Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

STARSMASH BADMINTON CENTER CORPORATION,
Respondent.

CTA EB No. 1379
(CTA Case No. 8523)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAR 21 2017 2:55 pm

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DECISION

CASANOVA, *J.*:

This Petition for Review[1] is filed by petitioner-Commissioner of Internal Revenue pursuant to Section 2 (a)(1)[2] Rule 4 of Administrative Matters No. 05-11-07-CTA, otherwise known as the "Revised Rules of the Court of Tax Appeals". It assails the Decision[3] dated May 29, 2015

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[1] CTA *En Banc* Rollo, pp. 6-12

[2] "**SEC. 2.** Cases within the jurisdiction of the Court en banc. – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;"

[3] Division Docket, pp. 357-379

and Resolution[4] dated October 20, 2015 rendered by the First Division of this Court in CTA Case No. 8523, which cancelled and set aside Assessment Notice No. 39-B04-07 issued against respondent-Starsmash Badminton Center Corporation for its alleged deficiency income tax, value-added tax, improperly accumulated earnings tax and compromise penalty in the aggregate amount of ₱614,428.28 for taxable year 2007.

Petitioner Commissioner of Internal Revenue (CIR), is the one vested by law with the authority to assess and collect all national internal revenue taxes, fees, and charges. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Starsmash Badminton Center Corporation is a corporation duly organized and existing under Philippine Laws with address at 21 Sta. Ana St., Magallanes Village, Makati City, and is represented by its President, Mr. Rajesh Chulani.

On April 19, 2010, a Post Reporting Notice dated March 19, 2010 was received by Starsmash's accountant Ms. Nenita Basconcillo. The Post Reporting Notice was issued pursuant to TVN No. 00076373 dated July 1, 2008 which covered all of respondent's internal revenue taxes for taxable year 2007.

On July 28, 2010, respondent's President, Mr. Rajesh Chulani, went to BIR Revenue District Office No. 39 for an informal conference. Mr. Chulani executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code ("Waiver" for brevity) in favor of the BIR. The Waiver extended the period of limitations until December 31, 2011.

Thereafter, on October 24, 2011, respondent received a Preliminary Assessment Notice (PAN) dated September 5, 2011, assessing it for deficiency value-added tax (VAT), expanded withholding tax (EWT), annual registration fee and compromise penalty in the total amount of ₱3,352,642.93.

On July 19, 2012, respondent received a Final Notice Before Seizure dated June 26, 2012 and July 12, 2012, respectively, covering

[4] *Ibid.*, pp. 405-411

respondent's deficiency income tax, VAT, improperly accumulated earnings tax and compromise penalty in the total reduced amount of ₱614,428.28 for taxable year 2007. The notices pertain to the CIR's Assessment No. 39-B04-07.

Treating the same as the CIR's final decision on the matter, respondent filed with the Court of Tax Appeals (CTA) a Petition for Review with Urgent Application for the Issuance of a Writ of Preliminary Injunction on July 31, 2012.

In a Resolution dated August 29, 2012, the CTA First Division granted respondent's application for preliminary injunction after treating it as a motion for suspension of collection of taxes, subject, however, to the condition of posting an acceptable surety bond in the amount of ₱921,642.42.

Thereafter, trial ensued.

On May 29, 2015, a Decision[5] was rendered by the court *a quo* cancelling the deficiency assessments for having been issued beyond the three-year period within which to assess any deficiency taxes. The *fallo* of the said Decision reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, BIR Assessment No. 39-B04-07 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

On June 23, 2015, petitioner filed a Motion for Partial Reconsideration (Decision dated 29 May 2015][6], praying that the above Decision be reversed and set aside. However, in the October 20, 2015 Resolution[7], the court *a quo* denied petitioner's Motion for Reconsideration for lack of merit.

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[5] *Supra* No. 3
[6] Division Docket, pp. 380-385
[7] *Supra* No. 4

After asking for an extension of time, petitioner elevated the matter to the Court *En Banc* on November 11, 2015 *via* the instant Petition for Review[8]. He prays that the Resolution dated October 20, 2015 which denied his Motion for Reconsideration be reversed and set aside by the Court *En Banc*.

In a Resolution[9] dated February 16, 2016, the Court *En Banc* directed respondent to file its Comment within ten (10) days from receipt thereof. Unfortunately, however, as per Records Verification[10] dated March 31, 2016, respondent failed to file its comment.

Consequently, in the Resolution[11] dated April 27, 2016, the Court *En Banc* gave due course to the instant Petition and, further, deemed the case submitted for decision.

In his Petition for Review, petitioner merely reiterated the previous issues[12] he raised in his Motion for Reconsideration filed with the court *a quo*. His grounds[13] for the present Petition are as follow:

> The First Division erred in ruling that the assessment issued against respondent is void due to petitioner's failure to strictly comply with the notice of requirements laid down in Section 228 of the NIRC of 1997, as amended, and Revenue Regulation No. 12-99 amounting to denial of respondent's right to due process; and
>
> The First Division erred in ruling that the Waiver of the Statute of Limitations executed by respondent is defective and invalid, hence, without force and effect.

Petitioner asserts that the court in division erred in holding that he failed to properly comply with a constructive mode of service under Revenue Regulations (RR) No. 12-99[14]. He insists that since respondent

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[8] *Supra* No. 1
[9] CTA *En Banc* Rollo, pp. 47-48
[10] *Ibid.*, p. 49
[11] *Id.*, pp. 51-52
[12] Grounds, Motion for Reconsideration, Division Docket, pp. 380-381
[13] Grounds for the Petition, Petition for Review, CTA *En Banc* Rollo, p. 7
[14] "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

already had admitted the receipt of the PAN, it therefore can be deemed to have also received the Final Assessment Notice (FAN) since both documents were served to and received in the same address. As to the issue of Waiver, petitioner claims that by voluntarily signing the waiver and not questioning it during investigation in the administrative level, a valid agreement was therefore made and respondent is already estopped from questioning its validity under Article 1305[15] of the New Civil Code. Lastly, petitioner avers that the date of notarization of the Waiver may be reasonably deemed as the date of acceptance since it can be presumed that the parties appeared, signed and swore before the presence of the notary public. Since no evidence was presented to destroy the regularity of the performance of the duty of the Notary Public, the waiver is valid and should bind respondent.

After due consideration of the arguments presented by petitioner and thorough evaluation of the records of this case, *We* find no merit in the instant Petition.

Petitioner's assessments are void for failure to properly observe due process.

Time and again, *We* consistently bear emphasis on the importance of issuing a FAN, not only for the purpose of informing the taxpayer concerned of its deficiency taxes but, more importantly, to enable the filing of protest. For it is the act of timely filing a protest that makes an assessment a disputed one, which in turn qualifies it to fall under the exclusive appellate jurisdiction of the CTA. There can be no final, executory and demandable assessment where there is no showing that the subject PAN and FAN were properly and duly served upon the taxpayer concerned.[16]

In the present case, petitioner assails the findings of the court *a quo* in the Decision dated May 29, 2015 and Resolution dated October 20, 2015 for not seeing the importance of the stipulated fact that

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TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", dated September 6, 1999

[15] **Art. 1305.** A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

[16] *See* People of the Philippines vs. Joseph Typingco, CTA EB Crim No. 021 (CTA Crim Case No. O-114), September 27, 2013

respondent had received the PAN dated September 5, 2011.[17] Petitioner continues that by admitting receipt thereof, respondent is deemed to also have received the FAN since both documents were served and received at the same address.

We are not persuaded.

Noticeably, the tendency discernible in petitioner's argument tends to be imaginative and speculative rather than logical - it is *non sequitur*. Not because a taxpayer initially received an assessment notice will it automatically be presumed to have received all subsequent notices for the sole reason that it is served in the same address. As contemplated in the maxim, *ei incumbit probatio qui dicit, non qui negat,*[18] the rule is that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service by concrete and competent evidence, not by mere surmises.

Based on the case records, in an attempt to prove that there was a valid service of FAN, petitioner presented Revenue Officer Ma. Lisa S. Grajo, who testified, by way of a Judicial Affidavit[19], that she personally served the FAN along with the Formal Letter of Demand and Details of Discrepancies (FLD-DD) at Mr. Chulani's known address, *to wit*:

> "5.20 Q. Was the FAN served immediately?
>
> A. Yes. I personally served the same at Mr. Chulani's known address where I also served the PAN. Located at 21 Sta. Ana St., Magallanes Village, Makati City. Due to the absence of Mr. Chulani who was allegedly out of town, I served a copy of the FAN along with the attached Formal Letters of Demand and Discrepancies **by leaving copies of the documents to Yasser Masola and a certain Vanessa, both of whom were present at Mr. Chulani's known address and who introduce[d] [sic] themselves as office staff of STRJ Marketing.**" *(Emphasis Ours)*

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[17] Paragraph 5, Joint Stipulation of Facts, Division Docket, p. 131
[18] "He who asserts, not he who denies, must prove."
[19] Exhibits "10" and "10-A" for the BIR

However, during the cross-examination of Revenue Officer Grajo in the November 21, 2013 hearing, she revealed little information as to the circumstances surrounding her service of the FAN, *viz*:

"Atty. Contacto:

Q. I now refer you to Question No. 5.20, when you answered that you left a copy of the Final Assessment Notice to a certain Yasser Masola and another copy of the Final Assessment Notice to one Vanessa. They introduced themselves as staff of STRJ Marketing. How did you identify the identity of the alleged persons who received the Final Assessment Notice?

Ms. Grajo:

A. I went to the house of Rajesh Chulani and somebody came out. It was Yasser Masola, a male, and then, Vanessa; and I was trying to serve this letter but they don't want to receive. **So, I noted here, 'constructively served'**. And then, I asked their names. 'What is your name?' And he told me Yasser Masola. And the lady said she is Vanessa but their office is at STRJ marketing but they don't want to sign.'

Atty. Contacto:

Q. Madam Witness, are they connected with Starsmash Badminton Center?

Ms. Grajo:

A. I don't know. What I know is the house of Rajesh Chulani.

Atty. Contacto:

Q. **Are they the responsible officers of Starsmash Badminton Center?**

Ms. Grajo:

A. I don't know also.

Atty. Contacto:

Q. Ok[*a*]y. Thank you.

Ms. Grajo:

A. Their office is SRTJ Marketing.

Atty. Contacto:

Q. STRJ? But the petitioner in this case is Starsmash Badminton Center?

Ms. Grajo:

A. Yes. But they are living in that house. They were in that house.

Atty. Contacto:

Q. **Did they say that they live in that house or they were just staying?**

Ms. Grajo:

A. I did not ask them. I only asked them only what are their names.

Atty. Contacto:

Q. Ok[*a*]y. Thank you for that."[20] *(Emphases Ours)*

Apparently, petitioner served the FAN *via* constructive mode of service. While such mode is recognized under Section 3.1.7[21] of Revenue

[20] Transfer of Stenographic Notes of November 21, 2013 hearing, pp. 19-21

[21] **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.**

Regulations (RR) No. 12-99 as a valid mode of serving assessment notices, the procedure on how it is effected should, nevertheless, be strictly observed. There has been a plethora of cases[22] wherein the Supreme Court held that the procedures provided in Section 3 of RR No. 12-99 are mandatory, and non-compliance therewith renders the assessment void. As such, 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.

Unfortunately, petitioner only complied with the first requisite in effecting constructive service, that petitioner *via* Revenue Officer Grajo, left the FAN with FLD-DD in the premises of the taxpayer. As to the second and third requisites, petitioner failed to sufficiently prove, through testimonial and documentary evidence, that the fact of constructive service was attested to, witnessed and signed by at least two revenue officers; and, that a written report of the constructive service was filed with the BIR Records. More so, it is worth noting that petitioner, likewise, failed to prove that Yasser Masola and a certain Vanessa have been vested with the authority to receive parcels on behalf of respondent, or at the very least, that they were connected with Starsmash Badminton Center Corporation.

Again, by directly denying receiving the assessment, petitioner is now burdened to present factual evidence necessary to establish his claim. [23] Needlessly, there must be strict compliance with the requirements of statutes authorizing substituted or constructive

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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 Ours)*

[22] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc, G.R. No. 197515, July 2, 2014; Commissioner of Internal Revenue vs. Metro Star Superama, Inc, G.R. No. 185371, December 8, 2010; Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, G.R. No. 172598, December 21, 2007; Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R. Nos. 159694 & 163581, January 27, 2006; Estate of the late Juliana Diez vda. De Gabriel vs. Commissioner of Internal Revenue, G.R. No. 155541, January 27, 2004; Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, Rogelio A. Dio and Virginia S. Dio, G.R. No. 128315, June 29, 1999; Commissioner of Internal Revenue vs. Algue, Inc., G.R. No. L-28896, February 12, 1988

[23] Section 1, Rule 131 of the Rules of Court

service.[24] In the present case, a re-evaluation of the evidence presented by the parties during trial in the court *a quo* reveals that all circumstances of the alleged constructive service of the FAN point to the fact that the same was tainted with irregularities and, henceforth, cannot be held valid in accordance with law and pertinent jurisprudence.

The Waiver of the Statute of Limitations is defective, hence, without force and effect.

Petitioner argues that respondent is estopped from impugning the validity of the waiver which respondent itself has voluntarily executed. He cites the case of *Rizal Commercial Banking Corporation vs Commissioner of Internal Revenue*[25] to bolster his argument.

Unfortunately, *We* are not swayed.

Parenthetically, Article 1431 of the New Civil Code provides that the doctrine of estoppel is anchored on the rule that "an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." However, Article 1432 of the same code expressly states that the principles of estoppel are adopted insofar as they are not in conflict with the provisions of the New Civil Code, the Code of Commerce, the Rules of Court and special laws, such as the National Internal Revenue Code (NIRC). Thus, being a principle in equity, estoppel cannot be applied in the presence of a law which is clearly applicable in a given case.

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[26], the Supreme Court ruled that estoppel does not apply as an exception to the statute of limitations on the assessment of taxes, *viz*:

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[24] *See* Ma. Imelda M. Manotoc vs. The Honorable Court of Appeals, et. al., G.R. No. 130974, August 16, 2006; *citing* 62B Am Jur 2d, Process 150, pp. 857-858, (Miller v. Corning Glass Works, 102 Ariz 326, 429 P2d 438)
[25] G.R. No. 170257, September 7, 2011
[26] G.R. No. 178087, May 5, 2010

> "The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. **As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate.** Simply put, the doctrine of estoppel must be sparingly applied.
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> Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed." *(Emphases Ours)*

Likewise, "a waiver of the statute of limitations under the NIRC, is not an ordinary agreement, according to the Supreme Court, it is to a certain extent, a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. It is governed not by the general provisions of the New Civil Code but by the National Internal Revenue Code following the basic principle in statutory construction that a special law prevails over a general law."[27]

Anent the *Rizal Commercial Banking Corporation (RCBC)* case cited by petitioner, *We* find no application of the doctrinal

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[27] Commissioner of Internal Revenue vs. Intel Technology Philippines, Inc., CTA EB Case No. 379, November 18, 2008

pronouncements made therein in the present case. In hindsight, *We* have denied RCBC's petition for lack of merit, for the reason that by receiving, accepting and paying portions of the reduced assessment against it, RCBC bound itself to the new assessment, therefore implying that it recognized the validity of the waivers. Hence, RCBC could not later on assail the validity of the waivers after it had received and accepted certain benefits as a result of the execution of the said waivers. In fact, when affirmed by the Supreme Court on appeal, it held that "[h]ad petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid."

Unfortunately, such is not the scenario with the present case. No partial payment was made nor any implied recognition by respondent of the Waiver's validity. Thus, having different factual milieu, the RCBC case cannot be applied.

Finally, petitioner theorizes that the date of notarization of the Waiver may also be reasonably deemed as the date of acceptance by virtue of the attestation made by the Notary Public that the parties personally appeared thereto.

We find petitioner's hypothesis untenable.

The case of *Commissioner of Internal Revenue vs. East Asia Power Resources Corporation*[28] is instructive on the matter, *viz*:

> "The date of notarization cannot be regarded as the date of acceptance for the same refers to different aspects, as the notary public is distinct from the Commissioner of BIR who is authorized by law to accept Waivers of the Statute of Limitations.
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> Moreover, there is no indication that the Revenue District Officer was present during the notarization of the waivers. A plain reading of the 'Acknowledgement' portion reveals that only one person appeared before the notary public as shown by the use of the singular pronoun 'he/she' and such person is the

[28] CTA EB Case No. 879, June 17, 2013

representative of respondent. Pertinent portions of the acknowledgement are quoted below:

'*x x x* personally appeared before me ______ *x x x* known to me and to me known to be the same person who executed the foregoing waiver for and in behalf of the said taxpayer *x x x*.'

Clearly, the person who appeared before the notary public is the one who 'executed the foregoing waiver for and in behalf of the said taxpayer', which can only be taken to mean as referring to the representative of respondent and not the Revenue District Officer.

Furthermore, the Revenue District Officer could not have appeared before the notary public because the acceptance of the BIR, as a matter of procedure, cannot be had unless and until the same has been earlier notarized as manifested in Revenue Delegation Authority Order No. 05-01, to wit:

'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.'" *(Citations Omitted)*

Accordingly, finding no reversible error, *We* find no cogent reason or justification to disturb the conclusions reached by the court *a quo*.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated May 29, 2015 and Resolution dated October 20, 2015 in CTA Case No. 8523 are both **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(I join PJ Del Rosario's Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I join PJ Del Rosario's Concurring Opinion)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

STARSMASH BADMINTON CENTER CORPORATION,
Respondent.

CTA EB NO. 1379
(CTA Case No. 8523)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:
MAR 2 1 2017 2:00 p

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) on November 23, 2015 and in affirming the assailed **May 29, 2015 Decision** and **October 20, 2015 Resolution** of the Court in Division which cancelled and set aside Final Assessment Notice No. 39-B04-07 (FAN) issued against respondent Starsmash Badminton Center Corporation (SBCC).

In denying the present Petition for Review, the *ponencia* sustains the findings of the Court in Division that the CIR failed to comply with the requirements of a valid constructive service of the FAN against SBCC. Specifically, the CIR failed to establish that the constructive service of the FAN was attested to, witnessed and signed by at least two (2) revenue officers and that the revenue officer who constructively served the FAN made a written report of the matter and attached the same to the docket (BIR records) of the case, as required under Revenue Regulations (RR) No. 12-99. For the CIR's failure to strictly comply with the notice requirements laid down in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and RR No. 12-99, the *ponencia* holds that FAN issued against SBCC is void.

The *ponencia* likewise affirms the conclusion of the Court in Division which invalidated the Waiver issued by SBCC on the basis of the Supreme Court's pronouncements in *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated,*[1] and *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue.*[2] Truth to tell, the conclusion in the assailed Decision and Resolution, to which I concurred, were made on the basis of the then prevailing jurisprudence regarding Waivers emphasizing the significance of strict compliance with the procedure for their execution. Since the Waiver executed by SBCC did not comply with the procedure set forth by the Bureau of Internal Revenue (BIR) itself, the Court in Division invalidated the Waiver and ruled that the same was not sufficient to extend the prescriptive period for the CIR to assess SBCC of deficiency taxes.

In the more recent *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils. Inc.),*[3] which was promulgated on **December 7, 2015 or a few months after the assailed Decision and Resolution were rendered**, the Supreme Court applied the doctrine of estoppel as an exception to the statute of limitations on the assessment of taxes, *viz.*:

> "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

[1] G.R. No. 187589, December 3, 2014.
[2] G.R. No. 162852, December 16, 2004.
[3] G.R. No. 212825, December 7, 2015.

> suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities."

I submit that unless and until modified by the Supreme Court *En Banc*, the more recent pronouncement in the *Next Mobile case*[4] should be applied in determining the validity of waivers executed by taxpayers. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[5]

All told, after re-assessment of the case and taking into consideration the pronouncement of the Supreme Court in the *Next Mobile case*,[6] I reconsider the position I have previously taken. I submit that the validity of the Waiver must be upheld as the parties in this case are in *pari delicto* in not ensuring that the requirements set forth in Revenue Memorandum Order No. 20-90 and Revenue Delegation Authority Order No. 05-01 were duly observed. Records show that the parties continued to deal with each other despite their knowledge of the Waiver's infirmities. Both parties did not even bother to correct the Waiver's defects. In the Letter dated July 1, 2011 of SBCC's counsel to Ms. Clavelina S. Nacar, Revenue District Officer of RDO No. 39, there was no mention about the Waiver's invalidity. Indeed, by its very own acts, SBCC is estopped from questioning the Waiver's infirmities.

Notwithstanding the validity of the Waiver, which makes the issuance of the FAN on October 7, 2011 within the extended period provided in the Waiver, the FAN remains void since, as afore-discussed, the CIR failed to observe the notice requirements laid down in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and RR No. 12-99 for the issuance of a valid FAN.

All told, I VOTE to DENY the Petition for Review filed by the Commissioner of Internal Revenue on November 23, 2015 and

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[4] *Supra*, note 3.
[5] Development Bank of the Philippines v. NLRC, March 1, 1995, 242 SCRA 59; Albert v. Court of First Instance of Manila (Branch VI), L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., Raul L. Lambino v. The Commission on Elections, G.R. No. 174153, October 25, 2006.
[6] *Supra,* note 3.

AFFIRM the assailed **May 29, 2015 Decision** and **October 20, 2015 Resolution** of the Court in Division which cancelled and set aside Final Assessment Notice No. 39-B04-07 issued against Starsmash Badminton Center Corporation.

ROMAN G. DEL ROSARIO
Presiding Justice