REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

***EN BANC***

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| ACTIVE MULTI-MARKETING & MERCHANDISING SERVICES, INC., Petitioner, | CTA EB No. 1728 (CTA Case No. 8744) |
| | Present: |
| -versus- | DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*. |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: |
| | MAR 12 2020 4:23 pm |

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## RESOLUTION

***Fabon-Victorino, J.:***

In its Motion for Reconsideration dated April 22, 2019, petitioner assails the Decision dated March 25, 2019, the dispositive portion of which reads as follows:

> **WHEREFORE**, the Petition for Review dated November 3, 2017, filed by petitioner Active Multi-Marketing & Merchandising Services, Inc. is **DENIED**, for lack of merit. The impugned Decision and Resolution dated May 25, 2017 and October 3, 2017 respectively, both rendered by the Court in Division are hereby **AFFIRMED**.
>
> **SO ORDERED**.

Petitioner claims that one of the conditions for the validity of a waiver provided under Revenue Memorandum Order (RMO) No. 20-90 is acceptance by the BIR prior to lapse of the prescriptive period to assess under Section 203 of the National Internal Revenue Code (NIRC), as amended. Given that the questioned waiver was executed by its President on June 28, 2012, and was accepted by respondent on June 29, 2012, the deficiency VAT covering the 1st Quarter of taxable year (TY) 2009, along with deficiency expanded withholding tax (EWT) and withholding tax on compensation (WTC) for the periods February to June 2009 had prescribed, hence, may no longer be enforced against it.

Further, Revenue Audit Memorandum Order (RAMO) 1-2000 requires that the Letter of Authority (LOA) must be served to the taxpayer within 30 days from issue, lest the it shall be without force and effect. In the instant case, respondent served the LOA to petitioner on November 22, 2010, or 52 days from its issuance on September 29, 2010, rendering the LOA void. Thus, the deficiency taxes resulting from its implementation must necessarily be a patent nullity and may not be utilized as foundation of a valid collection against it, says petitioner.

Further, the tenet laid down in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.),*[1] that when the parties to the execution of the waiver are equally at fault, a defective waiver may stretch respondent's prescriptive period to assess, may not be applied to the present case since the factual milieu in the present case is plainly disparate with that of the cited case.

Petitioner as well denies receipt of the Formal Letter of Demand (FLD) and the FAN allegedly served by respondent *via* registered mail on June 25, 2013. The Certification issued by postmaster Glenn V. Granados, relied upon by respondent, failed to satisfactorily prove such receipt for it merely indicated, per letter-carrier record book, that the

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

addressee of the Mail Matter No. 1098-13 containing the FLD/FAN was a certain "Camper Mfg., Inc." and not petitioner.

Finally, petitioner claims that there could not also be constructive service of the FLD/FAN in the absence of any explanation to justify the use of exceptional mode of service. Revenue Officer Leonita Dimagiba's only testified that "upon actual service of the FLD/FAN, petitioner declined the same." Petitioner believes that the said witness failed to show that "diligent efforts" were exerted to personally served the same as mandated by jurisprudence.[2]

Despite directive, respondent failed to file his comment/opposition to petitioner's Motion for Reconsideration.[3]

The instant Motion is bereft of merit.

Section 228 of the NIRC, as amended, explicitly grants a taxpayer a period of thirty (30) days from receipt of the FAN/FLD to institute an administrative protest with the BIR, the failure of which renders the latter's assessment final, executory, and demandable.

Relevantly, catena of cases[4] tells us that once an assessment becomes final, executory, and demandable, the taxpayer forecloses its right to invoke *any* defense relative to the propriety of its tax liability on the merits.

As observed in pages 17-19 of the assailed Decision, petitioner received respondent's FAN/FLD twice, *first* on June 25, 2013 through constructive service; and *second* on July 4, 2013 via registered mail. Petitioner's failure to seasonably institute an administrative protest thereon rendered the questioned assessments conclusive upon it.

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[2] Petitioner invokes *Manotoc vs. Court of Appeals,* G.R. No. 130674, August 16, 2006 as basis to support its theory.

[3] Records verification report dated December 11, 2019.

[4] See *Commissioner of Internal Revenue vs. Concepcion,* G.R. No. L-23912, March 15, 1968; *Morales vs. Collector of Internal Revenue,* G.R No. L-16759, August 31, 1966; *Republic of the Philippines vs. Lim Tian Teng Sons and Co., Inc.,* G.R. No. 21731, March 31, 1966; and *Republic of the Philippines vs. Albert,* G.R. No. L-12996, December 28, 1961.

For this reason, any defense relative to the finding of deficiency taxes that may possibly be raised by petitioner may no longer be entertained by the Court.

**WHEREFORE**, petitioner's Motion for Reconsideration dated April 22, 2019 is **DENIED**. The assailed Decision dated March 25, 2019 is **AFFIRMED**.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

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

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice