REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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ACTIVE MULTI-MARKETING & MERCHANDISING SERVICES, INC., Petitioner,	**CTA Case No. 8744**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 03 2017 ; 11:13 am

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on June 13, 2017, with respondent's **"MANIFESTATION & MOTION"** filed on July 12, 2017, seeking the reversal and setting aside this Court's Decision dated May 25, 2017, the dispositive portion of which reads:

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

In the *Motion for Reconsideration*, petitioner argues that the Waiver executed by petitioner suffers from substantial infirmities which are beyond its power to correct; that resort to constructive service by the respondent was improper in the absence of proof that personal service failed; that petitioner never received the *Formal*

Letter of Demand (FLD) and the *Assessment Notice* (AN) through registered mail; that the AN supposedly received by petitioner fails to comply with the basic requirements for the validity of an assessment (*i.e.*, in the AN for the alleged deficiency income tax, there is no computation of the alleged tax liabilities); that even granting that the execution of the Waiver and service of the AN are in order, several of the assessments for value-added tax, expanded withholding tax, and withholding tax on compensation have nonetheless prescribed; and that being founded on void FLD and AN, the Warrant for Distraint and Levy.

On the other hand, respondent, in his *Manifestation & Motion*, manifest and move to adopt the factual findings and legal conclusions of all the members of this Court in the assailed Decision. Respondent further argues that the instant *Motion for Reconsideration* is clearly a *pro forma* motion.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

A careful perusal of the instant *Motion for Reconsideration* shows that the following arguments are mere reiterations of matters which have already been considered, weighed, passed upon and exhaustively resolved by the Court in the assailed Decision, to wit:

1. That resort to constructive service by the respondent was improper in the absence of proof that personal service failed; and
2. that petitioner never received the FLD and the AN through registered mail.

Hence, finding no compelling reason to reconsider, modify or reverse the said Decision insofar as the foregoing arguments are concerned, We shall no longer belabor, in this Resolution, to repeat the disquisitions made therein regarding the said arguments.

The subject Waiver is valid, and thus, the period to assess was extended by virtue thereof.

NJ

Petitioner argues the Waiver it executed suffers from substantial infirmities which are beyond its power to correct. In support of such argument, petitioner contends that the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.* (the "*Next Mobile* case"),[1] which established an exception to the rule that a defective Waiver does not extend the period to assess tax, is not applicable to the instant case.

Relative thereto, petitioner points out that in the *Next Mobile* case, five separate waivers, all of which bore the same infirmities and defects that were not corrected either by the taxpayer or the Bureau of Internal Revenue (BIR), despite numerous opportunities to do so; and that the <u>repeated</u> and <u>uncorrected</u> mistakes of both parties in the said case were found to be "highly suspicious" and even led the Supreme Court to suggest that such gross negligence can be interpreted as collusion between the BIR and the taxpayer.

We disagree with petitioner.

Petitioner missed the clear import of the *Next Mobile* case in establishing an exception to the rule that a defective Waiver does not extend the period to assess tax. To be sure, it is not because there were separate defective waivers that were executed and that there were repeated and uncorrected mistakes of both parties.

Rather, as explicitly stated in the said case, the reasons for the exception are the following:

1. The parties are *in pari delicto* or "in equal fault";
2. The Supreme Court has repeatedly pronounced that parties must come to court with clean hands;
3. The taxpayer is estopped from questioning the validity of its Waivers; and
4. The Court cannot tolerate this highly suspicious situation.

A closer examination of the foregoing would reveal that the *second*, *third* and *fourth* reasons hinge on the *first* reason, *i.e.*, that the parties are *in pari delicto.*

Without doubt, respondent is at fault in relation to the execution

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

and acceptance of the subject Waiver for failure to observe the procedures laid down in Revenue Memorandum Order (RMO) No. 20-90[2] and Revenue Delegation Authority Order (RDAO) No. 05-01[3]. Nevertheless, petitioner cannot claim that it is without fault in observing the same administrative issuances.

Simply stated, petitioner is equally at fault with respondent.

In the instant case, petitioner cannot deny that it has executed the subject Waiver, through its President, Rogelio J. dela Cruz as this fact, among others, was stipulated by both petitioner and respondent in their *Joint Stipulation of Facts and Issues*,[4] viz:

> "5. On 28 June 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'** (the 'Waiver')."[5] *(Emphasis and underscoring supplied)*

In this connection, it must be emphasized that the parties, especially petitioner, cannot escape the binding effect of the foregoing judicial admission. This is so because the Supreme Court, in *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*,[6] classified a stipulated fact as a judicial admission, as follows:

> "The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. **The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly**

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

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

[4] Docket—Vol. I, pp. 421 to 426.

[5] *Supra*, at p. 422.

[6] G.R. No. 157594, March 9, 2010; *Commissioner of Internal Revenue vs. Petron Corporation*, G.R. No. 185568, March 21, 2012.

> **dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.**" *(Emphasis supplied)*

It is well-settled that a judicial admission conclusively binds the party making it.[7] **A judicial admission also removes an admitted fact from the field of controversy.** Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and **all proofs to the contrary or inconsistent therewith should be ignored**, whether objection is interposed by the party or not.[8]

Thus, since it is clear that petitioner executed the subject Waiver, the non-submission of a notarized written authority, appointing Mr. dela Cruz to sign the same on behalf of petitioner, is an act of omission attributable to petitioner. In other words, since petitioner executed the said Waiver, it should have submitted the required notarized written authority. Having caused this significant infirmity of the subject Waiver, petitioner is also at fault. Consequently, petitioner, being at fault too, comes to this Court with unclean hands, and thus, cannot be allowed to benefit from its own wrongdoing.

Furthermore, having executed the subject Waiver, petitioner is likewise in estoppel as it allowed respondent to rely on said Waiver, and did not raise any objection against its validity until it was assessed by respondent for the subject deficiency taxes.

Finally, the Court looks into the following alleged 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.

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[7] *Cahilig, et al. vs. Terencio, et al.*, G.R. No. 164470, November 28, 2011.
[8] *Republic of the Philippines vs. De Guzman*, G.R. No. 175021, June 15, 2011.

The Court finds the first and second alleged infirmities as highly suspicious situations.

As for the *first* infirmity, since petitioner executed the subject Waiver, as earlier shown, it could have submitted also a notarized written authority for Mr. dela Cruz, and yet it did not do so. On the part of respondent, the latter could have required the submission of such authority even before accepting the subject Waiver, but he did not do so.

Moreover, as regards the *second* infirmity, knowing that the Waiver it executed has no date of acceptance by respondent, petitioner could have easily called the latter's attention, and requested to indicate such date. But still, petitioner did not do so. For his part, respondent is shown to be grossly negligent in not indicating the said required information.

The said *third* and *fourth* supposed infirmities, however, may not be considered as such. This is so because, as regards the said *third* alleged infirmity, such information is not required to be stated in the Waiver. The reason for not requiring the said information is because, at the point of executing the Waiver, no determination has yet been made as regards any "deficiency taxes being assessed by respondent". Furthermore, as for the *fourth* supposed infirmity, the same has been complied with.[9]

In summary, to the mind of the Court, if petitioner had all the intentions to give legal effect to the Waiver it executed, and respondent had every inclination to perform his duties, both parties could have easily observed the procedures laid down in the subject administrative issuances. The fact that they did not creates a highly suspicious situation, which this Court will likewise not tolerate, nor countenance.

Hence, 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.[10]

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[9] Refer to Exhibit "R-2-C", BIR Records, p. 231.

[10] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

The subject tax assessments are valid.

Petitioner avers that the AN supposedly received by petitioner fails to comply with the basic requirements for the validity of an assessment. Specifically, according to petitioner, in the AN for the alleged deficiency income tax, there is no computation of the alleged tax liabilities; and thus, it cannot be said that the said AN is the assessment contemplated by law.

Petitioner's averment is untenable.

It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.[11] Thus, since petitioner did not raise the issue of lack of computation in the deficiency income tax assessment, the same should not be considered any longer.

But even granting that petitioner can still raise the said issue at this stage, the same is not meritorious. This is so because the *Formal Assessment Notice* (Part I),[12] and the *Details of Discrepancies*,[13] both dated June 24, 2013, which were shown to have been served to petitioner, indicate how the assessed taxes, including the subject deficiency income tax, were computed or determined. Thus, the said deficiency income tax assessment cannot be treated as void.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[11] *Toshiba Information Equipment (Philippines), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.
[12] BIR Records, pp. 358 to 359.
[13] BIR Records, pp. 355 to 357.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice