REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

M. TECH PRODUCTS PHILIPPINES, INC., Petitioner,	**CTA Case No. 9331**
	Members:
- versus -	**DEL ROSARIO,** P.J., *Chairperson,* **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUL 09 2019 2:06 pm

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on January 23, 2019, without respondent's comment thereon despite due notice[1], praying for the setting aside of this Court's Decision dated December 11, 2018, the dispositive portion of which reads:

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

In support of the *Motion for Reconsideration*, petitioner relies on the following grounds, to wit:

1) This Court has jurisdiction over the case—the instant Petition having been filed within the 30-day period from receipt of the

[1] Per Records Verification dated March 13, 2019.

letter dated March 10, 2016, and received by petitioner on March 15, 2016; thus, falling under the jurisdiction of this Court on "other matters";

2) Petitioner has filed its income tax return and such other pertinent tax returns for taxable year 2010, such fact is confirmed in the *Formal Assessment Notice* dated December 18, 2014 issued by respondent;

3) The case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[2] (the "*Next Mobile* case") cannot be applied, since in this case, petitioner is not at fault and that case was an exception to the rule; and

4) The alleged deficiency tax assessment against petitioner is prescribed already, thus, cannot ripen into a valid assessment.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit, and must perforce be denied.

The [3]instant case is unappealable to this Court.

It is the primary argument of petitioner that this Court has jurisdiction to entertain the present appeal.

Petitioner is certainly mistaken.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[4] As stated in the assailed Decision, the subject tax assessments have already become final, unappealable and therefore, demandable, upon the expiration of the 30-day period to protest the same.

The term *"final"* is defined as *"precluding further litigation"*;[5] while the word *"unappealable"* means *"not capable of being appealed"*.[6]

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[2] G.R. No. 212825, December 7, 2015.
[3]
[4] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[5] Random House Webster's Dictionary of the Law, © 2000, p. 186.

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Relative thereto, We reiterate Our ruling that this Court has no jurisdiction to take cognizance of this case, because the protest of petitioner was filed beyond the period allowed by law, and therefore the subject tax assessments have become final, executory and unappealable. Hence, this Court is no longer empowered to entertain the present appeal.

Be that as it may, even granting that this Court has jurisdiction to entertain the present appeal, the arguments raised by petitioner in its *Petition for Review* are clearly without merit, as sufficiently addressed and discussed in the assailed Decision. This Court finds no valid ground, in the said *Petition for Review* and in the instant *Motion for Reconsideration*, to cancel the subject tax assessments and to declare that petitioner is not liable thereto.

Petitioner failed to prove that it submitted the pertinent tax returns.

In arguing that it filed its 2010 Income Tax Return (ITR), petitioner points to the testimony of its witness about the supposed fact of the said ITR's filing on March 22, 2011. Additionally, petitioner posits that the computation of interest confirms that its tax returns for 2010 were timely filed.

We disagree.

In determining the facts of the case, We cannot simply rely on the testimony of a witness, who, in turn, merely relies on a particular document, which was not admitted in evidence. For this Court to be sure on the actual date of filing of petitioner's 2010 ITR, such latter document must be presented. After all, testimonial evidence is easy of fabrication.[7]

Furthermore, the respective imposition of interest on the basic tax is *non sequitur* that tax returns were timely filed.

Section 249(A) of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

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[6] *Ibid.*, p. 441.
[7] *Government Service Insurance System vs. The Court of Appeals, et al.*, G.R. No. 52080, May 28, 1993.

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – **There shall be assessed and collected on any unpaid amount of tax, interest** at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment until the amount is fully paid.**" *(Emphases supplied)*

Based on the foregoing, interest on any unpaid amount of tax shall be assessed and collected from the date prescribed for payment until the amount is fully paid. In other words, so long as there is an unpaid amount of tax, interest is imposed thereon from the date prescribed for the payment thereof.

Thus, the reckoning from the date prescribed for the payment of the subject taxes does not necessarily mean that the corresponding tax returns were filed. It simply means that there is an unpaid amount of tax. Such being the case, the imposition of interests in this case is not an indication that said tax returns were timely filed.

Nevertheless, it must be emphasized that the *timely filing* of the subject tax returns is **not** specifically the issue here. Rather, it is the determination of the *actual date* of the filing thereof.

Section 203 of the NIRC of 1997 reckons the three-year prescriptive period from the last day prescribed by law for the filing of the tax return *or* **the actual date of filing of such return**, *whichever comes later.* Hence, in determining prescription under the said Section 203, petitioner must specifically show the *actual date* of filing of the pertinent tax returns, for this Court to know which came later: the due date prescribed by law or such actual date of filing.

To repeat, it is incumbent upon a taxpayer, who wants to avail of the benefits of Section 203 of the NIRC of 1997 by setting up prescription as an affirmative defense, **to prove that he submitted a return**. If he fails to do so, the conclusion should be that no such return was filed, in which case the Government has ten (10) years within which to make the corresponding assessments.[8] In this case, it is clear that petitioner failed to do so.

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[8] *Taligaman Lumber Co., Inc. vs. The Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962.

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Correspondingly, this Court's finding that the assessment of the subject taxes has not prescribed is sustained.

The* Next Mobile *case is applicable to the instant case.

Petitioner also contends that the *Next Mobile* case finds no application to the present case, and that the doctrine of *in pari delicto* cannot be used. Specifically, petitioner points out that in this case, there is only one (1) Waiver, unlike in the *Next Mobile* case, wherein there are five (5) Waivers which were executed. Moreover, petitioner claims, in effect, good faith on its part.

We do not agree with petitioner.

While it is true that the *Next Mobile* case involves the execution of five (5) waivers by the concerned taxpayer, such case does not denigrate its application to cases where more or less than five (5) waivers are involved. This is so because a careful reading of the ruling in the said case would reveal that what is critical is whether the parties are *in pari delicto.*

In the assailed Decision, this Court pointed out that the parties herein are *in pari delicto*, to wit:

> "In the instant case, both parties are evidently *in pari delicto.*
>
> Although petitioner, in effect, denies ever having authorized Mary Grace T. Aguilar to sign the subject Waiver, it appears however, that at the administrative level, petitioner admitted that the signatory was, in fact, authorized, as shown in petitioner's letter dated April 1, 2015.[9] The pertinent portions thereof read as follows:
>
>> '**Waiver must be signed by the CIR or Revenue Official Authorized by him and that the date of acceptance should be indicated.**
>>
>> The BIR provided a waiver template which the Company fill-out. The said waiver was pre-

[9] Exhibit "R-10", BIR Records, pp. 595 to 597.

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> signed by two witness – Felinor Pascua and Susana Santos. <u>This waiver was returned to the BIR after the Company have it signed by their authorized representative.</u> After which, the Company didn't hear anything from the BIR about the said waiver." *(Underscoring supplied)*

Thus, petitioner cannot deny that it authorized Mary Grace T. Aguilar as signatory of the subject Waiver.

On the other hand, there is no showing that respondent's representative, who is presumed to know that the delegation must be in writing and duly notarized pursuant to the said BIR issuances, required from petitioner's representative, such written and notarized authorization/delegation before accepting the subject Waiver.

Anent the absence of the date of acceptance by respondent, petitioner's authorized representative received the Waiver without requiring that the date of acceptance be indicated therein. Hence, both are equally remiss in ensuring compliance with legal requirements.

In the same vein, the lack of indication that petitioner was furnished a copy of the subject Waiver could have been likewise averted to, if petitioner and respondent made sure that the subject Waiver was fully compliant with all the legal requirements therefor.

Thus, just as in the above-quoted *Next Mobile* case, the parties herein are similarly *in pari delicto*, and did not come to this Court with clean hands. Therefore, both parties are estopped from questioning the validity of the subject Waiver because they performed contributory acts in the invalidity thereof."

Thus, the *Next Mobile* case is clearly applicable to the instant case. Such being the case, petitioner could not claim good faith on its part.

We do not subscribe to the contention of petitioner that it could not be faulted in believing that the waiver was not notarized and did not bear the proper signatures; and that only during the proceedings for the present *Petition for Review* that petitioner learned of a final version of the subject waiver.

Good faith is a state of mind, denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.[10]

In this case, petitioner cannot be said to be free from knowledge of circumstances which ought to put it upon inquiry. Needless to state, the execution of a Waiver of the statute of limitations under the NIRC connotes that a taxpayer is willing to agree with the Bureau of Internal Revenue (BIR) to extend the period to assess it of any tax liability. Thus, it behooves such taxpayer to know or be put on inquiry whether the executed Waiver has been accepted by the BIR and on whether the same was executed in accordance with law.

For petitioner to argue, in effect, that after submitting an executed Waiver to BIR, there is nothing left to do, runs counter to the claim of good faith.

WHEREFORE, premises considered, the instant *Motion for Reconsideration* 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
Associate Justice

[10] *Montejo vs. Commission on Audit, et al.*, G.R. No. 232272, July 24, 2018.