REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AYALA LAND INTERNATIONAL SALES, INC.,
Respondent.

CTA EB No. 2017
(CTA Case No. 9262)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, JJ.

Promulgated:

OCT 19 2021

2:35 p.m.

x - x

DECISION

UY, J.:

This is a *Petition for Review* filed on March 11, 2019[1] by the Commissioner of Internal Revenue (CIR), petitioner, against Ayala Land International Sales, Inc., respondent, praying for the reversal and setting of the Decision dated September 28, 2018 and Resolution dated February 4, 2019[2], both rendered by the Special Third Division (Court in Division) of this Court in CTA Case No. 9262, entitled *"Ayala Land International Sales, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent".* The dispositive portions thereof respectively read:

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[1] EB Docket, pp. 7 to 19.

[2] Decision dated September 28, 2018, and Resolution dated February 4, 2019, penned by Associate Justice Esperanza R. Fabon-Victorino, concurred by Associate Justice Ma. Belen M. Ringpis-Liban, EB Docket, pp. 24 to 47; and pp. 48 to 53, respectively.

Decision dated September 28, 2018:

"**WHEREFORE,** the Petition for Review dated February 17, 2016 filed by Ayala Land International Sales, Inc. is hereby **GRANTED**.

Accordingly, respondent's Formal Letter of Demand dated March 24, 2014, with Details of Discrepancies and Assessment Notices, and the Final Decision on Disputed Assessment dated January 18, 2016 assessing petitioner for deficiency taxes in the aggregate amount of ₱29,226,987.73 for calendar year 2009 is **CANCELLED**.

SO ORDERED."

Resolution dated February 4, 2019:

"**WHEREFORE**, there being no ground to reverse, much less modify the assailed Decision of September 28, 2018, respondent's *Motion for Reconsideration* dated October 18, 2018 is **DENIED**, for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) with the authority to decide on disputed assessments, among others, under the National Internal Revenue Code (NIRC) of other laws or portions thereof administered by the BIR.

On the other hand, respondent is a domestic corporation, with office address at 3rd Floor, Makati Stock Exchange Building, Ayala Avenue, Makati City. It is registered with the BIR with Taxpayer Identification Number (TIN) 237-523-160-000 and Certificate of Registration No. OCN 8RC0000059755 issued on April 18, 2005.

Respondent is primarily engaged in the business of selling and marketing real estate products including, but not limited to, land, buildings, condominium units, townhouses, apartments, house and lot packages and all other forms of real estate products which are owned and/or developed by its Parent company, subsidiaries and affiliates within and outside the Philippines.

Respondent filed its Annual Income Tax Return (AITR), Quarterly Value-Added Tax (VAT) Returns, Expanded Withholding Tax (EWT) Returns, Withholding Tax on Compensation (WTC) Returns, and Documentary Stamp Tax (DST) Return for calendar year (CY) 2009, on the following dates:

Annual Income Tax Return	***Date of Filing***
CY 2009	April 14, 2010

Quarterly VAT Return	***Date of Filing***
1st Quarter, CY 2009	April 20, 2009
2nd Quarter, CY 2009	July 24, 2009
3rd Quarter, CY 2009	October 21, 2009
4th Quarter, CY 2009	January 22, 2010

Monthly EWT Return	***Date of Filing***
January 2009	February 16, 2009
February 2009	March 10, 2009
March 2009	April 13, 2009
April 2009	May 11, 2009
May 2009	June 10, 2009
June 2009	July 10, 2009
July 2009	August 10, 2009
August 2009	September 10, 2009
September 2009	October 12, 2009
October 2009	November 10, 2009
November 2009	December 10, 2009
December 2009	January 15, 2010

Monthly WTC Return	***Date of Filing***
January 2009	February 16, 2009
February 2009	March 10, 2009
March 2009	April 13, 2009
April 2009	May 11, 2009
May 2009	June 10, 2009
June 2009	July 10, 2009

July 2009	August 10, 2009
August 2009	September 10, 2009
September 2009	October 12, 2009
October 2009	November 10, 2009
November 2009	December 10, 2009
December 2009	January 20, 2010

DST Return	***Date of Filing***
June 10, 2009	July 6, 2009

On May 24, 2010, respondent received *Letter of Authority (LOA)* No. 126-2010-00000013 dated May 14, 2010, authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for CY 2009.

Thereafter, five (5) *Waivers of the Defense of Prescription under the Statute of Limitations of the NIRC* were executed to extend petitioner's period to assess and collect respondent's alleged deficiency taxes for CY 2009, as follows:

Date of Waivers	**Period of Extension**	**Person who signed the Waivers**
February 6, 2012	Until September 30, 2012	Ma. Teresa R. Famy Chief Financial Officer
July 25, 2012	Until December 31, 2012	
October 18, 2012	Until June 30, 2013	
April 22, 2013	Until December 31, 2013	
August 12, 2013	Until June 30, 2014	

On March 3, 2014, respondent received from the BIR a *Preliminary Assessment Notice* (PAN) dated December 26, 2013 covering CY 2009, to which respondent filed a Protest on March 18, 2014.

Subsequently, respondent received on April 15, 2014 a *Formal Letter of Demand (*FLD) dated March 24, 2014, *with Details of Discrepancies and Assessment Notices*, assessing respondent for deficiency income tax (IT), VAT, EWT, WTC and DST, including surcharge, interests and compromise penalty for CY 2009. Again, respondent protested the said FLD on May 15, 2014.

On January 18, 2016, respondent received a *Final Decision on Disputed Assessment* (FDDA) finding it liable for deficiency IT, VAT, EWT, WTC, and DST, inclusive of penalties and interest, in the aggregate amount of ₱29,226,987.73 for CY 2009.

On February 17, 2016, respondent filed a Petition for Review before the Court in Division, docketed as CTA Case No. 9262 assailing the said FDDA.

Within the extension period granted by the Court, petitioner filed his Answer on April 15, 2016 in CTA Case No. 9262, interposing, among others, the following special and affirmative defenses: (1) the assessments were made within the period prescribed by law; (2) the assessments issued against respondent have bases in facts and law; and (3) the assessments issued against respondent are valid and lawful.

After the pre-trial conference on August 2, 2016, the parties submitted their *Joint Stipulation of Facts and Issues* on August 12, 2016. Thereafter, the Court in Division issued a Pre-Trial Order on September 1, 2016 and pre-trial was deemed terminated.

During trial, respondent presented the following witnesses: Sheryll Anne C. Magnaye, respondent's Finance Manager; and Katherine O. Constantino, the duly-commissioned independent certified public accountant (or ICPA).

Thereafter, respondent filed its *Formal Offer of Evidence* on March 1, 2017, with petitioner's *Comment/Opposition* on February 20, 2017. In the Resolution dated April 24, 2017, the Court in Division admitted all of respondent's exhibits.

For his part, petitioner presented as witness, Revenue Officer (RO) Elizabeth U. Cadiz.

Thereafter, petitioner filed a *Motion for Leave of Court to Admit Attached Formal Offer of Evidence* on June 30, 2017, praying that the attached *Formal Offer of Evidence* dated June 30, 2017 be admitted. On September 11, 2017, the Court in Division granted the said motion and at the same time admitted all of petitioner's exhibits.

Considering the filing of petitioner's and respondent's respective Memorandum on October 18, 2017 CTA Case No. 9262 was submitted for decision on November 8, 2017. On September 28, 2018, the Court in Division rendered the assailed *Decision*[3] granting respondent's Petition for Review in said case.

Aggrieved, petitioner filed a *Motion for Reconsideration Re: Decision dated 28 September 2018* on October 19, 2018[4], with respondent' *Comment/Opposition Re: Respondent's Motion for Reconsideration* filed on December 7, 2018.[5]

In the Resolution dated February 4, 2019, the Court in Division denied petitioner's motion for reconsideration for lack of merit.[6]

On February 22, 2019, petitioner filed a *Motion for Extension of Time to File Petition for Review* before the Court *En Banc*, praying for an additional period of fifteen (15) days from February 23, 2019, or until March 10, 2019, within which to file his Petition for Review.[7] The Court *En Banc* granted the same on February 26, 2019.[8]

On March 11, 2019,[9] petitioner filed before the Court *En Banc* the instant *Petition for Review.*[10]

As directed by the Court *En Banc* in the Resolution dated April 8, 2019[11], and within the extension period granted by the Court, respondent filed its Comment on June 10, 2019.[12]

Thereafter, the Court *En Banc* referred the instant case to the Philippine Mediation Center Unit-Court of Tax Appeals (PMC-CTA) for mediation pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals* on June 27, 2019.[13]

On October 4, 2019, the Court *En Banc* received a *Request for Extension*[14] filed by Atty. Emma Carino-Francisco, mediator in the PMC-CTA, praying for a final extension of thirty (30) days from October 10, 2019 to give the parties additional time to reach an

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[3] EB Docket, pp. 24 to 47; Division Docket (CTA Case No. 9262)– Vol. III, pp. 1327 to 1349.
[4] Division Docket (CTA Case No. 9262) – Vol. III, pp. 1350 to 1360.
[5] Division Docket (CTA Case No. 9262) – Vol. III, pp. 1369 to 1372.
[6] EB Docket, pp. 48 to 53; Division Docket – Vol. II (CTA Case No. 9262), pp. 1374 to 1379.
[7] EB Docket, pp. 1 to 4.
[8] Minute resolution dated February 26, 2019, EB Docket, p. 6.
[9] March 10 fell on a Sunday.
[10] EB Docket, pp. 7 to 19.
[11] EB Docket, pp. 55 to 56.
[12] EB Docket, pp. 62 to 66.
[13] Resolution dated June 27, 2019, EB Docket, pp. 68 to 69.
[14] EB Docket, p. 74.

amicable settlement. Said Request was granted by the Court *En Banc* on October 24, 2019, and the parties and mediator were given an extended period from October 10, 2019 until November 9, 2019, within which to complete the mediation proceedings.[15]

On March 13, 2020, the Court *En Banc* received a *Records Verification Report* from the Judicial Records Division of this Court stating that no mediation report of both parties has been filed.[16]

Subsequently, respondent filed a *Manifestation*[17] on October 6, 2020, stating, among others, that it is still interested in pursuing an amicable resolution of the case; that respondent has previously submitted a draft of the compromise agreement for the consideration of petitioner, except that the same may have been affected by the withdrawal of appearance of the counsel previously handling the case and more severely, by the lockdowns due to the current pandemic; and that it is not unnecessarily delaying the resolution of the case.

In the Resolution dated October 20, 2020,[18] the Court *En Banc* noted respondent's Manifestation and the instant case was submitted for decision.

On December 4, 2020, the Court *En Banc* received the *Mediator's Report* from the PMC-CTA stating the unsuccessful mediation between the parties.[19] The Court *En Banc* noted the same and reiterated that the instant case was submitted for decision on October 20, 2020.[20]

Hence, this Decision.

ISSUE

Petitioner raises a sole issue for the Court *En Banc's* resolution, to wit:

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[15] Resolution dated October 24, 2019, EB Docket, pp. 76 to 78.
[16] EB Docket, p. 79.
[17] EB Docket, pp. 80 to 82.
[18] EB Docket, pp. 85 to 87.
[19] EB Docket, p. 88.
[20] EB Docket, pp. 89 to 90.

> "THE HONORABLE COURT IN DIVISION GRAVELY ERRED IN RULING THAT THE FIRST WAIVER IS VOID THUS IT DID NOT EXTEND THE THREE (3) YEAR PERIOD TO ASSESS."[21]

Petitioner's arguments:

According to petitioner, the FLD and FAN received by respondent on April 15, 2014 has not prescribed as the period to assess was extended until June 30, 2014 by virtue of the five (5) Waivers of the defense of prescription executed by the parties.

Petitioner argues that the first waiver was not defective and it was duly notarized by a notary public on February 6, 2012. Allegedly, although the notary public did not write in the acknowledgment the name of the affiant and the latter's relevant details, it does not mean that the affiant did not really appear before the notary public and did not render the notarization void.

Likewise, petitioner argues that RMO No. 20-90, as amended by RDAO No. 05-01 did not affect the validity of the waivers willingly and executed by the parties; that the said issuances are merely internal intended to regulate internal functions and processes of the officers and employees of the BIR. No taxpayer should be allowed to claim any vested right from these issuances as they are procedures and instructions directed to the concerned employees of the BIR for orderly administration of law; thus, respondent has nothing to do with these issuances.

Moreover, petitioner contends that the signatory of the Waivers is respondent's responsible official that binds respondent.

Lastly, petitioner submits that the assessments issued are valid and lawful.

Respondent's counter-arguments:

Respondent counter-argues that the Court in Division correctly held that the first waiver is void, thus it did not extend the three (3) year period to assess. Hence, petitioner's assessments are void.

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[21] Petition for Review, EB Docket, p. 9.

In arguing for the validity of the first Waiver dated February 6, 2012, petitioner stated, among others:

> "The fact that the Notary Public did not write in the acknowledgment the name of the affiant and her relevant details does not mean that the affiant did not really appear(ed) before the Notary. This does not render the notarization void. The presumption of regularity remains that the affiant appeared before the Notary Public considering that the Notary Public signed the Acknowledgement and it bore her official seal."
>
> and
>
> "Moreover, there is nothing in RMO No. 20-90, as amended by RDAO No. 05-01 which provides for the nullification of the waiver for failure to strictly follow the procedures. x x x"

Allegedly, petitioner should not trivialize its own rules, as well as the Supreme Court's pronouncement, on the validity of waivers in the course of the investigation as this effectively dilutes the rights of the taxpayer to due process and against arbitrariness.

Due process allegedly dictates that when petitioner lays down its own rules, it should abide by those rules. More so, when petitioner relies on two presumptions – presumption of regularity in the notarization process and presumption of the validity of an assessment – it runs afoul with the long established pronouncement of the Supreme Court on assessments.

Thus, respondent submits that the Third Division of this Court ruled correctly in its September 28, 2018 Decision and in its February 04, 2019 Resolution, cancelling the assessment and denying petitioner's Motion for Reconsideration, respectively, and that there is no basis to disturb the said Decision and Resolution.

THE COURT *EN BANC*'S RULING

The Court *En Banc* finds merit in the instant Petition for Review.

The Waivers validly extended the prescriptive period to assess respondent.

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the periods of limitation upon the assessment and collection of taxes, to wit:

> "Sec. 203. *Period of Limitation Upon Assessment and Collection.* – **Except as provided in Section 222**, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (*Emphasis supplied*)

The abovementioned provision mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective.[22]

One of the exceptions, however, is provided under Section 222 (b) of the NIRC of 1997, as amended, where the taxpayer and the CIR timely agree in writing to extend the prescriptive period to assess deficiency taxes before the expiration date. Said provision states:

> "Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

[22] *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

xxx xxx 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. (*Emphasis supplied)*
>
> xxx xxx xxx"

Verily, such agreement is called a Waiver of the Defense of Prescription. Said waiver is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[23] However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[24]

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation,*[25] the Supreme Court laid down the procedure for the proper execution of waivers, to wit:

> "Section 222(b) of the NIRC provides that the period to assess and collect taxes **may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period.** RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the execution of the 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 the tax after the regular three-year period of prescription, should be filled up.

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[23] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.,* G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[24] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* supra.
[25] G.R. No. 178087, May 5, 2010.

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 of 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." (*Emphasis supplied*)

Nevertheless, while We recognize the rule that the foregoing procedures laid down by Revenue Memorandum Order (RMO) No. 20-90[26] and Revenue Delegation Authority Order (RDAO) No. 05-01[27] must be strictly followed, the Supreme Court recognized an exception thereto in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (Next Mobile case).*[28] In said case, the Supreme Court held:

[26] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.
[27] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitation.
[28] G.R. No. 212825, December 7, 2015.

"To be sure, **both parties in this case are at fault.**

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Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

In this case, respondent (referring to Next Mobile, Inc.), after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claim before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefitting therefrom and allowing petitioner to rely on the same is an act of bad faith.

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The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO [No.] 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

***First,* the parties in this case are *in pari delicto* or "in equal fault.**" *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto,* the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

***Second,* the Court has repeatedly pronounced that parties must come to court with clean hands**. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

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

***Finally,* the Court cannot tolerate this highly suspicious situation**. In this case, the taxpayer, on the

> one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities." (*Emphasis supplied)*

The thrust of the *Next Mobile* case is that when the parties are both at fault, it creates an exception to the rule which requires strict compliance with the procedures laid down by RMO No. 20-90 and RDAO No. 05-01.

Clearly in this case, both parties are *in pari delicto.*

In the assailed *Decision*, the Court in Division found the first *Waiver* dated February 6, 2012[29] as void for the following defects:

1) The first *Waiver* was not duly authorized as the said document failed to bear the name of the person who appeared before the notary public, nor was the detail of the person's identity indicated therein; and

2) There was no showing of any Board Resolution authorizing petitioner's representative to sign the Waivers.

However, the Court *En Banc* views the defects noted by the Court in Division attributable to the fault of both parties. Hence, the exception to the general rule in the *Next Mobile* case applies.

Here, respondent is at fault because its representative, Ma. Teresa R. Famy, respondent's Chief Finance Officer, who executed the Waiver failed to indicate in the acknowledgement section her name and proof of identity to the notary public. As to her authority to sign the Waiver, she failed to show any board resolution authorizing her to sign the Waivers.

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[29] Par. 6, Admitted Facts, JFSI, Division Docket – vol. II, p. 722; Exhibit "R-5", BIR Records, p. 413.

In *Asian Transmission Corporation vs. Commissioner of Internal Revenue,*[30] the Supreme Court emphasized the role of the taxpayer in the preparation of waivers, to wit:

> "Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, **a careful reading of RDAO 01-05 indicates that the proper execution of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver.** Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates." (*Emphasis supplied)*

Notwithstanding the foregoing pronouncement, in the instant case, the Court *En Banc* finds petitioner's authorized representative also at fault because as a revenue officer, he ought not only to know, but must ensure compliance with the necessary requisites of a valid Waiver pursuant to the said BIR issuances, before accepting the subject Waiver.

Anent the absence of details in the Acknowledgment Section of the Waiver, petitioner's authorized representative received the Waiver without requiring that the missing details be indicated therein. It bears pointing out that, on various dates, respondent through its representative, Ma. Teresa R. Famy, executed four (4) additional *Waivers,*[31] which evidently means that petitioner and respondent continued to deal with each other relying on these Waivers, and that neither party took any action to rectify the noted defects in order to comply with the requirements set forth under RMO No. 20-90 and RDAO No. 05-01.

Clearly, both parties are equally remiss in ensuring compliance with legal requirements. Petitioner's revenue officer concerned was negligent and failed to exact compliance from respondent of its own

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[30] G.R. No. 230861, September 19, 2018.

[31]

Waivers	Date of Execution	Date of Extension	Exhibit
Second	July 25, 2012[31]	December 31, 2012	Exhibit "R-6", BIR Records, p. 414.
Third	October 18, 2012[31]	June 30, 2013	Exhibit "R-7", BIR Records, p. 415.
Fourth	April 22, 2013[31]	December 31, 2013	Exhibit "R-8", BIR Records, p. 416.
Fifth	August 12, 2013[31]	June 30, 2014	Exhibit "R-9", BIR Records, p. 417.

rules. On the other hand, respondent is estopped from questioning the validity of the subject Waivers because the BIR delayed the issuance of an assessment by virtue of the Waivers executed by respondent. Thus, the FLD with details of discrepancies and Assessment Notices received by respondent on April 15, 2014, were issued well within the extended period provided for in the questioned Waivers.

It bears noting that respondent only raised the irregularity of the *Waivers* for the first time on appeal,[32] and failed to raise the issue of the invalidity of the Waivers in its protests to the PAN,[33] and FLD.[34]

In *Commissioner of Internal Revenue vs. Transitions Optical Philippines,*[35] the Supreme Court said:

> "Estoppel similarly applies in this case.
>
> Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent's Waivers despite their non-compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01.
>
> **Nonetheless, respondent's acts also show its implied admission of the validity of the waivers. First, respondent never raised the invalidity of the Waivers <u>at the earliest opportunity</u>, either in its Protest to the PAN, Protest to the FAN, or the Supplemental Protest to the FAN. It thereby impliedly recognized these Waivers' validity and its representatives' authority to execute them. Respondent only raised the issue of these Waivers validity in its Petition for Review filed with the Court of Tax Appeals.** xxx"

In sum, as elucidated in the *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 Waivers because of their respective contributory acts in the invalidity thereof.

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[32] Petition for Review, Division Docket – Vol. I, pp. 10 to 34.
[33] Par. 2, Admitted Facts, JSFI, Division Docket – Vol. II, pp. 722.
[34] Exhibits "P-3" and "P-3-A", Division Docket – Vol. II, pp. 538 to 559; BIR Records, pp. 725 to 746.
[35] G.R. No. 227544, November 22, 2017.

In view thereof, the first Waiver is valid and therefore, the three (3) year period to assess was validly extended. Consequently, the second to the fifth Waivers are valid as well.

Therefore, petitioner's right to assess respondent for deficiency IT, VAT, EWT, WTC and DST for calendar year 2009 has not prescribed when the FLD was served to respondent on April 15, 2014.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**. Accordingly, the assailed Decision dated September 28, 2018 and Resolution dated February 4, 2019, both rendered by the Court in Division in CTA Case No. 9262 are **REVERSED** and **SET ASIDE**.

Let the case be **REMANDED** to the Court in Division for determination on the merits of respondent's petition seeking the cancellation of the deficiency tax assessments for calendar year 2009 for IT, VAT, EWT, WTC and DST in the aggregate amount of ₱29,226,987.73.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Concurring and Dissenting Opinion)
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

MARIAN IVY F. REYES-FAJARDO
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 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,*	**CTA EB NO. 2017** *(CTA Case No. 9262)*
- versus -	***Present:*** **DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, *and* REYES-FAJARDO, *JJ.***
AYALA LAND INTERNATIONAL SALES, INC., *Respondent.*	**Promulgated:** OCT 1 9 2021 2:35p.m.

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CONCURRING & DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague, Associate Justice Uy, I **CONCUR** with the *ponencia* in finding that the First Waiver is void for failure to be notarized despite the fact that the subsequent four (4) Waivers were notarized. Since the First Waiver was defective, it did not serve to extend the prescriptive period. Consequently, the Final Letter of Demand (FLD)/Details of Discrepancies and the Final Decision on Disputed Assessment (FDDA) should be cancelled for having been issued beyond the 3-year prescriptive period.

Furthermore, even if the First Waiver was indeed notarized, it would still be invalid since no evidence was presented to show that the representative of respondent Ayala Land International Sales, Inc. (ALISI) had written board authority to execute the waiver.

However, as regards the applicability of the *Next Mobile*[1] case and the finding of the *ponencia* that the parties are *in pari delicto*, I respectfully register my **DISSENT.**

The doctrine of *in pari delicto* involving waivers of the defense of prescription has been defined by jurisprudence as follows:

> x x x this Court recognized the doctrine of estoppel and upheld the waivers when both the taxpayer and the Bureau of Internal Revenue were *in pari delicto.* The taxpayer's act of impugning its waivers after benefitting from them was considered an act of bad faith x x x.
>
> Parenthetically, this Court stated that when both parties continued to deal with each other in spite of knowing and without rectifying the defects of the waivers, their situation is "dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities."[2]

It is the undersigned's opinion that the *in pari delicto* doctrine does not apply in this case even if the BIR failed to ensure that all the requisites for proper execution of the waivers were complied with in accordance with RMO 20-90 and RDAO 05-01. This is because the defects in the waiver were never raised as an issue by ALISI and ALISI never impugned the authority of its signatory to sign the waivers. This shows that it had no intention to benefit from the infirmity.

I therefore vote to **DENY** the Petition for Review and **AFFIRM** the Decision dated September 28, 2018 and the Resolution dated February 4, 2019 rendered by the Court in Division in CTA Case No. 9262.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[1] *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*, G.R. No. 212825, December 7, 2015.

[2] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.