Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

## *FIRST DIVISION*

**STARSMASH BADMINTON CENTER CORPORATION, represented by RAJESH CHULANI,**
Petitioner,

-versus-

**THE COMMISSIONER OF INTERNAL REVENUE AND RDO CLAVELINA S. NACAR,**
Respondents.

**CTA Case No. 8523**
For: Assessment

Members:

**DEL ROSARIO, *Chairperson***
**UY, and**
**MINDARO-GRULLA, JJ.**

Promulgated:

MAY 29 2015 ; 4:18 p.m.

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# DECISION

***MINDARO-GRULLA, J.:***

This resolves the Petition for Review with Urgent Application for the Issuance of a Writ of Preliminary Injunction filed by Starsmash Badminton Center Corporation, as petitioner, against the Commissioner of Internal Revenue and Revenue District Officer Clavelina S. Nacar, as respondents, with the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

Petitioner seeks the cancellation of the assessment issued against it and the issuance of a writ of preliminary injunction.

Petitioner Starsmash Badminton Center Corporation is represented by Mr. Rajesh Chulani, with address at 21 Sta. Ana St. Magallanes Village, Makati City. On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), holding office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 19, 2010, a Post Reporting Notice[3] dated March 19, 2010 was received by Ms. Nenita Basconcillo, the accountant of petitioner.[4] The Post Reporting Notice was issued pursuant to TVN No. 00076373 dated July 1, 2008 and covered all internal revenue taxes of petitioner for the taxable year 2007.[5]

[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Exhibit "2".

[4] Exhibit "2"; Par. 5.4.B, Exhibit "10", Docket, p. 236.

[5] Par. 10, Statement of Facts, Petition for Review, Docket, p. 10.

A Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code was executed by Mr. Rajesh Chulani, the president of petitioner, on July 28, 2010[6]. The waiver contained an averment that the signatory waives the defense of prescription and that he consents to the assessment which may be found due after investigation at any time before or after the lapse of the period of limitations fixed by the Tax Code but not later than December 31, 2011.[7]

On May 6, 2011, petitioner received an undated Amended Post Reporting Notice[8] issued by respondent.

On June 29, 2011, petitioner's counsel wrote to respondent RDO Clavelina S. Nacar requesting for the basis of the computation of petitioner's tax liability and for copies of documents in support of the computation, including all pertinent notices sent to petitioner relative to the assessment.[9] On the same date, petitioner's counsel conferred with Revenue Officer Ma. Liza S. Grajo.

On October 24, 2011, petitioner received the Preliminary Assessment Notice[10] (PAN) dated September 5, 2011, assessing it for deficiency value-added tax (VAT), expanded withholding tax (EWT), annual registration fee, and compromise penalty.[11] Respondent likewise issued Assessment No. 39-B04-07 and Formal Letter of Demand.[12]

On July 19, 2012, petitioner received two (2) copies of a Final Notice Before Seizure dated June 26, 2012[13] and July 12, 2012[14]. The notice pertains to Assessment No. 39-B04-07, covering income tax, VAT, improperly accumulated

[6] Exhibit "D"; Exhibit "3".
[7] Exhibit "D-1".
[8] Exhibit "4".
[9] Exhibit "E".
[10] Par. 5, Joint Stipulation of Facts (JSF), Docket, p. 131.
[11] Exhibit "I"; Exhibit "5".
[12] Exhibit "6" to "6-F".
[13] Exhibit "A"; Exhibit "9-A".
[14] Exhibit "B"; Exhibit "9-B".

earnings tax, and compromise penalty in the amount of ₱614,428.28 covering the taxable year 2007.[15]

Petitioner considered the same as the final demand letter, tantamount to a denial of petitioner's request for reconsideration and as respondent's final decision on disputed assessment; hence, petitioner filed the instant Petition for Review with Urgent Application for the Issuance of a Writ of Preliminary Injunction[16] on July 31, 2012.

The Court treated petitioner's Urgent Application for the Issuance of a Writ of Preliminary Injunction as a Motion for Suspension of Collection of Taxes. In a Resolution[17] dated August 29, 2012, the Court granted petitioner's Motion for Suspension of Collection of Taxes subject to posting of an acceptable surety bond in the amount of ₱921,642.42.

Within the extended time granted by the Court, respondent filed her Answer[18] on October 1, 2012, interposing the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. She reiterates and re-pleads the foregoing paragraphs of this Answer as part of her Special and Affirmative Defenses;

6. All presumptions are in favor of the correctness of the Assessment and the manner by which it was arrived at. Petitioner was accorded due process in the conduct of the investigation of its internal revenue tax including the execution of a valid waiver of the defense of prescription under the statute of limitation of the National Internal Revenue Code;

[15] Par. 4, Petition for Review, Docket, pp. 7-8.
[16] Docket, pp. 6-34.
[17] Docket, pp. 69-70.
[18] Docket, pp. 83-86.

7. Herein petitioner was fully apprised of the facts and the law upon which the Final Assessment Notice was issued. The Final Assessment Notice, Formal Letter of Demand and details of Discrepancies were all sent to the Petitioner detailing the manner of computation, the facts upon which the assessments were based and the law applied in arriving at the deficiency assessment. The assessments were presumed to have been received by the Petitioner, hence it has become final and demandable;

8. The contention of the Petitioner that the Final Notice Before Seizure (FNBS) is deemed to be Respondent's last act is misplaced;

9. It is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, existing laws and prevailing jurisprudence to validly dispute the Assessment including but not limited to the filing of a valid and binding protest;

10. Taxpayer must establish by sufficient and competent evidence that its Petition for Review is cognizable by the Honorable Court considering the fact the Petitioner did not file a valid and binding protest with the Respondent;"

In the Notice of Pre-Trial Conference[19], the pre-trial conference was set on October 25, 2012. Petitioner's Pre-Trial Brief[20] was filed on October 22, 2012; while respondent's Pre-Trial Brief[21] was filed on October 23, 2012.

On October 22, 2012, the Court lifted and set aside the Resolution dated August 29, 2012 that granted petitioner's Motion for Suspension of Collection of Tax for petitioner's failure to post the required surety bond.[22]

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[19] Docket, p. 87.
[20] Docket, pp. 88-92.
[21] Docket, pp. 114-118.
[22] Resolution dated October 22, 2012, Docket, p. 113.

During trial, petitioner presented its sole witness, Mr. Rajesh Chulani.

Petitioner filed its Formal Offer of Evidence[23] through registered mail on April 1, 2013, which was received by the Court on April 10, 2013. In the Resolution[24] dated July 15, 2013, the Court admitted Exhibits "A", "B", "D", "D-1" to "D-7", "E", "G", "H", "I", "J", and "K" as petitioner's evidence. The Court, however, denied the admission of Exhibits "C", "F", and F-1" for failure of petitioner to submit the originals for comparison.

The documentary exhibits offered by the petitioner and which were admitted by the Court are as follows:

| Exhibit | Description |
|---|---|
| A | Respondent's FINAL NOTICE BEFORE SEIZURE dated June 26, 2012. |
| B | Respondent's FINAL NOTICE BEFORE SEIZURE dated July 12, 2012. |
| D<br>D-1-D7 | WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATION OF THE NATIONAL INTERNAL REVENUE CODE. |
| E | Letter request of Petitioner's counsel dated June 29, 2012. |
| G | Petitioner counsel's letter to respondent dated July 1, 2011. |
| H | Respondent's letter dated July 14, 2011. |
| I | PRELIMINARY ASSESSMENT NOTICE dated September 5, 2011. |
| J | CERTIFICATION issued by the OFFICE OF THE CLERK OF COURT & EX-OFFICIO SHERIFF Notarial Section |

[23] Docket, pp. 168-172.
[24] Docket, pp. 229-230.

K Judicial Affidavit of Rajesh Chulani

On the other hand, respondent presented Revenue Officers Ma. Liza S. Grajo and Benjamin T. Casals as her witnesses.

Respondent filed her Formal Offer of Evidence[25] on May 5, 2014. In the Resolution[26] dated June 18, 2014, the Court admitted respondent's Exhibits "1" to "13-A".

Respondent formally offered the following exhibits, to wit:

| Exhibit | Description |
|---|---|
| 1 | BIR Record of Petitioner relating its deficiency taxes for taxable year 2007 amounting to P614,428.28 consisting of 158 pages but inadvertently numbered as pages 1 to 256. |
| 2 | Post Reporting Notice (PRN) dated March 19, 2010. |
| 3 | Waiver of the Defense of prescription under the Statute of Limitation of the National Internal Revenue Code (Waiver). |
| 3-A | Proof of Receipt of Waiver. |
| 4 | Amended Post Reporting Notice. |
| 5 | Preliminary Assessment Notice (PAN) dated September 5, 2011. |
| 5-A | Details of Discrepancies. |
| 6 | Final Assessment Notice (FAN) for Value Added Tax dated October 7, 2011. |
| 6-A | Final Assessment Notice (FAN) for Expanded Withholding Tax dated October 7, 2011. |

[25] Docket, pp. 307-312.
[26] Docket, pp. 322-323.

| | |
|---|---|
| 6-B | Final Assessment Notice (FAN) for Improperly Accumulated Earnings Tax dated October 7, 2011. |
| 6-C | Final Assessment Notice (FAN) for Compromise Penalty dated October 7, 2011. |
| 6-D | Formal Letter of Demand (Compromise Penalty) dated October 7, 2011. |
| 6-E | Formal Letter of Demand (FLOD) dated October 7, 2011. |
| 6-F | Details of Discrepancies. |
| 7 | BIR Form No. 40 of Petitioner. |
| 8 | Preliminary Collection Notice. |
| 9 | Final Notice Before Seizure dated June 4, 2012. |
| 9-A | Final Notice Before Seizure dated June 26, 2012. |
| 9-B | Final Notice Before Seizure dated July 12, 2012. |
| 10 | Judicial-Affidavit of Revenue Officer Ma. Liza S. Grajo. |
| 10-A | Signature of RO Ma. Liza S. Grajo. |
| 11 | Memorandum dated April 3, 2012. |
| 12 | Transmittal of Payment Returns |
| 12-A | Registry Receipt No. 3003. |
| 13 | Judicial Affidavit of Revenue Officer Benjamin T. Casals. |
| 13-A | Signature of RO Benjamin T. Casals. |

The case was submitted for decision on August 20, 2014,[27] considering the Memorandum for the Petitioner[28]

[27] Resolution, Docket, p. 353.
[28] Docket, pp. 324-350.

filed on July 28, 2014 and respondent's failure to submit a Memorandum.[29]

The parties did not stipulate on any issue, however, the following are the issues they proposed in their respective Pre-Trial Briefs:

Petitioner:

1. Whether or not the waiver executed by petitioner is defective and therefore not valid.

2. Whether or not respondent's right to assess herein petitioner for deficiency taxes covering the taxable year 2007 has prescribed.

Respondent:

1. Whether or not petitioner is liable to pay the questioned deficiency Income Tax, Value-added Tax and Withholding Tax?

2. Whether or not petitioner failed to file the Petition for Review within the thirty (30)-day statutory period?

3. Whether or not petitioner complied with existing laws and guidelines relative to the Filing of Protest and the Filing of Petition for Review?

The Court will first settle the procedural issue raised by petitioner, particularly, the allegation that the Preliminary Assessment Notice and the Final Assessment Notice were received by unauthorized persons; as they are indispensable requirements to satisfy petitioner's right to due process.

The right of taxpayers to procedural due process in the issuance of assessment is clearly decreed in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, quoted hereunder for easy reference:

[29] Records Verification dated August 1, 2014, Docket, p. 351.

"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**: *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

**The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**

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

Corollary to the foregoing provision is Section 3 of Revenue Regulations (RR) No. 12-99[30], which provided the following rules to satisfy the due process requirement in the issuance of assessments:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –*

[30] 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 Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty, September 6, 1999.

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference.* - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN).* - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a

Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.3 *Exceptions to Prior Notice of the Assessment.* - The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof."

The afore-quoted provisions enumerate the requirements that must be observed to satisfy the "procedural due process", which is vital to the validity of an assessment.

First is the sending of a notice for informal conference to the taxpayer accompanied by a Summary of Findings or Report of Investigation. After the informal conference and if the BIR Commissioner or her duly authorized representative finds that taxes should be assessed, the taxpayer will be notified in writing in the form of a Preliminary Assessment Notice. The PAN will state the basis of the assessment.

The taxpayer is given fifteen (15) days from receipt of the PAN to make a reply, failing to do so, a formal letter of demand and assessment notice shall be issued calling for payment of the taxpayer's deficiency tax liability. If the taxpayer disagrees with or wishes to protest the assessment, it must send a letter to the BIR indicating its protest, stating the reasons therefor, and submitting such proof as may be necessary. The assessment then becomes a disputed assessment on which the BIR Commissioner may render a decision.

Petitioner contends that its right to due process was violated since the Post Reporting Notice[31], the Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC[32], the Amended Post Reporting Notice[33], the Preliminary Assessment Notice[34], and the Final Assessment Notice were all received by persons not authorized to receive the same.

The Post Reporting Notice merely hints at the initial findings of the BIR against a taxpayer and invites the latter to an "informal" conference or clarificatory meeting. It does not contain a declaration of the tax liability of the taxpayer or a demand for its payment. Therefore, the lack of such notice inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice.[35]

Petitioner alleges that the Preliminary Assessment Notice and the Final Assessment Notice were received by persons not authorized to receive them.

The Court notes that the parties have stipulated that petitioner received the Preliminary Assessment Notice dated September 5, 2011.[36] Petitioner can no longer dispute this

[31] Exhibit "C"; Exhibit "2".
[32] Exhibit "D"; Exhibit "3".
[33] Exhibit "4".
[34] Exhibit "I".
[35] *Commissioner of Internal Revenue vs. Dominador Menguito,* G.R. No. 167560, September 17, 2008.
[36] Par. 5, JSF, Docket, p. 131.

stipulated fact by saying that it was received by an unauthorized person.

Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated.[37] Judicial admissions are legally binding on the party making the admissions.[38]

However, the Final Assessment Notice dated October 7, 2011 was not properly served on petitioner.

Respondent's witness, Revenue Officer Ma. Lisa S. Grajo, testified in her Judicial Affidavit that she personally served the Final Assessment Notice 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."

During the cross-examination, it was revealed that respondent constructively served the Final Assessment Notice to petitioner, thus:

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[37] *Bayas, et. al. vs. The Sandiganbayan, et. al.*, G.R. Nos. 143689-91, November 12, 2002.
[38] *Constantino, et. al. vs. Heirs of Pedro Constantino, Jr.*, G.R. No. 181508, October 2, 2013.

"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."[39] *(Emphasis supplied)*

Section 3.1.7 of RR No. 12-99 provides for the requirements of a valid constructive service of tax assessment notices, which reads:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

xxx xxx xxx

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

[39] TSN of the November 21, 2013 hearing, p. 19.

> 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. 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" *(Emphasis supplied)*

Based on the foregoing, constructive service of tax assessment notice can be availed of when the taxpayer or his duly authorized representative refuses to acknowledge receipt of a personally served notice. It is effected by leaving the notice in the premises of the taxpayer and this should be attested to by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the notice shall make a written report of the service which shall form part of the docket.

Records show that respondent did not comply with the requirements of a valid constructive service of the Final Assessment Notice. There is no written report of the constructive service in the BIR Records as required.

Respondent's failure to strictly comply with the notice requirements as laid down in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 amounts to the denial of petitioner's right to due process, effectively voiding the assessment issued.

The Court will now discuss the validity of the waiver of the defense of prescription executed by petitioner.

Section 222(b)[40] of the NIRC of 1997, as amended, provides that the period to assess and collect deficiency taxes may be extended upon a written agreement between the Commissioner of Internal Revenue and the taxpayer prior to the expiration of the three-year prescriptive period.

In relation to the above-quoted provision, Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990[41], as amended by Revenue Delegation Authority Order (RDAO) No. 05-01 dated August 2, 2001[42], provided the procedures that should be followed for the proper execution of the waiver of the statute of limitations. The pertinent portions of RMO No. 20-90 are quoted as follows:

> "1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase 'but not after __________ 19___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

[40] SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes* – xxx
(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
[41] Subject: Proper Execution of the Waiver of the Statute of Limitations Under the National Internal Revenue Code, dated April 4, 1990.
[42] Subject: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

xxx xxx xxx

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with."

In the case of *Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated,*[43] the Supreme Court enumerated the requisites of a valid waiver, to wit:

"1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after _______ 19 ____', which indicates the expiry date of the period agreed upon to assess/collect

[43] G.R. No. 187589, December 3, 2014.

the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

Upon careful perusal of the waiver[44] executed by petitioner on July 28, 2010, the Court finds the following infirmities:

1. The waiver failed to indicate the date of acceptance[45];

2. The waiver failed to indicate the kind and amount of tax involved; and

3. The waiver was not properly notarized considering that the affiant was not specified, and the date and place of issuance of the Community Tax Certificate were not indicated.[46]

Considering the above defects in the execution of the waiver, this Court finds the same invalid, hence, without force and legal effect.

In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[47], the Supreme Court ruled that a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the assessment and collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection.

Due to the failure of the executed waiver of the statute of limitations to strictly comply with RMO No. 20-90 and

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[44] Exhibit "D".
[45] Exhibit "D-5".
[46] Exhibit "D-7".
[47] G.R. No. 162852, December 16, 2004.

RDAO No. 05-01, the prescription period was not extended; hence, the Final Assessment Notice and the Formal Letter of Demand dated October 7, 2011 are void for having been issued beyond the three-year period to assess.

In view of the foregoing, there is no reason for the Court to discuss the other issues and arguments of the parties considering that a void assessment bears no fruit.

**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.**

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

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

(on leave)
**ERLINDA P. UY**
Associate Justice

## C E R T I F I C A T I O N

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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice
Chairperson, 1st Division