REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1729 (CTA Case No. 8972)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
2100 CUSTOMS BROKERS, INC., Respondent.	Promulgated: MAY 20 2019 3:43 pm

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RESOLUTION

Fabon-Victorino, J.:

Challenged in petitioner's *Motion for Reconsideration* dated February 1, 2019[1] is the Decision dated January 15, 2019,[2] disposing the case as follows:

> **WHEREFORE**, the Petition for Review dated October 12, 2017, filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit.
>
> Consequently, the assailed Resolution dated February 22, 2017 and Resolution dated September 20,

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[1] *Rollo,* pp. 107-111.
[2] Ibid. at pp. 61-74.

2017, both rendered by the Court in Division, are **AFFIRMED**.

SO ORDERED.

Petitioner maintains that the 1st and 2nd waivers executed on December 15, 2009 and November 18, 2010, respectively, contain all the requisites set forth in Revenue Memorandum Order (RMO) No. 20-90, particularly: 1) the definite period of extension of assessment or collection of taxes due; 2) the RDO's date of acceptance; 3) acceptance by respondent's authorized representative; 4) both were notarized; 5) respondent's date of execution and petitioner's acceptance; and 6) respondent was furnished with the 2nd copy of the waivers. Being valid in all respects, the 1st and 2nd waivers legally extended his prescriptive period to assess respondent relative to its 2007 deficiency taxes.

Assuming that the subject waivers were defective, they may still be conferred legal effect given that respondent's responsible officer Ariel J. Agcoili has the inherent authority to execute the waivers on its behalf despite absence of the required notarized written authority to execute the same. Further, petitioner's acceptance of the 1st waiver on December 15, 2009, or two (2) days prior to the transmittal thereof on December 17 of even year is inconsequential to its efficacy since respondent's execution thereof and his acceptance were both made on December 15, 2009, or before the expiration of the three (3) year prescriptive period to assess. In addition, with its execution of the 2nd waiver, respondent is deemed to have impliedly admitted the validity of the 1st waiver. Moreover, he and respondent continued to deal with each other despite knowing the flaws in the waivers, thus, they are in *pari delicto,* or at equal fault. For all the foregoing, petitioner believes that prescription did not set in on his right to assess respondent for deficiency income tax (IT), value-added tax (VAT), and withholding tax on compensation (WTC) for TY 2007.

In its Comment/Opposition dated March 8, 2019, respondent avers that: 1) the execution of the waivers by Ariel J. Agcoili was not among his duties and responsibilities as Director of Finance of respondent, precisely a notarized authority to execute the waivers was indispensable; 2) since the 1st waiver was transmitted to the BIR on December 17, 2009, the date of acceptance by petitioner on December 15, 2009 casts serious doubt on the veracity of such acceptance; and 3) petitioner cannot invoke estoppel to justify its failure to comply with the requirements of a valid waiver mandated under RMO No. 20-90.

THE RULING OF THE COURT

The instant Motion is bereft of merit.

Section 203 of the NIRC, as amended, teaches us that petitioner has three (3) years to assess a taxpayer for internal revenue taxes, counted from the last day prescribed by law for filing of a tax return, or actual filing thereof, whichever is later. However, such rule is not unrestrained for it admits of exceptions as stated in Section 222 of the same Code.

Section 222(b) of the NIRC, as amended, along with RMO No. 20-90 and RDAO 5-01 requires, *inter alia,* the following requisites for the validity of a waiver, to wit: *first,* receipt of the taxpayer of a copy of the duly executed waiver; *second,* the date of acceptance by the BIR; and *third,* the specific type and the amount of tax involved. Per jurisprudence these requirements are mandatory in nature and non-compliance thereof is fatal.

In *Commissioner of Internal Revenue vs. FMF Development Corporation,*[3] the Supreme Court found the waivers invalid for the BIR's failure to establish among others that the taxpayer was furnished a copy of the waiver. Consequently, it did not stretch the prescriptive period to assess.

The waiver involved in *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Inc.*[4] were as well nullified since the waiver did not bear the conformity of Commissioner of Internal Revenue or his duly authorized representative.

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[3] G.R. No. 167765, June 30, 2008.
[4] G.R. No. 187589, December 3, 2014.

In the recent case of *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.,*[5] the waivers were quashed as they failed to indicate the type of tax involved and the amount of tax to be assessed or collected.

As discussed in pages 7-13 of the challenged Decision, the 1st waiver must be nullified as: 1) respondent's copy of a waiver was received by a certain Mario C. Enriquez, who was neither its personnel nor under its employ; and 2) petitioner's date of acceptance was not convincingly established as it was well-nigh impossible for him to accept such waiver on December 15, 2009 since it was transmitted to his office two days thereafter or only on December 17, 2009.

Moreover, the 1st waiver[6] merely contains a sweeping declaration that it covers "all internal revenue taxes" without indicating the particular class/es and sum/s of tax/es to be assessed or collected. "Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity."[7] With the foregoing infirmities in the *first* waiver, it did not stretch petitioner's prescriptive period to assess. Thus, the FAN/FLD issued on November 15, 2010, or beyond the three (3) year prescriptive period[8] is void, warranting its cancellation and withdrawal.

Even if the flawed waivers were conferred validity, resulting in the timely issuance of the assessments, the nullity of the subject FAN/FLD may not be ignored for it is not an assessment notice contemplated under the law and jurisprudence.

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[5] G.R. No. 211289, January 14, 2019.
[6] Exhibit P-15, docket (CTA Case No. 8972), p. 1747.
[7] *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.,* G.R. No. 220835, July 26, 2017.
[8] The last day petitioner may assess respondent under the ordinary three (3)-year prescriptive period covering TY 2007 shall at most be on June 30, 2010 for IT; April 26, 2010 for VAT; and April 15, 2010, for WTC.

Section 6(A)[9] of the NIRC, as amended, decrees that a taxpayer shall be held answerable for a valid assessment only upon notice and demand from petitioner or his authorized representative.

Pertinently, case-law defines an assessment as a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there *definitely set and fixed*.[10] Its primary purpose is to determine the amount that a taxpayer is liable to pay.[11] *Ergo*, any FAN/FLD which is still subject to modification or adjustment, as in the present case, is not an assessment contemplated by the Tax Code and settled case-law on the matter.

The record reveals that the FAN dated November 15, 2010[12] indicates that the tax liabilities were still for computation since the amount of tax due and the interest thereon would vary depending on actual date of payment, thus:

> ***Please note that the interest and the total amount due will have to be adjusted if paid beyond the specified date therein.**[13]

Petitioner's assessment is virtually hinged upon the period when respondent decides to account for its alleged tax obligation in favor of the government. Verily, the FLD dated November 15, 2010 failed to indicate a fixed and definite amount of tax liability to be paid, rendering it legally infirm and without any legal consequence. Consequently, the Court is left no other recourse but to invalidate in the same.

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[9] **SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -**

(A) Examination of Return and Determination of Tax Due. - xxx

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. xxx

[10] See *Adamson vs. Court of Appeals,* G.R. No. 120935, May 21, 2009.

[11] See *Tupaz vs. Hon. Ulep,* G.R. No. 127777, October 1, 1999.

[12] Exhibit P-17, docket (CTA Case No. 8972), pp. 1765-1766. Boldfacing in the original.

[13] Ibid. at p. 1766.

WHEREFORE, petitioner's *Motion for Reconsideration* dated February 1, 2019 is **DENIED**. The challenged Decision of January 15, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE

CATHERINE T. MANAHAN
Associate Justice