] Reply to PAN dated April 19, 2013, BIR Record, pp. 346-350.
[33] G.R. No. 230861, September 19, 2018.

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As to whether the FLD/AN was seasonably issued to, and received by petitioner, the answer is in the affirmative.

Jurisprudence has it that an assessment is deemed made on time when notice to this effect is released, mailed or sent by the Collector[34] to the taxpayer, even though the same is actually received by the taxpayer upon expiration of the prescriptive period.[35] Precisely, this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved.[36]

Significantly, xxx if the taxpayer denies ever having received an assessment from the BIR, as in the instant case, it is incumbent upon the (BIR) to prove by competent evidence that such notice was indeed received by the addressee.[37] On this regard, the ruling in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[38] is instructive, *viz*:

> x x x. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative.** ***And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.*** This 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. x x x

Petitioner insists that the Certification dated February 3, 2014 issued by Glenn V. Granados fell short of establishing its actual receipt of the FLD/AN as the record book upon which it was based shows that the addressee of

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[34] Now Commissioner of Internal Revenue.

[35] See *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,* G.R. No. 128315, June 29, 1999; and *Collector of Internal Revenue vs. Bautista,* 105 Phil. 1326 (1959).

[36] See *Nava vs. Commissioner of Internal Revenue,* G.R. No. L-19740, January 30, 1965.

[37] See *Republic of the Philippines vs. The Court of Appeals,* G.R. No. L-38540, April 30, 1987. Word in brackets supplied.

[38] G.R. No. 185371, December 8, 2010.

registered letter No. 1098-13 was not petitioner, but a certain Camper Mfg., Inc.

The Court is not persuaded.

Burden of evidence is defined as the duty of the party to go forward with the evidence to overthrow the *prima facie* evidence against him.[39] Such party has the burden to come forward with his own evidence to counteract whatever positive impression which the evidence of the other party may have created in the mind of the court,[40] otherwise, a favorable verdict shall be returned in favor of the latter.

Plain from the BIR Memorandum dated June 25, 2013 that the FLD/AN addressed to petitioner was posted on June 24, 2013, at the Makati Central Post Office with Registry Receipt No. 1098-13.[41] The Makati Central Post Office, on the other hand, issued a Certification dated January 24, 2014 explicitly confirming that the addressee of the FLD/AN enclosed in mail matter with Control No. 1098-13 was petitioner.[42] Further, Postmaster Glenn V. Granados[43] declared that he anchored his Certification dated February 3, 2014,[44] attesting that the FLD/AN was delivered to, and received by petitioner on July 4, 2013 on control no. 1098-13 of such mail matter in the letter-carrier record book.

On the other hand, petitioner utterly failed to prove its allegation that a certain Camper Mfg. Inc. in the addressee column of the letter-carrier record book ever existed and could be located at the same address as that of petitioner. Petitioner's failure to controvert all the evidence adduced by respondent on this point supports the conclusion that petitioner was the addressee of the mail matter No. 1098-13 containing the FLD/AN issued against it.

Neither does the Court agree with petitioner's theory that respondent improvidently resorted to constructive

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[39] See *Bautista vs. Hon. Sarmiento,* G.R. No. L-45137, September 23, 1985.
[40] See 1 Jones on Evidence, 6th Ed., p. 523.
[41] Exhibits R-15 and R-15-A.
[42] Exhibit R-19. The Certification was issued by Divina G. Maneja, Chief, Records Unit – Makati Central Post Office.
[43] Postmaster V, Parañaque Post Office.
[44] Exhibits R-20, R-20-A.

service of the subject FLD/AN. Section 3.1.7 of RR No. 12-99 provides the conditions *sine qua non* for the BIR to validly effectuate constructive service of an assessment to the taxpayer. It reads:

> 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 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

Plain from the foregoing that constructive service of assessment may be validly effected if the following concur: a) leaving the FLD/AN at the taxpayer's premises; b) fact of constructive service must be attested to, witnessed and signed by at least two (2) revenue officers, other than the revenue officer who caused such constructive service; and c) the revenue officer effecting the constructive service must make a written report of such matter, which shall form part of the docket of the case.

Evidence show that on June 25, 2013, RO Leonita L. Dimagiba attempted to personally serve the FLD/AN on petitioner's responsible officers at its office address Camper Mfg. Inc. Compound, Km. 14. Edison Ave., Barangay Sun Valley, Parañaque City but was rejected.[45] She then effected constructive service by leaving the original copies of the FLD/AN with petitioner's administrative staff Mary Jane B. Garces who acknowledged receipt thereof.[46] Such constructive service was witnessed by ROs Rufina M.

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[45] Answer to Question No. 41, Judicial Affidavit of RO Leonita L. Dimagiba, docket (CTA Case No. 8744), pp. 227-228.
[46] Ibid.

Baldonasa and Flordeliza F. Ferrer.[47] A Memorandum Report of even date was prepared by RO Dimagiba, duly signed and attested to by ROs Baldonasa and Ferrer, narrating the facts which led the constructive service of the FLD/AN.[48] With the concurrence of the foregoing incidents, petitioner is deemed to have constructively received the FLD/AN on June 25, 2013.

Petitioner further argues that constructive service was improper since respondent failed to show that diligent efforts were exerted to effect personal service of the FLD/AN before availing of such exceptional mode of service, invoking the *Manotoc* case[49] as authority.

The argument is illusory.

In the *Manotoc* case, the sheriff therein availed of substituted service of summons without explaining in his sheriff's return the reason why personal service of the court process was not effected. The Supreme Court ruled that substituted service of summons was improper since the sheriff's return is wanting on specific facts showing that serious efforts were exerted to personally serve summons to therein petitioner; and that no plausible reason was offered on why the efforts to personally serve court summons failed as mandated by Section 8, Rule 14 of the Rules of Court.

Note that in the *Manotoc* case, the Supreme Court interpreted the rule on substituted service of court summons under Section 8, Rule 14 of the Rules of Court, which wholly speaks of and is dedicated to court summons. Given that this case involves *constructive service of FLD/AN* and not of court summons, Section 8, Rule 14 of the Rules of Court, as well as the *Manotoc* case find no application in the given controversy.

In fine, the totality of evidence veer towards the conclusion that respondent seasonably issued the subject assessment on June 25, 2013, or well-within his *extended*

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[47] Answer to Question No. 42, Judicial Affidavit of RO Leonita L. Dimagiba, docket (CTA Case No. 8744), p. 228.
[48] Exhibits R-16, R-16-A and R-16-B, BIR Record, p. 382.
[49] *Manotoc vs. Court of Appeals,* G.R. No. 130974, August 16, 2006.

period to assess of until June 30, 2013. On the other hand, petitioner received the subject assessment on two (2) occasions, namely: *first,* when the FLD/AN was constructively served to it on June 25, 2013; and *second,* when the *mailed* FLD/AN was delivered to it on July 4, 2013.

The Court does not also subscribe with petitioner's contention that the subject FLD/AN was a nullity for failure to state the factual and legal bases of the assessment as mandated under Section 228 of the NIRC, as amended.

In *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,*[50] it was ruled that the details of discrepancy accompanying the FLD/AN satisfactorily disseminates to the taxpayer the factual and legal basis of the assessment issued against it, thus:

> In the present case, a mere perusal of the FAN for the deficiency EWT for taxable year 1994 will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis. Petitioner should have *at least attached* ***a detailed notice of discrepancy*** **or stated an explanation** why the amount of ₱48,461.76 is collectible against respondent and how the same was arrived at. xxx (emphasis supplied)

The record shows that respondent issued the FLD/AN together with a Details of Discrepancy,[51] explaining the particulars on how petitioner's deficiency taxes for TY 2009 were computed and arrived at.

In last-ditch effort to convince the Court to rule in its favor, petitioner avers that the deficiency VAT covering the 1st Quarter of TY 2009,[52] as well as the deficiency EWT[53] and WTC[54] covering the periods February to June 2009 should be cancelled as prescription had set in prior to the extension of respondent's period to assess, i.e., June 30, 2013.

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[50] G.R. No. 197515, July 2, 2014.
[51] Exhibits R-12-B and R-12-C, BIR Record, pp. 355-357.
[52] See Note 17.
[53] See Note 18.
[54] See Note 19.

The averment is unavailing.

Pursuant to Section 228 of the NIRC, as amended, petitioner was granted a period of thirty (30) days from receipt of the FLD/AN to assail the BIR's finding of deficiency taxes, lest such assessment shall be considered final, executory and demandable, thus:

> **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
>
> 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 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

As stated earlier, petitioner received the FLD/AN twice: *first,* on June 25, 2013, by way of constructive service; and *second,* on July 4, 2013, via registered mail. Thus, it had at the most, until August 5, 2013[55] to register its protest thereon. There being no administrative protest filed by petitioner, the subject assessment duly issued by respondent against it attained immutability and may no longer be disturbed. When the assessment has become final

[55] August 3 and 4, 2013 fell on a Saturday and Sunday respectively.

and executory, the taxpayer is precluded from disputing the correctness thereof, or from invoking any defense that would warrant any review of its liability on the merits.[56]

WHEREFORE, the Petition for Review dated November 3, 2017, filed by petitioner Active Multi-Marketing & Merchandising Services, Inc. is **DENIED**, for lack of merit. The impugned Decision and Resolution dated May 25, 2017 and October 3, 2017 respectively, both rendered by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[56] See *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 134062, April 17, 2007; and *Republic of the Philippines vs. Lim Tian Teng & Co., Inc.,* G.R. No. L-21731, March 31, 1966.

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